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Corporate Taxes 2017/18

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Worldwide Tax Summaries

Corporate Taxes 2017/18

All information in this book, unless otherwise stated, is up to date as of 1 June 2017.

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Foreword

Welcome to the 2017/18 edition of *Worldwide Tax Summaries – Corporate Taxes*, one of the most comprehensive tax guides available. This year's edition provides detailed information on corporate tax rates and rules in 157 countries worldwide.

As governments across the globe are looking for greater transparency and with the increase of cross-border activities, tax professionals often need access to the current tax rates and other major tax law features in a wide range of countries. The country summaries, written by our local PwC tax specialists, include recent changes in tax legislation as well as key information about income taxes, residency, income determination, deductions, group taxation, credits and incentives, withholding taxes, indirect taxes, and tax administration. All information in this book, unless otherwise stated, is up to date as of 1 June 2017.

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

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

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

Colm Kelly
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Significant developments

On 1 August 2016, the '*EU-Abgabenänderungsgesetz 2016*' was published in the Austrian Federal Law Gazette. *See Transfer pricing in the Group taxation section and EU state aid investigations and base erosion and profit shifting (BEPS) in the Other issues section for more information*.

On 30 December 2016, the '*Abgabenänderungsgesetz 2016*' was published in the Austrian Federal Law Gazette. This act includes several amendments, but does not result in significant changes in the field of corporate income taxation. *See Stability fee for banks in the Other taxes section for more information*.

Based on the '*KMU-Förderungsgesetz*', the Austrian Federal Ministry for Science, Research, and Economics issued on 7 March 2017 the directive on investment growth tax bonus payments. *See Investment incentives in the Tax credits and incentives section for more information*.

Taxes on corporate income

Basis of corporate income tax (Körperschaftsteuer)

Corporations (i.e. limited liability company [GmbH], stock corporation [AG]) are subject to unlimited taxation in Austria of their entire (domestic and foreign) income if they have their legal seat or place of effective management in Austria. A non-Austrian corporate tax resident (with neither a legal seat nor place of effective management in Austria) is subject to limited taxation on certain sources of income in Austria.

Rates of corporate income tax (Körperschaftsteuer)

Due to the qualification of corporations as independent tax subjects, a distinction must always be made between tax ramifications at the level of the company and those at the shareholder level. At the level of the company, profits are taxed at the standard corporate income tax (CIT) rate of 25%, regardless of whether profits are retained or distributed. At the shareholder level, the profit distributions are usually subject to withholding tax (WHT) of 25% for corporations and 27.5% for other recipients.

There is also a minimum CIT, payable by companies in a tax-loss position. The minimum CIT can be carried forward without time limitation and can be credited against future CIT burdens of the company.

The minimum CIT amounts to 875 euros (EUR) for an AG for each full quarter of a year.

The minimum CIT for a GmbH is EUR 437.50 for each full quarter of a year. However, for GmbHs founded after 30 June 2013, the minimum CIT amounts to EUR 125 for each full quarter of the first five years and EUR 250 for the next five years.

Local income taxes

There is no additional state or local income tax levied at the company level.

Corporate residence

A corporation is resident in Austria for tax purposes if either it is registered in Austria (legal seat) or its place of effective management is located in Austria. The 'place of effective management' is located where the day-to-day management of the company is actually carried out and not where singular board decisions are formally made. However, the definition of place of effective management under Austrian tax law does not significantly deviate from its definition under the Organisation for Economic Co-operation and Development (OECD) guidelines.

Permanent establishment (PE)

An Austrian PE is defined under Austrian tax law as a fixed establishment where a business is carried out, in particular:

- the place where the management is carried out
- plants, warehouses, purchase and sales establishments, and other establishments where an entrepreneur or one's permanent representative carries out one's business, or
- construction sites, which last for more than six months.

However, the definition of PE is different in some tax treaties. The Austrian tax authorities generally follow the commentary to the OECD model convention regarding the PE concept.

Other taxes

Value-added tax (VAT) (Mehrwertsteuer)

Generally, the Austrian VAT law is based on the 6th European Union (EU) VAT Directive. Under the Austrian VAT law, companies and individuals carrying out an active business on a permanent basis are qualified as entrepreneurs for VAT purposes. As entrepreneurs, they have to charge the supply of goods or services provided to their customers with Austrian VAT at a rate of 20%. A certain limited range of goods and services is taxed at the reduced rate of 10% (e.g. books, food, restaurants, passenger transportation, medicine) or 13% (e.g. animals, seeds and plants, cultural services, museums, zoos, film screenings, wood, ex-vineyard sales of wines, domestic air travel, public pools, youth care, guest accommodation, athletic events). Certain other transactions are exempted from Austrian VAT (e.g. export transactions).

Input VAT

Entrepreneurs are entitled to deduct Austrian input VAT insofar as the input VAT does not result from goods/services purchased that are directly linked to certain VAT-exempt sales (e.g. interest income, insurance premium). However, certain transactions are exempt from Austrian VAT (e.g. export transactions) without limiting the ability of the entrepreneur to deduct the related input VAT. To be entitled to deduct input VAT, the entrepreneur must obtain an invoice from one's supplier that fulfils certain formal requirements.

VAT filing and payment

Entrepreneurs have to file monthly or quarterly VAT returns by the 15th day of the second month following the month concerned or by the 15th day of the second month following the quarter concerned. The balance of the VAT due and the input VAT deducted has to be paid to the tax office (if VAT burden) or is refunded by the tax office (if in a net input VAT position) to the electronic tax account of the entrepreneur. A separate report has to be filed by the entrepreneur at the tax office showing the cross-border intra EU-transactions made.

Customs duties

Certain cross-border inbound movements of goods from non-EU countries trigger Austrian customs duty. The duty is levied according to the Austrian customs duty scheme, which is based on the EU-customs duty scheme. It defines the customs duty tariffs, dependent on the nature of the good.

Excise taxes

Excise taxes are imposed on certain products, including petroleum (approximately EUR 40 to EUR 600 per 1,000 litres), tobacco products (13% to 47% of price), and alcoholic beverages (tax rate depends on type of alcohol).

Stability fee for banks

A stability fee for financial institutions is charged at 0.024% based on balance sheet totals of over EUR 300 million to EUR 20 billion and 0.029% on balance sheet totals over EUR 20 billion. In addition to the stability fee, there is a contribution of 45% imposed on the stability fee, which has to be paid by banks for periods till the end of the year 2017. These contributions are deemed to be used for stability measures regarding the capital market.

Real estate tax

Local authorities annually levy real estate tax on all Austrian real estate property, whether developed or not. The tax is levied on the assessed standard ratable value (*Einheitswert*) of immovable property. The assessed value is usually substantially lower than the market value. The effective tax rate depends on the intended use of the real estate and is calculated using a special multiplier.

Tax rates:

- Agricultural area and forestry:
  - 0.16% for the first EUR 3,650 of the assessed standard ratable value.
  - 0.2% for the amount of the assessed standard ratable value exceeding EUR 3,650.
- Buildings and property are taxed at 0.2% of the assessed standard ratable value. This multiplier is reduced for:
  - Single family houses:
    - to 0.05% for the first EUR 3,650 of the assessed standard ratable value and
    - to 0.1% for the next EUR 7,300.
  - Leasehold and shared property:
    - to 0.1% for the first EUR 3,650 of the assessed standard ratable value and
    - to 0.15% for the next EUR 3,650.
  - All other property:
    - to 0.1% for the first EUR 3,650 of the assessed standard ratable value.

After the assessed standard ratable value is multiplied by the relevant multiplier, the real estate tax is calculated by using a special municipal rate fixed by each municipality (maximum 500%). Finally, the tax amount is reduced by a general reduction of 25% as stated by law and increased by a 35% inflation adjustment.

Real estate transfer tax

Tax is generally levied at 3.5% on transactions that cause a change in the ownership of Austrian real estate or in the person empowered to dispose of such property (e.g. direct owner). Real estate transfer tax is generally calculated on the basis of the acquisition price. However, the taxable base has to be at least the property value (*Grundstückswert*). This value will be calculated either on the basis of the sum of the projected *pro rata* three-fold land value (*Bodenwert*) and the *pro rata* value of the building or derived from a proper real estate price index. Further, in case the taxpayer is able to prove that the fair market value is lower than the property value, the fair market value represents the taxable base.

In the case of real estate transfers within the closer family circle, the three-fold assessed ratable value (capped at 30% of the fair market value) is taken as the tax base, and a tax rate of 2% applies. For transfers in connection with corporate restructuring under the Reorganisation Tax Act, the two-fold assessed standard ratable value is taken as the tax base, and the standard tax rate applies.

The taxable base for free of charge transfers (i.e. family and non-family transfers) is the property value. The rate for transfers without compensation is subject to different levels. It is 0.5% for a property value of below EUR 250,000, 2% up to EUR 400,000, and 3.5% over EUR 400,000. In case of business transfers, the tax is capped at 0.5% of the property value. For transfers in connection with corporate restructuring under the Reorganisation Tax Act and the consolidation of shares, the tax rate amounts to 0.5% of the property value.

Real estate transactions with a tax base of EUR 1,100 or below are exempt.

Note that an additional 1.1% registration fee becomes due upon incorporation of the ownership change in the land register. The registration fee is assessed on the basis of the market value. There is a preferential taxation (three-fold ratable value capped at 30% of the fair market value) in case of family transactions or corporate restructuring qualifying for the application of the Reorganisation Tax Act.

Share transfers

Real estate transfer tax in the amount of 0.5% is also triggered in situations where the shares of companies and shares of partnerships owning Austrian real estate are transferred. The following transactions trigger real estate transfer tax:

- The transfer of at least 95% of the shares in a real estate owning partnership to new shareholders within a period of five years.
- The transfer of at least 95% of the shares of a corporation to unify them in the hand of a single acquiring shareholder or in the hand of several shareholders forming a tax group (according to Section 9 of the Austrian Corporate Income Tax Law).

Shares held by a trustee for tax purposes will be attributed to the trustor and are therefore part of the calculation of the shareholding limit. Real estate transfer tax is triggered only in scenarios where the shares of real estate owning corporations or partnerships are transferred by their direct shareholder or partners (no indirect transfer). The tax base for share transfers is the property value.

Capital transfer tax (Gesellschaftsteuer)

Capital transfer tax has been entirely abolished as of 1 January 2016.

Stamp duty

Stamp duty is imposed in connection with certain legally predefined transactions for which a written contract has been established (e.g. lease contracts, bills of exchange, assignments of receivables). The Austrian administration's understanding of a 'written contract' is very broad and covers not only paper contracts but also contracts concluded by electronic means (e.g. electronically signed emails).

The stamp duty is triggered upon the establishment of a legal relationship if at least one Austrian party is contractually involved or, even if a contract is concluded between non-Austrian parties only, if the subject of the contract relates to Austria (e.g. lease contract on Austrian real estate). However, various possibilities are available for most legal transactions subject to stamp duty to structure them in a way without triggering stamp duties (e.g. setting up of contracts abroad, offer-acceptance procedure, usage of audio-tapes).

Loan and credit agreements are not subject to stamp duty.

The stamp duty rates for the most common legal transactions are as follows:

Legal transactions	Stamp duty (%)
Lease agreements	1.00
Certificates of bonds/pledges	1.00
Bill of exchange	0.13
Assignment of receivables	0.80

Payroll taxes

Payroll taxes are income taxes levied on employment income, withheld by the employer. A progressive tax rate is applied to the tax base, being the salary after deduction of allowances and various expenditures (e.g. social security contribution). The employer is legally obligated to withhold the payroll tax and liable to do so *vis-a-vis* the Austrian tax authority.

Social security contributions

Monthly rates of compulsory (pre-tax) social security contributions are shown below for pensions, sickness, unemployment, accident insurance, and certain minor contributions:

Social security categories	Employer (%)	Employee (%)	Total (%)
Sickness	3.78	3.87	7.65
Unemployment	3.00	3.00	6.00
Pension	12.55	10.25	22.80
Accident	1.30	0.00	1.30
Miscellaneous	0.85	1.00	1.85
Total	**21.48***	**18.12***	**39.60***

* On a maximum assessment basis (gross salary) of EUR 4,980 per month for current payments. Special payments receive a tax favoured treatment (employer at 20.98%, employee at 17.12%, for a total of 38.10%). The maximum assessment basis (gross) amounts to EUR 9,960 per year.

In addition, the employer is liable to the Family Burdens Equalisation Levy at the rate of 4.1%, the municipal tax on payroll at the rate of 3% of monthly gross salaries and wages, and a public transportation levy of EUR 2 per week per employee in the city of Vienna. In addition, a contribution to the Chamber of Commerce is levied at a rate of approximately 0.40% (between 0.36% and 0.44%) of monthly gross salaries paid (depending on the province). Moreover, a contribution to the mandatory employee pension fund at the rate of 1.53% on monthly gross salaries is payable for employments subject to Austrian employment law.

Branch income

Austrian branches of foreign corporations are taxed in the same way as Austrian corporations, except that inter-company dividends received by Austrian branches of non-EU corporations are not tax exempt (*see the Income determination section*) and Austrian tax losses can be carried forward only if they exceed non-Austrian profits. Books and records generally can be kept abroad but must be brought to Austria in case of a tax audit (upon official request).

Income determination

Taxable income is determined based on statutory accounts under Austrian generally accepted accounting principles (GAAP) adjusted for certain deductions and additions prescribed by the tax law.

Inventory valuation

In general, inventories are valued at the lower of cost or market. If specific identification during stock movements is not possible, other methods, such as last in first out (LIFO) and first in first out (FIFO), are permitted when shown to be appropriate. Conformity between financial book keeping and tax reporting is required.

Capital gains/exit taxation/inbound transfer

Generally, capital gains (short and long-term) are part of the normal annual result of a corporation and are taxed at the ordinary CIT rate (25%).

A special tax treatment applies to capital gains with respect to the exit of taxable assets. In the case of a transfer of assets that formed part of a business from Austria to a foreign country (e.g. allocation of assets to a foreign branch), latent capital gains generally are taxed at the time of the transfer. In case these assets are transferred to an EU member state, it is possible to apply for a payment by instalments (i.e. seven years for non-current assets and two years for currents assets). Asset transfers for which the taxation has been postponed in the past (i.e. transfer after 1 January 2006 as the maximum limitation period is ten years) will be subsequently recaptured when the assets are sold or transferred outside the European Union.

In case of an inbound transfer, generally, the fair market value of the assets is considered for Austrian income tax purposes (step up). Therefore, any hidden reserves accumulated abroad are not taxed in Austria.

Dividend income

Dividends received from an Austrian company at the corporate shareholder level are generally excluded from the tax base (no minimum stake, no minimum holding period). This tax exemption refers to domestic dividends only, not to capital gains or losses.

Additionally, dividends received from companies located within the European Union or from countries within the European Economy Area (EEA) with which Austria has concluded a comprehensive agreement on mutual assistance regarding the exchange of information are also tax exempt if the foreign company is subject to a tax similar to the Austrian CIT and if the foreign CIT rate is not below 15%.

In cases where the dividends from foreign investments are taxable, foreign CIT can be credited against the Austrian CIT.

Portfolio dividends

Portfolio dividends (i.e. dividends from an investment below 10%) received from corporations located in member states of the European Union, as well as dividends from corporations that are located in those EEA and third countries with which Austria has concluded a comprehensive agreement on mutual assistance regarding the exchange of information, are generally exempt from CIT. However, under special circumstances, a switch-over to the credit method, as outlined under *International participation exemption for dividends and capital gains below*, has to be considered. Moreover, the dividend must not be deductible for tax purposes in the source state in order to be tax exempt at the level of the Austrian recipient (valid for substantial investments and portfolio dividends).

Stock dividends

A conversion from revenue reserves (retained earnings) to capital by a company does not lead to taxable income for the shareholder. However, capital reductions are treated as taxable income if within ten years prior to the capital reduction the above-mentioned increase in capital was repaid to the shareholder. Otherwise, they are tax exempt.

International participation exemption for dividends and capital gains

Dividends received from a foreign company are also tax exempt at the corporate shareholder level if the Austrian company holds at least 10% of the issued share capital for a minimum holding period of one year (international participation exemption). Furthermore, both capital gains and capital losses derived from shares qualifying for the international participation exemption are tax neutral. This means a deduction of capital losses is no longer available. However, the parent company (in the tax return of the year of acquisition) can exercise an (irrevocable) option for each single participation acquired to treat both capital gains and capital losses as taxable (spread of losses and depreciations over a period of seven years). The option refers to capital gains (losses) only and does not affect the tax treatment of ongoing dividend distributions.

Switch-over-clause

In the case of presumed tax abuse, the participation exemption for dividends and capital gains is replaced by a tax credit (switch-over-clause). The credit system is applied if the foreign subsidiary does not meet an active-trade-or-business test (i.e. passive income from royalties, interest, etc. is greater than 50% of total income of subsidiary) and, at the same time, is regularly subject to a foreign income tax burden of 15% or below. The domestic and foreign participation exemptions are available to

Austrian resident corporations and to Austrian branches of EU corporations only, but not to Austrian branches of non-EU corporations.

Interest income
Interest income is taxed at the general CIT rate of 25%.

Royalty income
Royalty income is taxed at the general CIT rate of 25%.

Rental income
Rental income is treated as normal business income.

Foreign income
Austrian resident corporations are taxed on their worldwide income. If a double taxation treaty (DTT) is in force, double taxation is mitigated either through an exemption or by granting a tax credit equal to the foreign WHT at the maximum (capped with the Austrian CIT incurred on the foreign-source income). If foreign WHT cannot be credited at the level of the Austrian corporation (e.g. due to a loss position), Austrian tax law does not allow one to carry forward the foreign WHT to future assessment periods. However, if the source of the income is a non-treaty country, exemption or a tax credit shall be available based on unilateral relief (representing a discretionary decision of the Austrian Ministry of Finance only but no legal entitlement for the applicant). Austrian tax law does not provide for a deferral of taxes on foreign income. Special rules for taxing undistributed income of foreign subsidiaries are applicable only to foreign investment funds.

Please note that Austrian Tax Law does not define special controlled foreign company (CFC) rules. However, under certain circumstances, the Austrian tax administration, under a substance-over-form approach, taxes passive income of foreign subsidiaries of Austrian companies located in low-tax jurisdictions (*see switch-over-clause under International participation exemption for dividends and capital gains above*).

Deductions

Depreciation and amortisation
Only the straight-line method is accepted for tax purposes, whereby the cost is evenly spread over the useful life of an asset. For certain assets, depreciation rates relevant for tax purposes are prescribed by the tax law and shown in the following chart:

Assets	Depreciation rate (%)
Buildings (industrial use, banking, insurance)	2.5
Other buildings	2.0
Automobiles	12.5

Buildings used as business assets are depreciated at a rate of 2.5%, irrespective of the use of the building.

Tax depreciation is not required to conform to financial depreciation under Austrian GAAP. If depreciated property is sold, the difference between tax value and sale proceeds is taxed as a profit or loss in the year of sale.

Trademarks are usually amortised over 15 years. Other intangibles have to be amortised over their useful lives.

Goodwill

Goodwill arising in the course of an asset deal for tax purposes must be amortised over 15 years. Goodwill that arose in the course of a share deal can be amortised only if the acquired company is included in a tax group and if the share deal was effected until 28 February 2014 (*see the Group taxation section*). Goodwill arising as a result of a corporate merger cannot be amortised.

Organisational and start-up expenses

Generally, organisational and start-up expenses are tax deductible.

Interest expenses

Interest payments (also inter-company) are generally tax deductible if they meet the general arm's-length requirements. *See Thin capitalisation in the Group taxation section and Payments to foreign affiliates below for more information*.

Financing costs

According to current tax law, interest expenses resulting from the debt-financed acquisition of shares are usually tax deductible. This is so even if the Austrian participation exemption regime applies (*see the Income determination section*).

However, interest expenses relating to the debt-financed acquisition of shares from related parties or (directly or indirectly) controlling shareholders are generally non-deductible. This disallowance of interest also applies in circumstances where the shareholder acquiring the shares has been funded by a debt-financed equity contribution (insofar as the equity contribution was made in direct connection with the share acquisition). The deductibility of interest expenses incurred in connection with the debt-financed acquisition of shares from a third party is not covered by this rule.

All financing costs (e.g. fees, foreign exchange expenses, legal advice) that relate to tax-exempted international participations are non-deductible.

Interest expenses to foreign affiliates that are effectively taxed below 10% are not deductible (*see Payments to foreign affiliates below*).

Accrued expenses

Certain accruals (such as provisions for liabilities and impending losses) running for more than 12 months as of the closing date of the accounts have to be discounted, depending on their actual duration. The discount rate to be used is 3.5%. Exempted from this reduction are provisions for personnel benefits (severance payments, pensions, vacations, and anniversary awards) for which specific reduction and computation methods have been provided and provisions that were already calculated by discounting a future obligation.

In general, lump-sum accruals and accruals for deferred repairs and maintenance are not allowed for tax purposes.

Bad debt

Valuation allowances for bad debts are, in principle, deductible for tax purposes, unless they are calculated on a lump-sum basis. In case of inter-company receivables, appropriate documentation regarding the compliance with the arm's-length principle is required.

Charitable contributions

Donations to certain charitable institutions are generally tax deductible, up to a limit of 10% of the current year's profit.

Furthermore, donations to certain public Austrian institutions, such as universities, art colleges, or the academy of science, and to non-profit organisations performing research and educational activities mainly for the benefit of the Austrian science or economy may also be deducted as operating expenses, up to the limit of 10% of the current year's profit. The same is valid for donations granted to foreign institutions with residence in the EU/EEA or third countries with which Austria has concluded an agreement on mutual assistance regarding the exchange of information. The requirement for deductibility is that the activities of the organisation are carried out mainly for the benefit of Austrian science or the Austrian economy.

Meals and entertainment

The deductibility of costs for business lunches generally is limited to 50% of actual expenses incurred (provided the business lunch had the purpose of acquiring new business).

The deductibility of entertainment expenses is restricted to advertising expenses.

Salary payments

Payments to a member of the supervisory board (*Aufsichtsrat*) are tax deductible up to a limit of 50%. Salaries (including all payments in cash and in kind, excluding privileged severance payments) exceeding EUR 500,000 per person and per year are not tax deductible. This rule also covers bonus payments and pension schemes. However, for pension schemes there is a EUR 500,000 *per annum* threshold to be considered separately from the other salary payments.

This rule also covers costs on-charged in relation with employees for foreign (group) companies that are an active part of the organisation of the Austrian company (e.g. foreign group staff acting as managing director for an Austrian group company).

Severance payments granted by companies to employees that go beyond statutory obligations (voluntary severance payments) at the level of the employer represent non-deductible expenses insofar as they are taxed at the reduced income tax rate of 6% at the employee's level.

Fines and penalties

Fines and penalties are generally not tax deductible.

Taxes

Austrian and foreign taxes on income and other personal taxes, as well as VAT insofar as it relates to non-deductible expenditures, are non-deductible. Other taxes, such as payroll taxes, are deductible.

Net operating losses

Tax losses can be carried forward without any time limit. However, tax loss carryforwards generally can be offset against taxable income only up to a maximum of 75% of the taxable income for any given year. Some exceptions apply (i.e. in connection with tax groups, in the case of liquidations or the recapture taxation of foreign losses), allowing a company to charge tax loss carryforwards available against 100% of annual taxable income.

The Austrian tax law does not provide for a carryback of tax losses.

Loss-trafficking *(Mantelkauf)*

Tax loss carryforwards may be lost in the case of a share deal being classified as loss-trafficking (so called '*Mantelkauf*') or in the course of a legal restructuring leading to similar results.

Under Austrian tax law, a share deal against compensation is classified as a *Mantelkauf* if, from a substance-over-form perspective, the 'economic identity' of a company is changed due to the transaction. The change of economic identity of a company is realised if all of the following structural changes are made to the acquired Austrian company having the tax loss carryforwards available:

- Change of shareholder structure.
- Change of the organisational structure.
- Change of the business structure.

All three conditions cumulatively have to be met. There is no exact time period defined within which they have to be met; however, meeting them within one year after the share transfer usually is regarded as a strong indication for a *Mantelkauf*.

Payments to foreign affiliates

Generally, there are no restrictions on the deductibility of royalties, interest, and service fees paid to foreign affiliates, provided they are at arm's length (which should be appropriately documented by agreements, contracts, calculation sheets, etc.). Payments to affiliated companies exceeding the arm's-length threshold are treated as a hidden distribution of earnings (i.e. they are not tax deductible, and WHT is usually triggered at source). *See Transfer pricing in the Group taxation section for more information*.

In addition, interest and royalty payments made by an Austrian company to affiliated companies (beneficial owner) located in low-tax jurisdictions (effectively taxed below 10%) are non-deductible as well. Special attention in this context has to be drawn to the fact that the low-taxation test has to be passed at the level of the beneficial owner of the income (interest income, royalties).

Note that the domestic implementation of the EU Interest Royalty Directive, which abolishes WHT on cross-border payments of interest and licence fees (regardless of whether taken out by deduction or by assessment) between affiliated companies in the member states, should be considered.

Group taxation

Two or more companies can form a tax group, provided the parent company directly or indirectly owns more than 50% of the shares in the subsidiaries. The tax group also can include foreign group members. However, the scope of foreign tax group members is limited to corporations being resident in EU member states and in states that have entered into a comprehensive administrative assistance arrangement with Austria. If a group member withdraws from the group within a minimum commitment-period of three years, all tax effects derived from its group membership must be reversed.

Within a tax group, all of the taxable results (profit and loss) of the domestic group members are attributed to their respective group parent. From foreign tax group members, tax losses in the proportion of the shareholding quota are attributed to the tax group parent. The foreign tax loss has to be calculated in accordance with Austrian tax law. However, it is capped with the amount actually suffered based on foreign tax law. Starting in 2015, ongoing tax losses from foreign group members can only be recognised to the extent of 75% of the profit of all domestic group members (including the group leader). The remaining loss surplus may be carried forward by the group parent. In addition, foreign tax losses utilised by the Austrian tax group parent are subject to recapture taxation at the time they are utilised by the tax group member in the source state, or in the moment the group member withdraws from the Austrian tax group. Under the recapture taxation scheme, the Austrian tax group has to increase its Austrian tax base by the amount of foreign tax losses used in prior periods.

For the purpose of the application of the recapture taxation scheme, a withdrawal from the tax group is also assumed if the foreign group member significantly reduces the size of its business (compared to the size of the business at the time the losses arose). Reduction of size is measured on the basis of business parameters such as turnover, assets, balance sheet totals, and employees, while the importance of the respective criteria depends on the nature of the particular business.

Under the previous tax group regime, goodwill that arose in the course of a share deal (acquisition of an Austrian active business company from a third party contractor) had to be amortised over 15 years, provided that the acquired company was included in a tax group. Goodwill amortisations have now been abolished and are applicable only for share deals effected until 28 February 2014. Existing goodwill amortisations are grandfathered, provided the goodwill amortisation potentially impacted the share purchase price.

Note that the Court of Justice of the European Union (CJEU) in 2015 qualified the limitation of the goodwill amortisation to Austrian target companies as not being in line with EU law (case C-66/14, Finanzamt Linz). The Austrian Administrative Court (VwGH) followed the decision of the CJEU with its decision of 10 February 2016 (case 2015/15/0001).

Consequently, the acquisition of non-Austrian EU target companies basically qualifies for goodwill amortisation. However, the decision of the VwGH has only an impact on share deals that were made before 1 March 2014.

Write-downs of participations in tax group members are not tax deductible.

Transfer pricing

Under Austrian Tax Law, there are no explicit transfer pricing regulations available defining, in detail, the local requirements with regards to arm’s length, the documentation standards required, penalties, etc. In general, Austria applies the OECD transfer pricing guidelines referring to the OECD model tax convention. Furthermore, Austrian transfer pricing guidelines have been issued by Austrian tax authorities. The guidelines represent the Austrian authority’s understanding of inter-company business relationships with regards to their arm’s-length classification and are based on the OECD transfer pricing guidelines.

According to these guidelines, all business transactions between affiliated companies must be carried out under consideration of the arm's-length principle. Where a legal transaction is deemed not to correspond to arm's-length principles, the transaction price is adjusted for CIT purposes. Such an adjustment constitutes either a constructive dividend or a capital contribution. Currently, there is the option of applying for a non-binding ruling of the tax authorities. Additionally, there is an advanced ruling opportunity available. Under this regulation, binding information in the fields of transfer pricing, group taxation, and mergers and acquisitions (M&A) can be requested from the Austrian tax authorities against payment of an administrative fee (the fee rate depends on the size of the applicant's business).

On 14 July 2016, the Austrian Parliament enacted the European Union Tax Amendment Act 2016 ('EU-Abgabenänderungsgesetz 2016'), including new mandatory transfer pricing documentation requirements (*'Verrechnungspreisdokumentationsgesetz'* [VPDG]) as defined in Action 13 of the OECD's Action Plan on Base Erosion and Profit Shifting. The European Union Tax Amendment Act 2016 was announced in the Austrian Federal Law Gazette on 1 August 2016.

The VPDG follows a three-tiered documentation approach, requiring the preparation of a Master File, a Local File, and a Country-by-Country (CbC) Report, and is effective for fiscal years starting from 1 January 2016 onwards. The entire documentation is to be prepared in either German or English.

Austrian companies with a turnover above EUR 50 million in the two preceding fiscal years are subject to transfer pricing documentation requirements under the Master File/Local File concept. In case the consolidated group revenue of a multinational enterprise (MNE) group amounted to at least EUR 750 million in the preceding fiscal year, the ultimate parent entity, if resident in Austria, is obligated to file a CbC Report for the reporting year 2016 with the Austrian tax authorities by 31 December 2017.

Further, it is possible that any Austrian business unit (i.e. basically legal entities or PEs preparing financial statements) of a qualifying foreign MNE may take over its parent's duty to report, for fiscal years beginning from 2017 onwards, in case the ultimate parent entity is not obligated to file a CbC Report in its jurisdiction of tax residence or in case no (functioning) qualifying competent authority agreement is in place with the tax jurisdiction of the ultimate parent entity that provides a basis for the exchange of the CbC Report.

Thin capitalisation

There are no explicit tax regulations available under Austrian tax law stipulating the minimum equity required by a company ('thin capitalisation rules'). Basically, group financing has to comply with general arm's-length requirements. Therefore, an Austrian group entity being financed by an affiliated entity must be able to document that it would have been able to obtain funds from third-party creditors under the same conditions as from an affiliated financing entity. Therefore, the appropriate ratio between an Austrian company's equity and debt will mainly depend on the individual situation of the company (profit expectations, market conditions, etc.) and its industry. Nonetheless, the fiscal authorities in administrative practice (i.e. no 'safe-harbour' rule) tend to accept a debt-to-equity ratio of approximately 3:1 to 4:1. However, the debt-to-equity ratio accepted by tax authorities also strongly depends on the average ratio relevant for the respective industry sector. If an inter-company loan is not accepted as debt for tax purposes, it is reclassified into hidden equity and related interest payments into (non-deductible) dividend distributions.

Furthermore, under Austrian commercial law, a minimum equity ratio of 8% is claimed. If the equity ratio of the company falls below 8% and its earning power (virtual period for debt redemption) at the same time does not meet certain requirements, a formal and public reorganisation process will have to be initiated.

Controlled foreign companies (CFCs)

The Austrian Tax Law does not define special CFC rules (*see Foreign income in the Income determination section*).

Tax credits and incentives

Foreign tax credit (matching credit)

Generally, foreign WHT can be credited against Austrian CIT (*see Foreign income in the Income determination section*). In special cases (e.g. Brazil, China, Korea), the DTT provides for a matching credit, which allows the credit of a pre-defined amount that exceeds the actually paid foreign WHT.

Research and development (R&D) incentives

R&D costs are fully deductible at the time they accrue. An R&D premium of 12% (i.e. R&D expenses x 12% = R&D premium) may be claimed for R&D activities performed in Austria.

In order to receive the current R&D premium of 12%, an expert report (issued by the Austrian research promotion organisation [FFG]) is required that confirms the nature of the expenses in question as R&D expenses. The definition of privileged R&D expenses is taken from the Frascati Manual.

The R&D premium is also available in case of contract R&D; however, R&D incentives cannot be claimed by both principal and agent (the agent is just able to apply for the premium if the principal does not). In case of contract R&D, the privileged R&D costs are capped at EUR 1 million per year.

Austria has no ‘patent box regime’.

Employment incentives

Employment incentives have been abolished for tax years after 31 December 2015.

Investment incentives

For investment in certain regions, government grants and subsidies are available and are generally individually negotiated.

Investment growth tax bonus payments

For tax years after 31 December 2016, it is possible to apply for an investment growth tax bonus payment in the amount of 10% or 15%, depending on the size of the company. Only new investments in depreciable fixed assets qualify for the bonus payment. The investment growth is defined as the difference between the value of the new investment and the average of the new investments made in the last three years and has to be confirmed by a tax advisor or auditor. Applications for the tax bonus have to be filed before the new investments are made and are limited to EUR 175 million for small and medium-sized companies and EUR 100 million for big companies. The granting of the bonus payment is based on the ‘first-come, first served’ principle.

Withholding taxes

Dividend WHT

Under Austrian domestic law, there is generally a 25% WHT for corporations and 27.5% WHT for other recipients on dividends (profit distributions) paid to a foreign parent company. The WHT has to be deducted and forwarded by the Austrian subsidiary to the tax office.

To end up with the reduced WHT rate as defined under the DTT applicable, Austrian tax law provides for the following alternative methods of WHT relief: refund method or exemption at source method.

Refund method

The Austrian subsidiary generally has to withhold 25% WHT (for corporations) or 27.5% WHT (for other recipients) on profit distributions to the foreign parent company, and the parent company has to apply for a refund (of the difference between 25% or 27.5% WHT and the lower DTT rate). In the course of the refund process, the Austrian tax administration analyses whether the foreign shareholder can be qualified as beneficial owner of the dividends paid. If the refund is approved by the Austrian tax authority, dividend distributions within the following three years can be done without deduction of WHT (for distributions of a comparable size and provided the foreign holding structure did not change in the meantime).

Exemption at source method

Relief at the source is available only if the direct parent company issues a written declaration confirming that it is an 'active' company carrying out an active business that goes beyond the level of pure asset management (holding activities, group financing, etc.) and has its own employees and office space at its disposal (substance requirements).

WHT on dividends paid to EU companies

With regard to dividends paid to EU resident corporate shareholders, Austria has implemented the EU Parent/Subsidiary Directive according to which domestic WHT is reduced to zero. The requirements for the reduction are that the EU resident parent company, which also has to meet the substance requirements mentioned above (*see Exemption at source method*) at the moment of the dividend distribution, must directly own at least 10% of the share capital of the Austrian subsidiary for a period of at least one year. In case of foreign EU shareholders being qualified as pure holding companies, the Austrian tax administration does not allow an exemption at source but claims the application of the refund method.

Provided the requirements according to the EU Parent/Subsidiary Directive are not met, Austrian WHT has to be deducted. If an EU parent company cannot credit the Austrian WHT deducted against the CIT of its resident state (e.g. because the foreign dividend income is exempted from the CIT or due to a loss position of the shareholder), it is entitled to apply for a refund of the Austrian WHT. This application has to include a confirmation/documentation that the Austrian WHT could (fully or partly) not be credited at the level of the parent company.

Repayment of equity

The tax-wise equity of a company has to be annually reported to the Austrian tax authority as part of the CIT return (equity account, so called 'Evidenzkonto'). This equity can be repaid to the domestic or foreign shareholders without triggering

Austrian WHT. However, the tax-wise classification of a dividend as 'capital repayment' has to be shown in the shareholder resolution about the distribution and in the company's equity account.

For repayments and dividend distributions that are decided after 31 December 2015, the taxpayer has the possibility to opt whether a dividend for tax purposes should be treated either as dividend distribution or as repayment of equity. The execution of the option for treating dividends as dividend distribution requires a sufficient level of retained earnings while a classification as equity payment requires a positive level of tax-wise equity (in addition to the formal requirements outlined above).

Interest WHT

Interest payments to non-resident companies are currently not subject to WHT (provided no Austrian real estate property is used as security).

Previously, interest on Austrian bank deposits received by individuals resident in the European Union was subject to 35% EU WHT on the basis of the Austrian EU Withholding Tax Act. However, the EU Withholding Tax Act was abolished as of 1 January 2017 (for new bank accounts as of 1 October 2016). Subsequently, interest on Austrian bank deposits received by individuals resident in the European Union is no longer subject to WHT. The background of this law amendment is that Austria agreed on the automatic exchange of information (according to directive 2014/107/EU).

Interest (accrued) on Austrian bank deposits or Austrian bonds received by non-resident individuals, where the paying/depositary agent is located in Austria, is subject to 25% WHT (27.5% WHT for Austrian bonds). A tax exemption applies if an automatic system regarding the exchange of information is available and WHT has to be withheld.

Royalties WHT

On royalties paid to a non-resident company, Austrian WHT at a rate of 20% has to be deducted. This tax rate can be reduced under an applicable DTT or under the application of the EU Interest Royalty Directive, which was implemented in Austrian Tax Law.

Tax treaties

The following table lists the countries with which Austria has signed a DTT and provides details of the amount of Austrian WHT.

	WHT (%)		
Recipient	**Dividends (1, 2)**	**Interest (3)**	**Royalties, licences (4)**
Resident corporations	0/25 (5)	0/25	0
Resident individuals	27.5 (6)	0/25/27.5 (43)	0
Non-residents:			
Non-treaty:			
Corporations and business enterprises	25/27.5 (44)	0	20
Individuals	27.5	0/25/27.5/35 (42)	20
Treaty:			
Albania	5*/15	0	5
Algeria	5+/15	0	10

	WHT (%)		
Recipient	Dividends (1, 2)	Interest (3)	Royalties, licences (4)
Argentina (7) (DTT was recalled by Argentina in 2009)			
Armenia	5+/15	0	5
Australia	15	0	10
Azerbaijan	5/10/15 (8)	0	5/10 (9)
Bahrain	0	0	0
Barbados	5+/15	0	0
Belarus (White Russia)	5*/15	0	5
Belgium	15	0	0/10**
Belize	5*/15	0	0
Bosnia and Herzegovina	5*/10	0	5
Brazil	15	0	10/15/25 (10)
Bulgaria	0	0	5
Canada	5+/15	0	10
Chile	15	0	5/10 (35)
China	7*/10	0	6/10 (11)
Croatia	0+/15	0	0
Cuba	5*/15	0	0/5 (13)
Cyprus	10	0	0
Czech Republic	0+/10	0	5 (12)
Denmark	0+/15	0	0
Egypt	10	0	0/20 (14)
Estonia	5*/15	0	5/10 (15)
Finland	0+/10	0	5
France	0+/15	0	0
Georgia	0**/5+/10 (16)	0	0
Germany	5+/15	0	0
Greece	5*/15	0	7
Hong Kong	0+/10	0	3
Hungary	10	0	0
Iceland (45)	5+/15	0	5
India	10	0	10
Indonesia	10*/15	0	10
Iran	5*/10	0	5
Ireland	10	0	0/10**
Israel	25	0	10
Italy	15	0	0/10**
Japan	10**/20	0	10
Kazakhstan	5+/15	0	10
Korea	5*/15	0	2/10 (17)
Kuwait	0	0	10
Kyrgyzstan	5*/15	0	10
Latvia	10/15*	0	5/10 (18)
Libya (19)			
Liechtenstein	0+/15 (37)	0	5/10 (20)
Lithuania	5*/15	0	5/10 (21)
Luxembourg	5*/15	0	0/10**
Macedonia	0+/15	0	0

Austria

	WHT (%)		
Recipient	**Dividends (1, 2)**	**Interest (3)**	**Royalties, licences (4)**
Malaysia	5*/10	0	10/15 (22)
Malta	15	0	0/10 (23)
Mexico	5+/10	0	10
Moldova	5*/15	0	5
Mongolia	5+/10	0	5/10 (24)
Montenegro (38)	5 (39)/10	0	5/10 (40)
Morocco	5*/10	0	10
Nepal	5*/10+/15	0	15
Netherlands	5*/15	0	0/10**
New Zealand	15	0	10
Norway	5*/15	0	0
Pakistan	10+++/15	0	10
Philippines	10+/25	0	15
Poland	5+/15	0	5
Portugal	15	0	5/10 (25)
Qatar	0	0	5
Romania	0*/5	0	3
Russia	5*/15 (26)	0	0
San Marino	0+/15	0	0
Saudi Arabia	5	0	10
Serbia	5*/15	0	5/10 (28)
Singapore	0+/10	0	5
Slovakia (29)	10	0	5
Slovenia	5*/15	0	5
South Africa	5*/15	0	0
Spain	10**/15	0	5
Sweden	5*/10	0	0/10**
Switzerland	0+++/15 (30)	0	0
Syria (31)	5*/10	0	12
Taiwan (41)	10	0	10
Tajikistan	5++/10	0	8
Thailand	10*/25	0	15
Tunisia	10*/20	0	10/15 (32)
Turkey	5*/15	0	10
Turkmenistan (27)	0*/15	0	10
Ukraine	5+/10	0	5
United Arab Emirates	0	0	0
United Kingdom	5*/15	0	0/10**
United States (36)	5+/15	0	0/10 (33)
Uzbekistan	5+/15	0	5
Venezuela	5++/15	0	5
Vietnam	5***/10*/15	0	7.5/10 (34)

Notes

1. Dividend distributions attributable to a prior release of paid-in surplus or other shareholder contributions (classified as capital reserves) are deemed to be a repayment of capital, i.e. no WHT is incurred. At the shareholder's level, dividends received and those classified as contribution refund will reduce the tax basis assessment for investments. To the extent to which the tax basis would become negative, such dividends are treated as taxable income (unless taxation is eliminated by a tax treaty).

2. Under certain treaties, the amount of the WHT is dependent on the extent of the proportion of issued share capital held by the recipient. Where this is the case, all rates are given. Those marked with + refer to an investment of 10%, ++ to 15%, +++ to 20%, * to 25%, ** to 50%, and *** to 70%.
3. Interest on cash deposits in euro or foreign currency in bank accounts, on fixed interest bearing securities in foreign currency (issued after 31 December 1988), and on fixed interest bearing securities denominated in Austrian schillings or euro (issued after 31 December 1983) are subject to a 25%/27.5% WHT. If the recipient is an individual, this WHT is final (no further income taxation and inheritance taxation). Companies receiving interest payments may obtain an exemption from WHT if they provide the bank or other custodial agent with a written confirmation from the recipient that such interest payments constitute a part of the recipient's operating revenues (exemption statement). Interest payments to non-residents without a PE in Austria are generally not subject to WHT (provided the loan is not secured via Austrian land property). At interest payments between affiliated companies, the regulations stipulated by the EU Interest Directive have to be taken into consideration.
4. In case of payments to countries marked with **, the rate is 0% unless more than 50% of the issued share capital of the company paying the royalties is held by the recipient, in which case the rate given applies. At royalty payments between affiliated companies, the regulations stipulated by the EU Interest Directive have to be taken into consideration.
5. If the recipient holds a participation of less than 10% in the distributing company, the dividends are subject to a 25% WHT. Since dividends distributed by an Austrian corporation to another Austrian corporation are generally not subject to taxation, the WHT is credited against CIT upon assessment of the recipient corporation for the respective tax year.
6. WHT on dividends from Austrian companies is final, i.e. no further income tax is collected from the recipient (provided it is an individual).
7. The treaty was recalled by Argentina in 2009. Austrian tax citizens are protected by section (§) 48 BAO (*Bundesabgabenordnung* [Austrian Fiscal Federal Code]) against double taxation.
8. 5% for shares of at least 25% and worth at a minimum of 250,000 United States dollars (USD); 10% for shares of at least 25% and worth at least USD 100,000; 15% in all other cases.
9. 5% for industrial licences and know-how not more than three years old; 10% in all other cases.
10. 10% for copyright licence fees in connection with literature, science, and art; 25% for trademarks licence fees; 15% in all other cases.
11. 6% for industrial, commercial, or scientific equipment; 10% in all other cases.
12. 5% for licence income from copyrights, brands, plans, secret formulas or procedures, computer software, industrial, commercial or scientific use of equipment, and information.
13. 0% for copyright royalties in connection with the production of literary, dramatic, musical, or artistic work; 5% in all other cases.
14. 20% for films.
15. 5% for leasing of mobile goods, and 10% for other licences.
16. 0% for shares of at least 50% and worth at a minimum of EUR 2 million; 5% for shares of at least 10% and worth at least EUR 100,000; 10% for shares in all other cases. The treaty was updated on 4 July 2012, but it has not yet been decided when the amendments will enter into force (0% if a company directly holds at least 10% of the capital of the company paying the dividends, 10% for shares in all other cases).
17. 2% for licence income from industrial, commercial, or scientific use, and 10% for other licences.
18. 5% for the use of commercial or scientific equipment; 10% in all other cases.
19. The treaty was signed on 16 September 2010. It has not yet been decided when it will enter into force.
20. 5% in case of direct (or indirect over a patent-realisation-company) payments of royalties by companies of the other member state (with an industrial establishment in the other member state), and 10% for other licences.
21. 5% in case of licence income from industrial, commercial, or scientific use, and 10% for other licences.
22. 15% for films.
23. 0% for copyright licence fees in connection with literature, art, and scientific use, and 10% for other licences.
24. 10% for the right of use of copyrights to artistic, scientific, or literary as well as cinematographic works, and 5% for other licences.
25. For Portugal, the rate of WHT is 5%, but 10% if more than 50% of the issued share capital is owned by the recipient.
26. 5% if capital share amounts to at least 10% and worth at least USD 100,000; 15% in all other cases.
27. The treaty was signed on 12 March 2015 and entered into force on 1 February 2016. It is applicable as of the beginning of fiscal year (FY) 2017.
28. 5% for copyright licence fees; 10% for other licences.
29. Until a new treaty will be established, the treaty with Czechoslovakia remains applicable.
30. For dividend distributions retroactive as of 1 January 2000.
31. The treaty was signed on 3 March 2009. It has not yet been decided when it will enter into force.
32. 15% for films.
33. 10% for films.
34. 7.5% for fees for technical services; 10% for royalties.
35. 5% for the use of, or the right to use, any industrial, commercial, or scientific equipment; 10% in all other cases.
36. Austria and the United States created a draft for an amendment protocol to the existing DTT, but it has not yet been decided when it will be signed.
37. 0% for a direct participation of at least 10% and a holding period of at least 12 months; 15% in all other cases.

38. The treaty was signed on 16 June 2014 and entered into force on 21 April 2015. It is applicable as of the beginning of FY 2016.
39. 5% if the recipient holds a qualifying participation of at least 5%; 10% in all other cases.
40. 5% for licence fees for the use of any copyright of literary, artistic, or scientific work; 10% for licence fees for the use of patents, trademarks, and information concerning industrial, commercial, or scientific experience.
41. The treaty entered into force on 1 January 2015 and is applicable in respect of taxes withheld at source for amounts paid on or after 1 January 2016 and in the case of other taxes for periods beginning on or after 1 January 2016.
42. Interest on Austrian bank deposits received by individuals resident in the European Union is subject to 35% EU WHT on the basis of the Austrian EU Withholding Tax Act. However, the EU Withholding Tax Act will be abolished as of 1 January 2017 (for new bank accounts as of 1 October 2016). Subsequently, interest on Austrian bank deposits received by individuals resident in the European Union are no longer subject to WHT. The background of this law amendment is that Austria agreed on the automatic exchange of information (according to directive 2014/107/EU).

    Interest (accrued) on Austrian bank deposits or Austrian bonds received by non-resident individuals, where the paying/depositary agent is located in Austria, is subject to 25% WHT (27.5% WHT for Austrian bonds).
43. Interest on Austrian bank deposits (or Austrian bonds), where the paying/depositary agent is located in Austria, is subject to 25% WHT (27.5% WHT on Austrian bonds).
44. 25% WHT for corporations and 27.5% WHT for other recipients.
45. The treaty was signed on 30 June 2016 and entered into force on 1 March 2017. It is applicable as of the beginning of FY 2017.

Tax administration

Taxable period

The standard tax assessment period in Austria is the calendar year. However, a company's financial year may deviate. When the tax and financial years deviate, the tax assessments for a year are based on the profits derived in the financial year(s) ending in the respective calendar year (e.g. if tax year is 1 June 2017 to 31 May 2018, then assessment is financial year 2018).

Tax returns

Generally, the CIT return has to be submitted electronically by 30 June of the calendar year following the year in which the fiscal year of the company ends. However, if the company is represented by an Austrian certified tax advisor, the tax return can be submitted by 31 March of the second following year at the latest (if the company will not be formally requested by the tax office to file it earlier). If the end of a tax year is 31 May 2017 for example, the filing deadline is 30 June 2018 (without tax advisor) or 31 March 2019 (with tax advisor).

Electronic filing of annual CIT returns

The annual CIT return (as well as the annual VAT return) has to be filed by electronic means. In the case of a company that cannot reasonably be expected to file tax returns electronically due to the lack of technical prerequisites, filing of the tax return is allowed to be done via pre-printed forms.

Payment of tax

CIT is prepaid in quarterly instalments during the calendar year, with a final settlement subsequent to the annual assessment (payment falls due one month after assessment). Prepayments of CIT generally are based on the most recently assessed tax year's tax burden (unless the taxpayer can show that its tax charge for the current year will be lower).

The difference between CIT as per the final assessment and the prepayments made is interest bearing from 1 October of the year subsequent to the year when the tax claim arose up to the date when the assessment is released (late payment interest). Interest at a rate of currently 1.38% is applied to underpayments (as well as overpayments) of tax.

Tax audit process
Tax audits usually cover CIT, VAT, and WHT. Separate audits are carried out in connection with payroll taxes and social security contributions.

In general, companies are audited every three to four years. The audit period usually covers three to four fiscal years, so, generally, each fiscal year is audited.

The duration of a tax audit depends on the number of years covered and on the complexity of topics (usually between 0.5 and 1.5 years). These topics usually cover ongoing compliance, such as tax returns. Specific topics vary from company to company and can involve, for instance:

- Business restructurings (applicability of Austrian reorganisation tax act, transfer of intangibles, etc.).
- Tax groups (all group members are audited together).
- WHT on dividends, licences, etc.
- Compliance with arm's-length principle in case of group transactions (tax auditors recently tend to focus on transfer pricing issues).

Statute of limitations
The right to assess CIT is subject to a general limitation period of five years after the end of the calendar year in which the fiscal year ends. Additionally, the limitation period can be extended in cases where certain interruptive events (e.g. tax audit, tax assessment) take place within the general limitation period. The maximum limitation period is generally ten years.

The limitation period in case of tax evasion is also ten years.

In certain cases, the maximum limitation period can be extended to 15 years.

Other issues

Choice of business entity
The most important types of companies in Austria are the limited liability corporation (GmbH) and the joint stock corporation (AG). Foreign investors generally choose the GmbH since it provides a higher degree of corporate law control and allows for lower equity provision.

As a legal entity, the GmbH exists upon registration with the Companies' Register. The application for registration must contain the notarised signatures of all managing directors. The articles of association must be drawn up in the form of a notarial deed (written document executed by a public notary) and must, as minimum requirements, include the name of the company as well as its seat, the business purpose, the amount of registered capital, and the capital contribution of each of the various owners.

The minimum share capital for a GmbH amounts to EUR 35,000. Formation costs and fees are linked with the amount of the minimum share capital.

The minimum share capital for companies founded after 30 June 2013 is EUR 10,000 for the first ten years after foundation. In the case a company intends to claim this foundation privilege, an amendment of the articles of association is required. After the first ten years upon incorporation, the minimum share capital will be automatically increased to EUR 35,000.

Generally, one half of the registered capital must be raised in cash while the remainder may be contributed in the form of assets (contributions in kind). Of the original capital contribution, 25%, or at least EUR 17,500 (EUR 5,000 in case of a start-up), must actually be paid in upon incorporation. Under certain conditions, the capital can be provided exclusively in the form of assets (incorporation in kind, in this case the contribution is subject to an audit verifying the market value of the assets contributed). The articles of association may provide for additional capital contributions payable by the owners on the basis of a resolution adopted by the shareholder meeting.

The minimum share capital of an AG is EUR 70,000. For an AG, the same payment regulations apply as for a GmbH, but the owners can agree upon a further capital contribution going beyond the nominal value of the shares (premium). The premium is shown on the company's balance sheet as a capital reserve.

Since 2004, the company type *Societas Europaea* (SE) can be chosen in Austria. The SE is a stock corporation based on community law. The advantages of this legal form are the simplification of organisational structures (in particular for international groups) and the possibility of cross-border transfers of corporation seats without loss of the legal identity. The SE allows the choice of a business location under an economic point of view as well as the choice of the most favourable legislation. The minimum share capital required for the incorporation of a SE is EUR 120,000 while the statutory seat of the corporation must be located in the same country where the place of management is located in.

EU state aid investigations and base erosion and profit shifting (BEPS)

BEPS

Austria is involved in the BEPS-development process at an EU/OECD level. The recommendations of the OECD have been implemented to local law in individual areas (*see the limitation of the deductibility of interest under Payments to foreign affiliates in the Deductions section*).

The main changes in local tax law due to the BEPS project are probably the introduction of local rules on the transfer pricing documentation. On 1 August 2016, the Austrian government published the new mandatory transfer pricing documentation requirements (VPDG). *For more details, see Transfer Pricing in the Group taxation section*.

EU state aid investigations

Currently, there are no investigations on the part of the European Commission with regard to Austrian tax law.

However, the BFG Linz (case RE/5100001/2014) referred three questions to the European Court of Justice (ECJ) for a preliminary ruling with respect to the compatibility of the new legislation on energy tax rebates (i.e. exclusion of service providers from the refund of energy taxes) with the General Block Exemption Regulation. Based on the decision of the ECJ of 21 July 2016 (C-493/14), the BFG Linz concluded that the exclusion of service providers from energy tax rebates had not entered into force yet. As a result, service providers are able to submit an application for the refund of energy taxes for prior periods if no application has been filed so far (can be filed for the last five years). Also, for production companies, the court's ruling may result in a higher refund entitlement.

International exchange of information

The Republic of Austria signed a Model 2 Intergovernmental Agreement (IGA) with the United States (US) on 29 April 2014. The IGA came into force on 30 June 2014. The approval of the Austrian Parliament took place on 23 October 2014. This agreement has been enacted in order to support the implementation of the Foreign Account Tax Compliance Act (FATCA) in Austria. The Model 2 IGA includes the obligation of Austrian financial institutions to forward summarised information (collected data) regarding the accounts of US customers (recalcitrant account holders) to the US Internal Revenue Service (IRS). Due to the conclusion of this agreement, the US tax authorities will not withhold a 30% WHT on capital income in Austria.

Restructuring measures (M&A from a business perspective)

Transfers of assets and undertakings can be realised with retroactive effect and be tax neutral within the framework of the Austrian Reorganisation Tax Act (so called 'UmgrStG').

The legislation administers the following areas (Article I-VI):

- Mergers (within EU, also cross-border) of corporations.
- Special conversion (from corporations to partnerships).
- Contribution of businesses and exchange of shares.
- Merger of partnerships.
- Demerger of partnerships.
- Demerger of corporations.

If the reorganisation qualifies for the application of the Austrian Reorganisation Tax Act, the reorganisation steps are realised tax neutrally and with a retroactive effect as of the reorganisation due date. Existing tax loss carryforwards can be transferred under certain conditions as well. Furthermore, several other tax privileges are granted under the Reorganisation Tax Act for stamp duties, etc. However, the application of the Austrian Reorganisation Tax Act requires the transaction to be classified as a non-abusive transaction; consequently, it must be based on plausible non-tax reasons.

Belgium

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Significant developments

Notional interest deduction (NID)

The Belgian NID rate for tax year 2017 (accounting years ending between 31 December 2016 and 30 December 2017, both dates inclusive) is 1.131%. (1.631% for small and medium-sized enterprises [SMEs]).

The Belgian NID rate for tax year 2018 (accounting years ending between 31 December 2017 and 30 December 2018, both dates inclusive) is 0.237% (0.737% for SMEs).

New patent income deduction (PID) regime: Innovation income deduction (IID)

As of 1 July 2016, the Belgian PID regime has been abolished. Indeed, in line with the so-called 'modified' nexus approach, the patent box regime had to be replaced with a base erosion and profit shifting (BEPS) (in particular Action Point 5 of the Organisation for Economic Co-operation and Development [OECD] BEPS Action Plan)/European Union (EU) compliant patent box regime. Subject to conditions, the (old) PID regime is grandfathered for five years.

In contrast to the (old) PID regime, the qualifying patent/innovation income is calculated on a net basis. The percentage of this deduction is raised from 80% under the (old) PID regime to 85% under the new IID regime.

Increase in withholding tax (WHT) on investment income

As of 1 January 2017, the WHT on investment income, such as interest and dividends, increased from 27% to 30% (some exceptions apply).

Reform of the corporate income tax (CIT) regime in Belgium

On 9 April 2016, the Belgian government has announced that the CIT regime in Belgium will be reformed to (i) strengthen the competitive position of the Belgian market and (ii) become increasingly fair for SMEs. At this time, only a few basic principles of the new measures have been agreed whilst the details are not yet clear and are still subject to change. The measures will now have to be translated into legislative texts. Date of entry into force is still highly uncertain.

New measures proposed following the amendments to the EU Parent-Subsidiary Directive

On 1 December 2016, a Bill was published in the official Belgian Gazette implementing into Belgian tax law two amendments to the Parent-Subsidiary Directive.

The first amendment to the Parent-Subsidiary Directive aims at tackling situations that would result in 'double non-taxation' by introducing a rule against hybrid instruments. Under this new rule, dividends received by the parent company will no longer be tax exempt whenever the distributed profit is tax deductible in the jurisdiction of the subsidiary (e.g. hybrid loans).

The second amendment introduces a general anti-abuse rule (GAAR). As a result, the dividend received deduction (DRD) and corresponding WHT exemption will be denied whenever the dividends originate from legal acts or a whole of legal acts that are artificial (i.e. no valid business reasons that reflect economic reality) and merely in place to obtain the DRD and/or WHT exemption. The amendments are applicable on income received/distributed from 1 January 2016. For WHT, the amendments are applicable from 1 January 2017.

Real estate investments funds

The Royal Decree dated 9 November 2016 on Belgian specialised real estate investment funds (better known as *fonds d'investissement immobilier spécialisé* or FIIS / *gespecialiseerd vastgoedbeleggingsfonds* or GVBF) was published in the Belgian Official Gazette on 18 November 2016. This new investment vehicle allows flexible and efficient real estate investments for institutional and professional investors, whilst enjoying a special tax regime, in particular for non-Belgian investors and/or for investing in non-Belgian real estate.

An FIIS is subject to Belgian CIT but with a minimal taxable basis, excluding rental income, capital gains, dividends, or interest received by the FIIS in relation to Belgian and non-Belgian real estate.

An 'exit tax' is triggered on Belgian real estate assets entering the FIIS regime via the conversion of an existing company, (de)merger, or contribution. The tax is due on the unrealised capital gains and untaxed reserves at a favourable tax rate of 16.995% (instead of the default rate of 33.99%) and can be offset with available tax attributes (e.g. tax losses, NID).

Since the FIIS only needs to register with the Ministry of Finance, it is possible to establish an FIIS and make it operational in record-time of 30 calendar days without high constitution costs.

The FIIS may qualify as an alternative investment fund and, in such a case, its manager should be regulated according to the European alternative investment fund managers directive (AIFMD). Such regulated manager of the FIIS will benefit from a pan-European passport to market the shares of the FIIS throughout the European Union.

Taxes on corporate income

Corporate income tax (CIT)

In general, the tax base for CIT purposes is determined on an accrual basis and consists of worldwide income less allowed deductions. The rules are equally applicable to companies and permanent establishments (PEs). It is assumed that all income received by a company is, in principle, business income. The income tax base is based on the Belgian Generally Accepted Accounting Principles (GAAP) financial statements of the company.

General rate
CIT is levied at a rate of 33% plus a 3% crisis tax, which is a surtax, implying an effective rate of 33.99%. This rate applies to both Belgian companies (subject to Belgian CIT) and Belgian PEs of foreign companies (subject to Belgian non-resident CIT). Capital gains on qualifying shares realised without meeting the one-year holding requirement are taxed at 25.75% (25% plus a 3% crisis tax, which can be offset against available tax losses), provided certain conditions are met (and at 0.412% if this one-year holding period and certain other conditions are met). Non-qualifying shares are subject to the 33.99% rate.

Fairness tax
Large companies (i.e. not SMEs, *see below*) are subject to a fairness tax on all or part of their distributed dividends. The fairness tax is a separate assessment at a rate of 5.15% (5% increased by a 3% crisis surtax) borne by the company distributing the dividends.

The tax is only applicable if, for a given taxable period, dividends have been distributed by the company that stem from taxable profit that has been offset against (current year) NID and/or carried forward tax losses. Liquidation bonuses and share buy-back proceeds are not in scope of the fairness tax.

First step
The taxable basis of the fairness tax is determined by the positive difference between the gross dividends distributed for the taxable period and the taxable result that is effectively subject to the nominal corporate taxes of generally 33.99% (there are some exceptions).

Second step
This positive difference as determined in the first step will be decreased with the part of the dividends stemming from taxed reserves constituted, at the latest, during tax year 2014. To identify the origin of the reserves, a last in first out (LIFO) method is applied.

Third step
The outcome of the above calculation is limited by a percentage, being the result of the following fraction:

- The numerator consists of the amount of carried forward tax losses and NID that has been effectively used in the taxable period at hand.
- The denominator consists of the taxable result of the taxable period at hand, excluding the tax-exempt reductions in the value and provisions.

The fairness tax itself is not tax deductible. The fairness tax due can be offset against prepayments made and tax credits.

Large companies are in scope of the fairness tax, whereas it does not apply to SMEs.

Belgian PEs of foreign companies are also in scope of the fairness tax. For Belgian PEs, ‘distributed dividends’ are, for the purposes of the fairness tax, defined as the part of the gross dividends distributed by the head office, which proportionally corresponds with the positive part of the accounting result of the Belgian PE in the global accounting result of the head office.

Progressive rates

A progressive scale of reduced rates applies to taxpayers with lower amounts of taxable income. If the taxable income is lower than 322,500 euros (EUR), the following rates apply (including the 3% crisis tax):

Taxable income (EUR)	CIT rate (%)
0 to 25,000	24.98
25,001 to 90,000	31.93
90,001 to 322,500	35.54

In case the threshold of EUR 322,500 is reached, the total taxable basis of the company is subject to the general CIT rate of 33.99%. Even if their taxable income does not exceed the aforesaid ceilings, certain companies are excluded from the reduced rate and are subject to the normal CIT rate. These companies include, amongst others, companies that are owned 50% or more by one or more companies.

Surcharge

A surcharge is due on the final CIT amount upon assessment (including the crisis surtax). The surcharge can be avoided if sufficient advance tax payments are made (*see Payment of tax in the Tax administration section for more information*). For tax year 2016 and 2017 (i.e. accounting years ending between 31 December 2015 and 30 December 2017, both dates inclusive), the surcharge is 1.125%.

Secret commissions tax

A special assessment of 103% (100% plus 3% crisis tax) is applicable to so called 'secret commissions', which are any expense of which the beneficiary is not identified properly by means of proper forms timely filed with the Belgian tax authorities. These expenses consist of:

- Commission, brokerage, trade, or other rebates, occasional or non-occasional fees, bonuses, or benefits in kind forming professional income for the beneficiaries.
- Remuneration or similar indemnities paid to personnel members or former personnel members of the paying company.
- Lump-sum allowances granted to personnel members in order to cover costs proper to the paying company.

The secret commissions tax can be limited to 51.5% (50% plus 3% crisis tax) if certain conditions are met. In some cases, no secret commissions tax applies.

Taxable income of non-residents

Certain income attributed by a Belgian tax resident to a non-resident is taxable in Belgium. A paragraph in the Belgian Income Tax Code functions as a 'catch all clause' to tax certain payments made to a non-resident of Belgium.

The catch all clause applies in case the following conditions are all met:

- Revenues stem from 'any provision of services'.
- Revenues qualify as benefits or profit in the hands of the non-resident beneficiary.
- The services are provided to an individual tax resident in Belgium in the framework of one's business activity, a corporation, a taxpayer subject to the legal entities tax, or a Belgian establishment.

- There are (in)direct links of interdependence between the foreign supplier and its Belgian client.
- Such revenues are taxable in Belgium according to a double tax treaty (DTT) or, in the absence of any DTT, if the non-resident taxpayer does not provide evidence that income is actually taxed in the state where the taxpayer is resident.

Given the condition of 'any direct or indirect links of interdependence', provision of services between non-related parties should thus, in principle, remain out of scope.

The rate amounts to 33% on the gross fee paid (resulting in an effective tax rate of 16.5%, as a lump sum deduction of 50% as professional expenses is allowed).

Local income taxes

No tax is levied on income at the regional or local level. Note that immovable assets (land, building, and possibly machinery and equipment) situated within the Belgian territory are, in principle, subject to an immovable WHT that is levied locally.

Corporate residence

A company is considered to be a resident of Belgium for tax purposes if it has its registered office, its principal place of business, or its seat of management in Belgium. The seat of management has been defined by Belgian case law as the place from where directing impulsions emanate or the place where the company's effective management and central administration abide, meaning the place where the corporate decision-making process actually takes place.

Permanent establishment (PE)

The definition of a Belgian establishment under Belgian domestic tax law corresponds, but is broader than, the definition of a PE under either the OECD Model Tax Convention or Belgium's DTTs. Since the latter prevail over domestic law, Belgium generally cannot levy tax if a non-resident has a Belgian establishment that does not constitute a PE under the relevant DTT. Although Belgium would not be entitled to tax the profit attributable to the Belgian establishment in such a case, the foreign company should still abide by certain formal tax requirements (e.g. filing a non-resident tax return, responding to requests for information).

Other taxes

Value-added tax (VAT)

Scope of VAT

The following transactions are subject to VAT in Belgium if they are considered to take place in Belgium:

- The supply of goods and services effected for consideration by a taxable person acting as such.
- The acquisition of services for consideration from outside Belgium between taxable persons.
- The importation of goods.
- Intra-Community acquisition of goods for consideration by a taxable person acting as such or by a non-taxable legal person (including the transfer of assets).

- The self-supply by a taxable person.

Intra-Community supply and intra-Community acquisition
An intra-Community supply of goods is a supply of goods whereby the goods are moving from one EU member state to another EU member state. In the member state of departure of the goods, the goods can be, under certain conditions, VAT exempt. As a result, the intra-Community acquisition of the goods (i.e. the arrival of the goods in the other member state) will be taxable.

Standard and other VAT rates
The standard VAT rate is 21%. This rate applies to all goods and services not qualifying for one of the reduced VAT rates.

The following supplies of goods and services have a 12% VAT rate:

- Restaurant and catering services, excluding beverages.
- Phytopharmaceutical products.
- (Inner) tubes.
- Certain combustible material.
- Margarine.
- Social housing and certain renovation works on immovable property.

The following supplies of goods and services have a 6% VAT rate:

- Works on immovable property (limited in time and with strict conditions).
- Basic necessities, such as food and pharmaceuticals.
- Distribution of water through pipelines.
- Some printed materials (currently, there is a proposal pending at an EU level to expand the reduced rate to electronic publications).
- Transport services of persons.
- Hotels and camping.
- Use of cultural, sporting, and entertainment venues.
- Works of art, antiques, and collector's items.
- Supplies of cars for the disabled, as well as equipment and accessories for such cars.
- Supplies of certain devices for therapeutical use.
- Contract farming.
- Repair of bicycles, shoes and leather goods, clothing, and household linen.
- Some housing for private use, for the disabled, and in the social sector.
- Copyrights.
- Concerts and exhibitions.
- Some medical equipment.
- Goods and services supplied by social organisations.

The following supplies of goods and services are VAT exempt with credit ('zero-rated'):

- Exports and certain related services.
- Intra-Community supplies of goods and certain related services.
- Imports, intra-Community acquisitions, and local trades of goods within VAT warehouses or under special customs regimes.
- Certain transactions on goods placed in a customs or VAT warehouse.
- Cross-border passenger transportation by ship or aircraft.
- Supplies to diplomats and international organisations.

- Certain supplies of goods and services to certain vessels and aircraft mainly involved in international passenger transport.
- Certain newspapers, journals, and magazines.
- Supply of recovered goods or products.

The following supplies of goods and services are, in principle, VAT exempt without credit:

- Healthcare services, excluding certain types of cosmetic surgery.
- Social services.
- Education services.
- Sport services.
- Cultural services.
- Banking services.
- Interest charges.
- Financial services (option to tax possible for paying and cashing services).
- Insurance services.
- Land and real estate sales.
- Property leasing and letting.

It should be noted that specific conditions may apply to the above two categories.

VAT grouping

Under a VAT group, independent legal persons are treated as one single taxable person for VAT purposes if they are closely linked financially, economically, and organisationally. Hence, for VAT purposes, all supplies of goods and services to or by the group members are deemed to be made to or by the group itself.

The application of a VAT group has, amongst other, the following consequences:

- No issuance of ‘inter-company’ invoices between companies in the VAT group (however, internal documents will be required).
- No charging of VAT between companies in the VAT group (avoiding VAT pre-financing).
- No cascade of limitation of the right to deduct VAT when on charging costs to companies in the VAT group.
- Head office abroad outside the VAT group will be seen as a third party and will trigger VAT on head office/PE services.
- Mutual liability between VAT group members.
- Filing of one VAT return for all companies in the VAT group.

Import duties

Goods coming from outside the European Union and imported into Belgium are subject to import duties. Import duties are calculated based on three main elements:

Classification

All products are classified based on the rules laid down in the Combined Nomenclature (CN). All products traded in the world can be classified according to the tariff nomenclature. An import duty rate is linked to every CN-code.

Origin

Based on international trade agreements (i.e. bilateral), a preferential import duty rate (i.e. a lower import duty rate) may apply to products imported in the European

Union in case the goods meet the applicable criteria in the country benefiting from the agreement.

Valuation

The customs value is determined based on one of the six rules laid down in the Union Customs Code (UCC). The most commonly used rule to determine the customs value upon importation in the European Union is the 'transaction value' (i.e. Article 70 of the UCC).

These valuation rules are harmonised on a global level through Article 7 of the General Agreement on Tariffs and Trade (GATT) valuation agreement.

Various economic customs regimes (i.e. bonded warehouse, inward processing procedure, outward processing procedure) are available, allowing optimisation schemes throughout the supply chain.

Excise duties

Excise goods are divided into the following two groups:

- Community excise products: These are defined as excise products at the EU-level, and the same procedures (i.e. excise applications, suspension regimes) should apply in all EU member states. Products in scope are (i) alcoholic beverages, (ii) energy products, and (iii) manufactured tobacco.
- National excise products: These can be defined at the member state level on a voluntary basis. Belgium has identified the following goods as being 'national excise products': (i) non-alcoholic beverages (i.e. soda), (ii) coffee, and (iii) water.

The European Union determined the threshold (with minimum and maximum rates) in which the EU member states have to define the applicable excise duty rate per product on a national basis. With respect to the national excise goods, every member state has the liberty to freely decide upon the national excise duty rates applicable.

Property taxes

Immovable property is subject to an immovable WHT (also called 'real estate tax') due on a yearly basis. This tax is calculated in function of the so-called 'cadastral income' of the property (a kind of 'deemed' rental income). The deemed rental income constitutes the average normal net income of one year (based on rental income of 1976). This means that the deemed rental income can be considered as a presumed income, which generally will not match the actual income.

The tax rate depends on where the property is located (as it is a combination of regional, provincial, and communal tax).

Machinery and equipment can also be considered as immovable property in certain cases.

Registration duties

Purchases and transfers of real estate located in Belgium, including buildings (except new buildings, which are subject to VAT as described above), are subject to registration duty at the rate of 12.5% of the higher of transfer price or fair market value (except in the Flemish Region, where the applicable rate is 10%).

If the purchase or transfer of land is subject to VAT, no registration duties will be charged on the purchase or transfer.

In principle, no registration duty is due upon a capital contribution; only a fixed fee of EUR 50 is due.

Stamp duties

Stamp duties are due on transactions relating to public funds that are concluded or executed in Belgium, irrespective of their (Belgian or foreign) origin, to the extent that a professional intermediary intervenes in these transactions. Exemptions for non-residents and others are available.

Payroll taxes

In Belgium, there are no payroll taxes applicable other than those for social security contributions and income tax withholding.

Social security contributions

The base percentage of the employer contribution for white collar workers is currently 30% (consisting of a basic 22.65% and a percentage for salary moderation of 7.35%) calculated on an uncapped salary.

However, the Act of 26 December 2015 (Tax Shift Act) foresees a gradual decrease of the base percentage of social security contributions for employers to 25% (consisting of a basic 19.88% and a percentage for salary moderation of 5.12%) by 1 January 2018.

On top of the basic percentage of the employer's social security contributions, additional contributions may be due of which the percentages may vary depending on the company and the sector whereto the company belongs.

However, all employers that employ employees, subject to all aspects of the social security regulation, might currently benefit from a structural reduction (which will be abolished from 1 January 2018 for the majority of employees). Therefore, at the moment, the employer social security contributions are rather around 28% of the total gross compensation.

Social security contributions are deductible in determining taxable income both for the employer (CIT) and for the employee (personal income tax or PIT).

For foreign employees with an international employment (i.e. assignment or simultaneous employment) in Belgium who continue to be subject to the social security schemes of their home country, an exemption from subjection to the Belgian social security scheme may be granted, depending on the place of residence and/or nationality of the claimant.

Branch income

PE profits are subject to the normal tax rate for Belgian corporations of 33.99% (or 25.75% for certain capital gains on shares not meeting the one-year holding period or 0.412% for those capital gains meeting the one-year holding period and the subject to tax test) plus the possible surcharge for absence/insufficiency of advance payments (*see the Taxes on corporate income section*). PEs can benefit from the reduced CIT rates under specific conditions (*see the Taxes on corporate income section*).

Capital gains realised on real estate located in Belgium by non-resident companies are subject to a professional WHT at the normal CIT rate of 33.99%.

In general, the taxable basis is the difference between the profits actually realised and the tax-deductible costs actually incurred in the hands of the Belgian PE as determined from the separate set of accounts of the Belgian PE. No legal requirement exists to keep a separate set of accounts in the hands of the PE, in case no legal PE is deemed to exist in Belgium.

Should no separate set of accounts be kept, the taxable basis in the hands of the Belgian PE, in principle, can be determined on a lump-sum basis. As a result, the yearly taxable basis will be determined on 10% of the gross turnover realised in Belgium with a minimum of EUR 7,000 per employee (the minima vary between EUR 7,000 and EUR 24,000, depending on the kind of business) and an absolute minimum of EUR 19,000. Note that such determination of the taxable basis is often formalised in a written agreement with the local Belgian tax inspector without deviating from the tax law criteria as mentioned.

Income determination

Inventory valuation
Belgian accounting law provides for the following four methods of inventory valuation: the method based on the individualisation of the price of each item, the method based on the weighted average prices, the last in first out (LIFO) method, and the first in first out (FIFO) method. All of these methods are accepted for tax purposes.

Capital gains
Capital gains are subject to the normal CIT rate. For tax purposes, a capital gain is defined as the positive difference between the sale price less the costs related to the disposal of the asset and the original cost of the acquisition or investment less the depreciations and write-offs that have been deducted for tax purposes.

Capital gains realised on tangible fixed assets and intangible assets could be subject to a deferred and spread taxation regime, provided that certain conditions are met.

Capital gains on shares
Net capital gains realised by a large Belgian company (or Belgian PE) on shares are subject to a 0.412% tax, provided the subject to tax condition and the one-year holding period are met. The 0.412% tax is not applicable to SMEs.

If the net capital gain is realised before the minimum holding period of one year was reached and the taxation condition (*see below*) is met, the net capital gain is taxed at a rate of 25.75% (25% plus a 3% crisis tax, which can be offset against available tax losses). There are some exceptions (e.g. for financial institutions).

Dividend income
Dividends received by a Belgian company are first included in its taxable basis on a gross basis when the dividends are received from a Belgian company or on a net basis (i.e. after deduction of the foreign WHT) when they are received from a foreign company.

Provided certain conditions are met, 95% of the dividend income can be offset by a DRD.

Dividends-received deduction (DRD)
A DRD of 95% of dividend income can be applied under certain conditions (*see below*). Any unused portion of the DRD from dividends received from a European Economic Area (EEA) subsidiary or a subsidiary from a country with which Belgium has concluded a DTT with a nondiscrimination clause on dividends can be carried forward to future tax years. The same also applies for dividends from Belgian subsidiaries.

The DRD is subject to a (i) minimum participation condition and (ii) taxation condition.

In addition, a rule against hybrid instruments has been introduced into Belgian law. Under this rule, dividends received by the parent company will no longer be tax exempt whenever the distributed profit is tax deductible in the jurisdiction of the subsidiary (e.g. hybrid loans). Further, a GAAR has been introduced into Belgian legislation. As a result, the DRD will be denied whenever the dividends originate from legal acts or a whole of legal acts that are artificial (i.e. no valid business reasons that reflect economic reality) and merely in place to obtain the DRD exemption.

Minimum participation condition
According to the minimum participation condition, the recipient company must have, at the moment of attribution, a participation of at least 10% or an acquisition value of at least EUR 2.5 million in the capital of the distributing company. The beneficiary of the dividend must have been holding the full legal ownership of the underlying shares for at least one year prior to the dividend distribution or commit to hold it for a minimum of one year.

Taxation condition
The taxation condition, in summary, means that the dividend income received must have been subject to tax at the level of the distributing company and its subsidiaries if the former redistributes dividends received.

The taxation condition is based on five 'exclusion' rules and certain exceptions to these rules. Basically, the exclusion rules apply to the following:

- Tax haven companies, which are companies that are not subject to Belgian CIT (or to a similar foreign tax) or that are established in a country where the common taxation system is notably more advantageous than in Belgium. Countries in which the minimum level of (nominal or effective) taxation is below 15% qualify as tax havens for the application of the regime (a list of tainted countries has been published). The common tax regimes applicable to companies residing in the European Union are, however, deemed not to be notably more advantageous than in Belgium.
- Finance, treasury, or investment companies that, although are subject in their country of tax residency to a corporate tax similar to that of Belgium as mentioned in the item above, nevertheless benefit from a tax regime that deviates from common law.
- A Belgian real estate investment trust or foreign regulated investment trust that benefits from a substantially more advantageous tax regime than the Belgian tax regime.

- Offshore companies, which are companies receiving income (other than dividend income) that originates outside their country of tax residency and in these countries such income is subject to a separate taxation system that deviates substantially from the common taxation system.
- Companies having PEs that benefit globally from a taxation system notably more advantageous than the Belgian non-resident corporate taxation system. This exclusion is deemed not applicable to EU companies with an EU PE.
- Intermediary holding companies, which are companies (with the exception of investment companies) that redistribute dividend-received income, which on the basis of regulations mentioned under the items above would not qualify for the DRD for at least 90% of its amount in case of direct holding.

While this is a summary of the exclusion rules, numerous exceptions to these exclusion rules exist and need to be analysed on a case-by-case basis.

Bonus shares (stock dividends)
Distribution of bonus shares to shareholders in compensation for an increase of the share capital by incorporation of existing reserves is, in principle, tax free. The situation may be different if the shareholder has the choice between a cash or stock dividend.

Interest, rents, and royalties
Interest that accrued, became receivable by, or was received by a company, and rents and royalties received by a company, are characterised as business profits and taxed at the general CIT rate of 33.99%. The income can be offset against available tax assets.

Foreign income
A Belgian resident company is subject to CIT on its worldwide income and foreign-source profits not exempt from taxation by virtue of a DTT (*see the treaty list in the Withholding taxes section*). This income is taxable at the normal CIT rate in Belgium (i.e. 33.99%).

A foreign tax credit may be available for foreign royalty income and foreign interest income. *See the Tax credits and incentives section for more information*.

Undistributed income of subsidiaries, whether or not they are foreign, is not subject to any Belgian income tax in the hands of the Belgian corporate shareholder (i.e. no CFC rules).

Deductions

As a general rule, expenses are tax deductible in Belgium if they are incurred in order to maintain or to increase taxable income, they are incurred or have accrued during the taxable period concerned, and evidence of the reality and the amount of such expenses is provided by the taxpayer.

Depreciation and amortisation
Depreciation of an asset is tax deductible to the extent that it results from a devaluation of the asset, and the devaluation effectively occurred during the taxable period concerned. The depreciation methods that are accepted by Belgian tax law are the straight-line method (linear method) and the double-declining balance method. In the latter case, the annual depreciation may not exceed 40% of the acquisition value. The double-declining method may not be used for intangible fixed assets, automobiles,

minibuses and automobiles used for mixed purposes, and for assets, the use of which has been transferred to a third party (e.g. operational leasing).

Depreciation rates are based on the expected lifetime of the assets concerned, which are normally agreed upon by the taxpayer with the tax authorities. However, for certain assets, rates are set by administrative instructions as follows:

Assets	Depreciation rate (%)
Commercial buildings	3
Industrial buildings	5
Machinery and equipment (depending on the type)	20 or 33
Rolling stock	20

Intangible fixed assets have to be amortised over a period of at least five years for tax purposes (except research and development [R&D] expenses, for which the minimum amortisation period is three years).

For the year of acquisition of an asset, only the proportionate share of an annual depreciation calculation can be accepted as depreciation for income tax purposes (in principle to be computed on a daily basis). This provision, however, applies only to companies that cannot be considered as SMEs (*see the Tax credits and incentives section for the definition*). In contrast, SMEs can deduct a full year of depreciation in the year of acquisition.

Goodwill
Belgian accounting and tax laws allow amortisation of goodwill arising at the occasion of an asset deal. For Belgian tax purposes, the amortisation period, which depends on the elements included in the goodwill, is a minimum of five years, and the straight-line method must be applied. According to the Minister of Finance, '*clientele*' (client lists) should be amortised over a period of ten to 12 years. The aforesaid accounting and tax amortisation for goodwill is not available if tax-free mergers or de-mergers occur (i.e. they, among other things, follow the continuity principle from an accounting perspective).

Start-up expenses
Incorporation costs, at the election of the taxpayer, may be deducted fully in the year of incorporation or can be depreciated over a maximum period of five years.

Interest expenses
Interest expenses are, in principle, tax deductible insofar as thin capitalisation limits are respected (*see Thin capitalisation in the Group taxation section*) and the interest is at an arm's-length rate.

Provisions and bad debt reserves
Provisions and bad debt reserves are tax deductible provided that:

- they are set up to cover clearly identified losses and charges (i.e. not to cover 'general' risks) that have been rendered probable by events that took place during the taxable period concerned
- they are booked at the end of the financial year in one or more separate accounts on the balance sheet
- they are reported on a specific form enclosed with the tax return, and

- they relate to losses and charges that are deductible for Belgian tax purposes.

Charitable contributions
Charitable contributions may not be less than EUR 40 and may not exceed 5% of the total net income of the taxable period, with a maximum of EUR 500,000 to be tax deductible. The law includes an exhaustive list of gifts that are deductible, including gifts in cash to certain social, cultural, or scientific organisations.

Automobile costs
The deductibility rate of automobile costs in the hands of Belgian companies (and Belgian PEs) varies in a range between 50% and 120% of the automobile costs, depending on the CO2 emission of the company car and its catalogue value.

Moreover, the deduction for fuel costs is limited to 75%.

Taxes, fines, and penalties
Belgian resident and non-resident CIT, including advance tax payments, any surcharge imposed in case of insufficient advance tax payments, any interest for late payment of the CIT, and any Belgian movable WHT, is not tax deductible in Belgium. Immovable WHT (i.e. real estate tax), secret commissions tax, and foreign taxes, however, are considered as tax deductible.

Regional taxes and contributions, including penalties, increases, ancillary expenses, and interest for late payment, are not tax deductible in Belgium (certain exceptions apply).

Any administrative and judicial fines or penalties (except for VAT proportionate fines) are not tax deductible in Belgium.

Disallowed expenses
The following expenses are not tax deductible in Belgium (this list is not exhaustive):

- 31% of restaurant expenses.
- 50% of representation expenses and business gifts (there are exceptions).
- Advantages granted to employees for social reasons, with certain exceptions (e.g. hospitalisation insurance premiums, gifts of a small value).
- Capital losses on shares (except upon liquidation, up to the amount of paid-up capital of the liquidated company).
- Brokerage, commissions, commercial discounts, or other payments allocated directly or indirectly to a person in the form of a Belgian public bribery.
- 17% of the benefit in kind of company cars (minimum taxable basis).

Net operating losses

Principle: carried forward without limitation in time
Tax losses can, in principle, be carried forward without any limitation in time.

Change of control
If a change of control of a Belgian company takes place (e.g. if the shares of the company are transferred and along with them the majority of the voting rights), the amount of tax losses, investment deduction, and NID carried forward available in that company (before the change of control) can no longer be offset against future profits unless the change can be justified by legitimate needs of a financial or economic nature

in the hands of the loss realising company (i.e. evidence must be brought that the change is not purely tax driven).

A ruling can be requested from the Belgian tax authorities to obtain upfront certainty on the Belgian tax treatment of the contemplated operation, so as to ensure the losses are not forfeited as a result of a change of control.

Tax-free merger or (partial) de-merger
If a tax-free merger or (partial) de-merger takes place, Belgian tax law provides for a partial transfer/maintenance of the rollover tax losses of the absorbed/absorbing company. The carried forward tax losses of the companies involved are then reduced based on the proportionate net fiscal value of the company (before the restructuring) compared to the sum of the net fiscal values of both the merging entities (before the restructuring).

No carryback
There is no tax loss carryback provision under Belgian tax law.

Payments to foreign affiliates
A Belgian company can claim a deduction for royalties, management service fees, and interest charges paid to foreign affiliates, provided such amounts are at arm's length. However, when such payments are made, either directly or indirectly, to a foreign person, entity, or PE that is not subject to tax or is subject to a tax regime that is notably more advantageous than the Belgian tax regime on such income, there is a reversal of the burden of proof. Such charges will be disallowed unless the Belgian company can prove that the payments are reasonable and that they correspond to genuine and real transactions.

Fees, commissions, etc. paid to beneficiaries located in foreign countries and not properly reported, will, in principle, be subject to the secret commissions tax.

Payments to tax havens
Companies subject to Belgian CIT or Belgian non-resident CIT that make direct or indirect payments to recipients established in tax havens are obligated to declare them if they are equal to or exceed EUR 100,000 during the tax year. The reporting has to be made on a special form to be attached to the (non-resident) CIT return.

In the event of non-reporting, the payments will be disallowed expenses for CIT purposes. Where the payments have been reported duly and timely, their tax deductibility will be subject to the ability of the taxpayer to prove that (i) said payments were made as part of genuine, proper transactions and (ii) they were not made to an entity under an artificial construction.

A tax haven is defined as: (i) a jurisdiction where the nominal corporate tax rate is less than 10% or (ii) a jurisdiction regarded by the OECD as not being cooperative concerning transparency and international exchange of information (EoI) (i.e. on the OECD 'black list'). A royal decree containing the list of countries where the nominal corporate tax rate is lower than 10% is published.

As of 14 July 2016, the scope is extended to payments to:

- PEs located in a state with a low or zero tax charge
- bank accounts managed or held by one of these people or PEs, and

- bank accounts managed or held through credit institutions (or their PE) located in one of those states.

The definitions of 'non-compliant state', 'state', and 'state with a low or zero' tax charge are also enlarged.

Group taxation

Belgium does not apply any tax consolidation mechanism with respect to corporate tax.

Transfer pricing

The arm's-length principle is formally codified in the Belgian Income Tax Code (BITC). In addition, the tax authorities can make use of other, more general, provisions in the BITC to assess the arm's-length nature of transfer prices (e.g. the general rules on the deductibility of business expenses). The BITC contains provisions that tackle artificial inbound or outbound profit shifting. These are the so-called provisions on abnormal or gratuitous benefits.

If a Belgian tax resident company grants an abnormal or benevolent benefit, the benefit should be added back to the taxable income as a disallowed expense unless the benefit was taken into account to determine the taxable basis of the beneficiary. Even if the abnormal or gratuitous benefit was taken into account for determining the taxable basis of the beneficiary, the tax deductibility of the related expenses can still be denied in the hands of the grantor. Notwithstanding the above exception, the abnormal or benevolent benefit should be added back to the taxable income when the benefit is being granted to a non-resident affiliated company. Such granted abnormal or benevolent benefits can be offset against any tax deductible items (e.g. tax losses carried forward, NID).

If a Belgian tax resident company receives an abnormal or benevolent benefit, and to the extent that such benefit is received from a related company, the benefit received cannot be offset by the Belgian company against its current year or carried forward tax losses or other tax deductions. According to the position of the tax authorities (by the Minister of Finance), the taxable basis of a Belgian company equals at least the amount of the benefit received (however, there is case law deviating from this position).

Belgium has a special transfer pricing investigation unit with a mission to (i) build up and share transfer pricing expertise and (ii) carry out in-depth transfer pricing audits of multinationals present in Belgium through a subsidiary or PE. The number of transfer pricing audits being initiated in Belgium has increased significantly.

On 29 June 2016, the Belgian Parliament adopted the 'programme law' (introduced on 2 June 2016) that contains the introduction into Belgian tax law of specific transfer pricing documentation requirements (published in the Belgian Official Gazette of 4 July 2016). These requirements are based on Action 13 of the OECD/G20 BEPS Project.

The relevant articles of the programme law introduce a three-tier documentation approach as provided under BEPS Action 13: Master File, Local File, and Country-by-Country (CbC) Reporting. According to the newly adopted documentation requirements, Belgian entities of a multinational group that exceed one of the following criteria:

- operational and financial revenue of at least EUR 50 million (excluding non-recurring revenue)
- balance sheet total of EUR 1 billion, or
- annual average number of employees of 100 full-time equivalents

need to submit to the tax authorities a master file and a local file (the detailed form that is part of the local file only when at least one of the business units of the entity has realised intra-group cross-border transactions of more than EUR 1 million).

Belgian ultimate parent entities of a multinational group with a gross consolidated group revenue of at least EUR 750 million should file a CbC report. Under certain conditions, the Belgian entity that is not the ultimate parent entity of the multinational group may be required to file the CbC report directly with the Belgian tax authorities.

The master file and CbC report should be filed no later than 12 months after the last day of the reporting period concerned of the multinational group. The local file, however, should be filed with the tax return concerned.

The programme law also introduces specific transfer pricing documentation penalties, ranging from EUR 1,250 to EUR 25,000.

On 2 December 2016, the Royal Decrees that contain the various models of the forms Belgian entities need to use to submit the master file, local file, and CbC report were published in the Belgian Official Gazette. This was the closing stone of the formal introduction of transfer pricing documentation requirements into Belgian tax law.

Advance pricing agreements (APAs) can be concluded (unilaterally, bilaterally, and multilaterally) via which the taxpayer can obtain upfront certainty.

Thin capitalisation

For the purposes of the thin capitalisation rule, equity is defined as the sum of the taxed reserves at the beginning of the taxable period and the paid-up capital at the end of the taxable period.

For the purposes of the thin capitalisation rule, debt is defined as:

- all loans, whereby the beneficial owner is not subject to income taxes, or, with regard to the interest income, is subject to a tax regime that is substantially more advantageous than the Belgian tax regime, and
- all intra-group loans.

Bonds and other publicly issued securities are excluded, as well as loans granted by financial institutions.

Interest payments or attributions in excess of the 5:1 ratio are not tax deductible. The thin capitalisation rule is not applicable to loans contracted by (movable) leasing companies and companies whose main activity consists of factoring or immovable leasing (within the financial sector).

In case the loans are guaranteed by a third party or in case loans are funded by a third party that partly or wholly bears the risk related to the loans, the third party is deemed to be the beneficial owner of the interest if the guarantee or the funding has tax avoidance as main purpose.

To safeguard companies having a centralised treasury function in Belgium, a netting for thin capitalisation purposes is allowed at the level of the interest payments and interest income related to the centralised financing function/cash pool function.

Controlled foreign companies (CFCs)
There are no CFC rules in Belgium.

Tax credits and incentives

Foreign tax credits (FTCs)
Unilateral relief from double taxation of foreign-source income may be provided in the form of an exemption, credit, or tax reduction, depending on the type of income. Where taxable, foreign income is subject to tax only on its net amount (i.e. after deduction of expenses and foreign taxes).

Dividend income FTC
Generally, no FTC is available for foreign dividends.

Royalty income FTC
Unless a more advantageous provision (e.g. a tax sparing provision) would apply based on a DTT concluded by Belgium (*see the treaty list in the Withholding taxes section*), an FTC is granted under Belgian tax law with respect to foreign royalty income, provided that this income has effectively been subject to taxation in its source country. This FTC is equal to 15/85 of the net frontier amount (i.e. after deduction of foreign WHT) of the royalty. The FTC is, in principle, included in the taxable basis of the recipient company and is only creditable against Belgian income tax to the extent that said foreign income is included in the taxable basis of the Belgian company. Excess FTC, if any, is not refundable and cannot be carried forward.

Interest income FTC
Unless a more advantageous provision (e.g. a tax sparing provision) would apply based on a DTT concluded by Belgium (*see the treaty list in the Withholding taxes section*), the Belgian beneficiary of foreign interest income is entitled to an FTC under Belgian tax law, provided that this income effectively has been subject to taxation in its source country. The computation of the FTC is based on the net frontier interest income (i.e. after deduction of foreign WHT) and adjusted with a ratio taking into account the financial leverage. The FTC is, in principle, included in the taxable base of the Belgian lender to the extent the FTC can be effectively used. It is creditable against the CIT due but is not refundable in case of excess, neither can it be carried forward.

Notional interest deduction (NID)
Belgian corporate income taxpayers can claim NID for tax purposes, reflecting the economic cost of the use of capital, equal to the cost of long-term, riskfree financing.

The NID rate for tax year 2017 (i.e. accounting years ending between 31 December 2016 and 30 December 2017, both dates inclusive) is 1.131% (1.631% for SMEs).

The NID rate for tax year 2018 (i.e. accounting years ending between 31 December 2017 and 30 December 2018, both dates inclusive) is 0.237% (0.737% for SMEs).

As of tax year 2013, new excess NID can no longer be carried forward, whereas, under the old rules, ‘excess NID’ (i.e. NID that cannot be claimed owing to the taxpayer having insufficient taxable income) could be carried forward for a maximum of seven years.

However, the 'stock' of excess NID (stemming from previous years, i.e. tax years 2012 and before) can still be carried forward for seven years (as was previously the case), though the excess NID that can be applied in a given year is limited to 60% of the taxable profit (i.e. the profit remaining after setting off carried-forward tax losses and other tax deductions). The 60% limit is only applicable to the part of taxable profit exceeding EUR 1 million. The portion of excess NID that cannot be used due to the '60% rule' (i.e. 40% of taxable profit minus EUR 1 million) can be carried forward indefinitely.

As for determining the basis on which this deduction is calculated, the company's share capital plus its retained earnings, as determined for Belgian GAAP purposes and as per the last year-end date, will have to be taken into account with some adjustment. The accounting equity as per the last year-end date has to be reduced by, amongst others, (i) the fiscal net value of financial fixed assets qualifying as participations and other shares, (ii) the fiscal net value of participations and shares that qualify for the dividends received deduction regime, and (iii) if a company has a foreign PE located in a jurisdiction with which Belgium has concluded a tax treaty, the NID is reduced by:

- the lower amount of (i) the result of the foreign PE or real estate or (ii) the net asset value of the PE or real estate multiplied by the NID rate if it concerns a PE located in the European Economic Area or
- the net asset value of the PE or real estate multiplied by the NID rate if it concerns a PE or real estate located in a treaty country outside of the European Economic Area.

In addition, various other adjustments should be made in order to avoid abuse.

Investment deductions

The investment deduction is a deduction from the tax base in addition to the normal tax depreciation on, amongst others, qualifying patents, environmentally friendly R&D investments, and energy-saving investments.

A company can benefit from a one-shot investment deduction of 13.5% (for tax year 2017, i.e. accounting years ending between 31 December 2016 and 30 December 2017 [both dates inclusive], and for tax year 2018, i.e. accounting years ending between 31 December 2017 and 30 December 2018 [both dates inclusive]) of the acquisition value of qualifying investments. With respect to environmentally friendly R&D investments, a company can also opt for a spread investment deduction of 20.5% (for tax year 2017 as well as tax year 2018) of the depreciation on qualifying environmentally friendly R&D investments.

If there are insufficient or no taxable profits, the investment deduction can be carried forward without any limitation in time or in amount. Certain restrictions apply as to the maximum amount of investment deduction carried forward that is tax deductible in a given year.

Under certain conditions, the investment deduction carried forward can be lost after a change of ownership (*see Net operating losses in the Deductions section*).

Note that the investment deduction for patents and R&D cannot be combined with the tax credit for patents and R&D.

As of 2016, note that, in principle, only development costs can be activated and no longer costs of research.

Patents and R&D tax credit

As an alternative for the above investment deduction for patents and R&D, a company may opt for a tax credit for which the advantage corresponds to the advantage of the investment deduction (i.e. 13.5% one-time and 20.5% for a spread investment deduction for tax year 2017 as well as tax year 2018), multiplied by the normal CIT rate of 33.99%. The investment deduction implies a deduction of the taxable basis, while the tax credit is a reduction of the tax due. A key advantage of the tax credit for patents and R&D is that it is refundable if it has not been deducted for five subsequent tax years.

Note that the amount of the tax credit should be deducted from the basis of the NID.

Reduced payroll tax for qualifying researchers

80% of the payroll tax withheld from wages of qualifying researchers by a Belgian company or establishment does not need to be remitted to the Belgian Tax Revenue if the researchers are employed in R&D programmes and have a qualifying degree (e.g. a degree in [applied] sciences, veterinary medicines, biotechnology). For the employee's personal tax liability, the Belgian Tax Revenue considers that the payroll WHT amount was entirely withheld.

Belgian law mentions a definition of 'scientific research' and foresees a reporting obligation with the Public Federal Administration for Scientific Policy (*Belspo*), which can approve or reject the request for application if asked for.

Innovation income deduction (IID)

As of 1 July 2016, the Belgian PID regime has been abolished. Indeed, in line with the so-called 'modified' nexus approach, the patent box regime had to be replaced with a BEPS (in particular Action Point 5 of the OECD BEPS Action Plan)/EU compliant patent box regime. Subject to conditions, the (old) PID regime is grandfathered for five years.

In contrast to the (old) PID regime, the qualifying patent/innovation income is calculated on a net basis. The percentage of this deduction is raised from 80% under the (old) PID regime to 85% under the new IID regime resulting in an effective tax rate of 5.1% over the life time of the intellectual property (IP). The new regime entered into force on 1 July 2016.

Qualifying intellectual property (IP)

The IID can apply to income derived from the following IP of which the company or branch has the full ownership, co-ownership, usufruct, or licence of or right to use:

- Patents and supplementary protection certificates.
- Breeders' rights requested or acquired as of 1 July 2016.
- Orphan drugs, i.e. a drug to treat rare diseases, (limited to first ten years) requested or acquired as of 1 July 2016.
- Data and market exclusivity granted by the competent authorities after 30 June 2016 (e.g. market exclusivity for orphan drugs or data exclusivity for reports with respect to pesticides, clinical studies of generic or animal drugs).
- IP of copyrighted software resulting from a research or development project as defined for the purposes of the partial exemption of wage WHT for R&D and that has not yet generated income before 1 July 2016.

Under the (old) PID regime, the benefit was only provided as from the year the patent was actually granted. Going forward, the benefit would also become available as of the date the patent is requested (and provided that the patent is actually granted afterwards).

Innovation income

Without making any restrictions to SMEs, the following income will be considered as derived from the above qualifying IP in so far as the remuneration is included in the Belgian taxable result of the Belgian company or branch concerned:

- Licence fees.
- IP income embedded in the sales price of own manufactured products for which a third party would be willing to pay a license (so-called 'embedded' royalties).
- IP income derived from process innovation.
- Indemnities on the basis of a court/arbitral decision, an amicable settlement, or an insurance settlement.

Furthermore, the proceeds from a transfer of qualifying IP are also in the scope of the deduction, subject to a reinvestment condition to be met within five years.

For the first taxable period during which the IID will be applied, the (net) innovation income should be decreased by the overall expenditure incurred during (preceding) taxable periods ending after 30 June 2016. Alternatively, one can opt to spread this recapture on a straight-line basis during a period of a maximum of seven years. In the case that the qualifying IP right terminates or is alienated before the end of this seven-year period, a correction will apply in order to limit the IID actually applied to the amount that would have been applied if no spread recapture had been opted for.

Calculation of the IID

The IID is determined by multiplying the net innovation income by a fraction. This fraction represents the ratio between one's own R&D activities and the outsourced R&D activities (towards related parties). As such, the taxable result of a Belgian company or branch will be reduced by 85% of the total net innovation income after this fraction has been applied.

IID = ((qualifying expenditures + uplift) / overall expenditure)) x net innovation income x 85%

It is important to note that the ratio should be calculated on a net basis, implying that (contrary to the [old] PID regime) current year deducted overall expenditure should be deducted from the current year qualifying innovation income.

It is thereby also provided that excess deduction that cannot be used due to insufficient taxable basis can be carried forward to be compensated with future taxable profits (contrary to the [old] PID regime).

The qualifying expenditure may be uplifted by 30%, with a maximum of the overall expenditure. This means that the uplift may increase the qualifying expenditure but only to the extent that the taxpayer has non-qualifying expenditure. The purpose of this uplift is to ensure that the nexus approach does not penalise taxpayers excessively for acquiring IP or outsourcing R&D activities to related parties.

Withholding taxes

Domestic corporations and PEs of foreign corporations paying dividends, interest, royalties, service fees, and/or certain rentals are required to withhold tax.

A uniform WHT rate of 30% is applicable on dividends, interest, and royalties. There are some exceptions.

Some WHT reductions/exemptions are foreseen under Belgian domestic tax law.

- A WHT exemption is foreseen for the distribution of profits made by a Belgian subsidiary to an EU parent company if both the parent and subsidiary have a legal form that is mentioned in the Annex to the EU Parent-Subsidiary Directive, if both are subject to CIT, and if the parent company holds, during an uninterrupted period of at least one year, a shareholding of at least 10% in the capital of the distributing company (implementation of the Parent-Subsidiary Directive). If the one-year holding requirement is not fulfilled at the time of distribution, the distributing company provisionally should withhold the amount of WHT due (but it does not have to pay the tax authorities). Once the one-year holding requirement is met, the provisionally withheld tax amount can be paid out to the parent company. If the one-year holding requirement eventually is not complied with (e.g. because the Belgian participation is disposed of by the parent company before the one-year holding requirement is met), then the Belgian company has to pay the amount provisionally withheld, increased by interest for late payment (at an annual rate of 7%), to the competent services of the Belgian tax authorities.
- Recently, a GAAR has been introduced into Belgian legislation. As a result, the WHT exemption will be denied whenever the dividends originate from legal acts or a whole of legal acts that are artificial (i.e. no valid business reasons that reflect economic reality) and merely in place to obtain the WHT exemption.
- In 2012, the European Court of Justice ruled that the Belgian dividend WHT regime was incompatible with EU law (the 'Tate & Lyle case'). The regime stated that dividends distributed by Belgian companies to foreign corporate shareholders having a holding interest in the capital of a company of less than 10% but with an acquisition value of at least EUR 1.2 million (currently EUR 2.5 million) are, in principle, subject to full withholding at 30%. According to the new Act (of 18 December 2015), dividends distributed by a Belgian company to non-resident minority corporate shareholders are now subject to a reduced WHT rate of 1.6995% (instead of 30%), provided certain conditions are met, among which are the following:
  - The reduced rate of 1.6995% is only applicable to the extent that the Belgian WHT cannot be credited or is not refundable in the jurisdiction of the beneficiary.
  - Both the company distributing the dividends and the beneficiary of the dividends are subject to a taxation condition.
  - The beneficiary must be a non-resident corporate shareholder having a holding interest in the capital of the distributing company of less than 10% but with an acquisition value of at least EUR 2.5 million.
  - The holding interest must be held for an uninterrupted period of at least one year (in full ownership).
  - The shareholder must be a company located in the EEA or in a jurisdiction with which Belgium has concluded a DTT.
  - The shareholder must have a legal form as mentioned in the EU Parent-Subsidiary Directive or a similar form.

- The application of the Parent-Subsidiary Directive to dividend payments has been extended towards non-EU-resident companies. Dividends distributed towards a country that has concluded a tax treaty with Belgium containing a qualifying exchange of information clause can be exempt from WHT, subject to the same conditions as laid down in the Parent-Subsidiary Directive.

On top of the above exemptions, there are other dividend/interest exemptions/ reductions implemented in Belgian tax law.

With respect to payments made to non-resident corporations or individuals, WHT exemptions and/or reductions can also be found in the DTTs concluded by Belgium.

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Royalties, certain rentals (6)**
Non-resident corporations and individuals			
Non-treaty:	30	30	30
Treaty:			
Albania	5/15 (4)	5	5
Algeria	15 (4)	15 (6)	5/15
Argentina	10/15 (4)	12 (6)	3/5/10/15
Armenia	5/15 (4)	10 (6)	8
Australia	15 (4)	10	10
Austria	15 (4)	15 (6)	10
Azerbaijan	5/10/15 (4)	10	5/10
Bahrain	10 (4)	5 (6)	0
Bangladesh	15 (4)	15 (6)	10
Belarus	5/15 (4)	0/10	5
Bosnia-Herzegovina (1)	10/15 (4)	15	10
Brazil	10/15 (4)	10/15 (6)	10/15/20
Bulgaria	10 (4)	10 (6)	5
Canada	5/15 (4)	10 (6)	0/10
Chile	0/15 (4)	5/15	5/10
China, People's Republic of (2)	5/10 (4)	10 (6)	7
Congo	5/10 (4)	10 (6)	10
Croatia	5/15 (4)	10 (6)	0
Cyprus	10/15 (4)	10 (6)	0
Czech Republic	5/15 (4)	10 (6)	5/10
Denmark	0/15 (4)	10	0
Ecuador	15 (4)	10 (6)	10
Egypt	15/20 (4)	15	15/25
Estonia	5/15 (4)	10 (6)	5/10
Finland	5/15 (4)	10	5
France	10/15 (4)	15	0
Gabon	15 (4)	15 (6)	10
Georgia	5/15 (4)	10 (6)	5/10
Germany	15/25 (4)	0/15	0
Ghana	5/15 (4)	10 (6)	10
Greece	5/15 (4)	5/10 (6)	5

Belgium

Recipient	WHT (%) Dividends	Interest	Royalties, certain rentals (6)
Hong Kong	0/5/15 (4)	10 (6)	5
Hungary	10 (4)	15 (6)	0
Iceland	5/15 (4)	10 (6)	0
India	15 (4)	10/15	20
Indonesia	10/15 (4)	10 (6)	10
Ireland, Republic of	15 (4)	15	0
Israel	15 (4)	15	10
Italy	15 (4)	15 (6)	5
Ivory Coast	15/18 (4)	16 (4)	10
Japan	5/15 (4)	10	10
Kazakhstan	5/15 (4)	10 (6)	10
Korea, Republic of	15 (4)	10 (6)	10
Kosovo (1)	10/15 (4)	15	10
Kuwait	0/10 (4)	0	10
Kyrgyzstan (3)	15	15 (6)	0
Latvia	5/15 (4)	10 (6)	5/10
Lithuania	5/15 (4)	10 (6)	5/10
Luxembourg	10/15 (4)	0/15	0
Macedonia (1)	10/15 (4)	15	10
Malaysia	0/15 (4)	10	10
Malta	15 (4)	10 (6)	0/10
Mauritius	5/10 (4)	10 (6)	0
Mexico	5/15 (4)	10/15 (6)	10
Moldova (3)	15	15 (6)	0
Mongolia	5/15 (4)	10 (6)	5
Montenegro (1)	10/15 (4)	15	10
Morocco	6.5/10 (4)	10 (6)	10
Netherlands	5/15 (4)	10 (6)	0
New Zealand	15 (4)	10	10
Nigeria	12.5/15 (4)	12.5	12.5
Norway	0/5/15 (4)	15 (6)	0
Pakistan	10/15 (4)	15 (6)	0/15/20
Philippines	10/15 (4)	10 (6)	15
Poland	5/15 (4)	5 (6)	5
Portugal	15 (4)	15	10
Romania	5/15 (4)	10 (6)	5
Russia	10 (4)	10 (6)	0
Rwanda	0/15 (4)	10 (6)	10
San Marino	0/5/15 (4)	10 (6)	5
Senegal	15 (4)	15	10
Serbia (1)	10/15 (4)	15	10
Singapore	0/5/15 (4)	5 (6)	5
Slovakia	5/15 (4)	10 (6)	5
Slovenia	5/15 (4)	10 (6)	5
South Africa	5/15 (4)	10 (6)	0
Spain	0/15 (4)	10 (6)	5
Sri Lanka	15 (4)	10 (6)	10
Sweden	5/15 (4)	10 (6)	0

Recipient	WHT (%) Dividends	Interest	Royalties, certain rentals (6)
Switzerland	0/10/15 (5)	0/10 (5)	0
Taiwan	10 (4)	10 (6)	10
Tajikistan (3)	15	15 (6)	0
Thailand	15/20 (4)	10/25 (6)	5/15
Tunisia	5/15 (4)	5/10 (6)	11
Turkey	15/20 (4)	15 (6)	10
Turkmenistan (3)	15	15 (6)	0
Ukraine	5/15 (4)	2/10 (6)	0/10
United Arab Emirates	0/5/10 (4)	5 (6)	0/5
United Kingdom	0/10 (4)	10 (6)	0
United States	0/5/15 (4)	0/15	0
Uzbekistan	5/15 (4)	10 (6)	5
Venezuela	5/15 (4)	10 (6)	5
Vietnam	5/10/15 (4)	10 (6)	5/10/15

Notes

1. The treaty concluded with ex-Yugoslavia is still applicable to Bosnia-Herzegovina, Kosovo, Macedonia, Montenegro, and Serbia.
2. Not applicable to Hong Kong.
3. The treaty concluded with the former USSR is still applicable to Kyrgyzstan, Moldova, Tajikistan, and Turkmenistan.
4. It concerns an EU country or the treaty contains a qualifying exchange of information clause. Hence, the rate of 0% is applicable subject to the same conditions as invoked by the Parent-Subsidiary Directive (*see above*). Where multiple rates apply, the difference is generally based on the percentage of participation the recipient holds (directly) in the capital of the company paying the dividends.
5. Under the Bilateral II agreement concluded between Belgium and Switzerland, a rate of 0% is applicable under certain conditions.
6. With respect to EU countries, a WHT exemption is applicable, provided that the conditions laid down in the Interest & Royalty Directive are met (*see above*). Furthermore, please note that some treaties contain an exemption for trade receivables or loans concluded with a governmental body.

The treaties that are currently in force are listed above. Based on the websites of the Belgian government, the following tax treaties are signed, modified, or under renegotiation (including some for the exchange of information clause): Canada, Congo, Greece, Iceland, Ireland, Isle of Man, Macao, Macedonia, Malaysia, Malta, Mexico, Moldova, New Zealand, Norway, Oman, Poland, Qatar, Russia, Rwanda, Seychelles, Spain, Switzerland, Tajikistan, Turkey, Uganda, the United Kingdom, Uruguay, and Uzbekistan.

Tax administration

Taxable period

The assessment is based on the taxable income of a financial year. For the application of the rules on statutory limitations and of new laws, an assessment year is related to each taxable period. If the financial year corresponds with the calendar year, the assessment year is the following calendar year (e.g. financial year closing 31 December 2017 corresponds with assessment year 2018). If the financial year does not correspond with the calendar year, the assessment year, in principle, equals the calendar year during which the financial year ends (e.g. financial year closing 30 June 2017 corresponds with assessment year 2017).

Tax returns
As a general rule, the annual resident or non-resident CIT return cannot be filed less than one month from the date when the annual accounts have been approved and not later than six months after the end of the period to which the tax return refers. For instance, assuming that the accounting year has been closed on 31 December 2017, the corporate tax return needs to be filed, in principle, by 30 June 2018 at the latest (this deadline is often postponed).

Payment of tax
CIT is payable within two months following the issue of the tax assessment. Interest for late payment is charted at the (non-cumulative) rate of 7% per year.

The advance tax payments needed to avoid the CIT surcharge (*see the Taxes on corporate income section*) can be made in quarterly instalments. In the situation where the company's financial year ends on 31 December 2017, the due dates for the advance tax payments are 10 April 2017, 10 July 2017, 10 October 2017, and 20 December 2017. If the due date is a Saturday, Sunday, or a bank holiday, the payment is due on the next working day. Advance tax payments give rise to a tax credit. The tax credit amounts to 1.5%, 1.25%, 1%, or 0.75% of the advance tax payment made, depending on whether such payment has been made respectively in the first, second, third, or fourth quarter (percentages applicable for tax year 2018 [financial years that close as of 31 December 2017 until 30 December 2018]). If the total amount of credits exceeds the surcharge, no surcharge is due, but the excess is not further taken into account for the final tax computation. The taxpayer can choose to either have the excess reimbursed by the tax authorities or used as an advance tax payment for the next year.

Tax audit process
A tax audit normally begins with a written request for information from the tax inspector. The taxpayer must provide the data requested within (in principle) one month. Any documentary evidence considered relevant to the audit can be requested and reviewed by the authorities. Once the tax inspector has completed the analysis, any adjustment is proposed in a notification of amendment outlining the reasons for the proposed amendment. The taxpayer has 30 days to agree or to express disagreement. The tax inspector then makes an assessment for the amount of tax that the tax inspector believes is due (taking into account any relevant comments of the taxpayer with which the inspector agrees). Thereafter, the taxpayer has six months within which to lodge an appeal with the Regional Director of Taxes. The decision of the Regional Director of Taxes may be appealed and litigated. In a number of circumstances, the intervention of the courts can be sought prior to receiving the decision of the Regional Director of Taxes.

Statute of limitations
Based on the Belgian income tax statute of limitations, the period during which the tax authorities are authorised to perform a tax audit and adjust the taxable basis is three years (except in case of fraud, where the statute of limitations is extended to seven years) starting from the first day of the assessment year, unless the company's financial year does not correspond to the calendar year. The same statutes of limitations are applicable for social security contributions with the difference that the statute of limitations begins to run as from the end of the month following the month for which the social security contributions were due.

Belgian ruling practice
Belgium has a long tradition of providing formal and informal rulings. Currently, a taxpayer may request an advance tax ruling on a wide range of subjects, including, but not limited to, CIT, individual tax, non-resident income tax, legal entity income tax, VAT, customs, and registration duties. The request should cover a 'specific and concrete' operation, which effectively is envisaged to be realised in the foreseeable future. The ruling should be filed before the transaction takes place. In practice, the ruling decision should be granted prior to the filing of the CIT return of the year of the transaction. A ruling is binding upon the Belgian tax authorities for a renewable period of a maximum of five years. Delivery of a requested ruling takes, on average, three months.

The Ruling Office is autonomous from the Belgian tax authorities and has the legal authority to issue decisions, which are binding upon the Belgian tax authorities. The Ruling Office increasingly has adopted a constructive approach towards the taxpayer and is seen in the Belgian tax practice as a powerful insurance instrument in ascertaining the Belgian tax treatment of contemplated operations.

Topics of focus for tax authorities
Topics of interest to Belgian tax authorities include:

- Transactions with entities based in tax havens.
- Structures aimed at tax optimisation for the group.
- Significant increase in transfer pricing audits by the special transfer pricing investigation unit (deviating profit margins compared to prior years, material drop in operating profit or turnover, structurally loss-making entity, thin capitalisation, and others).
- Significant increase in professional WHT audits.
- The deductibility of interest payments (e.g. to tax haven companies).
- Substance.

Other issues

Base erosion and profit shifting (BEPS)
The OECD's Action Plan on BEPS was published in July 2013 with a view to address perceived flaws in international tax rules. The Action Plan identifies actions needed to address BEPS, sets deadlines to implement these actions, and identifies the resources needed and the methodology to implement these actions. The Action Plan contains 15 separate action points with three key themes: coherence, substance, and transparency. The Plan is focused on addressing these issues in a coordinated, comprehensive manner, and was endorsed by G20 Leaders and Finance Ministers at their summit in St. Petersburg in September 2013. Belgium has also been actively involved in this initiative and is likely to endorse and/or implement the outcome of the Action Plan.

On 5 October 2015, the OECD presented its final package of BEPS measures for a comprehensive, coherent, and co-ordinated reform of the international tax rules. The package was endorsed by the G20 Finance Ministers at their meeting on 8 October 2015, in Lima, Peru. It is expected that, following the release of the final package, unilateral measures will be introduced into the Belgian legislation in line with the OECD final package.

Cayman tax
The 'Cayman tax' is a taxation of certain income from certain legal constructions in the hands of Belgian individuals (and Belgian entities subject to legal entities income tax). Income from certain legal constructions becomes subject to PIT in the hands of the private individual, being the founder or beneficiary of the legal construction.

The legal constructions in scope include, among others, foreign trusts, foundations, undertakings for collective investments or pension funds when not publicly offered, low-taxed or non-taxed entities, etc. to which the Belgian individual (or Belgian entity subject to legal entities tax) is, in one way or another, linked as a founder, an effective beneficiary, a potential beneficiary, etc.

By application of this measure, the income of certain legal constructions becomes taxable in the hands of the private individual regardless of whether the income has been distributed by the legal construction to the private individual. The constructions are deemed to be transparent.

Generally, a distinction is made between two categories of legal constructions.

The legal constructions of the first category concern the trusts without legal personality. The income realised by these trusts or paid or attributed by these trusts as of 1 January 2015 is taxable in the hands of the Belgian private individual or entity subject to legal entities tax (being the founder or beneficiary of the legal construction), as if the Belgian individual or entity subject to legal entities tax would have realised the income directly.

The second category concerns legal constructions, being foreign entities (with legal personality), which are subject to an effective tax rate of less than 15%. The income realised by the legal constructions are deemed to be realised directly by the Belgian private individual (being the founder or the beneficiary of the legal construction).

Within both categories, the income concerns profits, such as real estate income, movable income (interest, dividends, and royalties), miscellaneous income, and earned (i.e. professional) income.

United States (US) Foreign Account Tax Compliance Act (FATCA), Common Reporting Standard (CRS), and Directive 2014/107/EU

Goal of FATCA and CRS
FATCA (a US initiative) and CRS (an OECD initiative) aim to tackle offshore tax evasion via a shared objective of Automatic Exchange of Information (AEoI) in Tax Matters. Although CRS relies to a large extent on the FATCA system, there are noticeable differences, and interpretation can also substantially vary across different jurisdictions.

In a nutshell, financial institutions have to comply with registration, due diligence, and reporting obligations with respect to: (i) accounts held by specified US persons (FATCA) or reportable residents of other participating states and (ii) accounts held through certain non-financial entities qualifying as 'passive' (or passive NFEs), which are controlled directly or indirectly by private individuals who are reportable persons.

FATCA
The US Congress enacted FATCA in 2010. FATCA is applicable in other jurisdictions in either of the following situations:

- A Model I Intergovernmental Agreement (IGA) was signed by the relevant jurisdiction: Local financial institutions are obligated to report to the local tax authorities, who will then forward the information to their relevant foreign counterpart.
- A Model II IGA was signed by the relevant jurisdiction: Financial institutions will directly report to the US Internal Revenue Service (IRS).
- The relevant jurisdiction has not concluded an IGA with the US: FATCA is imposed unilaterally by the US Treasury Regulations released by the US Department of the Treasury and the IRS.

Belgium entered into a Model I IGA (Belgian IGA) with the US authorities on 23 April 2014.

CRS/DAC2
On 15 July 2015, the OECD approved its CRS on AEoI. This model has been endorsed by more than 100 countries so far (Belgium is amongst the early adopters).

At the European level, the CRS was integrated in the EU Directive on Administrative Cooperation in Tax Matters (DAC2) of 9 December 2014, which had to be implemented in member states' national legislation by 31 December 2015.

Belgian domestic law
The Belgian Act of 16 December 2015 gives a legal basis to AEoI in Belgium (including FATCA and CRS). It has implemented the Belgian IGA together with the DAC2 into Belgian domestic law.

A Royal Decree on the Belgian Act still has to be released.

On 20 April 2015, the Belgian tax authorities published draft Belgian Guidance Notes on the Belgian IGA related to FATCA, which are subject to modifications, but can offer more insight on certain FATCA concepts.

On 14 March 2017, the Belgian tax authorities have published the Belgian Guidance Notes on CRS (version 1), which contain valuable clarifications on the practical application of the CRS and DAC2.

Reporting requirements for financial institutions
Financial institutions should already have made two FATCA reportings (one regarding the second half of 2014, the other relating to 2015). The third FATCA reporting (2016 information) is due by 30 June 2017. The first reporting under CRS/DAC2 (2016 information as well) is due by the same date.

Bulgaria

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Significant developments

Value-added tax (VAT) exemption for donation of food products to operators of food banks

As of 1 January 2017, the provision of food products to a food bank free of charge is not subject to VAT if certain conditions provided in the legislation are met.

Amendments to the scope of supplies of goods and services related to aircraft and vessels

As of 1 January 2017, the scope of supplies subject to 0% VAT rate related to aircraft and vessels has been limited. Until now, the supplies of all kinds of aircraft and vessels were subject to 0% VAT, with the exception of those intended for private or entertainment purposes. According to the amendments, the supply of vessels that are not used for navigation on the high seas (i.e. mostly inland waterways and cabotage) are subject to 20% VAT. Supplies of aircraft are subject to 0% VAT rate only if they are used by airlines operating mainly on international routes.

New rules for input VAT deduction regarding immovable property and other assets used both for business and private purposes

As of 1 January 2017, a new rule has been introduced according to which the input VAT shall be deducted proportionately depending on the percentage of the use of the goods or the immovable property for business purposes. An allocation criterion, which insures the most precise calculation of the VAT amount related to the business use, should be applied for the calculation of the VAT credit, taking into account the specifics of the immovable property/assets.

Introduction of one-off tax on expenses in-kind related to the private use of company assets

As of 27 September 2016, new amendments to the Corporate Income Tax Act (CITA) entered into force with a retrospective effect starting from 1 January 2016, which aim to simplify the taxation of personal use of company assets. The new provisions shall be applied for the part of the accounting expenses that are related to owned or leased company assets, corresponding to their private use.

In particular, the new provisions introduce rules on how to calculate the tax base of the one-off tax on expenses in-kind regarding the following three categories of company assets:

- Vehicles.
- Immovable property.
- Other assets.

Nevertheless, companies may choose whether to tax the private use with the new one-off tax on expenses in-kind or consider the private use as employment income in-kind and tax it as per the requirements under the Personal Income Tax Act (PITA).

The choice for each year has to be made in advance by completing a specific section in the annual CIT return for the previous year.

Obligation for provision of indemnity for traders of liquid fuels
As of 5 August 2016, new rules for traders of liquid fuels have been implemented in the Bulgarian VAT Act. Based on the new provisions, each taxable person is liable to provide the competent tax authorities with indemnity in the form of cash, unconditional and irrevocable bank guarantee, valid for a period of one year, or government bonds if:

- it effects taxable supplies of liquid fuels with a VAT rate of 20% and a total value of their tax bases exceeds 25,000 Bulgarian lev (BGN)
- the total value of the tax bases in the event of intra-Community acquisitions of liquid fuels exceeds BGN 25,000, or
- it receives liquid fuels, released for consumption from a tax warehouse with a value exceeding BGN 25,000 and there are no other grounds to provide an indemnity.

The value of the indemnity should not be lower than 20% of one of the above thresholds reached during the previous tax period, but not less than BGN 50,000. There are exemptions envisaged in particular cases.

New requirements for foreign traders
As of 1 January 2017, entities registered as traders in the European Union (EU) or European Economic Area (EEA) have the right to apply for a certificate for an end customer exempt from excise duties if they have a registered branch in Bulgaria. EU and EEA-registered entities shall be able to sell electricity and/or natural gas for household and industrial purposes through a branch or a tax representative under the VAT Act.

Draft bill on new mandatory country-by-country (CbC) reporting obligations for Bulgarian-headquartered multinational groups
A draft bill of the Tax and Social Security Procedures Code (TSSPC) introduces new rules related to the filing of country-by-country reports (CbC reports) by multinational enterprise groups (MNE groups) with consolidated group revenue exceeding 750 million euros (EUR). The reports will be automatically exchanged between the EU member states or other jurisdictions with which Bulgaria has signed international agreements.

Specific rules are proposed to MNE groups with total consolidated group revenue exceeding BGN 100 million, whose ultimate parent company is a Bulgarian tax resident. Those groups will be obligated to file CbC reports to the National Revenue Agency (NRA) that will not be subject to automatic exchange of information with other jurisdictions.

The first year for which CbC reports would be submitted is FY16 (FY17 in case of secondary reporting mechanism).

The draft bill is expected to enter into force on 1 July 2017.

Taxes on corporate income

Bulgarian tax residents are taxed on their worldwide income. Non-residents are taxed on their income from Bulgarian sources only, through a permanent establishment (PE) and/or via withholding tax (WHT), depending on the case (*see the Branch income section*).

In general, corporate income is subject to CIT at a flat rate of 10%.

Alternative tax

Income earned by organisers of gambling games for which the bet is included in the price of a phone or other telecommunication service is subject to 15% alternative tax, applied on the increase in the price of the phone or other telecommunication service (i.e. the difference between the regular price of the service and the new higher price due to the gambling game). A fixed-sum tax is applied to the operation of gaming machines.

Online gambling games are exempt from the alternative tax, as are a significant part of the other land-based gambling games (i.e. totto; lotto sports betting, including horse and dog racing; and betting on random events or related to the knowledge of facts).

Tonnage tax regime

A special alternative tax regime applies to the operation of commercial maritime vessels, as per their net tonnage, at a rate of 10%.

Local income taxes

There are no provincial or local government corporate income taxes in Bulgaria.

Corporate residence

A corporation is resident in Bulgaria for tax purposes if it is incorporated in Bulgaria.

Permanent establishment (PE)

PEs of foreign tax residents (e.g. branches) are treated as separate entities similar to Bulgarian residents for tax and accounting purposes.

The definition of a PE in the Bulgarian legislation follows, in general, the Organisation for Economic Co-operation and Development (OECD) model; however, it covers a broader scope of activities leading to a tax presence in Bulgaria. A PE is generally defined as a fixed place (own, rented, or otherwise used) through which a foreign entity partly or wholly carries out business activities in the country.

Other taxes

Value-added tax (VAT)

The standard VAT rate is 20%. A reduced VAT rate of 9% applies to certain tourist services. Some activities are zero-rated, including intra-Community supplies, exports of goods to countries outside the European Union, international transport of goods (i.e. transport to or from countries outside of the European Union), and supplies of goods and services related to aircraft and vessels, subject to statutory limitations.

Some supplies are VAT exempt without the right to a VAT credit, including (but not limited to) certain land transactions; leasing of residential property to individuals; financial, insurance, gambling, educational, and health services; and provision of food products to a food bank free of charge, subject to certain statutory conditions. Options to charge VAT exist for certain land transactions, leasing of residential property to individuals, and finance lease contracts.

As of 1 January 2017, a new rule has been introduced according to which the input VAT shall be deducted proportionately depending on the percentage of the use of the goods or the immovable property for business purposes.

The VAT Act provides for mandatory VAT registration upon certain conditions (e.g. for all companies upon reaching a statutory threshold of BGN 50,000 taxable turnover in Bulgaria for a period of 12 months). Voluntary VAT registration is also available. The Bulgarian legislation does not provide for retroactive VAT registration.

The following statutory periods for VAT refunds apply:

- 30 days for persons that have performed supplies subject to zero-rate (e.g. exports) within the last 12 months exceeding 30% of the total value of all taxable supplies performed by them in the same period, as well as by large investors meeting certain specific conditions.
- Two months and 30 days in all other cases.

The following mechanism for VAT recovery applies to VAT-registered companies: the positive or negative difference between the output VAT charged by the company and the input VAT for the respective month for which recovery is claimed results, respectively, in VAT payable or refundable. The VAT payable should be remitted to the state budget not later than the 14th day of the month following the respective month. VAT refundable is offset against any VAT payable in the following two months, and any remainder is effectively recovered within 30 days thereafter.

It is possible to claim a refund for VAT paid with respect to assets acquired not earlier than five years prior to the VAT registration, under certain conditions. In the case of real estate, the term is 20 years.

The cash accounting regime may be applied by persons with a taxable turnover below EUR 500,000 for a period of 12 months and a number of other requirements. Taxpayers authorised to apply this regime remit VAT upon receiving a payment from their counterparts and are entitled to VAT credit when they make a payment to their suppliers. Under this regime, a person who has received an invoice from a supplier that is using the cash accounting regime will be entitled to VAT credit upon payment of the invoiced amount.

The telecommunications, broadcasting, and electronically supplied services rendered to EU non-taxable persons (e.g. private individuals, public bodies) are subject to VAT in the country where the customer is established, has its permanent address, or usually resides. This rule has a significant impact on the pricing strategies and the profit margins of the suppliers. In order to apply the correct VAT rate, the suppliers need to collect information to identify the location of their customers. In addition, under this rule, the suppliers are required to register for VAT purposes and pay VAT in different EU countries where they have customers. In order to avoid such administrative difficulties, a possibility for registration under the Mini One Stop Shop (MOSS) is available. Examples of services that are impacted by this VAT rule include the following:

- Fixed and mobile telephone services.
- Access to internet, website supply, and webhosting.
- Radio and television programmes transmitted over a network or distributed via the internet.
- Supply of software and associated updates.
- Supply of music, films, games, images, texts, and information.
- Distance maintenance of programmes and equipment.
- Supply of distance teaching.

Customs duties
Customs duties are calculated in accordance with the EU customs tariff and regulations.

Excise duties
Excise duties are charged as a percentage of the sales price or customs value or as a flat amount in Bulgarian lev per unit (or per other quantity measures, depending on the type of the excisable good), unless a suspension regime applies. Excisable products include petrol and diesel fuel, liquefied petroleum gas (LPG), heavy oil, kerosene, beer and spirits, tobacco and tobacco products, and electricity.

The applicable rates include the following:

- Unleaded petrol: BGN 710 per 1,000 litres.
- Diesel: BGN 646 per 1,000 litres if used as motor fuel and BGN 646 per 1,000 litres if used for heating purposes.
- LPG: BGN 340 per 1,000 kg if used as motor fuel and BGN 0 per 1,000 kg if used for heating purposes.
- Kerosene: BGN 646 per 1,000 litres if used as motor fuel and BGN 646 per 1,000 litres if used for heating purposes.
- Natural gas: BGN 0.85 per gigajoule if used as motor fuel (may be increased to BGN 5.10 if the European Commission rules that the rate is incompatible with the state aid rules); BGN 0.60 per gigajoule if used for production purposes; and BGN 0 per gigajoule if used by households.
- Biogas: Zero rate.
- Heavy oil: BGN 646 per 1,000 kg if used as motor fuel for vessels.
- Electricity: BGN 2 per MWh (zero rate if used by households).
- Beer: BGN 1.50/hl/°Plato.
- Wine: Zero rate.
- Ethyl alcohol: BGN 1,100 per hectolitre.
- Cigarettes: 27% *ad valorem* plus BGN 101/1,000 pieces (minimum total of BGN 168 per 1,000 pieces).

Lower rates may apply in certain cases (e.g. beer produced by independent small breweries).

The Excise Duties and Tax Warehouse Act provides for the tax warehousing regime and regulates the production, storage, and movement of excisable products under duty suspension.

Property tax
The annual property tax rate is determined by each municipality and ranges from 0.01% to 0.45% of the tax value of property. Individuals and legal entities that are owners of immovable property (i.e. land and buildings) are liable for property tax. For individuals and residential properties of enterprises, the taxable base is the tax value as determined by the municipal authorities based on certain statutory criteria. The taxable base for properties of enterprises is the higher of the property's gross book value and its tax value determined by the respective municipal authorities.

A garbage collection fee is payable for immovable property at a rate determined by the local municipal council annually.

Transfer tax
A transfer tax is due on the value of transferred real estate or motor vehicles, subject to certain exemptions (e.g. contributions in-kind, acquisitions under the Law on Privatisation and Post-privatisation Control). The rate of the transfer tax ranges from 0.1% to 3% and is determined by each municipality.

Stamp duties
There are no stamp duties in Bulgaria.

Payroll taxes
Upon payment of salaries, the employer should withhold PIT at a flat rate of 10% due on employment remuneration, bonuses, and certain fringe benefits and should remit it to the tax authorities by the 25th day of the following month.

National insurance contributions
National insurance contributions include social security and health insurance contributions.

The aggregate rate of social security contributions is 23.7% to 24.4%*, of which 13.56% to 14.26%* is payable by the employer and 10.14% is payable by the employee.

The aggregate rate of health insurance contributions is 8%, out of which 4.8% is payable by the employer and 3.2% is payable by the employee.

The total national insurance contribution rate (social security and health insurance) is 31.7% to 32.4%*, out of which 18.36% to 19.06%* is payable by the employer and 13.34% is payable by the employee.

* The range is due to the rate of contributions payable to the 'Accident at Work and Occupational Illness Fund', which is due only by the employer and can vary from 0.4% to 1.1%, depending on the employer's economic activity. The rate for the administration and services sector is 0.5%.

Insurance premium tax
A tax of 2% is levied on all insurance premiums paid under insurance agreements covering risks insured in Bulgaria. Life insurance, reinsurance, aircraft, vessels, and international transport insurance agreements are exempt from this tax. The taxable base is the insurance premium received by an insurance company under an insurance agreement.

Insurance companies and their tax representatives are liable to collect the tax and remit it to the budget quarterly by the end of the month following the quarter when the insurance premium was collected.

Tourist tax
The tourist tax is levied with respect to the number of nights spent in hotels and other places for accommodation. The municipalities may determine the tax within a range of BGN 0.20 to BGN 3 per night, depending on the type of accommodation facility.

The tax is payable on a monthly basis by the 15th day of the following month.

One-off taxes
The following corporate expenses are subject to a one-off tax:

- Representative expenses related to a company's business.
- Social expenses provided to employees in kind (monetary social expenses are subject to PIT).
- Expenses in-kind related to the private use of company assets.

The rate of the one-off tax with respect to the above expenses is 10%. Both the expenses and the related one-off taxes are deductible for CIT purposes.

Branch income

Although branches are not deemed to be separate legal persons, branches of non-resident companies have separate balance sheets and profit and loss accounts and are subject to CIT at the standard rate of 10% as well as other general taxes (e.g. VAT, property tax).

Representative offices of foreign entities are not allowed to carry out business activities and are not subject to CIT. A representative office registered under the Encouragement of Investments Act may perform only those activities that are not regarded as 'economic activities' (e.g. marketing activities normally carried out by a representative office and auxiliary to the activities of its head office). Representative offices do not constitute PEs of the non-resident entities unless they engage in business activities in breach of the law.

Profits repatriated by a branch to its head office abroad are not subject to WHT. However, certain income payable by a Bulgarian branch or a PE to other parts of the enterprise abroad may trigger WHT (e.g. income from technical services, interest, royalties) unless the respective expenses are not deductible to the branch or the PE, or are recharged at cost.

Income determination

The taxable result is based on the statutory accounting principles relating to profit/loss and adjusted for tax purposes. Statutory accounting is maintained on an accrual basis in line with the applicable accounting standards.

Small and medium-sized companies may apply specific national standards for the financial statements of small and medium-sized companies or, optionally, International

Financial Reporting Standards (IFRS). The principles provided by the standards for the financial statements of small and medium-sized companies are similar to those provided by IFRS. Certain types of companies, including banks and insurance companies, are obligated to apply IFRS.

Inventory valuation

The tax legislation follows the accounting rules for inventory valuation methods. The accounting rules may restrict the application of certain methods (e.g. last in first out [LIFO] is not allowed under IFRS).

Inventory valuation and revaluation methods applicable under accounting standards may be used for tax purposes. Companies may choose the method of inventory valuation but must apply the chosen method consistently throughout the accounting period. An inventory of assets and liabilities is carried out in each accounting period. Accounting gains and losses realised upon revaluation of inventory will not be recognised for tax purposes and will form a temporary tax difference. These gains and losses will be recognised for tax purposes in the period in which the inventory is disposed of.

Capital gains

Realised capital gains are included in corporate income and are taxed at the full CIT rate.

Note that capital gains from securities will not be subject to taxation if resulting from shares in listed companies and tradable rights in such shares on a regulated securities market in the EU/EEA. Assets distributed as dividends are deemed realised at market value, and any capital gains arising from this will be subject to tax.

Dividend income

Dividends distributed by Bulgarian companies to foreign shareholders and resident individuals are subject to 5% WHT under the domestic legislation (*see the Withholding taxes section for exceptions for payments to EU/EEA tax residents and under double tax treaties [DTTs]*).

Inter-company dividends

Inter-company dividend payments between Bulgarian companies and dividends distributed by EU/EEA residents to Bulgarian companies (except for dividends from special purpose investment companies or in case of 'hidden distribution of profits') are not included in the tax base of the recipient company.

Note that dividends distributed to a Bulgarian company by its EU or EEA subsidiary are exempt from CIT only if the distribution is not treated as a tax-deductible expense by the distributing company.

Stock dividends

No explicit regulation with respect to stock dividends exists in the Bulgarian CIT Act. Rather, the tax treatment of stock dividends follows the accounting treatment.

Interest income

Interest income is included in the financial results of the company and is subject to 10% CIT.

Royalty income
Royalty income is included in the financial results of the company and is subject to 10% CIT.

Exchange rate gains/losses
Exchange rate gains and losses are reported in the profit and loss account and reflected in the assessment of taxable profit.

Foreign income
Income derived outside Bulgaria by resident legal entities and income derived in Bulgaria by Bulgarian branches of non-residents is included in the taxable base for the purpose of CIT, regardless of whether such income is subject to taxation abroad.

In instances where the provisions of a DTT are applicable, a tax credit or exemption for the foreign tax paid may be allowed. There is also a unilateral tax credit that may not exceed the amount of the tax that would be payable in Bulgaria for the same type of income.

Undistributed income of foreign subsidiaries of a Bulgarian resident company is not taxed.

Deductions

Depreciation and depletion
For accounting purposes, depreciation is calculated in accordance with the straight-line, progressive, or declining-balance methods. Accounting regulations permit Bulgarian companies to establish a depreciation schedule for each tangible and intangible fixed asset on the basis of the method chosen by the company.

For tax purposes, only the straight-line method is permitted. For machines and equipment that are part of the initial investment, accelerated depreciation may also apply, subject to certain conditions.

For tax purposes, fixed assets are divided into the following seven categories:

Category	Assets	Maximum rates (%)
I	Massive buildings, industrial constructions/equipment, transmission facilities/lines (including electricity)	4
II	Machinery, production facilities, apparatuses	30/50
III	Vehicles (except cars), coverage of roads and runways	10
IV	Computers, peripherals to computers, software and rights to use software, mobile phones	50
V	Cars	25
VI	Long-term intangibles with legal or contractual limitations on the period of use	33⅓
VII	Other assets	15

Under certain conditions, assets classified in Category II that are new may be depreciated at a maximum rate of 50% for tax purposes.

The depreciation rate for Category VI is determined by the period of limitations, but not more than 33⅓%.

Depletion is not specifically regulated for tax purposes.

Goodwill
Goodwill is not amortisable under Bulgarian tax law.

Start-up expenses
Start-up expenses may be recognised as deductible in the year of establishment of the company.

Interest expenses
Interest expenses are recognised as deductible expenses, subject to the thin capitalisation rules applicable in Bulgaria (*see Thin capitalisation in the Group taxation section*).

Bad debt
Bad debt impairment costs can be deducted upon expiration of the statute of limitation period. Also, the impairment costs can be recognised for tax purposes upon transferring the receivables. Such impairment costs are tax deductible for financial institutions in the year of recognition.

Charitable contributions
Generally, charitable contributions to certain organisations or persons, specified by law, can be deductible at up to 10% of a company's accounting profit.

Fines and penalties
Expenses for fines and penalties for violation of the legislation are not deductible.

Taxes
CIT is not deductible for tax purposes. However, other taxes, such as one-off taxes on certain expenses (e.g. representative expenses, certain types of fringe benefits) or local taxes and fees may be recognised as deductible for CIT purposes.

Net operating losses
The taxpayer has the right to carry forward tax losses incurred in a given year over the following five years. The loss subject to carryforward is the negative amount of the financial result adjusted for tax purposes, with certain add-backs and deductions specified in the tax legislation.

Tax losses may be reversed up to the amount of the positive financial result after tax adjustments (without the effect of the loss subject to be carried forward itself).

Carryforwards of foreign-source losses may only offset income from the same source. However, EU/EEA-source losses may offset income from other sources, including Bulgarian sources.

Loss carryback is permitted in very specific cases.

Payments to foreign affiliates
Payments to foreign affiliates may be subject to recalculation by the tax authorities if such payments are not made at arm's length.

Group taxation

No group consolidation is permitted for tax purposes in Bulgaria. All companies must pay tax on the basis of individually assessable profits and losses.

Transfer pricing

Bulgarian law requires that taxpayers determine their taxable profits and incomes applying the arm's-length principle to prices at which they exchange goods, services, and intangibles with related parties (transfer prices). Bulgarian transfer pricing rules generally follow OECD Transfer Pricing Guidelines.

Transfer prices are not set in compliance with the arm's-length principle where:

- prices of the supply of goods or services differ from the market prices or
- loans are received or granted against an interest rate that differs from the market interest rate effective at the time the loan agreement is concluded.

The market interest rate is defined as the interest payable under the same conditions for a loan provided or received, notwithstanding the form of the loan, between non-related parties. The market interest is determined according to the market conditions.

The taxable person should be able to evidence that its relations with related parties are in line with the arm's-length principle.

For the purposes of transfer pricing rules, market prices are determined by the following methods:

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

Preparation of transfer pricing documentation is not mandatory but is recommendable for material related party transactions. Recently, the revenue authorities have tended to focus more on the transfer pricing area.

Currently, there is no possibility to obtain an Advance Pricing Agreement (APA). However, it is possible to obtain an opinion from the revenue authorities on a case-by-case basis. Such opinions are not binding, but they may provide protection from assessment of interest for late payment and penalties.

Thin capitalisation

Interest payable by local companies to local or foreign persons may be restricted by the thin capitalisation rules (which also apply to interest due to non-affiliated companies).

The tax deductibility for interest expenses that exceed interest income is restricted to 75% of the accounting result of the company, exclusive of interest income and expense. If the accounting result of the company before including the effect of the interest income and expenses is a loss, none of the net interest expense will be deductible for tax purposes. Interest on bank loans and interest under financial lease agreements are subject to thin capitalisation regulations only when the agreements are between related parties or guaranteed by or extended at the order of a related party.

The thin capitalisation rules do not apply if the debt-to-equity ratio does not exceed 3:1 for the respective tax period.

Interest expenses restricted in a given year under the thin capitalisation rules may be deducted from the financial result for tax purposes during the following five consecutive years. This reversal may be made up to the tax allowed interest expenses, as per the above formula.

Controlled foreign companies (CFCs)

The Bulgarian tax legislation does not provide for any CFC rules.

Tax credits and incentives

Tax incentives may apply in certain circumstances, including:

- Partial granting of the CIT due for performance of agricultural activities.
- Additional tax deductions for hiring of long-term unemployed, handicapped, or elderly persons.
- Granting back of up to 50% of the CIT due for investment in regions with high unemployment.

Foreign tax credit

See Foreign income in the Income determination section for a description of the foreign tax credit regime.

Withholding taxes

Bulgarian companies are required to withhold tax on payments of dividends and liquidation proceeds; interest (including that incurred under finance lease agreements and on bank deposits); royalties; fees for technical services; payments for the use of properties; payments made under operating leasing, franchising, and factoring agreements; and management fees payable to non-residents.

Capital gains from the transfer of shares in a Bulgarian company or immovable property located in Bulgaria realised by a non-resident are also subject to domestic WHT; however, the tax is payable by the non-resident. Capital gains from securities are not subject to WHT if they result from shares in listed companies and tradable rights in such shares on a regulated securities market in the EU/EEA. Capital gains from disposal of governmental bonds are also exempt from WHT realised on a regulated market in the EU/EEA.

Dividends and liquidation proceeds are also taxed where payments are made to resident individuals and non-profit organisations (*for details on dividend payments between domestic companies, see Dividend income in the Income determination section*). Dividends capitalised into shares (stock dividends) are not subject to WHT.

Interest and royalties payable to EU-based associated companies are subject to full WHT exemption in Bulgaria. Associated company criteria are identical to those in the EU Interest and Royalty Directive and require a holding of at least 25% of the capital for at least two years. The WHT exemption on income from interests and royalties can be applied before the expiration of the two-year participation period, provided that the participation in the capital does not fall below the required minimum before the end of this period (i.e. the direct participation is kept for at least two years).

Any fees for services and use of rights (in addition to technical services fees and royalties) accrued to entities in low-tax jurisdictions will attract 10% Bulgarian WHT unless there is proof of the effective provision of the supply. Subject to 10% WHT would also be any accruals for penalties or damages payments to entities in low-tax jurisdictions, except for insurance compensations. The tax legislation introduces a list of low-tax jurisdictions. These are certain off-shore territories that are explicitly listed, as well as countries with which Bulgaria has not signed a DTT and in which the applicable corporate tax rates are more than 60% lower than the applicable rate in Bulgaria.

Certain types of income (other than dividends) accrued by a PE of a foreign person to other parts of its enterprise located outside the country are subject to WHT (*except for that mentioned in the Branch income section*).

Dividends

When a dividend is accrued to a non-resident company or an individual (both resident and foreign), it is subject to WHT at a rate of 5%, unless the rate is reduced by an applicable DTT. No differentiation is made between portfolio and substantial holdings for purposes of this WHT on dividends.

Dividends distributed by a Bulgarian resident company to an entity that is a tax resident in an EU/EEA member state are not subject to Bulgarian WHT.

Interest

A 10% rate applies to interest (including interest from bank deposits) payable to a non-resident, unless the rate is reduced by an applicable DTT.

Interest on borrowings by the government or the Bulgarian National Bank from international financial institutions is not taxable if the respective loan agreements contain relevant exemption arrangements (international treaties override domestic legislation).

Interest paid to an associated EU-based related company is subject to WHT exemption (requiring at least 25% holding for at least two years, *see above for a description of relief from the two-year participation period*), unless reduced by a DTT.

An exemption from WHT is provided for income from interests on bonds and other debt securities emitted by a local tax resident and admitted to a regulated stock exchange in an EU/EEA member state.

An exemption from WHT is also provided for income from interests on loans extended by a tax resident of an EU/EEA member state, issuer of bonds or other debt securities, provided that the bonds/debt securities are issued for the purposes of extending a loan to a local legal entity and are admitted to a regulated stock exchange in an EU/EEA member state.

Royalties

Royalties payable to foreign persons are taxed at a rate of 10% at source, unless the rate is reduced by an applicable DTT.

Royalty payments to an associated EU-based related company are exempt from WHT (requiring at least 25% holding for at least two years, *see above for a description of relief from the two-year participation period*), unless reduced by a DTT.

Capital gains and technical services

Capital gains and technical service fees payable to foreign residents are subject to 10% WHT, unless the rate is reduced by an applicable DTT. As per the domestic legislation, technical services include installation and assembly of tangible assets as well as consultancy services and marketing research.

Application of DTT relief

Applying DTT relief is generally possible only after completing an advance clearance procedure with the Bulgarian tax authorities. Companies have to evidence that they satisfy the requirements for applying the DTT (e.g. tax residence, beneficial ownership, existence of contractual relationship, actual accrual/payment of the income). The procedure usually takes 60 days to complete.

The above procedure has to be followed only if the annual income payable by a Bulgarian resident exceeds BGN 500,000. In all other cases, DTT relief can be applied directly, through submitting a tax residence certificate and a beneficial ownership declaration with the payer of the income.

Beneficial ownership is explicitly defined in Bulgarian legislation. A company is considered a beneficial owner of the income if it has the right to dispose of the income, has discretion over its use, bears the whole or a significant part of the risk of the activity from which the income is realised, and does not qualify as a conduit company.

A conduit company is a company that is controlled by persons who would not benefit from the same type and amount exemption if the income was realised directly by them, does not carry out any economic activity except for owning and/or administering the rights or the assets from which the income was realised, and does not own assets, capital, or personnel relevant to its economic activity or does not control the use of the rights or assets from which the income was realised.

The conduit company restriction does not apply to companies that have more than a half of their voting shares traded on a registered stock exchange.

The following is a summary of the main parameters of the Bulgarian DTTs as of 1 January 2017:

	WHT (%)			
Recipient	**Dividends***	**Interest****	**Royalties****	**Capital gains**
Albania (3, 6, 9, 28)	5/15	0/10	10	0/10
Algeria (24)	10	0/10	10	0
Armenia (1, 2, 6, 28, 36)	5/10	0/5/10	5/10	0/10
Austria (6, 10, 27, 35)	0/5	0/5	5	0/10
Azerbaijan (6, 28, 34)	8	7	5/10	0
Bahrain (6)	5	0/5	5	0
Belarus (6)	10	0/10	10	0
Belgium (6, 10, 27)	10	0/10	5	0
Canada (9, 16, 28)	10/15	10	10	0/10
China (2, 6, 9, 28)	10	0/10	7/10	0/10

	WHT (%)			
Recipient	Dividends*	Interest**	Royalties**	Capital gains
Croatia (27)	5	5	0	0
Cyprus (3, 26, 27)	5/10	7	10	0/10
Czech Republic (11, 27)	10	0/10	10	0
Denmark (3, 27)	5/15	0	0	0
Egypt (6)	10	0/12.5	12.5	10
Estonia (9, 16, 27)	0/5	5	5	0/10
Finland (4, 9, 12, 27)	10	0	0/5	0/10
France (5, 27)	5/15	0	5	0
Georgia (6)	10	0/10	10	0
Germany (11, 16, 26, 27, 36, 39)	5/15	0/5	5	0/10
Greece (27)	10	10	10	0
Hungary (6, 27)	10	0/10	10	0
India (6)	15	0/15	15/20	10
Indonesia (6)	15	0/10	10	0
Iran (6, 9, 28)	7.5	0/5	5	0/10
Ireland (3, 6, 9, 27, 28)	5/10	0/5	10	0/10
Israel (18, 19, 20, 21)	10/7.5 to 12.5	0/5/10	7.5 to 12.5	7.5 to 12.5
Italy (27)	10	0	5	0
Japan (3, 6)	10/15	0/10	10	10
Jordan (6, 28)	10	0/10	10	0
Kazakhstan (8, 9, 28)	10	0/10	10	0/10
Kuwait (3, 22)	0/5	0/5	10	0
Latvia (3, 9, 24, 25, 27, 28)	5/10	0/5	5/7	0/10
Lebanon (6)	5	0/7	5	0
Lithuania (16, 27, 28, 29)	0/10	0/10	10	0/10
Luxembourg (3, 10, 27)	5/15	10	5	0
Macedonia (3, 6)	5/15	0/10	10	0
Malta (12, 17, 27)	0/30	0	10	0
Moldova (3, 6, 9, 28)	5/15	0/10	10	0/10
Mongolia (6)	10	0/10	10	0
Morocco (5, 9, 28)	7/10	10	10	0/10
The Netherlands (3, 7, 9, 27)	5/15	0	0/5	0/10
North Korea (6)	10	0/10	10	0
Norway (16, 22, 28, 41)	0/5/15	0/5	5	0/10
Poland (6, 27)	10	0/10	5	0
Portugal (3, 6, 27)	10/15	0/10	10	0
Qatar (6, 36)	0	0/3	5	0
Romania (6, 27)	5	0/5	5	0
Russian Federation (6)	15	0/15	15	0
Serbia (3)	5/15	10	10	0
Singapore (6)	5	0/5	5	0
Slovak Republic (27)	10	10	10	0
Slovenia (3, 23, 27, 28)	5/10	0/5	5/10	0/10
South Africa (3, 6, 23, 24)	5/15	0/5	5/10	0/10
South Korea (5, 6)	5/10	0/10	5	0
Spain (3, 27)	5/15	0	0	0
Sweden (9, 27, 28)	10	0	5	0/10
Switzerland (10, 13, 37, 38)	0/10	0/5	0/5	0
Syria	10	0/10	18	0

Bulgaria

	WHT (%)			
Recipient	**Dividends***	**Interest****	**Royalties****	**Capital gains**
Thailand (14, 15)	10	10/15	5/15	10
Turkey (3, 6, 9)	10/15	0/10	10	0/10
Ukraine (3, 6, 9, 28)	5/15	0/10	10	0/10
United Arab Emirates (6, 22, 34)	0/5	0/2	0/5	0
United Kingdom (27, 28, 38, 40)	5/15	0/5	5	0/10
United States (16, 24, 28, 30, 31, 32, 33)	5/10	0/5/10	5	0/10
Uzbekistan (6, 28)	10	0/10	10	0/10
Vietnam (6, 9)	15	0/10	15	0/15
Zimbabwe (3, 6, 9, 28)	10/20	0/10	10	0/10

Notes

* Under Bulgarian domestic legislation, dividends distributed to non-residents are subject to 5% WHT, unless the recipient is a resident of an EU/EEA member state (in which case the recipient is not subject to WHT).

** Under Bulgarian domestic legislation, interest and royalty payments accrued to EU-resident companies, satisfying the Interest and Royalty Directive requirements, are exempt from WHT.

1. The lower rate applies to dividends paid out to a non-resident that is the direct owner of at least the equivalent of 100,000 United States dollars (USD) forming part of the capital of the company making the payment.
2. The reduced rate for royalties is available for the use of (or right to use) industrial, commercial, or scientific equipment.
3. The lower rate applies to dividends paid out to a foreign company that directly controls at least 25% of the share capital of the payer of the dividends. In the specific cases of the different countries, more requirements may be in place.
4. There is no WHT on royalties for the use of (or the right to use) scientific or cultural works.
5. The lower rate applies to dividends paid out to a foreign company that directly controls at least 15% of the share capital of the payer of the dividends.
6. There is no WHT on interest when paid to public bodies (government, the central bank, and, in several cases, certain governmental bodies).
7. 5% royalties are applicable if the Netherlands applies WHT under its domestic law.
8. Up to 10% branch tax may be imposed on PE profits.
9. The 10% rate on capital gains from securities applies in specific cases that are described in the respective treaty.
10. The zero rate on interest applies if the loan is extended by a bank and also for industrial, trade, and scientific equipment on credit.
11. The zero rate on interest applies if the interest is paid to public bodies (government, municipality, the central bank, or any financial institution owned entirely by the government), to residents of the other country when the loan or the credit is guaranteed by its government, or if the loan is extended by a company for any equipment or goods.
12. The Council of Ministers has stated its intention to renegotiate the DTTs with Malta and Finland.
13. A 5% rate on royalties applies if the Swiss Confederation introduces in its domestic law WHT on royalties paid to non-residents.
14. The 10% rate on interest applies if the interest is received from a financial institution, including an insurance company.
15. The 5% rate on royalties applies if the royalties are paid for the use of copyright for literary, art, or scientific work.
16. The lower rate applies to dividends paid out to a foreign company that directly controls at least 10% of the share capital of the payer of the dividends.
17. The zero rate applies to dividends payable by a Bulgarian resident entity to an entity resident in Malta. The 30% rate applies to dividends payable by a Maltese entity to a Bulgarian entity.
18. The 10% rate applies to dividends distributed by companies that enjoy a reduced or zero CIT by virtue of a tax incentive for investments. In all other cases, the rate is equal to one half of the applicable rate as per the national legislations of Bulgaria and Israel. Nevertheless, the WHT rate may not be less than 7.5% or more than 12.5%.
19. The 5% rate applies to interest payable to banks or other financial institutions. The zero rate applies to interest payable to certain public bodies (governments, municipalities, central banks) or to residents of the other country when the loan or credit is guaranteed, insured, or financed by a public body of that country or by the Israeli International Trade Insurance Company.
20. The rate on royalties is equal to one half of the applicable rate as per the national legislations of Bulgaria and Israel. Nevertheless, the WHT rate may not be less than 7.5% or more than 12.5%.

21. The rate on capital gains from securities is equal to one half of the applicable rate as per the national legislations of Bulgaria and Israel. Nevertheless, the WHT rate may not be less than 7.5% or more than 12.5%. However, capital gains from transfers of shares in entities whose real estate properties exceed 50% of their assets are taxed in the country in which the real estate is located.
22. The zero rate applies to dividends and interest paid to certain public governmental and local bodies as well as entities fully owned by the state.
23. The 5% rate on royalties applies if the royalties are paid for the use of copyright for literary, art, or scientific work as well as for the use of industrial, commercial, or scientific equipment.
24. There is no WHT on interest when paid to and beneficially owned by public bodies (government, local public authorities, the central bank, or any financial institution wholly owned by the government), as well as on interest derived on loans guaranteed by the foreign government or based on an agreement between the governments of the states.
25. The 7% rate on royalties applies if the royalties are paid for the use of, or the right to use, cinematograph films and films or tapes for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula, or process.
26. The zero rate applies for capital gains from shares in a Bulgarian resident company that are traded on the Bulgarian Stock Exchange.
27. In accordance with the EU Parent-Subsidiary Directive implemented in the Bulgarian legislation, dividends distributed by a Bulgarian resident company to an entity that is a tax resident in an EU member state may not be subject to Bulgarian WHT.
28. Full WHT at source may be levied on capital gains from the sale of shares in companies, the main assets of which are direct or indirect holdings in real estate situated in Bulgaria, and in some other cases (subject to the specifics stipulated in the respective treaty).
29. There is no WHT on interest when paid to public bodies (government, the central bank, governmental institutions) or any financial institution wholly owned by the government.
30. Pension funds and charities are considered resident persons.
31. The zero rate does not apply to dividends distributed to real estate investment trusts (REITs).
32. The zero rate does not apply to interest paid under a back-to-back loan.
33. The benefits of the treaty are limited to entities that satisfy certain criteria (Limitation of Benefits clause).
34. The 5% rate on royalties applies if the royalties are paid for the use of, or the right to use, any patent, design, model, plan, secret formula, process, or know-how.
35. The treaty provides for 10% WHT on capital gains unless shares were sold on a recognised stock exchange or seller owned at least 20% of the issuing company's capital.
36. The reduced rate for interest is available for bank loans (subject to specifics in the treaty).
37. The zero rate applies to dividends paid to a pension fund, central bank, or a foreign company (other than a partnership) if the company directly controls at least 10% of the share capital of the payer for at least one year.
38. The zero rate applies to interest paid to a pension fund, a public body (i.e. the government, a political subdivision, a local authority, or a central bank), in relation to a liability for the sale on credit of goods, equipment or services, as well as to a company with a minimum direct participation of at least 10% in the payer of the interest for at least one year or where a third company holds a 10% minimum direct participation in both the payer and the recipient of the interest.
39. The use or right of use of industrial, economic, and scientific equipment has been excluded from the definition of royalty and is subject to full WHT exemption.
40. The zero rate on dividends applies on interest distributed to and beneficially owned by a company resident of a contracting state or a pension fund. The 5% rate would apply in all other cases, unless the dividends are paid out of income that is derived from immovable property by an investment vehicle that distributes most of this income annually and whose income from such property is exempted from tax (i.e. real estate investment trust). 15% WHT would apply to a dividend paid out by a real estate investment trust.
41. The zero rate applies to interest paid to certain public bodies (i.e. the government, a political subdivision, a local authority, or a central bank) under a loan extended by a bank or in relation to a sale of industrial, commercial, or scientific equipment on credit or a loan of any kind extended or guaranteed by a governmental institution for the encouragement of exports.

Under some DTTs, technical service payments fall within the definition of royalty payments and are taxed accordingly.

Tax administration

Taxable period

The financial and tax years coincide with the calendar year.

Tax returns
Annual profit must be declared no later than 31 March of the year following the financial (tax) year. Along with their annual CIT returns, companies are required to file financial information for their business activities during the year in a standard statistical form not subject to a financial audit. The self-assessment principle is applied.

Payment of tax
If a company realised net revenue from sales of more than BGN 3 million in the preceding year, it is liable for monthly CIT payments for each month in the current year. If the net revenue from sales for the preceding year is below BGN 3 million but above BGN 300,000, the company is liable for quarterly advance CIT payments for each quarter of the year except the fourth quarter. The amount of the monthly or quarterly CIT instalments is calculated based on the forecasted taxable profit for the current year.

Companies established during the current year and companies with net revenue from sales below BGN 300,000 for the preceding year are not required to pay advance CIT instalments.

The overpaid amount of CIT cannot be offset against advance and annual payments due for the next period. The overpaid amount may only be effectively claimed for refund by the taxpayer. The difference between the annual tax declared in the CIT return and the advance tax paid for the corresponding year must be paid by the deadline for submitting the tax return on 31 March of the following year.

Priority order for settlement of tax and social security liabilities
Payment of tax liabilities and social security contributions should be made to four separate accounts: for tax liabilities, for general mandatory social security contributions, for supplementary mandatory retirement provisions, and for health insurance contributions.

If a taxpayer has several public liabilities (e.g. tax and/or social security liabilities) to one of the four accounts of the NRA, the one with the earlier payment date will be settled first.

Tax audit process
Tax audits are usually performed every four to five years, corresponding to the period of the statute of limitations.

Statute of limitations
The statute of limitations (i.e. the period within which the state authorities are entitled to collect the tax liabilities and other related mandatory payments) is five years from the beginning of the year following the year in which the tax liabilities became payable. The above periods can be extended in certain cases. However, the maximum period of the statute of limitations is ten years.

Topics of focus for tax authorities
Transfer pricing is likely to become an area of focus for the tax authorities.

Other issues

Intergovernmental agreements (IGAs)

In December 2014, Bulgaria and the United States signed and disclosed a non-reciprocal Model 1B IGA to implement the tax reporting and withholding procedures associated with the Foreign Account Tax Compliance Act (FATCA).

As of 1 January 2016, Bulgaria has implemented the rules on automatic exchange of financial information in compliance with the EU law, OECD recommendations, and FATCA. The tax authorities will exchange financial information with foreign tax offices on an annual basis.

The information concerns individual and company accounts (including trusts, foundations, and pass-through foreign control entities), account balances, and fund movements related to dividends, interest, sales proceeds, assets, etc.

Croatia

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Significant developments

Croatian corporate tax legislation was partially amended by the enforcement of the Tax Reform, which issued significant corporate tax developments.

Effective 1 January 2017, the corporate income tax (CIT) rate decreased from 20% to 18% or 12%, depending on the amount of realised revenues (*see the Taxes on corporate income section for more information*).

Taxes on corporate income

CIT is generally paid at a rate of 18%. For taxpayers with revenues in the tax period lower than 3 million Croatian kuna (HRK), the rate of 12% is applied. This is applicable for the tax years starting from 1 January 2017 (previously, the CIT rate was a flat 20%). The CIT payers are enterprises engaged in independent activities on a long-term basis for the purpose of deriving profit, branches of foreign enterprises, enterprises that control shares in capital (unless the object of investment itself pays CIT), and natural persons who choose to pay CIT instead of personal income tax (PIT).

The CIT base is the accounting profit adjusted for deductions and disallowed items. Croatian residents pay CIT on profit derived in Croatia and abroad, and non-residents (e.g. branches) pay CIT only on profits derived in Croatia. The tax base also includes gains arising from liquidation, sale, change of legal form, and division of the taxpayer where it is determined at the market rates.

Payments into voluntarily pension funds paid by an employer for an employee under certain conditions prescribed by the CIT Act are also considered as deductible expenditures.

Expenditures are not considered to be deductible expenditures if they are not related to the taxpayer's business activity.

Taxpayers who realise less than HRK 3 million in revenues can determine the tax base according to the cash principle.

The CIT base is reduced by the following items:

- Income from dividends and profit sharing (i.e. dividends and shares in capital that are paid by the company that pays CIT that is identical to Croatian CIT, which has a prescribed legal form, and dividends and shares in capital that the payer didn't use as recognised cost [i.e. deduction] in one's CIT return).

- Unrealised gains from value adjustments of shares (increase of financial asset value) if they were included as income in the profit and loss (P&L) account and offset previously recognised tax non-deductible unrealised losses from the same financial year.
- Income from collected written-off claims that were included in the tax base in the previous tax periods but not excluded from the tax base as recognised expenditure.
- The amount of depreciation not recognised in previous tax periods, up to the amount prescribed by the CIT Act.
- The amount of tax relief or tax exemption in line with special regulations (i.e. costs of education, costs of research and development (R&D), and costs of a new employee's salary).

The CIT base is increased by the following items:

- Unrealised losses from value adjustments of shares (decrease of financial asset value) if they were included as expenses in the P&L account and do not offset previously recognised gains from value adjustments from the same financial asset.
- The amount of depreciation in excess of the amounts prescribed by the CIT Act.
- 50% of entertainment costs (food and drink, gifts with or without the printed firm logo or product brand, and expenses for vacation, sport, recreation, renting cars, vessels, airplanes, and holiday cottages). Entertainment costs do not include the costs of goods and merchandise adapted by a taxpayer for business entertainment purposes, labelled 'not for sale', and other promotional objects with the name of the firm or merchandise or other advertising objects (e.g. glasses, ashtrays, table cloths, mats, pencils, business diaries, cigarette lighters, tags) put to use in the selling area of the purchaser and given to consumers, provided that their value does not exceed HRK 160 per item.
- 50% of the costs, except insurance and interest costs, incurred in connection with owned or rented motor vehicles or other means of personal transportation (e.g. personal car, vessel, helicopter, airplane) used by managerial, supervisory, and other employees, provided that the use of means of personal transportation is not defined as salary. Please note that the percentage of 50% non-deductible expenses incurred in relation to personal cars will be applicable as of 1 January 2018. Until then, 30% of these expenses will be non-deductible.
- Asset shortages exceeding the amount prescribed by the Croatian Chamber of Economy or Croatian Chamber of Trades and Crafts, in accordance with the Value-added Tax (VAT) Act and on the basis of which no PIT was paid.
- The costs of forced collection of taxes and other levies.
- Fines imposed by competent bodies.
- Late payment interest charged between associated persons.
- Privileges and other economic benefits granted to natural or legal persons for the purpose of causing or preventing a certain event in favour of the company (generally related to commissions paid to parties acting on behalf of the taxpayer).
- Donations in excess of the amounts prescribed by the CIT Act.
- Expenditures identified during tax authority's audit, including VAT and contributions related to hidden profit payments and withdrawals from shareholders, company members, and physical persons performing independent activities taxable by CIT.
- Any other expenditure not directly related to profit earning, as well as other increases in the tax base, which were not included in the tax base.

Local income taxes
According to the newly enforced Local Taxes Act and amended Act concerning the financing of units of local government and regional self-government, which came into force as of 1 January 2017, tax on trade name as one of the revenues of local governments was revoked. This decision exempted all entrepreneurs, including crafts, from paying the aforementioned tax.

Corporate residence

In terms of the CIT Act, residents are legal or natural persons whose seat is recorded in the Register of Companies or other register in Croatia, or whose place of effective management and control of business is in Croatia. Residents are also entrepreneurs/ natural persons with domicile or habitual residence in Croatia whose business activity is recorded in a register or other records.

A non-resident is any person who does not satisfy one of the requirements referred to above.

Permanent establishment (PE)
Definition of a business unit of a non-resident is based on the Organisation for Economic Co-operation and Development (OECD) guidelines, which provides that a non-resident's business unit is a place of management, a branch, an office, a factory, a workshop, a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources or construction site or project for a period longer than six months, including agents acting in its name, having the right to conclude contracts or hold stock of products that it distributes on the Croatian market in the name of a foreign entrepreneur. The business unit of a non-resident also includes the performance of services (i.e. advisory and business consulting services) for the same or a related project, which lasts for more than three months in a 12-month period.

Other taxes

Value-added tax (VAT)
The Croatian VAT system is in line with the provisions of the European Union (EU) VAT Directive.

VAT is payable on sales of goods and supply of services, import of goods, and intra-Community acquisition of goods.

Croatia has not introduced any VAT grouping rules.

VAT rates
The general VAT rate is 25%.

A reduced rate of 13% is applicable for:

- Organised stays (accommodation or accommodation with breakfast, full or half board, in all kinds of commercial hospitality facilities).
- Newspapers and magazines of a publisher that has a statute of media and newspapers and magazines for which there is no obligation of adoption of the

statute of media according to a special law (with the exception of those that consist entirely of advertisements or are used mainly for advertising purposes).
- Edible oils and fat of animal and vegetable origin.
- Child seats for cars and children's food and processed cereal-based foods for infants and small children.
- Water delivery, except for water in bottles and other packaging on the market, in terms of public water supply and public drainage system according to a special law.
- Concert tickets.
- Supply of electric energy to another supplier or end user, including fees related to that supply.
- Public service of mixed municipal waste, biodegradable municipal waste, and separate waste collection according to a special law.
- Urns and caskets.
- Seedlings and seeds.
- Fertilisers and pesticides and other agrochemical products.
- Animal food, other than pet food.

A reduced rate of 5% is applicable for:

- Bread and milk, including baby food used as a substitute for mother's milk.
- Books of a scholarly, scientific, artistic, cultural, and educational character, as well as school textbooks (primary, secondary, and tertiary education, on all kinds of media).
- Certain medicines and surgical implants.
- Scientific journals.
- Services rendered by cinemas.
- Daily newspapers of a publisher that has a statute of media (with the exception of those that consist entirely of advertisements or are used mainly for advertising purposes).

Reporting obligations

Taxpayers have to electronically file monthly VAT returns by the 20th day of the month following the reporting month. Exceptionally, taxpayers who do not have any transactions with EU taxpayers (inbound or outbound) and whose aggregate value of goods delivered and services provided in the previous year does not exceed HRK 800,000 can submit the VAT return quarterly.

Any annual adjustments are made in the VAT return for December, which is the last monthly VAT return in a financial year.

In addition, both intra-Community acquisitions and supplies, as well as services provided to or received from an EU-registered taxpayer, have to be reported in a recapitulative statement, submitted by the 20th day of the month following the reporting month.

Where the amount of input tax credits exceeds the entity's VAT liability, a taxpayer is entitled to a refund of the difference or may choose to use the difference as a VAT prepayment.

VAT registration

VAT payers are defined as entrepreneurs that deliver goods or perform services in Croatia. An 'entrepreneur' is a legal entity or a natural person that continuously and independently performs an activity for the purpose of deriving profit. In addition to those that may be regarded as ‘normal’ taxpayers, domestic enterprises receiving imported services from foreign enterprises and legal entities and individuals that issue invoices or receipts including VAT without authorisation are also liable to pay VAT.

A taxpayer is required to register for VAT where turnover in the previous year exceeded HRK 230,000 (as of 1 January 2018, the threshold is increased to HRK 300,000). Voluntary registration is also possible.

Reclaiming of input VAT is granted to EU-registered VAT payers. No tax representative is required.

Entrepreneurs registered in third countries can apply for a VAT refund, provided reciprocity agreements are in place and a tax representative is used.

Determination of VAT base

The VAT base for goods and services supplied is the consideration that includes everything that the supplier has received or is supposed to receive from the buyer or a third person in connection to the supply, including the subventions directly related to price of goods and services supplied.

Where no consideration is provided, for instance where goods are exchanged, the VAT base is considered to be the market value of the goods or services. The VAT base of imports is the customs value as prescribed by customs regulations, increased by customs duties, import duties, special taxes, and other fees paid during customs clearing.

VAT-exempt supplies

VAT-exempt supplies include rental of residential property (with some exceptions); granting of credits and credit guarantees; transactions related to bank accounts, interest, winnings from special games of chance in casinos, slot machine clubs, and other forms of gambling; supplies of domestic and foreign legal tender, securities and shares.

Other exemptions include the following:

- Services and deliveries of goods by public institutions in the field of culture, such as museums, galleries, archives, libraries, theatres, religious communities and institutions, primary and secondary schools, universities, and student catering and boarding institutions.
- Postal services.
- Public radio and television activities.
- Medical services, including services conducted by doctors, dentists, nurses, physiotherapists, and biochemistry laboratories engaged in private practices; services of medical care performed in healthcare institutions; and services performed by social care institutions and child and adolescent care institutions.
- Supplies (transfers) of real estate (land, buildings, parts of buildings, housing premises, and other structures) with the exception of ‘newly built buildings’. ‘Newly built buildings’ subject to VAT are buildings that have not been used for more than two years. Buildings not subject to VAT are subject to real estate transfer tax (RETT).
- Temporary imports of goods that are exempt from customs duty.

Croatia

Customs duties

Croatian customs legislation and policies have been fully harmonised with the EU legislation. Goods imported from non-EU countries are subject to import customs clearance, and goods exported from the EU customs territory must be declared for export customs clearance. For performance of customs clearance procedures, each person has to be identified by an Economic Operator Registration and Identification (EORI) number, which is issued by the Customs office upon request.

Excise duties

There are a number of excise duties and special taxes levied on specific products. They are levied at a fixed amount and are payable by the producer or importer. VAT is applied first, after which the fixed amounts are added.

Excise taxes

Product	Excise tax rate
Oil derivatives	From HRK 100 to HRK 3,801 per 1,000 l/kg
Natural gas	HRK 4.05 per MWh for business purpose heating HRK 8.10 per MWh for non-business purpose heating
Cole and coke	HRK 2.30 per Gj
Electricity	HRK 3.75 per MWh for business use HRK 7.5 per MWh for non-business use
Tobacco products:	
Cigarettes	Not less than EUR 64 (in HRK) per 1,000 pieces Minimal excise duty is 57% of the weighted average retail price
Cigars and cigarillos	HRK 600 per 1,000 pieces
Fine-cut tobacco	HRK 450 per kg
Other tobacco for smoking	HRK 380 per kg
Beer	HRK 40 per 1 volume percentage alcohol in 1 hectolitre (hl)
Alcohol:	
At 15% alcohol or higher	HRK 800 per hl
Less than 15% alcohol	HRK 500 per hl
Ethyl alcohol	HRK 5,300 per hl

Special taxes

Product	Special taxes
Coffee and soft drinks:	
Roasted coffee	HRK 6 per kg
Coffee extracts, essence, and concentrates	HRK 20 per kg
Roasted coffee contained in finished products	HRK 6 per kg of coffee net mass
Coffee extracts, essence, and concentrates in finished products	HRK 20 per kg of coffee net mass
Sugar or sweetener added water, aromatised water (mineral water and fruit juices exempt)	HRK 40 per hl
Other drinks with max 1.2% alcohol (mixture of beer and soft drinks with more than 0.5% alcohol exempt)	HRK 40 per hl
Syrups and concentrates for soft drinks preparation	HRK 240 per hl
Powders and granules for soft drinks preparation	HRK 400 per 100 kg

Product	Special taxes
Motor vehicles on which special tax was not already paid for the use on public roads:	Determined on the basis of purchase price of the motor vehicle, carbon dioxide (CO2) emissions expressed in g/km, engine power in kW, volume of the engine in cm3, and the level of emission of exhaust gases
Motor vehicles on diesel fuel	From 1% to 25% depending on the purchase price, from HRK 55 to HRK 1,450 depending on 1 g/km CO2
Motor vehicles on petrol, liquefied petroleum gas, natural gas, and other fuels except diesel fuel	From 1% to 25% depending on the purchase price, from HRK 35 to HRK 1,300 depending on 1 g/km CO2
Motorcycles, mopeds, bicycles and 'ATV' vehicles	Determined on the basis of calculation of the volume of the engine in cm3 multiplied by the engine volume ratio increased by 5, 10, or 15 depending on the level of emission of exhaust gases (EURO III, EURO II, EURO I)
Fully electric vehicles, motor vehicles with 0 g/km CO2, and motor vehicles produced 30 years ago and older ('olditimers')	Not subject to taxation
Producers, dealers, and dealers of used motor vehicles	Obligated to register in the registry of motor vehicle producers and dealers eight days before the beginning of the activities. Also, they are obligated to deposit a security instrument for the payment of special taxes.
Acquisition of used motor vehicles on which special tax on motor vehicles was paid, which applies if supply was not subject to VAT, gift, or inheritance tax	5% of the market value
Liability and comprehensive road vehicle insurance premiums	15% of the contractual amount for obligatory motor vehicle insurance premium
	10% of the contractual amount for comprehensive motor vehicle insurance premium

Property taxes
There are no property taxes in Croatia.

Real estate transfer tax (RETT)
The acquisition of real estate is subject to taxation. 'Real estate' generally includes agricultural, construction, and other land as well as residential, commercial, and other buildings. Transactions include the sale, exchange, and any other means of acquiring real estate for consideration. The acquisition of real estate on which the VAT is paid is not subject to the RETT. As of 1 January 2017, there is no longer the possibility of exemption from payment of RETT for the purchase of the first property, provided that the given property was purchased in order to solve residential status.

Tax is charged at 4% of the market value of the real estate on the contract date and is paid by the acquirer.

Stamp tax
There are no stamp taxation provisions in Croatia.

Payroll taxes
Employers are required to withhold a percentage of their employees' salaries and benefits as a payment on account of their PIT. The rate of withholding is a progressive

rate between 24% and 36%, depending on the employee's personal circumstances and income.

Social security contributions
The Croatian social security system covers pension, health, and unemployment insurance. In case of dependently employed individuals, social security charges are borne by the employee and employer.

Employers make social contributions at the rate of 17.2% for the following social security benefits:

- Health insurance: 15%.
- Health insurance for health protection while at work: 0.5%.
- Unemployment insurance: 1.7%.

The basis for payment of employer's social security contributions is gross salary, which is not capped.

Employers have certain obligations with respect to disabled individuals. Apart from some exceptions, employers employing 20 or more employees are obligated to employ a prescribed number of disabled individuals. The number depends on the total number of employees and nature of activities the employer carries out but it cannot be lower than 2% or higher than 6% from the total number of employees.

Employers who do not comply with prescribed requirements are obligated to pay a monthly fee amounting to 30% of minimal salary (minimal salary for 2017 amounts to HRK 3,276) for each disabled individual that employer was due to employ.

Chamber of Commerce contribution
Employers pay a mandatory contribution to the Croatian Chamber of Commerce. The amount varies between HRK 42 and HRK 3,973, depending on company size.

Branch income

Foreign corporations carrying on business in Croatia are taxed on their Croatian-source income at the rate of 18% or 12%, depending on the amount of realised revenues.

Income determination

Inventory valuation
Inventories are generally valued at the lower of their acquisition cost or net realisable value. Taking into consideration the accounting principles set out in the Accounting Act and the International Financial Reporting Standards (IFRS), a company can choose to adopt the most favourable method.

Capital gains
Capital gains or losses are covered by the CIT regime. They are either an increasing or decreasing item to the CIT base.

Dividend income
Dividend and profit shares payments made to resident companies are not taxable. Dividends and profit shares paid to non-resident companies are taxed at the

withholding tax (WHT) rate of 12%. *Please see the Withholding taxes section for more information*.

Interest income

Interest income is taxable at the applicable CIT rate, as a part of total income stated in the P&L account. Interest paid to non-resident companies can be taxed at the WHT rate of 15%. *Please see the Withholding taxes section for more information*.

Interest income on loans between related companies has to be determined at the minimum interest rate prescribed by the Ministry of Finance as calculated and published by the Croatian National Bank (4.97% as of 1 January 2017). An alternative approach (instead of the interest rate prescribed by the Ministry of Finance) is the interest rate determined according to the transfer pricing rules, if applied to all contracts.

Royalty income

Royalty income is taxable at the applicable CIT rate, as a part of total income stated in the P&L account. Royalties paid to non-resident companies can be taxed at the WHT rate of 15%. *Please see the Withholding taxes section for more information*.

Foreign income

The tax base of a resident taxpayer subject to CIT is the profit earned both in Croatia and abroad, excluding the case where the taxpayer has registered a branch office abroad and taking into account the provisions of respective double tax treaties (DTTs).

Deductions

Depreciation

Most companies depreciate assets on a straight-line basis; this is because depreciation calculated this way, at the prescribed rates, is recognised for tax purposes. Companies are, however, free to use any depreciation method defined in the IFRS and to estimate the useful lives of all fixed assets in accordance with their accounting policies.

Prescribed annual depreciation rates are as follows:

Assets	Depreciation period (years)	Depreciation rate (%)
Buildings and ships of over 1,000 gross registered tonnage (GRT)	20	5
Basic herd and personal cars	5	20
Intangible assets, equipment, vehicles (except personal cars), and machinery	4	25
Computers, computer hardware and software, mobile telephones, and computer network accessories	2	50
Other non-mentioned assets	10	10

However, depreciation expenses in excess of the amount allowed for tax purposes are taxable. The value adjustment expenses of tangible fixed assets are non-deductible if such expenses exceed the amount of expense calculated by using the prescribed depreciation rate.

The cost of depreciation of assets that are not used for business purposes is not deductible.

Plant and equipment are considered to be acquired in the period in which installed or ready for use. Plant and equipment includes: tools of trade, information technology infrastructure (including software), furniture and fittings, and motor vehicles (excluding vehicles for personal use).

If the taxpayer writes off a portion of a depreciable asset, the remaining undepreciated portion will be depreciated at the rate prescribed by law. According to the CIT Act, the taxpayer can double the depreciation rates.

Land and forests (renewable resources) are not depreciated.

Financial assets, cultural monuments, and art work are not depreciated.

Depreciation of vessels, aircraft, condominiums, and vacation houses can be tax deductible only if certain conditions are met.

Goodwill
Goodwill is usually the difference between the consideration paid and the fair value of acquired net assets. If the taxpayer applies Croatian Financial Reporting Standards for its financial reporting, then goodwill must be amortised over five years.

The amortisation of goodwill is not recognised for tax purposes.

If the taxpayer applies IFRS for its financial reporting, goodwill impairment (if any) is considered as a non-deductible expense for tax purposes.

Start-up expenses
Generally, start-up expenses are considered to be expenses in the financial year in which they are incurred. As no special rule is provided for tax purposes, they are considered as tax deductible expenses for CIT purposes in the year in which they are incurred.

Interest expenses
According to the CIT Act, late payment interests are tax deductible, unless those interests are due to related companies, regardless of whether the late payment interests are charged by resident or non-resident related parties.

Interest expenses on loans between related companies is also deductible, up to the amount prescribed by the Ministry of Finance as calculated and published by the Croatian National Bank (4.97% for 2017) and if compliant with thin capitalisation rules (4:1 ratio). An alternative approach (instead of the interest rate prescribed by the Ministry of Finance) is the interest rate determined according to the transfer pricing rules, if applied to all contracts.

See Thin capitalisation and Interest rate charged between related parties in the Group taxation section.

Bad debt
Value adjustments arising from the adjustment of the value of claims against customers for goods delivered and services rendered are recognised as deductible expenses if

more than 60 days elapsed between the maturity of the claim and the end of the tax period, and if the claims were not collected up to 15 days before filing the CIT return. The claim needs to be recorded in the business books as revenue, and all measures for debt collection have to be taken (legal actions) in accordance with best management practices.

These expenses are permanently deductible if a settlement has been reached with the debtor - CIT payer who is not a related person, in case of bankruptcy, arbitration, or conciliation, based on a special regulation.

In addition, the law introduces a possibility of permanent tax deductibility of expenses from write-offs of receivables recognised from an unrelated person if a taxpayer proves that costs of initiating a procedure to collect the receivable are higher than the amount of the receivable itself or if it proves that it took the necessary actions with due care and diligence of a prudent businessperson with the aim of collecting the receivable, whereby one determined the final inability to collect the amount of the receivable being written off.

Moreover, for the purpose of accelerating the debt reduction procedure, the new regulations introduced a provision encouraging credit institutions to implement the debt reduction procedure during 2017, which relates to bad debt or difficult-to-collect receivables determined as on 31 December 2015, whereby the total expense of a write-off of the receivable, without initiating court or enforcement proceedings, or other proceedings aimed at receivable collection, is recognised as a tax deductible expense. This can be applied only in the tax return for 2017 (or for the tax period which begins in 2017 for taxpayers whose fiscal year is different than the calendar year). In other words, it is a one-off measure.

Charitable contributions

Donations in a form of gifts in kind or cash for cultural, scientific, educational, health, humanitarian, sports, religious, environmental, or other socially beneficial purposes are tax deductible by 2% of the revenues generated in the previous year. Exceptionally, the amount may exceed 2% of the revenues generated in the previous year, provided that it is granted pursuant to the decisions of competent ministries on the financing of special programs and activities.

The donations of food to prescribed persons for social, humanitarian, and other purposes, and to people affected by natural disasters, made by taxpayers that are food producers and food traders can also be considered as tax deductible (provided the donations are in line with the relevant regulations of the Ministry of Agriculture).

Fines and penalties

Fines and penalties prescribed by Croatian administrative and judicial authorities are considered to be non-deductible expenses.

Taxes

There are no provisions for tax treatment of taxes paid/accrued. *For foreign tax credits, please see the Tax credits and incentives section*.

Net operating losses

Tax losses may be carried forward and utilised within five years following the year in which the losses were incurred and must be utilised in the order in which they occurred. The losses may not be transferred to any third party except in the case of merger, de-merger, or acquisition. Tax losses cannot be carried back.

Utilisation of tax losses from previous years in case of statutory changes of legal entities is prescribed in detail in the CIT Act, limiting the entitlement where the legal predecessor is inactive and in case of a significant change in business activity or ownership structure.

Payments to foreign affiliates
The treatment of payments made to foreign affiliates is dealt with through the mechanism of the CIT base. The CIT base is increased for any concealed profit payments made. The tax authorities may audit the expenditure of non-resident taxpayers, examining expenditure on goods and services abroad as well as management, intellectual property (IP), and other fees and payments that may have the character of a profit transfer. If the tax authorities discover that transactions have been used to conceal profit transfers, the difference between the declared price/fee and the average market price/fee will be added back into the taxpayer's tax base.

Group taxation

There are no group taxation provisions in Croatia.

Transfer pricing
Prices between a Croatian entity and its foreign related parties must be set at fair market value (the arm's-length principle). Provisions on transfer pricing and interests are also introduced in transactions between resident related parties if one of the parties has:

- beneficial tax status (i.e. reduced tax rates) or
- entitlement to carry forward tax losses from previous years.

If the prices between related entities are different than those between non-related resident and non-resident entities, the tax base must be calculated with prices that would be charged between unrelated companies. In order to determine the market value of the related party's transaction, the following methods can be used:

- Comparable uncontrolled price.
- Resale price.
- Cost plus.
- Profit split.
- Net profit.

Advance pricing agreements (APAs)
A possibility of concluding an APA between the taxpayer and the tax administration and administrative bodies of other states where related entities involved in transactions with domestic taxpayers are residing is introduced. The APA determines certain criteria (e.g. methods, comparables, adjustments, key assumptions) applicable to future transactions in order to determine transfer prices for such transactions during a certain period.

Thin capitalisation

Interest on loans from a shareholder or a member of a company holding at least 25% of shares or voting power of the taxpayer will not be recognised for tax purposes in relation to the amount of the loan that exceeds four times the amount of the shareholder's share in the capital or their voting power. Interest on loans obtained from financial institutions is exempt from this provision. Loans from a shareholder or a member of a company are considered to be:

- Third-party loans if guaranteed by a shareholder.
- Loans from related parties.

Interest rate charged between related parties

A possibility was introduced that the taxpayer determines the interest charged between related parties in a way stipulated for determining the fees agreed between unrelated parties in general (i.e. in accordance with the arm's-length principle), under the condition that the same modality of determining interest applies to all financial agreements that taxpayer has with related parties. The introduction of this possibility is very beneficial to taxpayers since it allows them to determine on their own what the market interest is in the relations between related entities, which is in accordance with requirements on the application of the arm's-length principle in business activities with related taxpayers. Until now, the regulations have stipulated what is deemed market interest rate in relations between related entities and that interest rate did not necessarily correspond to actual market interest rates.

Controlled foreign companies (CFCs)

No CFC regulations exist in Croatia.

Tax credits and incentives

The Act on Investment Incentives provides the following relief and incentives for taxpayers.

Investment incentives

Investment incentives are usually organised as corporate tax credits applicable for up to ten years upon completion of various conditions.

General incentives apply for investors profit earned as a result of an investment under the following conditions:

Investment amount (EUR)	Tax benefit rate (%)	Period (years)	Necessary to employ (employees)
150,000 to 1,000,000	50	10	5
1,000,000 to 3,000,000	75	10	10
More than 3,000,000	100	10	15

Furthermore, tax benefits are prescribed for micro entrepreneurs. A minimum investment of EUR 50,000 allows tax incentives in the form of a 50% decrease of the tax rate over a period of five years, with a minimum of three new jobs.

Tax benefits cannot exceed investment amount.

Incentives for investments in technological development and innovation activities, strategic business support activities, and high value-added services
Incentives are available for investments in technological development and innovation activities, strategic business support activities, and high value-added services. High value-added services relate to:

- Creative services (activities in a field of architecture, design, marketing, art, etc.).
- Touristic services (projects related to accommodation facilities with four or more stars; accommodation facilities in cultural and historic buildings; activities for developing health, congress, nautical, and cultural tourism; recreation centres and parks and environmental projects in tourism).
- Managing, consulting, and educational services.
- Industrial engineering services.

These investments allow an additional non-refundable monetary subsidy over the incentive for creating new jobs, as follows:

Investment type	Additional non-refundable subsidy (%)
Technological development and innovation activities	50
Strategic business support activities and high value-added services	25

Additionally, a non-refundable money subsidy for the purchase of equipment in the amount of up to 20% of justified costs related to investment in technological development and innovation activities and strategic business support activities (maximum amount of up to EUR 500,000) can be granted to a company, provided that equipment bought is high technology equipment.

Incentives for investments into capital intensive and work intensive projects
An investment qualifies as capital intensive if the minimum amount of the investments is EUR 5 million and 50 new jobs are created. Those projects can benefit from additional non-refundable subsidies between 10% and 20% of recognised costs of new plants, objects, equipment, and other capital costs, depending on the unemployment rate of the county where located.

Work intensive projects are those with at least 100 new jobs created within a three-year period from the start of the investments project. Initial incentives can be increased by an additional 25% for up to 300 new jobs, 50% for a minimum of 300 new jobs, and up to 100% for 500 new jobs.

Employment incentives
Employment subsidies are incentives for creating new jobs and incentives for training required by the new jobs.

Newly created jobs should be kept for at least five years.

Unemployment rate (%)	Non-refundable cash subsidy (%)	Maximum costs per employee (EUR)
Up to 10	10	3,000
10 to 20	20	6,000

Unemployment rate (%)	Non-refundable cash subsidy (%)	Maximum costs per employee (EUR)
More than 20	30	9,000

Incentives for training required by new jobs are also increased, as given in the table below.

Entrepreneurs' size	General training (% of non-refundable subsidy)
Large and when training is provided for employees with disability	50
Medium	60
Small and micro	70

Research and development (R&D) incentives

Registered scientific organisations, centres of scientific excellence, individual scientists, and groups of scientists are entitled to apply for the state subsidies and tax incentives for scientific research, basic research, and applied R&D research.

Depending on the type of research (e.g. scientific, basic, applied research, or technical feasibility) and size of entrepreneur (i.e. small, medium, or large entrepreneur, according to the Accounting Act), the percentage of the costs covered by state subsidy can vary between 25% and 100%. Additionally, the CIT base can be decreased (depending on the same criteria) by up to 150% of the amount of the costs covered by the state subsidy, where the CIT liability decrease is granted up to the amount of the percentage of the costs covered by state subsidy.

Foreign tax credit

If a domestic taxpayer has paid tax abroad on profit derived abroad, the tax paid can be included in its CIT return, up to the CIT rate in Croatia. The amount of paid tax abroad, which can be offset with the domestic tax, is calculated in the following way:

- The domestic tax rate is charged on the revenues/profit derived from abroad, and the result represents the highest amount of tax that can be offset with the domestic tax.

In practice, it means that if the amount of tax paid abroad was charged at a rate equal or lower than 18%, only the actual amount of foreign tax paid can be offset with the domestic tax.

Withholding taxes

General rules

Taxpayers who pay fees for the use of IP rights (the right to reproduction, patents, licences, copyrights, designs or models, manufacturing procedures, production formulas, blueprints, plans, industrial or scientific experience, and such other rights); fees for market research services, tax consulting services, business consulting services, auditing, or interest to foreign legal entities, natural persons excluded, shall, when making the payment, calculate and withhold tax at a rate of 15%.

Interest payments are subject to WHT at a 15% rate, unless they relate to the following:

- Commodity loans for the purchase of goods used for carrying out a taxpayer's business activity.
- Loans granted by a non-resident bank or other financial institution.
- Holders of government or corporate bonds who are non-resident legal persons.

Exceptionally, WHT on dividends and profit shares are taxed at the rate of 12%. If the company uses a tax allowance for reinvested profit, other than that earned in the banking or the financial non-banking sector, WHT on such dividends and profit shares is not applied. WHT does not apply on dividends and profit shares if they are paid out from the profit realised before 29 February 2012.

Generally, taxpayers who pay fees for the use of IP rights, pay interest, or pay out dividends and shares in profit to natural persons have to withhold 24% in the case of IP rights, 12% for interest, and 12% for dividends and shares in profit.

EU Directives

The CIT Act provisions and certain EU Directives provide special treatment for dividends, royalties, and interest paid to related companies in EU member states.

Regarding interest and royalty payments, full exemption only applies to payments between related companies, provided that:

- there is a direct minimum holding of 25% for an uninterrupted period of at least two years and
- the beneficial owner of the interest or royalties is a company of another member state or a PE situated in another member state of a company of a member state.

Regarding dividend and profit shares payments, full exemption applies when dividends and shares of profits are distributed to a parent company of different EU member state, provided that:

- the recipient of the dividend or profit share has a minimum holding of 10% in the capital of a company distributing the dividend or profit share, and
- the minimum holding is held for an uninterrupted period of at least two years.

The recipient of a dividend or profit share is any company:

- that takes one of the forms that are subject to the common system of taxation applicable to parent companies and subsidiaries of different EU member states
- resident in a member state for tax purposes and, under the terms of a DTT concluded with a third state, not considered to be resident for tax purposes outside the European Union, and
- subject to one of the taxes in the common system of taxation applicable to parent companies and subsidiaries of different EU member states, without the possibility of an option or of being exempt.

Treaty rates

If a country has a DTT signed with Croatia, WHT rates are lowered if the treaty rate is lower than the non-treaty rate. There are specific applications that need to be fulfilled in order to benefit from a DTT between countries.

The following countries have a DTT with Croatia:

Recipient	Dividends (%)	Interest (%)	Royalties (%)
Non-treaty countries	12	15	15
Treaty countries:			
Albania	10	0/10 (23)	10
Armenia	0/10 (15)	10	5
Austria	0/15 (1)	5	0
Azerbaijan	5/10 (16)	0/10 (36)	10
Belarus	5/15 (2)	10	10
Belgium	5/15 (3)	0/10 (24)	0
Bosnia and Herzegovina	5/10 (4)	10	10
Bulgaria	5	5	0
Canada	5/15 (5)	10	10
Chile	5/15 (6)	5/15 (25)	5/10 (38)
China	5	0/10 (26)	10
Czech Republic	5	0	10
Denmark	5/10 (18)	5	10
Estonia	5/15 (8)	0/10 (27)	10
Finland	5/15 (2)	0	10
France	0/15 (9)	0	0
Georgia	5	0/5 (37)	5
Germany	5/15 (8)	0	0
Greece	5/10 (4)	10	10
Hungary	5/10 (4)	0	0
Iceland	5/10 (12)	0/10 (27)	10
India	5/15 (39)	10	10
Indonesia	10	0/10 (28)	10
Iran	5/10 (4)	5	5
Ireland	5/10 (10)	0	10
Italy	15	0/10 (29)	5
Israel	5/10/15 (14)	0/5/10 (30)	5
Jordan	5/10 (11)	10	10
Korea	5/10 (4)	5	0
Kuwait	0	0	10
Latvia	5/10 (4)	0/10 (27)	10
Lithuania	5/15 (8)	0/10 (27)	10
Luxembourg *	5/15 (42)	0/10 (43)	5
Macedonia	5/15 (2)	0/10 (26)	10
Malaysia	5/10 (12)	10	10
Malta	5 (19)	0	0
Mauritius	0	0	0
Moldova	5/10 (4)	5	10
Montenegro	5/10 (4)	10	10
Morocco	8/10 (17)	0/10 (31)	10
Netherlands	0/15 (1)	0	0
Norway	15	0	10
Oman	0	0/5 (32)	10
Poland	5/15 (2)	0/10 (26)	10
Portugal	5/10 (40)	10	10
Qatar	0	0	10
Romania	5	0/10 (26)	10
Russia	5/10 (20)	10	10

Croatia

Recipient	Dividends (%)	Interest (%)	Royalties (%)
San Marino	5/10 (4)	0/10 (33)	5
Serbia	5/10 (4)	10	10
Slovakia	5/10 (4)	10	10
Slovenia	5	0/5 (34)	5
South Africa	5/10 (21)	0	5
Spain	0/15 (13)	0/8 (35)	8
Sweden	5/15 (7)	0	0
Switzerland	5/15 (2)	5	0
Syria	5/10 (10)	10	12
Turkey	10	10	10
Turkmenistan	10	0/10 (41)	10
Ukraine	5/10 (4)	10	10
United Kingdom	5/10/15 (22)	0/5 (44)	5

* DTT is applicable as of 1 January 2017.

Notes

1. The 0% rate applies if the recipient (beneficial owner) is an entity that directly holds at least 10% of the capital of the payer. The 15% rate applies to other dividends.
2. The 5% rate applies if the recipient (beneficial owner) is an entity that directly holds at least 25% of the capital of the payer. The 15% rate applies to other dividends.
3. The 5% rate applies if the recipient (beneficial owner) is an entity that directly or indirectly holds at least 10% of the capital of the payer. The 15% rate applies to other dividends.
4. The 5% rate applies if the recipient (beneficial owner) is an entity that directly holds at least 25% of the capital of the payer. The 10% rate applies to other dividends.
5. The 5% rate applies if the recipient (beneficial owner) is an entity that directly or indirectly controls at least 10% of the voting power of the payer, or directly holds at least 25% of the capital of the payer. The 15% rate applies to dividends paid by an investment corporation resident of Canada that is owned by a non-resident and in all other cases.
6. The 5% rate applies if the recipient (beneficial owner) is an entity that directly holds at least 20% of the capital of the payer. The 15% applies to other dividends.
7. The 5% rate applies if the recipient is an entity that directly holds at least 25% of the voting power of the payer. The 15% applies to other dividends.
8. The 5% rate applies if the recipient (beneficial owner) is an entity that directly holds at least 10% of the capital of the payer. The 15% rate applies to other dividends.
9. The 0% rate applies if the recipient (beneficial owner) is an entity that directly or indirectly holds at least 10% of the capital of the payer. The 15% rate applies to other dividends.
10. The 5% rate applies if the recipient (beneficial owner) is an entity that directly controls at least 10% of the voting power of the payer. The 10% rate applies to other dividends.
11. The 5% rate applies if the recipient (beneficial owner) is an entity that holds at least 25% of the capital of the payer, provided that ownership is not achieved for the purposes of exploiting these provisions. The 10% rate applies to other dividends.
12. The 5% rate applies if the recipient (beneficial owner) is an entity that directly holds at least 10% of the capital of the payer. The 10% rate applies to other dividends.
13. The 0% rate applies if the recipient is an entity that directly holds at least 25% of the capital of the payer. The 15% rate applies to other dividends.
14. The 5% rate applies if the recipient (beneficial owner) is an entity that directly holds at least 25% of the capital of the payer. The 10% rate applies if the recipient is an entity (beneficial owner) that directly holds at least 10% of the capital of the payer, which is a resident of Israel and dividends are paid out of the profit that is subject to lower corporate tax rate than usual. The 15% rate applies to other dividends.
15. The 0% rate applies if the recipient (beneficial owner) is an entity that directly or indirectly holds at least 25% of the capital of the payer and if the dividends aren't subject to CIT in the other contracting state. The 10% rate applies to other dividends.
16. The 5% rate applies if the recipient (beneficial owner) is an entity that directly holds at least 25% of the capital of the payer and has invested in the payer at least EUR 150,000. The 10% rate applies to other dividends.
17. The 8% rate applies if the recipient (beneficial owner) is an entity that directly holds at least 25% of the capital of the payer. The 10% rate applies to other dividends.
18. The 5% rate applies if the recipient (beneficial owner) is an entity (except a partnership) that directly holds at least 25% of the capital of the payer if dividends are held for at least one year without interruption and are published within this period. The 5% also applies if the beneficial owner is a pension fund or other similar institution. The 10% rate applies to other dividends.

19. The 5% rate applies if dividends are paid from a Croatian resident to a resident in Malta. If a resident from Malta pays dividends to a Croatian resident the rate cannot be higher than the CIT on profit from which dividends are paid out.
20. The 5% rate applies if the recipient (beneficial owner) is an entity that directly holds at least 25% of the capital of the payer and that share shall be at least 100,000 United States dollars (USD). The 10% rate applies to other dividends.
21. The 5% rate applies if the recipient (beneficial owner) is an entity that holds at least 25% of the capital of the payer. The 10% rate applies to other dividends.
22. The 5% rate applies if the recipient of dividends (beneficial owner) is an entity that directly or indirectly holds at least 25% of the capital of the payer. The 15% rate applies for the dividends that are paid out of the profit derived directly or indirectly from the real estate from an investment company (that distributes most of the profit on an annual basis and when income from such real estate is not taxable). The 10% rate applies to other dividends.
23. Interest to the government, local authority, and the Central Bank is exempt from WHT.
24. Interest on commercial claims for debts, interest on an issued, guaranteed, or insured loan or credit with the purpose of promotion of export, interest on loan from banks, interest on deposits held in banks, and interest that is paid to the state or local authority is exempt from WHT.
25. The 5% rate applies to interests on loans granted by bank and insurance companies. The 15% rate applies to other interest.
26. Interest arising in a contracting state and derived by the government of the other contracting state, a local authority, and the Central Bank thereof or any financial institution wholly owned by that government, or by any resident of that other contracting state with respect to debt and claims indirectly financed by the government of that other contracting state, or the local authority, or the Central Bank thereof or any financial institution wholly owned by the government is exempt from WHT.
27. Interest arising in a contracting state and derived by the government of the other contracting state, local authority, and the Central Bank thereof or any financial institution wholly owned by that government, or interest on loans from the government is exempt from WHT.
28. Interest arising in the contracting state and derived by the government of the other contracting state, local authority, the Central Bank, or any other financial institution wholly owned by the government is exempt from WHT.
29. Interest is exempt from WHT when the payer of interest is the government or local authority in the contracting state or when interest is paid to the government, local authority, or agency of the other contracting state that is wholly owned by the government or local authority, or when interest is paid to any other agency on loans arising from the application of contracts between contracting states.
30. The 5% rate applies to interest on all type of loans granted by banks. The rate of 10% applies to other interest. Interest arising in a contracting state and derived by the government of the other contracting state, a local authority, and the Central Bank thereof, or on a loan that is approved, guaranteed, or insured by an insurance institution, or financing of international business transactions to the extent that it acts on behalf of the other contracting state is exempt from WHT. Interest arising in a contracting state and paid to a resident of the other contracting state who is the beneficial owner is also exempt from WHT to the extent that such interest is paid to the seller of any industrial, commercial, or scientific equipment or other property that is sold on credit.
31. Interest paid to the government or Central Bank of the other contracting state is exempt from WHT.
32. Interest paid to the government is exempt from WHT.
33. Interest is exempt from WHT when the payer is the government or local authority, when the receiver is the government, local authority, or body wholly owned by the government or the local authority, and when interest is paid in the name of the government to the other bodies (including financial institutions) related with a loan that the government received under the agreement between the governments of the contracting states.
34. Interest on loans that give, approve, or guarantee the government, local authority, Central Bank, or institution authorised for insurance and financing of international business transactions is exempt from WHT.
35. Interest on loans from banks, interest on sale on credit for industrial, commercial, or scientific equipment, interest on sale on credit for commercial goods, and interest from the government, Central Bank, or other financial institution owned and controlled by the government is exempt from WHT.
36. Interest arising in a contracting state and derived by the government of the other contracting state, a local authority, and the Central Bank thereof, or on a loan that is approved, guaranteed, or insured by the government of the contracting state, Central Bank, or the agency (including financial institution) that is owned or controlled by the government is exempt from WHT.
37. Interest is exempt from WHT when the payer of interest is the government, Central Bank, or government agency or institution.
38. The 5% rate applies on royalties for use or the right to use any type of industrial, commercial, or scientific equipment. The 10% rate applies to other royalties.
39. The 5% rate applies if the recipient of dividends (beneficial owner) (except partnership) is an entity that directly holds at least 10% of the capital of the payer. The 15% rate applies to other dividends.
40. The 5% rate applies if the recipient of dividends (beneficial owner) (except partnership) is an entity that directly holds at least 10% of the assets of the payer. The 10% rate applies to other dividends.
41. Interest is exempt from WHT when sourced in one contracting party and paid to another contracting party or to central bank of the contracting party.
42. The 5% rate applies if the recipient of dividends (beneficial owner), except a partnership, is an entity that directly holds at least 10% of the assets of the payer. The 15% rate applies to other dividends.

43. Interest is exempt from WHT when paid by the government, Central Bank, or local authority if interest is paid by the country, local authority, or official body in which interest occurs, if interest is paid on loan or receivables owned or guaranteed by that country, local authority, or export financial agency, or if paid to a financial institution or subject for joint investment.
44. Interest is exempt from WHT when paid regarding the sale on credit of industrial, commercial, and scientific equipment, the sale on credit of any commodity between two companies, or on bank loans.

In addition to the current WHT rates of 15% and 12%, an increased rate of 20% applies to all services not listed under 'General rules' (*see above*) paid to foreign entities whose place of seat or management is in countries considered to be tax havens or financial centres on the list of countries published by the Ministry of Finance. This provision does not apply to EU member countries and countries with which Croatia has signed a DTT.

Countries listed by the Ministry of Finance are as follows:

- Andorra
- Anguilla
- Antigua and Barbuda
- Aruba
- Bahamas
- Bahrain
- Barbados
- Belize
- Bermuda
- British Virgin Islands
- Brunei Darussalam
- Cayman Islands
- Christmas Island
- Cook Islands
- Dominica, Commonwealth of
- Dominican Republic
- Falkland Islands
- Fiji
- Gibraltar
- Grenada
- Guam
- Guernsey
- Guyana
- Hong Kong
- Isle of Man
- Jersey
- Liberia
- Liechtenstein
- Macau
- Maldives
- Marshall Islands
- Monaco
- Monserrat
- Nauru
- Netherlands Antilles
- Niue
- Palau
- Panama
- Saint Kitts and Nevis
- Saint Lucia
- Saint Vincent and the Grenadines
- Samoa
- Seychelles
- Solomon Islands
- Tonga
- Trinidad and Tobago
- Turks and Caicos Islands
- Tuvalu
- United States (US) Virgin Islands
- Vanuatu

Tax administration

Taxable period
The CIT shall be assessed for a period that is normally a calendar year. The tax authorities may agree, at the request of a taxpayer, that the tax period should not correspond with the calendar year, where the tax period may not exceed 12 months. The chosen tax period cannot be changed for three years.

Tax returns
All CIT payers are obligated to submit an annual CIT return to the tax authorities no later than four months after the end of the tax period for which CIT is assessed.

The Ministry of Finance administers taxation matters through the tax administration. These organisations have responsibilities and powers defined by law.

Payment of tax
Every taxpayer is required to pay monthly CIT advances (by the end of the month for the previous month) on the basis of the previous year's tax return.

In the first year of operation, taxpayers are not obligated to pay any CIT advances.

CIT is assessed at the end of the tax period, and the assessed amount, less any instalments made, is payable by the day of submission of the tax return.

Tax audit process

The Inspection Sector of the Croatian tax authority performs a tax audit of a taxpayer.

The tax audit process is usually performed as follows:

- Notification of a tax audit is sent to the taxpayer.
- Tax audit is conducted.
- Minutes of the tax audit are issued.
- Taxpayer can object to the minutes within a prescribed filing deadline. If objection shows new facts and evidence, the tax inspector will prepare supplementary minutes.
- Resolution of the tax audit is issued within 60 days as of the day (supplementary) minutes have been provided to the taxpayer.
- Appeal against the resolution can be filed within 30 days as of the day the taxpayer received the resolution. It needs to be replied to within two months as of the day the appeal has been filed.
- After a rejected appeal, the taxpayer can initiate court litigation procedures.

Statute of limitations

The Croatian tax authority is entitled to review the tax returns of a company within six years following the end of the year in which the tax return is submitted.

Topic of focus for tax authorities

Tax authorities are focusing on business relations with related parties. Also, after the accession of Croatia to the European Union, transactions between member states within the European Union are of focus for the tax authorities. In this regard, the tax authority stipulated the obligation of preparation of a report on transactions with related parties (PD-IPO form) in case the taxpayer recorded transactions with related parties in its business ledgers during the tax period, and to deliver that report along with the CIT return (PD form).

Binding opinions

Opinions and instructions issued by tax authority central offices are binding for all tax authority regional offices, and the goal is to ensure uniformity of the tax authority representatives' treatment of taxpayers.

Other issues

US Foreign Account Tax Compliance Act (FATCA)

On 2 April 2014, the US Treasury announced that an intergovernmental agreement (IGA) was 'in effect', and, on 20 March 2015, the US Treasury and Croatia signed and released the IGA. The FATCA Agreement came into force on 27 December 2016 (as published in the Official Gazette).

Base erosion and profit shifting (BEPS)

Even though Croatia is not a member of the OECD, a BEPS plan will become applicable according to the EU Directives. For example, Action 13 of the BEPS plan is incorporated in the Croatian legislation and applicable as of the beginning of 2017.

Cyprus

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Significant developments

Cyprus is expanding and updating its double tax treaty (DTT) network. New/amended DTTs with Georgia, Bahrain, India, and Latvia are effective for Cyprus as of 1 January 2017. New DTTs with Iran and Jersey entered into force in 2017 and are effective for Cyprus as of 1 January 2018. New/amended DTTs with Barbados, Ethiopia, Luxembourg, and Ukraine have been signed and are awaiting entry into force.

Cyprus is an early adopter of the Common Reporting Standard (CRS) on automatic exchange of financial account information and also has an intergovernmental agreement (IGA) with the United States (US) for the Financial Account Tax Compliance Act (FATCA).

Cyprus is a member of the *ad-hoc* group for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS). In November 2016, the group adopted the BEPS Action 15 'Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion', which is expected to be signed by Cyprus on 7 June 2017.

On 30 December 2016, the Cyprus Minister of Finance issued a Decree introducing mandatory country-by-country (CbC) reporting in line with the relevant amendment to the European Union (EU) Directive on Administrative Cooperation (DAC) in the Field of Taxation, known as DAC4, and the G20/Organisation for Economic Co-operation and Development (OECD) BEPS Action 13 CbC reporting requirements. Earlier, on 1 November 2016, Cyprus signed the Multilateral Competent Authority Agreement that implements CbC reporting on a global basis.

Further, the below-mentioned tax-related Directives of the EU will be transposed into Cyprus tax law:

- The amendment to the DAC for the automatic exchange of cross-border tax rulings within the EU, known as DAC3.
- The DAC amendment known as DAC5, which allows tax authorities to access anti-money laundering (AML) information held by entities pursuant to the 4th AML Directive of the European Union.
- The Anti-Tax Avoidance Directives (ATAD I & II), which set out minimum standards that EU member states need to have in their corporate tax laws in the following areas (we note that ATAD II is still to be formally adopted into law by the EU):
  - (Net) interest expense limitation.
  - Exit taxation.
  - A general anti-abuse rule.

- Controlled foreign company (CFC) rules.
- Hybrid mismatch rules.

Cyprus is working in cooperation with the European Commission (EC) regarding the EC's recent focus into fiscal state aid and tax rulings. To date, the EC has not raised any specific investigations regarding Cyprus.

A number of recent amendments to the Cyprus corporate and personal tax laws were enacted with the aim of making the tax system in Cyprus fairer and even more competitive for both individuals and businesses. With regards to corporate tax laws, these amendments comprise, *inter alia*, the following:

- A new Cyprus intellectual property (IP) box is introduced, while the old Cyprus IP box continues to be effective until 30 June 2021 under grandfathering provisions (*see the Tax credits and incentives section for more information*).
- Introduction of tax amortisation for all types of IP used in the business (excluding IP falling under the transitional rules of the old Cyprus IP box) *(see the Deductions section for more information*).
- Taxpayers may elect to tax profits earned by foreign permanent establishments (PEs), with a tax credit for foreign taxes incurred on the foreign PE profits. In the absence of such an election, the exemption method remains the default position (*see the Income determination section for more information*).
- As of 1 January 2017, immovable property tax (IPT) is abolished (*see the Other taxes section for more information*).
- As of 1 January 2017, Special Contribution of the private and public sectors is abolished (*see Special Contribution under Payroll taxes in the Other taxes section for more information*).
- Immovable property transfer fees are reduced by 50% if the immovable property is not subject to value-added tax (VAT) at the time of acquisition and are reduced by 100% if the immovable property is subject to VAT at the time of acquisition (*see the Other taxes section for more information*).

The Cyprus Tax Authorities (CTA) announced in February 2017, with the aim of aligning Cyprus with the latest developments of the G20/OECD BEPS Actions 8-10 Transfer Pricing guidance, that, as of 1 July 2017, related-party financing transactions will have to be supported by transfer pricing studies based on the relevant OECD standards. Further application guidance is expected from the CTA.

A proposed legislative amendment is currently discussed in Parliament under which building land will be subject to VAT at the standard rate of 19%. When enacted into law, supplies of building land will be subject to VAT at the rate of 19%. It is likely that this will be subject to conditions.

Taxes on corporate income

Corporate income tax (CIT)

All companies that are tax residents of Cyprus are taxed on their income accrued or derived from all sources in Cyprus and abroad. A non-Cyprus tax resident company is taxed on income accrued or derived from business activity that is carried out through a PE in Cyprus and on certain other income arising from sources in Cyprus.

The standard CIT rate in Cyprus is 12.5%.

The Cyprus CIT law explicitly provides for a number of exemptions for many and varied types of incomes, profits, and gains (*see the Income determination section for more information*).

Special Defence Contribution (SDC)
SDC is imposed only on non-exempt dividend income, 'passive' interest income, and rental income earned by Cyprus tax residents. Non-tax residents of Cyprus are exempt from SDC.

Dividends generally are exempt from SDC, subject to certain rarely applicable limitations (*see Dividend income in the Income determination section*).

Interest received by close-ended or open-ended collective investment schemes (CISs) is never subject to SDC as it is considered as 'active' interest income. Such interest is only taxed under CIT (after deducting allowable expenses) at the standard CIT rate of 12.5%.

Interest received by companies in the ordinary course of business, including interest closely connected to the ordinary course of business, is also considered as 'active' interest income and is only taxed under CIT (after deducting allowable expenses) at the standard CIT rate of 12.5%.

When companies receive interest that does not satisfy the conditions prescribed immediately above, the interest is considered to be 'passive' interest income, which is subject to SDC (without expense deduction) at the rate of 30%. Such 'passive' nature interest is, however, exempt from CIT.

Gross rental income reduced by 25% is also subject to SDC at the rate of 3% in addition to CIT (after deducting allowable expenses) of 12.5%.

Tonnage tax
For ship-owning companies, the profits derived by the owner of a ship registered in the European Union or European Economic Area (EEA) (as well as other foreign jurisdictions, subject to conditions) from its operation/charter out are fully exempt from all direct taxes. The term 'owner' includes a bareboat charterer of a non-Cyprus flag vessel parallel registered in Cyprus. A similar exemption applies to charterers and ship managers.

Instead of CIT, ship owners, charterers, and managers pay tonnage tax on the net tonnage of the ships they own, charter, or manage. In addition, there is no tax on dividends paid at all levels of distribution by the above persons out of profits subject to tonnage tax and related capital gains on the sale of the ship and no capital gains tax (CGT) on the sale or transfer of a ship, share in a ship, or shares in a ship-owning company. The same legislation also provides for income tax exemption of the salaries and benefits of the captain, the officers, and the crew aboard a Cyprus flag vessel.

This treatment applies until 2020 and is compulsory for Cyprus flag ship owners, but optional for other ship owners, charterers, and ship managers.

Local income taxes
There are no local government taxes on income in Cyprus.

Corporate residence

Only companies managed and controlled in Cyprus are treated as tax resident of Cyprus.

Permanent establishment (PE)

Cyprus domestic income tax legislation explicitly provides for the determination of a taxable Cyprus PE of a non-Cyprus tax resident company. These specific legislative provisions are broadly in line with the relevant article of the 2014 OECD model DTT, with the addition of offshore activities relating to the exploration, extraction, or exploitation of the seabed, subsoil, and natural resources, as well as the installation and exploitation of pipelines and other installations on the seabed.

Other taxes

Value-added tax (VAT)

VAT is imposed on the provision of goods and services in Cyprus as well as on the acquisition of goods from the European Union and the importation of goods into Cyprus. Taxable persons charge VAT on their taxable supplies (output tax) and are charged with VAT on goods or services that they receive (input tax).

The standard VAT rate in Cyprus is 19%. Two reduced VAT rates, a 9% rate and a 5% rate, apply in Cyprus:

- The reduced VAT rate of 9% applies on accommodation, restaurant and catering services, as well as on certain local passenger transport services. The term ‘restaurant and catering services’ includes the supplies of prepared and unprepared foodstuffs and beverages that are accompanied by sufficient support services that enable the immediate consumption of the foodstuffs and beverages supplied.
- The reduced rate of 5% applies on foodstuffs, pharmaceutical products, books and newspapers, as well as on a variety of other goods and services that are beyond the scope of this summary.
- From 18 November 2016 onwards, the reduced rate of 5% applies on the first 200 square metres of the buildable area of a property that qualifies as a new building/house acquired by individuals/eligible persons, as this is determined on the building coefficient of the residence in accordance with the architectural plans filed with the competent authorities. This is on the condition that the property will be used as their primary and main residence for ten years. On the remaining square metres, the standard VAT rate of 19% is applied. In addition, based on the amendment, persons who have already acquired a residence on which the reduced VAT rate was imposed can re-apply and acquire a new residence on which the reduced VAT rate will be imposed, irrespective of whether the ten year prohibition period for using the residence provided for in the legislation has lapsed or not. A condition for this to apply is that in case the ten-year period of using the residence as the main and permanent place of residence has not lapsed, the persons must pay back to the Tax Department the difference in the VAT between the standard and reduced VAT rates applicable at the time of the acquisition or construction of the residence.
- The 5% reduced rate also applies to renovation and repair of all private residences that are considered as being old (i.e. a period of at least three years has elapsed from their first use), excluding the materials that comprise of more than 50% of the value of the services.

Exports from Cyprus are zero-rated (i.e. no VAT must be charged on the export, and the company is entitled to recover the relevant input VAT suffered). The services for the international transport of passengers as well as the transportation of goods either from or to countries outside the European Union are also zero-rated.

Supplies of goods to businesses resident in other EU member states are outside the scope of Cyprus VAT.

Certain education services, as well as the majority of financial, insurance, and medical services, are exempt from Cyprus VAT. Supplies of land and buildings also are exempt from VAT unless the supply relates to new buildings before first use.

VAT registration

VAT registration is compulsory for business with:

- turnover in excess of 15,600 euros (EUR) during the 12 preceding months or
- an expected turnover in excess of EUR 15,600 within the next 30 days.

Businesses with turnover of less than EUR 15,600, or with supplies that are outside the scope of VAT but for which the right to claim the amount of the related input VAT is granted, have the option to register on a voluntary basis.

An obligation for registration also arises for businesses that:

- make acquisitions of goods from other EU member states in excess of EUR 10,251.61 during any calendar year, or
- are engaged in the provision of intra-Community services or supplies of goods for which the recipient must account for VAT under the reverse-charge provisions. No registration threshold exists for the provision of intra-Community supplies of goods and services.

Furthermore, an obligation for VAT registration arises for businesses carrying out economic activities as a result of the receipt of services from abroad for which an obligation to account for Cyprus VAT under the reverse-charge provision exists, subject to the registration threshold of EUR 15,600 per any consecutive 12-month period.

Exempted products and services, and disposals of items of capital nature, are not taken into account for determining annual turnover for registration purposes.

Registration is effected by completing the appropriate application form.

VAT declaration and payment/return of VAT

VAT returns must be submitted quarterly, and the payment of VAT must be made by the tenth day of the second month that follows the month in which the VAT period ends.

VAT-registered persons have the right to request for a different filing period. Approval of the VAT authorities is required. The VAT Commissioner also has the right to request for a taxable person to file one’s VAT returns for a different period.

Where, in a quarter, input VAT is higher than output VAT, the difference is refunded (subject to certain conditions) or is transferred for set-off against the VAT payable of the next VAT returns.

Customs duties
Customs duties may be imposed upon the importation of goods into Cyprus. The customs duties are imposed in accordance with the provisions of the applicable legislation.

Whether customs duties are imposed depends on the nature of the goods and the respective customs duty codes.

Excise taxes
Excise taxes are imposed on certain products, including means of transport, petroleum, tobacco products, and alcoholic drinks.

Immovable property tax (IPT)
Until tax year 2016, the owner of immovable property situated in Cyprus was liable to pay an annual IPT, which was calculated on the market value of the property as of 1 January 1980, at the varying rates as noted in the table below, which apply per owner and not per property.

Property value (as at 1 January 1980) (EUR)	Tax rate (‰)	Accumulated tax (EUR)
Up to 40,000*	6	240
40,001 to 120,000	8	880
120,001 to 170,000	9	1,330
170,001 to 300,000	11	2,760
300,001 to 500,000	13	5,360
500,001 to 800,000	15	9,860
800,001 to 3 million	17	47,260
Over 3 million	19	

* Property owners whose property has a total value of EUR 12,500 or less (based on 1 January 1980 values) are exempt from IPT.

For 2016, taxpayers were entitled to the following discounts on the applicable IPT:

- 75% of the IPT if paid until 31 October 2016 (i.e. 25% payable until 31 October 2016).
- 72.5% of the IPT if paid between 1 November 2016 and 31 December 2016 (i.e. 27.5% of the IPT is paid between these two dates).

From tax year 2017, the IPT is abolished.

Stamp duty
The general rule is that Cyprus stamp duty is imposed only on written instruments relating to assets located in Cyprus or to matters that will take place in Cyprus. The applicable rates are based on the value stipulated in each instrument and are nil for values up to EUR 5,000, 0.15% for values from EUR 5,001 up to EUR 170,000, and 0.2% for values above EUR 170,000, subject to an overall maximum amount of stamp duty of EUR 20,000. Exemption from stamp duty applies in the case of a qualifying reorganisation scheme.

Capital duty

Upon incorporation of a Cyprus company

Upon incorporation of a Cyprus company, capital duty is due on the authorised share capital at EUR 105 plus 0.6% on the authorised share capital. It is important to note that the 0.6% rate applies only to the nominal value of the authorised share capital and not to any share premium.

As for the issued share capital, there is no stamp duty payable if the shares are issued at their nominal value. There is a flat duty of EUR 20 if the shares are issued at any premium.

Upon subsequent increases

Upon subsequent increases, capital duty is due on the authorised share capital at 0.6% of the nominal value of the additional share capital. Again, the 0.6% rate applies only to the nominal value of the authorised share capital and not to any share premium.

As for the issued share capital, EUR 20 is due on every issue batch, whether the shares are issued at a premium or not and irrespective of the number of shares issued in the batch.

Capital gains tax (CGT)

CGT applies only to gains relating to Cyprus-situated immovable property when the disposal is not subject to CIT.

Disposal for the purposes of CGT specifically includes sale, exchange, lease, gifting, abandoning use of right, granting of right to purchase, and any sums received upon cancellation of disposals.

CGT at the rate of 20% is imposed on gains arising from the disposal of immovable property situated in Cyprus or the disposal of shares in companies that own Cyprus-situated immovable property. CGT is also imposed on disposals of shares in companies that indirectly own immovable property situated in Cyprus where at least 50% of the market value of the said shares derives from Cyprus-situated immovable property. Shares listed on any recognised stock exchange are excluded from CGT.

In the case of disposal of company shares, the gain is calculated exclusively on the basis of the gain relating to Cyprus-situated immovable property. The value of the immovable property will be its market value at the time the shares were disposed of.

The taxable gain is generally calculated as the difference between the disposal proceeds and the original cost of the property plus any improvements as adjusted for inflation up to the date of disposal on the basis of the consumer price index in Cyprus. In the case of property acquired before 1 January 1980, the original cost is deemed to be the value of the property as at 1 January 1980 on the basis of the general valuation conducted by the Land Registry Office under the Immovable Property Law.

Other expenses that relate to the acquisition and disposal of immovable property are also deducted from the gain, subject to certain conditions (e.g. interest costs on related loans, transfer fees, legal expenses).

It is important to note that, subject to conditions, land and buildings acquired from unrelated parties in the period 16 July 2015 to 31 December 2016 are exempt from CGT upon their future disposal.

Immovable property transfer fees

The fees charged by the Department of Land and Surveys to the acquirer for transfers of Cyprus-situated immovable property are as follows:

Market value (EUR)	Rate (%)	Fee (EUR)	Accumulated fee (EUR)
Up to 85,000	3	2,550	2,550
85,001 to 170,000	5	4,250	6,800
Over 170,000	8		

It is important to note that:

- No transfer fees are payable if VAT is applicable upon purchasing the immovable property.
- The above transfer fees are reduced by 50% in case the purchase of immovable property is not subject to VAT.

Mortgage registration fees are 1% of the current market value.

In the case of companies' reorganisations, transfers of immovable property are not subject to transfer fees or mortgage registration fees.

Payroll taxes

In addition to the payroll taxes charged on employers, employers are also responsible to withhold from employees earnings the employees' contributions to the social insurance fund, employees' Special Contribution (*see below*), and employees' personal income tax (PIT) burden through the pay-as-you-earn (PAYE) system.

Social security contributions

Employed persons are compulsorily insured under a state-administered social insurance fund. Contributions to the fund are borne by both employer and employee. The employer's contributions are calculated as a percentage of the employee's earnings. The employer also contributes to other funds as set out in the table below:

Funds	Employer contribution (% of employee's earnings) (1)
Social insurance fund	7.8 (2, 3)
Redundancy fund	1.2
Training development fund	0.5
Social cohesion fund	2.0
Holiday fund (if not exempt)	8.0

Notes

1. With the exception of the social cohesion fund, the maximum amount of monthly earnings on which the contributions are paid is EUR 4,533 for 2017 (as with 2016). This maximum is usually adjusted for inflation annually at the beginning of each calendar year.
2. The rate of 7.8% is applicable up to 31 December 2018.
3. The employee must also contribute at the same rate as the employer to the social insurance fund, but not to the other funds. It is the employer's responsibility to withhold this contribution upon payment of employee's earnings.

Special Contribution
For 2014 through 2016, the following Special Contributions were payable on the gross monthly earnings and pensions of private sector employees, on profits of self-employed individuals, and on private sector pensions from work/business within Cyprus:

Gross monthly emoluments from private sector employment/profits of self-employment/pension (EUR)	Contribution (%) (1)	Monthly accumulated tax (EUR)
0 to 1,500	0	0
1,501 to 2,500	2.5 (minimum EUR 10)	25
2,501 to 3,500	3.0	55
Over 3,500	3.5	

Notes

1. In the case of employed individuals, the employer is liable for half the Special Contribution and the employee for the other half. It is the employer's responsibility to withhold this contribution upon payment of employee's earnings.

From 1 January 2017, the Special Contribution is abolished.

Branch income

The rate of tax on Cyprus branch profits is the same as on corporate profits (12.5%). No further tax is withheld on transfers of profits or funds to a foreign head office.

Income determination

Inventory valuation
Inventories generally are stated at the lower of cost and net realisable value. Last in first out (LIFO) is not permitted for taxation purposes. First in first out (FIFO) is permitted. Conformity between book and tax reporting is not required.

Capital gains
Profits from disposals of corporate 'titles' are unconditionally exempt from CIT. 'Titles' is defined as shares, bonds, debentures, founders' shares, and other titles of companies or other legal persons incorporated in Cyprus or abroad and options thereon. According to a circular issued by the CTA, the term includes, *inter alia*, futures/forwards on titles, short positions on titles, swaps on titles, depositary receipts on titles, repos on titles, units in open or close CISs, international collective investment schemes (ICISs), undertakings for collective investment in transferable securities (UCITSs), investment trusts and funds, mutual funds, real estate investment trusts (REITs), and units in stock exchange indices on titles.

Capital gains on Cyprus-situated immovable property (and on non-quoted shares directly or indirectly holding such Cyprus-situated immovable property) are taxed separately in Cyprus. *See Capital gains tax in the Other taxes section for more information*.

Dividend income
Dividends received from other Cyprus tax resident companies are exempt from all taxes, subject to certain anti-avoidance provisions.

Cyprus

Dividends earned from foreign investments are exempt from CIT in Cyprus, with the exception of dividends that are deductible for tax purposes for the paying company. Such deductible foreign dividends are subject to CIT and are exempt from SDC. Other (i.e. non-deductible) foreign dividend income is also exempt (participation exemption) from SDC unless:

- more than 50% of the foreign paying company's activities directly or indirectly result in investment income, and
- the foreign tax is significantly lower than the tax burden in Cyprus (i.e. an effective tax rate of less than 6.25%).

In those cases where the above-mentioned Cyprus participation exemption on foreign dividend income is not available, any foreign withholding tax (WHT) imposition on dividends paid to the Cyprus company will be credited against the Cyprus flat SDC rate of 17% on such dividends, without the need for a DTT to be in place with the paying jurisdiction. Furthermore, in some cases, a credit for underlying foreign tax (i.e. foreign tax on the paying company's profits) is also available.

Stock dividends
A Cyprus corporation can distribute tax-free dividends of common stock (bonus shares) proportionately to all common stock shareholders.

Interest income
See Special Defence Contribution (SDC) in the Taxes on corporate income section for a description of the tax treatment of interest income.

Royalty income
Royalty income is taxed under CIT, after deducting allowable expenses, at the rate of 12.5%.

Cyprus has recently introduced an intellectual property (IP) box fully aligned with the provisions of the OECD BEPS Action 5 report (modified) nexus approach as well as a grandfathered IP box (*see Intellectual property (IP) box in the Tax credits and incentives section for more information*).

Rental income
See Special Defence Contribution (SDC) in the Taxes on corporate income section for a description of the tax treatment of rental income.

Foreign currency exchange (forex) differences
Forex differences are tax neutral for CIT purposes (i.e. forex gains are not taxable and forex losses are not deductible). However, forex differences arising from trading in foreign currencies (and related derivatives) are subject to CIT.

Foreign income
Resident corporations are subject to tax on their worldwide income. However, foreign PE income (*see below*), as well as most dividend and capital gains income from abroad (*see Dividend income above*), may be exempt from taxation in Cyprus.

Profits from a PE abroad are exempt from CIT, subject to anti-avoidance rules set out below.

The PE exemption is applicable, unless the below anti-avoidance rules apply:

- more than 50% of the foreign PE's activities directly or indirectly result in investment income, and
- the foreign tax on the income of the foreign PE is significantly lower than the tax burden in Cyprus (i.e. an effective tax rate of less than 6.25%).

Losses from an exempt foreign PE are eligible to be offset with other profits of the Cyprus company in Cyprus (and via group relief, *see the Group taxation section*). In such a case, future profits of an exempt PE abroad become taxable up to the amount of losses previously allowed.

With effect from 1 July 2016, taxpayers may irrevocably elect to subject to CIT foreign PE profits (and utilise foreign PE losses).

Where foreign income is taxed in Cyprus, double taxation is avoided through granting tax credits for the foreign taxes, without the need for a DTT to be in place with the foreign jurisdiction. Transitional rules apply in certain cases on the granting of foreign tax credits where a foreign PE was previously exempt from taxation and subsequently a taxpayer elects to be subject to CIT on foreign PE profits.

Deductions

Generally, expenditure wholly and exclusively incurred for the generation of taxable income is deductible against the company's taxable income. Such expenditure should be supported by invoices and relevant receipts or other supporting documents.

Depreciation and amortisation

For tangible assets, depreciation is computed on a straight-line basis at set rates that vary, depending on the type of asset. On the sale of such depreciated property, tax depreciation may be recaptured and taxed as ordinary income, depending upon the level of sale proceeds.

Property and equipment acquired during the tax years 2012 through 2016 are eligible for accelerated tax depreciation at the rate of 20% *per annum* (excluding assets that are already eligible for a higher annual rate of tax depreciation).

Industrial and hotel buildings acquired during the tax years 2012 through 2016 are eligible for accelerated tax depreciation at the rate of 7% *per annum*.

Land does not attract tax depreciation.

Tax amortisation on any expenditure of a capital nature for the acquisition or development of IP is introduced with effect from 1 July 2016 and is allocated over the lifetime of the IP, in accordance with accepted accounting principles, with a maximum period of 20 years (excluding goodwill and IPs falling under the transitional rules of the old Cyprus IP box, which continue with that box's tax amortisation). A taxpayer may elect not to claim all or part of the available tax amortisation for a particular tax year.

Goodwill
Any amounts paid for the acquisition of trading goodwill should be deductible upon the subsequent sale of such trading goodwill.

Start-up expenses
Start-up expenses, such as formation expenses, are generally not tax deductible in the computation of the company's taxable income.

Research and development (R&D) expenses
Any expenditure on scientific research of a capital nature for which no tax depreciation is granted is deductible from taxable income and spread equally over the year in which it has been incurred and the five subsequent years. Scientific research expenditure of a revenue nature is deducted in the year incurred.

See Intellectual property (IP) regime in the Tax credits and incentives section as well.

Interest expenses
Generally, interest expenses incurred by the company for the generation of taxable income should be deductible in the company's tax computation.

Interest financing assets that generate tax-exempt income is not deductible in the first seven years of ownership of such assets. Interest expense associated with such assets held beyond seven years becomes tax deductible from thereon.

Interest expense financing the acquisition of 100% shareholdings in subsidiaries that are directly or indirectly trading is deductible, provided that the acquisition was made on or after 1 January 2012.

See the Significant developments section in relation to a proposed EU Anti-Tax Avoidance Directive (ATAD).

Bad debts
Bad debts of any business should generally be deductible, provided they are write-offs/provisions against specific trading receivables and the taxpayer can evidently prove that sufficient steps were taken beforehand to recover them.

Charitable contributions
Charitable donations or contributions made for educational, cultural, or other charitable purposes to the Republic of Cyprus (including local authorities), or to approved charitable institutions, are wholly deductible, provided that these expenses are supported with relevant vouchers.

Fines and penalties
Fines and penalties are generally not deductible in the computation of the taxable income of the company.

Taxes
Taxes that are deducted in computing profits for CIT purposes include VAT not recovered and the employer's share of contributions to the social insurance and other employee-related funds, as well as the Special Contribution (note that the Special Contribution is abolished from 1 January 2017).

Net operating losses

Tax losses can be carried forward (from the end of the tax year in which the loss occurred) and set-off against taxable profits of the next five years. Carryback of tax losses is not permitted. Under certain conditions, they may also be eligible for group relief (*see the Group taxation section*).

Payments to foreign affiliates

A Cyprus corporation can claim a deduction for royalties and interest charges paid to foreign affiliates, and a reasonable amount of head office expenses of an overseas company, provided such expenditures can be justified as having been incurred in the production of the income and subject to the rules generally applicable for the deduction of such expenditure.

In the case of insurance companies, the amount of head office expenses should not exceed 3% of the net premiums in Cyprus for the general insurance business and 2% for the life insurance business.

Group taxation

Group relief provisions allow, subject to certain conditions, companies of the same group to transfer tax losses from loss-making group companies to profitable group companies. A group includes a Cyprus company directly or indirectly holding at least a 75% interest in another Cyprus company or two or more Cyprus companies directly or indirectly held at least 75% by a third company.

The interposition of a non-Cyprus tax resident company(ies) will not affect the eligibility for group relief as long as such company(ies) is tax resident in either another EU member state or a country with which Cyprus has in place a DTT or an exchange of information agreement (which may be bilateral or multilateral).

Further, a Cyprus tax resident company may also claim the tax losses of a group company that is tax resident in another EU member state, provided such EU company firstly exhausts all possibilities available to utilise its losses in its EU member state of residence or in the EU member state of any intermediary EU holding company.

Transfer pricing

Transactions between related parties should be carried out at pure commercial terms (i.e. at arm's length). If not carried out at pure commercial terms, the CTA has the powers within the tax legislation to adjust results for tax purposes to those that would apply at pure commercial terms. Therefore, it is strongly recommended that the taxpayer be able to support the arm's-length nature of transactions.

The CTA has communicated that the transfer of shares of companies within a group at a value different than the market value should not have any adverse Cyprus tax implications in certain circumstances.

The CTA announced in February 2017, with the aim of aligning Cyprus with the latest developments of the G20/OECD BEPS Actions 8-10 transfer pricing guidance, that, as of 1 July 2017, related-party financing transactions will have to be supported by transfer pricing studies based on the relevant OECD standards. Further application guidance is expected from the CTA.

Thin capitalisation
There are no thin capitalisation provisions in the Cyprus tax law.

See the Significant developments section in relation to a proposed EU Anti-Tax Avoidance Directive (ATAD).

Controlled foreign companies (CFCs)
There are no CFC provisions in the Cyprus tax law.

See the Significant developments section in relation to a proposed EU Anti-Tax Avoidance Directive (ATAD).

Tax credits and incentives

Foreign tax
See Foreign income in the Income determination section for a description of the foreign tax credit regime.

The Cyprus holding company
Exemptions for:

- dividends received from abroad (*see Dividend income in the Income determination section*),
- foreign PE trading profits (*see Foreign income in the Income determination section*), and
- profits from transactions in titles (*see Capital gains in the Income determination section*),

together with the fact that Cyprus does not withhold taxes on payments abroad of dividend, interest, and royalty (unless right is used in Cyprus) and its extensive DTT network, as well as full adoption and access to all EU Directives, make Cyprus an ideal 'holding company' EU jurisdiction.

The Cyprus financing company
The low CIT rate of 12.5% imposed on interest incomes, coupled with acceptable thin spreads under certain conditions and where applicable, make Cyprus a very competitive 'financing company' EU jurisdiction.

Notional interest deduction (NID) on corporate equity
Equity introduced to a Cyprus tax resident company post 31 December 2014 ('new equity') in the form of paid-up share capital or share premium may be eligible for an annual NID for tax purposes, calculated as new equity x NID interest rate. New equity may be contributed in cash or in assets in kind. The NID is also applicable to Cyprus PEs of non-Cyprus tax resident companies.

NID calculated on new equity is deductible for tax purposes in a similar manner as for actual interest expense (*see the Deductions section for more information*); the NID cannot, however, exceed 80% of the taxable profit generated by the activities financed by the new equity (as calculated prior to the NID). Any NID deduction that is restricted due to the cap of 80% is not available to be utilised by way of carryforward to future tax years or otherwise. A taxpayer may elect not to claim all or part of the available NID for a particular tax year.

The NID interest rate used in the calculation is the yield on ten-year government bonds (as at 31 December of the prior tax year) of the country where the funds are employed in the business of the company plus a 3% premium. This is subject to a minimum amount, which is the yield of the ten-year Cyprus government bond (as at the same date) plus a 3% premium. Accordingly, the minimum NID interest rate is 6.489% for 2017 (6.685% for 2016).

In order to tackle possible abuse of the NID, the NID provisions include specific anti-avoidance provisions and a general anti-avoidance provision for non-commercial transactions.

Intellectual property (IP) box

The CIT IP box provisions have been aligned with the conclusions of the OECD BEPS Action 5 report on the (modified) nexus approach. The new Cyprus IP box applies with retrospective effect from 1 July 2016, and the initial ('old') Cyprus IP box was closed on 30 June 2016 and is subject to transitional/grandfathering rules.

New Cyprus IP box

The new Cyprus IP box allows for a deductible notional expense calculated as 80% x qualifying profits from qualifying IP.

For the purposes of the 80% deduction, qualifying IP may be legally or economically owned and comprise:

- patents
- copyrighted software
- utility models, IP assets that grant protection to plants and genetic material, orphan drug designations, extensions of patent protection, and
- other IP that are non-obvious, useful, and novel, that are certified as such by a designated authority, and where the taxpayer satisfies size criteria (i.e. annual IP related revenue does not exceed EUR 7.5 million for the taxpayer, and group total annual revenue does not exceed EUR 50 million, using a five-year average for both calculations).

Marketing-related IP, such as trademarks, do not qualify.

Qualifying profits include, *inter alia*:

- royalties or other amounts in relation to the use of qualifying IP
- amounts for the grant of a licence for the exploitation of qualifying IP
- amounts derived from insurance/compensation in relation to the qualifying IP
- trading income from the sale of qualifying IP (note that capital gains on IP are excluded; as such, capital gains are not subject to taxation in Cyprus), and
- IP income embedded in the sale of products, services, or the use of processes directly related with qualifying IP assets.

In calculating the amount of the qualifying IP profits entitled to the 80% deduction, a fraction is applied to the above IP profits based on R&D activity of the taxpayer; the higher the amount of R&D undertaken by the taxpayer itself (or via a taxable foreign PE or via unrelated third party outsourcing), the higher the amount of R&D fraction (modified nexus fraction).

Old Cyprus IP box
The old Cyprus IP box closed from 30 June 2016. Under transitional/grandfathering rules, taxpayers with IPs that were already included in the old Cyprus IP box as of 30 June 2016 continue to apply the old Cyprus IP box provisions for a further five years (i.e. until 30 June 2021) for that IP.

A much shorter transitional/grandfathering period to 31 December 2016 is applied in the case of IPs acquired directly or indirectly from related parties during the period 2 January 2016 to 30 June 2016, unless at the time of acquisition such IPs were already benefiting from an IP box (including the Cyprus IP box) or were not acquired with the main purpose (or one of the main purposes) being tax avoidance.

Embedded income and income earned from IPs economically but not legally owned will only qualify in the relevant transitional/grandfathering period if earned from those type of IPs that would qualify for the new Cyprus IP box (i.e. patents, copyrighted software, etc.).

Any expenditure of a capital nature incurred for the acquisition or development of such IPs may be claimed as a tax deduction in the year in which it was incurred and the immediate four following years on a straight-line basis.

In line with BEPS Action 5 recommendations, it is expected that Cyprus will spontaneously exchange information (under existing international agreements) on taxpayers who benefit from the transitional/grandfathering arrangements of the old IP box if the IP entered the old IP box in the period 7 February 2015 to 30 June 2016 for the particular taxpayer.

Exemption from CGT on acquired Cyprus immovable property
Land and land with buildings acquired at market value (excluding exchanges and donations) from unrelated parties in the period 16 July 2015 to 31 December 2016 is exempted from CGT upon a future disposal.

The Cyprus Alternative Investment Funds (AIFs) and undertakings for collective investment in transferable securities (UCITSs)
The sole objective of AIFs and UCITSs is the collective investment of funds raised from a number of investors/unitholders for the benefit of those investors/unitholders.

AIFs and UCITSs are liable to tax or not depending on their legal status.

Under certain conditions, management fees charged for the management of AIFs and UCITSs funds can be exempt from VAT.

AIFs
AIFs can take the following types and legal forms:

AIF types
- AIFs with a limited number of investors (75).
- AIFs with no limitation as to the number of investors.

AIF legal forms
AIFs with a limited number of investors:

- Variable capital investment company (VCIC).

- Fixed capital investment company (FCIC).
- Limited partnership (LP).

AIFs with no limitation as to the number of investors:

- VCIC.
- FCIC.
- LP.
- Common fund (CF).

UCITSs
UCITSs can take the following legal forms:

- VCIC.
- CF.

Withholding taxes

Cyprus does not levy a WHT on dividends, interests, and royalties paid to non-residents of Cyprus except in the case of royalties earned on rights used within Cyprus, which are subject to WHT of 10% (5% in the case of cinematograph films). Such Cyprus WHT on royalties for rights used within Cyprus may be reduced or eliminated by DTTs entered into by Cyprus or by the EU Interest and Royalty Directive as transposed into the Cyprus tax legislation.

WHT on other types of income

Cyprus levies a 10% WHT on technical services performed by non-residents in Cyprus. No such WHT is levied if such services are performed via a PE in Cyprus or between 'associated' companies as defined by the EU Interest and Royalty Directive as enacted into the Cyprus tax legislation.

Cyprus also levies a 10% WHT on the gross income/receipts derived from the exercise in Cyprus by a non-resident individual of any profession or vocation and the remuneration of non-resident public entertainers (e.g. theatrical, musical, football clubs, other athletic missions).

Further, a 5% WHT is levied on gross income derived from within Cyprus by non-residents with no local PE for services in regards to the exploration, extraction, or exploitation of the continental shelf, as well as the establishment and use of pipelines and other installations on the ground, on the seabed, and on the surface of the sea.

WHT on dividend, interest, and royalties table

In the table below, we illustrate the applicable Cyprus WHT rates outbound for dividend, interest, and royalty payments.

	WHT (%)			
Recipient	Dividends (1)	Interest (1)	Royalties rights not used within Cyprus	Royalties rights used within Cyprus
Non-treaty countries	0	0	0	5/10 (2)
Treaty countries:				
Armenia	0	0	0	5

	WHT (%)			
Recipient	**Dividends (1)**	**Interest (1)**	**Royalties rights not used within Cyprus**	**Royalties rights used within Cyprus**
Austria	0	0	0	0
Bahrain (12)	0	0	0	0
Belarus	0	0	0	5
Belgium	0	0	0	0
Bosnia (7)	0	0	0	5/10 (5)
Bulgaria	0	0	0	5/10 (5)
Canada	0	0	0	0/5/10 (4, 5)
China, People's Republic of	0	0	0	5/10 (5)
Czech Republic	0	0	0	0/10 (11)
Denmark	0	0	0	0
Egypt	0	0	0	5/10 (5)
Estonia	0	0	0	0
Finland	0	0	0	0
France	0	0	0	0/5 (3)
Georgia (13)	0	0	0	0
Germany	0	0	0	0
Greece	0	0	0	0/5 (5)
Guernsey	0	0	0	0
Hungary	0	0	0	0
Iceland	0	0	0	5
India	0	0	0	5/10 (5)
Iran (16)	0	0	0	5/6 (5)
Ireland, Republic of	0	0	0	0/5 (5)
Italy	0	0	0	0
Jersey (17)	0	0	0	0
Kuwait	0	0	0	5
Latvia (14)	0	0	0	0/5 (15)
Lebanon	0	0	0	0
Lithuania	0	0	0	5
Malta	0	0	0	5/10 (5)
Mauritius	0	0	0	0
Moldova	0	0	0	5
Montenegro (7)	0	0	0	5/10 (5)
Norway	0	0	0	0
Poland	0	0	0	5
Portugal	0	0	0	5/10 (5)
Qatar	0	0	0	5
Romania	0	0	0	0/5 (10)
Russia	0	0	0	0
San Marino	0	0	0	0
Serbia (7)	0	0	0	5/10 (5)
Seychelles	0	0	0	5
Singapore	0	0	0	5/10 (5)
Slovak Republic (9)	0	0	0	0/5 (10)
Slovenia	0	0	0	5
South Africa	0	0	0	0
Spain	0	0	0	0
Sweden	0	0	0	0

Recipient	WHT (%) Dividends (1)	Interest (1)	Royalties rights not used within Cyprus	Royalties rights used within Cyprus
Switzerland	0	0	0	0
Syria	0	0	0	5/10 (5)
Thailand	0	0	0	5/10 (6)
Ukraine	0	0	0	5/10 (8)
United Arab Emirates	0	0	0	0
United Kingdom	0	0	0	0/5 (3)
United States	0	0	0	0

Notes

1. Under Cyprus legislation, there is no WHT on dividends and interest paid to non-residents of Cyprus. Further, there is also no WHT on royalties paid to non-residents of Cyprus for rights not used within Cyprus.
2. Royalties earned on rights used within Cyprus are subject to WHT of 10% (except royalties relating to cinematographic films, where the WHT rate is 5%).
3. A WHT rate of 5% is applicable on cinematographic films, including films and videotape for television.
4. 0% on literary, dramatic, musical, or artistic work (excluding motion picture films and works on film or videotape for use in connection with television).
5. The WHT rate of 5% is applicable on cinematographic film royalties.
6. 5% WHT applies for any copyright of literary, dramatic, musical, artistic, or scientific work.
7. Bosnia, Montenegro, and Serbia apply the Yugoslavia/Cyprus treaty.
8. A 5% WHT will be levied on payment of royalties in respect of any copyright of scientific work, any patent, trademark, secret formula, process, or information concerning industrial, commercial, or scientific experience and cinematographic films.
9. The Cyprus-Czechoslovakia treaty applies with the Slovak Republic.
10. 5% rate applies for patents, trademarks, designs or models, plans, secret formulas, or processes, or any industrial, commercial, or scientific equipment, or for information concerning industrial, commercial, or scientific equipment, or for information concerning industrial, commercial, or scientific experience.
11. 10% for patent, trademark, design, or model, plan, secret formula or process, computer software or industrial, commercial, or scientific equipment, or for information concerning industrial commercial, or scientific experience.
12. The treaty with Bahrain is effective as of 1 January 2017.
13. The treaty with Georgia is effective as of 1 January 2017.
14. The treaty with Latvia is effective as of 1 January 2017.
15. 0% rate applies if the payer is a company that is a resident in Cyprus and the beneficial owner of the income is a company (other than partnership) that is a resident in Latvia. 5% rate applies for all other cases.
16. The treaty with Iran is effective as of 1 January 2018 for Cyprus.
17. The treaty with Jersey is effective as of 1 January 2018.

Tax administration

Taxable period
In Cyprus, the tax year is the calendar year.

Tax returns
Business organisations are required to prepare audited accounts based on generally accepted auditing standards. Tax returns are completed based on these accounts on a calendar-year basis.

Electronic submission
Companies should be registered online and submit their annual tax returns electronically. In this respect, the submission deadline of the 2017 corporate tax return is 31 March 2019.

Payment of tax

Corporate entities must pay provisional tax on the current year's income. Such provisional tax payment is made in two equal instalments on 31 July and 31 December of the tax year. A final balancing payment must be made on or before 1 August of the following year on a self-assessment basis to bring the total payments of tax to the total actually due according to the tax return.

Tax audit process

The Cyprus tax process is one of self-assessment. Following the filing of a tax return, the CTA has six years from the end of the relevant tax year to raise an enquiry (12 years in cases of established fraud or wilful default). These can range from simple information requests to detailed technical challenges over treatments adopted in the tax return.

Any enquires are often conducted between the taxpayer and the CTA by exchange of information via correspondence and meetings. Where agreement cannot be reached, litigation may be necessary.

A taxpayer may also proactively request that the CTA review the company's 'open' tax years if the taxpayer requires a tax clearance certificate (e.g. upon commencement of voluntary liquidation).

For companies in a tax-loss position per the self-assessment return, the CTA is not restricted to the above-mentioned six-year (or 12-year) period; however, outside of this period, any adjustments may only reduce or nullify a loss.

Topics of focus for tax authorities

Tax authorities generally focus on the tax statements being computed based on generally accepted auditing standards prepared and audited financial statements and on the principles of taxation as per the tax laws and their issued circulars.

Other issues

Business combinations

Transfers of assets and liabilities between companies can occur without tax implications within the framework of a tax-exempt qualified reorganisation. Reorganisations include mergers, demergers, partial divisions, transfers of divisions of activities, exchanges of shares, and transfers of registered office of a European company (SE) or a European cooperative company (SCE).

Intergovernmental agreements (IGAs) and cooperation

Alongside DTTs, Cyprus is a signatory to the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters and is an early adopter of the CRS on automatic exchange of information. Cyprus has also signed a Model 1 IGA with the United States for the US FATCA initiative on automatic exchange of information.

Cyprus is a member of the *ad-hoc* group for the multilateral instrument implementing BEPS tax treaty measures. In November 2016, the group adopted the BEPS Action 15 'Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion', which is expected to be signed on 7 June 2017.

On 1 November 2016, Cyprus signed the Multilateral Competent Authority Agreement, which implements the G20/OECD BEPS Action 13 CbC reporting requirements.

Cyprus, as a member state of the European Union, incorporates all EU Directives in its domestic Laws.

Cyprus is in cooperation with the European Commission regarding the EC's recent focus into fiscal state aid and tax rulings. To date, the European Commission has not raised any specific investigations regarding Cyprus.

Czech Republic

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Significant developments

Changes are to be made to the value-added tax (VAT) legislation. As of 1 July 2017, the local reverse-charge mechanism shall be extended to transfers of real estate (immovable property) in auctions, provision of employees for construction works, and transfers of goods in relation to guarantees.

Further, the VAT legislation amendment shall contain new provisions that deal with losses and related correction of input VAT deduction, VAT treatment of vouchers, and VAT registration of members of a VAT group in relation to transformations. The amendment shall also cancel special provisions for VAT treatment of association of VAT payers.

A new amendment to income tax law is expected to become effective in 2017. The amendment should, *inter alia*, introduce deductibility of tax loss from sale of shares in trading portfolio for Czech tax non-residents.

Due to European Union (EU) activities, the Czech Republic is obligated to incorporate the provisions of the EU Anti-Tax Avoidance Directives with effect from 2019. Exit charge, as an exception, may be introduced with effect from 2020.

Taxes on corporate income

Corporate income tax (CIT) applies to the profits generated by all companies, including branches of foreign companies. Corporate partners in general partnerships (i.e. unlimited) and corporate general partners (i.e. unlimited) in a limited partnership are subject to CIT on their share of the profits in the partnership.

Czech resident companies are required to pay CIT on income derived from worldwide sources. Non-resident companies are required to pay CIT on income sourced in the Czech Republic.

The 19% CIT rate applies to all business profits, including capital gains from the sale of shares (if not exempt under the participation exemption regime).

There is a special tax rate of 15% levied on dividend income of Czech tax resident entities from non-resident entities (unless subject to participation exemption).

A 5% CIT rate applies to income of defined investments, and a 0% CIT rate applies to pension funds.

Local income taxes
There are no regional or local income taxes in the Czech Republic.

Corporate residence

A company is resident in the Czech Republic for CIT purposes if it is registered in, or has a place of management located in, the Czech Republic.

Permanent establishment (PE)
Under domestic law, the creation of a PE of a foreign tax resident in the Czech Republic is triggered by a fixed place available for carrying out business activities, long-term provision of services (for more than six months in any 12 consecutive months), or presence of a dependent agent, unless an applicable double taxation treaty (DTT) stipulates otherwise. For interpretation purposes, the Organisation for Economic Co-operation and Development (OECD) Model Tax Commentary is followed. The Czech Republic tends to have a service PE clause included in its DTTs.

Other taxes

Value-added tax (VAT)
VAT is generally charged at 21% on supplies of goods and services within the Czech Republic. Certain supplies (such as groceries and accommodation, restaurant, and transport services) are taxed at a rate of 15%, and a second reduced rate of 10% is applicable for specified categories of goods (some medicaments, books, and baby food).

Exports are generally exempt from VAT with a credit. Some supplies are exempt without a credit, including the lease of real estate (with certain exceptions), financial and insurance services, radio and TV broadcasting, education, health, and welfare.

VAT registration
Companies seated in the Czech Republic whose turnover exceeds 1 million Czech korun (CZK) in any consecutive 12-month period must register as a VAT payer with the tax authorities.

For non-resident companies, there is no registration threshold, but they must register as a VAT payer if they:

- make any supply subject to Czech VAT (unless the liability to declare and pay VAT is shifted to the recipient of the supply), or
- supply goods from the Czech Republic to another EU member state.

A company can register as a VAT payer voluntarily even if its turnover does not reach the threshold if it renders or is going to render taxable supplies or VAT exempt supplies with credit in the Czech Republic.

Under certain circumstances, companies not registered for VAT to whom VAT liability arises due to acquired goods or services become persons identified for VAT. A person identified for VAT only pays VAT from received supplies without being entitled to recover related input VAT in its VAT return.

VAT returns and payments
The VAT return must be filed and tax paid within 25 days after the end of the taxable period. The taxable period is a calendar month (or calendar quarter under certain circumstances). All VAT payers registered in the Czech Republic have to submit a report, a so-called 'control statement'. In the control statement, the VAT payers have to give detailed evidence of data from invoices that have been issued and received, so that the Czech Financial Administration can compare and check transactions with business partners. The control statement does not substitute for a VAT return. Legal entities have to file the report every calendar month, and the deadline for submission of the control statement is no later than 25 days after the taxable period. Companies have to submit all VAT reports to the Czech tax authorities electronically.

Customs duties
The Czech Republic is an EU member state; consequently, the EU customs code applies.

Excise taxes
Excise tax is charged on the production or import of certain products, such as tobacco and tobacco products, wines, semi-products, spirits and pure ethanol, beer, fuel, and mineral oils.

Energy taxes
Energy tax is charged on natural gas and certain other gases, solid fuels, and on electricity sold to final customers in the Czech Republic.

Real estate tax
Real estate tax is payable annually by the owner of land or buildings. The amount of the tax is dependent on area, location, and usage of the land or buildings. Paved areas used for business purposes (such as concrete areas in logistics centres) are taxable, with taxpayers obligated to self-assess the tax. However, some areas (e.g. publicly accessible parking lands in shopping malls) are not taxable.

Real estate transfer tax
The real estate transfer tax rate is 4% and applies to the greater of the transaction price or the officially appraised value of the real estate transferred. The taxpayer is the acquirer of the real estate.

Stamp duties
There are no stamp duties in the Czech Republic. Certain business operations in which a notary has to be involved by operation of law are subject to notarial fee.

Payroll taxes
Employers (including economic employers and certain types of PEs) in the Czech Republic are obligated to submit monthly withholdings and an annual reconciliation in respect of their employees. The withholdings include personal income tax (PIT) plus solidarity surcharge and statutory social security and health insurance.

Social security and health insurance contributions
Employers contribute 34% of the employee's gross salary to the state health and social security funds. A cap on only the social security premium is available.

Road tax
Road tax is payable annually with respect to vehicles (including private vehicles) used for commercial purposes. Rates vary depending on engine capacity and vehicle size.

Branch income

A foreign company can trade in the Czech Republic through a Czech branch. A branch usually creates a Czech PE of the foreign entity for CIT purposes (depending on the character of the activities carried out through the branch). The basis of taxation is the same as for corporations (i.e. tax base is calculated as taxable revenues less tax-deductible costs).

A branch is liable for tax on its attributable profits at the standard CIT rate.

Income determination

The starting point for the calculation of the CIT base is the accounting result as per the Czech accounting standards. The tax non-deductible costs are then added and non-taxable revenues deducted from the accounting result.

Inventory valuation

Stock (i.e. inventory) is valued at cost. Czech legislation specifically provides for the use of the arithmetical average cost and first in first out (FIFO) methods to value stock. Last in first out (LIFO) and the replacement-cost methods (except for livestock) may not be used.

Capital gains

No separate capital gains tax is levied in the Czech Republic. Capital gains are included in the CIT base and taxed as ordinary income in the year in which they arise.

Capital gains from the sale of shares may be exempt from Czech taxation if all of the following conditions are met:

- The Czech or EU parent holds at least 10% of the shares of the subsidiary for at least 12 months.
- The subsidiary is a tax resident of the Czech Republic or another EU member state.
- Both the parent and the subsidiary have one of the legal forms listed in the Annex to the EU Parent/Subsidiary Directive.
- The parent or the subsidiary are not exempt from corporate taxation or may not choose to be exempt, and the tax rate applicable to their income is greater than 0%.

If the subsidiary is not a tax resident of the Czech Republic or another EU member state, the exemption may be applied, provided that the subsidiary is a tax resident of a country where there is a DTT in place with the Czech Republic, it has a legal form similar to a limited liability company or a joint stock company, it is subject to CIT at the nominal rate of at least 12% in a year when dividends are paid, and the time test of 10% for at least 12 calendar months is met. The time test may be met both prospectively and retrospectively.

Dividend income

Dividends received by Czech tax resident corporations from non-resident entities are subject to a special tax rate of 15%, unless exempt under the participation exemption regime *described below*.

Dividends paid by Czech tax resident corporations to Czech resident entities are subject to 15% final withholding tax (WHT), unless exempt under the participation exemption regime.

Dividends paid by Czech tax resident corporations to Czech non-resident entities are subject to 15% final WHT, unless exempt under the participation exemption regime or decreased under the relevant DTT. Dividends paid to entities that are residents of countries outside of the European Union and European Economic Area (EEA), and countries with which the Czech Republic does not have an enforceable DTT or tax information exchange agreement (TIEA), are subject to 35% WHT.

Participation exemption regime

Dividend income may be exempt from Czech taxation (i.e. WHT when a Czech company is paying dividends, CIT when a Czech company is receiving dividends) if all of the following conditions are met:

- The Czech or EU parent holds at least 10% of the shares of the subsidiary for at least 12 months.
- The subsidiary is a tax resident of the Czech Republic or another EU member state.
- Both the parent and the subsidiary have one of the legal forms listed in the Annex to the EU Parent/Subsidiary Directive.
- The parent or the subsidiary are not exempt from corporate taxation or may not choose to be exempt, and the tax rate applicable to their income is greater than 0%.

Regarding dividends paid, provided that the conditions above are met, the exemption also applies when dividends are paid by a Czech subsidiary to a parent in Switzerland, Norway, or Iceland.

Regarding dividends received, if the subsidiary is not a tax resident of the Czech Republic or another EU member state, exemption on dividends received by a Czech resident may be applied, provided that the subsidiary is a tax resident of a country where a DTT with the Czech Republic is in place, it has a legal form similar to a limited liability company or a joint stock company, it is subject to CIT at the nominal rate of at least 12% in a year when dividends are paid, and the time test of at least 10% for at least 12 consecutive calendar months is met.

Interest and royalty income

Interest and royalties received by Czech tax residents are included in the standard tax base subject to the 19% CIT rate.

Czech-source interest and royalty income received by Czech tax non-residents is subject to 15% WHT, unless subject to domestic exemption or a DTT stipulates otherwise. Interest and royalties paid by Czech tax residents to entities that are residents of countries outside of the European Union and European Economic Area, and countries with which the Czech Republic does not have an enforceable DTT or TIEA, are subject to 35% WHT.

Under domestic law, interest and/or royalty income is exempt if it is paid by a Czech resident to an EU resident recipient who is a beneficial owner of the interest and/or royalty income, provided that for at least 24 months before the payment:

- the payer is in at least a 25% parent-subsidiary or at least a 25% direct sister relation to the recipient of the income and

- the interest and/or royalty is not attributable to a Czech PE of the recipient.

The exemption is applicable subject to approval by the tax authorities.

Exchange gains and losses

Realised foreign exchange gains and losses are accounted for in profit and loss accounts and represent taxable revenues or tax-deductible costs, respectively. The same treatment applies to unrealised foreign exchange differences; however, there are court cases dated 2012 concluding that unrealised foreign exchange income is not taxable as it is only virtual income rather than a real increase of the taxpayer's property.

The default functional currency is the Czech koruna. A Czech company cannot opt for any foreign currency to be the functional currency for tax purposes.

Foreign income

Companies resident in the Czech Republic are taxed on their worldwide income. A Czech corporation is taxed on its foreign branch income when earned (accrual basis) and on foreign dividends when approved by general meeting.

The participation exemption regime *described above* may be applicable.

There is no controlled foreign company (CFC) legislation in the Czech Republic. However, under the EU Anti-Tax Avoidance Directive, the Czech Republic is obligated to implement CFC legislation by the beginning of 2019.

Deductions

Depreciation and amortisation

Methods of tax depreciation are prescribed by tax legislation and are independent from depreciation methods for accounting purposes. Tax depreciation is calculated on an asset-by-asset basis, applying the straight-line or accelerated basis methods of depreciation at statutory rates. Under both methods, depreciation expense in the first year is lower than for subsequent years. The company may choose which method to apply to a new asset, but once the choice is made, it cannot be altered. All assets are classified into six groups, which determine the number of years over which the asset will be written off, as follows:

Depreciation group	Assets	Minimum depreciation period (years)
1	Office machines and computers, tools	3
2	Engines, motor vehicles, machines, audio-visual equipment	5
3	Elevators, escalators, turbines, air conditioning equipment, electric motors, and generators	10
4	Buildings made of wood and plastic, long-distance lines, and pipes	20
5	Buildings (except for those listed in groups 4 and 6), roads, bridges, tunnels	30
6	Administrative buildings, department stores, historical buildings, and hotels	50

'Tangible assets' (i.e. assets that are subject to tax depreciation) are defined by tax legislation generally as assets with economic useful lives of greater than one year and acquisition prices higher than CZK 40,000. Certain assets, such as buildings, are always considered tangible assets.

Taxpayers are generally not obligated to depreciate a tangible asset for tax purposes every year. Depreciation may be interrupted in any year and continued in a later year without a loss of depreciation potential.

Tangible assets are generally depreciated by the taxpayer with ownership title. Certain exceptions apply, for instance, technical appreciation of a rented asset carried out by a tenant may be depreciated by that tenant, subject to certain conditions.

Depreciation can start only once the assets are put into use and comply with the requirements of specific laws.

Certain assets have special depreciation methods (e.g. moulds are depreciated based on expected life or number of products).

The value to be used as the basis for tax depreciation depends on how the asset is acquired, for example:

- Acquisition cost (construction and equipment costs, architect fees, legal fees, notary's fees, etc.) if the asset is acquired for consideration.
- Internal costs incurred if the asset is acquired or produced internally.

'Intangible assets' are defined by tax legislation as software, valuable rights, intangible results of research and development (R&D), and other assets regarded as assets for accounting purposes, provided that they:

- were acquired from a third party or developed internally for the purpose of trading with them
- have an acquisition price of more than CZK 60,000, and
- have a useful life of greater than one year.

Intangible assets are amortised for tax purposes based on the number of years that the taxpayer has a licence for the assets if the licence is for a limited number of years. Otherwise, amortisation for tax purposes will vary depending on the asset (e.g. software is amortised over 18 months, results of R&D is amortised over 36 months).

Goodwill
Goodwill arisen as a result of the purchase of a business (or its part) as a going concern may be evenly amortised for 180 months. Any other goodwill (e.g. arisen within a merger) is disregarded for tax purposes.

Start-up expenses
Start-up expenses incurred in 2016 and after are directly deductible expenses and are no longer recognised as intangible assets.

Interest expenses
Interest as accrued and duly accounted for under Czech generally accepted accounting principles (GAAP) is generally tax deductible, with the following exceptions:

- Interest disallowed based on the thin capitalisation restriction (*please refer to Thin capitalisation in the Group taxation section*).

- Interest disallowed for its relation to income that is tax exempt or taxed outside the standard tax base.
- Interest disallowed due to its relation to holding a subsidiary.
- Profit-dependent interest.

Under the EU Anti-Tax Avoidance Directive, the Czech Republic has an obligation to implement, by the end of 2018, a new interest stripping rule limiting tax deductibility of net interest expenses (calculated as the difference between interest expenses and interest revenue) to 30% of earnings before interest, tax, depreciation, and amortization (EBITDA) of a company. The interest stripping rule will apply to interest expenses arising in connection with debt instruments from related and also from unrelated parties.

Bad debt
Doubtful or bad receivables that have not yet become statute-barred may be provisioned for under special rules. Generally, provisions may be created for trade receivables overdue for more than 18 months. Provisions of 100% may be created for debts overdue for 30 months. For receivables, banks, insurance companies, and defined financial institutions have their specific system for provisioning.

Charitable contributions
Certain charitable donations are deductible. The minimum deductible donation is CZK 2,000 and the maximum deductible donation is 10% of the tax base.

Travel expenses and meal allowances
Payments for travel expenses and meal allowances that are made to employees may generally be tax-deductible.

Fines and penalties
Contractual fines and penalties are generally tax deductible on a cash basis. Non-contractual fines are not tax deductible.

Taxes
Road tax, real estate tax, and most other taxes, with the exception of income taxes, are deductible, as are social security contributions paid by an employer with respect to employees.

Other significant items
Fees paid to members of other statutory bodies of companies (i.e. board of directors of joint stock companies and cooperatives) for their services are deductible for tax purposes.

Net operating losses
Losses incurred in a tax year may be carried forward to offset taxable profits generated in the following five tax years. Losses may not be carried back. The possibility to utilise tax loss carried forward has been extended even to cross-border mergers (subject to certain limitations).

Payments to foreign affiliates
Generally, deductions may be claimed for royalties, management service fees, and interest charges paid to foreign affiliates, provided such amounts are at arm’s length.

Group taxation

Currently, the Czech Republic does not permit group taxation. Each company in a group is taxed individually. Consolidated tax base applies only for the general partners and their shares in profit of their general partnership.

Transfer pricing

For tax purposes, prices agreed between related parties have to meet the definition of the arm's-length principle, and these prices are often subject to tax audits by tax authorities. The consequences of incorrect transfer pricing adjustments are tax exposure and penalties. In the case of companies receiving investment incentives, incorrect transfer pricing can cause a loss of the investment incentives. Generally, pricing methods as described in OECD guidelines should be followed.

Although there is no legal requirement to keep transfer pricing documentation, in practice it is strongly recommended to keep it as the taxpayer bears the burden of proof upon challenge of prices by tax authorities.

Taxpayers may request the tax administrators to issue an advance pricing agreement (APA) regarding progressing or future transactions between related parties.

Thin capitalisation

Thin capitalisation rules apply in the Czech Republic and may limit the tax deductibility of interest payments on debt financing from related parties as well as in certain cases from third parties (e.g. back-to-back financing with a bank interposed between two related parties).

Below is a brief summary of the thin capitalisation rules:

- The tax-deductibility test applies not only to interest but also to all so-called 'financial costs' on loans (e.g. interest plus other related costs, such as bank fees).
- Thin capitalisation applies only to related-party loans.
- The debt-to-equity ratio for related-party loans is 4:1 (6:1 for financial services industry), i.e. interest on such part of the related-party loans by which the principal of these loans exceeds four times the accounting equity (based on Czech GAAP) of the borrower is tax non-deductible.
- Unrelated-party loans (e.g. bank loans) guaranteed by a related party are not considered related-party loans for thin capitalisation purposes. If, however, a bank provides a back-to-back loan to a Czech entity where the loan is provided to the bank by a related party, such a bank loan to the Czech entity is considered a related-party loan.
- Interest on profit-participating loans is not deductible for tax purposes.

Controlled foreign companies (CFCs)

There is no CFC legislation in the Czech Republic.

Tax credits and incentives

Foreign tax credit

Foreign tax credits are available only under tax treaties. If credit is not available under a treaty, CIT paid abroad may be deducted as an expense in the following year, provided it is imposed on the income included in Czech taxable income.

Investment incentives

Investment incentives are available only to Czech entities (including Czech subsidiaries of foreign companies). Incentives include income and real estate tax relief, financial support for the creation of new jobs, financial support for training or retraining of employees, cash grant on capital expenditures, and a transfer of land at a specially reduced price.

Investment incentives are available in the manufacturing industry and also for support of technology centres, strategic services, data centres, and customer support centres.

Research and development (R&D) allowance

Up to 100% of specific R&D expenses (or costs) incurred in a given tax year may be deducted from the tax base as a special tax allowance. These costs are deducted twice for tax purposes: once as a normal tax-deductible cost and then again as a special tax allowance. An additional 10% may be applied as an allowance from the difference by which the current year qualifying costs exceed those of the prior period.

The following costs can be included in the R&D tax allowance:

- Direct costs (e.g. personnel costs of R&D engineers, consumed materials).
- Tax depreciation of fixed assets used for R&D activities.
- Other operational expenses directly related to the realisation of R&D activities (e.g. telecommunications fees, electricity, water, gas).

Only qualifying expenses are deductible for tax purposes and must be separately identified from other expenses (or costs). This allowance does not apply to costs of purchased services or intangible results of R&D acquired from other entities, except for expenses (or costs) incurred from an R&D organisation. In addition, expenses that were supported from public sources are also excluded.

Any non-utilised R&D allowance may be carried forward for three subsequent years.

A taxpayer may request a binding ruling with respect to R&D costs from the respective tax office in the event that the taxpayer is unsure of whether certain R&D costs are eligible for the allowance.

Withholding taxes

Czech corporations are required to withhold tax on payments of dividends, interest, and royalties as follows:

Recipient	Dividend (%) (1)	Interest (%) (2)	Royalties (%) (3)
Resident corporations	15	0	0
Resident individuals	15	0	0
Non-resident corporations and individuals:			
Non-treaty	15/35	15/35	15/35
Treaty:			
Albania	5/15	0/5	10
Armenia	10	5/10	5/10
Australia	5/15	10	10
Austria	0/10	0	5

Recipient	Dividend (%) (1)	Interest (%) (2)	Royalties (%) (3)
Azerbaijan	8	5/10	10
Bahrain	5	0	10
Barbados	5/15	5	5/10
Belarus	5/10	0/5	5
Belgium	5/15	10	0/10
Bosnia	5	0	0/10
Brazil	15	10/15	15/25
Bulgaria	10	0/10	10
Canada	5/15	0/10	0/10
Chile	15	5/15	5/10
China, People’s Republic of	5/10	7.5	10
Colombia	5/15/25	0/10	10
Croatia	5	0	10
Cyprus	0/5	0	0/10
Democratic People’s Republic of Korea	0/10	0/10	0/10
Denmark	0/15	0	10
Egypt	5/15	0/15	15
Estonia	5/15	0/10	10
Ethiopia	10	0/10	10
Finland	5/15	0	0/1/5/10
France	10	0	0/5/10
Georgia	5/10	0/8	5/10
Germany	5/15	0	5
Greece	Local rates	0/10	0/10
Hong Kong	5	0	10
Hungary	5/15	0	10
Iceland	5/15	0	10
India	10	0/10	10
Indonesia	10/15	0/12.5	12.5
Iran	5	5	8
Ireland, Republic of	5/15	0	10
Israel	5/15	0/10	5
Italy	15	0	0/5
Japan	10/15	0/10	0/10
Jordan	10	0/10	10
Kazakhstan	10	0/10	10
Korea, Republic of	5/10	0/10	0/10
Kuwait	0/5	0	0/10
Latvia	5/15	0/10	10
Lebanon	5	0	5/10
Liechtenstein	0/15	0	10
Lithuania	5/15	0/10	10
Luxembourg	0/10	0	0/10
Macedonia	5/15	0	0/10
Malaysia	0/10	0/12	12
Malta	5	0	5
Mexico	10	0/10	10
Moldova	5/15	5	10
Mongolia	10	0/10	10
Morocco	0/10	0/10	0/10

Recipient	Dividend (%) (1)	Interest (%) (2)	Royalties (%) (3)
Netherlands	0/10	0	5
New Zealand	15	0/10	10
Nigeria	12.5/15	0/15	15
Norway	0/15	0	0/5/10
Pakistan	5/15	0/10	10
Panama	0/10	0/5/10	0/10
Philippines	10/15	0/10	10/15
Poland	5	0/5	10
Portugal	10/15	0/10	10
Romania	10	0/7	10
Russia	10	0	10
Saudi Arabia	5	0	10
Serbia and Montenegro	0/10	0/10	0/5/10
Singapore	5	0	10
Slovak Republic	5/15	0	0/10
Slovenia	5/15	0/5	10
South Africa	5/15	0	10
Spain	5/15	0	0/5
Sri Lanka	15	0/10	0/10
Sweden	0/10	0	0/5
Switzerland	0/15	0	10
Syria	10	10	12
Tajikistan	5	0/7	10
Thailand	10	0/10	5/10/15
Tunisia	10/15	0/12	5/15
Turkey	0/10	0/10	0/10
Ukraine	5/15	5	10
United Arab Emirates	0/5	0	10
United Kingdom	5/15	0	0/10
United States	5/15	0	0/10
Uzbekistan	5/10	0/5	10
Venezuela	5/10	0/10	12
Vietnam	10	0/10	10

Notes

1. The lower rate applies if the recipient is a company that owns at least a certain amount of the capital or a certain amount of the voting shares of the company paying the dividend directly. Non-treaty residents: Dividends paid to residents of countries outside of the European Union and European Economic Area, and countries with which the Czech Republic does not have an enforceable DTT or TIEA, are subject to 35% WHT.
2. The lower rate applies mostly in situations when the interest is received by the government or a state-owned institution or is paid by the government. Non-treaty residents: Interest paid to residents of countries outside of the European Union and European Economic Area, and countries with which the Czech Republic does not have an enforceable DTT or TIEA, is subject to 35% WHT.
3. The lower rate applies mostly to cultural royalties. Non-treaty residents: Royalties paid to residents of countries outside of the European Union and European Economic Area, and countries with which the Czech Republic does not have an enforceable DTT or TIEA, are subject to 35% WHT.

Tax administration

Taxable period

A corporation may choose either a calendar year or an accounting year as its tax year.

Tax returns
Returns must be filed within three months of the end of the tax period.

A three-month extension of the filing deadline is available if a taxpayer is represented by a registered tax advisor or if the taxpayer is subject to a statutory accounting audit.

In some special cases, a filing deadline of less than three months may apply (e.g. upon merger or liquidation). This shorter deadline may, however, be extended if approved by the tax office.

Payment of tax
Tax payments are due on the same day as the filing deadline.

A company is obligated to make CIT advances based on its last known tax liability. The tax advances are paid semi-annually or quarterly, depending on the amount of the last known tax liability.

Upon filing a tax return, tax advances paid during the year for which the tax return is filed will offset the tax liability declared in the tax return. Any outstanding amount must be paid on the date the tax return is due. Any overpayment will be refunded upon request or may be credited against future tax liabilities.

Tax audit process
There is no statutory tax audit cycle. Entities are picked by the tax authorities based on selected criteria (e.g. tax loss position, huge marketing costs) or randomly.

Statute of limitations
The tax may be assessed within three years after the deadline for regular tax return filing. In certain cases (e.g. filing of supplementary tax return), such assessment period may be prolonged by one year, maximally up to ten years. Tax liability arisen as result of criminal action may be assessed any time within two years after the year of the relevant penal court decision becoming effective.

Topics of focus for tax authorities
The tax authorities seem to focus on marketing costs, transfer pricing in intra-group relations, entities in a tax loss position, entities with tax investment incentives, and entities with an R&D allowance. More and more attention is drawn to the topic of tax law abuse.

Other issues

International agreements
In 2014, the United States and the Czech Republic signed an intergovernmental agreement (IGA) implementing the tax reporting and withholding procedures associated with the Foreign Account Tax Compliance Act (FATCA).

The Czech Republic has an effective bilateral TIEA with the following countries: Andorra, Aruba, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Cook Islands, Guernsey, Isle of Man, Jersey, Monaco, and San Marino.

The Czech Republic is also a party to the multilateral OECD Convention on Mutual Administrative Assistance in Tax Matters.

As regards the OECD's base erosion and profit shifting (BEPS) initiative, the Czech Republic will implement the minimum standards requirements only. In this respect, the Czech Republic will implement into its DTTs a principal purpose test provision, a new wording of preamble, and a Mutual Agreement Procedure. Nevertheless, in the future, the Czech Republic is prepared to implement new BEPS provisions into its network of DTTs through bilateral negotiation.

Denmark

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Significant developments

Effective from 1 July 2016, the tax rate on dividends and sales proceeds for foreign entities, which are taxable to Denmark, has been reduced from 27% to 22% in order to align the rate with the current Danish corporate income tax (CIT) rate. It should be noted that the withholding tax (WHT) rate has not been reduced, meaning that a 27% WHT must be withheld. Subsequently, the receiving foreign company must claim a refund with the Danish tax authorities.

Simultaneously, a change to the definition of 'subsidiaries shares' was introduced. These changes influence whether Danish companies can receive tax-exempt dividends from a foreign company. Previously, subsidiary shares were defined as follows:

- The Danish parent company holds 10% or more of the shares in the foreign subsidiary.
- The taxation of dividends from the foreign subsidiary to the Danish parent company must be waived or reduced in accordance with the Parent/Subsidiary Directive or a double tax treaty (DTT).

The new definition of subsidiary shares is as follows:

- The Danish parent company holds 10% or more of the shares in the foreign subsidiary.
- The foreign subsidiary must be subject to CIT in its domicile state and the applicable CIT rate exceed 0%.
- Denmark must hold an agreement to exchange tax information with the domicile state of the subsidiary. Such agreement must be in force at the time of distribution of dividends, etc.

Both the reduction of the CIT rate on dividends for foreign companies and the definition of subsidiary shares have retroactive effect, in some cases back to 1 January 2007.

For tax years beginning 1 January 2016 or later, new requirements regarding transfer pricing documentation are in place. These include an obligation to structure the transfer pricing documentation in a master file and local files. In addition, groups with a consolidated turnover of 5.6 billion Danish kroner (DKK) are required to file a country-by-country (CbC) report, which will provide an overview of the economic activities of the group as well as the taxes paid.

Taxation of dividends and interest paid by Danish entities to foreign group companies has been a hot topic in Danish taxation in the last few years. One of the main issues still seems to be whether holding companies incorporated in the European Union (EU) can qualify as the beneficial owner of dividend and interest payments received from Danish group entities or if such payments should be subject to Danish WHTs.

A number of cases have been publicly disclosed, but several cases have been appealed and are currently pending in the Danish courts and may not be concluded for years.

As of the tax year 2014, tax returns must be filed digitally. In May 2015, the online system for filing of tax returns was opened. Due to technical issues, the deadline for filing of the tax returns for the tax year 2014 and 2015 was postponed to 1 September of the following year. For the tax year 2016 and onwards, the deadline has been restored to the ordinary date, meaning that it will be 30 June (for the income year 2016, the deadline is 2 July because the ordinary deadline is a Friday; if the deadline is a Friday/Saturday, then the deadline is postponed to the first coming Sunday, i.e. 2 July 2017 for the income year 2016).

The Danish government has recently concluded a broad political agreement on a temporary tax credit regime for oil and gas companies advancing the time of deduction and increasing depreciation on production assets to 20% and uplift to 6.5% for six years, in order to encourage investments in the Danish part of the North Sea. The regime has not yet been adopted by law.

Taxes on corporate income

According to Danish tax law, a territoriality principle prevails. Hence, a Danish company is not taxed on its worldwide income. Instead, income from a permanent establishment (PE) outside Denmark or from real estate located abroad is excluded from taxable income. Non-resident companies with a PE in Denmark are taxed only on income allocated to the PE. The CIT rate is 22%.

Hydrocarbon income tax

The ordinary CIT rate of 22% does not apply to Danish oil and gas upstream activities. Instead, there are two ring fenced taxes on Danish oil and gas upstream activities. One very similar to the ordinary CIT; however, the tax rate is 25% instead of 22% and the income is ring fenced (i.e. no tax losses from other income can be deducted from income from the Danish oil and gas upstream activities). In addition to the 25% tax, a special income tax, labelled ‘hydrocarbon tax’, is levied on profits from the exploration and extraction of oil and gas on the Danish continental shelf at a rate of 52%. The 25% tax is deductible in computing the hydrocarbon tax, resulting in an effective tax rate of 64%.

Annual tax depreciation of platforms, wells, and inter-platform installations is allowed at up to 15% on a declining balance. Pipelines and other infrastructure assets can be depreciated at up to 7%.

Exploration costs can either be expensed or capitalised for tax purposes. If capitalised, the costs shall be amortised over five years at 20% annually from the year of first oil.

The following assets, which are subject to the special hydrocarbon tax (52%), qualify for an uplift of 5% for six years (30% in total):

- Exploration costs; however, only if capitalised, and only on exploration costs before declaration of commerciality on a specific field. After first oil of a company,

exploration costs can no longer be capitalised and thus no uplift can be claimed. Appraisal wells are regarded as exploration costs and not a fixed asset as, for example, production wells.
- Platforms, wells, inter-platform installations, pipelines, and other fixed assets; however, only if the company owns the fixed assets, and not on leased or rented assets.

No uplift is granted under chapter 2 (25%).

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Activity connected to the prospecting, exploration, or exploitation of oil and gas is taxed at 22%; however, it is taxable under a more aggressive regime than non-oil/gas activity. Any activity connected to oil and gas (e.g. drilling, seismic surveying, oilfield services) is taxable, regardless of whether a PE exists or not. This may be tempered by provisions in applicable DTTs.

Tonnage Tax Scheme

Danish tax law provides for a special tax scheme for shipping entities.

The main principle of the Tonnage Tax Scheme is that qualifying shipping entities are not taxed on the basis of their actual income derived from their business but on a fictitious income based on the net tons carrying capability of their fleet used for purposes covered by the Tonnage Tax Act.

The Tonnage Tax Scheme is available to:

- Danish shipping entities organised as limited liability companies (*Aktieselskab* [A/S] or *Anpartsselskab* [ApS])
- foreign shipping companies with the place of management and control in Denmark, and
- EU shipping companies with a PE in Denmark.

A decision to enter into the scheme should be made in the first income year where the entity qualifies for the Tonnage Tax Scheme, and the decision is binding for a period of ten years.

As a general rule, group-related shipping companies based in Denmark must make the same choice regarding the Tonnage Tax Scheme. However, shipping companies that do not have the same management or operating organisation and do not conduct business in related fields may be exempt from the joint decision provision.

The Tonnage Tax Scheme is restricted to certain types of business activities. The entity must operate at least one vessel of minimum 20 GT used for commercial transportation of passengers or cargo between different destinations or hire out such vessels on time charter contracts for the same purpose. The ships must be owned or chartered on either 'bareboat' terms of one to seven years or under time-charter contracts with a call/buy option by the company. Certain restrictions apply for ships chartered on a time-charter basis without a call/buy option. The ships must be strategically and commercially run from Denmark.

Income from activities that are carried out in close connection with this business, such as the usage of containers and loading facilities, etc. may also be included in the Tonnage Tax Scheme. Ships used for exploration, diving, fishing, towing, sand dredging, etc. are specifically exempt from the scheme. The same applies for certain types of ships, such as barges, floating docks, etc. However, EU or European Economic Community (EEC) registered ships used for towage activities at sea (i.e. not in and around ports) during at least 50% of their operating time during the income year may be included in the Tonnage Tax Scheme.

Ship management companies may also use the Tonnage Tax Scheme. A ship manager is defined as a company doing business with crew management and technical management of ships qualified for use in the Tonnage Tax Scheme. It is a requirement that the ship manager has taken over the full operating responsibility and all obligations and responsibilities according to the International Safety Management codex.

Taxable income

The taxable income for the part of the business that qualifies for the Tonnage Tax Scheme is determined for each ship as a fixed amount of Danish kroner per 100 net tons (NT) per day according to the following:

	Fixed amount per day (DKK per 100 NT)	
Ship net ton (NT)	**2016**	**2017**
0 to 1,000	9.40	9.60
1,001 to 10,000	6.75	6.90
10,001 to 25,000	4.04	4.12
Over 25,000	2.65	2.71

The income is taxed at the ordinary CIT rate of 22%. No deductions for expenses related to tonnage-taxed income are allowed.

Income that does not qualify for the Tonnage Tax Scheme is taxed according to the general tax provisions in Denmark, thus expenses are deductible. Consequently, deductions for losses derived from other income can be offset against the income calculated under the Tonnage Tax Scheme.

Furthermore, losses from tax consolidation with group companies and, to a certain extent, financial expenses are deductible under the Tonnage Tax Scheme. However, deductibility for financial expenses is subject to various capping rules and implies that gains/losses are not derived from financial instruments entered into in order to secure the shipping income.

Depreciation

Shipping entities that apply the Tonnage Tax Scheme from the time of their establishment may not deduct depreciation for tax purposes. Special rules apply for shipping entities that were already in existence when they elected to become subject to the scheme and for entities that elect to include certain other assets at a later point in time that were not previously subject to the scheme.

Gains on the sale of ships

Gains on the sale of ships that have not been used in the scheme prior to 1 January 2007 are tax exempt. The same applies to gains on the sale of contracts on the delivery of ships if the ship was destined to be delivered after 1 January 2007. Gains on the sale of ships used in the scheme in prior years are taxable. The taxable gain is calculated as the sale price minus the purchase price plus improvements. Any losses on ships acquired and sold within the same income year as the income year in which a gain is realised may be offset against the gain.

New activities to be included

In December 2015 the Danish Parliament passed an amendment to the Tonnage Tax Act including more activities under the Tonnage Tax Scheme from fiscal year 2016; however, the expansion of the Danish Tonnage Tax still awaits final approval from the European Commission. The new activities that can be covered include the following:

Guard, supply, and construction vessels

The amendment to the Tonnage Tax Act includes revenue from guard service (e.g. in connection with cable laying and other non-fixed installations).

It is also proposed that all activities relating to supply services are included in the Tonnage Tax Scheme. This means that, for example, transportation of victuals or bunker fuel oil will be covered.

The Danish Tax Administration (SKAT) interprets the former rules in a way that does not allow for the inclusion of the above-mentioned activities. The explanation for this is that these activities are supposedly not carried out between different destinations.

Ice management vessels

Every kind of ice handling at sea is included in the amendment. This can be escorting of vessels through icy waters, protection of drilling units against floating icebergs in arctic waters, and actual ice breaking.

Offshore installation vessels

The amendment includes construction at sea, include the building, repair, and dismantling of wind farms at sea. These activities are typically carried out by wind farm service vessels.

Furthermore, the amendment includes the building, repair, and dismantling of other offshore installations, such as oil installations, wave-breaking installations, and other coast protection measures. In regards to oil installations, the building, repair, and dismantling of these is only included when the activities are carried out outside the Danish sea territory or continental shelf.

Additionally, the amendment includes the laying, inspection, and repair of pipelines and cables on the seabed. Specialised pipeline layers and cable layers typically carry out these activities.

Accommodation and support vessels (ASVs)

Income from the housing of employees, spare parts, or workshop facilities in connection to offshore operations is included in the amendment to the Tonnage Tax Act. Specialised ASVs typically carry out these activities. The vessels can be part of comprehensive and lengthy offshore works and form an integral and necessary part thereof.

Local income taxes
There is no local CIT or similar surcharge.

Corporate residence

A corporation is resident in Denmark for tax purposes if it is incorporated in Denmark and registered in the Companies Register as having a Danish place of business. Further, foreign companies having their actual place of management in Denmark are also tax resident in Denmark. The actual place of management is typically the place where the management decisions concerning the company's day-to-day operations are made.

Permanent establishment (PE)
Non-resident companies are liable to tax in Denmark on business profit if derived through a PE in Denmark. The existence of a PE is determined according to Danish tax law, which makes either a reference to a specific DTT or to text similar to Article 5 of the Organisation for Economic Co-operation and Development (OECD) Model Convention.

Other taxes

Value-added tax (VAT)
The general VAT rate is 25% of the price charged (exclusive of VAT).

Exemption or a special reduced rate of 0% applies to a limited range of supplies (e.g. newspapers; hospital treatment; insurance and reinsurance services; most financial activities, including deposits of money, loans, and provision of loans).

Denmark was one of the first countries to introduce a VAT system. Since the first VAT Act came into force on 3 July 1967, the VAT legislation in Denmark has undergone several changes. The most important changes have been modifications to bring the legislation in line with the Council Directive 2006/112/EC on the common system of VAT.

Compared to the Directive, the Danish VAT legislation includes minor deviations and the use of various discretionary provisions.

All supplies of goods and services by so-called 'taxable persons' (entrepreneurs who independently carry out economic activity) are subject to VAT, unless specifically exempted. The VAT exemptions are restricted to a limited range of services and goods but are nonetheless subject to discussions and complications in the Danish VAT jurisprudence. Transactions are subject to Danish VAT only when they are deemed to take place in Denmark. For the sake of tax neutrality, VAT is also levied on (i) imports (i.e. receipt of goods from non-EU territories), (ii) intra-Community acquisitions (i.e. receipt of goods from EU member states), and (iii) purchase of most types of services from abroad.

In order to avoid VAT being borne by anyone other than the final consumer, those who qualify as taxable persons can, with some exceptions, recover VAT charged by their suppliers according to the invoice/credit method, provided that the purchases relate to VATable transactions. VAT is recovered either via the periodical VAT return (as a deduction in VAT payable) or by filing a special application.

In general, it is the supplier's responsibility to collect and report VAT on supply of goods or services.

Customs duties
Denmark is a member state of the European Union, and, according to EU's Common Customs Tariff, many goods imported into Denmark from outside the European Union are subject to customs duties. The rates of duty vary widely between goods.

Excise duties
According to Danish tax law, several excise duties are levied on different products. Some of the excise duties are enacted based on EU regulations while others are enacted according to domestic law only.

Excise duties are chargeable on a long list of goods, including hydrocarbon oil products, certain packaging, alcoholic drinks and tobacco, chocolate and sweets, coffee/tea, etc.

The excise duty rates depend on the type of goods (e.g. chocolate, packaging) as well as, in some cases, the category of the goods (e.g. plastic bags, paper bags). Furthermore, many of the excise duty rates are regulated every year.

Only goods sold in Denmark (or taken into Denmark) are liable to the Danish excise duties. Companies importing goods into Denmark or companies producing goods in Denmark must be registered with the Danish tax authorities to settle the excise duties. This will often also be the case even though they are selling the goods on to other companies in Denmark.

The type of registration is decisive for when the companies must pay the excise duties. Companies just storing goods must register and settle excise duties in Denmark in spite of the fact that the goods are not being sold in Denmark.

As excise duties are a tax for national consumption in Denmark, a company can, in principle, obtain a reimbursement of the excise duties on products sold outside of Denmark. Companies are entitled to a reimbursement even if the company is not registered for the excise duties in question and even if the excise duties have been paid by previous resellers, etc.

Property taxes
Owners of non-residential property must pay land tax annually. The land tax rate is set by the municipalities and must be between 1.6% and 3.4% of the value of the land. Municipalities may also levy a special coverage charge on certain non-residential properties at a maximum of 1% of the value of the property minus the value of the land and minus a property value threshold of DKK 50,000. Land tax and coverage charge are deductible from CIT.

Stamp tax
Stamp tax is payable on a few documents, such as a deed of transfer of real estate (DKK 1,660 plus 0.6% of the transfer sum). There is no stamp duty on transfer of shares.

Payroll taxes

Employer's tax
The employer's contribution to *Arbejdsmarkedets Tillægspension* (ATP) (i.e. old-age pension) charges is DKK 2,160 *per annum* for a full-time employee.

Companies that provide VAT-exempt services are liable to pay the employer's tax, which is calculated on the total annual salary cost. The rate can be as high as 14.1%, which is the rate for 2017 for banks and other financial institutions, the most significant sector paying the employer's tax. The rate will increase to 15.3% by the year 2021 for banks and other financial institutions. This tax is deductible for income tax purposes.

Other than these taxes, an employer's obligation for social security taxes is minimal. The main social security charge is an additional income tax of 8% on salaries and wages, which is borne by employees.

Environmental taxes/Energy taxes

Danish companies must pay environmental taxes, which were introduced to reduce companies' energy consumption, discharges of fluids with an environmental impact, and emission. These taxes are paid to the companies that provide the energy, who then pay the taxes to the Danish tax authorities. Most of the environmental tax rates are regulated every year.

In general, almost all VAT-registered companies in Denmark can obtain a reimbursement of some of the environmental taxes on energy (also called energy taxes). The size of the reimbursement of the energy taxes depends on the type of energy used and to what extent the companies can deduct VAT.

Branch income

PEs of foreign companies are taxed under the same rules and rates as Danish resident companies. There is no branch remittance tax or other similar tax on branch profits. As a branch is considered to be the same legal entity as the headquarters, interest paid from the branch to the headquarters is not tax deductible.

Income determination

Taxable income generally is calculated as income determined for accounting purposes that is adjusted and modified for several items, as prescribed by the tax laws. Typical timing differences include reserves, work in progress, and depreciation.

Inventory valuation

Inventory is valued at acquisition cost, current market value, or manufacturing cost (if manufactured by the company itself) according to a first in first out (FIFO) principle. The company may opt for different principles for each category of goods and may change principle from income year to income year, provided certain conditions are met.

Capital gains

Gains and losses realised on the sale of tangible and intangible assets, including goodwill, are generally included in taxable income. However, gains realised on the sale of shares are tax-exempt if the shares qualify as either 'subsidiary shares', 'group shares', or 'tax-exempt portfolio shares'.

As of 1 July 2016, the definition of 'subsidiary shares' are shares held by a corporate shareholder that holds a minimum of 10% of the share capital in a foreign subsidiary. It is a condition that the foreign subsidiary must be subject to CIT in its domicile state and the applicable CIT rate must exceed 0%. Furthermore, Denmark must hold an agreement to exchange tax information with the domicile state of the subsidiary. Such agreement must be in force at the time of distribution of dividends, etc.

The change of 'subsidiary shares' is effective as of 1 July 2016. The change has retroactive effect, in some cases back to 1 January 2007.

'Group shares' are defined as shares in companies with which the shareholder is jointly taxed or might be jointly taxed. The definition of a group is therefore the same as in the joint taxation rules and generally corresponds to the definition of a group for accounting purposes. The location where the companies are registered is irrelevant, as long as the companies are affiliated.

If the shares do not constitute group shares, subsidiary shares, or treasury shares, they constitute portfolio shares. Portfolio shares are divided into two types: tax-exempt portfolio shares and taxable portfolio shares.

'Tax-exempt portfolio shares' consist of shareholdings less than 10% in unlisted companies.

The residual constitute taxable portfolio shares unless held by the company that has issued the shares (gains on 'treasury shares' are also tax exempt).

Gains on taxable portfolio shares are fully taxable regardless of holding period, whereas losses on the sale of portfolio shares are generally tax-deductible if the inventory principle has been selected. Specific rules apply to taxable, unlisted portfolio shares.

Gains realised on the sale of real estate property are taxable, whereas losses are not tax-deductible unless the property is a building qualifying for tax depreciation. A loss realised on the sale of land and other buildings may be utilised only against taxable profits on the sale of real estate properties in the same year or may be carried forward infinitely.

A capital gain may, under certain conditions, be deferred if the capital gain is reinvested in properties. Reinvestment must be made no later than the income years following the income year of disposal.

For receivables, capital gains are, in general, taxable and losses are, in general, tax deductible. However, capital losses related to intra-group receivables are non-deductible for companies, and, correspondingly, capital gains on debt are not taxable for the debtor.

Capital gains and capital losses on receivables should be included in the taxable income using the inventory principles. However, if the receivable relates an inter-company receivable or a trade receivable, the realisation principle applies but the company can chose to apply the inventory principles on exchange rate changes and/or the receivable itself.

As a main rule, capital gains and capital losses on debt should be included in the taxable income using the realisation principle. However, the inventory principle can be applied for exchange rate changes and/or the debt itself if the debt is listed. If the debt is unlisted, the inventory principle can only be applied for exchange rate changes.

Special rules apply in relation to compositions, remission of debt, and conversion of debt. Special rules also apply for financial activities.

Gains and losses on financial instruments are generally included in taxable income, according to the mark-to-market principle, which is required. There are special rules for losses on certain share-based contracts.

Dividend income

Dividends received by a Danish parent company on ‘subsidiary shares’ or ‘group shares’ are tax exempt, regardless of the length of the ownership period.

Only 70% of the dividends received from unlisted portfolio shares by a Danish company should be included in the taxable income, whereas dividends received on listed portfolio shares are fully included in taxable income.

Regardless of whether the shares qualify as ‘subsidiary shares’ or ‘group shares’, dividends are fully taxable if received from a foreign company that can deduct the dividends paid.

Stock dividends

Stock dividends may be distributed to shareholders free of tax, provided that the dividends are in proportion to the existing shareholdings (i.e. bonus shares).

Interest income

Interest income is generally included in the determination of taxable income.

Royalty income

Royalty income is generally included in the determination of taxable income.

Foreign income

As a general rule, foreign-source income, such as interest, is included in taxable income. However, income from a PE or real estate outside Denmark is excluded from taxable income.

The income of a foreign subsidiary may be taxed in the hands of its Danish parent company if the subsidiary constitutes a controlled foreign company (CFC). *See the Group taxation section for more information*.

Deductions

Depreciation, amortisation, and depletion

Tax depreciation need not be in conformity with book depreciation.

Annual depreciation allowances on machinery and equipment may be claimed under the diminishing-balance method at up to 25%. The depreciation base is the cost of fixed assets less sales proceeds from disposals and depreciation allowances previously claimed.

New machinery and equipment acquired between 30 May 2012 and 31 December 2013 could be included in the base with a supplement of 15%. Hence, 115% of costs of new fixed assets was added to the base and depreciated at up to 25% per year. If a company has applied this principle, the assets in question must be kept on a separate account until the end of the tax year 2017.

For ships, the depreciation rate is 20% in the year of construction and a 12% declining-balance basis in subsequent years.

Depreciation allowances on buildings (other than residential buildings and office buildings not adjoining an industrial building) may be claimed at up to 4% on the straight-line basis.

Airplanes, trains, and utility plants can be depreciated only at a 15% declining balance.

Rails, telecommunications facilities, and certain other long-life plant and equipment can be depreciated only at a 7% declining balance.

Depreciation allowances that are recaptured as part of a capital gain on the sale of an asset generally are fully taxable.

Acquired goodwill and other intangible property rights can be amortised at up to one-seventh per year on a straight-line basis. Costs related to the purchase of patents or know-how (including rights/licences to utilise patents or know-how) can either be fully expensed in the year of acquisition or amortised over a seven-year period on a straight-line basis.

Certain restrictions regarding the depreciable value of goodwill apply in the case of group transactions. Goodwill on the purchase of shares cannot be amortised for tax purposes.

Depletion of the cost of acquisition or exploitation of natural resources is subject to special rules.

Start-up expenses

No specific rules in Danish tax law govern the treatment of start-up expenses. Instead, these expenses are treated according to general tax law.

Companies may, under certain conditions, benefit from a scheme allowing for a cash payment equal to the tax value (22%) of negative taxable income, provided the negative income is created from research and development (R&D) costs (*see the Tax credits and incentives section*).

Interest expenses

See Thin capitalisation and interest relief limitations in the Group taxation section.

Bad debt

Companies may deduct loss on bad debt, which is not inter-company debt.

The main rule for calculation and taxation of companies' gains and losses on receivables for tax purposes will be the inventory principle (i.e. taxation based on the difference in value at the beginning and end of the assessment year). Use of the inventory principle means that recognition of losses on these types of receivables for tax purposes is not conditional on a final loss having been ascertained.

Special rules apply to gains and losses on trade and inter-company receivables, as these, as a main rule, should be calculated according to realisation principles. Companies may, however, opt for the inventory principle for each category of receivables.

Charitable contributions

Companies may deduct a small amount in gifts to certain organisations approved by the Danish tax authorities and mentioned in the Danish tax authorities' guidelines. The deduction cannot exceed DKK 15,600 per year for tax year 2017 (previously DKK 15,200).

Furthermore, companies may deduct gifts to cultural organisations that receive a maintenance grant for operating expenses from either the government or the municipality. According to these rules, there is no limitation in terms of value, but certain restrictions regarding the use of the gift are applicable.

Finally, gifts to certain charitable organisations within Denmark or the European Union may be deducted, provided the recipient uses the funds for research. Deductibility is conditioned upon the organisation being approved by the Danish tax authorities. No limitation in regards to amount is applicable.

Fines and penalties

Fines and penalties are, in general, not deductible, as these are not considered operational expenses.

Bribes, kickbacks, and illegal payments

Even if considered economically reasoned and custom in certain jurisdictions, amounts used for bribery of officials are not deductible.

Taxes

Taxes are non-deductible for CIT purposes, except for employer's tax, non-recoverable VAT, land tax, and coverage charge (*see the Other taxes section*).

Net operating losses

Tax losses may be carried forward indefinitely. However, the utilisation of tax losses carried forward may be restricted. According to the rules, taxable income up to DKK 8,025,000 for 2017 (previously DKK 7,852,500) can always be eliminated by tax losses carried forward, whereas taxable income exceeding DKK 8,025,000 (previously DKK 7,852,500) can merely be reduced by 60% as a result of tax losses carried forward. For Danish tax consolidation groups, the rules apply for the group collectively. If losses are restricted, the limitation must be allocated to each of the companies according to complex rules.

Certain restrictions on the right to carry tax losses forward apply when more than 50% of the share capital or 50% of the voting rights at the end of the financial year are owned by shareholders different from those that held control at the beginning of the income year in which the tax loss was incurred.

Similarly, under certain circumstances, tax losses are cancelled if a Danish company receives a debt forgiveness or comparable transaction. However, there are numerous exceptions (e.g. inter-company transactions).

Tax losses may not be carried back and utilised in previous income years.

Payments to foreign affiliates
A Danish corporation can claim a deduction for royalties, management fees, and similar payments made to foreign affiliates, provided that such amounts are made on an arm's-length basis and reflect services received. Interest at normal commercial rates paid to foreign affiliates will generally be allowed as a deduction but is subject to very complex thin capitalisation and interest relief limitation rules (*see Thin capitalisation and interest relief limitations in the Group taxation section*).

Group taxation

Mandatory Danish tax consolidation
A mandatory tax consolidation regime obligates all Danish resident companies and Danish branches that are members of the same Danish or international group to file a joint group tax return. The definition of a group generally corresponds with the definition of a group for accounting purposes. The tax consolidated income is equal to the sum of the taxable income of each individual Danish company and Danish branches of foreign companies that are a member of the consolidated group.

The top parent company participating in the Danish tax consolidation group will be appointed the role of a so-called 'management company'; this company is responsible for settling tax on account and final corporate tax payments of all group members.

Companies included in a mandatory tax consolidation are jointly and severally liable for payment of corporate taxes. WHTs on dividends, interest, and royalty payments are also covered by the joint and several liability. For companies with external minority shareholders, the company has a reduced liability and is merely liable if none of the other jointly taxed companies are able to pay the taxes.

Elective cross-border tax consolidation
A non-Danish subsidiary may be included as a member to a Danish tax grouping, provided that the group includes all group companies and branches in the Danish tax grouping. In effect, this all-or-nothing provision rules out the possibility for major international groups to have their Danish subgroup file a Danish group tax return that includes only certain hand-picked (typically loss-making) foreign group members. Losses deducted in an elective cross-border tax consolidation will be recaptured either fully or to a limited extent.

If a general cross-border tax consolidation is established, it will be binding for ten years; however, there are certain possibilities of 'breaking' the ten-year period (e.g. in connection with takeovers). 'Breaking' the ten-year period will result in a full recapture of previously deducted tax losses.

The comments under Mandatory Danish tax consolidation with respect to the calculation of the tax consolidation income, 'management company', etc. generally also apply to international tax consolidation.

Transfer pricing
Danish transfer pricing rules apply to transactions between related parties (e.g. inter-group transactions), whether the transactions are made between residents or non-residents. The rules apply when a company or person directly or indirectly owns at least 50% of the share capital or 50% of the voting rights in another company.

Companies with inter-company transaction above DKK 5 million are obligated to disclose in the annual tax return certain information regarding type and volume of inter-company transactions. The submission should be submitted via Form 05.022.

Groups with a consolidated turnover of DKK 5.6 billion, based on previous year's revenue, must additionally prepare a country-by-country (CbC) report. The CbC report must contain a range of information for each country in which the group operates, including revenue, profit, tax, capital structure, assets, and employees. Furthermore, the group has to identify each entity within the group and specify the entities' tax residencies and the activities of each entity. Before year-end, taxpayers must notify the Danish tax authorities about which group entity is obligated to file the CbC report. The notification should be submitted via form 05.034 on the Danish Tax Authorities website or the Danish digital system (TastSelv). The deadline for submission is 12 months after the end of the income year. A Danish subsidiary, which is part of a multinational group but is not the ultimate parent entity, will have to file the CbC report if certain requirements are met. However, this is only applicable for income years starting 1 January 2017 or later.

Companies (with 250 or more employees at the group level or with consolidated revenue of DKK 250 million combined with a balance sheet sum of DKK 125 million or more) are also obligated to maintain detailed and extensive transfer pricing documentation to substantiate that intra-group transactions are conducted in accordance with arm's-length principles. A company is subject to fines for failure to comply with the documentation rules. The penalty is DKK 250,000 per company per income year plus 10% of any increase in the taxable income as a result of a tax audit.

Traditionally, there have been no specific requirements regarding the format of transfer pricing documentation. As a result of the OECD's base erosion and profit shifting (BEPS) project, Denmark has implemented the updated guidelines from the OECD with Executive Order no. 401 of 28 April 2016, under which the following documentation must be prepared:

- Master file.
- Local file.

The master file must contain standardised information relevant for the entire group, whereas the local file(s) must contain specific information on the local affiliate(s). It follows from the Executive Order that a local file must be prepared for each legal entity even though the group has several entities in the same country. Local files for empty Danish entities are not required.

The Danish tax authorities may request a group's transfer pricing documentation to be submitted within 60 days. This request may be made at any time after the tax return filing is due, and the deadline for submission cannot be extended. The Danish tax authorities often request three to five years of documentation at a time.

The Danish tax authorities may, under either of the following circumstances, request the taxpayer to obtain an independent auditor's report:

- The group has controlled transactions with entities in countries outside the EU/European Economic Area (EEA) or in countries without a tax treaty with Denmark.
- The group has had a negative average operating profit/earnings before interest and tax (EBIT) over the past four years.

The auditor must state whether any circumstances regarding the performed work causes the auditor to conclude that the transfer pricing documentation of the company does not provide a true and fair view. The Danish tax authorities can request for the statement seven days after receiving the transfer pricing documentation. The deadline for submission of the Independent Auditors Statement is 90 days upon request.

Information submitted to the Danish tax authorities (e.g. CbC report, master file) can be exchanged automatically or spontaneously with countries that Denmark has concluded an exchange of information agreement with and has accepted confidentiality of the information. Correspondingly, the Danish tax authorities can receive information regarding Danish companies who are part of a group resident in another country.

Thin capitalisation and interest relief limitations

Danish resident companies and Danish branches of foreign companies are subject to three sets of restrictions, each of which may seriously limit or disallow Danish tax deductions for financing costs.

Firstly, there is the thin capitalisation rule. This rule works to disallow gross interest costs and capital losses on related company debt to the extent the overall debt-to-equity ratio based on market values exceeds 4:1. Related company debt includes external bank debt if group member companies have provided guarantees to the bank. This rule does not apply if the controlled debt is less than DKK 10 million. When calculating the 4:1 ratio, a special consolidation rule applies if two or more companies are considered affiliated (note that the definition of affiliated companies differs from the definition under the Danish rules on joint taxation). There is no recharacterisation of interest as dividends.

Secondly, there is an asset-based rule that applies in relation to financing costs that remain after the thin capitalisation limitation. To the extent a Danish company on a stand-alone basis or, if part of a joint tax group, together with group companies has net financing costs in excess of DKK 21.3 million, the deductibility of the remaining financing costs can be limited to an amount equal to 3.2% for tax year 2017 (previously 3.4%) of the tax basis of certain assets of the group. Net financing costs consist of, among other things, interest income/expenses, taxable gains/losses on debt, receivables and financial contracts, taxable gains/losses on shares, and taxable dividends.

Thirdly, there is an EBIT-based rule that works to limit the deductibility of financing costs that remain after the thin capitalisation test and the asset-based rule to an amount equal to 80% of the Danish company's/tax group's taxable EBIT income. This rule applies the same definition of net financing costs as the asset-based rule, and it also allows for a minimum deduction of DKK 21.3 million in cases where EBIT is too low or negative. Financing costs that are limited in accordance to this rule do not lapse but can be carried forward to the next tax year.

If a Danish resident company has a debt to a non-Danish resident creditor (person or company) that considers the payments as dividends on a contributed capital (hybrid financing), the debt will also, in accordance with Danish rule, be requalified as equity. The Danish debtor company is then cut off from deducting the interest cost and/or capital losses on the requalified debt.

Controlled foreign companies (CFCs)

According to the Danish CFC rules, a Danish company has to include in its taxable income the total taxable income of a subsidiary, foreign or Danish, if such subsidiary qualifies as a CFC. A subsidiary qualifies as a CFC if all of the following criteria are met:

- The Danish company, together with other group member companies, directly or indirectly owns more than 50% of the capital or controls more than 50% of the voting rights in the subsidiary.
- More than half of the subsidiary's taxable profits, as hypothetically assessed under Danish tax laws, are predefined CFC income types (mainly interest, royalty, capital gains, etc.).
- During the income year, the subsidiary's CFC assets (assets, where the return is characterised as a CFC income type) make up more than 10% of the subsidiary's total assets.

There is no black or white list that exempts subsidiaries resident in certain countries.

Tax credits and incentives

Foreign tax credit

According to Danish tax law, relief is generally available to credit foreign tax paid on non-Danish source profits against the Danish tax on the same profits. As Danish companies are not taxed on income from foreign PEs or properties, the rules have limited application.

For shareholdings of 10% or more of the share capital in foreign companies, Denmark has further rules allowing 'underlying' tax relief in respect of foreign dividends, so that tax suffered at lower levels can be relieved where dividends flow to Denmark via a chain of companies. As Danish tax law, as a main rule, exempts dividends from companies resident in countries with which Denmark has a tax treaty in which the Danish recipient company holds 10% or more, this rule, as well, has a limited application.

The definition of 'subsidiary shares' has been changed. As of 1 July 2016, the definition of 'subsidiary shares' are shares held by a corporate shareholder that holds a minimum of 10% of the share capital in a foreign subsidiary. It is a condition that the foreign subsidiary must be subject to CIT in its domicile state and the applicable CIT rate must exceed 0%. Furthermore, Denmark must hold an agreement to exchange tax information with the domicile state of the subsidiary. Such agreement must be in force at the time of distribution of dividends, etc.

The change of 'subsidiary shares' is effective as of 1 July 2016. The change has retroactive effect, in some cases back to 1 January 2007.

Capital expenditure incentives

A small variety of tax incentives are available in the form of deductions for capital expenditures.

Danish tax law allows for an immediate write-off of capital expenditures for R&D. Alternatively, the taxpayer may choose to take tax depreciation in the same year and the following four years on a straight-line basis. Costs incurred in connection with the exploration for raw materials may also be fully deducted in the same year.

Companies in a loss making situation may not benefit from an immediate write-off of capital expenditures. However, companies have been granted the opportunity to apply to the Danish tax authorities for a payment equal to the tax value (22%) of negative taxable income. It is a condition that the negative taxable income relates to R&D costs. The rule does not cover costs incurred in connection with exploration for raw materials.

Tax payment according to this rule cannot exceed an amount of DKK 5.5 million, corresponding to a tax loss of DKK 25 million. For companies participating in joint taxation, the limit applies for all companies in total.

Costs related to purchase of patents and know-how (including rights/licences to utilise patents or know-how) may either be fully expensed in the year of acquisition or amortised over a seven-year period on a straight-line basis.

Withholding taxes

WHTs on payments to foreign corporations and non-resident aliens

Dividends

Dividends paid to a parent company in another EU member state or a state with which Denmark has a DTT are exempt from WHT, provided that the shares qualify as subsidiary shares (and the taxation should be reduced/lapsed according to the DTT or EU Parent-Subsidiary Directive). The same applies for dividends paid on group shares (that are not also subsidiary shares, i.e. holdings below 10%), provided that the recipient company is resident within the EU/EEA.

However, the dividends are not exempt from WHT if they are regarded as a redistribution of tax-exempt dividends that the Danish company has received from a foreign subsidiary where the Danish company cannot be regarded as the beneficial owner.

As of 1 July 2016, the tax rate on dividends distributed from a Danish company to foreign corporate shareholders is 22%. For dividends distributed from Danish companies to shareholders situated in the EU/EEA, the tax rate has been reduced retrospectively and applies to dividends distributed on 1 January 2007 or later. For the income years 2007 to 2013, the applicable tax rate is 25%; for the income year 2014, it is 24.5%; and for the income year 2015, it is 23.5%. It should be noted that the WHT rate has not been reduced but remains 27%. The shareholders must reclaim the difference between the higher WHT rate and the lower tax rate. Specific transitional rules apply.

If the portfolio shareholder (shareholding below 10%) is situated in a country with which Denmark has a tax information exchange agreement (TIEA), the tax rate on the dividend is reduced to 15% and the difference between the higher WHT rate and the lower WHT rate may be reclaimed. However, the reduced rate does not apply if the shareholder is resident outside the European Union and together with related entities owns more than 10% of the capital in the Danish distributing company.

Interest

Interest is generally not subject to WHT unless paid to a foreign group member company that is tax resident outside the European Union and outside any of the states with which Denmark has concluded a tax treaty. In this situation, interest WHT is levied at 22%. Certain other exemptions apply, mainly relating to CFC taxation.

For recipients resident in countries within the European Union with which Denmark does not have a tax treaty, it is a condition that the paying company and the recipient company are associated as mentioned in the EU Interest/Royalty Directive.

Royalties

Royalties are subject to a 22% WHT. In most cases, the WHT rate can be reduced in accordance with the tax treaty applicable to the payee. Also, the EU Interest/Royalty Directive may provide an exemption from WHT if the payee is an immediate parent, sister, or subsidiary company resident in the European Union.

Treaty WHT rates

	WHT (%)			
	Dividend			
Recipient	Qualifying companies (1a+b)	Others	Interest (2)	Royalty
Resident corporations	0	22 (10)	22 (10)	22 (10)
Resident individuals		27/42 (10)	(10)	(10)
Non-treaty (4):				
Non-resident corporations	27 (11)	27 (11)	22 (3, 5, 9)	22 (5, 9)
Non-resident individuals		27 (11)	0	22 (9)
Treaty:				
Argentina	0 (1a)	15	0	3/5/10/15 (7)
Australia	0 (1a)	15	0	10
Austria	0 (1a+b)	15	0	0
Bangladesh	0 (1a)	15	0	10
Belgium	0 (1a+b)	15	0	0
Brazil	0 (1a)	25	0	15/25 (7, 9)
Bulgaria	0 (1a+b)	15	0	0
Canada	0 (1a)	15	0	0/10 (7)
Chile	0 (1a)	15	0	5/15 (7)
China, People's Republic of	0 (1a)	10	0	10
Croatia	0 (1a)	10	0	10
Cyprus	0 (1a+b)	15	0	0
Czech Republic	0 (1a+b)	15	0	5
Egypt	0 (1a)	20	0	20
Estonia	0 (1a+b)	15	0	5/10 (7)
Faroe Islands	0 (1a)	15	0	0
Finland	0 (1a+b)	15	0	0
Georgia	0 (1a)	10	0	0
Germany	0 (1a+b)	15	0	0
Ghana, Republic of	0 (1a+b)	5/15	0	8
Greece	0 (1a+b)	18	0	5
Greenland	0 (1a)	15	0	10
Hungary	0 (1a+b)	15	0	0
Iceland	0 (1a+b)	15	0	0
India	0 (1a)	25	0	20
Indonesia	0 (1a)	25	0	15
Ireland, Republic of	0 (1a+b)	15	0	0

	WHT (%)			
	Dividend			
Recipient	Qualifying companies (1a+b)	Others	Interest (2)	Royalty
Israel	0 (1a)	15	0	10
Italy	0 (1a+b)	15	0	5
Jamaica	0 (1a)	15	0	10
Japan	0 (1a)	15	0	10
Kenya	0 (1a)	28	0	20
Korea, Republic of	0 (1a)	15	0	10/15 (7)
Kuwait	0 (1a)	15	0	10
Kyrgyzstan	0 (1a)	15	0	0
Latvia	0 (1a+b)	15	0	5/10 (7)
Lithuania	0 (1a+b)	15	0	5/10 (7)
Luxembourg	0 (1a+b)	15	0	0
Macedonia	0 (1a)	15	0	10
Malaysia	0 (1a)	0	0	0
Malta	0 (1a+b)	15	0	0
Mexico	0 (1a)	15	0	10
Morocco	0 (1a)	25	0	10
Netherlands	0 (1a+b)	15	0	0
New Zealand	0 (1a)	15	0	10
Norway	0 (1a+b)	15	0	0
Pakistan	0 (1a)	15	0	12
Philippines	0 (1a)	15	0	15
Poland	0 (1a+b)	15	0	5
Portugal	0 (1a+b)	10	0	10
Romania	0 (1a+b)	15	0	4
Russia	0 (1a)	10	0	0
Serbia (6)	0 (1a)	15	0	10
Singapore	0 (1a)	10	0	10
Slovak Republic	0 (1a+b)	15	0	5
Slovenia	0 (1a+b)	15	0	5
South Africa	0 (1a)	15	0	0
Sri Lanka	0 (1a)	15	0	10
Sweden	0 (1a+b)	15	0	0
Switzerland	0 (1+a)	15	0	0
Taiwan	0 (1a)	10	0	10
Tanzania	0 (1a)	15	0	20
Thailand	0 (1a)	10	0	5/15 (7)
Trinidad and Tobago	0 (1a)	20	0	15
Tunisia	0 (1a)	15	0	15
Turkey	0 (1a)	20	0	10
Uganda	0 (1a)	15	0	10
Ukraine	0 (1a)	15	0	10
United Kingdom	0 (1a+b)	25	0	0
United States	0 (1a)	15	0	0
Venezuela	0 (1a)	15	0	5/10 (8)
Vietnam	0 (1a)	15	0	15
Zambia	0 (1a)	15	0	15

Notes

1. Denmark does not operate a system of WHT on dividends when the parent company holds:
   a. at least 10% of the share capital of the distributing Danish company, provided the receiving company is resident in a EU/EEA member state or a state with which Denmark has entered a DTT (subsidiary shares) and that Denmark is obligated to reduce or waive taxation according to the Parent/Subsidiary Directive or a DTT, or
   b. less than 10% of the share capital in the distributing company, provided the receiving company is an EU/EEA-resident, the distributing and the receiving company are affiliated companies (group shares), and that Denmark is obligated to reduce or waive taxation according to the Parent/Subsidiary Directive or a DTT.
2. Interest is generally not subject to WHT unless paid to a foreign group member company that is tax resident outside of the European Union and outside of any of the states with which Denmark has concluded a tax treaty. In this situation, interest WHT is levied at 22% for interest accrued or paid on 1 March 2015 or later (25% for interest that is accrued or paid before 1 March 2015).
3. Exemptions apply if the receiving company is directly or indirectly controlled by a Danish parent company or if the receiving company is controlled by a company resident in a state with which Denmark has a double tax convention and that company may be subject to CFC taxation. Finally, an exemption applies if the receiving company establishes that the foreign taxation of interest is not less than three-quarters of the Danish corporate taxation and that the interest is not paid to another foreign company subject to taxation that is less than three-quarters of the Danish corporate taxation.
4. Denmark has terminated its treaty with Spain and France with effect from 1 January 2009. The termination means that each country will tax the relevant income according to its domestic tax rules. New treaties are not expected to be agreed in the near future. Companies in Spain and France receiving dividends from a Danish company may, however, qualify for tax exempt dividends since they are EU member states.
5. The EU Interest/Royalty Directive may provide an exemption from WHT if the payee is an immediate parent, sister, or subsidiary company resident in the European Union.
6. Serbia has succeeded in the treaty between Denmark and Yugoslavia.
7. Different rates apply depending on the characteristics of the assets on which royalty is paid.
8. The 10% rate is applicable for royalties, whereas the 5% rate is applicable to fees for technical support.
9. The WHT rate is 25% for interest and royalties that are accrued or paid before 1 March 2015.
10. Dividends, interest, and royalties received by a company resident in Denmark are included in the taxable income and taxed in accordance with the current tax rate for companies (22%). It is possible to get credit for foreign taxes on the received dividends, interest, or royalties. For individuals resident in Denmark, received dividends are included in a special share income that is taxed at 27% of the first DKK 50,600 of share income and at 42% for the rest. Interest and royalties are included in the person's taxable income and are taxed in line with other taxable income.
11. As of 1 July 2016, the tax rate on dividends distributed from a Danish company to foreign corporate shareholders is 22%. For dividends distributed from Danish companies to shareholders situated in the EU/EEA, the tax rate has been reduced retrospectively and applies to dividends distributed on 1 January 2007 or later. For the income years 2007 to 2013, the applicable tax rate is 25%; for the income year 2014, it is 24.5%; and for the income year 2015, it is 23.5%. It should be noted that the WHT rate has not been reduced but remains 27%. The shareholders must reclaim the difference between the higher WHT rate and the lower tax rate. Specific transitional rules apply. If the portfolio shareholder is situated in a country with which Denmark has a TIEA, the tax rate on the dividend is reduced to 15% and the difference between the higher WHT rate and the lower WHT rate may be reclaimed. However, the reduced rate does not apply if the shareholder is resident outside the European Union and together with related entities owns more than 10% of the capital in the Danish distributing company.

Tax administration

Taxable period

Danish corporate taxpayers are taxed on an annual basis. Corporate taxpayers may choose a tax year that is different from the calendar year.

Tax returns

Tax returns are completed on the basis of financial accounts with adjustments for tax. Tax returns should be filed no later than six months following the end of the accounting year. Corporations with an accounting year-end that falls in the period from 1 January to 31 March must file a tax return no later than 1 August in the same calendar year.

Tax returns must be filed digitally. Companies can file the tax return themselves or grant their auditor/tax advisors access to file the tax return on their behalf.

The tax system, in practice, is based on self-assessment. Tax assessments are made automatically by the tax authorities on the basis of the tax return. However, the tax authorities may subsequently audit the tax return.

Payment of tax

CIT must be paid on a current-year basis in two equal instalments due on 20 March and 20 November. The authorities request payments of 50% of the average of the last three years' final income tax. In addition, voluntary additional payments may be made on the same dates. An allowance is granted in case of voluntary payment on 20 March, and voluntary payments on 20 November are subject to interest when set against the final tax bill. The allowance granted for voluntary payments on 20 March 2016 was 0%, and the interest for payments on 20 November 2016 was 0%.

The actual interest rates for the tax year 2016 were published in November 2016.

Companies may make a voluntary additional payment no later than 1 February following the assessment year (i.e. no later than 1 February 2017 for the tax year 2016). Such voluntary payment will be subject to an additional interest charge based on the interest rate of the underpaid tax for the period 20 November 2016 to 1 February 2017. This interest was 0.7% for the tax year 2016.

The final tax bill is settled by 20 November in the following year. Underpaid tax is then payable by 20 November with a surtax of 3.4% of the tax amount (for tax year 2016). Overpaid tax is refunded by November of the following year with interest of 0.1% (for tax year 2016).

The actual interest rates, adjustments, etc. for the tax year 2017 will be published no later than December 2017.

Tax audit process

The Danish tax system is based on self-assessment. Companies are, in general, subject to audit on a random basis, but some large companies/groups are subject to annual audit by the Danish tax authorities.

Statute of limitations

The general statute of limitations is 1 May in the fourth calendar year after that of the end of the relevant accounting period. This limitation is extended for another two years with respect to inter-company (transfer pricing) issues and certain tax-exempt restructurings.

Topics of focus for tax authorities

Once a year, the Danish tax authorities publish a list of topics subject to increased focus by the tax administration during their audit. Transfer pricing issues are on top of this list.

In general, all aspects of transfer pricing are in focus. However, specific topics certainly seem to have caught the tax authorities' attention. These are mainly transactions with group companies resident in countries with which Denmark does not have a tax convention, use and transfer of intangible assets, restructurings, and companies making continuous losses. Also, the frequency of transfer pricing documentation penalties has risen. Those penalties are given if the documentation is deemed inadequate, non-contemporaneous, or the deadline of sending in the documentation upon request is not met.

Attention has also been drawn to whether Danish entities have complied with the WHT requirements regarding dividends and interest.

Last but not least, the tax authorities have increased their focus on tax deductions for costs related to the creation of tax-exempt income, such as dividends from and capital gains on certain shares.

Payroll costs
The Eastern Division of the Danish High Court delivered two judgements in favour of the Danish Ministry of Taxation laying down that own payroll costs incurred in connection with acquisitions cannot be deducted. The judgements have been appealed to the Supreme Court by the Ministry.

In the two cases in question, two banks had each incurred payroll costs in relation to their own employees in connection with the take-over of a number of branches. In both cases, the Ministry of Taxation argued that these costs were incurred to expand the income base and that, therefore, the costs were not deductible. The Court agreed but allowed deduction on the grounds that it should be considered a change of practice.

The Ministry of Taxation appealed the judgements to the Supreme Court, and the final decision is expected to be made in June 2017.

Consequently, it is not clear at present whether it is possible to deduct payroll costs incurred for purposes other than the operation of the enterprise. If, before the matter has been clarified by the Supreme Court, enterprises deduct this type of costs, they should be aware of a possible interest charge on the tax on a potential increase of income.

Other issues

Tax-free restructuring
Restructuring (e.g. mergers, demergers, share exchanges, drop-down of assets) can, in many cases, be carried out tax-free under the provisions of the EU Mergers Directive as implemented into Danish law. These types of restructuring can be carried out in a tax-exempt manner without prior approval from the tax authorities. However, several objective conditions must be fulfilled. Formation, merger, reorganisation, and liquidation expenses are mostly non-deductible.

Danish Intergovernmental Agreement (IGA) with the United States (US)
Denmark has entered into an Intergovernmental Agreement (IGA Model 1) with the United States on the Danish implementation of the Foreign Account Tax Compliance Act (FATCA). The IGA is implemented into Danish law and is, to a large extent, an overlay to existing Danish tax reporting rules applying to Danish banks. The scope of FATCA is, however, wider than the existing rules in terms of both entities and products covered and customer due diligence procedures. The IGA implies that Danish foreign financial institutions (FFIs) must report to the Danish tax authorities instead of directly to the US Internal Revenue Service (IRS). The Denmark-US IGA contains important exceptions for both the Danish mutual fund and pension savings industries.

Common Reporting Standard (CRS)
Denmark is among the 'early adopters' of the CRS, whereby the first exchange of information will take place in 2017.

The Council Directive 2014/107/EU, amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, has been fully implemented in Denmark and is effective from 1 January 2016.

Reporting under FATCA/CRS
The reporting financial institutions must submit the required information under FATCA/CRS through the online system solution of the Danish tax authorities. The reporting deadline is 1 May, and is the same under both regimes.

Estonia

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Significant developments

Estonia is regarded as offering a relatively favourable income tax regime, as all undistributed corporate profits are tax exempt. Estonia levies a corporate income tax (CIT) only on profits that are distributed as dividends, share buy-backs, capital reductions, liquidation proceeds, or deemed profit distributions. Distributed profits are generally subject to 20% corporate tax (20/80 on the net amount of the profit distribution).

A general anti-avoidance rule (GAAR) and an anti-hybrid rule were introduced to the Estonian Income Tax Act as provided by the amendments to the Parent Subsidiary Directive. The changes came into effect as of 1 November 2016. As a result of these amendments, it is expected that the tax authorities will start taking a closer look at holding structures, and the issue of substance in holding companies will become more relevant.

On 19 December 2016, amendments to several taxation acts were passed by the new government coalition, such as:

- Increase of excise duties as of 1 July 2017.
- The planned decrease of social tax by 0.5% was cancelled.
- The planned value-added tax (VAT) rate increase applicable to accommodation services was cancelled.
- Partial tax exemption for sports and health costs of an employee will be enacted.

On 17 April 2017, the Ministry of Finance published another draft law with multiple amendments to the Income Tax Act, which has been sent for rounds of approval before it could be passed. The more significant planned amendments are as follows:

- Introduction of the so-called pledge income tax, which is a CIT charge applicable on certain intra-group loans granted on account of untaxed corporate profits. The tax liability is not final since it will be possible to reclaim the paid income tax if the loan is repaid during two years as of the last day of the calendar month of when it was issued. This amendment is expected to become effective as of 1 January 2018 and would apply on qualifying loans granted onwards from 1 July 2017.
- Introduction of a lower CIT at the rate of 14% for those companies making stable profit distributions. The payment of dividends in the amount that is below or equal to the extent of taxed dividends paid during the three preceding years (20%) will be taxed with a rate of 14% (the tax rate on the net amount being 14/86 instead of the regular 20/80). In cases where the recipient of the 14% dividend is either a resident or non-resident individual, a 7% withholding tax (WHT) rate will apply, unless a tax treaty provides for a lower WHT rate (5% or 0%).

Taxes on corporate income

All undistributed corporate profits are tax exempt. This exemption covers both active (e.g. trading) and passive (e.g. dividends, interest, royalties) types of income. It also covers capital gains from the sale of all types of assets, including shares, securities, and immovable property. This tax regime is available to Estonian resident companies and permanent establishments (PEs) of non-resident companies that are registered in Estonia.

The taxation of corporate profits is postponed until the profits are distributed as dividends or deemed to be distributed, such as in the case of transfer pricing adjustments, expenses and payments that do not have a business purpose, fringe benefits, gifts, donations, and representation expenses.

Distributed profits are generally subject to the 20% CIT at 20/80 of the net amount of profit distribution. For example, a company that has profits of 100 euros (EUR) available for distribution can distribute dividends of EUR 80, on which it must pay CIT of EUR 20.

However, the new government coalition has announced its plan to lower the CIT rate from 20% to 14% for companies who pay dividends on a regular basis, but only in cases where dividends are paid to legal persons. Further details are still pending.

From the Estonian perspective, this tax is considered a CIT and not a WHT, so the tax rate is not affected by an applicable tax treaty. Certain distributions are exempt from such tax (*see the Income determination section*).

In Estonia, resident companies are taxed on profits distributed from their worldwide income, while PEs of non-residents are taxed only on profits distributed from income derived from Estonian sources. Other Estonian-source income derived by non-residents may be subject to final WHT or CIT by way of assessment.

Local income taxes

There are no municipal or local income taxes in Estonia.

Corporate residence

A legal entity is considered resident in Estonia for tax purposes if it is established under Estonian law. There is no management and control test for the purpose of determining corporate residency. Most tax treaty tie-breakers for legal entities are based on competent authority procedures.

Permanent establishment (PE)

A PE (including a branch registered in the Commercial Register) of a foreign entity is deemed to be a non-resident taxpayer. Under the domestic law, which deviates from the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention, a PE is defined as an enterprise through which the permanent business activities of the non-resident are conducted in Estonia. A PE is deemed to be created as a result of the business activities conducted in Estonia that are geographically linked or have movable character or as a result of the business activities of an agent that is authorised to conclude contracts in the name of the non-resident.

Other taxes

Value-added tax (VAT)

The following transactions are subject to Estonian VAT:

- Taxable supplies of goods and services (the place of supply of which is Estonia).
- Taxable imports of goods.
- Taxable intra-Community acquisitions of goods.

The standard VAT rate is 20%. A reduced rate of 9% is applied to books, periodicals (with few exceptions), hotel accommodation services, and listed pharmaceuticals.

It was planned to raise the VAT rate for hotel accommodation services from 9% to 14%, but the amendment is to be cancelled by the new government coalition, so these services will continue to enjoy the reduced rate.

The VAT rate on the export of goods and certain services is 0% (i.e. exempt with credit). Some services, such as health care, insurance, certain financial, and transactions with securities, are exempt (i.e. exempt without credit).

Transactions in real estate are generally exempt from VAT, but there are certain significant exceptions (e.g. transactions in new and significantly renovated buildings). Taxpayers can elect to add VAT to real estate transactions if certain conditions are met.

The reverse-charge mechanism applies to the supply of gold, waste metal, and real estate, under which VAT is accounted for by the VAT liable purchaser and not by the supplier. For real estate and investment gold, the reverse charge applies only when the seller has opted for taxation.

If the taxable supplies of Estonian resident businesses or a PE of a non-resident business in Estonia exceed EUR 16,000 in a calendar year, VAT registration is required. Voluntary registration is also possible. As of 1 January 2018, the threshold for obligation to register will be raised from EUR 16,000 to EUR 40,000. Certain transactions of non-resident businesses require Estonian VAT registration without any threshold.

The VAT accounting period is generally a calendar month, and VAT should be declared and paid on or before the 20th day of the following month.

Under certain conditions, a European Union (EU) taxable person that is not registered for VAT in Estonia will be entitled to a refund of input VAT paid in Estonia. Non-EU taxable persons are entitled to claim VAT refunds based on reciprocity.

Estonia has implemented a system that allows, under certain conditions, a company to account for VAT on imports on the VAT return without paying VAT to the customs authority.

Customs duties

After becoming a member of the European Union, Estonia also became a member of the Customs Union. The Community Customs Code and related implementation regulations apply, meaning that:

- trade between Estonia and other EU countries is customs-free

- imports from non-EU countries are subject to EU customs tariffs, and
- numerous free trade agreements concluded between EU and non-EU countries apply to Estonia.

Excise duties
Excise taxes are levied on tobacco, alcohol, electricity, some packaging materials, and motor fuel.

Land and property taxes
Land is subject to an annual land tax, which is calculated on the assessed value of land at rates between 0.1% and 2.5%, depending on the municipality. The tax is paid by the owners of land, or sometimes by the users of land, in two instalments, by 31 March and 1 October (amounts not exceeding EUR 64 are paid in one instalment by 31 March). The land under a home is generally exempted from land tax.

There is no property tax (i.e. tax on the value of buildings).

Property transfers are generally subject to state and notary fees.

Transfer taxes
There are no transfer taxes in Estonia.

Stamp taxes
Certain transactions may be subject to insignificant stamp taxes (i.e. state fees).

Payroll taxes
In addition to payment of the social tax, unemployment insurance contributions, and compulsory accumulative pension scheme contributions (*see below*), employers should withhold personal income tax (PIT) at the flat rate of 20% after deduction of the employee's contribution to unemployment insurance scheme, compulsory accumulative pension scheme, and, if relevant, personal deduction of EUR 180 per month.

Social security and unemployment insurance
Employers operating in Estonia (including non-residents with a PE or employees in Estonia) must pay social tax on certain payments to individuals at the rate of 33% (where 20% is used for financing public pension insurance and 13% is used for financing public health insurance). Social tax paid by employers is not capped and mainly applies to salaries, directors' fees, and service fees paid and fringe benefits granted to individuals.

In addition to social tax, employers are also required to pay and withhold unemployment insurance contributions. Employers must pay 1% and employees must pay 2% (collected by employers through payroll withholding). The contributions mainly apply to salaries and service fees paid to individuals.

Compulsory accumulative pension scheme
Employers' payroll withholding includes 2% contributions to the compulsory accumulative pension scheme if the employee has joined that pension scheme. Under the compulsory accumulative pension scheme, resident employees born after 31 December 1982 are obligated to join the compulsory accumulative pension scheme and make contributions at 2% from gross salary. For resident employees born before 1983, joining the compulsory accumulative pension scheme is voluntary, but, after joining, it

becomes compulsory and employees may not subsequently leave the scheme. In 2013, employees had an opportunity to increase the pension contribution rate temporarily (for the period 2014 to 2017) from 2% to 3% by submitting the respective application. The state will contribute 6% (instead of 4%) to the employees' pension account where the increase of the contribution has been opted.

Heavy goods vehicle tax

The heavy goods vehicle tax is paid for the following classes of vehicles that are registered with the Estonian National Motor Vehicle Register and are intended for the carriage of goods:

- Lorries with a maximum authorised weight or gross laden weight of not less than 12 tons.
- Road trains composed of trucks and trailers with a maximum authorised weight or gross laden weight of not less than 12 tons.

The tax is paid by the owners or users of the vehicles. The quarterly tax rates range from EUR 0 to EUR 232.60 per heavy goods vehicle.

Gambling tax

Gambling tax is imposed on amounts received from operating games of skill, totalisator, betting, lotteries, and promotional lotteries. Tax is also charged on gambling tables and machines used for games of chance located in licensed premises. The tax is paid monthly by authorised operators.

Local taxes

Local taxes can be imposed by rural municipalities or city councils; however, the fiscal significance of local taxes is almost non-existent. Local taxes include advertisement tax, road and street closure tax, motor vehicle tax, tax on keeping animals, entertainment tax, and parking charges.

Branch income

Registered PEs of non-residents, much as with resident companies, are subject to CIT only in respect of profit distributions, both actual and deemed, as defined in domestic law.

Transactions and dealings between a head office and its PE(s) should be conducted on arm's-length terms. Thus, such profits should be attributed to a PE of a non-resident taxpayer that the PE would be expected to make if it were a distinct and separate taxpayer engaged in the same or similar activities, and under the same or similar conditions, and dealing in a wholly independent manner with its head office.

Income determination

Distributable profits are determined based on financial statements drawn up in accordance with Estonian Generally Accepted Accounting Principles (GAAP) or International Accounting Standards (IAS)/International Financial Reporting Standards (IFRS), and there are no adjustments to accounting profits for tax purposes (e.g. tax depreciation, tax loss carryforward or carryback).

The CIT liability associated with the distribution of dividends is accounted for as an expense at the time the dividends are declared, regardless of when the profits were generated or distributed.

Dividends paid by Estonian companies are generally subject to 20/80 CIT at the level of the distributing company. However, dividends distributed by Estonian companies are exempt from CIT if the distributions are paid out of:

- dividends received from Estonian, EU, European Economic Area (EEA), and Swiss tax resident companies (except tax haven companies) in which the Estonian company has at least a 10% shareholding
- profits attributable to a PE in the European Union, European Economic Area, or Switzerland
- dividends received from all other foreign companies in which the Estonian company (except tax haven companies) has at least a 10% shareholding, provided that either the underlying profits have been subject to foreign tax or if foreign income tax was withheld from dividends received, or
- profits attributable to a foreign PE in all other countries, provided that such profits have been subject to tax in the country of the PE.

In addition, stock dividends (bonus shares) distributed to stockholders are exempt from 20/80 CIT charge.

Certain domestic and foreign taxes can also be credited against the 20/80 CIT charge under domestic law or tax treaties.

It should be noted that the new government coalition has announced its plan to lower the CIT rate from 20% to 14% for companies who pay dividends on a regular basis (at least in three consecutive years), but only in cases where dividends are paid to legal persons. No further details have yet been decided.

Deductions

Distributable profits are determined based on financial statements drawn up in accordance with Estonian GAAP or IAS/IFRS, and there are no adjustments to accounting profits for tax purposes (e.g. tax depreciation, tax loss carryforward or carryback).

Fringe benefits

Employers operating in Estonia (including non-resident companies that have a PE or employees in Estonia) are liable to Estonian taxation on any fringe benefits granted to their employees (including directors).

Fringe benefits are subject to an exceptional tax treatment in Estonia, as only the employer is obligated to pay taxes on the fringe benefits furnished to the employee. Taxable fringe benefits received by a resident employee are generally not included in the taxable income of the employee for Estonian tax purposes. Fringe benefits are subject to 20/80 CIT and 33% social tax. For example, where the amount of the benefit is EUR 100, the CIT due by the employer would be EUR 25 (20/80 x 100) and the social tax due EUR 41.25 (0.33 x 125), for a total fringe benefit tax charge of EUR 66.25.

As of 1 January 2018, sports and health costs of an employee are to be exempted from income and social tax in the sum of up to EUR 100 per employee in one quarter. Currently, if the employer bears such costs without a respective obligation deriving from law, the costs are deemed fringe benefits.

Gifts, donations, and representation expenses

The 20/80 CIT is generally due on gifts and donations. Gifts and donations made to certain qualifying recipients are only subject to 20/80 CIT if such expenses exceed one of two limitations:

- 3% of the calculated social tax base for the existing calendar year or
- 10% of the profit of the last financial year according to statutory financial statements.

Representation expenses, those expenditures whose character and primary purpose is for representational or entertainment related activities, are generally subject to 20/80 CIT only if they exceed the threshold of EUR 32 per month plus 2% of the calculated social tax base of the calendar month in which the expenses are paid.

Taxes

All taxes paid are deductible for CIT purposes. In certain circumstances, domestic or foreign taxes may be creditable against the 20/80 CIT charge under domestic law or an applicable tax treaty.

Other significant items

The 20/80 CIT is generally due on expenses and payments that do not have a business purpose and that are regarded as deemed profit distributions. These may include, for example, late payment interest on tax arrears, penalties imposed by law, bribes, purchase of services or settlement of obligations not related to the taxpayer's business, and acquisition of assets not related to the taxpayer's business.

Furthermore, there are specific anti-tax haven rules treating certain transactions and dealings with tax haven companies as deemed profit distributions, which are therefore subject to 20/80 CIT. These include the following:

- Acquisition of securities issued by a tax haven entity (exception for certain listed securities).
- Acquisition of an ownership interest in a tax haven entity.
- Payment of fines or penalties to a tax haven entity, unless settled by court or arbitrage.
- Granting loans or making prepayments to a tax haven entity or otherwise acquiring a claim against a tax haven entity.

Payments to foreign affiliates

Payments to foreign affiliates are deductible for tax purposes (i.e. not subject to 20/80 CIT as deemed profit distributions) if the payment serves a business purpose, provides a benefit to the payer, is at arm's length, and is substantiated by sufficient documentation.

Payments to foreign affiliates may also be subject to various WHTs. Certain payments to affiliates located in tax haven countries are always subject to 20/80 CIT or a 20% WHT rate.

Group taxation

There is no form of consolidation or group taxation for CIT purposes in Estonia.

Transfer pricing

Transfer pricing rules are applicable to all types of transactions between related parties. Both domestic and cross-border transactions with related parties must be conducted at arm's length. Estonian tax legislation includes a relatively broad definition of related parties. Under the present corporate tax system, if the transactions between related parties do not follow the arm's-length principle, then the subsequent transfer pricing adjustments are treated as hidden profit distributions subject to 20/80 monthly CIT.

As a general rule, Estonian group companies and PEs of foreign companies are obligated to prepare transfer pricing documentation to prove the arm's-length nature of the inter-company transactions with all related parties.

However, this documentation requirement does not apply to small and medium-size enterprises (SMEs) unless they have conducted transactions with entities located in low-tax territories. A company or PE is deemed to be an SME if the consolidated results of the previous financial year of an Estonian company or a PE, together with its associated enterprises or head office (i.e. at the group level), are below all of the following criteria:

- EUR 50 million annual sales.
- EUR 43 million balance sheet.
- 250 employees.

Apart from the formal transfer pricing documentation and general requirement to disclose the transactions with the related parties in the annual reports, there are no additional reporting requirements related to transfer pricing in relation to inter-company transactions.

Thin capitalisation

There are no thin capitalisation rules in the Estonian tax legislation.

Controlled foreign companies (CFCs)

Estonia has no CFC rules for corporate taxpayers.

Tax credits and incentives

There are no special tax incentives in Estonia. However, the entire Estonian corporate tax system, which provides for an indefinite deferral for taxing corporate profits, may be viewed as a tax incentive that promotes reinvestment of profits and thus stimulates economic growth.

Foreign tax credit

In certain circumstances, domestic or foreign taxes may be creditable against the 20/80 CIT charge under domestic law or an applicable tax treaty. *See the Income determination section for more information*.

Withholding taxes

Withholding agents must withhold CIT from certain payments. Withholding agents include resident legal entities, resident individuals registered as sole proprietorships or acting as employers, and non-residents having a PE or acting as employers in Estonia. The tax must be reported and paid by the tenth day of the month following the payment. CIT is not withheld from payments to resident companies, registered sole proprietorships, and registered PEs of non-resident companies. The following rules are in place with respect to payments that are subject to WHT:

- There is no WHT on dividends.
- There is no WHT on interest payments to non-residents. Interest payments to resident individuals are subject to a 20% WHT rate.
- Royalties (including payments for the use of industrial, commercial, or scientific equipment) paid to non-residents are generally subject to a 10% WHT rate under domestic law, but reduced rates may be available under double tax treaties (DTTs). Certain royalty payments to associated EU and Swiss companies that meet certain conditions are exempt from WHT.
- Rental payments to non-residents for the use of immovable property located in Estonia and movable property subject to registration in Estonia (excluding payments for the use of industrial, commercial, or scientific equipment) are subject to a 20% WHT rate under domestic law, but DTTs may exempt payments for the use of movable property from WHT.
- Royalties and rental payments to resident individuals are subject to a 20% WHT rate.
- Payments to non-resident companies for services provided in Estonia, including management and consultancy fees, are subject to a 10% WHT rate under domestic law, but may be exempt under DTTs. Service fee payments to tax haven entities are always subject to a 20% WHT rate.
- Salaries, directors' fees, and service fees paid to individuals are subject to a 20% WHT rate under domestic law, but DTTs may exempt service fee payments to non-resident individuals from WHT.
- Payments for the activities of non-resident artistes or sportsmen carried out in Estonia are subject to a 10% WHT rate.
- Certain pensions, insurance benefits, scholarships, prizes, lottery winnings, etc. paid to non-residents and resident individuals are subject to a 20% WHT rate under domestic law.

For non-residents without a PE in Estonia, the tax withheld from these payments at domestic or treaty rates constitutes final tax in terms of their Estonian-source income, and they do not have any tax reporting requirements in Estonia.

For certain types of Estonian-source income, non-residents are liable under Estonian domestic law to self-assess their Estonian tax and submit a tax return to the Estonian tax authorities. These types of income include:

- Taxable capital gains.
- Profits derived from business conducted in Estonia without a registered PE.
- Other items of income from which tax was not withheld but should have been withheld.

From 2017, Estonia has effective tax treaties with the territories listed in the table below. A treaty has been signed with Morocco, but it is not yet effective.

Estonia

The following WHT rates apply to dividends, interest, and royalties paid to a recipient or beneficial owner resident in a tax treaty country. The lower of the domestic or the treaty rate is given.

Recipient	Dividends (%) (1)	Interest (%) (2)	Royalties (%) (3)
Non-treaty	0	0	0/10
Treaty:			
Albania	0	0	5
Armenia	0	0	10
Austria	0	0	0/5/10 (4)
Azerbaijan	0	0	10
Bahrain	0	0	0
Belarus	0	0	10
Belgium	0	0	0 (7)
Bulgaria	0	0	0/5
Canada	0	0	0 (7)
China, People's Republic of	0	0	10
Croatia	0	0	10
Cyprus	0	0	0
Czech Republic	0	0	0/10
Denmark	0	0	0 (7)
Finland	0	0	0 (7)
France	0	0	0 (7)
Georgia	0	0	10
Germany	0	0	0/5/10 (4)
Greece	0	0	0/5/10 (4)
Hungary	0	0	0 (7)
Iceland	0	0	0 (7)
India	0	0	10
Ireland, Republic of	0	0	0 (7)
Isle of Man	0	0	0
Israel	0	0	0
Italy	0	0	0 (7)
Jersey	0	0	0
Kazakhstan	0	0	15
Korea, Republic of	0	0	5/10 (4)
Latvia	0	0	0/5/10 (4)
Lithuania	0	0	0/10
Luxembourg	0	0	0 (7)
Macedonia	0	0	5
Malta	0	0	0/10
Mexico	0	0	10
Moldova	0	0	10
Netherlands	0	0	0 (7)
Norway	0	0	0 (7)
Poland	0	0	0/10
Portugal	0	0	0/10
Romania	0	0	0/10
Serbia	0	0	5/10 (5)
Singapore	0	0	7.5
Slovakia	0	0	0/10

Recipient	Dividends (%) (1)	Interest (%) (2)	Royalties (%) (3)
Slovenia	0	0	0/10
Spain	0	0	0 (7)
Sweden	0	0	0 (7)
Switzerland	0	0	0 (7)
Thailand	0	0	8/10 (6)
Turkey	0	0	5/10 (4)
Turkmenistan	0	0	10
Ukraine	0	0	10
United Arab Emirates	0	0	0
United Kingdom	0	0	0 (7)
United States	0	0	5/10 (4)
Uzbekistan	0	0	10
Vietnam	0	0	0/10

Notes

1. Under the domestic law, the rate is nil for all non-resident individual and corporate shareholders.
2. Under the domestic law, the rate is nil for all non-resident individual and corporate creditors.
3. The rate is nil for arm's-length royalties paid to an associated EU or Swiss company if certain conditions are met.
4. The lower 5% rate applies to royalties paid for the use of industrial, commercial, or scientific equipment.
5. The lower 5% rate applies to royalties paid for the use of copyright royalties, excluding software royalties.
6. The lower 8% rate applies to royalties paid for the use of industrial, commercial, or scientific equipment.
7. The definition of royalties precludes fees paid for the use of equipment, and royalties are exempt from WHT in Estonia.

Tax administration

Taxable period

The tax period is a calendar month.

Tax returns

The combined CIT and payroll tax return (form TSD with appendices) must be submitted to the local tax authorities by the tenth day of the month following a taxable distribution or payment. Tax returns may be filed electronically via the Internet.

Payment of tax

CIT and payroll taxes must be remitted to the local tax authorities by the tenth day of the month following a taxable distribution or payment. No advance CIT payments are required.

Advance rulings

The aim of the advance ruling system is to provide certainty on the tax consequences of specific transactions or combination of transactions taking place in the future. The ruling is binding on the authorities (and not on the taxpayer) if the transaction was made within the deadline and the description provided in the ruling and the underlying legislation has not been substantially changed in the meantime. Estonian legislation specifically excludes obtaining rulings when the interpretation of the legislation is objectively clear, the situation is hypothetical, or the main purpose of the planned transaction is tax avoidance. In addition, transfer pricing valuation issues are excluded from the scope of the binding ruling system.

Tax audit process
There is no statutory tax audit cycle in Estonia.

Statute of limitations
As a general rule, the statute of limitations is three years. In case of intentional tax evasion, it is five years.

Topics of focus for tax authorities
The main topics of focus for tax authorities are 'envelope wages', personal services companies, VAT fraud, and transfer pricing.

Other issues

Company restructurings
In accordance with the EC Directive 2009/133/EC on mergers, divisions, partial divisions, transfers of assets, and exchanges of shares concerning companies of different member states, the mergers, divisions, and re-organisations of companies are generally tax-neutral in Estonia. The principle of going concern is applied in taxation of referred restructuring transactions.

Finland

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Significant developments

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

Taxes on corporate income

Finnish resident companies are subject to Finnish corporate income tax (CIT) on their worldwide income (i.e. unlimited tax liability). Also, Finnish permanent establishments (PEs) of non-resident companies are subject to Finnish CIT on their worldwide income attributable to the PE.

The CIT rate is 20%.

Public service broadcasting tax

Public service broadcasting tax (*Yleisradio* or YLE tax) for companies and organisations is based on the taxable income for a fiscal year. The tax amounts to 140 euros (EUR) per year if the taxable income of the organisation is at least EUR 50,000. For organisations with taxable income exceeding EUR 50,000, the tax is levied at EUR 140 plus 0.35% of the taxable income exceeding EUR 50,000. The maximum of the annual tax is EUR 3,000, which will be payable by organisations with taxable income of EUR 868,000 or more.

YLE tax is deductible in the taxation of income of a company.

Local income taxes

No municipal or local income taxes are levied in Finland on the income of a company.

Corporate residence

A company is deemed to be resident on the basis of incorporation. Consequently, a company is deemed to be resident in Finland if it is incorporated (registered) in Finland.

Permanent establishment (PE)

A PE is, in general, formed in line with the Organisation for Economic Co-operation and Development (OECD) Model Convention.

Other taxes

Value-added tax (VAT)

The general VAT rate is 24%. A reduced rate of 14% is applied to food and animal feed. The reduced VAT rate of 14% also applies to restaurant and catering services. A reduced VAT rate of 10% is applied to certain goods and services (e.g. books, subscriptions of newspapers and magazines lasting one month or longer, accommodation, passenger transport).

A zero rate applies in certain instances (e.g. intra-Community supplies of goods and exports of goods). Additionally, certain services (e.g. financial services, insurance services, and certain educational services) are exempted from VAT.

Customs duties

Many goods imported into Finland from outside the European Union (EU) are subject to customs duties. The rates of duty are provided by the EU's Common Customs Tariff and vary widely.

Excise duties

Product specific, EU harmonised excise duties are levied on tobacco products, liquid fuels, and alcohol, as well as electricity and certain other fuels. In addition to the harmonised excise duties, Finland levies national excise duties on soft drinks, beverage containers, oil waste on lubrication oils and other oil based lubrication preparations, oil transported through or imported into Finland, waste to landfill deposits, and tall oil, as well as electricity, coal, natural gas, and liquid fuels.

Real estate tax

Municipalities impose an annual real estate tax. The tax is levied on the taxable value of buildings and land. The municipal council determines the applicable tax rates, although the minimum and maximum tax rates are set by tax legislation (e.g. 0.93% to 1.80% for general real estate tax, 0.41% to 0.90% for permanent dwellings). The tax is deductible from taxable business income if the real estate is used for business purposes. The tax is deductible from taxable income of the so-called 'other-source income' if the real estate is used to acquire other taxable income than business income.

Transfer tax

A transfer tax of 4% of the sales price is payable on the transfer of real estate situated in Finland. The transfer of shares in Finnish companies (other than housing companies and real estate companies) and other domestic securities is subject to a transfer tax of 1.6%. The transfer of shares in Finnish housing companies and real estate companies is subject to a transfer tax of 2%.

A transfer tax of 2% of the sales price is payable on the transfer of shares in a foreign company whose activities consist mainly of owning or holding (directly or indirectly) real estates in Finland, provided that either the transferor or the transferee is a resident of Finland or, alternatively, a Finnish branch of a foreign credit institution, a Finnish branch of a foreign investment firm, or a Finnish branch of a foreign fund management company.

Generally, the transfer tax is payable by the transferee.

No transfer tax is payable on the transfer of securities that are subject to trading on a regulated market or multilateral trading facility in the European Economic Area

(EEA). Similarly, no transfer tax is payable if both the seller and the transferee are non-residents. Transfer tax is, however, always payable on transfers between non-residents if the transferred shares are shares in a Finnish housing or real estate company.

Stamp tax

No stamp taxes are levied in Finland.

Payroll taxes

The employer has a liability to income tax withholding, but the withholding liability is limited to the amount of cash remuneration.

Social security contributions

According to the Finnish social security legislation, both Finnish and foreign employers have a liability to pay several social security payments in Finland in cases where an employee performs one's tasks partly or wholly in Finland. The liability concerns all employers, regardless of the form of the company and whether the foreign company has a PE in Finland. The percentage rates for the employer's (and employee's) social security contributions are revised on an annual basis.

Compulsory social security contributions payable by the employer in 2017, according to the paid salaries, are as follows:

- Employer's health insurance contribution: 1.08% (no cap).
- Employer's pension insurance contribution: 17.95% (on average, no cap).
- Employer's unemployment insurance contribution: 0.8% for the first EUR 2,059,500 of gross salaries and 3.3% for the portion of the gross salaries exceeding EUR 2,059,500 (no cap).
- Group life insurance premium: 0.07% (on average, no cap).
- Accident insurance premium: 0.8% (on average, no cap).

The new rates for employer's health insurance contribution are applicable to salaries paid as of 1 January 2017. The employer's health insurance contribution is paid to the Finnish Tax Administration, and the other contributions are paid to the insurance providers. All of these contributions are tax deductible as salary cost.

Compulsory social security contributions payable by the employee in 2017 are as follows:

- Employee's pension insurance contribution: 6.15% for employees of age 17 to 52 or 63 and over, and 7.65% for employees of age 53 to 62 (no cap).
- Employee's unemployment insurance contribution: 1.60% (no cap).

The above-mentioned contributions are tax deductible for the employee. These contributions are withheld from the gross salary at the time of salary payment and remitted by the employer to the appropriate insurance provider together with the employer's pension and unemployment contributions.

- Employee's sickness insurance contribution: 1.58%, provided that the annual taxable income exceeds EUR 14,000 (otherwise 0.00%; no cap).

In 2017, the sickness insurance consists of two payments, a daily allowance contribution of 1.58% and a medicare contribution of 0.00%. From these two contributions, only the daily allowance contribution is tax deductible for the employee.

Unlike other employee's social security contributions, the sickness insurance contribution is included in the withholding tax (WHT) rate of the employee's personal WHT card and, thus, withheld and remitted to the tax authorities together with the withheld income taxes and is finally settled in the final assessment.

If an employee is regarded as a foreign-posted employee and has an A1 certificate or a certificate of coverage from one's home country, neither the aforementioned employer's social security contributions nor the employee's social security charges are payable in Finland.

Branch income

As a general rule, a branch is taxed like a corporation (tax rate 20%) on the profits attributable to it, provided the branch constitutes a PE in Finland. No tax is withheld on transfers of (taxed) profits to the head office.

Income determination

Companies and other legal entities may have income from three different sources: income from business activities, agricultural income, and personal source income. The net taxable income is calculated separately for each source. The expenses of one source of income cannot be deducted from the taxable income of another source, and a loss from one source of income cannot offset taxable income from another source. All taxable income received by a company is taxed at the CIT rate of 20%, irrespective of the source to which it is attributable.

Income from business and professional activities falls into 'business source' income (taxed in accordance with the Business Income Tax Act or BITA), while income from non-business activity is 'personal income'. Typically, personal income is passive income derived, for example, from investments. As an example, rental income from real estate let to non-related companies is usually regarded as 'personal source' income. The same can apply to a dividend received from stock exchange quoted companies, where the recipient of the dividend is a passive holding company. Farming and forestry income are, as a main rule, treated as agricultural source income.

In general, Finland has a very broad income concept, and taxable income includes all income derived from a company's activities, though there are some significant exceptions, including (among others):

- Capital contributions by shareholders.
- In most cases, dividends from unlisted companies (*see Dividend income below*).
- Liquidation gains and capital gains qualifying for the participation exemption (*see Capital gains below*).
- Proceeds from disposal of company's own shares.
- Merger gain.

There is no general distinction between capital gains and other income; capital gains of a company are taxed as part of its general income either in the 'business income' basket or the 'other income' basket. No rates other than the general CIT rate of 20% are applied to any part of taxable income of a company.

Taxable income of a company generally is computed on an accrual basis (i.e. income is taxable in the year it is earned). However, exemptions to this main rule do exist, including unrealised exchange gains and losses, which are taxable/deductible in the year of the rate change.

Inventory valuation
Inventories may be written down to the lower of direct first in first out (FIFO) cost, replacement cost, or net realisable value. Conformity between book and tax reporting is required.

Capital gains
Capital gains and losses are generally included in the taxable business income (i.e. sales proceeds are included in the taxable income, and the undepreciated balance of the asset sold is deducted in the sales year) and treated as ordinary income. However, the entire stock of machinery and equipment is treated as a single item, and the capital gain on machinery and equipment is entered as income indirectly by deducting the selling price from the remaining value of the stock of machinery and equipment.

Capital gains arising from the sale of shares are tax exempt via a participation exemption, under certain circumstances. Specifically, capital gains arising from the sale of shares are tax exempt if:

- the seller is not a company carrying out private equity activities (as defined by the BITA)
- the seller has owned continuously, for a period of at least one year, at least 10% of the share capital of the target company, and
- the shares are part of the seller's fixed assets and the shareholding is included in the seller's business income source for tax purposes.

For the participation exemption to apply, the target company cannot be a real estate company, a housing company, or a company the activities of which mainly include owning of real estates. The target company must also be a Finnish company, a company referred to in the European Commission (EC) Parent-Subsidiary Directive, or a company resident in a country with which Finland has concluded a tax treaty that applies to the target company's dividend distribution.

Note that a capital gain is taxable to the extent that the gain corresponds with a previous tax-deductible write-down or provision made in connection with the acquisition cost of shares, subsidies received for acquiring shares, or previous capital losses deducted for Finnish tax purposes from intra-group transfer of the shares.

Capital losses are non-deductible in situations where capital gains are exempt from tax.

Dividend income
Dividends received by a Finnish company are tax exempt in most cases.

However, dividends received by a Finnish company are fully taxable (100%) if:

- the dividend is received from a publicly quoted company, the receiving company is not a publicly quoted company, and the shareholding is less than 10% of the equity of the distributing company

- the dividend is distributed by a non-resident company that is not such as mentioned in the EC Parent-Subsidiary Directive or other company resident in an EU or EEA country that is not liable to pay at least 10% tax for its income, or
- the dividend is distributed by a company resident outside the European Union or European Economic Area.

Note that most of the Finnish tax treaties include provisions enabling tax-exempt dividends from the tax treaty country in case of at least a 10% shareholding.

Furthermore, dividends received are partly (75%) taxable if the dividend is received on shares belonging to 'investment assets' and the receiving company does not own at least 10% of the equity of the distributing company that is resident in another EU member state and covered by the EC Parent-Subsidiary Directive or the dividend is received on shares belonging to 'investment assets' and the distributing company is resident in Finland or an EEA country but not a company covered by the EC Parent-Subsidiary Directive (note that only financial, pension, and insurance institutions may have assets that are considered as 'investment assets').

Finland has implemented into domestic tax legislation the changes in the Parent-Subsidiary Directive (concerning mismatches in tax treatment of profit distribution to avoid situations of double non-taxation and general anti-abuse rules, directives 2014/86/EU and 2015/121/EU) by limiting Finnish companies' right to receive tax-exempt dividends. Due to these changes, dividends received by a Finnish company are always considered fully taxable in case:

- the dividend is tax deductible for the distributing company, or
- the dividend distribution relates to an arrangement or series of arrangements mainly aimed at achieving a tax benefit that is not meant to be the purpose of the dividend article and is not genuine, taking into account all the facts and circumstances related to the case (i.e. the arrangement or series of arrangements is not based on solid business reasons).

Stock dividends

Stock dividends (bonus shares) may be distributed to stockholders, which are corporations and other legal entities with some exceptions, free of tax on the shareholder (*see Dividend income above*).

Distributions from reserves for invested unrestricted equity

Distributions from reserves for invested unrestricted equity are, in general, deemed as dividends. However, distributions from non-listed companies can be deemed as capital gain if they are:

- a return of capital investment made by the same taxpayer
- distributed within ten years of the investment, and
- clarified by the taxpayer that the above-mentioned conditions are met.

Distributions cannot be deemed as a capital gain if the reserves for invested unrestricted equity have been formed in conjunction with company restructurings (merger and acquisition [M&A] processes).

Interest income

Interest income of a company is taxed as part of its general income, thus the regular CIT rate of 20% is applied.

Royalty income
Royalty income of a company is taxed as part of its general income, thus the regular CIT rate of 20% is applied.

Foreign income
A Finnish corporation is taxed on foreign dividends when the decision to distribute dividends is made and on foreign branch income and other foreign income (e.g. interest and royalties) as earned. The principal method of avoiding double taxation is the credit method, although the exemption method is still applied in a few older treaties (*see the Tax credits and incentives section for more information*).

Deductions

As with taxable income, the concept of deductible costs is wide and covers, in general, all costs incurred in the pursuance of taxable income. Significant exceptions to this rule include (among others):

- Income taxes (*see below*), tax late payment interests, and punitive tax increases.
- Fines and other punitive payments.
- 50% of entertainment costs.
- Capital losses and liquidation losses if capital gains from the sale of shares of a target company would qualify for the participation exemption (*see Capital gains in the Income determination section*).
- Losses from the disposal of a company's own shares.
- Merger losses.
- Net interest expenses exceeding 25% of taxable profit as increased with interest expenses, depreciation, and received group contribution, and as decreased with given group contribution (EBITDA) (*see Thin capitalisation in the Group taxation section*).

As the accrual method is applied to the calculation of taxable income, expenses are usually deductible in the year they are realised (i.e. the year the obligation to pay has arisen).

Depreciation, amortisation, and depletion
The maximum annual rates of depreciation calculated on the remaining acquisition cost for tax purposes (declining-balance method) are 25% for machinery and equipment and from 4% to 20% for buildings and other constructions, depending on the type and estimated life of the asset. The remaining acquisition cost for tax purposes is defined as cost less accumulated tax depreciation and, in the case of machinery and equipment, proceeds on disposal of the assets. The straight-line method is applied to certain intangible assets and capitalised expenditures and to assets with long economic use, such as dams. Tax depreciation is limited to the cumulative charges made in the books.

Costs related to qualifying intangible property are usually amortisable over a period of ten years or a shorter period if the economic life is proven to be less than ten years.

The capital cost of mines, sandpits, quarries, and peat bogs is written off in proportion to the quantities extracted. Short-lived items (the economic life of which is three years or less) may be written off immediately.

Land is not a depreciable asset.

Goodwill
Acquired goodwill is amortisable for tax purposes over its economic life, up to a maximum of ten years.

Start-up expenses
Start-up expenses are generally deductible expenses when determining taxable income.

Interest expenses
As a general rule, interest expenses are fully deductible. However, deductibility of interest expenses for intra-group loans is restricted to 25% of fiscal EBITDA (*see Thin capitalisation in the Group taxation section*).

Bad debt
In general, bad debts incurred from sales receivables, etc. are tax deductible. The bad debts must also be deducted for accounting purposes.

Charitable contributions
Donations are deductible for CIT purposes in certain cases.

In order for a donation to be tax deductible, the amount of the donation should be at least:

- EUR 850, but not more than EUR 250,000, if made to an EEA member state or to a publicly financed university or other higher educational institution in the EEA to benefit the sciences, the arts, or the Finnish cultural heritage, or
- EUR 850, but not more than EUR 50,000, if made to an association, foundation, or other institution in the EEA nominated by the Tax Administration and to benefit the sciences, the arts, or the Finnish cultural heritage.

Donations of not more than EUR 850 (e.g. to charitable purposes) are, in general, tax deductible.

Taxes
No income taxes are deductible when determining taxable income. However, the real estate tax and YLE tax are deductible.

Education costs of employees
Employers are allowed to make an additional tax deduction for certain education costs of their employees. It is required that the employer has made a qualifying education plan and the education relates to the current or future tasks of the employee. The deduction entails both internal and external courses. The amount of the deduction is the average daily salary of all employees working for the employer multiplied by the amount of all qualifying educational days of all employees. This amount is subsequently divided by two. The maximum amount of qualifying education days is three days per employee within the fiscal year in question. The deduction has no tax consequences for the employees.

Net operating losses
Losses may be carried forward for ten subsequent years. However, the right to carry forward losses may be forfeited in certain instances, such as in cases where there is a

direct or indirect change in the ownership of the company operating at a loss. However, a special permit can be applied in certain situations from the Finnish tax authorities to retain the tax losses despite the change in ownership. Loss carrybacks are not allowed.

Payments to foreign affiliates

A Finnish corporation may claim a deduction for royalties, service fees, and interest charges paid to foreign affiliates, provided the underlying transaction is beneficial to it and the amounts paid are at arm's length.

Group taxation

Companies within a group are not consolidated for CIT purposes. However, via group contributions (i.e. lump sum payments of cash based on annual taxable profits), group companies may even out their taxable profits and losses, which leads effectively to the same result as consolidation would. A group contribution is a deductible cost for the granting company and taxable income for the receiving company, provided that all of the following are true:

- Both companies belong to a group where there is a direct or indirect common ownership of at least 90%, and the group structure has existed for the entire fiscal year.
- Both companies are Finnish resident for tax purposes.
- Both companies are limited liability companies or co-operatives with business activities (i.e. have a source of income from business activities, *see the Income determination section*) and are not financial, insurance, or pension institutions.
- The contribution is recorded in the annual statutory accounts of both companies involved and must affect their annual net income.
- The accounting period for both companies ends at the same date.
- The amount of contribution does not exceed the taxable business income of the granting company.
- The contribution is not considered a capital investment.

Based on case law, the ownership chain may also be traced via foreign entities, provided there is a tax treaty between Finland and the country wherein the ultimate parent for the group is resident.

Transfer pricing

All transactions between related parties must take place at arm's length. The requirement is imperative even in relation to purely domestic transactions. If the arm's-length requirement is not followed, income or deductions of a company may be adjusted for tax purposes, in addition to which a risk for substantial penalties exists.

The guidance provided by the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations is adopted as a significant source of interpretation in the application of the arm's-length principle. According to Finnish Tax Administration's statement, the OECD's Base Erosion and Profit Shifting (BEPS) Reports are applied retrospectively.

A Finnish company is obligated to prepare transfer pricing documentation to support transactions between its non-Finnish related parties. Documentation is subject to statutory requirements regarding content, which vary depending on the volume of related party transactions. As of 1 January 2017, the content requirement is in line with the three-tiered documentation model introduced in the updated OECD Transfer Pricing Guidelines. The documentation requirement concerns Finnish companies and Finnish PEs of foreign companies that are a part of a group that has more than 250 employees or a group that has a turnover of more than EUR 50 million and a balance sheet exceeding EUR 43 million.

These thresholds are calculated at the group level. Failure to present appropriate documentation within 60 days from the tax authorities' request may lead to a punitive tax increase. The documentation may be requested six months after financial year end at the earliest.

Country-by-country (CbC) reporting
The CbC reporting obligation applies to multinational groups with a consolidated turnover of at least EUR 750 million in the preceding fiscal year. The main rule is that an obligation to submit a CbC report to the Finnish tax authorities lays with the ultimate parent company if resident in Finland. However, if the ultimate parent company is not resident in Finland, the obligation lays with any other group company resident in Finland in case the foreign ultimate group company (i) is not obligated by CbC reporting requirements; (ii) is resident in a jurisdiction outside the European Union with which Finland has not concluded an agreement on exchange of information regarding CbC reports within due time; or (iii) is resident in a jurisdiction that has systematically neglected exchange of information and the Finnish tax authorities have reported this neglect.

This does not, however, apply to situations where the ultimate group company has appointed a group company resident within the European Union to submit the CbC report. Nor does it apply, under certain conditions, if the ultimate group company has appointed a group company resident outside the European Union. A notification of the company obligated to submit the CbC report shall be given to the Finnish tax authorities.

The CbC report shall contain the following country-specific data of the group companies and PEs:

- Revenues.
- Profit or loss before taxes.
- Income tax paid and accrued, as well as WHT.
- Bookkeeping value of equity.
- Accumulated earnings
- Number of employees.
- Tangible assets, other than cash or cash equivalents.

In addition, the CbC report should include information on the business of each group company (and PE), as well as information on data sources and currency used. The government's proposal text also suggests that other information that is considered relevant to facilitate an understanding of transfer pricing risks could be included in the CbC report.

Also, the CbC report can be provided in Finnish, Swedish, or English.

The CbC report shall be prepared for financial years starting on or after 1 January 2016, and it is due within 12 months after the end of the financial year concerned. This means that CbC reports for financial year 2016 shall be submitted by 31 December

2017. The notification of the company obligated to submit the CbC report shall be made by the end of the fiscal year for which the report is provided. For financial year 2016, an extension has been granted allowing for the notification to be submitted by 1 June 2017.

Thin capitalisation

There are no thin capitalisation rules as such; interest limitation rules have been implemented instead. Deductibility of interest expenses for intra-group loans is restricted to 25% of fiscal EBITDA. Excess interest can be carried forward to future years. The limitation rules do not apply if (i) net annual interest expense (including both intra-group and third party interest) does not exceed EUR 500,000 or (ii) if the Finnish company's equity-to-gross-assets ratio is greater than or equal to the group-consolidated ratio. In addition, the amount of debt and rate of interest should be at arm's length. If not, a possibility for application of the general anti-avoidance provision may exist.

Controlled foreign companies (CFCs)

The CFC rules are applicable with respect to foreign entities in low tax jurisdictions controlled by Finnish residents. The undistributed profits of such foreign entities may be taxed as profit of the Finnish resident direct or indirect shareholders. The entity is deemed to be controlled by Finnish residents if at least 50% of the capital or total voting rights are directly or indirectly held by Finnish residents or if Finnish residents have the right to at least 50% of the profits of the entity. The taxable person in such a case is the Finnish resident shareholder who directly or indirectly owns at least 25% of the capital of the corporate body or has the right to at least 25% of the profits of the entity. A foreign entity is considered to be low taxed if the actual income tax burden of the foreign corporation in its country of residence is lower than three-fifths of the tax burden of a comparable Finnish corporation.

Foreign PEs of non-resident companies can be regarded as equal to foreign companies, provided that the PE's profits are not taxed in the head office state. Due to the transitional period, the PE provision is applicable to PEs of foreign entities only as of 1 January 2015.

Certain types of businesses are excluded from the scope of the CFC rules (e.g. income principally from industrial, manufacturing, or shipping activities, as well as sales or marketing activities related to such activities, if they are directed principally to the country of residence of the sales or marketing company). Also, companies resident in a country with which Finland has a double tax treaty (DTT) generally are outside the scope of the CFC rules if the company does not benefit from any special tax incentives in that treaty country. Tax treaty countries that are not covered by this rule are exhaustively mentioned in a specific 'black list' provided by the Ministry of Finance. These countries are Barbados, Bosnia-Herzegovina, Georgia, Kazakhstan, Macedonia, Malaysia, Moldova, Montenegro, Serbia, Singapore, Switzerland, Tajikistan, United Arab Emirates, Uruguay, and Uzbekistan.

In addition to these two mentioned exclusions, the Finnish CFC rules are not applicable in cases of genuine economical establishment in a foreign country, which is either an EU/EEA member state or a tax treaty state not on the 'black list'. The genuine economical establishment is evaluated in light of the requirements of the business in question and paying special attention to capable personnel and office space located in the low tax jurisdiction.

Tax credits and incentives

Foreign tax credit

The principal method of avoiding double taxation is the credit method, although the exemption method is still applied in a few older treaties. Foreign tax can be credited against taxes payable in Finland on the same income over the same period on a *pro-rata* basis. The credit is given for taxes paid to a foreign state and covered by the relevant DTT. The maximum credit is the lesser of either the amount of the foreign tax or an amount equal to the Finnish tax payable on the income from a foreign state. This maximum is calculated on a source-by-source basis. Unused credit of foreign tax paid may be carried forward for five years on an income basket basis.

Research and development (R&D) activities

R&D related costs may be deducted annually, or they can be capitalised.

Withholding taxes

Finnish corporations paying certain types of income are required to apply a 20% or 15% WHT on payments to foreign corporations and a 30% WHT on payments to non-resident individuals or other than corporate entities.

According to domestic legislation, interest paid to a non-resident is usually tax exempt in Finland.

No WHT is levied on dividend payments received by companies resident in the EU/EEA area, which would have been tax-free if paid to a Finnish corporate body, if the WHT cannot be fully credited in the company's country of residence.

Dividends paid to a company referred to in the EC Parent-Subsidiary Directive, owning at least 10% of the capital of the dividend distributing company, are also tax exempt.

The domestic WHT rate may be 15% (or lower under a relevant tax treaty) in cases where the shares of the distributing company belong to the investment assets of the non-resident beneficiary of dividends and if certain prerequisites are met.

See the table below for WHT rates on dividends and other payments from Finland to non-residents.

For countries not included in the table, the WHT rate is 20% (corporate entity) and 30% (individual or other than corporate entity).

Note that each tax treaty should be studied carefully because there are often exceptions to general rules.

	WHT (%)			
Recipient	**Dividend (portfolio)/interest on cooperative capital**	**Dividend (direct investment)***	**Investment fund profit share**	**Royalties**
Argentina	15	10 [25%]	20/30	15 (18)
Armenia	15	5 [25%]	0	10 (6)
Australia	15	5 [10%] (6, 14)	20/30	5 (8)

	WHT (%)			
Recipient	**Dividend (portfolio)/interest on cooperative capital**	**Dividend (direct investment)***	**Investment fund profit share**	**Royalties**
Austria	10 (2)	0 [10%] (2, 14)	0	5 (25)
Azerbaijan	10	5 [25%] (8)	20/30	5 (4)
Barbados	15 (5)	5 [10%] (14)	20/30	5 (1, 5)
Belarus	15	5 [25%]	0	5
Belgium	15 (2)	5 [25%] (2)	0	5 (1, 25)
Bosnia-Herzegovina	15	5 [25%]	0	10
Brazil (see protocol)	20/30	20/30	20/30	20/30
Bulgaria	10 (2)	10 (2)	0	5 (1, 25)
Canada	15	5 [10%] (14)	20/30	10 (1)
China, People's Republic of	10	5 [25%]	20/30	10 (9)
Croatia	15	5 [25%]	0	10
Cyprus	15 (2)	5 [10%] (2)	0	0 (25)
Czech Republic	15 (2)	5 [25%] (2)	0	10 (1, 16, 25)
Denmark (including the Faroe Islands)	15 (2)	0 [10%]	0	0
Egypt	10	10	20/30	25
Estonia	15 (2)	5 [25%] (2)	20/30 (15)	10 (12, 25)
France	0	0	0	0
Georgia	10	0 [50%]/5 [10%] (8)	0	0
Germany	15 (2)	10 [25%] (2)	See dividend (15)	5 (1, 25)
Great Britain	0 (5)	0	0 (5, 15)	0 (5)
Greece	13 (2)	13 (2)	0	10 (1, 25)
Hungary	15 (2)	5 [25%] (2)	0	5 (1, 25)
Iceland	15 (2)	0 [10%]	0	0
India	10	10	20/30	10
Indonesia	15	10 [25%]	20/30	15 (4)
Ireland, Republic of	0 (5)	0 [10%] (2, 14)	0 (5, 15)	0 (5)
Israel	15	5 [10%]	0	10
Italy	15 (2)	10 [50%] (2)	0	5 (1, 25)
Japan	15	10 [25%] (8)	0	10
Kazakhstan	15	5 [10%]	0	10
Korea, Republic of	15	10 [25%]	0	10
Kyrgyzstan	15	5 [25%]	0	5
Latvia	15 (2)	5 [25%] (2)	20/30 (15)	10 (12, 25)
Liechtenstein	20/30 (2, 24)	20/30 (2, 24)	20/30	20/30
Lithuania	15 (2)	5 [25%] (2)	20/30 (15)	10 (12, 25)
Luxembourg (10)	15 (2)	5 [25%] (2)	0	5 (1, 25)
Macedonia	15	0 [10%] (14)	0	0
Malaysia	15	5 [10%]	20/30	5
Malta	15 (2)	5 [10%] (2, 14)	0	0
Mexico	0	0	20/30	10
Moldova	15	5 [25%]	0	7 (6)
Morocco	10	7 [25%]	20/30	10
Netherlands	15 (2)	0 [5%]	0	0
New Zealand	15	15	20/30	10
Norway	15 (2)	0 [10%]	0	0

	WHT (%)			
Recipient	Dividend (portfolio)/interest on cooperative capital	Dividend (direct investment)*	Investment fund profit share	Royalties
Pakistan	20 (21)	12 [25%]	20/30	10
Philippines	20/30	15 [10%] (14)	20/30	25 (3)
Poland	15 (2)	5 [25%]	0	5 (25)
Portugal	15 (2)	10 [25%] (2)	0	10 (25)
Romania	5 (2)	5 (2)	0	5 (19, 25)
Russia	12	5 [30%] (7)	0	0
Serbia and Montenegro	15	5 [25%]	0	10
Singapore	10	5 [10%] (14)	20/30	5
Slovak Republic	15 (2)	5 [25%] (2)	0	10 (1,16, 24)
Slovenia	15 (2)	5 [25%] (2)	0	5 (25)
South Africa	15	5 [10%]	0	0
Spain	15 (2)	10 [25%] (2)	0	5 (25)
Sri Lanka	15	15	0	10
Sweden	15 (2)	0 [10%]	0	0
Switzerland	10	0 [10%]	0	0
Tajikistan	15	5 [25%]	0	5
Tanzania	20	20	0	20
Thailand	20/30	20 [25%] (13)	20/30	15
Turkey	15	5 [25%]	20/30	10
Ukraine	15	5 [20%]	0	10 (17)
United Arab Emirates	20/30 (23)	20/30 (23)	20/30 (23)	20/30 (23)
United States	15 (22)	5 [10%] (14, 22)	0	0
Uruguay	15	5 [25%]	0	10 (20)
Uzbekistan	15	5 [10%] (14)	0	10 (6)
Vietnam	15	5 [70%]/10 [25%]	20/30	10
Zambia	15	5 [25%]	20/30	15 (1, 11)

Notes

* The recipient is a company whose share in the company making the payment is at least the percentage indicated in brackets.

1. Tax is not levied on literary, scientific, or artistic royalties (*for film royalties see text of treaty*).
2. If corporate entity, then:
   - no tax if these dividends were tax free under Business Tax Act and if the recipient does not receive a full credit for the Finnish tax in the country of residence, and
   - no tax on dividend paid to a company meant in the EC Parent-Subsidiary Directive owning at least 10% of the capital of the paying company.
3. The tax rate is 15% on films, tapes used in television or radio broadcasts, use of copyright of literary, artistic, or scientific works, or royalty paid for usufruct.
4. The tax rate is 10% on literary, scientific, artistic, and film royalties.
5. The tax rate for an individual is 30% if income is tax-exempt in the country of residence.
6. A lower tax in certain cases.
7. Foreign capital greater than 100,000 United States dollars (USD) when dividend becomes due and payable.
8. *See the treaty for additional requirements.*
9. The tax rate is 7% on industrial, scientific, and commercial royalties.
10. The tax agreement does not apply if the recipient is a special holding company.
11. The tax rate is 5% on royalties from films and tapes.
12. The tax rate is 5% on royalties paid for the use of industrial, commercial, or scientific equipment.
13. The tax rate is 15% if the payer is also an industrial enterprise.
14. The 10% is calculated on the total voting stock.

15. There is no tax on profit shares meant in EC Directive 2003/48/EC.
16. The tax rate is 1% for finance lease of equipment and 5% for operating lease of equipment and computer software.
17. The tax rate is 5% for the use of secret process or for know-how; there is no tax for computer software or patent.
18. The tax rate is 10% on industrial royalty, 3% on royalties to news agency, and 5% on artistic royalty to the author or the author's *mortis causa* successor.
19. The tax rate is 2.5% on royalties paid for the use of industrial, commercial, or scientific equipment or computer software.
20. The tax rate is 5% on royalties paid for the use or the right to use of industrial, commercial, or scientific equipment or software.
21. The tax rate is 15% if the recipient is a company.
22. There is no tax on dividends to qualified parents-subsidiaries and pension funds.
23. There is no tax if the recipient proves that one has domicile (individual) or is incorporated in the United Arab Emirates.
24. If corporate entity tax is 15% or 20%.
25. There is no tax on royalties between associated companies meant in EC Directive 2003/49/EC.

Non-treaty areas include Andorra, Antigua and Barbuda, Bahama Islands, Bahrain, Belize, Cayman Islands, Channel Islands, Gibraltar, Grenada, Greenland, Hong Kong, the Spitsbergen, Jan Mayen, Liberia, Macao, Mauritius, Monaco, Panama, Samoa, San Marino, Vanuatu, and Virgin Islands.

Tax administration

Taxable period

The fiscal year is generally the calendar year. A company having an accounting period other than the calendar year is taxed for the accounting period or the accounting periods ending during the calendar year.

Tax returns

A company must file a CIT return within four months from the end of the month during which the accounting period ends. As a general rule, companies must file a CIT return electronically for accounting periods ending on or after July 2017.

For potential tax refunds, taxpayers should submit their account number to the tax authorities electronically.

Payment of tax

Income taxes are levied as prepayments during the fiscal year. Advance tax payments for companies are collected in two or 12 instalments during the fiscal year. If the total amount to be paid is not more than EUR 1,700, the instalments are due in the third and the ninth month of the accounting period. If the total amount to be paid exceeds EUR 1,700, the instalments are due monthly (due date is the 23rd day of each month).

The process for advance tax amendments will change as of 1 November 2017. New rules will apply to fiscal year 2017 in most cases. As of 1 November 2017, taxpayers may apply for amendments to advance taxes levied (increase, decrease, or abolishment) until tax assessment has been completed (within ten months from the end of the fiscal year). Application for amendments to advance taxes should be filed electronically.

Tax authorities may, without application, levy or increase advance taxes within two months from the end of the fiscal year. Decrease or abolishment of advance tax payments may be levied by the tax authorities (by or without taxpayer's application) until tax assessment has been completed.

Interest on late payment will be calculated starting from the first day of the second month after the fiscal year has ended until the due date of each for the following payments that are due on that day or after:

- advance tax payable
- outstanding tax (i.e. if the final tax exceeds advance taxes paid and thus additional payment will be levied by the tax authorities), and
- tax payable due to tax amendments.

The YLE tax is included in the advance tax payments.

Tax audit process
Tax audits are performed at irregular intervals by tax auditors, who are entitled to examine the accounts of a company and to request additional information necessary to the examination. Generally, the taxpayer receives an advance notice of an audit from the tax authorities.

Statute of limitations
The time to claim for reassessment of CIT has changed from fiscal year 2017.

From 2017 and onwards, the general time to claim for reassessment of CIT is three years starting from the subsequent year after the fiscal year (i.e. calendar year 2017 will be open for reassessment until 2020).

Prior to fiscal year 2017, the general time limit for statute of limitations was five years starting from the year after the tax assessment year (i.e. calendar year 2016 would have been open for reassessment until 2022).

In addition to the general three-year rule, the Finnish tax authorities may also rectify taxation after the three-year time limit in case certain criteria are met (in such cases, time limit would be extended to four or six years). In case of the taxpayer being accused for a crime, the appeal time is linked to the criminal justice process.

Appeal process
The appeal process has also changed from 1 January 2017 onwards. The primary appeal authority will always be the Tax Adjustment Board, regardless of the type of tax. The taxpayer may appeal to the Tax Adjustment Board within the general three-year time limit.

After receiving a decision from the Tax Adjustment Board, it can be appealed within 60 days to the Administrative Court.

The possibility to appeal the Tax Adjustment Board’s decision directly to the Supreme Administrative Court on prejudice grounds remains unchanged and it will cover all tax types.

Topics of focus for tax authorities
Current issues of special focus for tax audits are transfer pricing and PEs.

The Tax Account system
The Tax Account system is a taxpayer-specific information system under which unprompted taxes (e.g. VAT and employer’s social charges) are declared on a monthly basis. Payments are made through regular payment channels.

Tax types not covered by the Tax Account system are income tax, real estate tax, inheritance tax, gift tax, forestry fees, and transfer tax. It is important to note that WHTs are declared through the Tax Account system.

Other issues

Company restructurings

In accordance with the EC Directive 2009/133/EC on mergers, divisions, partial divisions, transfers of assets, and exchanges of shares concerning companies of different EU member states, it is possible to carry out the said restructurings tax neutral if statutory conditions are met. In cross-border situations, both parties should be resident in the European Union. The principle of going concern is applied in taxation (i.e. the receiving company receives the assets with the values the transferring company had for those assets in its taxation).

EU state aid investigations

There are no current state aid investigations going on in Finland.

Notification duty for construction businesses

A monthly notification duty of the employee and contract information to the Tax Administration applies to construction work subscribers and the main contractor of a joint construction site.

Foreign Account Tax Compliance Act (FATCA)

On 5 March 2014, Finland signed an intergovernmental agreement (IGA) concerning FATCA with the United States. On the basis of the agreement, Finland agreed to bring into force legislation according to which Finnish financial institutions are required to carry out specific due diligence procedures in order to identify their customers subject to tax in the United States and to report information relating to these customers' income and wealth to the Finnish Tax Administration. The information to be reported includes, for example, interest income, income from dividends and derivatives, life insurance payments, and gross sales prices of shares and bonds. The Finnish Tax Administration shall forward the information to the US Internal Revenue Service (IRS).

The domestic law regarding the FATCA agreement was approved by the Finnish President on 20 February 2015. The financial sector began recognising their customers in accordance with FATCA as of 1 July 2014. The first FATCA reports (for year 2014) were required to be submitted to the Finnish Tax Administration by 30 April 2015.

The Finnish Tax Administration published tax technical guidance on the interpretation of the Finland-US FATCA IGA on 15 April 2015. The guidance in the circular can be used to interpret the FATCA-related customer due diligence and reporting obligations faced by Reporting Finnish Financial Institutions.

Common Reporting Standard (CRS)

On 29 October 2014, Finland signed an international agreement on automatic exchange of information, which requires Finland to apply the CRS for Automatic Information Exchange published by the OECD.

Finland has implemented the CRS into domestic law as of 15 April 2016. The amendment requires Finnish financial institutions (as defined in the CRS) to identify their financial account holders and to annually report to the Finnish Tax Administration certain income and asset information with respect to account holders that have been identified to be tax resident in the countries outside of Finland.

Finland has agreed to exchange information automatically in accordance with CRS for the first time in 2017 regarding certain financial information collected from the beginning of 2016.

Information exchange within the European Union

Starting from 2016, the amended EU Directive of Administrative Co-operation in Tax Matters (Council Directive 2014/107/EU, the so called 'DAC 2' or 'EU FATCA') was implemented into domestic legislation. Under DAC 2, EU member states have to require their financial institutions to implement reporting and due diligence rules that are fully consistent with those set out in the CRS.

France

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Significant developments

No share of fees and expenses in case of a net capital loss (Orange Participations case)

According to the long-term capital gain regime, gains on the sale of shares in subsidiaries held for at least two years benefit from significant relief (88% of such capital gains are excluded from corporate income tax [CIT], with the remaining 12% portion being taxed at the standard 33.33% rate).

On 14 June 2017, the French administrative Supreme Court ruled that there is no 12% taxable portion in case of net long-term capital loss during a fiscal year (i.e. where the whole amount of long-term capital losses is higher than the whole amount of long-term capital gains realised during a fiscal year). Where a company has realised a net long-term capital gain, the 12% taxable portion is computed based on gross amount of long-term capital gains realised during the fiscal year (potential long-term capital losses not being taken into account to compute the basis of the 12% taxable portion).

Companies' added value contribution (CVAE) and French tax consolidation group (FB Finance case)

On 19 May 2017, the French Constitutional Court ruled that the French tax consolidation of the turnover of companies belonging to a French tax consolidated group for the determination of the effective CVAE rate is unconstitutional to the extent that it creates an unjustified difference of tax treatment between entities being part of the tax consolidated group and other companies.

The declaration of unconstitutionality takes effect from 20 May 2017.

Incompatibility of the prior approval for cross-border mergers with European Union (EU) law (Euro Park Service case)

On 8 March 2017, the European Court of Justice (ECJ) ruled that the principle of an advance ruling in cross-border situations whereby the taxpayer must demonstrate that the merger has good *bona fide* economic motivations and is not tax driven whereas such a demonstration *ex ante* is not required for pure domestic mergers is in breach with the freedom of establishment (Art. 49 TFEU).

Progressive reduction of the CIT rate

The 2017 Act progressively reduces the CIT rate from 33.33% to 28% by 2020.

For 'small companies', as defined per EU regulations, whose tax years begin on or after 1 January 2017, the standard CIT rate will be 28% on taxable income up to 75,000 euros (EUR) and 33.33% on taxable income exceeding EUR 75,000.

For all companies whose tax years begin on or after 1 January 2018, the standard CIT rate will be 28% on taxable income up to EUR 500,000 and 33.33% on taxable income exceeding EUR 500,000.

For companies with revenues less than or equal to EUR 1 billion whose tax years begin on or after 1 January 2019, the standard CIT rate will be 28%. For companies with revenues exceeding EUR 1 billion, the standard CIT rate will be 28% on taxable income up to EUR 500,000 and 33.33% on taxable income exceeding EUR 500,000. For companies in a tax consolidation, the applicable revenues will be the aggregate of the consolidated group members' revenues.

For all companies whose tax years begin on or after 1 January 2020, the standard CIT rate will be 28%.

New 3% distribution tax exemption

The French Constitutional Court ruled, on 30 September 2016, that the 3% distribution tax exemption available to members of a French tax consolidation group is unconstitutional because it creates an unjustified difference in treatment between entities that are member of a French tax consolidation group and entities that are not.

As a result of this ruling, the French legislature amended the existing 3% distribution tax exemption.

Therefore, pursuant to the 2016 Act, the following distributions made on or after 1 January 2017 are exempt from the 3% distribution tax:

- distributions between companies that meet conditions to be part of a French tax consolidation group, and
- distributions made to companies that cumulatively:
  - are subject to a tax that is equivalent to a corporate tax in the European Union or in a state that has concluded with France an administrative assistance agreement on tax matters covering tax evasion and avoidance, and
  - would satisfy the conditions to be part of a French tax consolidation group with the distributing company.

This being said, distributions to 'non-cooperative states or territories' (NCSTs) are not eligible for an exemption unless the distributing company can demonstrate that the activities conducted by the company established in an NCST are real and that the company does not commit tax fraud or seeks to locate profits in the NCST.

Incompatibility of the 3% distribution tax with the Parent-Subsidiary Directive (AFEP case)

Moreover, on 17 May 2017, the ECJ ruled that the liability of a French company to the 3% distribution tax on dividends it receives from its subsidiaries established in another member state of the European Union is in breach with the Parent-Subsidiary Directive to the extent that it creates a double taxation of profits made within the European Union.

Amended long-term capital gain regime

Until now, the long-term capital gain regime applied to capital gains from the disposition of shares eligible to the parent-subsidiary regime.

The 2016 Act specifies that the long-term capital gain regime applies to capital gains from the disposition of shares benefiting from the parent-subsidiary regime only if the seller holds at least 5% of the voting rights in the entity whose shares are being disposed. This provision applies to tax years beginning on or after 1 January 2017.

The long-term capital gain regime now also applies to capital gains from the disposition of shares in an entity located in an NCST as long as the entity can demonstrate that its activities are real and it is not seeking to locate profits in the NCST.

Increased tax credit to boost competitiveness and employment (Article 72 of the 2017 Act)

Current law provides for a tax credit calculated as a percentage of the wages paid during a calendar year to employees receiving less than 2.5 times the French minimum wage.

The credit is available generally to most French and foreign enterprises subject to corporate tax in France. The 2017 Act increases the credit from 6% to 7% beginning in calendar year 2017.

Extra amortisation deduction (Article 13 of the 2017 Act)

Under current law, taxpayers may deduct from taxable income an amount equal to 40% of the original cost of equipment, excluding financial charges, used in the taxpayer's activities if such equipment were manufactured or purchased between 15 April 2015 and 14 April 2017.

This regime will continue to apply to such equipment ordered before 15 April 2017 as long as companies make an advance payment representing at least 10% of the purchase price and delivery occurs within a 24-month period from the date of the order.

New dividend exemption

Further to the French Constitutional Court decision (3 February 2016 - Ste Metro Holding France), the Finance Bill for 2016 has changed the participation exemption regime applicable to dividends received, as follows.

Under the prior regime, the receiving company was 100% exempted on dividends distributed by a subsidiary member of the same French tax group (except for the dividends distributed during the first fiscal year in the tax group of the distributing company) and 95% for all other qualifying dividends.

Under the new regime, there is a 99% exemption on dividends received by a member of a tax group from:

- another member of the same group, or
- a company:
  - subject to a tax equivalent to French CIT in another member state, or in a European Economic Area (EEA) member state that has concluded an administrative assistance agreement with France to fight against tax fraud and tax evasion, and
  - that fulfils the conditions to participate in a French tax consolidated group if it is established in France (other than being subject to CIT in France).

All other qualifying dividends remain 95% exempt (e.g. dividends from French subsidiaries that are not part of a consolidated group, dividends received from a foreign subsidiary if the French parent is not a member of the French consolidated group).

This new regime applies to fiscal years that begin on or after 1 January 2016.

In addition to the above, the 2016 Act repealed the exclusion from the benefit of the parent-subsidiary regime for the dividends received on shares with no voting rights.

Accordingly, the parent-subsidiary regime applies to dividends received on shares with no voting rights, retroactive to 3 February 2016.

Taxes on corporate income

France levies CIT at a standard rate of 33.33%.

The 2017 Act progressively reduces the CIT rate from 33.33% to 28% by 2020.

- For ‘small companies’ under EU law whose tax years begin on or after 1 January 2017, the standard CIT rate will be 28% on taxable income up to EUR 75,000 and 33.33% on taxable income exceeding EUR 75,000.
- For all companies whose tax years begin on or after 1 January 2018, the standard CIT rate will be 28% on taxable income up to EUR 500,000 and 33.33% on taxable income exceeding EUR 500,000.
- For companies with revenues less than or equal to EUR 1 billion whose tax years begin on or after 1 January 2019, the standard CIT rate will be 28%. For companies with revenues exceeding EUR 1 billion, the standard CIT rate will be 28% on taxable income up to EUR 500,000 and 33.33% on taxable income exceeding EUR 500,000. For companies in a tax consolidation, the applicable revenues will be the aggregate of the consolidated group members’ revenues.
- For all companies whose tax years begin on or after 1 January 2020, the standard CIT rate will be 28%.

A resident company is subject to CIT in France on its French-source income. In that respect, income attributable to foreign business activity (if there is no treaty in force between France and the relevant foreign country) or to a foreign permanent establishment (PE) (if a tax treaty applies) is excluded from French tax basis.

A non-resident company is subject to CIT in France on income attributable to French business activity or to a French PE, as well as on income from real estate located in France.

Social contribution tax

Concerning large-size companies, a social contribution tax amounting to 3.3% is assessed on the CIT amount from which a EUR 763,000 allowance is withdrawn.

In addition, the Finance Bill for 2016 implemented an additional contribution due by the companies that are liable to the social contribution tax and whose turnover of the preceding year is equal to or exceeds EUR 1 billion.

This additional contribution is levied at a rate of 0.04% and is assessed on the estimated turnover of the year.

An instalment that amounts to 90% of the additional contribution must be paid and declared at the latest by 15 December of each year.

The additional contribution balance is paid each year at the same time as the social contribution tax, meaning 15 May of the year following the one during which the tax is due. The additional contribution paid during a year is deducted from the amount of the social contribution tax for the following year.

3% additional contribution on dividend distributions

Dividend distributions (or deemed distributions for tax purposes) made as of 17 August 2012 by French companies are subject to a genuine 3% additional tax, which comes on top of underlying CIT. The 3% tax is not due (i) by French companies meeting the EU small and medium enterprise (SME) criteria, (ii) by foreign partners in a tax transparent French partnership, and (iii) by French branches of EU companies.

Tax credits are not creditable, with the possible exception of foreign tax credits eligible under a double tax treaty (DTT).

Distortion of taxation resulting from the form of establishment in France (branch vs. subsidiary) will generate new litigations based on EU principles. Foreign investors may revisit the most appropriate structure (branch vs. subsidiary) for investment in France.

In fact, in March 2015, the European Commission launched an infringement procedure against France regarding the 3% tax as non-compliant with EU Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries, articles 4 and 5. Under this procedure, the French government will have to submit its observations. This tax litigation is still in progress.

Moreover, the French Constitutional Court ruled on 30 September 2016 that the 3% distribution tax exemption available to members of a French tax consolidation group is unconstitutional because it creates an unjustified difference in treatment between entities that are member of a French tax consolidation group and entities that are not.

As a result of this ruling, the 3% distribution tax exemption has been enlarged to the following distributions made on or after 1 January 2017:

- distributions between companies that meet the conditions to be part of a French tax consolidation group, and
- distributions made to companies that cumulatively:
  - are subject to a tax that is equivalent to a corporate tax in the European Union or in a state that has concluded with France an administrative assistance agreement on tax matters covering tax evasion and avoidance, and
  - would satisfy the conditions to be part of a French tax consolidation group with the distributing company.

This being said, distributions to NCSTs are not eligible for an exemption unless the distributing company can demonstrate that the activities conducted by the company established in an NCST are real and that the company does not commit tax fraud or seek to locate profits in the NCST.

Patent box regime

Under certain conditions, income derived from the sale or license of patents or patentable inventions is taxed at a reduced CIT levied at the rate of 15%.

Capital gains
A reduced tax rate of 15% applies to certain capital gains. *See Capital gains in the Income determination section for more information*.

Local income taxes
No income tax is levied on income at the regional or local level.

Corporate residence

France is defined as metropolitan France (excluding the overseas territories [TOM], but including the continental shelf), Corsica, and the overseas departments (DOM, i.e. French Guyana, Guadeloupe, Martinique, Reunion).

As a general rule, a resident company is a company that is incorporated under French commercial laws.

Permanent establishment (PE)
The notion of PE is not defined by the French Tax Code (FTC) and has been specified by a case law of the French Administrative Supreme Court (i.e. '*Conseil d'Etat*'). The notion of PE refers to an enterprise exploited in France that can be materialised in one of the three following situations:

- Business activity conducted through an establishment (i.e. a fixed business installation operating with some degree of autonomy [e.g. a branch, sales office]).
- Business conducted in France by a dependent agent.
- Existence of a complete commercial cycle in France.

A ruling application can be submitted to the French tax authorities to get confirmation as to whether the presence in France of a foreign corporation is a PE.

Other taxes

Turnover taxes
Turnover taxes are assessed on goods sold and services rendered in France, and operate as a value-added tax (VAT). The normal rate is 20%. Sales of certain kinds of medicines and transports of persons are taxable at a 10% reduced rate. Food products, subscription to gas and electricity (under certain circumstances), sales of books, and products and services provided to disabled persons are taxable at a 5% reduced rate. Other specific sales and services are taxable at a 2.1% reduced rate. Exports and certain specific services invoiced to non-French residents are zero-rated.

Business-to-business (B2B) suppliers of services are generally taxable at the location of the customer and not at the location of the supplier. For business-to-consumer (B2C) suppliers of services, the place of taxation is generally where the supplier is established.

Turnover taxation applies only to taxable persons, partly taxable persons, and non-taxable legal persons that are registered for turnover taxes.

Specific turnover taxation rules apply to leases of transportation equipment; cultural, arts and sports services; electronic and telecommunication services; and transportations of goods.

Customs duties
Depending on their country of origin, goods may be subject to customs duties. The rules are aligned with the EU customs regulations.

Under certain circumstances, the payment of the duties can be deferred depending on the terms and conditions of the warehousing arrangements.

Excise taxes
Some specific goods are subject to excise duties, notably:

- Alcohol and alcoholic drinks (e.g. wine, beer, ethylic alcohol).
- Processed tobaccos (e.g. cigars, cigarettes, tobacco).
- Oil and gas products.

Real estate tax
All properties located in France are subject to a 3% real estate tax. The tax is assessed annually on the fair market value of the real estate, in proportion to the direct or indirect interest held. All entities in the chain of ownership are jointly liable for the payment of the tax.

Automatic exemptions apply in three situations. First, to entities whose French real estate assets represent less than 50% of their total French assets. Second, to entities listed on a regulated market whose shares, units, or rights are significantly traded on a regular basis. Third, to entities having their registered office in France, in an EU member state, or in a country that has concluded a DTT with France providing for an administrative assistance or a non-discrimination clause, where:

- their direct or indirect interest in the French real estate is less than either EUR 100,000 or 5% of the fair market value of the French real estate
- they are pension funds or public charities recognised as fulfilling a national interest whose activities justify the need to own French real estate, or
- they are non-listed French real estate funds (*société de placement à prépondérance immobilière à capital variable* [SPPICAV] or *fonds de placement immobilier* [FPI]) or foreign funds subject to equivalent regulations.

Where an automatic exemption does not apply, a claim may be submitted for conditional exemption.

Territorial economic contribution
The territorial economic contribution (*Contribution Economique Territoriale* or CET) is comprised of two different taxes: the companies' land contribution (*Cotisation Foncière des Entreprises* or CFE) and the companies' added value contribution (*Cotisation sur la valeur ajoutée des entreprises* or CVAE). Although they have a similar scope, the taxes are subject to very different rules.

The CFE tax is based on the rental value of assets that are subject to the real estate tax, excluding movable goods and equipment. For industrial plants, the taxable base is reduced by 30%. There is a specific rental value for each town and an upgrading ratio is set forth at the national level each year.

The CVAE is based on a company's added value. Only taxpayers that are not exempt from the CFE and whose turnover is greater than EUR 152,500 are subject to CVAE. However, tax relief equal to the amount of the tax is provided for companies whose turnover is below EUR 500,000. The tax rate for companies whose turnover ranges from EUR 500,000 to EUR 50 million is assessed according to a progressive scale, which ranges from 0% to 1.5%.

There is an upper ceiling on the added value that applies to the CET. As a consequence, tax relief applies and is equal to the excess of the sum of CFE and CVAE over 3% of the added value of the company.

Registration duties

Registrations duties mentioned hereafter are imposed on the purchaser. However, the seller may be liable for these duties in case of non-settlement by the purchaser.

Transfer of goodwill

The transfer of goodwill is subject to a registration duty at a rate of 3% on the part of the transfer price amounting from EUR 23,000 to EUR 200,000 and at a rate of 5% on the part exceeding EUR 200,000.

Transfers of shares

The transfer of shares is subject to registration duty at a rate of 0.1% with no cap. The transfer of listed shares recorded by a deed is subject to registration duty at a rate of 0.1%.

Several exemptions are added to the list of the transactions that are not subject to transfer duties:

- Transactions subject to the financial transaction tax (FTT).
- Repurchase by companies of their own shares intended to be sold to the subscribers of a company employee saving plan, with some exceptions.
- Transactions between companies in the same group within the meaning of Article L233-3 of the French Commercial Code.
- Transfer of ownership resulting from a merger, a contribution, or a spin-off made under the provisions of Article 210 A and 210 B of the FTC and acquisition shares of a company by its employees.

Transfer of interest or quotas in legal entities whose capital is not divided into shares
The transfer of interests or quotas in legal entities whose capital is not divided into shares (e.g. *Société à responsabilité limitée* [SARLs] or *Société en nom collectif* [SNCs], which are a form of private limited liability corporate entity) is subject to a registration duty of 3%.

Transfer of shares in non-quoted real estate companies
The transfer of shares in non-quoted companies whose assets consist principally of immovable property is subject to a registration duty of 5%. In case of disposal of shares held in real estate companies, the taxable basis for transfer tax purposes is equal to the fair market value of the real estate assets or rights reduced by the debt contracted for the acquisition of such assets or rights. Other kinds of debts are not taken into account to compute the taxable basis of the transfer tax.

Transfer of real estate

The sale of land and buildings is subject to registration duty at a rate of 5.09% on the transfer price, including expenses.

Exit tax rules in case of transfer of French head office or establishment
In the case of a transfer of assets outside France as part of a transfer of a head office or an establishment, unrealised gains are immediately taxable. However, in the case of a transfer to an EU member state or, under certain conditions, to an EEA member state, taxpayers are able to either pay the full amount of tax immediately or pay it over five years in five equal instalments.

Payroll tax
Companies that are not liable for VAT on at least 90% of their annual turnover are subject to payroll tax (*taxe sur les salaries*) regarding salaries paid during the following calendar year. Companies below the 90% trigger are liable for the payroll tax on the complement of their VAT recovery ratio, called the counter VAT recovery ratio.

Payroll tax is assessed on gross salaries. The rate varies from 4.25% to 13.6%. A 20% rate is applicable on annual gross salaries above EUR 150,000. The taxable base also includes compulsory or voluntary profit sharing.

French social security contributions
The French social security system is composed of various schemes providing a wide range of benefits. This system includes social security basic coverage, unemployment benefits, compulsory complementary retirement plans, complementary death/disability coverage, and complementary health coverage.

The contributions are shared between employer and employee; on average the employer's share of contributions represents 45% of the gross salary. For 2017, the employee's share of French social contributions represents approximately 20% to 23% of the remuneration. However, since the contributions are assessed using various ceilings, the average rate will decrease as the gross salary increases.

Employers' contributions made to additional medical coverage schemes (which are mandatory and collective) are taxable.

Generally, for any employee who carries out a salaried activity in France, the employer withholds the employer's and employee's share of French social security charges.

Systemic risk tax
A bank tax known as a systemic risk tax has been implemented to prevent excessive risk behaviour by banks. This tax is payable by certain financial institutions (including credit institutions).

It should be noted that 'fund' entities (e.g. hedge funds or securitisation vehicles) are outside the scope of the tax.

French banks are subject to the bank tax on their worldwide business activities. The equity requirements that are used as the taxable basis for the calculation of the bank tax are calculated on a consolidated basis. Therefore, institutions that fall within the scope of the tax and that belong to a consolidated group are not subject to the tax on an individual basis. Where they are not part of such a group, institutions pay a contribution calculated on their individual position. The taxable basis is made up of the minimum equity required of the institution, as set out by the Prudential Control Authority to meet reserve ratio requirements in accordance with Basel II standards and specified during the previous calendar year.

The rate of the bank tax amounts to 0.25% of the taxable basis, and any amounts paid in that respect will be deductible for CIT purposes.

A tax return must be filed by 30 June every year, and the tax due must be settled at the same time.

Subject to the principle of reciprocity, it should be noted that taxpayers for which the registered office or the group parent company is located in a country that has enforced a similar tax on systemic risk can benefit from a tax credit. This tax credit can be used to settle the tax due or can be reimbursed.

Amending Finance Bill for 2014 gradually reduces the tax rate before its complete abolition in 2019. In addition, a new tax (in order to finance the support fund for local authorities who contract 'toxic loans'), whose characteristics are similar to systemic risk tax, is created as of 1 January 2015.

As of 31 December 2016, this tax is no longer deductible from CIT.

Financial transaction tax (FTT)

FTT applies to acquisitions for consideration of equity securities or similar securities in the meaning of the French Monetary and Financial Code issued by certain French-listed companies (i.e. financial instruments giving access to capital or to voting rights in the company and securities issued under foreign law representing French-eligible securities). FTT applies regardless of whether the transaction is executed inside or outside of France.

The tax is due by the investment service provider (ISP) that has executed the purchase order or, when there is no ISP, by the custodian, irrespective of its place of establishment.

In most cases, the central securities depositary will be in charge of centralising the collection of the tax, the reporting to the French tax authorities, and the payment of the tax to the French Treasury.

The tax is computed based on the acquisition price of the shares.

The 2017 Act increases the financial transactions tax rate from 0.2% to 0.3% for acquisitions made on or after 1 January 2017.

Beginning 1 January 2018, the financial transactions tax will be extended to intra-day trading transactions.

Branch income

Tax rates on branch profits are the same as on corporate profits. As a principle, branch profits are deemed to be distributed to the head office. Withholding tax (WHT) is levied on French branches of non-resident, non-EU corporations at the rate of 30%, or a reduced tax treaty rate (e.g. for the United States [US], 5%), on net profits. Refund (limited or full) of tax may be claimed to the extent that the taxable amount exceeds the dividend(s) actually distributed by the foreign corporation during the 12 months following the close of the fiscal year concerned, or to the extent the dividends are distributed to residents of France.

Profits realised in France by non-resident corporations whose head offices are located in an EU country are not subject to branch WHT, provided that certain conditions are met (e.g. effective head office in an EU country or non-resident corporation subject to corporate taxation).

Income determination

Inventory valuation

Inventories must be valued at the lower of cost or market. Cost must be determined in accordance with the first in first out (FIFO) or the average-cost method. The last in first out (LIFO) method is prohibited.

Capital gains

Capital gains generally are taxable as ordinary income and subject to CIT at the standard rate of 33.33%, regardless of the duration of ownership of the assets sold.

However, a reduced rate of 15%, increased by the social contribution tax, is applied to capital gains on the disposal of patents or patentable inventions, as well as on income from the licensing of patents or patentable inventions.

Gains on the sale of shares in subsidiaries held for at least two years benefit from significant relief (88% of such capital gains are excluded from CIT, with the remaining 12% portion being taxed at the standard 33.33% rate).

The long-term capital gain regime applies notably to capital gains from the disposition of shares benefiting from the parent-subsidiary regime only if the seller holds at least 5% of the voting rights in the entity whose shares are being disposed. This provision applies to tax years beginning on or after 1 January 2017.

The long-term capital gain regime now also applies to capital gains from the disposition of shares in an entity located in an NCST as long as the entity can demonstrate that its activities are real and it does not seek to locate profits in the NCST.

Capital gains and losses on shares sold to a related company

Capital gains derived from the disposal of shares held in subsidiaries for less than two years are immediately taxable at the common rate of CIT.

Capital losses derived from such disposal are not immediately deductible. In such a case, the loss will be deducted if, before a period of two years (as from the date of acquisition by the purchaser):

- the vendor stops being subject to CIT
- the shares are, after a restructuring of the transferee company, held by a company that is not related to the vendor, or
- the shares stop being held by the related company (notably further to a new sale).

If no event mentioned above arises within a period of two years starting from the acquisition by the vendor, the capital loss that has not been immediately deducted is treated in accordance with the long-term regime (i.e. the capital loss is therefore not deductible).

Otherwise, the vendor has to join to its corporate tax return a specific form mentioning capital losses that are not immediately deducted.

Capital gains of non-residents
As a general rule, non-resident companies are not taxable in France regarding capital gains derived from the disposal of French assets unless these are part of a PE.

There are two main exceptions to this principle:

- Capital gains derived from the disposal of real estate assets located in France or derived from the disposal of French real estate non-listed companies are subject in France to WHT at a 33.33% rate.
- Capital gains derived from the disposal of shares held in a French company subject to CIT are subject in France to WHT at a 19% rate in the specific case where the seller has owned, at any point in time during the five years preceding the sale, at least 25% of the rights in the profits of the French company, unless provided otherwise by the DTT applicable, if any.

Note that in the specific case where the non-resident company is located in an NCST, all capital gains derived from the disposal of French assets are subject to WHT in France at a specific rate of 75%.

Dividend income
Dividends generally are taxable as ordinary income and subject to CIT at the standard rate of 33.33%.

For information on the taxation of inter-company dividends, see Participation exemption regime in the Group taxation section.

Interest income
Interest income generally is taxable as ordinary income and subject to CIT at the standard rate of 33.33%.

Royalty income
A reduced tax rate of 15% applies to capital gains on proceeds from the:

- licensing (or sublicensing) of patents or patentable inventions, and manufacturing processes associated with such patents or patentable inventions (including improvements made to such patents), held for at least two years, subject to certain conditions, and
- sale of patents or patentable inventions, and manufacturing processes associated with such patents or patentable inventions, held for at least two years, subject to certain conditions.

In other cases, royalties are subject to CIT at standard rate of 33.33% (plus additional social contribution).

Foreign income
Resident corporations are not taxed on foreign-source income derived from activities carried out abroad through foreign branches and foreign PEs. Other foreign income is not taxable until actually repatriated to French resident corporations. As a result, undistributed income of foreign subsidiaries is not taxable. The only exception to the territoriality principle is provided by Article 209 B of the Tax Code, known as

the Controlled Foreign Company (CFC) rules (*see the Group taxation section for more information*).

Deductions

Depreciation

The depreciation of fixed assets has to be carried out component by component. The components of a fixed asset have to be depreciated separately according to their own lifetime.

Declining-balance depreciation is allowed for certain new and renovated assets whose useful life is in excess of three years.

For assets bought or manufactured between 4 December 2008 and 31 December 2009, the rate is computed by multiplying the rate of straight-line depreciation by:

- 1.75, if the useful life of the asset is three or four years
- 2.25, if the useful life of the asset is five or six years, or
- 2.75, if the useful life of the asset is more than six years.

For assets bought or manufactured after 31 December 2009, the rate is computed by multiplying the rate of straight-line depreciation by:

- 1.25, if the useful life of the asset is three or four years
- 1.75, if the useful life of the asset is five or six years, or
- 2.25, if the useful life of the asset is more than six years.

A new temporary investment incentive measure was introduced by the Finance Bill for 2016, enabling companies to claim an additional deduction equal to 40% of the asset investment, provided the investment meets the following three conditions:

- Conditions of the fiscal special depreciation regime (i.e. a new asset having a minimum useful life of three years).
- Belonging to some limited categories defined by the government (industrial assets, such as plant machinery and equipment, manufacturing equipment, and research operations fittings).
- Investments made between 15 April 2015 and 14 April 2016.

The Finance Bill for 2017 extended this incentive measure to companies that invest under the following three conditions:

- The investment has been firmly decided before 15 April 2017.
- The investing company has paid before 15 April 2017 an instalment that amounts to at least 10% of the total investment cost.
- The final acquisition of the investment occurs within a two-year period following the date of beginning of the purchase order.

Goodwill

Under current French tax rules, goodwill (e.g. *clientele*, trademarks) cannot be amortised.

Start-up expenses
No specific rules apply regarding deduction of start-up expenses, except the qualified expenses incurred in establishing the company (so called '*frais d'établissement*'), which can be either deducted or depreciated over five years.

Research and development (R&D) and software expenses
Concerning R&D and software expenses, a business may elect to immediately deduct costs incurred in R&D of software or to amortise their cost on a straight-line basis over a maximum period of five years.

The cost of acquiring software may be written off on a straight-line basis over 12 months.

The cost of patents acquired can be amortised over a five-year period.

Interest expenses
In principle, interest expenses are tax deductible.

Restriction of interest deduction
A test is applicable to the existing rules governing interest deductions for financing by a party that is directly or indirectly related to a French borrower.

Interest deductions are allowed only if the French borrower demonstrates that the lender is, for the current financial year, subject to a CIT on the interest that equals 25% or more of the CIT that would be due under French tax rules. When the lender is domiciled or established outside of France, the CIT determined under French law equals the tax liability that the lender would have owed on the interest had it been resident or domiciled in France.

Taxpayers must provide documentation to support the CIT calculation if requested by the French tax authorities.

Carrez Amendment
In accordance with Article 40 of the fourth amended Finance Act for 2011 (i.e. 'Carrez Amendment'), interest expenses incurred by a French company for the acquisition of participation or shareholding acquisitions will not be deductible for CIT purposes unless the French acquiring company is in a position to demonstrate that it actually:

- makes decisions relating to the acquired participation and
- exercises an actual control or influence over the participations.

The purpose of the legislation is to prevent the interest deduction for the participation acquisition by a French entity when the acquired participation is effectively managed outside of France.

This rule does not apply where:

- the total fair market value of the participations owned by the French acquiring company does not exceed EUR 1 million
- the participation acquisition has not been financed by debt at the level of the French acquiring company or at the level of a company of the same group, or
- the debt-to-equity ratio of the group is equal to or higher than the acquiring company's debt-to-equity ratio.

Additional limit on interest deductions

25% of the net finance expenses of a company subject to French CIT is not deductible. This limit applies in addition to existing limits. In a tax group, this limit applies to the consolidated tax result of the group. This is a permanent disallowance, as there is no mechanism to carry the disallowed interest forward to subsequent fiscal years. 'Net finance expense' is defined as the total amount of finance expense incurred as consideration for financing granted to the company, reduced by the finance income received by the company in consideration for financing granted.

Rents incurred as part of a rental agreement between related parties or a financial lease agreement also are included in finance expenses after the deduction for depreciation of the lessor. However, rents paid in relation to real estate rental agreements between related parties should be excluded. This limit applies to both related and third party financing, regardless of the purpose of the financing.

This limit does not apply if a company's annual net finance expense is lower than EUR 3 million. In a tax group, this applies if the net finance expense of the group is lower than EUR 3 million. Groups need to consider the impact of this provision on how tax is shared among the members of the tax group in the tax sharing agreement.

In addition, in a tax consolidated group, this limit does not apply to the portion of net finance expense resulting from financing transactions between members of a French tax unity.

Thin capitalisation

Please see comments regarding thin capitalisation in the Group taxation section.

Bad debt

Bad debts that are definitively non-recoverable are treated, from a tax point of view, as losses.

Under certain conditions, a tax-deductible reserve can be established for debts whose collection is uncertain.

Charitable donations

Charitable donations made by companies to certain foundations or societies are deductible at up to 60% of their amount (limited to EUR 5,000 of the turnover before taxes).

Fines and penalties

As a general principle, fines and penalties are not tax deductible for CIT purposes.

Taxes

Most taxes, including unrecoverable turnover taxes, registration duties, and CET, are deductible. The major exceptions are CIT and tax penalties.

CIT losses

Carryforward of tax losses

Tax losses carried forward are available to offset the first EUR 1 million of taxable profits and 50% of taxable profits in excess of this.

The carryforward is conditional to certain limitations, namely that the entity continues the same business activities. The FTC provides criteria for measuring such a change of activity that jeopardises the right to carry forward net operating losses. Under certain circumstances, a ruling can be obtained from the French tax authorities to keep all or part of the net operating losses despite a business reorganisation.

Carryback of tax losses
Tax losses are available for carryback to the fiscal year immediately preceding that in which the losses arise and up to a maximum of EUR 1 million. Any unused surplus will be carried forward and used as set out above. In addition, the election to carry back tax losses must be filed prior to the deadline for submission of the tax return for the loss-making period.

Tax groups
The overall tax losses of a French tax group, as well as pre-election tax losses of the individual members of the group, will be attributed, whether carried forward or carried back, in the same manner and within the same limits as those set out above.

Payments to foreign-related parties
Payments to foreign affiliates are allowed, as long as they meet the arm's-length test. If they do not, Article 57 of the FTC provides that income directly or indirectly transferred to the foreign-related parties, through either the increase or the reduction of the purchase or sales price of goods and services, or through any other means, must be added back to taxable income. For the purpose of this provision, foreign-related parties are defined as a parent, subsidiaries, or sister companies.

Where the payments are made to companies located in a country with a privileged tax regime, the French taxpayer must prove, in addition, that the transaction is *bona fide* and that the amount due is not exaggerated (*see the Group taxation section for more information on countries with a privileged tax regime*).

Royalties
Article 11 of the Finance Act for 2012 restricts the conditions for deducting licensing royalties where the licensor and the licensee are related parties. A full deduction for the royalty expense may only be allowed if the licensee can demonstrate, and properly document, that:

- the use of the licence results in added value for the licensee over the entire licensing period, and
- such use is real (i.e. does not consist of an artificial scheme).

Group taxation

Tax consolidation regime
French corporations and their 95% owned domestic subsidiaries may elect to file one single tax return, thus allowing the offset of losses of one group corporation against the profits of a related corporation. CIT is then levied on the aggregate income after certain adjustments for intra-group provisions (e.g. debt waivers, dividend distributions) have been made.

When shares in a company that will be integrated into the group are acquired by a group company from individuals or legal entities that control this group, either directly or indirectly, a portion of the group's overall financial expense incurred by the members of the group is progressively added back to the group's taxable income on a straight-line basis over a nine-year period.

A French subsidiary can be included in a tax consolidated group even if its parent company is not located in France. However, at least 95% of the share capital of the foreign company must be held, directly or indirectly, by the French company that is head of the tax consolidated group. In addition, the foreign company must be subject to CIT, be located in the European Union or in a member state of the European Economic Area whose tax treaty with France includes a mutual administrative assistance clause to fight tax fraud and tax evasion, and hold 95% of the lower-tier subsidiary's shares.

Amending Finance Bill for 2014 adds the opportunity for the companies subject to CIT to adopt horizontal tax consolidation. The creation of a horizontal tax consolidation between French companies' subsidiaries of the same parent located in an EU member state, or Iceland, Norway, and Liechtenstein, and subject to a tax equivalent to CIT ('non-resident parent entity') is now permitted, allowing one of its subsidiaries (called 'parent company') to be solely liable for CIT. This regime applies, optionally, for fiscal years beginning on or after 1 January 2015.

A PE of a foreign company subject to French CIT can be a member of a French tax consolidated group if the shares of the foreign company are held by other French companies, which are members of the consolidated group.

Provisions on the tax neutrality of intra-group transaction flows (e.g. dividends, amortisation, waivers of debts, interest, and capital gains/losses on the sales of shares) have been modified to treat tax consolidated groups with an intermediate foreign company the same as other tax consolidated groups. Dividends distributed within a tax consolidated group under the parent-subsidiary regime are exempt up to 99%, and the remaining 1% may not be neutralised.

Allocation of the tax charge within a tax consolidated group

In an important decision dated 12 March 2010 ('Wolseley Centers France'), the French Supreme Court disagreed with the French tax authorities by ruling that the tax charge of the group can be freely allocated between members of the consolidated tax group.

Following this decision, group companies are free to enter into a tax consolidation agreement stating the conditions for the allocation of the group tax charge or, where applicable, the tax savings arising from the group arrangement.

The Supreme Court concludes that since the terms of an agreement to allow a re-allocation taking into account the specific results of each of the group companies, the terms of this re-allocation cannot be regarded as an indirect subsidy. However, this allocation should neither undermine the corporate benefit of each group member nor the minority shareholders rights; otherwise, this will result in an abnormal act of management.

Underpriced sale of asset between two entities of a same tax consolidated group

In a decision dated 10 November 2010 ('Société Corbfi'), the French Supreme Court specified that an underpriced sale of an asset between two members of the same tax group must be neutralised at the group level only after the computation of the entities results on a standalone basis.

First, on a standalone basis, the seller has to add back the advantage given to the buyer (i.e. the difference between the fair market value and the amount paid) and the buyer adds back this advantage as if it was a dividend. Second, when reprocessing the different entities results, the advantage added back by the buyer has to be neutralised at the group level.

Participation exemption regime

French parent companies (i.e. companies incorporated in France and holding qualifying shares that represent at least 5% of the issued capital of subsidiaries, French or foreign) have the option of excluding 95% of the subsidiaries' net dividends from CIT (5% of charges and expenses must be added back to the parent company's taxable results). The French parent-subsidiary regime extends to certain shares without voting rights. There is no formal commitment to have held the shares for at least two years, and companies can benefit from this regime from the acquisition date of the shares. However, the obligation remains to hold the shares over this two-year period. Certain shares of listed real estate companies are not eligible to the French parent-subsidiary regime.

The taxation of dividends received by a parent company from its subsidiary cannot be capped at the amount of the expenses actually incurred by the parent company. Thus, the tax liability will be equal to 5% of the dividends received, tax credits included.

The French parent-subsidiary regime is not applicable to dividends paid from entities located in an NCST.

In principle, the subsidiary's shares must be kept by the parent company for at least two years in order to benefit from the participation exemption regime. However, some operations lead to a break of the two-year holding period. In that case, the exchanged shares are deemed withheld until the sale of the securities received in exchange.

The exchanged shares will be deemed kept for the application of the participation exemption regime only if the gain or loss is not taken into account in the result of that exchange. If the gain or loss is included in the result, the dividends received may not benefit from the participation exemption regime and will be taxed.

In addition to the above, the 2016 Act repealed the exclusion from the benefit of the parent-subsidiary regime for the dividends received on shares with no voting rights.

Accordingly, the parent-subsidiary regime applies to dividends received on shares with no voting rights, retroactive to 3 February 2016.

In case of tax consolidated group

There is a 99% exemption on dividends received by a member of a tax group from:

- another member of the same group or
- a company:
  - subject to a tax equivalent to French CIT in another member state, or in an EEA member state that has concluded an administrative assistance agreement with France to fight against tax fraud and tax evasion, and
  - that fulfils the conditions to participate in a French tax consolidated group if it is established in France (other than being subject to CIT in France).

All other qualifying dividends remain 95% exempt (e.g. dividends from French subsidiaries that are not part of a consolidated group, dividends received from a foreign subsidiary if the French parent is not a member of the French consolidated group).

Distribution followed by absorption or sale of subsidiary
The FTC prevents the possibility for a company to accumulate the exemption of dividends received from its subsidiaries (under the participation exemption regime or the tax consolidation regime) and the deduction of a loss in value resulting from the dividends' distribution due to previous distributions at the time of the securities exchange or sale of shares.

Transfer pricing
Light but annual transfer pricing documentation is to be provided within six months from CIT filing, reporting all intra-group flows in excess of EUR 100,000 and any change in the transfer pricing policy compared to the previous period.

Upon tax audit, companies whose gross assets exceed EUR 400 million, have a turnover that exceeds a specific threshold (EUR 152.4 million or EUR 76.2 million, depending on the activity of the company), or that are part of a group that meet those criteria, and assuming they have management accounts or consolidated accounts, have to provide the French tax administration with analytical and consolidated accounts.

Identically, rulings granted by foreign tax authorities have to be part of the transfer pricing documentation.

It is not possible to defer the collection of CIT reassessed when a mutual agreement procedure is launched.

Transfer pricing documentation
Large corporations located in France (i.e. with annual turnover or amount of gross assets in excess of EUR 400 million) are required to provide documentation containing general information regarding the relevant group of companies, including main activities, operational and legal structures of the related companies, functions performed and risks borne, main intangible assets, and group transfer pricing policy, amongst others.

Advanced pricing agreements (APAs)
APAs are available for taxpayers only on the basis of international agreements entered into in accordance with Article 25 of the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention. Currently, taxpayers are also allowed to enter into APAs with the French tax authorities on a unilateral basis. In practice, taxpayers are entitled to submit their transfer pricing policy to the French tax authorities. Agreement of the tax authorities to the APA precludes a later challenge as long as facts and circumstances described in the APA and actual ones are identical.

Light French transfer pricing annual reporting obligation
All French entities with turnover or gross assets on the balance sheet exceeding EUR 50 million, or with more than 50% direct or indirect shareholder or subsidiary interest meeting this threshold, are also subject to the light but annual French transfer pricing documentation requirements.

French companies subject to these transfer pricing obligations must file Form 2257 no later than six months after the deadline to file the annual CIT return with the tax authorities.

Form 2257 discloses general information related to the consolidated group (i.e. activities performed, group transfer pricing policy, country of location of intangibles, etc.). The form also includes specific information on the French entity (i.e. aggregated amounts of intercompany transactions exceeding EUR 100,000, main transfer pricing method used for each kind of transaction, etc.).

The 2016 Finance Act introduced two main changes:

- Electronic filing of Form 2257.
- If the relevant French entities are members of a French fiscal unity (consolidated group), Form 2257 must be filed by the head company of the French fiscal unity on behalf of the entire consolidated tax group.

The law on economic transparency adopted in November 2016 has decreased the threshold beyond which companies are subject to the light French transfer pricing annual reporting obligation from EUR 400 million to EUR 50 million.

This threshold has been reduced for fiscal years ended 31 December 2016 and onwards.

Country-by-country (CbC) reporting

To align with recommendations of the OECD and the G20 Base Erosion and Profit Shifting (BEPS) Initiative (Action 13), France has introduced CbC reporting for multinational corporations, applicable to tax years beginning on or after 1 January 2016. The annual obligation requires multinational corporations to file with the French tax authorities anytime within the 12 months following their fiscal year-end a CbC report disclosing information regarding the name, activities, and profits of foreign entities in the same group.

Multinational corporations will therefore file their first CbC report sometime in 2017. As an example, for fiscal years opened on 1 January 2016, the filing must be made no later than 31 December 2017.

French entities are subject to the new CbC reporting requirement if they:

- establish consolidated accounts
- directly or indirectly hold or control one or several legal entities established abroad, or have foreign branches
- generate annual consolidated group revenue of at least EUR 750 million, and
- are not held by one or several legal entities established in France already subject to the French CbC reporting requirement, or by legal entities established abroad that are subject to similar CbC reporting requirements pursuant to foreign legislation.

The French government will publish a list of states or territories that have implemented a similar CbC reporting requirement, have concluded an automatic exchange of information agreement with France, and comply with this agreement.

An entity established in France is also subject to the French CbC reporting requirement when that French entity is held, directly or indirectly, by a legal entity established in a foreign state or territory that would have been subject to the CbC reporting requirement if established in France when:

- the French entity is designated by the consolidated group to perform the CbC reporting obligation for that group, and the French tax authorities have been informed of that designation, or
- the French entity is not able to demonstrate that any other entity of the group, either established in France or in a listed state or territory, has been designated to perform the CbC reporting for the group.

Failure to provide the French tax authorities with complete CbC reporting will result in a penalty of up to EUR 100,000.

Thin capitalisation

Under current rules, the tax deduction of interest paid by a French company to its foreign controlling shareholders is subject to the following three restrictions:

Interest rate limitation

Under the amended Article 212 of the FTC, tax deduction of interest paid to related parties is limited to the higher of (i) the average annual interest rate applied by credit institutions to companies for medium-term variable rate loans or (ii) the interest that the borrowing company could have obtained from independent banks under similar circumstances. This rate is 2.07% for financial years ending on 31 December 2016. Having passed this interest rate test, French indebted companies have to pass a second test: the debt ratio.

Debt ratio

That part of interest paid to related parties that is deductible under the rate limitation test is disqualified if it exceeds all of the three following limitations during the same financial year:

- Interest relating to financing of any kind granted by related parties, within the limit of 1.5 times the net equity of the borrower.
- 25% of adjusted net income before tax (‘*résultat courant avant* impôt’, defined as the operating income, increased by certain items).
- Interest income received from related parties (i.e. there is no limitation on thin capitalisation grounds when the borrowing company is in a net lending position vis-a-vis related entities).

The portion of the interest that exceeds the three above limits is not deductible, except if it is lower than EUR 150,000.

Carryforward of excess interest

That part of the interest that is not deductible immediately by the borrowing company can be carried forward, without time limit, for relief in subsequent years, provided there is an excess capacity during such years. The amount in excess is, however, reduced by 5% each year, from the second financial year following the financial year in which the interest expense has been incurred.

Exceptions

The thin capitalisation rules do not apply to interest payable by banks and credit institutions, and also to certain specific situations, such as interest in connection with intra-group cash pools or with certain financial lease operations.

The thin capitalisation rules do not apply if the French indebted company can demonstrate that the debt-to-equity ratio of the worldwide group to whom it belongs exceeds its own debt-to-equity ratio.

Deductibility is also facilitated within a French tax consolidated group. The thin capitalisation rules apply to each company member of the group taken on a stand-alone basis. Any excess interest incurred by such company is, however, not carried forward by it. Instead, it is appropriated at the group level.

Extension of the thin capitalisation mechanism to loans granted by related parties
In the specific case where the repayment of a loan granted by a third party (including banks) is guaranteed by a related party or by a third party whose commitment is itself secured by a related one, then the proportion of interest that is payable on that part of the loan that is secured in this way is potentially subject to thin capitalisation rules.

The provisions will not apply where the loan:

- takes the form of a bond issued by way of a public offering or under equivalent foreign regulations, although this excludes private placements
- is guaranteed by a related party solely by way of a pledge of shares in the debtor, security over the debtor's receivables, or shares in a company directly or indirectly owning the debtor so long as the holder of such shares and the debtor are members of the same tax group; as a result, this exception will not apply where a foreign company grants a pledge of shares in its French subsidiary to guarantee the bank loan granted to it
- is obtained in the context of a refinancing to allow the debtor to complete the mandatory repayment of a pre-existing debt, which is required as a result of a direct or indirect takeover of the debtor (allowed up to the amount of the loan principal repaid and accrued interest to that date), or
- has been obtained prior to 1 January 2011 in connection with an acquisition of securities or the refinancing of such acquisition debt.

Controlled foreign companies (CFCs)
The CFC rules provide that:

- French corporations are required to include in their taxable income profits made by their more than 50% owned foreign subsidiaries and branches. The 50% holding is determined by direct and indirect control of shares and voting rights.
- The minimum holding threshold has to be reduced to 5% if over 50% of the share capital of the foreign entity is indirectly held through French or foreign companies controlled by the French parent company. However, if the shares in the foreign entity are listed on a regulated market, the French tax authorities will have to demonstrate that the French parent company, together with other entities holding shares in such foreign entity, is acting in concert.
- The CFC rules are only applicable if the foreign legal entity or PE in which the French company owns the requisite percentage of shares is in a country with a privileged tax regime. A privileged tax regime is defined by the FTC as a tax regime in which a foreign jurisdiction subjects taxable income of a foreign entity to at least 50% or lower of the income tax liability that would have been incurred in France, had the activity of the foreign entity been performed in France.
- Profits of the foreign entity that fall under the CFC rules are no longer taxed separately. They are now aggregated with the other taxable profits of the French

parent company. Consequently, any tax losses incurred by the French parent company may be offset against the foreign entity's profits.
- The French parent company can avoid the application of the CFC rules if it demonstrates that the foreign entity carries an effective trading or manufacturing activity, conducted from its country of establishment or registered office. Furthermore, the CFC rules, in principle, are not applicable with respect of foreign branches or subsidiaries located in another EU country. However, this exception is not applicable if the French tax authorities can demonstrate that the foreign entity located in another EU country constitutes an artificial arrangement, set up to circumvent French tax legislation. This concept is similar to the 'abuse of law' concept, although it does not have all the same characteristics.

Tax credits and incentives

Foreign tax credit

Under DTTs signed by France, several methods have been established to avoid double taxation. The main one is the traditional deduction of a tax credit from tax effectively paid. However, some treaties establish a tax exemption or the exclusive right to tax. Also, a tax-sparing clause is included in some treaties, which allows for the deduction of not only the tax actually paid but a higher amount of tax.

Tax credit to boost competitiveness and employment

To improve the competitiveness of the French economy and reduce employment costs, France has a tax credit that is available to French and foreign enterprises subject to CIT in France.

Partnerships will pass their tax credit through to their partners, provided the partners are subject to French tax.

There are no requirements regarding the nature of the activity carried out in France.

The tax credit is calculated as a percentage of the wages paid during the calendar year to employees receiving less than 2.5 times the French regulated minimum wage (SMIC).

The current gross monthly SMIC is EUR 1,480.27. The rate applicable for this tax credit is 7%. The tax credit can be offset against the CIT liability payable by the taxpayer with respect to the calendar year during which the wages are paid. Any excess credit can be carried forward and offset against the tax liability of the taxpayer during the next three years.

Credits unused after three years will be refunded to the taxpayer. The 'receivable' (unused credits) can be transferred or sold only to credit institutions. Finally, special provisions apply in the case of mergers and assimilated restructuring operations.

R&D tax credit

The R&D tax credit is determined on the basis of the eligible R&D expenses incurred during the calendar year.

Currently, the R&D credit equals 30% of the R&D eligible expenses incurred during the year, up to EUR 100 million in eligible R&D expenses, and 5% beyond this amount. In addition, eligible R&D expenses incurred by the company can be included in the basis for computation of the tax credit at up to 100% of that amount.

Moreover, the 'standard' rate is 40% and 35% for the first and the second year, respectively, during which the company incurs eligible R&D expenses, or after the expiration of a period of five consecutive years during which the company did not benefit from the tax credit, provided, in both cases, that the concerned company is not affiliated with another company that benefited from the R&D tax credit within the same time period.

The tax code classifies eligible technical and scientific research operations in three areas: fundamental research, applied research, and experimental development.

The eligible expenditures include the following:

- Tax deductible depreciation expenses relating to fixed assets, created or acquired newly, assigned to eligible R&D works/projects, including patents acquired.
- Costs relating to staff qualifying as scientists and/or engineers (staff costs relating to 'young graduate doctors' are retained at up to 200% during the 24 months following their hiring by the company).
- Expenses resulting from outsourced R&D works/projects.
- Expenses incurred for patent registration and/or in connection with the defence of patents.
- Expenses relating to the monitoring of technical developments.
- Premiums paid in connection with insurance contracts relating to the legal defence of patents.

Operating costs are taken into account by retaining 50% of the R&D staff costs plus 75% of the depreciation on the assets allocated to the research. Also, spending on outsourcing to private research organisations is included in the limit of three times the total amount of other research expenses qualifying for the tax credit.

The use of patented or patentable technologies in manufacturing

Companies that are involved in the manufacturing of products in France containing patented or patentable technologies, or companies that incorporate such technologies into goods that are manufactured in France, benefit from a reduced effective rate of tax.

In the case of a licensing arrangement between connected French companies, the licensor will benefit from a reduced 15% tax rate on royalty income, whereas the licensee company will benefit from a tax deduction at 33.33%.

In order for a licensee company to benefit from full deductibility for royalties paid, the rules require that the licensee company 'effectively exploits' the rights available to it.

Inbound investment incentives

No particular incentives are available to foreign investors in France. However, the government offers a comprehensive programme of tax incentives and development subsidies to encourage investment in underdeveloped areas.

Capital investment is encouraged through the declining-balance method of depreciation as well as through exceptional depreciation for certain capital expenditures.

Withholding taxes

Payments to resident corporations and individuals are not subject to WHT.

Payments to non-resident corporations and individuals are subject to WHT, as shown below.

In a decision given on 9 November 2015, the French Administrative Supreme Court ruled that a person who is exempt from tax in a contracting state by reason of one's status or activity cannot be considered liable to taxation and, consequently, is not a resident of the contracting state under the DTT if the treaty defines a 'resident' as a person who is liable to tax in a contracting state.

	Dividend WHT (%)		
Column 1	**Column 2**	**Column 3**	**Column 4**
Country of residence	**Individuals and non-parent companies**	**Parent companies**	**Shareholding required to be a parent**
Non-treaty:	21/30 (37)	30	-
Treaty:			
Algeria	15	5	10
Argentina	15	15	-
Armenia	15	5	10
Australia	15	0	10
Austria	15	0	10
Bahrain	0	0	-
Bangladesh	15	10	10
Belgium	15	0 (1)	10
Benin	30	30	-
Bolivia	15	15	-
Botswana	12	5	25
Brazil	15	15 (2)	-
Bulgaria	15	0/5 (1)	10/15
Burkina Faso	15 (19)	30 (2)	-
Cameroon	15	15	-
Canada	15	5	10
Central African Republic	15	5	10
China	10	10	-
Comoro Islands (Mayotte)	15/25	15/25	-
Congo, Republic of	20	15	10
Croatia	15	0	10
Cyprus	15	0/10 (1)	10
Czech Republic	10	0 (1)	10
Ecuador	15	15	-
Egypt	0	0	-
Estonia	15	0/5 (1)	10
Finland	0/15	0/5 (1)	10
Gabon	15	15	-
Georgia	10	0/5/10	10/50
Germany	15	0 (3)	10
Ghana	15	5	10
Greece	21/30 (37)	0/30 (1)	10
Hong Kong	10	10	-

	Dividend WHT (%)		
Column 1	**Column 2**	**Column 3**	**Column 4**
Country of residence	**Individuals and non-parent companies**	**Parent companies**	**Shareholding required to be a parent**
Hungary	15	0/5 (1)	10
Iceland	15	0/5 (1)	10
India	10	10	-
Indonesia	15	10	25
Iran	20	15	25
Ireland, Republic of	15	0/10 (1)	10/50
Israel	15	5	10
Italy	15	0/5/15 (1)	10
Ivory Coast	15	15	-
Jamaica	15	15	10
Japan	10	5	10
Jordan	15	5	10
Kazakhstan	15	5	10
Kenya	10	10	-
Korea, Republic of	15	10	10
Kuwait	0	0	-
Latvia	15	0/5 (1)	10
Lebanon	0	0	-
Lithuania	15	0/5 (1)	10
Luxembourg	15	0/5 (1)	10/25
Holding company (4)	30	30	-
Macedonia	15	0	10
Madagascar	25	15	25
Malawi	30	30	-
Malaysia	15	5	10
Mali	15/30	30 (2)	-
Malta	15	0 (1)	10
Mauritania	30	30	-
Mauritius	15	5	10
Mayotte	30	25 (2, 5)	-
Mexico	15	0/5	5/10
Monaco	25	25	10
Mongolia	15	5	10
Morocco	0/15	0/15 (6)	-
Namibia	15	5	10
Netherlands	15	0/5 (1)	10/25
New Caledonia	15	5 (35)	-
New Zealand	15	15	-
Niger	25	-	-
Nigeria	15	12.5 (35)	10
Norway	15	0 (1)	10
Oman	0	0	-
Pakistan	15	10	10
Philippines	15	10 (35)	10 (36)
Poland	15	5	10
Polynesia, French	30	30	25
Portugal	15	0/5 (1)	10

	Dividend WHT (%)		
Column 1	**Column 2**	**Column 3**	**Column 4**
Country of residence	**Individuals and non-parent companies**	**Parent companies**	**Shareholding required to be a parent**
Qatar	0	0	-
Romania	10	0 (1)	10
Russia	15	5/10/15 (7)	-
Russian Federation	15	5	10
St. Pierre & Miquelon	15	5	-
Saudi Arabia	0	0	-
Senegal	15	15	-
Singapore	15	10	10
Slovakia	10	0/10 (1)	20
South Africa	15	5	10
Spain	15	0	10
Sri Lanka	30	30	-
Sweden	15	0/15 (1)	10
Switzerland (8)			
A (9)	15	0 (8)	10 (8)
B (10)	15 (8)	0/15 (8)	10 (8)
C (11)	30	30	-
Thailand	20	15	25
Togo	15/30	25 (2)	-
Trinidad and Tobago	15	10	10
Tunisia	30	30	-
Turkey	20	15	-
Ukraine (12)	15	0/5	10/50
United Arab Emirates	0	0	-
United Kingdom	15	0/5 (1)	10
United States	15	0/5	10/80
Uzbekistan	10	5	10
Venezuela	15	0/5	10
Vietnam	15	5	10
Zambia	30	30	50
Zimbabwe	15	10	25

	WHT (%)		
	Interest	**Royalties**	**Distributions**
Column 1	**Column 5**	**Column 6**	**Column 7**
Country of residence	**For instruments other than borrowings**		**Automatically levied on after-tax profits of PEs**
Non-treaty: (13, 14, 15)	0 (16)	33.33	25
Treaty:			
Algeria	0	5/10 (33)	0
Argentina	0	18	5
Armenia	0	5/10 (33)	5
Australia	0	5	15
Austria	0	0	0
Bahrain	0	0	25
Bangladesh	0	10	15

	WHT (%)		
	Interest	Royalties	Distributions
Column 1	Column 5	Column 6	Column 7
Country of residence	For instruments other than borrowings		Automatically levied on after-tax profits of PEs
Belgium	0	0	0/10 (22)
Benin	0	0	25 (17)
Bolivia	0	15	0
Botswana	0	10	5
Brazil	0	10/15/25 (18)	15
Bulgaria	0	0/5 (38)	0/5 (22)
Burkina Faso	0	0	25 (17)
Cameroon	0	15 (19)	15
Canada	0	10 (19)	5
Quebec	0	10	5
Central African Republic	0	0	25 (17)
China	0	6/10 (20)	0
Comoro Islands (Mayotte)	0	33.33	25 (17)
Congo, Republic of	0	15	15
Croatia	0	0	0
Cyprus	0	0 (21, 38)	0/10 (22)
Czech Republic	0	0/5/10 (23, 34, 38)	0 (22)
Ecuador	0	15	15
Egypt	0	15	0
Estonia	0	0/5/10 (34, 38)	0
Finland	0	0	0/15 (22)
Gabon	0	10	0
Georgia	0	0	0
Germany	0	0	0
Ghana	0	10	0
Greece	0	0/5 (38)	0/25 (22)
Hong Kong	0	10	10
Hungary	0	0	0/5 (22)
Iceland	0	0	5
India	0	0	0
Indonesia	0	10	10
Iran	0	10	15
Ireland, Republic of	0	0	0/25 (22)
Israel	0	0/10 (19, 21)	5/10
Italy	0	0/5 (23, 38)	0
Ivory Coast	0	0/10 (24)	0
Jamaica	0	10	10
Japan	0	0	0
Jordan	0	5/15/25 (18)	5
Kazakhstan	0	10	5
Kenya	12	10	25
Korea, Republic of	0	10	5
Kuwait	0	0	25
Latvia	0	0/5/10 (34, 38)	0
Lebanon	0	33.33	25

	WHT (%)		
	Interest	Royalties	Distributions
Column 1	Column 5	Column 6	Column 7
Country of residence	For instruments other than borrowings		Automatically levied on after-tax profits of PEs
Lithuania	0	0/5/10 (34, 38)	0
Luxembourg	0	0	0/5 (22)
Holding company (4)	10 to 15	33.33	25
Macedonia	0	0	0
Madagascar	0	10/15 (25, 26)	25
Malawi	0	0/33.33 (19)	10
Malaysia	0	10 (26)	15
Mali	0	0	25 (17)
Malta	0	0/10 (23, 38)	0/10 (22)
Mauritania	0	0	25 (17)
Mauritius	0	0/15 (23)	15
Mayotte	0	0	25 (17)
Mexico	0	10 (20, 23)	0
Monaco	0	33.33	25
Mongolia	0	5 (23)	0
Morocco	0	5/10 (27)	0
Namibia	0	10 (23)	0
Netherlands	0	0	0
New Caledonia	0	10 (23)	10
New Zealand	0	10	15
Niger	0	0	25 (17)
Nigeria	0	12.5	25
Norway	0	0	0
Oman	0	7	25
Pakistan	0	10	0
Philippines	0/15/50	15	10
Poland	0	0/10 (23)	25
Polynesia, French	0	33.33	25 (17)
Portugal	0	0/5 (38)	0/15 (22)
Qatar	0	0	25
Romania	0	0/10 (38)	0/10 (22)
Russia	0	0	0
Russian Federation	0	0	25
St. Pierre & Miquelon	0	10 (23)	10
Saudi Arabia	0	0	25
Senegal	0	0	0
Singapore	0	0	5
Slovakia	0	0/5 (23)	10
South Africa	0	0	0
Spain	0	0/5 (29, 38)	0
Sri Lanka	0	0/10 (30)	25
Sweden	0	0	0 (22, 23)

France

		WHT (%)	
	Interest	Royalties	Distributions
Column 1	Column 5	Column 6	Column 7
Country of residence	For instruments other than borrowings		Automatically levied on after-tax profits of PEs
Switzerland (8)			
A (9)	0	0/5 (8, 31)	0 (8)
B (10)	0	0/5 (8, 31)	0 (8)
C (11)	0	33.33	0 (8)
Thailand	0	5/15 (28)	25
Togo	0	0	25 (17)
Trinidad and Tobago	0	0/10 (20)	10
Tunisia	0	5/15/20 (32)	25 (17)
Turkey	0	10	7.5
Ukraine	0	0/10	25
United Arab Emirates	0	0	0
United Kingdom	0	0	0 (22)
United States	0	0	5
Uzbekistan	0	0	0
Venezuela	0	5	0
Vietnam	0	10	0
Zambia	0	0/33.33 (19)	10
Zimbabwe	0	10	0

Explanation of columns

Column 2: Individuals and companies not qualifying as parents are subject to the WHT rates for dividends as indicated in this column.

Columns 3 and 4: Column 3 indicates the WHT rate for dividends paid to a foreign 'parent' company. To be considered as a parent company, the foreign company must hold a specified percentage of the French company's share capital or voting rights. These minimum percentages range from 0% to 50%, as indicated in Column 4, and certain other conditions must be met (*see each treaty*). If no percentage is indicated, either no minimum shareholding is required or the tax treaty does not reduce the WHT rate of 30%.

No WHT is levied on dividends paid by a French company to an EU parent or to a parent company of Iceland, Liechtenstein, or Norway that is subject to CIT, provided all the following conditions are met:

- The parent company has held a minimum percentage of the share capital of the distributing company, directly and continuously, for at least two years. As of 1 January 2009, the participation required is 10%.
- The parent company is the effective beneficiary of the dividends.
- The parent company has its effective seat of management in an EU state and is not deemed to be domiciled outside the European Union under an applicable tax treaty.
- The parent company is one of the legal forms enumerated by the relevant Directive.
- The parent company is subject to CIT in the member state where it has its effective seat of management.
- There is an anti-avoidance rule.

Column 5: The tax mechanism has been changed so as to exempt the interest from WHT in France except where the interest is paid to an entity established in a non-cooperative state or territory (WHT at a rate of 75% applicable). The payer can, however, be exempt if one proves that the main purpose and effect of such a payment is not to take advantage of locating the income in such a jurisdiction.

These provisions apply to income paid as of 1 March 2010. A special provision applies to loans entered into outside of France by French companies and some investments funds prior to this date. Interest paid on these loans and on related loans after 1 March 2010 will continue to be exempt.

Column 6: There is no requirement to withhold income tax on royalties paid to EU companies if all the following conditions are met:

- The taxpayer is a French resident company or a French PE of a company resident in another EU member state.
- The recipient of the income is an EU resident company.
- The taxpayer and the recipient are at least 25% associates, which means that either one directly holds 25% or more of the share capital or voting rights in the other, or a third party directly holds 25% or more of the capital or voting rights in them both.

Column 7: WHT is automatically imposed on after-tax profits of a PE unless certain conditions are met. The rate is 25% or the reduced tax treaty rate.

Notes

1. *See explanation of Columns 3 and 4.*
2. Exceptions where the dividends are excluded from the taxable income of the company that has received the dividends.
3. A rate of 15% is applicable for dividends distributed by certain companies.
4. The 1929-type Luxembourg holding companies are not entitled to any of the benefits of the France-Luxembourg tax treaty.
5. A 25% rate applies if dividends are not included in the income taxed to either corporate or income tax.
6. No WHT applies if dividends are taxable in Morocco.
7. The 5% rate applies to dividends when three conditions are fulfilled, as follows: (1) the effective recipient of the dividends must have invested at least EUR 76,224.51 in the company that pays these dividends; (2) the recipient must be a company liable for CIT; and (3) the latter company must be exempt from CIT. The rate is 10% when only condition (1) or conditions (2 and 3) are fulfilled. In all other cases, the rate is 15%.
8. An addendum signed on 22 July 1997 modifies the provisions of the French-Swiss tax treaty relating to dividends, interest, and royalties, and provides for the removal of the 5% WHT on profits realised by French PE of Swiss resident companies.
9. The rate indicated applies to Swiss resident companies controlled by Swiss residents.
10. The rate indicated applies to Swiss resident companies that are controlled by non-Swiss residents (non-UE) (Article 11.2.b ii) and meet the conditions of Article 14 of the tax treaty. In the case of column 3, the 15% rate applies to these companies, provided both the recipient and the distributing company are not quoted on a stock exchange. If these conditions are not met, the tax exemption applies.
11. The rate indicated applies to Swiss resident companies controlled by non-Swiss residents but not complying with Article 14 of the tax treaty.
12. The 5% rate applies to gross dividends if the effective recipient is a Ukrainian company that holds, directly or indirectly, at least 10% of the French company's capital. The rate is 0% if the participation exceeds 50% and EUR 762,245. It is 15% in all other cases.
13. Non-treaty recipients of royalties and management fees are subject to a 33.33% withholding rate. Where a treaty exists, management fees are exempt from WHT unless they are included in the definition of royalties subject to WHT.
14. In France, the WHT is levied on a provisional basis at 25% of the net profit. This amount is reduced to the extent it exceeds the dividends actually paid by the company during the previous 12 months, and the amount of dividends paid to residents of France. Consequently, if the foreign head office undertakes not to distribute dividends in a given year, the after-tax profits of its French branch are not subject to WHT, even when they are transferred abroad.
15. WHT on interest on loans with a contract is 0%, while withholding on other interest is in a range from 15% to 50%. For treaty rates, consult the individual entry in the table.
16. The WHT rate can be 60% for certain securities if the investor's identity is not disclosed.
17. The WHT is levied on the following amount: French net profit divided by the total foreign company net profit, multiplied by the amount of the distribution.
18. The rate of 10% is applicable on royalties for the use of literary, artistic, or scientific works, including films; 25% on royalties for the use of trademarks; and 15% otherwise.
19. No WHT is applicable on a royalty arising from the use of or the right to use literary, artistic, or scientific works (excluding film).
20. WHT is reduced to 6% for royalties paid for the lease of industrial, commercial, or scientific equipment.
21. A rate of 5% (Cyprus) and 10% (Israel) is applicable on royalties paid for the use or the right of the use of films.
22. Profits realised in France by foreign corporations whose head offices are located in a European country are not subject to WHT if certain conditions concerning the foreign corporation are met (effective head office in a European country; foreign corporation subject to corporate taxation).
23. No WHT is applicable on a royalty arising from the use or the right to use literary, artistic, or scientific works.
24. No WHT is levied on certain royalties paid in the field of audio visual techniques.
25. The rate of 15% is applicable on royalties paid for the use of industrial property and trademarks.
26. A rate of 33.33% is applicable on royalties paid for the use of or the right to use films.
27. The rate of 5% is applicable on royalties paid for the use of literary, artistic, or scientific works, excluding films.

28. The rate of 33.33% is applicable on royalties paid for the use of literary and artistic works, including films, and for information concerning commercial experience.
29. No WHT is levied on royalties paid for the use of or the right to use literary or artistic works, excluding films and recordings.
30. No WHT is levied on royalties paid for the use of or the right to use copyrights or films.
31. No WHT is levied on royalties paid for the use of or the right to use industrial, commercial, or scientific equipment.
32. The rate of 20% is applicable on royalties paid for the use of trademarks, 15% for the use of industrial property, and 5% for the use of literary, artistic, or scientific works.
33. The rate of 5% is applicable on royalties for the use of literary, artistic, or scientific works, not including films.
34. The rate of 5% is applicable on royalties for the use or the right to use industrial, commercial, or scientific equipment.
35. The reduced rate is applicable if the beneficial owner is a company (other than a partnership).
36. Voting shares solely.
37. French domestic law decreases the WHT rate from 30% to 21% concerning individuals who are resident in another EU member state, in Iceland, and in Norway.
38. *See explanation of Column 6.*

WHT on French-source dividends

The EU WHT exemption extends to dividends paid by foreign companies whose effective place of management is in an EEA member state that has concluded an administrative assistance agreement with France (including Iceland, Liechtenstein, and Norway).

Shares held in bare ownership are taken into account for the computation of the 10% percentage in the distributing entity's capital in order to benefit from the WHT exemption. The ownership percentage required to benefit from the WHT exemption may be reduced from 10% to 5% if the beneficial owner of the dividends (EU or EEA) cannot offset the French domestic WHT in its home country.

The WHT exemption also applies if dividends are paid to a parent company based in the European Union or in a third country that has concluded an administrative assistance agreement with France that is in a tax loss position and is declared bankrupt or is in a similar situation.

Dividends received by a French parent from qualifying holdings

Shares held in bare ownership are taken into account for the computation of the 5% percentage in the subsidiary's capital in order to benefit from the participation-exemption regime.

Participation exemption is available for fiscal years ending on or after 31 December 2015 to distributions received from entities established in NCSTs, provided the parent company demonstrates that these operations are not designed for, or do not result in, locating profits in such NCST for tax fraud purposes.

There is an exclusion of certain dividend distributions (e.g. distributions made by *société d'investissement immobilière* côtée [SIIC], *société immobilières pour le commerce et l'industrie* [SICOMI], *société de placement à prépondérance immobilière à capital variable* [SPPICAV], etc.) from the participation-exemption regime.

Anti-avoidance rules applicable to Non-Cooperative States or Territories (NCSTs)

The French parent-subsidiary regime is not applicable to dividends paid from entities located in an NCST.

WHT on passive income is 75% for transactions with an NCST person or entity.

For French tax purposes, a state or territory is considered non-cooperative if it meets all of the following criteria:

- It is not a member of the European Community.
- It has been reviewed and monitored by the OECD Global Forum on Transparency and Exchange of Information.
- It has not concluded at least 12 administrative assistance agreements/treaties that allow a complete exchange of information for tax purposes.
- It has not concluded an administrative assistance agreement/treaty with France.

Payments (e.g. interests, royalties, payments for services) made to an NCST person or entity are, as a general rule, not tax deductible. In addition, it is not possible to offset WHT in France with any foreign WHT borne by the entity located in an NCST.

Moreover, concerning shareholders (individuals and companies) located in an NCST, a tax amounting to 75% is levied on capital gains derived from the disposal of shares in French companies, whatever the level of shareholding.

The list of NCSTs is upgraded each year.

On 8 April 2016, the French government published a Ministerial decree including Panama in its list of NCSTs, effective as of 1 January 2017.

General Anti-Abuse Rule (GAAR)
A GAAR provided by the EU Directive is implemented in French law and applies to the:

- Parent-subsidiary regime.
- French WHT exemption.

The French GAAR provides that the benefit of these regimes cannot be claimed:

- if the distributions result from a scheme or series of schemes put in place to obtain, as a main objective or as one of the main objectives, a tax benefit that is contrary to the purpose of the parent-subsidiary regime, and
- that is not genuine based on the applicable facts and circumstances.

According to parliamentary works, this GAAR aims to exclude from the exemption holding companies with a sole purpose of holding shares.

Tax administration

Taxable period
The ordinary taxable period is equal to 12 months. Conformity with the calendar year is not requested. In particular cases, the duration of the taxable period can be different from 12 months (e.g. newly established companies are allowed to have taxable periods longer than 12 months; companies that are involved in extraordinary transactions [merger, de-mergers, etc.], as well as companies that are liquidated, may have taxable periods shorter than 12 months).

Tax returns
Regarding fiscal years that end on 31 December, CIT returns are due by the end of April of the following year.

Accounting records to be provided in 'computerised format' in case of tax audit
Companies are required to keep their accounting records in computerised form and to provide them to the tax authorities in the same format. Such electronic files must be provided for fiscal year 2014 and following years when audited in fiscal year 2017.

Payment of tax

Payment of tax is made during the fiscal year by way of four instalments totalling 33.33% of the taxable income of the preceding year (i.e. by 15 March, 15 June, 15 September, and 15 December for fiscal years that end on 31 December). Regarding fiscal years that end on 31 December, final CIT payment is due on 15 April of the following year.

Currently, for companies that have gross income in excess of EUR 500 million, the last down-payment is assessed on the basis of the estimated taxable income of the present year (in case of significant increase of the taxable profits in comparison with the previous fiscal year). This leads to an anticipated payment of CIT.

For tax years beginning on or after 1 January 2017, companies with revenues exceeding EUR 250 million in the previous tax year must compute their fourth CIT instalment payment as follows:

Total of the four instalment payments	Conditions
80% of the CIT due on the projected profits	EUR 250 million ≤ Revenues ≤ EUR 1 billion
90% of the CIT due on projected profits (previously 85%)	EUR 1 billion < Revenues ≤ EUR 5 billion
98% of the CIT due on projected profits (previously 95%)	Revenues > EUR 5 billion

For example, the last instalment payment will be due on 15 December 2017 for tax years ending on 31 December 2017.

Interest and penalties

Regarding CIT, VAT, registration duties, and business tax:

- late payment is subject to late interest computed at a rate of 0.4% per month (4.80% per year) and to a 5% penalty, and
- late filing is subject to late interest computed at a rate of 0.4% per month (4.80% per year) and to a 10% penalty.

Moreover, a penalty of 40% applies in case of bad faith and is increased to 80% in case of fraud.

Tax audit process

The French tax authorities are responsible for verifying that taxpayers' obligations are correctly complied with and, if necessary, for making adjustments by issuing tax assessments.

Once an assessment is notified by the tax inspector and if the taxpayer disagrees with such an assessment, the taxpayer has 30 days to answer (with a possible 30 days extension upon request) and to provide comments to the French tax authorities.

Following an exchange of written correspondences between the tax inspector and the taxpayer (including hierarchical recourse), either party may submit any disagreement on a factual issue to the departmental or national tax commission. The decision of this commission is neither binding on the taxpayer nor on the French tax authorities.

In cases where the disagreement between the French tax authorities and the taxpayer still remains, the taxpayer can file a claim with the French civil courts or with the French administrative courts, depending on the type of tax that has been subject to assessment by the tax inspector.

Statute of limitation

Regarding CIT, the general statute of limitation expires at the end of the third year following the one that has triggered the tax liability.

Under certain circumstances, the statute of limitation can be extended (e.g. fraud, undisclosed/hidden activity); the statute of limitation can also be interrupted (e.g. notification of a notice of reassessment).

Topics of focus for tax authorities

Transfer pricing, business reorganisation, financing arrangements, and VAT are standard elements reviewed during tax audit.

The ruling system

To secure the tax status of a situation, foreign companies and individuals can request a private ruling from the French tax authorities as to whether their activities constitute a PE or fixed base.

The French tax authorities have to provide an answer within three months after the receipt of the request. In the absence of response from the French tax authorities within this period of time, the foreign company or individual will be deemed not to have a PE in France.

APAs are also provided by the French tax authorities for transfer pricing purposes (*see the Group taxation section for more information*) as well as for eligibility of R&D expenses to the R&D tax credit.

Other issues

France and the United States sign bilateral agreement on the implementation of the Foreign Account Tax Compliance Act (FATCA)

On 14 November 2013, France and the United States signed a bilateral intergovernmental agreement (IGA) intended to implement FATCA. FATCA was enacted by the United States in 2010 to combat offshore tax evasion by US persons. France, with the United Kingdom, Germany, Spain, and Italy, was an original member of the 'G5' countries that agreed with the United States to advance the principles of FATCA under the concept of bilateral IGAs in order to address many of the legal barriers faced by financial institutions in complying with FATCA.

The French government has committed to drafting local laws and regulations to implement FATCA among all financial institutions resident in France (including French branches of foreign companies). Broadly speaking, the banking, life insurance, and asset management industries will be most affected, but certain estate (patrimonial) vehicles, holding companies, as well as hedging, finance, and treasury centres of non-financial groups could also be impacted, depending on the nature of their activities.

France

As expected, the US-France IGA is based on the Model 1A version with an Annex II negotiated to include provisions specific to the local French market and that contains categories of French financial institutions qualifying for exempt beneficial owner or deemed-complaint status.

Compliance with FATCA's due diligence, reporting, and, in some cases, withholding requirements is necessary for foreign financial institutions (FFIs) to avoid suffering 30% withholding on certain US-source income and payments. The French IGA is intended to simplify the FATCA requirements for French financial institutions, but, in most cases, still requires significant efforts to maintain compliance.

The following are key points specific to the US-France IGA to consider:

- Inclusion of the 'most favoured nation' clause allowing adoption of certain provisions from other IGAs that may be more favourable to French financial institutions.
- Consistent with Notice 2013-43, the timetable for implementation of FATCA has been synchronised with the intended amendments to the US Treasury Regulations, starting with the entry into force of key provisions effective 1 July 2014.
- Annex II of the French IGA describes various classes of exempt beneficial owners and deemed-compliant financial institutions.
  - The deemed-compliant financial institutions described in Annex II are treated as Non-Reporting French Financial Institutions under the French IGA. In turn, these Non-Reporting French Financial Institutions are considered certified deemed-compliant FFIs under the US regulations and do not have to register to obtain a global intermediary identification number (GIIN).
  - Collective investment vehicles, including investment entities established in France that are regulated as collective investment vehicles, *sociétés de crédit foncier* and *sociétés de financement de l'habitat*, are Non-Reporting French Financial Institutions treated as deemed-compliant FFIs.
- The asset management industry should benefit from an exemption related to employee savings plans and a special status that is intended to reduce the FATCA obligations of investment vehicles and management companies that can ensure the absence of US investors and non-participating financial institution customers.
- The agreement also provides specific provisions for certain French institutions and financial products, including:
  - Exemption for certain local banks with an almost exclusively local client base. This could be beneficial to French institutions following the mutual banking model.
  - Most regulated savings products (savings books and savings plans), which are excluded from the definition of a financial account and will not be treated as US Reportable Accounts, whereas the share savings plan (PEA) remains within the scope of FATCA.
  - Products dedicated to retirement planning (Article 39, Article 82 , Article 83, Madelin, Madelin agricole, Perp, Pere, and Prefon), which are excluded from the definition of financial accounts and will not be treated as US Reportable Accounts.
  - Pension funds will also benefit from a specific exemption.

French financial institutions, as well as non-financial organisations with financial institutions within their groups, should be taking steps based on the IGA (and in some cases US Treasury Regulations) to ensure they are prepared to comply. Unofficial draft guidelines have been prepared regarding the US-France IGA. This draft is not binding on French tax authorities. Official guidelines were published on 5 August 2015.

Germany

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Significant developments

In December 2016, Germany adopted new legislation regarding the utilisation of net operating loss (NOL) carryforwards, introducing a new relief from the change of control rules in relation to going concern businesses.

Further, the Act to implement the changes to the European Union (EU) Mutual Assistance Directive and to introduce measures to combat base erosion and profit shifting (BEPS) entered into the statute books in December 2016. This includes the introduction of country-by-country reporting (CbCR) in Germany and an adjustment of transfer pricing documentation rules in line with the recommendations of the Organisation for Economic Co-operation and Development (OECD) BEPS Project. In addition, a bill introduced into domestic law the extension of the scope of the Mutual Assistance Directive with respect to the automatic exchange of information regarding CbCR as well as advance cross-border tax rulings and advance pricing arrangements (APAs).

The goal of implementing various conclusions of the OECD BEPS project has been further promoted through the last months. The introduction of restrictions on the deductibility of royalty payments to related parties in certain cross-border situations where a preferential tax regime is considered harmful is proposed from 2018 onwards in an ongoing legislative procedure, which is expected to be finalised in early June 2017.

Taxes on corporate income

Germany taxes its corporate residents on their worldwide income. However, most double tax treaties (DTTs) exempt income attributable to a foreign permanent establishment (PE). Non-residents with PE or property income are taxed by assessment on German-source income; those earning royalties and dividends are taxed by withholding at source. Interest paid abroad is, in most cases, free of German tax altogether.

German business profits are subject to two taxes, corporation tax and trade tax.

Corporation tax (Körperschaftsteuer)

Corporation tax is levied at a uniform rate of 15% and is then subject to a surcharge of 5.5% (solidarity surcharge). This results in a total tax rate of 15.825%.

Trade tax (Gewerbesteuer)
The trade tax rate is a combination of a uniform tax rate of 3.5% (base rate) and a municipal tax rate (*Hebesatz*) depending on where the PEs of the business are located. Currently, municipalities with at least 80,000 inhabitants levy trade tax at a rate of between 12.6% (*Hebesatz* of 360%) and 19.25% (*Hebesatz* of 550%).

The basis for this tax is the adjusted profit for corporation tax purposes: in particular, 25% of all financing costs over 100,000 euros (EUR), including the implicit financing costs in leasing, rental, and royalty payments, are added back to taxable income.

If the basis for the two taxes is identical (unlikely in practice), the overall burden on corporate profits earned in Munich would be 33%. In Frankfurt, the burden would be 32%. In Berlin, it would be 30.2%.

Corporate residence

A corporation is resident in Germany for tax purposes if either its place of incorporation or its main place of management is in Germany. A corporation meeting neither of these criteria will be regarded as non-resident with tax obligations limited to its income from German sources. These include active business activities through a PE or the letting of property and equipment rental (leasing), as well as investment income and royalties. Income of the first three categories is generally taxed by assessment on the actual net earnings. That of the last two is usually taxed at source by withholding from the gross amount payable. Interest paid to a non-resident is generally tax-free. However, interest on convertible or profit-sharing bonds is taxed as a dividend; interest on a German property or ship mortgage is seen as property or shipping income, respectively.

Permanent establishment (PE)
Domestic law defines a PE as any fixed business facility serving the corporate purpose. 'Fixed' is not defined further, but is generally taken to imply a duration of at least six months. A permanent representative is someone who 'habitually' deals on behalf of the principal acting on the principal's instructions, again without any specific time limit. In its tax treaty PE definitions, Germany consistently follows the OECD model; consequently, purchasing activities, delivery stores, and independent agents acting in the ordinary course of their business are regularly excluded from the PE concept. Recent tax treaties generally reflect the Authorised OECD Approach to PE income, and Germany has also negotiated corresponding amendments to a number of older treaties. The Authorised OECD Approach has been adopted into domestic law and is generally followed in practice unless doing so would lead to double taxation from continued adherence to the old approach (of treating a PE as part of the same legal entity as its head office) in the other state.

Other taxes

Value-added tax (VAT)
Proceeds of sales and services effected in Germany are subject to VAT under the common system of the European Union at the standard rate of 19% (7% on certain items, such as food and books). The taxpayer generally is entitled to deduct the VAT charged on inputs from that payable on outputs.

VAT is administered by the tax office responsible for the corporation tax assessment of a company. It is based on preliminary VAT returns filed monthly or quarterly by the tenth day of the following month (monthly for new businesses or where the tax payable in the previous year was more than EUR 7,500) drawn up on the basis of the actual transactions during the filing period as shown in the books of account. A permanent filing extension of one month is available against an advance payment of one-eleventh of the total net tax due during the previous year. Otherwise, payment is due when the return is filed.

Legally, VAT is an annual tax. Each taxpayer must file an annual return for each calendar year, regardless of the actual accounting date for the business. If the annual return does not agree with the total of the monthly or quarterly returns, the tax office can be expected to ask for a detailed explanation and to penalise any irregularity.

Customs duties

Customs duties are levied under a common system on imports into the European Union. The rate is set at zero on most imports from EU candidate countries and on many imports from countries with which the European Union has an association agreement.

For manufactured products from other countries, the rates generally lie within the range of 0% to 10%. The basis is the import value of the goods and thus includes uplifts for royalty or other payments associated with their use but not apparent from the transit documents.

The European Commission (EC) also sets 'countervailing' duties from time to time on specific imports from specific countries in order to counter dumping attempts. The countervailing duty rate is set to fully absorb the dumping margin and is therefore usually much higher than 10%.

Excise taxes

Excise taxes on fuel, electric power, insurance, and some other products are not a compliance issue for businesses other than dealers in bonded goods and insurance companies, although they can be a significant additional cost factor for business users. These excise taxes also have an environmental element in as much as the rates are set to discourage excessive use of pollutants. However, an air passenger duty is the only tax on pollution as such. Energy producers (such as power stations) can claim a refund of the excise tax borne in the cost of the energy products used in the production process.

Property taxes

There are no taxes on wealth or capital employed. There is a minor local authority tax on property, but the effect of this is partly offset by an additional trade tax deduction.

Stamp taxes

The only significant German stamp tax is the real estate transfer tax (RETT) on the consideration on conveyances of German property. The rate varies by province; in 2017, the rate is 3.5% for property in Bavaria and Saxony; 4.5% in Hamburg; 5% in Baden-Württemberg, Bremen, Lower Saxony, Mecklenburg-Western Pomerania, Rhineland-Palatinate, and Saxony-Anhalt; 6% in Berlin and Hesse; and 6.5% in Brandenburg, North Rhine-Westphalia, Saarland, Schleswig-Holstein, and Thuringia.

This tax is also levied on indirect transfers from the acquisition of at least 95% of the shares in property-owning companies. This applies to shares of the shareholder throughout the corporate chain.

In general, RETT is calculated based on the value of the consideration. Where RETT is triggered due to a restructuring, unification of shares, change of partners in a partnership, or in cases where a consideration does not exist, the tax base is determined based on the valuation principles applied for inheritance tax purposes.

The tax is not levied on direct or indirect transfers without consideration in the course of a corporate reorganisation under the laws of a member state of the European Economic Area (EEA), provided at least 95% of the ultimate interest in the property remains unchanged for five years before and after the transaction (group privilege). In a decision of 25 November 2015, the Federal Fiscal Court has asked the Federal Ministry of Finance in several pending cases to join the proceedings and to give its opinion *inter alia* on the question as to whether the group privilege might constitute unlawful state aid. The cases are still pending.

Payroll taxes
Employers are required to pay employee remuneration under deduction of the income tax due. The amounts deducted are paid over to the tax office at regular, usually monthly, intervals. The actual deductions are calculated from the gross pay, taking the employee's marital, family, and other personal circumstances into account. The necessary personal details can be downloaded from a government database. For the employee, the payroll tax deduction is a prepayment on the income tax due after filing one's annual income tax return. As such, the payroll tax is a withholding tax and not a financial burden on the employer. However, employers are required to deduct the correct amounts and are thus exposed to the risk from a later tax audit assertion of under-deduction, especially as there are often legal or practical impediments to recovery from the employees after the event. The administrative effort involved is also far from insignificant.

Social security contributions
All employers are required to account for social security contributions on wages and salaries paid, up to set monthly limits. There are four separate types of insurance: for old-age pensions, unemployment benefits, health care, and invalidity care. Employees regularly earning more than EUR 57,600 *per annum* (2017) can opt out of the health and invalidity insurances if they take out appropriate coverage with a private insurance company. The pension and unemployment insurances are compulsory for all employees. The upper monthly salary limits are EUR 6,350 (2017, EUR 5,700 in the eastern part of Germany) for the pension and unemployment insurances and EUR 4,350 for the health and invalidity insurances. Currently, the rates are as follows:

- Pension insurance: 18.7%, of which the employee's share is one half.
- Unemployment insurance: 3.0%, of which the employee's share is one half.
- Health insurance: 14.6%, of which the employee's share is one half. The health funds have the power to levy a supplement.
- Invalidity insurance: 2.55%, of which the employee's share is one half.

Branch income

Both corporation tax and trade tax are imposed on the taxable income of a foreign company's German branch. The rates are the same for branches as for resident German companies, although the withholding tax (WHT) on dividend distributions by German companies is not deducted from profits transferred by a German branch to its foreign head office.

Income determination

The taxable income is generally determined on the basis of a tax balance sheet, which in turn is based on the statutory accounts according to German generally accepted accounting principles (GAAP). There are certain specific tax law and accounting adjustments to be made to the statutory accounts, and additional accounting options are available. If accounting options are exercised in the tax balance sheet that diverge from the financial statements according to German GAAP, a register must be kept of the resulting variances between the financial statements and the tax computation showing the basis on which each arose and its reversal. International Financial Reporting Standards (IFRS) financial statements are not accepted as a basis for computing taxable income.

Inventory valuation

Inventories normally are valued at the lower of actual cost, replacement cost, and net realisable value. However, any write-downs below actual cost must be for specific reasons. If specific identification of the inventories is not possible, valuation at either standard or average cost is acceptable. The last in first out (LIFO) method is accepted as an option. First in first out (FIFO) is not accepted unless its assumption accords with the facts, although this condition is often fulfilled in practice.

Long-term liabilities and accruals

Non-interest bearing liabilities with a remaining term of 12 months or more as at the balance sheet date, other than advance payments received, must be discounted at 5.5% per year. A similar provision applies to refurbishment (to restore an asset to its original condition) and other accruals that accumulate over time.

Capital gains

Generally, capital gains realised by a corporate entity from a disposal of business assets are treated as ordinary income. It is possible to postpone the taxation of part or all of the gain on real estate by offsetting the gain against the cost of a replacement property.

Capital gains from the sale of investments in other corporations are exempt from corporation and trade taxes. Corresponding losses are not deductible. However, 5% of the capital gains are added back to taxable income as non-deductible, directly-related expenses.

Dividend income

Dividends received on significant holdings are exempt from corporation and trade taxes. Portfolio dividends are taxable. For corporation tax and trade tax purposes, different qualified portfolio holdings are applicable. With respect to corporation tax, a minimum shareholding of at least 10% is required and must be met at the beginning of the calendar year. For trade tax purposes, additional requirements need to be fulfilled (e.g. an active income criterion for certain foreign-source dividends) and different rules apply for German-source and foreign-source dividend income from shareholdings of at least 15% (or 10% insofar as the Parent/Subsidiary Directive is applicable).

5% of the tax-free gross dividend is added back to taxable income as non-deductible business expenses.

Note that banks do not enjoy this exemption on dividends from securities held for trading.

Stock dividends

In principle, a declaration of stock dividends (by converting reserves to capital stock) by a company will not lead to taxable income for the shareholder or to other tax effects. Subsequent capital reductions, however, will be treated as cash dividends in most circumstances. There is no German tax reason for distributing a stock dividend as opposed to merely leaving accumulated profits on the books to be carried forward. The decision, therefore, depends upon the situation in the investor's home country.

Interest income

Interest received is taxed as part of a company's ordinary trading income. There is no exemption corresponding to the trade tax disallowance of 25% of the interest expense or to the general tax disallowance of net interest expense in excess of 30% of 'earnings before interest, tax, depreciation, and amortisation' (EBITDA) under the interest limitation rule (*see the Deductions section*). However, since the interest limitation is based on the net interest margin, a company can benefit from earning income as interest as opposed to an interest substitute.

Royalty income

Royalties received are taxed as part of a company's ordinary trading income. There is no special regime such as an IP Box or the like.

Foreign income

Foreign income, except dividends, received by a German corporation from foreign sources is included in taxable income for corporation tax unless a tax treaty provides for an exemption. Foreign PE income, in most cases, is exempt from corporation and trade taxes, while double taxation on most items of passive income (e.g. interest and royalties) is avoided by foreign tax credit or, at the taxpayer's option, by a deduction of the foreign taxes as an expense.

Irrespective of any tax treaty, income from a foreign branch or partnership is, in general, not charged to trade tax. However, with effect from the 2017 period of assessment, certain passive income arising to a foreign PE will be deemed to have been earned by a domestic PE for trade tax purposes.

The Foreign Tax Act sets anti-avoidance (including controlled foreign company [CFC]) rules with respect to subsidiaries in certain lines of business subject to a low-tax regime. A low-tax regime is one in which the rate applicable to the income in question is less than 25%. Most forms of passive income fall under the CFC rules, which essentially attribute the income to the German shareholder as though it had been earned directly. Active business income is not generally caught where the business operates from properly established facilities.

Investment income held in an EU/EEA subsidiary is also exempt from attribution, provided the subsidiary is commercially active in its country of operation and maintains at least a minimum establishment.

Other provisions give the tax office the right to insist on full disclosure of all the facts and circumstances surrounding a transaction as a condition for the deduction of a business expense incurred within an essentially tax-free environment for the supplier. This rule operates independently of ownership or shareholding considerations.

Deductions

Depreciation and amortisation

Depreciation on movable fixed assets is calculated on the straight-line method over the asset's anticipated useful life. Depreciation takes the residual value of the asset into account only if it is material, with any gains on a sale being treated as normal business income.

Buildings are depreciated on a variety of straight-line or reducing-rate systems designed to reach a full write-down between 25 and 50 years, depending on the age of the building and on whether the taxpayer was its first owner.

In addition to normal depreciation, special depreciation is deductible for tax purposes in certain limited circumstances (e.g. small businesses, ancient monuments, buildings in designated renovated city zones).

Intangibles are amortised straight-line over their estimated useful lives; goodwill is amortised over 15 years.

Start-up expenses

Start-up and formation expenses are deductible as incurred.

Interest limitation

Annual net interest expense (the excess of interest paid over that received) of group companies is only deductible at up to 30% of EBITDA for corporation and trade tax purposes. The 30% limitation applies to all interest, whether the debt is granted by a shareholder, related party, or a third party.

This limitation does not apply where the total net interest expense for the year is less than EUR 3 million or where the net amount paid to any one shareholder of more than 25% (or a related party) is no more than 10% of the total. However, this latter concession is dependent on the demonstration that the equity-to-gross assets ratio of the company is no more than two percentage points below that of the group as a whole. Unused EBITDA potential may be carried forward for up to five years to cover future excess interest cost. This carryforward is otherwise subject to the same principles as the loss carryforward, including curtailment on change of shareholder(s).

In a decision as of 14 October 2015, the Federal Fiscal Court has held the interest limitation to be in breach of the constitution and has asked the Constitutional Court to give a definitive ruling. Since the Federal Fiscal Court is of the view that the provision is unconstitutional, it has suspended the proceedings in a pending case and submitted the question to the Constitutional Court. Only the Constitutional Court is authorised to decide if the regulation is unconstitutional and may thus no longer be applied.

It is emphasised that the interest limitation is additional to, and not a substitute for, the transfer pricing requirement that related-party finance be at arm's length.

Bad debts

Bad debts incurred on trading with unrelated parties are deductible once irrecoverability is apparent and all attempts to pursue the debt have failed or been abandoned. Provision for future bad debts may be made; general provisions must reflect the past experience of the business; specific provisions require specific justification based on the actual circumstances. Loans to shareholders of more than 25% or to their related parties may not be written down or off with tax effect, unless a third party creditor would have granted the loan or allowed it to remain outstanding in otherwise similar circumstances.

Charitable contributions

Donations to recognised charities in cash or in kind are deductible, up to the higher of 20% of otherwise net taxable income or 0.4% of the total of sales revenue and wages and salaries paid during the year. Donations to charities registered in other EU/EEA member states also qualify for deduction if the recipient charity meets the German requirements for recognition.

Fines and penalties

Fines and other penalty payments levied by a court, or other authority, with an intent to punish are not deductible. By contrast, those levied to confiscate ill-gotten gains, or to relieve damage to the victims or to the public good, are deductible. Penalty payments levied for attempted tax evasion are not deductible, but late payment surcharges are deductible if the tax itself is (e.g. VAT).

Taxes

All taxes borne are deductible except for corporation tax, trade tax, and the VAT on most non-deductible expenses.

Net operating losses

Net operating losses are carried forward without time limit. For corporation tax (but not trade tax), there is an optional carryback to the previous year of up to EUR 1 million.

The loss relief brought forward claimable in any one year is limited to EUR 1 million plus 60% of current income exceeding that amount. The remaining 40% of income over EUR 1 million is charged to trade and corporation taxes at current rates. This is referred to as 'minimum taxation'.

The loss carryforward, as well as current losses of the ongoing fiscal year accrued up to the date of the harmful share transfer, is forfeited if a single (immediate or ultimate) shareholder acquires more than 50% of the issued capital (voting rights) within a five-year period. An acquisition of more than 25% and up to 50% leads to a corresponding reduction in the loss carryforward.

These forfeiture rules do not apply to share acquisitions as part of a group internal reorganisation without effect on the single ultimate shareholder, or inasmuch as the loss carryforward is covered by hidden reserves in the company's assets that, on realisation, will lead to German taxation. This excludes the appreciation in value of shareholdings in other companies as well as business assets held in foreign PEs.

For harmful share transfers occurring after 31 December 2015, an application may be made under a new provision introduced in December 2016 to avoid a loss forfeiture. Relief may be available where the company has maintained exclusively the same business during a specified observation period and during this period no 'harmful event' has occurred. In this context, harmful events include, for example, the discontinuance of the business, the commencement of an additional business, and a change in activity/business sector. Where the conditions are fulfilled and the company has made the application, the total tax loss carryforward available at the end of the period of assessment, in which the harmful share transfer occurred, will be classified as so-called 'continuance-bound' loss carryforward (*Fortführungsgebundener Verlust*).

The occurrence of one of the harmful events as set out in the provision will result in the forfeiture of the continuance-bound loss carryforward last assessed as far as the continuance-bound tax loss carryforward is not matched by hidden reserves under the hidden reserve exception.

In a decision as of 29 March 2017, published on 12 May 2017, the German Federal Constitutional Court has held that the German tax loss forfeiture rules violate the German Constitution to the extent they anticipate a partial forfeiture of a company's tax losses upon an acquisition of more than 25% but less than 50% of its shares. The decision directly affects only the time period up to the introduction of the application for a continuance-bound loss carryforward (i.e. share transfers up to 31 December 2015).

The German Federal Constitutional Court obligated the German legislature to amend the rules on a loss forfeiture in case of the acquisition of a qualified minority interest by 31 December 2018 at the latest with retroactive effect from 1 January 2008 to 31 December 2015, to ensure that they are consistent with the German Constitution.

Payments to foreign affiliates

A German corporation can claim a deduction for remuneration, such as interest charges (subject to the interest limitation), service fees, and royalties, paid to foreign affiliates, provided the amounts are at arm's length. Detailed provisions covering both form and substance define this. In particular, all services must be covered by prior written agreement, and it is also necessary to conclude agreements for the purchase and sale of goods in writing where this would be usual between third parties (e.g. for quantity rebates on sales). The substance tests must be satisfied, both as to value for money and as to business relevance. Thus, the manager of a German subsidiary must be able to show an adequate business benefit from a related-party transaction. These and all other aspects of inter-company (related-party) trading fall under strict and extensive documentation requirements, breach of which can lead to serious penalties.

Special features for trade tax

There are a number of differences between the income subject to trade tax and to corporation tax. The most significant is the trade tax disallowance of one-quarter of the interest costs, including interest implicit in leasing, rental, and royalty charges. Banks have an exemption from this interest disallowance.

Group taxation

If a parent holds more than 50% of the voting rights in a subsidiary having its place of management in Germany, the two may conclude a formal, five-year, court-registered profit and loss pooling agreement. If certain conditions are fulfilled, the ensuing relationship is referred to as an *Organschaft*. Effectively, the annual results of an *Organschaft* are pooled at the level of the parent. The tax group subsidiary itself is only subject to tax with respect to 20/17 of the compensation payments made to outside minority shareholders, if applicable. Profits and losses within a group can therefore be offset, but there is no provision for the elimination of intra-group profits from the total tax base. It should also be noted that negative income of the parent or of the subsidiary incurred within an *Organschaft* is excluded from offset in the same or another year if a foreign country takes it into account in the taxation of an *Organschaft* member, or of any other entity.

The main conditions for a tax group for corporate tax/trade tax purposes are:

- The subsidiary is financially integrated; in effect, the parent must have held the shares in the subsidiary without interruption from the beginning of its business year sufficient to give it a majority of the voting rights in the subsidiary.
- The parent of an *Organschaft* must be an individual, a trading partnership, or a non-tax exempt corporation, association, or estate.
- The investment in the subsidiary must, from a functional point of view, be attributable to a German branch of the parent, and the income of the branch must be subject to German tax and not be exempt under a DTT.
- The subsidiary must be a corporation having its place of management in Germany and its registered seat in an EU/EEA member state.
- The parent and the subsidiary must have concluded a qualifying profit and loss pooling agreement (PLPA) to run for at least five years and be consistently applied throughout the term of the agreement. Under the PLPA, the subsidiary surrenders its entire income to the parent. Conversely, the parent is obligated to compensate the losses incurred by the subsidiary throughout the term of the agreement.

Transfer pricing

Extensive rules on transfer pricing in respect of all transactions with foreign-related parties are in force. The basic principle is that all trading should be at arm's length, but the documentation requirements go far beyond the level of documentation normally found sufficient to demonstrate a conscientious approach to true third-party business. Failure to meet these rules exposes the company to serious risk of penalties as well as unfavourable estimates by the authorities, who have the right to exercise every possible leeway or margin to the taxpayer's disadvantage.

In 2016, Germany has adjusted its transfer pricing documentation rules to the recommendations of the OECD BEPS Project. For business years commencing after 31 December 2016, the taxpayer has to prepare documentation specific to the country and each business (local file) as well as a master file with information regarding the global business operations of the group. Furthermore, a so-called country-by-country reporting (CbCR) is to be submitted for business years commencing after 31 December 2015.

Documentation (local file and master file) need not be set up already at the time of transaction or in the course of a tax return. However, in case of extraordinary business transactions (e.g. restructurings, cost sharing, other material long-term agreements), documentation needs to be prepared within six months after the end of the business year in which the business transaction occurred.

Usually, in preparation of a tax audit, the tax authorities request the relevant records/documentation. Upon request of the tax auditor, the documents must be furnished within 60 days of the request or, in case of extraordinary business transactions, within 30 days.

The CbCR has to be submitted within one year after the end of the respective business year.

Thin capitalisation

There are no thin capitalisation rules as such; their substitute is the ‘interest limitation’ to, basically, 30% of EBITDA discussed in the *Deductions* section.

Controlled foreign companies (CFCs)

Germany operates a CFC regime aimed at passive income sheltered abroad and taxed at less than 25%. Essentially, the income is added to that taxable in Germany in the regular manner against a credit for the foreign tax actually paid and not recoverable by either the foreign entity or its shareholder. Active business income, except from tourism and the arms trade, is generally exempt from the CFC net, provided it is earned through a properly established facility of a scale appropriate to the activity concerned. Treaty and EU directive rules exempting foreign income are respected, although taxpayers do have to demonstrate their treaty entitlement.

Tax credits and incentives

Germany does not offer tax incentives except in very limited circumstances, not usually of direct business relevance (e.g. special depreciation for buildings under a conservation order). Partly, this is a question of the state budget, and partly, it reflects the constitutional requirement for equal treatment of all taxpayers.

Other incentives

Local authorities may offer facilities on favourable terms, such as the provision of cheap land on industrial estates.

Foreign tax credit

If foreign-source income is not exempt from German taxation, a credit will be given for the foreign tax actually paid and not otherwise recoverable. However, the credit is limited to the corporation tax (including the solidarity surcharge) on the net income after deducting the related expense (a per-country limitation applies). Unused credit is lost, as there are no provisions for carryforward or for offset against other taxes, such as trade tax. There are still a few cases of fictitious foreign tax credits under tax treaties with developing countries (to protect the treaty partner’s investment incentives), but German treaty policy is to abandon such provisions at the first opportunity.

Withholding taxes

Resident corporations paying certain types of income are required to withhold tax as shown in the following tables. There is also a solidarity surcharge of 5.5% on the tax due.

Germany

General

	WHT (%)		
Recipient of German-source income	**Dividends (1)**	**Interest (1, 2, 3)**	**Royalties**
Resident corporations and individuals	25	0/25	0
Non-resident corporations and individuals (1):			
EU corporations (4, 5)	0/25	0/25	0/15
Non-treaty corporations	25	0/25	15
Non-treaty individuals	25	0/25	15

Notes

1. Corporate recipients of dividend and interest income (interest on convertible and profit-sharing bonds) can apply for refund of the tax withheld over the corporation tax rate of 15% plus solidarity surcharge, regardless of any further relief available under a treaty.
2. Generally, only interest paid by banks to a resident is subject to a WHT. A 25% tax plus solidarity surcharge is also withheld from income on convertible or profit-sharing bonds.
3. Interest paid to non-residents other than on convertible or profit-sharing bonds and over-the counter transactions is generally free of WHT. Tax on loans secured on German property is not imposed by withholding, but by assessment to corporation tax at 15% (plus solidarity surcharge) of the interest income net of attributable expenses. The tax authorities can order a WHT of 15.825% (including solidarity surcharge) if ultimate collection of the tax due is in doubt. Both forms of tax are reduced by treaty relief.
4. Where the EC Parent/Subsidiary Directive applies, dividends paid by a German company to a qualifying parent company resident in another EU member state are exempted from German WHT. The minimum shareholding is 10%, to be held continuously for at least one year.
5. The EC Interest and Royalties Directive exempts payments from WHT if made to an associated company in another EU member state. The association must be through a common shareholding of at least 25%.

Treaty rates

	WHT (%)		
Recipient of German-source income	**Dividends (1, 4)**	**Interest (1, 2, 3)**	**Royalties**
Albania (5)	5/15	5	5
Algeria (5)	5/15	10	10
Argentina (5, 8)	15	10/15	15
Armenia (5, 6)	15	5	0
Australia (5, 8, 10)	0/5/15	0/10	5
Austria (5)	5/15	0	0
Azerbaijan (7, 8)	5/15	0/10	5/10
Bangladesh (5)	15	10	10
Belarus (7)	5/15	0/5	3/5
Belgium (5, 8)	15	0/15	0
Bolivia (5)	10	15	15
Bosnia-Herzegovina (5, 9)	15	0	10
Bulgaria (5)	5/15	5	5
Canada (7, 8)	5/15	0/10	0/10
China, People's Republic of (5, 8)	5/10/15	0/10	10
Costa Rica (5, 8)	5/15	0/5	10
Croatia (5)	5/15	0	0
Cyprus	5/15	0	0
Czech Republic (11)	5/15	0	5
Denmark (5)	5/15	0	0
Ecuador (8)	15	10/15	15
Egypt (5, 7)	15	15	15/25

Recipient of German-source income	WHT (%) Dividends (1, 4)	Interest (1, 2, 3)	Royalties
Estonia (5, 8)	5/15	0/10	10
Finland (7)	10/15/25	0	0/5
France	5/15	0	0
Georgia (5)	0/5/10	0	0
Ghana (5, 8)	5/15	0/10	8
Greece	25	10	0
Hungary (5)	5/15	0	0
Iceland	5/15	0	0
India (5)	10	10	10
Indonesia (5, 7)	10/15	10	10/15
Iran	15/20	15	10
Ireland, Republic of (5)	5/15	0	0
Israel (5, 8)	5/10/15	0/5	0
Italy (5, 7, 8)	15	0/10	0/5
Ivory Coast (5)	15	15	10
Jamaica (8)	10/15	10/12.5	10
Japan (5)	0/5/15	0	0
Kazakhstan (5, 8)	5/15	0/10	10
Kenya	15	15	15
Korea, Republic of (5)	5/15	10	10
Kosovo (5, 9)	15	0	10
Kuwait (5)	5/15	0	10
Kyrgyzstan (5)	5/15	5	10
Latvia (5)	5/15	10	10
Liberia (7, 8)	10/15	10/20	10/20
Liechtenstein (5)	0/5/15	0	0
Lithuania (5)	5/15	10	10
Luxembourg (5)	5/15	0	5
Macedonia (5)	5/15	5	5
Malaysia (5)	5/15	10	7
Malta (5)	5/15	0	0
Mauritius (5)	5/15	0	10
Mexico (5, 8)	5/15	5/10	10
Moldova (5, 6)	15	5	0
Mongolia (5)	5/10	10	10
Montenegro (5, 9)	15	0	10
Morocco	5/15	10	10
Namibia (5)	10/15	0	10
Netherlands (5)	5/10/15	0	0
New Zealand (5)	15	10	10
Norway (5)	0/15	0	0
Pakistan (5, 8)	10/15	10/20	10
Philippines (5)	5/10/15	10	10
Poland (5, 8)	5/15	0/5	5
Portugal (5, 8)	15	10/15	10
Romania (5)	5/15	0/3	3
Russia (5)	5/15	0	0
Serbia (5, 9)	15	0	10
Singapore (5)	5/15	8	8

Germany

Recipient of German-source income	WHT (%) Dividends (1, 4)	Interest (1, 2, 3)	Royalties
Slovakia (11)	5/15	0	5
Slovenia (5)	5/15	5	5
South Africa	7.5/15	10	0
Spain	5/15	0/15	0
Sri Lanka (5, 8)	15	0/10	10
Sweden (5)	0/15	0	0
Switzerland (5)	0/15	0	0
Syria (5)	5/10	0/10	12
Taiwan (5)	10	10	10
Tajikistan (5)	5/15	0	5
Thailand (7, 8)	15/20	10/25	5/15
Trinidad and Tobago (7, 8)	10/20	10/15	0/10
Tunisia (7)	10/15	10	10/15
Turkey (5)	5/15	10	10
Turkmenistan (5, 6)	15	5	0
Ukraine (5, 7, 8)	5/10	5	0
United Arab Emirates (5)	5/10/15	0	10
United Kingdom (5)	5/10/15	0	0
United States (5, 10)	0/5/15	0	0
Uruguay (5)	5/15	10	10
Uzbekistan (5, 7)	5/15	5	3/5
Venezuela (5)	5/15	5	5
Vietnam (5)	5/10/15	10	10
Zambia	5/15	10	10
Zimbabwe (5)	10/20	10	7.5

Notes

1. Corporate recipients of dividend and interest income (interest on convertible and profit-sharing bonds) can apply for refund of the tax withheld over the corporation tax rate of 15% plus solidarity surcharge, regardless of any further relief available under a treaty.
2. Generally, only interest paid by banks to a resident is subject to a WHT. A 25% tax plus solidarity surcharge is also withheld from income on convertible or profit-sharing bonds.
3. Interest paid to non-residents other than on convertible or profit-sharing bonds and over-the-counter transactions is generally free of WHT. Tax on loans secured on German property is not imposed by withholding, but by assessment to corporation tax at 15% (plus solidarity surcharge) of the interest income net of attributable expenses. The tax authorities can order a WHT of 15.825% (including solidarity surcharge) if ultimate collection of the tax due is in doubt. Both forms of tax are reduced by treaty relief.
4. The lower rates on dividends apply under certain conditions (minimum shareholding, specific shareholders, in some cases minimum holding period).
5. The treaty does not limit the taxation of certain profit-based interest income, which is deducted by the debtor from their tax base; consequently, the domestic rate (plus solidarity surcharge) applies.
6. The USSR treaty continues in force with Armenia, Moldova, and Turkmenistan.
7. The applicable maximum WHT rate on royalties depends on the type of royalty granted (film and television royalties, trademarks, patents, franchises, etc.).
8. The lower rate on interest income applies under certain circumstances (e.g. for certain recipients, such as banks or pension funds, or for interest paid in connection with certain purchases on credit).
9. The Yugoslav treaty continues in force with Bosnia-Herzegovina, Kosovo, Montenegro, and Serbia.
10. The dividend exemption applies under certain conditions to corporate shareholders with at least 80% throughout the previous 12 months.
11. The Czechoslovak treaty continues to apply to the Czech Republic and to Slovakia. Interest on profit-sharing bonds is taxed as a dividend.

New treaties or protocols amending existing treaties with Australia, China, Costa Rica, Israel, Japan, and the Netherlands are applicable from 1 January 2017 onwards.

Treaties or protocols amending existing treaties are signed but awaiting ratification with Armenia, Finland, Macedonia, Oman, South Africa, and Turkmenistan.

Tax administration

Taxable period

The tax year in Germany is the calendar year.

Tax returns

Returns are filed for each calendar year and reflect the financial statements for the business year ending in that calendar year. Assessments are issued once the tax office has reviewed the return.

In principle, returns are due by 31 May of the following year. However, there is a virtually automatic extension to 31 December for those filing with professional assistance. A further extension to 28/29 February is possible, if justified under the circumstances. Known late-filers and those with a record of other irregularities can be asked to submit their returns before these extension dates, though not before 31 May. For tax periods starting after 31 December 2017, the regular deadline will be 31 July following the tax year-end. For tax returns prepared by a professional tax advisor, the deadline will be extended to the last day of February of the subsequent year.

Electronic returns

Monthly or quarterly returns for WHT from employee salaries, dividends, interest, royalties, and other payments, and for VAT must be submitted electronically. The same applies to the annual returns for corporation tax, trade tax, and VAT. There is also an electronic filing requirement for the financial statements supporting the return.

Payment of tax

Taxes are payable in quarterly instalments during the year, with a final settlement when the assessment is issued (usually five to six weeks afterwards). The quarterly instalments are based on the estimated ultimate liability. Usually, this is the total tax due shown by the last assessment issued, as adjusted by any rate changes. The corporation tax instalments are due on the tenth day of March, June, September, and December. For trade tax, the due dates are the 15th day of February, May, August, and November. Failure to pay by the due date followed by a three day grace period leads to a penalty of 1% per month.

Corporation and trade tax assessments bear interest on the net amount payable after deduction of all credits and previous payments. The rate is 0.5% per month simple interest, and the period runs from 1 April of the second year following the year of assessment until the date set for payment. The start of the interest period is independent of the actual date of assessment. It thus runs in retrospect on assessments issued later, for example following a tax audit.

Rulings

Tax offices are able to issue binding rulings in respect of planned transactions, provided the taxpayer can show a particular interest in the tax consequences of the intended action. The fee varies between EUR 241 and EUR 109,736, depending upon the amount of tax involved (no fee is charged if the tax amount is less than EUR 10,000).

Advance pricing agreements (APAs)
A taxpayer can request the Central Tax Office to negotiate an APA on related-party transactions with a foreign tax authority on one's behalf. The vehicle is the mutual agreement procedure under the treaty, and the fee is a lump sum EUR 20,000 for each new agreement.

Tax audit process
Germany relies heavily on tax audits as a means of ensuring taxpayer discipline. Audits of small businesses are carried out at random, although those for larger operations and for the local subsidiaries of foreign groups tend to be regular. With some district variations, audits are usually conducted at four to five yearly intervals, though not always with equal intensity for the entire period since the auditors' previous visit.

Statute of limitations
The statutory limitation period for the issue or correction of assessments is four years from the end of the year in which the return was filed. If no return was filed, the period runs from the end of the third year following the end of the year of assessment. The four-year period is extended to five in cases of taxpayer negligence and to ten in the event of evasion.

The statutory limitation period for the collection of tax debts is five years from the end of the year in which payment became due.

Topics of focus for the tax authorities
Tax office reviews of tax returns prior to issuing the assessment notice and payment demand are often rather superficial. Audits, though, are intense, being field reviews on site often lasting for several weeks or even months. Companies with an international focus can expect significant audit emphasis on all aspects of their dealings with their foreign business partners. If the company is a member of an international group, its most important audit component will usually be its transfer pricing on its dealings with foreign-related parties and the relevant documentation. It is emphasised that these two topics are separate fields, as documentation deficiencies can lead to unfavourable estimates on the taxpayer, even if the taxpayer is able to justify the taxpayer's group-company pricing in terms of overall result.

Other issues

International exchange of information
In recent years, Germany has been vigorous in promoting the international exchange of tax information and has agreed to either obligations regarding the exchange of information in DTTs or concluded Tax Information Exchange Agreements (TIEAs) with countries with which it has not concluded a general DTT.

The Foreign Account Tax Compliance Act (FATCA) agreement of 31 May 2013 with the United States (US) on the automatic exchange between national tax authorities of bank account information on each other's residents has been in force since December 2013.

Moreover, Germany has signed and implemented into domestic law the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information as of 29 October 2014, which is based on the Convention on Mutual Assistance in Tax Matters (1988/2010), which itself was also signed and implemented into domestic law by Germany.

Automatic exchange of information has further been pushed as part of the BEPS Project of the OECD. The Multilateral Competent Authority Agreement on the Automatic Exchange of Country-by-Country Reports as of 27 January 2016 was signed by Germany and implemented into domestic law in 2016. At the level of the EU, the Mutual Assistance Directive was recently amended and extended with respect to the exchange of information regarding CbCR as well as advance cross-border tax rulings and APAs. Both amendments were implemented by Germany into domestic law in December 2016. The implementation of the latest extension of the Mutual Assistance Directive to anti-money-laundering information is pending.

BEPS Project of the OECD

On the initiative of the G20 group of countries, the OECD developed a 15-point Action Plan to address base erosion and profit shifting (BEPS) by multinational companies. It aims to adjust local tax regimes and DTTs to keep pace with globalisation and technical developments.

Some jurisdictions and the European Union already started implementing parts of the actions into their local law. Moreover, in August 2016, the EU Anti-Tax Avoidance Directive (EU-ATAD) entered into force, which includes certain minimum standards to combat tax avoidance schemes and which must be primarily implemented into national law by 31 December 2018.

Germany has already transposed some of the measures developed by the OECD or provided for by the European Union into domestic law, in particular concerning the international exchange of information in tax matters. Additionally, the introduction of restrictions on the deductibility of royalty payments to related parties in certain cross-border situations where a preferential tax regime is considered harmful is proposed from 2018 onwards in an ongoing legislative procedure.

Gibraltar

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Significant developments

Brexit

On 23 June 2016, the 'United Kingdom European Union membership referendum' ("the Referendum") was held in the United Kingdom and Gibraltar. Despite 96% of Gibraltar's citizens voting to remain part of the European Union, the overall result of the referendum showed the majority of United Kingdom citizens wished to leave the European Union. The United Kingdom's intention to leave the European Union was formalised on 29 March 2017 by the United Kingdom invoking article 50 of the Treaty of the European Union. This triggers a two year time frame during which negotiations relating to the United Kingdom's relationship with the European Union must be completed. As the United Kingdom has notified the European Union of its intention to leave, Gibraltar will also be leaving the European Union. This is because Gibraltar's inclusion in the European Union is only by virtue of the United Kingdom being a member state of the European Union. At this stage, it is difficult to speculate on the outcome of Gibraltar's reluctant exit from the European Union. Consequently, the information in this tax summary reflects Gibraltar's current status within the European Union; Gibraltar continues to apply EU law in all but the excluded areas (*mentioned in Gibraltar's Overview section at www.pwc.com/taxsummaries*).

Gibraltar State Aid investigation

On 23 September 2016, the European Commission (EC) published the full text of its letter dated 1 October 2014 to the United Kingdom (UK) government, where it announced that it would examine the Gibraltar tax rulings practice from the perspective of the European Union (EU) State Aid Rules. This decision is part of an on-going State Aid investigation into the Gibraltar corporate tax system. The investigation relates to the Gibraltar tax system enacted in 2011. The tax system includes the possibility for taxpayers to conclude tax rulings with the Gibraltar tax authorities. The EC's view is that 165 rulings granted by Gibraltar in the period between 2011 and August 2013 constitute State Aid measures, and the EC doubts their compatibility with the internal market. PwC Gibraltar is continuing to monitor the progress of the EC's investigation.

Country-by-country (CbC) reporting

Under the CbC reporting regime, a Gibraltar tax resident company that is the ultimate parent entity of a multinational enterprise group with consolidated revenue of at least 750 million euros (EUR) is required, for fiscal years commencing on or after 1 January 2016, to file, within 12 months of the end of the fiscal year, a CbC report containing information on its group entities and jurisdictions in which the group operates.

The Gibraltar Budget

In his budget speech on 5 July 2016, the Chief Minister announced the following changes relating to corporations:

Telecommunications companies

To ensure a 'level playing field' for telecommunications companies, the higher corporate income tax (CIT) rate of 20% shall apply only to the profits and gains arising from telecommunication activities that are specifically mentioned in the Income Tax Act, while the lower CIT rate of 10% will apply to the gains and profits arising from their non-telecommunications business and activities.

Start-up incentive

All newly established businesses in Gibraltar that are set up between 5 July 2016 and 30 June 2017 will be eligible for a tax credit equal to the tax due, up to a maximum of 50,000 British pounds (GBP) *per annum* over each of the first three financial years of trading if they meet the following conditions:

- It must be a new business setting-up in Gibraltar and not the transfer of a business already existing in Gibraltar.
- The business must employ at least five people in Gibraltar.
- The business must be a company or limited partnership but not an individual trading in its own name.

The tax credit does not carry forward from one year to the next. Consequently, if the company does not make a profit and is not able to use the credit, it will be lost.

Property investment incentive

A tax-free property investment incentive has been introduced for owners of property constructed in Gibraltar during the period from 1 July 2016 to 31 December 2018 that has been rented for residential purposes. These owners will receive a tax credit equal to the tax payable on the profits earned on the first 24 months of rent occurring in the first five years after the completion of construction of that property.

Taxes on corporate income

Companies are subject to Gibraltar taxation on income accrued in and derived from Gibraltar.

The standard CIT rate is 10%, with utility and energy providers and companies that abuse a dominant position paying a higher rate of 20%. For telecommunications companies, the 10% rate will apply to the gains and profits arising from their non-telecommunications business and activities.

Corporate residence

A company will be considered resident in Gibraltar if the management and control of its business is exercised from Gibraltar or from outside Gibraltar by persons who are ordinarily tax resident in Gibraltar.

The location of central management and control will be established under legal principles laid down in the United Kingdom and is the place of the highest form of control and direction over a company's affairs, as opposed to decisions on the day-to-day running of the business.

Permanent establishment (PE)
Gibraltar has not entered into any double tax treaties (DTTs); consequently, there are no provisions on PE from a general treaty perspective. Nevertheless, the Gibraltar Tax Commissioner accepts the definition of PE set out in Article 5 of the Organisation for Economic Co-operation and Development (OECD) Model Convention.

Under the Gibraltar Companies Act 2014 (CA 2014), foreign companies that establish a place of business in Gibraltar or have a branch in Gibraltar must register with the Registrar one month after commencing business in Gibraltar. Under the CA 2014, the definition of a company includes a foreign company registered in Gibraltar. The profits or gains of a foreign company registered in Gibraltar shall be assessable on the accounting period beginning whenever that company is first registered in Gibraltar.

Other taxes

Value-added tax (VAT)
There is no VAT in Gibraltar.

Import duties
Goods imported into Gibraltar are subject to import duty at varying rates. The most noticeable exceptions are fuel, tobacco, and alcohol, which are subject to a fixed amount of duty regardless of the value, and motor vehicles, which attract duty at various rates of between 2% and 35% of the value, depending on the type and size of engine and whether it is a private or dealer importation.

Excise taxes
There is no provision for excise taxes in Gibraltar.

Property tax
A general business property rate is levied annually on all businesses in Gibraltar. The amount varies depending on the property and is subject to an annual review.

Stamp duty
Stamp duty is payable on the transfer or sale of any Gibraltar real estate or shares in a company owning Gibraltar real estate (on an amount based on the market value of said real estate) at the following rates:

- GBP 200,000 or less: 0%.
- Between GBP 200,001 and GBP 350,000: 2% on the first GBP 250,000 and 5.5% on the balance.
- Over GBP 350,000: 3% on the first GBP 350,000 and 3.5% on the balance.

Stamp duty is also payable on mortgages secured on Gibraltar real estate at the rate of 0.13% for mortgages less than GBP 200,000 and 0.20% for mortgages over GBP 200,000.

Payroll taxes
Collection of employee taxes is initially effected under a pay-as-you-earn (PAYE) system. Employers are required to operate the system without exception, keep appropriate records, and complete the necessary filings.

The PAYE regulations require each employee to obtain from the Commissioner of Income Tax a PAYE allowances certificate, which allocates a code to the employee. The employer is required to use tax tables issued by the Income Tax Office to calculate and deduct tax from emoluments in accordance with the employee's applicable code. The employer is then obligated to pay over to the Commissioner any tax so deducted by the 15th day of the following month.

An employer must also account for social insurance payments in a similar manner, deducting and paying over the employee tax as well as accounting for employer's social insurance.

Social insurance contributions
Social insurance contributions are payable by every employer in respect of every employee.

Employer contributions are 20% of gross earnings, subject to a minimum of GBP 16.50 per week (GBP 71.50 per month) and a maximum of GBP 36.50 per week (GBP 158.17 per month).

Gaming tax
Gaming tax is levied at 1% of the gaming income. The tax paid is subject to a minimum of GBP 85,000 and maximum of GBP 425,000.

Capital duty
Capital duty of GBP 10 is payable on the initial authorisation of share capital or any subsequent increase thereto.

Branch income

The basis for taxation of branches of foreign enterprises is the same as for corporations.

Allowable head office charges or expenses incurred by a Gibraltar branch for the common purpose of the company and its branches, or for the purpose of the head office or another branch exclusively, are limited to 5% of turnover of the Gibraltar branch (*see Payments to foreign affiliates in the Deductions section*).

Income determination

Generally, companies are subject to Gibraltar taxation on income accrued in and derived from Gibraltar.

The 'accrued in and derived from' principle is defined by reference to the location of the activities that give rise to the profits.

Should the activity of a business be a licensable activity under Gibraltar law, the profits from this activity will be deemed to arise in Gibraltar. Furthermore, the profits of a business that can lawfully be transacted in Gibraltar, through a branch or any form of PE, by virtue of the fact that it is licensed in another jurisdiction that enjoys passporting rights into Gibraltar and which would otherwise require such licence and regulation in Gibraltar shall be deemed to arise in Gibraltar.

In the case of royalty income and inter-company interest income, both revenue streams are deemed to accrue in and derive from Gibraltar where the entity in receipt of the income is a Gibraltar-registered company.

Inventory valuation

Inventory is valued at the lower of historical cost or net realisable value. A first in first out (FIFO) basis of determining cost where items cannot be identified is acceptable, but not the base-stock or the last in first out (LIFO) method.

Capital gains

Capital gains are not subject to tax in Gibraltar.

Dividend income

There is no charge to tax on the receipt by a Gibraltar company of dividends from any other company.

Interest income

Companies with a banking or money lending licence and earning interest as a trading receipt will have that interest treated as income chargeable to tax.

Interest received or receivable by a Gibraltar company arising from an inter-company loan will be chargeable to tax at the standard CIT rate. Where the interest received or receivable is less than GBP 100,000 *per annum*, the interest is exempt from any charge to taxation.

All other interest received or receivable is not taxable in Gibraltar.

Royalty income

Income from royalties received or receivable by a Gibraltar company is taxable at the standard CIT rate.

Foreign income

Foreign income is not normally taxed in Gibraltar. Exceptions to this rule are interest income and royalty income (*see above*).

Deductions

For the purpose of ascertaining assessable income, all expenses wholly and exclusively incurred in the production of income shall be deducted.

Capital allowances

The first GBP 30,000 of qualifying expenditure on plant and machinery (including fixtures and fittings) and the first GBP 50,000 of qualifying expenditure on computer equipment is fully deductible in the first year as a 'first year allowance'.

Thereafter, qualifying assets are pooled and are subject to an annual capital, or wear and tear, allowance. Allowances are available for plant and machinery (including fixtures and fittings), computer equipment, and motor vehicles at the rate of 15% (20% for companies that are obligated to pay the higher CIT rate, *see the Taxes on corporate income section*) and are calculated on a reducing-balance basis.

Capital allowances for industrial buildings are deductible at the rate of 4% *per annum* on a straight-line basis.

Goodwill
Amortisation of goodwill is not a deductible expense.

Start-up expenses
Expenditure incurred with a view to carrying on a trade is treated as incurred on the first day on which the trade is carried on for the purposes of computing the profits or gains of the trade.

Interest expenses
Full deduction is available in respect of interest expenses, subject to anti-avoidance rules (*see the Group taxation section for more information*).

Bad debt
Only specific bad debts or specific bad debt provisions are deductible to the extent that they are respectively estimated to be bad during the said period, notwithstanding that such bad debts were payable prior to the commencement of the period. General doubtful debt provisions are not an allowable expense.

Charitable contributions
A charitable donation is not considered as having been wholly and exclusively expended for the purposes of the production of the income of the trade and is therefore not allowable as a deduction for tax purposes.

Fines and penalties
Fines and penalties, including those resulting from late payment of taxation or from failure to make the necessary tax submissions, are deemed to be a tax and are therefore not a deductible expense.

Taxes
No deduction is allowed for any tax charges under the Income Tax Act.

Other significant items
Additionally, no deduction is allowed in respect of the following:

- Domestic or private expenses.
- Expenses not incurred wholly and exclusively in the generation of income.
- Any expenses of a capital nature.
- Any sum recoverable under an insurance contract or contract of indemnity.
- Property expenses not incurred for the purposes of producing income.
- Depreciation of assets (although capital allowances are available, *see above*).
- Employee remuneration not accompanied by a certified statement of name, address, and amount of remuneration (in respect of Gibraltar employment only).
- Certain business entertainment expenditure falling within guidelines published by the Commissioner.
- Interest paid to a non-Gibraltar resident that is more than a reasonable commercial rate.

In the case of a company that has income, some of which is chargeable to tax and some of which is not, the deductions allowed shall be apportioned on a pro-rata basis between the chargeable and non-chargeable income.

Net operating losses

A trading loss incurred in an accounting period may be offset against trading income arising in the same period or subsequent period, provided that within a period of three years there has not been both a change in the ownership of the company and a major change in the nature or conduct of the trade.

There is no provision for the carrying back of losses.

Payments to foreign affiliates

In the case of branches, the amount of general head office expenses incurred that is deductible is limited to 5% of its turnover.

The Income Tax Act includes anti-avoidance provisions. These provisions state that if the amount charged for goods or services by a connected person is not at arm's length, then the expenses that are allowed are subject to the lower of:

- the expense
- 5% of the gross turnover of the company, or
- 75% of the pre-expense net profit of the company.

Group taxation

Companies are assessed on an individual basis, and trading losses of group members may not be offset against profits of other members of the group.

The Income Tax Act contains a generic anti-avoidance clause that allows the Commissioner to disregard an arrangement that the Commissioner believes is fictitious or artificial. In addition, it includes the following specific anti-avoidance measures.

Where a taxpayer seeks to reduce their liability to tax by creating an artificial split between activities in Gibraltar and outside of Gibraltar, the Commissioner shall use anti-avoidance provisions to defeat such an attempt.

Transfer pricing

The amount of interest payments to connected persons that are in excess of that payable at arm's length will be deemed to be a dividend. Where the amount charged for goods and services by connected persons is not at arm's length, this will be disallowed as a taxable expense. Any expenses allowed will be subject to the lesser of (i) the expense, (ii) 5% of the gross turnover of the company, and (iii) 75% of the pre-expense profit of the company.

Thin capitalisation

Interest paid on a loan to related parties that are not companies (or loans where security is provided by related parties) where the ratio of the value of the loan capital to the equity of the company exceeds 5:1 will be considered as dividend payments and thus not deductible for tax purposes. This provision is not applicable to Gibraltar banks or money lenders.

Back-to-back loans

Since interest income is not taxable on back-to-back loans, the interest expense is not deductible.

Dual employment
Income from dual employment contracts is taxed in Gibraltar if both employers are connected persons.

Transfer of assets abroad
Where assets are transferred abroad with the purpose of avoiding tax and the taxpayer has the power to enjoy these assets either now or in the future, then any income or benefits received from these assets will be deemed to be income chargeable to tax.

Controlled foreign companies (CFCs)
There are no CFC rules in Gibraltar. However, under the general anti-avoidance rules, the Commissioner may disregard any CFC or transaction with such a CFC where the Commissioner believes that it is fictitious or artificial.

Tax credits and incentives

Foreign tax credit
Relief is available in Gibraltar in respect of foreign tax paid. This applies to any person who has paid or is liable to pay tax under the Income Tax Act in respect of profits or gains derived from sources within Gibraltar or within any other jurisdiction who can prove to the satisfaction of the Commissioner of Income Tax that one has paid or is liable to pay income tax in the other jurisdiction in respect of the same profits or gains.

The relief available in respect to those profits or gains shall be of an amount equal to the lesser of the two following amounts:

- The taxation under the Income Tax Act in respect of the said profits or gains.
- The income tax in the other country, territory, or jurisdiction in respect of that income.

Development aid
In order to encourage private development in Gibraltar, promoters and developers of approved projects are offered certain incentives, such as tax relief, import duty relief, and rates relief.

In order to qualify for the above reliefs, the project needs to be a new project that is for the economic benefit of Gibraltar and the aim of which is:

- to create a tangible immovable asset in Gibraltar that will remain in existence after the applicant has ceased to derive the benefits under the licence
- to provide more than two additional units of housing accommodation in Gibraltar
- to contribute materially to the development of the tourism industry in Gibraltar
- to afford any new employment opportunities or career prospects in Gibraltar, or
- to materially improve the economic or financial infrastructure of Gibraltar.

The project needs to be completed within a specified time (dependent on the type of project) following the issue of the licence, and the applicant must not expend less than the prescribed amount for the project.

Applications for development aid must be made to the Minister for Trade.

Deduction of approved expenditure on premises

For taxpayers with an interest in a building situated in Gibraltar, an allowance is available for approved expenditure on the painting, decorating, repair, or enhancement of the frontage of that building.

The approved amount will be available as a deduction against the taxpayer's income. This deduction is in addition to any deduction, relief, or allowance given in accordance with any other provision of the Income Tax Act in respect of the same expenditure.

The claim for the deduction must be made within two years after the end of the year of assessment with respect to which the deduction is claimed.

Property investment incentive

Owners of property constructed in Gibraltar during the period from 1 July 2016 to 31 December 2018 that is rented for residential purposes will receive a tax credit equal to the tax payable on the profits earned on the first 24 months of rent occurring in the first five years after the completion of construction of that property.

Commercial property rate incentives

There are early payment discounts available on property rates, depending on the business conducted from the premises.

Green incentives

A one-off tax deduction is available against assessable income (with the percentage to be verified and subject to the discretion of the Commissioner of Income Tax) on the investment made by an individual, company, or business that makes a significant improvement to the Energy Performance Certificate (EPC) rating of their premises.

Training costs

Training costs borne by an entity for employees studying for a qualification are allowed as an expense against the profits of a business at the rate of 150%. It needs to be shown that the costs are relevant to the work, either current or planned, carried out by an employee for their employer.

Small business and start-up incentives

All newly established businesses in Gibraltar are able to claim 100% of their eligible capital allowances in the first year of trade.

Businesses with ten employees or less will receive a credit of GBP 100 per employee in respect of social insurance contributions. For new businesses in the first year of operation, the credit is extended to 20 employees.

A tax credit equal to the lower of 200% or GBP 5,000 of architectural fees and fees charged by the government in respect of successful planning applications is available in the first three years of operation.

New businesses setting-up in Gibraltar between 5 July 2016 and 30 June 2017 are eligible to a tax credit equal to the tax due, up to a maximum of GBP 50,000 *per annum* over each of the first three financial years of trading. This incentive is subject to the following conditions:

- It must be a new business setting-up in Gibraltar and not the transfer of a business already existing in Gibraltar.

- The business must employ at least five people.
- The business must be a company or limited partnership but not an individual trading in its own name.
- The tax credit does not carry forward from one year to the next. Consequently, if the company does not make a profit and is not able to use the credit, it will be lost.

Withholding taxes

There are no withholding taxes (WHTs) in Gibraltar, except in the following cases:

- Payments to subcontractors in the construction industry. Unless the subcontractor is in possession of an exemption certificate, tax is withheld at the rate of 25% of the amount that relates to the labour and profit element of the contract.
- Payments to employees under the PAYE system. Under the PAYE regulations, employers are obligated to deduct an amount of tax in accordance with the employee's tax code.

Tax administration

Taxable period

The taxable period is the accounting period of the company, which begins on the later of the beginning of the accounting period and the date when the company first receives a source of taxable income and ends on the earlier of the end of the accounting period, 12 months from the beginning of the accounting period, or the date on which trade ceased.

Tax returns

Companies with income subject to tax in Gibraltar are required to file a return and calculate their tax liability for the year. The return, together with the estimated liability, needs to be accompanied by payment of the tax due nine months after the date of the company's financial year end.

Companies with assessable income of more than GBP 1.25 million are required to file audited accounts together with the tax return.

Where companies have assessable income of less than GBP 1.25 million, the accounts can be accompanied by an Independent Accountant's Report.

Companies with no assessable income are still required to file tax returns. The accounts to be filed depend on the size of the company as determined by the CA 2014. Full audited accounts are required except where the company qualifies as 'small', which would mean satisfying two of the following criteria for two consecutive years:

- Net turnover of less than GBP 10.2 million.
- Total assets of less than GBP 5.1 million.
- Average employees of less than 50.

Where the company is 'small' and has no assessable income, only an abridged balance sheet needs to be filed.

Payment of tax

Companies are required to make payments on account of future liabilities on 28 February and 30 September in each calendar year. Each payment should be equal to 50% of the tax payable for the relevant accounting period. The relevant accounting period is a prior accounting period whose tax payable date (i.e. nine months after the date of the company's financial year end) precedes the first payment on account date for the accounting period in question. The relevant table in Schedule 10 of the Income Tax Act can be used to determine the correct relevant accounting period for the purposes of calculating the payments on account.

The balance of tax due (i.e. the actual liability less payments on account) is payable on the date of filing of the return.

Penalties and fines

The following penalties and fines are applicable:

- For the late payment of tax, there is a penalty of 10% of the amount of tax due on the day immediately after such payment was due. If unpaid within 90 days, a further amount of 20% of the tax due and the surcharge mentioned that remains unpaid shall become immediately due and payable. A surcharge imposed shall be deemed to be part of the taxation payable.
- Failure to file a return by the due date will result in a penalty of GBP 50, with a further penalty of GBP 300 if the return is not submitted within three months after the due date. If the failure to file continues beyond six months, an additional penalty of GBP 500 is payable.
- Failure to respond to a notice or request to submit information or documentation will result in a fine of GBP 200 on the day the failure occurs and a further penalty of GBP 1,000 if the failure to comply continues one month after the applicable day for delivery of the accounts as referred to in the notice. Failure to comply beyond a three month period, if convicted, can result in imprisonment.
- For fraudulently, recklessly, or negligently delivering to the Commissioner an incorrect return, accounts, or information, there is a fine of up to 150% of the difference between the actual tax due and the tax due as per the original declaration. The amount of the penalty will depend on:
  - the amount of the tax lost and/or delayed
  - the gravity of the offence (i.e. if deliberate or an honest mistake), and
  - the level of cooperation in the investigation.
- The Commissioner of Income Tax may publish details of a person who has failed to pay tax due under the Income Tax Act or under the PAYE regulations in the Gibraltar Gazette if:
  - the Commissioner has notified the person of the Commissioner's intention to do so 30 days prior to the publication
  - the person has failed to pay tax due to an amount of GBP 5,000, and
  - the tax due to be collected or paid has not been collected or paid for a period of at least three months after the due date.
- Failure to notify the Commissioner of an arrangement, the main benefit of which is to avoid the payment of tax, will result in a fine of GBP 200 on the day the failure occurs and a further penalty of GBP 1,000 if the failure to comply continues one month after the applicable day for providing the information.

Tax audit process

The Gibraltar tax system is based on self-assessment. However, the Income Tax Office has powers to make an enquiry into the tax return of a company within a period of 12 months from the date when the return is due to be filed or, if filed later than the deadline, 12 months from the date it was filed. If the Commissioner of Income Tax believes a return to be fraudulent, the above time limits will not apply.

A taxpayer may appeal against a disputed assessment by notice in writing addressed to the Commissioner within 28 days of the date of service of the notice of the assessment.

Statute of limitations

The Commissioner has up to six years following the date of assessment to revise any incorrect assessments. There is no limit where the incorrect assessment is as a result of fraud, wilful default, or neglect.

Topics of focus for tax authorities

There are currently no particular topics of focus for the tax authorities.

Other issues

Intergovernmental agreements (IGAs)

Gibraltar has entered into Model 1 IGA reciprocal agreements with both the United States (US) and United Kingdom. The Gibraltar/UK agreement was signed 21 November 2013 and the Gibraltar/US agreement was signed 8 May 2014. Legislation in the form of regulations have been passed.

Information will be exchanged by the Competent Authorities nine months after the year-end. The first due date for exchange by the Competent Authorities was 30 September 2016 for the years ended 31 December 2015 and 2014 for UK reportable accounts and was 30 September 2015 for the year ended 31 December 2014 for US reportable accounts. The reporting deadline for reportable accounts is 31 July.

The Gibraltar government has committed to be an early adopter of the OECD Common Reporting Standard (CRS). The legislation was enacted on 22 December 2016. The first date that information will be exchanged by the Competent Authorities is 30 September 2017 for the period ended 31 December 2016. The reporting deadline for reportable accounts is 31 July.

On 25 May 2017, the Gibraltar government published an amendment to the Income Tax Act 2010. The amendment, which comes into operation on 5 June 2017, introduces the Country-by-Country Reporting Regime into Gibraltar as part of Article 13 of the OECD Base Erosion and Profit Shifting (BEP) Action Plan.

Under this regime, where a Gibraltar tax resident company is the ultimate parent entity of a multinational enterprise group with consolidated revenue of at least EUR 750 million, it will be obligated, for fiscal years commencing on or after 1 January 2016, to file, within 12 months of the end of the fiscal year, a CbC report containing the following information with regards to each jurisdiction in which the group operates:

- Revenue.
- Profit or loss before tax.
- Income tax paid.

- Income tax accrued.
- Stated capital.
- Accumulated earnings.
- Number of employees.
- Tangible assets other than cash or cash equivalents.

The report also requires identification of each constituent entity of the group, setting out for each entity the jurisdiction of tax residence (where different also the country of registration) as well as the nature of the main business activity.

The regulations also impose a requirement for a Gibraltar constituent entity to report in cases where it is not the ultimate parent entity, these are either where (i) the ultimate parent entity is not required to provide a report in its jurisdiction of residence, (ii) the jurisdiction of residence of the ultimate parent entity does not have a qualifying competent authority agreement with Gibraltar at the date the report is required, or (iii) there has been a systematic failure by the jurisdiction of tax residence of the ultimate parent entity and the Commissioner has notified the Gibraltar constituent entity that the failure has occurred. In these cases, the first reporting period is for fiscal years commencing on or after 1 January 2017.

Gibraltar has also signed Tax Information Exchange Agreements (TIEAs) with 27 jurisdictions, 25 of which have entered into force.

Greece

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Significant developments

Based on the provisions of Law 4438/2016, which was enacted on 28 November 2016, a Mutual Agreement Procedure is introduced in the Code of Tax Procedures, designated to cover the cases of elimination of double taxation in connection with the adjustment of transfers of profits between associated enterprises. Based on these provisions, the taxpayer may file a claim for the initiation of a Mutual Agreement Procedure by application of the Double Tax Conventions as well as the European Convention on the elimination of double taxation in connection with the adjustment of transfers of profits between associated undertakings. The details of application of this new procedure have been determined by virtue of a Ministerial Circular issued in April 2017 by the Independent Authority for Public Revenue.

Moreover, on 7 April 2017, a Ministerial Circular was issued that provides for interpretative guidelines with respect to domestic and cross-border corporate restructurings outlined in the Greek Income Tax Code (ITC), involving contribution of assets, exchange of shares, mergers, de-mergers, and the transfer of the registered seat of a *Societas Europaea* to a European Union (EU) member country.

By virtue of Law 4472/2017, published on 19 May 2017, any business income realised by legal persons/legal entities as of 1 January 2019 shall be taxed at a rate of 26%, with the exemption of credit institutions for which the currently applicable rate of 29% shall continue to be applicable. The reduction of the corporate income tax (CIT) rate from 29% to 26% shall be applicable on the condition that there is no divergence from the medium-term budgetary objectives set in the Economic Adjustment Program following an assessment of the International Monetary Fund and the European Commission in collaboration with the European Central Bank, the European Stability Mechanism, and the Greek authorities.

Taxes on corporate income

Resident corporations are taxed on their worldwide income. Non-resident corporations are taxed in Greece on any Greek-source income they derive.

The CIT rate of legal entities is 29%.

Shipping companies

The Greek tonnage tax regime model intends to tax shipping activity and applies to Greek or foreign ship-owning companies with vessels flying a Greek flag and foreign ship-owning companies with vessels flying a foreign flag that maintain a ship management company in Greece that is exclusively engaged in ship management activities. The Greek tonnage tax regime applies to vessels of ‘A’ and ‘B’ category that are either flying a Greek or foreign flag. In the case of vessels flying a foreign flag, the foreign ship-owning company should maintain a ship management office in Greece. Category ‘A’ vessels include cargo vessels, tankers, steel hull vessels for dry or liquid cargo that fly to/between foreign ports, passenger vessels, drilling platforms, etc. Category ‘B’ vessels include small boats and any other motor vessels not listed under category ‘A’.

Based on Law 4336/2015, the tonnage tax levied on certain categories of vessels flying a Greek flag (i.e. professional vessels, leisure yachts, ferries, etc.) has been expanded to vessels flying flags of the European Union or EU area member states, with exhaustion of the income tax liability of the ship owners on income earned from the related activity.

Said provision aligns the regime applying to said category of vessels following the European Commission’s accusation of discriminatory treatment of foreign-flag vessels compared to Greek-flag ones.

The gross tonnage is calculated by multiplying coefficient rates by each scale of gross registered tonnage. This taxable tonnage is then multiplied by an age-corrected rate.

Various exemptions/reductions of the tonnage tax apply, such as:

- Vessels built in shipyards in Greece, under a Greek flag, are exempt from tax for the first six years.
- 50% reduction for vessels operating regular routes between Greek/foreign ports or solely between foreign ports.

The tonnage tax exhausts the tax liability of the owner, and, if the owner is a company, this extends to its shareholders. Tonnage tax also exhausts the tax liability in relation to operating profits and capital gains arising out of the sale of the vessel flying the Greek flag. Tonnage tax also exhausts the tax liability of the foreign ship-owning company flying a vessel under a foreign flag managed by a ship management company in Greece, as well as of the shareholders thereof. No CIT or dividend withholding tax (WHT) is levied on shipping profits.

This tax burdens the ship owners or ship-owning companies, while the ship management companies are jointly and severally liable for the payment thereof.

An obligation of the liable parties for submitting before the Ministry of Mercantile Marine an annual statement indicating the name, flag, total tonnage, and age of the vessel under the foreign flag is established.

For calculating the tonnage tax (tax rates and tax brackets, criteria) and the special tax return and payment of tax, the provisions on the tonnage tax payable for Greek flagged vessels apply in analogy. A credit for the tonnage tax paid abroad is provided.

Annual contribution imposed on foreign ship management companies
An annual contribution (referring only to fiscal years 2016 through 2019) is imposed on offices or branches of foreign enterprises that have been established in Greece by virtue of Article 25 of Law 27/1975 and that are engaged in the chartering, insurance, average (damage) settlements, purchase, chartering or shipbuilding brokerage, or chartering of insurance of ships under Greek or foreign flag of total tonnage over 500 shipping tons,

as well as the representation of ship owner companies or undertakings, whose object is identical to the above-mentioned activities.

Greek and foreign companies of Law 27/1975 that are engaged in the management of vessels flying a Greek or foreign flag (that are subject to tonnage tax), as well as in other activities approved by the license of operation, are exempt. Passenger coastal ships or merchant vessels that perform internal routes are exempt.

This contribution is imposed on the total amount of imported foreign exchange, calculated on a minimum 50,000 United States dollars (USD), and, for the years 2016 through 2019, the tax scale is as follows:

Bracket of annual total foreign exchange (USD)	Rate (%)	Tax per bracket (USD)	Total foreign exchange (USD)	Total tax (USD)
200,000	7	14,000	200,000	14,000
200,000	6	12,000	400,000	26,000
Excess amount	5			

A special tax return for calculating the contribution on the basis of the imported foreign exchange of the previous year should be filed within March of each year. Upon filing of said tax return, one-quarter of the annual contribution is payable. The remaining contribution is paid in three instalments (June, September, and December).

The distribution of profits by a foreign ship-owning company maintaining an office or branch in Greece by virtue of Article 25 of Law 27/1975 that is exclusively engaged in the chartering, insurance, brokerage, etc. of vessels to Greek individual tax residents is subject to tax at a rate of 10%.

This tax applies to dividends paid or credited and shall be rendered to the Greek State by the beneficiary of the dividend.

The 10% tax also applies to cases of distributions of profits by the above-mentioned companies in the form of extraordinary fees and percentages (bonus) to Board of Directors (BoD) members, directors, and officials, in addition to the regular remuneration, exhausting the tax liability of the beneficiaries for said income.

The Greek tonnage tax system is under investigation by the European Committee as to its compliance with the EU State Aid rules. Based on the preliminary findings of the European Committee, certain amendments may be required in order for the Greek tonnage tax regime to comply with the EU State Aid rules.

Local income taxes

No municipal or local taxes on income are paid at a local level.

Corporate residence

A legal entity or other entity is considered as tax resident in Greece if one of the following conditions is met:

- It has been incorporated or established according to the Greek legislation.
- It has its registered seat in Greece.
- The place of effective management is located in Greece.

The determination by the tax authorities that the effective management of a legal entity is exercised in Greece is made on the basis of the actual facts and circumstances of each case and by taking into account mainly the place of exercising the day-to-day management, the place of making strategic decisions, the place where the annual general meeting of shareholders or partners is held, the place where the books and records are kept, the place where the meeting of the members of the BoD or other executive management board takes place, and the residence of the members of the BoD or other executive management board. The residence of the majority of the shareholders or partners may also be taken into consideration.

For determining a legal entity as being tax resident in Greece, the exercise of effective management in Greece for any period during the tax year is sufficient.

Companies that are established and operate according to Law 27/1975 'on the taxation of vessels [etc.]' and L.D. 2687/1954 'on the investment and protection of foreign capital' are explicitly excluded from the application of these provisions on tax residence.

Permanent establishment (PE)
The definition of a PE of foreign legal entities in Greece is similar to the one included in the Organisation for Economic Co-operation and Development (OECD) Model Convention on the Double Tax Treaties (DTTs) for the Avoidance of Double Taxation; however, where a DTT applies, its provision will override the domestic definition.

The term 'permanent establishment' includes especially:

- A place of management.
- A branch.
- An office.
- A factory.
- A workshop.
- A mine, an oil or gas well, a quarry, or any other place of extraction of natural resources.

In order for a construction site in Greece to constitute a PE, a time period of at least three months is required, instead of the time period of 12 months provided in the OECD Model Convention.

A distinction applies between the cases of maintaining a PE through a dependent agent and not maintaining a PE when performing activities through an independent agent (e.g. broker, general commission agent).

Other taxes

Value-added tax (VAT)
The standard VAT rate is 24% (applicable, *inter alia*, to all standard and processed foods, transportation services, food services, repair services, medical and dental services, and entertainment tickets [excluding theatre tickets]).

A reduced VAT rate of 13% applies, *inter alia*, to fresh food, to care of children, the elderly, and the disabled, and to accommodation in hotels or similar establishments (including holiday accommodation and letting of places in camping or caravan sites). A super reduced rate of 6% for medicines of CN3003 and 3004, and vaccines of CN3002 intended for human consumption, is applicable. The aforementioned rate is also applicable for children's books, colouring and drawing books, newspapers, magazines, and theatre tickets.

Supplies of goods and services to individuals and legal entities subject to VAT and established in EU countries (intra-Community supplies) are exempt from VAT (zero rated). Exports of goods and certain services to non-EU countries are also exempt (zero rated).

With the following exceptions, real estate leases are generally exempt from VAT. Lease contracts for shopping centres and logistics centres may be subject to VAT on the condition that the taxable person opts for the submission to taxation of the leasing right. Additionally, a right to elect to subject leases of property used for the exercise of professional activities, either independently or as part of mixed contracts, to VAT applies.

By virtue of Article 118 of L. 4446/2016, an extension of the reduced VAT regime (30% reduction) until 31 December 2017 was granted for the following islands of the Aegean Sea:

- Agathonisi
- Aghios Efstratios
- Arkoi
- Astypalaia
- Chalki
- Chios
- Farmakonisi
- Fournoi
- Ikaria
- Kalymnos
- Kasos
- Kastellorizo
- Kos
- Leipsoi
- Leros
- Lesvos
- Limnos
- Nisyros
- Oinousses
- Patmos
- Psara
- Pserimos
- Samos
- Samothraki
- Symi
- Thymaina
- Tilos

Moreover, by virtue of Law 4334/2015, for transactions exceeding 3,000 euros (EUR) between entrepreneurs that are obligatorily settled through the use of a professional bank account or bank cheque and for transactions exceeding EUR 1,500 between entrepreneurs and individuals that are obligatorily settled through the use of a credit or debit card or e-banking or bank deposit or a bank cheque, the intermediary bank is obligated to withhold the relevant VAT amount corresponding to the total amount of the transactions and to pay said VAT directly to the Greek State within five days from said payment, by issuing the respective certificate on the collected amount of VAT to VATable persons. Banks should not charge any fee or other charges for the implementation of the above-mentioned services. The above provision is known as the 'VAT split payment' provision.

By this provision, an obligation to immediate payment of the VAT due is imposed by the separation/split of the transaction value from the corresponding VAT due and the block of the VAT amount until its payment to the Greek state ('split payment' system).

The recipient of the invoice or the retail receipt must pay the transaction through the use of a bank payment instrument, separating/splitting the VATable value from the corresponding VAT, so that the credit institution may transfer the VAT due automatically to a blocked bank account.

The procedure of application of said provision and any other issue relating to the payment and refund of VAT will be regulated by a decision to be issued by the Independent Authority for Public Revenue. However, up to date, no such Decision has been issued, and the provision remains, in practice, inactive. Moreover, by virtue of L. 4446/2016, the quantitative threshold of annual turnover up to which taxable persons may pay the VAT to the state upon settlement of the invoices (special regime of article 39 (b) of the Greek VAT Code) was increased from EUR 500,000 to EUR 2 million.

Furthermore, pursuant to Circular POL 1153/2016, taxable persons established in other EU member states that have been VAT registered in Greece through the direct VAT registration procedure (i.e. without the appointment of a fiscal representative for VAT purposes) are now eligible to get VAT de-registered.

Customs duties

Many goods imported into Greece from outside the European Union are subject to customs duties. The rates of duty are provided by the EU's Common Customs Tariff.

Excise taxes

Excise taxes are imposed on energy and electricity products (e.g. petrol, natural gas, electricity), manufactured tobacco, and alcoholic products. In addition, excise duty on coffee was introduced as of 1 January 2017. The tax rates vary depending on the category of products.

Uniform Tax on the Ownership of Real Estate Property (ENFIA)

The ownership of real estate property/property rights in Greece is subject to the ENFIA, which consists of a principal tax imposed on each real estate property and a supplementary tax imposed on the total value of the property rights on real estate property of the taxpayer subject to tax.

More specifically, said tax is not imposed on the objective value of real estate property, but is determined on the basis of various factors, according to the final registration of the property at the land registry or ownership title.

The principal tax on buildings is calculated by multiplying the square metres of the building by the principal tax ranging from EUR 2 to EUR 13 per square metre and other coefficients affecting the value of the property (e.g. location, use).

The principal tax on land is calculated by multiplying the square metres of the land by the principal tax ranging from EUR 0.0037 to EUR 11.25 per square metre and other coefficients affecting the value of the property (e.g. location, use).

The supplementary tax is imposed on the total value of the rights to property at a rate of 5.5‰. Self-used real estate is taxed at the reduced rate of 1‰.

Real estate transfer tax

Each transfer of real estate, which is not subject to VAT, is subject to real estate transfer tax. The real estate transfer tax is imposed at a rate of 3% on the taxable value of the property.

Stamp taxes

Rentals of non-residential properties are subject to 3.6% stamp duty (with the exception of shopping centres and logistics centres subject to VAT).

In general, loans and interest may be subject to a 2.4% stamp duty. However, there are a number of exemptions, the main one covering bank loans and bond issues.

Other stamp duties may apply in certain limited cases.

Contribution tax on capital accumulation following incorporation

A 1% tax contribution is imposed on capital accumulation (share capital increase) by:

- business companies and joint ventures
- associations of all degrees and any other form of company, legal entity, or union of persons or society aiming to make profits, and
- branches of foreign companies (unless of EU origin).

For Greek *Société Anonyme* (SA) companies, an additional 0.1% duty is payable on capital to the competition committee.

The capital concentration tax is no longer imposed upon the incorporation/establishment of legal entities.

Payroll taxes

Employers are liable to submit payroll withholding taxes on monthly salary payments (following the grossing-up to the yearly salary) at the following tax scale:

Taxable income (EUR)	Tax rate (%)
Less than 20,000	22
20,001 to 30,000	29
30,001 to 40,000	37
Greater than 40,000	45

Reductions may apply depending on the amount of the annual taxable income received by individual taxpayers and by the number of the dependent children the individual taxpayer has.

Additionally, based on Law 4387/2016, the special solidarity contribution has been incorporated into the ITC, and its extraordinary character has been abolished. Moreover, the employers shall submit withholding of the special solidarity contribution on salary payment, based on the following progressive rate:

- From EUR 0 to EUR 12,000: 0%.
- From EUR 12,001 to EUR 20,000: 2.20%.
- From EUR 20,001 to EUR 30,000: 5%.
- From EUR 30,001 to EUR 40,000: 6.50%.
- From EUR 40,001 to EUR 65,000: 7.50%
- From EUR 65,001 to EUR 220,000: 9%.
- Exceeding EUR 220,000: 10%.

Benefits in kind are, in principle, subject to payroll taxes. However, to the extent that it is difficult to proceed to an evaluation of such benefits at the time of their granting, no employment withholdings should be effected thereon, but their value (assuming such benefits are taxable) shall be added to the employment income of the beneficiaries and be taxed upon the clearance of the annual income tax return filed by the employees.

Social security contributions
Social security contributions are due on salary and benefits in cash or in kind granted by an employer to its employees, with the exception of specifically enumerated extraordinary benefits of social character (e.g. marriage gifts, birth gifts). The imposition of social security contributions depends on the social security fund in which the employee is registered.

For the primary social security fund (IKA-ETAM), social security contributions are withheld at 16% at the level of the employee and contributed at 25.06% at the level of the employer. The monthly social security contribution cap for the IKA is currently set at EUR 5,860.80. The above is applicable as of 1 January 2017.

It should be noted that Law 4387/2016 introduced a major reform on the social security legislation. The Unified Social Security Body (EFKA) is introduced as the new body for main social security, which initiated its operation on 1 January 2017. The EFKA shall automatically integrate, from the initiation of its operation, all the currently available main social security funds.

Branch income

Profits of branches of foreign companies are subject to CIT.

Income determination

Inventory valuation
Inventories are stated at the lower of cost or market (replacement value). The Greek tax system recognises various valuation methods, such as first in first out (FIFO), last in first out (LIFO), weighted average, etc.

Capital gains
In general, capital gains are included in the taxable profits of Greek companies.

The income derived from the goodwill arising upon the transfer of Greek government bonds or Greek treasury bills that are acquired by legal entities that do not qualify as Greek tax residents and do not maintain a PE in Greece is tax exempt.

Capital gains tax on sale of listed shares
Capital gains derived from the sale of listed and non-listed shares are considered business income taxable at the standard CIT rate.

Capital gains derived from the sale of listed and non-listed shares by foreign legal entities that are tax resident abroad shall be taxable in Greece only if they maintain a PE in Greece.

The sale of listed shares is also subject to a transaction duty at a rate of 0.2%.

Dividend income
Dividend income is generally taxable. For subsidiaries established in third countries, any dividend WHT that may have been paid is credited against the Greek CIT payable (up to the amount of tax that would arise in Greece).

However, a tax exemption of intra-group dividends received by Greek tax resident legal entities or PEs of foreign legal entities in Greece applies, provided that:

- the legal entity distributing the profits is included in the forms enumerated in Annex I, Part A of Directive 2011/96/EE, as in force
- the legal entity distributing the profits is tax resident in an EU member state and is not considered as tax resident in a third country in application of the provisions of a DTT concluded with such third country
- the legal entity distributing the profits is subject to one of the taxes listed in Annex I, Part II of Directive 2011/96/EE or any other tax substituting one of those taxes
- the recipient taxpayer holds at least a minimum participation of 10% of the value or the quantity of the share or principal capital or voting rights of the distributing legal entity
- the minimum participation percentage is held for at least 24 months (although the exemption may be provided prior to the completion of 24 months secured by a guarantee), and
- the respective dividends have not been deducted at the level of the entity distributing the dividends.

In case of further distribution of the reserve formed by tax-exempt dividends received from Greek or foreign subsidiaries established in an EU member state, said amount shall not be included in the taxable income of the legal entity proceeding to said distribution, but may be subject to dividend WHT.

Based on the general anti-abuse rule introduced, the tax exemption in the case of collection and payment of dividends is alleviated in case it is considered that a 'non-genuine arrangement' exists (i.e. an arrangement that has not been put into place for valid commercial reasons reflecting the economic reality).

Should the aforementioned tax exemption of intra-group dividends not apply, any underlying CIT and dividend WHT that may have been paid by a Greek or foreign subsidiary established in an EU member state are credited against the Greek CIT payable (up to the amount of tax that would arise in Greece).

Stock dividends
Stock dividends are treated as cash dividends for CIT purposes.

Interest income
Interest income is generally taxable.

Partnership income
Both general partnerships (*Omorrythmi Etairia* or OE) and limited partnerships (*Eterrorythmi Etairia* or EE) are not tax transparent. They are subject to tax based on general rules (i.e. at a CIT rate of 29% plus a 15% WHT on distributions). Business income generated by partnerships that maintain single entry accounting books is taxed at a unified tax rate of 29%. In addition, any subsequent distribution of profits is not subject to dividend taxation.

Rents/royalties income
Income derived from rents and royalties is taxed as ordinary income.

Foreign income

Resident corporations are taxed on their worldwide income. Foreign income received by a domestic corporation is taxed together with other income. If related income tax is paid or withheld abroad, a tax credit is generally available up to the amount of the applicable Greek income tax.

Losses from foreign sources may not be set off against profits generated in Greece. Exceptionally, losses from EU and European Economic Area (EEA) member states may be set off with profits arising in those EU or EEA member states, provided that they are not exempt on the basis of the DTT concluded and applied by Greece.

Deductions

Depreciation

Mandatory depreciation on a fixed annual basis applies by using fixed depreciation rates stipulated in the law. The transfer of depreciated amounts between fiscal years is not permitted.

The rates of depreciation are determined on the basis of the following table:

Category of assets of the enterprise	Rate of depreciation per tax year (%)
Buildings, installations, facilities, industrial and special installations, non-building facilities, warehouses, and stations, including their annexes (and special loading and unloading vehicles)	4
Plots of land used for mining and quarries, unless used for ancillary mining activities	5
Public means of transportation, including airplanes, trains, vessels, and ships	5
Machinery and equipment (aside from personal computers and software)	10
Means of transportation of individuals	16
Means of transportation of goods (‘internal transports of goods’)	12
Intangible assets, royalties, and expenses of multiannual depreciation	10
Personal computer equipment, principal and ancillary and software	20
Other fixed assets of the enterprise	10
Equipment and instruments used for the purposes of performing scientific and technological research	40

Specifically for intangible assets and royalties, the rate may be adapted on the basis of the lifetime of the right.

An option for the lessee to depreciate a leased asset is provided in cases where there is a financial leasing agreement, provided that specific conditions are met. A financial leasing agreement is defined as any oral or written agreement by which the lessor (owner) is obligated, in return for a rent, to provide to the lessee (user) the use of an asset, provided that one or more of the following criteria are met:

- The ownership of the asset is passed on to the lessee following the end of the lease agreement.
- The lease agreement includes a term of preferential offer for the purchase of the equipment at a price below market value.

- The period of the lease covers at least a percentage of 90% of the financial life of the assets as it derives from the above-mentioned table, even in cases where the ownership title is not transferred after the end of the lease agreement.
- At the time of concluding the lease agreement, the present value of the rents amounts to at least 90% of the market value of the asset that is leased.
- The assets that are leased are of such special nature that only the lessee may use them without proceeding to important modifications.

Goodwill

There are some court cases that support the deductibility of goodwill as a start-up expense, but the specifics of each case must be carefully considered.

Organisational and start-up expenses

Based on the provisions of Law 4308/2014 (Greek Accounting Standards), any amount of start-up expenses shall be, under conditions, tax deductible within the year that they have been incurred, to the extent that they do not fall within a category of assets (including tangibles and intangibles).

Any expenses incurred for the acquisition of an asset that are directly related to the latter asset and are necessary for its use are included in the acquisition cost of said asset (e.g. concerning real estate property the real estate transfer tax, notary fees, registration fees, etc.).

Interest expenses

Interest deductibility restrictions apply.

Non-deductible expenses include interest expenses on loans undertaken by the enterprise from third parties, to the extent that they exceed the interest that would arise if the interest rate was equal to the interest rate of loans on open deposit/withdrawal accounts provided to non-financial enterprises, as indicated in a Statistical Bulletin of the Central Bank of Greece at the prior time period closest to the date such loan was undertaken.

The above interest deductibility restrictions do not apply to inter-bank loans, bonds, and inter-company loans issued by SAs.

Bad debt

The amounts of bad debt provisions and the write-off thereof are deductible, as follows:

- For uncollected due debt up to the amount of EUR 1,000 for a time period exceeding 12 months, the taxpayer may form a provision at a percentage of 100% of the said claim.
- For uncollected due debt exceeding the amount of EUR 1,000 for a time period exceeding 12 months, the taxpayer may form a provision according to the following table:

Duration of late payment (in months)	Provision (%)
Greater than 12	50
Greater than 18	75
Greater than 24	100

The condition for the deduction of the provision for the aforementioned two cases is that all appropriate actions have been taken to ensure the right of collecting the said claim.

The formation of provisions of bad debt is prohibited in the following cases:

- For due debt of shareholders or partners of the enterprise with a minimum participation percentage of 10% and the subsidiary companies of the enterprise with a minimum participation percentage of 10%, unless the claim of such debt is pending before court or court of arbitration, or if the debtor has filed an application for bankruptcy or for a procedure of rationalisation or an enforcement procedure has commenced against the debtor.
- For due debt that are covered by insurance or any guarantee or other contractual or *in rem* security or for debts of the state or local authorities or for those that have been provided by a guarantee of those bodies.

It is provided that a claim may be written off, provided that the following conditions are cumulatively met:

- An amount corresponding to the debt has been previously recorded as income.
- It has been previously written off from the books of the taxpayer.
- All legal actions for the collection of the debt have been exhausted.

Banks may deduct provisions of bad debt at a percentage of 1% on the amount of the annual average of real grants, as indicated by their monthly accounting statements. Aside from the aforementioned deductibility percentage, banks may deduct from their income additional special provisions regarding their clients, for which the settlement of interest has ceased. Moreover, specific provisions on leasing and factoring companies are included.

Charitable contributions

The tax deductibility of donations is not expressly regulated in the respective Greek tax legislation (in contrast to the previously applicable Greek ITC providing for the tax deductibility of specifically enumerated donations, up to a certain amount). Thus, the deductibility of charitable contributions shall be examined in light of the generally applicable deductibility criteria, focusing on the productivity of such expenses on a case-by-case basis.

Fines and penalties

Fees from activities constituting a criminal offence, fees from penal clauses, fines, and penalties are not recognised as deductible expenses.

Taxes

Taxes, other than income tax, extraordinary contributions, and VAT corresponding to non-deductible expenses that are not deductible as input VAT, are recognised as deductible expenses.

Other significant items

A general rule on the deductibility of all real and evidenced business expenses realised for the benefit or in the frame of the usual transactions of the company, the value of which is not deemed as higher or lower than the market value, and duly registered in accordance with the rules of recording of transactions is established, with the exception of the restrictively enumerated expenses that are not deductible.

The non-deductible expenses include:

- Some cases of loan interest (*see Interest expenses above*).
- Every kind of expense concerning the acquisition of goods or receipt of services of a value exceeding EUR 500, provided that the partial or total payment was not made through a means of bank payment.
- Unpaid insurance contributions.
- Provisions, with the exception of the explicitly regulated bad debt provisions (*see Bad debt above*).
- Fees and penalties, including additional payments.
- Provision or receipt of services in cash or in kind that constitute a criminal offence.
- The income tax, including the freelancers' duty and extraordinary contributions, as well as the VAT corresponding to non-deductible expenses, provided that it is not deductible as input VAT.
- Deemed income in case of self-use of property, to the extent that the latter exceeds a percentage of 3% of the objective value of the property.
- Expenses for the organisation and conducting of informative conferences and meetings concerning the hospitality (meals and stay) of clients or employees if exceeding the amount of EUR 300 per participant and to the extent that the total annual expense exceeds a percentage of 0.5% of the annual gross income of the enterprise.
- Entertainment expenses, with the exception of such expenses realised by taxpayers having as a main object the provision of entertainment services.
- Private consumer expenses.
- Total of expenses that are paid to tax residents in non-cooperative states or states with a preferential tax regime, unless the taxpayer proves that these expenses refer to real and usual transactions that do not have as their objective the transfer of profits or income or capital with the purpose of tax avoidance or evasion.
- Expenses relating to tax-exempt dividends.

Net operating and capital losses

Losses can be carried forward five years. Carrybacks are not permitted.

Pursuant to a rule on the abuse of provisions on the transfer and setoff of losses, in cases where the direct or indirect ownership or voting rights of an enterprise are changed at a percentage exceeding 33% during a tax year, the carryforward of tax losses ceases to apply unless the taxpayer can prove that the change in ownership occurred for commercial or business purposes.

Payments to foreign affiliates

Royalties, interest, and service fees paid to foreign affiliates are deductible expenses under certain requirements and conditions.

Special restrictions on transactions with non-cooperative states and states with preferential tax treatment

Greek tax law has established rules in relation to non-cooperating states and states with preferential tax treatment.

Non-cooperating states are defined as states that are not EU member states and have not concluded agreements of administrative assistance in the tax sector with Greece or with, at least, 12 other states. Non-cooperative states are enumerated in a Ministerial Decision to be issued annually.

Pursuant to the Ministerial Decision for 2016, the non-cooperating states for 2016 are specified as follows:

- Andorra
- Antigua and Barbuda
- the Bahamas
- Bahrain
- Barbados
- Brunei
- the Cook Islands
- Dominica
- former Yugoslav Republic of Macedonia (FYROM)
- Grenada
- Guatemala
- Hong Kong
- Lebanon
- Liberia
- Liechtenstein
- Malaysia
- Marshall Islands
- Monaco
- Nauru
- Niue
- Panama
- Philippines
- St. Lucia
- St. Kitts and Nevis
- St. Vincent and the Grenadines
- Samoa
- Uruguay
- US Virgin Islands
- Vanuatu

A legal entity, irrespective of its legal form, is considered located in a preferential tax regime, even if its residence of registered office is located in an EU member state, in cases where it is not subject to taxation in this state or is *de facto* not subject to taxation, or is subject to tax on income or capital at an amount that is equal to or lower than 50% of the tax that would have been due, in accordance with Greek tax legislation, if such entity were resident or were maintaining a PE in Greece.

Pursuant to the Ministerial Decision for 2015, states with preferential tax treatment for 2015 are specified as follows:

- Albania
- Andorra
- Anguilla
- the Bahamas
- Bahrain
- Belize
- Bermuda
- Bonair
- Bosnia and Herzegovina
- British Virgin Islands
- Bulgaria
- Cayman Islands
- Cyprus
- Republic of Macedonia former Yugoslav (FYROM)
- Gibraltar
- Guernsey
- Hashemite Kingdom of Jordan
- Ireland
- Isle of Man
- Jersey
- Liechtenstein
- Macau
- Marshall Islands
- Monaco
- Montenegro
- Montserrat
- Nauru
- Oman
- Paraguay
- Qatar
- Republic of Maldives
- Republic of Moldova
- San Marino
- Saudi Arabia
- Seychelles
- St. Eustatius
- Turks and Caicos
- United Arab Emirates
- Vanuatu

Group taxation

Group taxation is not permitted in Greece.

Transfer pricing

Related entities are obligated to document the prices of their intra-group transactions.

An exemption from maintaining a transfer pricing documentation file is provided if:

- the above transactions or transfer of operations amount to up to EUR 100,000 annually and the total turnover of the liable party does not exceed EUR 5 million annually, or
- the above transactions or transfer of operations amount to up to EUR 200,000 annually and the total turnover of the liable party exceeds EUR 5 million annually.

The transfer pricing documentation file is accompanied by the 'Summarized Table of Transfer Pricing Information', which is submitted electronically to the tax administration within the deadline for the submission of the annual income tax return.

The transfer pricing documentation file is kept at the registered seat of the liable party for the whole time period that the books and records are required to be kept, and should be provided to the tax administration within 30 days from the receipt of the relevant request.

The obligation of updating the respective transfer pricing file is provided in case of a change of market circumstances that affect the data included therein. The update is made in the tax year in which the change takes place.

The option of obtaining an Advance Pricing Arrangement (APA) of the methodology of specific future intra-group transactions with related parties is integrated in the Code of Tax Procedures. The object of the APA constitutes the total of the criteria used for the determination of the prices of intra-group transactions during a specific time period, which include mainly the transfer pricing methodology used, comparable or reference data, and the respective adjustments, as well as the critical assumptions on future developments. The object of the APA may constitute every other specialised matter concerning the pricing of transactions with related parties.

The validity of the APA decision cannot exceed four years, and it cannot enter into force retroactively (i.e. the tax year that has lapsed at the time the application for the APA has been submitted). The issuance of the APA decision does not impede the subsequent application of a mutual settlement procedure according to the applicable DTT.

The APA decision may be renewed, revoked, or cancelled by a decision of the tax administration, provided that the legal conditions are met.

The delayed submission of the Summary Information Table of transfer pricing information file incurs a penalty calculated at a percentage 1/1,000 of intra-group transactions (not below EUR 500 and not exceeding EUR 2,000).

The penalty for inaccurate submission of the Summary Information Table of transfer pricing information is calculated at a percentage 1/1,000 of the intra-group transactions (not below EUR 500 and not exceeding EUR 2,000), to the extent that the inaccuracy is higher than 10% of the transactions.

The penalty for the non-submission of the Summary Information Table of transfer pricing information is calculated at a percentage 1/1,000 of the intra-group transactions (not below EUR 2,500 and not exceeding EUR 10,000).

The penalty for the non-submission of the transfer pricing documentation file (imposed upon the expiration of the one-month deadline) is calculated at EUR 20,000 (after the 90th day or the non-submission in general).

A repetition within five years of the first infringement incurs double the initial penalty, whereas a second repetition within five years from the first infringement incurs quadruple the initial penalty.

Thin capitalisation

The thin capitalisation rules are determined in connection to the taxable profits before interest, tax, and depreciation (EBITDA). More specifically, interest expenses are not deductible to the extent that the surplus of interest expenses compared to interest income exceeds a percentage of 30% of EBITDA.

The aforementioned limit does not refer to net interest expenses that do not exceed the amount of EUR 3 million.

Any excess amount of non-deductible interest expenses may be carried forward indefinitely to future years and will be deductible in future years to the extent that these future years indicate an uncovered EBITDA amount.

The aforementioned rules do not apply to credit institutions, leasing companies, and factoring companies that are licensed by the Bank of Greece or respective regulatory authorities of other EU member states.

Controlled foreign companies (CFCs)

The taxable income of a taxpayer with tax residence in Greece shall be increased by the undistributed income of a legal person or legal entity with tax residence in another country, under the following conditions:

- The taxpayer, alone or together with affiliated persons, directly or indirectly owns shares, voting rights, or equity in excess of 50% or is entitled to receive more than 50% of the profits of that legal person or legal entity.
- The above legal person or legal entity is subject to taxation in a non-cooperative state or in a country with a preferential tax regime (*see the lists in the Deductions section*).
- More than 30% of the net income before taxes earned by a legal person or legal entity falls into at least one of the categories of income derived either from interest, dividends, royalties, income from immovable property, or income from insurance, banking, or other financial activities.
- It is not a company whose principal class of shares is subject to trading on a regulated market.

The above do not apply to legal persons or legal entities with tax residence in the European Union or residence in a country that is an EEA member unless the establishment or the financial activity of such legal entity constitutes a fictitious situation with the view to avoid taxation.

Tax credits and incentives

Foreign tax credit

Tax paid abroad for income taxable in Greece is credited but is limited to the amount of Greek tax due.

Deferred taxation
The concept of deferred taxation applies on the basis of the International Financial Reporting Standards (IFRS) to entities supervised by the Bank of Greece (namely banks and leasing companies, as well as factoring companies). In this respect, said entities may convert tax assets into tax credits in return for shares issued to the Greek State. Specific rules and conditions apply.

Incentives for the maintenance of workplaces
Legal entities that suffer a reduction of turnover for two consecutive accounting periods without reducing their workforce can enjoy a reduction of the tax rate by three percentage units. However, a revocation of the granted benefit and imposition of further tax in case of reduction of personnel or increase of the turnover within the three-year period is provided.

Other tax incentives
On 16 June 2016, Law 4399/2016 ‘Statutory framework for the establishment of Private Investments Aid Schemes for the regional and economic development of the country - Establishment of Development Council and other provisions’ has been ratified by the Greek Parliament. The new Law provides a general framework, which is expected to be specified for each aid scheme through ministerial decisions to be issued. In essence, the provisions of the new Law will start to apply following the issuance of the relevant ministerial decisions. Up to date, the Ministry of Development has issued the required ministerial decisions for four (out of eight in total) aid schemes.

Under the new Incentive Law, an explicit reference to the provisions of the General Block Exemption Regulation (GBER) of the European Commission (651/17.07.2014, Law 187/1/26.06.2014) is being made for first time.

The new Law is structured into two sections: (i) the General Section, which includes the main regulations and restrictions of the GBER and refers to all aid schemes, and (ii) the Special Section, which describes the specific aid schemes, to which the provisions of the General Part and of the GBER are applied.

In comparison to other types of aid, the new Incentive Law focuses mainly on the tax incentives.

A threshold is being provided for the types of aid available to individuals’ investment projects, as well as to companies and groups of companies, in order to achieve dispersion of the beneficiaries of state aid.

Special categories of aid are being determined, either (i) on the basis of the performance of the companies (extroversion, mergers, employment increase, sectors, high added value), or (ii) on territorial basis (highland, border areas and areas with increased migration burden, industrial areas, innovations zones). Companies that fall under the special categories may be reinforced through capital aids, in case the latter are not provided, or by additional capital aids, in case the latter are provided.

General Section
Under the General Section are regulated the beneficiaries of the aids, the terms and prerequisites for participation, the covered investment projects, the eligible expenses, the types of aids, the procedure regarding the filing of applications and evaluation of investments projects, as well as the issues regarding the implementation and completion of investments projects.

As beneficiaries of the aid schemes are determined any individual companies, commercial companies, cooperatives, social cooperative companies of Law 4019/2011, groups of producers, agricultural partnerships of Law 4015/2011, companies under formation or under merger, on the condition that they have been incorporated or merged before the commencement of the project, joint ventures provided that they have been registered with General Commercial Registry (GEMI).

As regards the terms and prerequisites for participation, it is provided that the compulsory nature of own-participation is abolished. The participation of the beneficiary in the cost of the investment project can take place either through own equity or through external financing. The main prerequisite is that the 25% of the total investment cost does not contain state aid, support, or subsidy.

The minimum investment amount ranges from EUR 50,000 (for social cooperative companies) to EUR 500,000 for large companies.

The investment projects that fall under the aid schemes should have the character of initial investment (buildings, machinery, intangible) and meet certain conditions (indicatively, creation of new plants, extension of existing plants' capacity, etc.).

The investment projects that are covered by the new Law relate, in principal, to all economic sectors, subject to certain exceptions (sector of steel, coal, synthetic fibres, shipbuilding, etc.). Under conditions, the covered investment projects could also relate to:

- Production or co-production and distribution of heat from renewable energy sources and production of electricity by small hydroelectric projects.
- Tourism.
- Processing and marketing of agricultural products, fisheries, and aquaculture products.
- Logistics services.

In respect of the eligible expenses, these are divided into: (i) eligible expenses of regional state aid nature based on the Regional State Aid Map (capital expenditure in tangible and intangible assets, employment cost of new employees) and (ii) eligible expenses of non-regional state aid, which aim to broaden and enrich the investment options towards new qualitative directions. The maximum amounts and percentages of regional state aids and non-regional state aids are also being determined. Based on the general framework, the maximum amounts and percentages of each individual aid scheme are being specified, in accordance with the provisions of the Special Section of the new Law.

Further, with regard to the types of aid, the following types are provided:

- Tax exemption (exemption from the payment of CIT on profits, before taxes, generated from the total business activity of the company, following the deduction of the CIT that corresponds to the profits distributed to the company's shareholders).
- Subsidy of funds in order to cover part of the eligible expenses of the investment project.
- Subsidy of leasing for the acquisition of new machinery and other equipment (which cannot exceed the period of seven years).
- Subsidy of employment cost.

- Fixed CIT rate for a period of 12 years from the completion of the investment project, exclusively for investment projects of major size.
- Funding of corporate risk through Funds of Funds.

All types of aids can be provided either separately or in combination thereof and are all taken into account for the determination of the total aid amount of each investment project. The subsidy of funds and the leasing subsidy are not granted to companies that did not generate any profits in any of the seven tax years prior to the year in which the relevant application was filed. The types of aid are granted (and, respectively, the benefit starts to apply), following a relevant certification, either in lump sum (following the issuance of the decision certifying the completion and the commencement of the productive operation of the project) or gradually (according to the specific requirements per each type of aid granted).

Moreover, as regards the support and implementation of the new Law (filing of applications, documentation file, evaluation, etc.), all procedural issues will be carried out through the State Aid Information System of the Ministry of Finance, Development, and Tourism. The evaluation process includes the stage of completion and legality control and the evaluation stage and is carried out either through the method of comparative evaluation or through the method of direct evaluation. Investment projects that fall under the aid schemes are audited at any time and at any stage of implementation of the investment project or at any stage of fulfilling their long-term liabilities.

It is also provided that the investment project is completed following the commencement of the productive operation of the investment and in any case within the period prescribed in the relevant ministerial decision, which may not exceed three years from the date of issuance of that decision. An extension for two years is also provided, under certain conditions.

Special section

Aid schemes

In the Special Section of the new Incentive Law, the following aid schemes and the relevant aid granted per scheme are being prescribed:

Aid scheme	Types of aid granted
Machinery equipment	Tax exemption.
General entrepreneurship	Tax exemption, subsidy of leasing, and subsidy of employment cost.
New independent small and medium enterprises (SMEs)	Tax exemption, subsidy of funds, subsidy of leasing, and subsidy of employment cost.
Innovative character aid for SMEs	
Clusters	
Integrated regional and sector projects	
Intermediary funding organisations (Funds of Funds)	

Aid scheme	Types of aid granted
	Public funding to private investors through: (i) equity or 'virtual' equity investment or sponsorship, or (ii) loans for funding of corporate risk directly or indirectly to eligible companies.
Major investments	• Fixed CIT rate for 12 years from the completion of the investment project, until the exhaustion of the aid and up to the amount of EUR 10 million. • Alternatively, tax exemption at a percentage of 10% of the eligible investment cost and up to the amount of EUR 5 million. • Possibility to make use of the 'fast track' procedure.

The beneficiaries, the eligible expenses, the type of aids, the percentage of aids, the implementation procedure, as well as the evaluation and audit process are being specifically prescribed per each separate scheme of aid.

The maximum annual amount of state aid budget per each scheme of aid is set at EUR 150 million, for which no prior notification is required and which is deemed compatible with the internal market, in accordance with the provisions of GBER.

Finally, it is noted that, up to date, the Ministry of Development has issued the required Ministerial Decisions for four (out of eight) aid schemes, while the Ministerial Decisions for the following aid schemes are still pending to be issued: innovative character aid for SMEs, clusters, integrated regional and sector projects, and intermediary funding organisations (Funds of Funds).

The procedure for the submission of applications through the State Aid Information System has started on 19 October 2016. Depending on the aid scheme, different deadlines apply for the submission of applications from the interested enterprises.

Withholding taxes

WHT rates are as follows:

Type of income	WHT rate (%)
Dividends	15
Interest	15
Royalties and other payments	20
Fees for technical projects, management fees, and consultancy and other related services	20
By exception, fees received by contractors of every kind of technical projects and lessors of public, municipal, association, or port proceeds	3% on the value of the project under construction or lease payment

Legal entities tax resident in Greece are not subject to WHT in relation to royalties, fees received for the provision of consultancy and other related services, and management fees, unless provided to general government bodies.

Legal entities that are not tax resident in Greece and do not maintain a PE in Greece are not subject to Greek WHT in relation to technical services, consultancy services, or other related services and management fees.

By virtue of the provisions of the Ministerial Circular 1007/2017, it is clarified that the fees for technical services, management fees, fees for consulting services, and the remuneration for similar services received by an EU legal entity through its PE in Greece are not subject to WHT.

The above exemption does not include the fees received by EU legal entities from the services provided to the general government bodies, as well as the fees for technical services received by the EU legal entities.

Conversely, non-EU foreign legal entities that maintain a PE in Greece are subject to Greek WHT in relation to the provision of the aforementioned services.

Legal entities that are tax resident in Greece or foreign legal entities that maintain a PE in Greece are not subject to WHT in relation to royalty payments.

The exemption from the obligation of WHT for payments of dividends, interest, and royalties by a Greek subsidiary to its parent company includes payments of dividends, interest, and royalties to Greek parent companies.

For the exemption from dividend WHT, the following conditions apply:

- The receiving legal entity should own shares, parts, or a participation of at least 10%, on the basis of the value or number, in the share capital, right to profits, or voting rights of the distributing taxpayer.
- The minimum holding percentage of shares or parts or participations should be held for at least 24 months (subject to providing a bank guarantee, in which case the exemption may apply prior to completing the 24-month holding period).
- The receiving legal entity should be:
  - included in the forms enumerated in Annex I Part A of Directive 2011/96/EU, as in force
  - tax resident in an EU member state according to the legislation of such state and not be considered as tax resident in a third country in application of the terms of the DTT concluded with such third country, and
  - subject, without the option or exemption, to one of the taxes mentioned in Annex I Part B of Directive 2011/96/EU, or to any other tax that may in the future replace one of those taxes.

A general anti-abuse rule is applicable by virtue of which the tax exemption in case of collection and payment of dividends is alleviated in case it is considered that a 'non-genuine arrangement' exists. A 'non-genuine arrangement' is an arrangement that has not been put into place for valid commercial reasons reflecting the economic reality.

For the exemption from WHT for interest and royalty payments, the following conditions apply:

- The receiving legal entity should directly own shares, parts, or a participation of at least 25%, on the basis of the value or number, in the share capital, right to profits, or voting rights of the paying taxpayer; the paying taxpayer directly owns shares, parts, or a participation of at least 25% in the share capital of the receiving entity; or a third legal entity directly owns shares, parts, or a participation of at least 25% in the share capital of the receiving entity and the paying legal entity.

- The minimum holding percentage of shares or parts or participations should be held for at least 24 months (subject to providing a bank guarantee, in which case the exemption may apply prior to completing the 24-month holding period).
- The receiving legal entity should be:
  - included in the forms enumerated in Annex I Part A of Directive 2003/49/EU, as in force
  - tax resident in an EU member state according to the legislation of such state and not be considered as tax resident in a third country in application of the terms of the DTT concluded with such third country, and
  - subject, without the option or exemption, to one of the taxes mentioned in Annex I Part B of Directive 2003/49/EU, or to any other tax that may in the future replace one of those taxes.

Payments of interest of bank loans, including default interest, as well as interest of intra-bank deposits, are exempt from WHT.

Interest received from Greek government bonds and treasury bills by legal entities that are not tax resident in Greece and that do not maintain a PE in Greece are not subject to WHT.

The following table provides a summary of the WHTs applicable under the respective DTTs entered into by Greece:

Recipient	**Dividends (%)**	**Interest (%)**	**Royalties (%)**
Resident individuals and companies	15	15	20
Non-resident individuals and companies:			
Non-treaty	15	15	20 (1)
Treaty:			
Albania	5	5	5
Armenia	10	10	5
Austria (3)	5/15 (4)	8	7
Azerbaijan	8	8	8
Belgium	5/15 (7)	5/10 (6)	5
Bosnia and Herzegovina	5/15 (2)	10	10
Bulgaria	10	10	10
Canada	5/15 (7)	10	0/10 (13)
China	5/10 (2)	10	10
Croatia	5/10 (2)	10	10
Cyprus	25	10	0/5 (5)
Czech Republic	Domestic	10	10
Denmark	38	8	5
Egypt	10	15	15
Estonia	5/15 (2)	10	5/10 (11)
Finland	47	10	0/10 (9)
France	Domestic	10	5
Georgia	8	8	5
Germany	25	10	0
Hungary	45	10	10
Iceland	5/15 (2)	8	10
India	Domestic	Domestic	Domestic
Ireland	5/15 (7)	5	5
Israel	Domestic	10	10

Recipient	Dividends (%)	Interest (%)	Royalties (%)
Italy	15	10	0/5 (9)
Korea, Republic of	5/15 (2)	8	10
Kuwait	5	5	15
Latvia	5/10 (2)	10	5/10 (11)
Lithuania	5/15 (2)	10	5/10 (11)
Luxembourg	38	8	5/7 (8)
Malta	5/10 (2)	8	8
Mexico	10	10	10
Moldova	5/15 (2)	10	8
Morocco	5/10 (2)	10	10
Netherlands	35	8/10 (12)	5/7 (8)
Norway	40	10	10
Poland	Domestic	10	10
Portugal	15	15	10
Qatar	5	5	5
Romania	45	10	5/7 (8)
Russia	5/10 (2)	7	7
San Marino	5/10 (2)	10	5
Saudi Arabia	5	5	10
Serbia	5/15 (2)	10	10
Slovakia	Domestic	10	10
Slovenia	10	10	10
South Africa	5/15 (2)	8	5/7 (8)
Spain	5/10 (2)	8	6
Sweden	Domestic	10	5
Switzerland	5/15 (2)	7	5
Tunisia	35	15	12
Turkey	15	12	10
Ukraine	5/10 (2)	10	10
United Arab Emirates	5	5	10
United Kingdom	Domestic	0	0
United States	Domestic	0/Domestic (10)	0
Uzbekistan	8	10	8

Notes

1. The non-resident legal person, legal entity, or individual pursuing business activity may elect to be taxed on income from royalties and fees for technical services, administration fees, and fees for consulting or similar services in accordance with the rules applicable to tax residents who receive such fees and then credit the WHT against the income tax due.
2. The rate of 5% applies in case the beneficiary is a company (excluding a partnership) and directly holds at least 25% of the capital of the paying company.
3. It should be taken into account that such rates are based on the DTT applicable as of 1 January 2011, whilst other rates have been applicable in the past.
4. The rate of 5% will apply if the beneficial owner is a company that directly holds at least 25% of the voting power of the company paying the dividends.
5. The rate of 5% is applicable only for the right to use cinematograph films.
6. Rate of 5% applies to loans not incorporated into negotiable instruments and granted by banks.
7. A rate of 5% is applicable to shareholders of 25% and above.
8. The rate of 5% applies if the royalties consist of payments of any kind received as a consideration for the use of or the right to use any copyright of literary, artistic, or scientific work, including cinematograph films.
9. Exemption ('0' rate) applies to payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematograph films and films or tapes for television or radio broadcasting.

10. Interest (on bonds, securities, notes, debentures, or on any other form of indebtedness) received from sources within Greece by a resident or corporation of the United States (US) not engaged in trade or business in Greece through a PE therein, shall be exempt from Greek tax but only to the extent that such interest does not exceed 9% *per annum*; but such exemption shall not apply to such interest paid by a Greek corporation to a US corporation controlling, directly or indirectly, more than 50% of the entire voting power in the paying corporation.
11. The 5% rate is applicable if the royalties consist of payments of any kind received as a consideration for the use of industrial, commercial, or scientific equipment, and the 10% rate is applicable for all the other cases.
12. The 8% rate is applicable when the beneficiary of the interests is a bank or a financial institution, 10% rate is applicable for all the other cases.
13. Exemption ('0' rate) applies to copyright royalties and other like payments in respect of the production or reproduction of any cultural or artistic work (but not including royalties in respect of motion picture films nor royalties in respect of works on films or videotapes or other means of reproduction for use in connection with television broadcasting).

In general, it should be noted that certain DTTs may include specific clauses in specific cases that are not all captured in the table; therefore, a careful review of each DTT is highly advisable.

Tax administration

Taxable period

The taxable period is the calendar year, which may end either on 30 June (for legal persons or legal entities keeping double entry books) or 31 December. The taxable year should not, in any case, exceed 12 months.

The exceptional case of closing the accounting period, for income tax purposes, at a date other than the 31 December or 30 June is limited only to Greek legal entities/other entities that are directly or indirectly owned at a percentage exceeding 50% by foreign legal entities/other entities.

Tax returns

CIT returns of Greek SAs, limited liability companies (LLCs), and branches of foreign companies are filed on a special form by the last day of the sixth month following the end of the tax year.

Tax returns are required to be submitted electronically.

The CIT return constitutes the basis for the direct assessment of tax, which arises without a further action by the tax administration, simultaneously with the submission of the tax return by the taxpayer.

The taxpayer also has the right to amend the tax return by paying the respective difference in tax or by establishing one's rights for a refund of tax paid in excess according to the amended tax return.

Moreover, the taxpayer may request the issuance of a corrective tax assessment act in case of filing an amending tax return for which an administrative assessment tax act has been issued, and the tax administration is obligated to issue such corrective tax assessment if the amending tax return is accepted.

Payment of tax

100% prepayment of the current year's CIT, less tax withheld at source, based on the tax return is paid in eight equal monthly instalments, the first of which should be paid upon filing.

CIT and tax prepayment based on the tax return are paid in eight equal monthly instalments, the first of which should be paid upon filing of the CIT return (i.e. until the last day of the sixth month following the end of the tax year) and the remaining seven until the last day of the seventh month of the filing of the CIT return, which, however, may not extend beyond the same tax year.

For newly established companies, the prepayment is reduced to 50% for the first three years of operations.

Tax audit process

Tax audit procedures

The tax audit commences with the issuance of an audit order for open tax years, usually not more than five. The order concerns the audit of all tax issues (CIT, VAT, WHT, capital gain tax, etc.). The duration of the audit may vary from a few weeks to a few months, in certain cases.

The tax administration performs a tax audit from its offices on the basis of the financial statements, tax returns, and other documents that are submitted by the taxpayer, as well as the documents and information in its possession.

The performance of a complete on-site tax audit must be notified to the taxpayer by a previous written notification. A complete on-site tax audit is performed without prior notification in cases where indications of tax avoidance exist.

The tax administration may have access to the books and records and to other documents of the taxpayers, as well as to the receipt of copies thereof. The tax administration has the same rights with regard to books and records that are kept electronically. It is noted that the legal entity subject to keeping books and records must maintain these books and records for at least five years.

An extension of the on-site tax audit may be granted once for six months, as well as for another six months in extraordinary cases.

The right for a new audit of a tax period already audited is provided only in case new data arises that affects the calculation of the tax liability. 'New data' is defined as all data that could not have been known to the tax administration upon the commencement of the original tax audit.

The election of the cases subject to audit will be made on the basis of risk analysis criteria. Exceptionally, cases may be elected on the basis of other criteria, according to a decision of the General Secretary of Public Revenue. It should be noted that, based on the recently enacted Law 4389/2016, the General Secretarial for Public Revenue is abolished and a new Independent Public Revenue Authority is formed aiming to the determination, the assessment, and the collection of tax, customs, and others public revenues.

The tax administration may use the following audit techniques for the indirect determination of the taxable basis:

- The proportionality principle.
- The analysis of the liquidity of the taxpayer.
- The net position of the relation between the sales price to the total turnover.
- The amount of bank deposits and expenses in cash.

The procedure of notification of the taxpayer of the results of the tax audit is provided. More specifically, a temporary corrective assessment of tax is issued in case a differentiation of tax arises on the basis of the tax returns of the taxpayer and the results of the audit.

Following the submission of such decisions and within 20 days from the receipt of the notification thereof, the taxpayer may submit its views in writing, whilst after that point a final corrective assessment of tax sheet is issued, which is notified to the taxpayer, within a month from the end of the deadline for submitting the taxpayer's views in writing.

Audit Centre for Taxpayers with Great Wealth

The special audit authority 'Audit Centre for Taxpayers with Great Wealth', competent for the whole Greek territory, performs provisional, temporary, and ordinary tax audits, as well as the audit of real estate property and of the annual expenses of individuals. The audit of foreign real estate companies not disclosing their ultimate beneficiary individuals and of Greek real estate companies in which a foreign legal entity participates without disclosing the ultimate beneficiary individuals are also assigned to the Audit Centre for Taxpayers with Great Wealth. Moreover, the Audit Centre for Taxpayers with Great Wealth is also competent for the certification and enforced collection of revenue of taxpayers with great wealth.

Audit Centre for Large Enterprises

The 'Audit Centre for Large Enterprises' is responsible for the performance of ordinary audits of taxpayers with annual gross income exceeding EUR 25 million for the fiscal year closing within 2009, of affiliated enterprises drafting consolidated financial statements irrespective of their gross income on the condition that the gross income of at least one of the affiliated enterprises exceeds EUR 25 million for the fiscal year closing within 2009, and unaudited cases prior to any business restructuring effected until 2011, irrespective of the gross revenues and the competent tax authority responsible for the taxation of their income, on the condition that the company or any of the companies resulting from the business restructuring falls within the ambit of the Audit Centre for Large Enterprises. The Audit Centre for Large Enterprises is also competent for the enforced collection of revenue of large enterprises located in the whole Greek territory.

Following the audit and the notification of tax audit findings, the company may in turn:

- File a mandatory administrative recourse within the framework of the special administrative procedure (out-of-court settlement procedure) before the Directorate for Dispute Resolution with the claim of reviewing any act of the tax authorities (including the tax assessment act), in case the content of the tax assessment act is questioned within a deadline of 30 days for Greek tax residents and 60 days for foreign tax residents from the notification of the act or the realisation of the failure. The direct filing of a recourse before the competent administrative courts against acts of the tax administration is inadmissible.
- Take the case to court (filing of a recourse) against the explicit/tacit negative reply of the Dispute Resolution Directorate. For tax/customs cases exceeding EUR 150,000, the competent court is the Court of Appeal (of first and last instance, which could normally issue a decision within six to 12 months; said timeframe may be longer, taking up to one to two years in case the competent court is the Court of First Instance [i.e. for disputes of an amount less than EUR 150,000]). The Supreme Administrative Court may take up to three to four years.

- Criminal sanctions are also imposed on the company's legal representative under certain conditions.

Moreover, based on the provisions of Law 4438/2016, which was enacted on 28 November 2016, a Mutual Agreement Procedure is introduced in the Code of Tax Procedures, designated to cover the cases of elimination of double taxation in connection with the adjustment of transfers of profits between associated enterprises. Based on these provisions, the taxpayer may file a claim for the initiation of a Mutual Agreement Procedure by application of the Double Tax Conventions as well as the European Convention on the elimination of double taxation in connection with the adjustment of transfers of profits between associated undertakings. The details of application of this new procedure are determined by virtue of a Ministerial Circular issued by the Independent Authority for Public Revenue.

The Ministerial Circular issued by the Independent Authority for Public Revenue provides guidelines as regards the procedure for claiming the initiation of a Mutual Agreement Procedure, the content, the competent authorities for examining the relevant claims, the process for achievement of a Mutual Agreement, the notification of the outcome of the Mutual Agreement Procedure to the taxpayer, and the procedure for accepting such Agreement, as well as any relevant issue with respect to the above.

Tax auditors' practice

In the past, complexity of the Greek tax legislation and the vagueness of its requirements enabled the tax auditors to dispute either the company's results reflected in its accounting records or to disallow expenses. This is true in all tax audits and, in spite of companies' endeavours to comply with the tax requirements, tax audits have always resulted in assessment of additional taxes and penalties.

The amount of additional taxes depends mainly on the following:

- Company's vulnerability because of nature of business and transactions.
- Taxes already paid on the basis of the company's income tax returns.
- Profits declared by competitors.
- Weaknesses and shortcomings that the tax auditors might reveal if a full audit is carried out.

In respect of deductible expenses, the legislation prescribes, among other requirements, that such expenses must be realised for the benefit of the company or in its ordinary course of normal business activity to represent, a valid transaction at a value that is not over or under the market value based on the data available by the tax administration, properly recorded in the company's books in the respective period to which they relate, and can be evidenced by appropriate documentation, without defining what a business expense is. Consequently, the tax auditors dispute the deductibility of various items arguing that, in their opinion, they are not contributing to the company's business income.

Greek SAs and LLCs whose annual financial statements are subject to a statutory audit by individual Certified Auditors and audit firms may optionally obtain an 'annual tax certificate' from their certified auditors upon the completion of a tax audit conducted, confirming compliance with Greek tax legislation. The tax audit is conducted on specific tax areas as defined by a special audit program issued by the Ministry of Finance in cooperation with the Committee of Accounting Standardization and

Auditing (ELTE). The audit program is updated annually and is in accordance with the provisions of International Standard on Non-Audit Assurance Engagements 3000.

Statute of limitations

The tax administration may issue an administrative, estimated, or corrective tax assessment within five years from the end of the year in which the deadline for filing the respective tax return lapsed.

This five-year prescription period may be extended for one year if:

- the taxpayer files an initial or amending tax return within the fifth year of the prescription period
- an application for the granting of information from a foreign state has been filed and commences from the date of the receipt of the respective information by the tax authority, or
- a mandatory administrative recourse has been filed and commences from the issuance of a decision that is not subject to recourse.

Exceptionally, for cases of tax avoidance, the tax administration has the right to issue an administrative, estimated, or corrective tax assessment within 20 years from the end of the year in which the deadline for filing the respective tax return lapsed.

In case of a corrective tax assessment resulting in an amendment of the tax assessment act for a year for which the prescription period of the state's right to audit has lapsed, the adaptation is made to the last year for which said right has not been prescribed.

Other issues

Intergovernmental agreements (IGAs) and cooperation

Greece and the United States have reached an agreement in substance and Greece has consented to disclose this status on the US Foreign Account Tax Compliance Act (FATCA) arrangements with effect from 30 November 2014.

In accordance with this status, the text of such IGA has not been released, and financial institutions in Greece are allowed to register on the FATCA registration website consistent with the treatment of having an IGA in effect, provided that the jurisdiction continues to demonstrate firm resolve to sign the IGA as soon as possible.

Base erosion and profit shifting (BEPS)

Greece adheres, in general, to the BEPS guidelines.

Measures that have been adopted and that are in the spirit of the BEPS guidelines include the CFC legislation and General Anti-Avoidance Rule (GAAR) applicable.

Choice of business entity

The main differences between a subsidiary (i.e. *Société Anonyme* [SA] or limited liability company [LLC]) and a branch of a company, from a corporate establishment perspective, are the following:

- A subsidiary is a separate legal entity from its parent company, whereas a branch does not form a separate legal entity, does not have its own shareholders, and,

consequently, the funds needed for its operation are transferred from the overseas parent company.
- The parent company of a branch must be either the equivalent of a Greek SA or an LLC, whereas there is no such restriction for subsidiaries.
- The day-to-day management of a branch is exercised by the legal representative, a person appointed by the parent company, whereas an SA is represented by its BoD and an LLC is administered and directed by the administrator(s).
- No minimum capital is required for the establishment of a branch or LLC; nevertheless, the share capital of the parent company should be, in principle, at least EUR 24,000 if the parent company has the legal form of an SA. However, from a practical perspective, the competent Greek General Commercial Registry might accept the establishment of a branch of an EU based SA, even if the share capital of the parent company is less than EUR 24,000.
- An SA appears to be a more popular type of company than a branch and an LLC. In particular, certain investors still tend to opt for the establishment of an SA company, particularly if they would like to participate in public tenders, etc.

The main legal differences between an SA and an LLC in Greece from a company law/establishment perspective are the following:

- An SA is managed by a BoD consisting of at least three members, whereas an LLC can be managed by only one individual, the administrator (legal entities are permitted to be appointed as BoD members or administrators). Both BoD members and administrators have to acquire a Greek tax registration number and a Greek residence permit (if applicable) prior to the establishment of the relevant companies. It should also be noted that the acquisition of a residence permit for non-EU citizens is a time consuming procedure.
- The shareholders of an SA are not required to be registered with the Greek tax authorities (however, if the said shareholders are also BoD members, they are required to be registered with the competent Greek tax authorities), whereas the partners of an LLC have to be registered with the Greek tax authorities.
- Establishment/incorporation of an SA is performed through the so-called One Stop Shop Authority (i.e. Notary Public). Any appropriate documents (applications, declarations, certificates, etc.) required for establishment process should be produced and submitted to the Notary Public by the founders of the SA, as said persons are defined in the Articles of Association (AoA) of the SA under establishment, or their representatives appointed by virtue of an (duly legalised as to the signature of the founders) authorisation. After the submission of the necessary documentation to the competent One Stop Shop Authority, the said authority accomplishes all the necessary steps for the establishment of the Greek SA, including the granting of the Greek tax registration number. Depending on the particular activity of the SA under establishment, the satisfaction of particular regulatory requirements, such as the acquisition of certain licences, might be required.
- Establishment/incorporation of an LLC is performed through the One Stop Shop Authority (i.e. Notary Public). Any appropriate documents (applications, declarations certificates, etc.) required for the establishment process should be produced and submitted to the Notary Public by the founders of the LLC, or their representatives appointed by virtue of written authorisation (duly legalised as to the signature of the founders). After the submission of the necessary documentation to the competent One Stop Shop Authority, the said authority accomplishes all the necessary steps for the establishment of the Greek LLC, including the granting of the Greek tax registration number. Depending on the particular activity of

the Greek LLC under establishment, the satisfaction of particular regulatory requirements, such as the acquisition of certain licences, might be required. SA and LLC companies are supervised by the Greek Ministry of Development (joint supervision by the General Commercial Registry and the competent Prefecture of the registered seat of the SA), which necessitates certain filings to be performed (e.g. minutes of BoD, general announcements, financial statements).

The 'Private Company' (PC)

- The PC constitutes a legal entity and is commercial in nature, even if its object is not *per se* commercial. The capital of the PC can be freely determined by the partners and can amount to zero, whilst its partners participate in the PC by means of capital, non-capital, and guarantee contributions.
- The PC is not entitled to acquire, either directly or indirectly, its own capital parts.
- The PC has its registered seat in the municipality referred to in its AoA, while the transfer of the registered seat of the PC in another country of the European Economic Area does not necessarily result in the dissolution of the PC, provided that the recipient country recognises the transfer and the continuity of legal personality. The PC is not obligated to have its actual seat in Greece, whilst the PC is capable of establishing various types of secondary establishments either in Greece or abroad.
- The term of the PC is definite; if not otherwise stipulated in the AoA of the PC, the PC has a term of 12 years following its establishment.
- The PC is administered and represented by one or more administrators.
- The administrator represents the PC and conducts in its name all actions pertaining to the administration of the PC, the management of its assets, and, in general, the pursuit of its objects.
- The establishment of the PC is effected by means of its registration with the Greek General Commercial Registry (GEMI).
- The PC is dissolved: (i) at any time following a resolution of the partners, (ii) when its definite term has expired, unless the term of the PC is extended by virtue of a resolution of the partners, (iii) if the PC defaults, and (iv) in all other circumstances contemplated by the law or the AoA.

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Significant developments

Guernsey is committed to the adoption of the global Common Reporting Standard (CRS) for the automatic exchange of information. This is effective from 1 January 2016, with the first reporting taking place in 2017.

Guernsey has formally committed to the Organisation for Economic Co-operation and Development (OECD) model of country-by-country reporting (CbCR) and has already put in place the relevant implementing regulations for entities with accounting periods commencing on or after 1 January 2016. In addition, Guernsey has signed up to the Multilateral Competent Authority Agreement (MCAA) to assist with the sharing of relevant information in relation to CbCR, as well as broadly adopting the OECD's CbCR implementation package, to facilitate its implementation of this base erosion and profit shifting (BEPS) minimum standard (*for more details in respect of the above, please see the Other issues section*).

Taxes on corporate income

Resident corporations are liable to tax on their worldwide income. Non-resident corporations are subject to Guernsey tax on their Guernsey-source income.

Companies pay income tax at the current standard rate of 0% on taxable income.

Income derived from a banking business, insurance business, custody services business, and licensed fund administration business is taxable at 10%.

'Banking business' is broadly defined as income that arises as a result of the provision of credit facilities by any type of company and the utilisation of customer deposits. Income derived from licensed fiduciaries (with regulated activities), licensed insurers (in respect of domestic business), licensed insurance intermediaries, and licensed insurance managers is also taxable at 10%.

Income derived from the exploitation of property located in Guernsey or received by a publicly regulated utility company is subject to tax at a higher rate of 20%. In addition, income from retail businesses carried on in Guernsey where taxable profits exceed 500,000 British pounds sterling (GBP) and income derived from the importation and/or supply of hydrocarbon oil and gas are also taxed at 20%.

Exempt companies
Some collective investment schemes (CISs) and unit trusts may qualify for exempt status, which will place them completely outside the Guernsey tax regime. In addition, anybody that forms part of, or contributes to, the overall structure of a CIS may claim exempt company status. This removes doubt in relation to the entities that are involved in the management or support of a CIS qualifying for exempt status. For each year for which exempt status is sought, a charge of GBP 1,200 is levied.

One of the following conditions, among others, must be met for the company to be considered exempt:

- The company is beneficially owned outside of Guernsey.
- No Guernsey-resident individual or company has a beneficial interest in the company (with the exception of shareholders, loan creditors, or nominees/trustees).

Loans to participators
If a company makes loans with preferential terms to an individual or entity connected with the company, this will be deemed to be income in the hands of the debtor, and the creditor company will be required to account for, withhold, and pay the tax. Certain exemptions apply.

Local income taxes
Guernsey does not operate any local government taxes.

Corporate residence

All Guernsey-registered companies are regarded as tax resident on the island unless granted exempt company status. In addition, a company will be treated as a resident in Guernsey (regardless of where it is incorporated) if shareholder control is exercised by persons resident on the island.

Permanent establishment (PE)
The Income Tax (Guernsey) Law, 1975 defines PE as including:

- a branch
- a factory, shop, workshop, quarry, or building site, or
- a place of management.

Note that the fact that a body's directors regularly meet at a particular place does not, in itself, make that place a PE of that body.

Other taxes

Value-added tax (VAT)
Guernsey does not operate a VAT or goods and service tax (GST).

Customs and excise duties
In accordance with the European Community (EC) Customs Code and the Implementing Regulation, Customs Import Duty is liable on all goods arriving in the Customs territory of the Community. The rates of duty are set by the European Community and are the same in all countries of the European Community.

The rates vary according to the commodity. Some may be as high as 22%, while, for other goods, the rate may be free.

The Channel Islands are not within the fiscal territory of the European Union (EU), and, as such, the Community Regulations that concern excise duties do not apply. Excise duty is classed as an internal tax.

The rates are reviewed annually by the States of Guernsey and set at budget time, which is usually in November. These cover Guernsey and Alderney, while Sark has its own rates set by the Chief Pleas.

An additional 15% rate of duty is applicable on some goods originating in the United States (US).

Property taxes
Income from Guernsey land and buildings is subject to Guernsey income tax at 20%. No other property taxes apply.

Transfer taxes
Guernsey does not levy transfer taxes.

In respect of the introduction of a Share Transfer Duty regime in Guernsey, which taxes sales of interests in entities that own either commercial or domestic real property in Guernsey at the same rate as applied under the Document Duty Law for standard conveyances, the Committee has continued to consult with the Guernsey Bar Council and other interested parties on the draft legislation and is intending to submit a Policy Letter for consideration shortly.

Stamp taxes
Guernsey does not levy any stamp duties.

Payroll taxes
The Employee Tax Instalment (ETI) Scheme is a scheme whereby the employer deducts income tax from its employees and pays this over to the Guernsey Income Tax Office.

The ETI Scheme applies to all employees. For the purposes of the ETI scheme, an employee is an individual holding or exercising an office or employment, including a company director, part-time workers, casual workers, and sub-contractors.

The ETI Scheme operates on a quarterly basis. Throughout each quarter, the employer should deduct tax from their employees on each payday. Details of the gross weekly or monthly wage and deductions made must be recorded and returned with the relevant remittance by the 15th day of the month following the end of the relevant quarter (e.g. tax deducted during the first quarter needs to be submitted by 15 April).

Social security contributions
An employer, for the purposes of Social Insurance, is anyone who has employees. An employee is anyone who is gainfully occupied in employment under a contract of service in Guernsey or Alderney.

In general, contributions are required from both employer and employee in respect of any employed person who is over school-leaving age and under 65. Employer social security contributions are levied on the gross employment income of the employee at 6.6%.

Employer social security contributions for 2017 are calculated on a monthly lower earnings limit of GBP 580.67, which is the level of earnings at which an employer becomes liable for the payment of contributions. The upper limit for 2017, which is the highest level of earnings on which contributions are calculated, is GBP 11,557 per month.

Branch income

Branch income is taxed in the same manner as companies, at the appropriate rate according to the activity being undertaken.

No further tax is withheld on the transfer of profits abroad to group companies, provided no Guernsey-resident individual has an interest in the company.

Income determination

Inventory valuation
Inventory is valued at the lower of historical cost or net realisable value. Use of last in first out (LIFO) is not permitted. Generally, there are no material differences between accounts prepared on a normal accounting basis and those prepared on a tax basis.

Capital gains
Capital gains are not subject to tax in Guernsey.

Dividend income
All dividends paid by a standard tax-paying company (0%) are deemed to have been paid from income arising after 31 December 2007 (i.e. after the introduction of the zero/ten tax regime), unless the company elects to have them treated otherwise.

Stock dividends
Stock dividends may be treated as income.

Interest income
Interest income received by a standard tax-paying company is taxable at 0%.

Please refer to the Taxes on corporate income section for further information on companies liable to tax at the company intermediate rate (10%).

Royalty income
Royalty income is treated as income for corporate income tax purposes. Any royalty income received by a standard-tax paying company is taxable at 0%.

Foreign income
Resident corporations are liable to tax on their worldwide income. Income tax is levied on foreign branch income when earned, and on investment income from foreign dividends, interest, rents, and royalties. Double taxation is mitigated either through unilateral relief (by giving credit for foreign taxation of up to three-quarters of the effective Guernsey rate) or by treaty relief.

Deductions

Normally, business deductions are allowed if they are incurred wholly and exclusively for the purpose of trade.

Depreciation

Annual allowances are granted for income tax purposes in respect of the following:

Assets	Basis	Rate (%)
Buildings:		
Stone, brick, concrete, or other substantial structures	Reducing-balance	1.25
Buildings of a less substantial construction	Reducing-balance	5
Farm Buildings	Straight-line	5 or 10 (depending on material utilised)
Motor vehicles, buses, lorries, and motorcycles	Reducing-balance	25
Computer hardware	Straight-line	20
Machinery and plant	Reducing-balance	20
Glasshouses:		
Expenditure in respect of initial allowance*	Straight-line	10
Other expenditure	Straight-line	5

* Section 123 (3) of the Law defines expenditure and circumstances on which initial allowances can be claimed in respect of glasshouses

Goodwill

The amortisation of goodwill is not a deductible expense in Guernsey.

Start-up expenses

Pre-trading expenditure incurred within the 12 months prior to the commencement of trade, which would have been allowable had it occurred on the first day of trading, may be allowed as a deduction in computing the profits of the first accounting period.

Interest expenses

Interest is a deductible expense where it is incurred wholly and exclusively for the purposes of trade.

Bad debt

Bad and doubtful debts discovered in the accounting period to have become bad or irrecoverable may be deducted from taxable profits, but the deduction may not exceed the amount written off as such in the books of the business.

Charitable contributions

Charitable donations by companies are not deductible for Guernsey income tax purposes.

Fines and penalties

Fines or penalties incurred are not deductible for Guernsey income tax purposes.

Taxes

Income tax paid is not deductible in computing taxable income.

Net operating losses

Losses from one class of income may be used to offset the profits from another class of income if both classes are subject to tax at the same rate. Unrelieved trading losses may be carried forward to offset future trading income.

Upon cessation of trade, operating losses arising from balancing allowances may be carried back to the previous two years of charge to be relieved against past trading profits.

Payments to foreign affiliates

Guernsey-source royalties and long-term interest are subject to taxation at source. Relief is obtained by the retention of the tax deducted. Short-term interest, unless owed to an authorised bank, is not deductible, unless the advance in respect of which it is paid is used wholly and exclusively for the purposes of trade. Other fees must be paid on an arm's-length basis.

Group taxation

Group loss relief may be claimed when both companies are members of the same group and the companies are either carrying on business in Guernsey through a PE or incorporated in Guernsey. Loss relief is available only against income taxed at the same rate.

A claim for group loss relief must be made by the claimant company within two years after the end of the calendar year in which the relevant accounting period ended, and the claim must be accompanied by a declaration by the surrendering company that it consents to the surrender.

Transfer pricing

Guernsey does not currently have specific transfer pricing legislation in place. However, the general anti-avoidance provisions do apply.

Thin capitalisation

Guernsey does not currently have specific thin capitalisation legislation in place. However, the general anti-avoidance provisions do apply.

Controlled foreign companies (CFCs)

Guernsey does not currently have specific anti-avoidance legislation in relation to CFCs. However, the general anti-avoidance provisions do apply.

Tax credits and incentives

In view of the low rate of tax, no special incentives are available to local businesses in Guernsey.

Foreign tax credit

Guernsey has signed full double taxation treaties (DTTs) with Cyprus, Hong Kong, Isle of Man, Jersey, Liechtenstein, Luxembourg, Malta, Mauritius, Monaco, Qatar, Seychelles, Singapore, and the United Kingdom (UK) and tax information exchange agreements (TIEAs) with 60 jurisdictions.

If no bilateral agreement exists, relief available to Guernsey-resident companies is the lesser of the other territory's effective rate or three quarters of the Guernsey effective rate.

Withholding taxes

Companies paying dividends to Guernsey resident individuals are required to deduct or account for the difference between the tax incurred by the company and the shareholder's individual tax rate (20%) on actual distributions.

A company is required to withhold tax when it is acting as an agent and making payments to a non-resident liable to Guernsey tax.

Guernsey does not levy any other forms of withholding tax (WHT).

Double taxation treaties (DTTs)

The table below sets out the rates of WHT applicable to the most common payments of dividends and interest under Guernsey domestic law where such a liability arises and the reduced rates that may be available under an applicable DTT. Please refer to specific treaties to ensure the values are up to date.

Recipient	Dividends (%)	Interest (%)
Resident corporations	0 (1)	0/10 (1)
Resident individuals	20 (2)	0 (3)
Non-resident corporations and individuals:		
Non-treaty	0	0
Treaty (4):		
Cyprus	0	0
Hong Kong	0	0
Isle of Man	0	0
Jersey	0	0
Liechtenstein	0	0
Luxembourg	0/5/15 (5)	0
Malta	0	0
Mauritius	0	0
Monaco	0	0
Qatar	0	0
Seychelles	0	0
Singapore	0	0
United Kingdom	N/A (6)	N/A (6)

Notes

1. Resident corporations receiving dividends and interest are not subject to any WHT.
2. For resident individuals, if the income has been taxed on the paying company at 0%, a 20% deduction should be made. If the income has been taxed on the paying company at 10%, 10% WHT should be applied. If the income has been taxed on the paying company at 20%, there should be no deduction at source.
3. Resident individuals are paid interest gross, without any WHT; however, individuals are required to file an annual tax return and pay 20% income tax on any interest received.
4. Where a reduced rate of withholding is allowed by any treaty, whether on dividends or interest, it is usual for this reduced rate to be stated not to apply to amounts that are in excess of a normal commercial rate of interest, or where the dividend or interest is effectively connected to a PE in Guernsey of the recipient; such general limitations are not specifically indicated in the table. Moreover,

note the general requirement for dividends and/or interest to be beneficially owned by the recipient in order to access benefits under a treaty.

5. Dividends paid by a company that is a resident of Guernsey to a resident of Luxembourg may be taxed in Luxembourg. However, such dividends may also be taxed in Guernsey, and if the beneficial owner of the dividends is a resident of Luxembourg, the tax charged may not exceed 5% of the gross amount of the dividends if the beneficial owner is a company that directly holds at least 10% of the capital of the company paying the dividends or 15% of the gross amount of the dividends in all other cases.
6. The Explanatory Note to the Guernsey-United Kingdom DTT specifically excludes dividends and interest from the scope of the DTT.

Tax administration

Taxable period

The tax year runs from 1 January to 31 December, although companies can adopt a year-end of their choice.

Tax returns

It is compulsory for all Guernsey companies to file their tax returns online.

Companies are required to file their income tax return on 30 November following the calendar year in which the accounting period ends. Should a company meet the conditions below, a simplified return may be filed without either a computation or financial statements.

In order to qualify for a simplified return, a company must have none of the following:

- Guernsey employees (other than directors).
- Guernsey-resident individual beneficial owners.
- Income from utilities (e.g. Guernsey water or electricity companies).
- Income from Guernsey properties.
- Income from a banking business.
- Income from domestic insurance business.
- Income from a licensed fund administration business providing administration services to unconnected third parties.
- Income from the provision of custody services.
- Income from the importation/supply of hydrocarbon oil and gas.
- Income from a retail business where the profits are above GBP 500,000.
- Loans to Guernsey participators.
- Distributions made to Guernsey-resident individuals.

Should a company have Guernsey-resident individual beneficial members and/or make loans to participators, it will be required to submit quarterly returns accounting for distributions and loans advanced.

Payment of tax

In Guernsey, tax is payable in two instalments, on 30 June and 31 December in the year of charge (calendar year). If liabilities have not been determined, this may necessitate initially raising estimated assessments based on prior year figures and raising a final assessment when the figures are agreed. Once the Income Tax Office has received the company's income tax return, they will issue an assessment detailing the final balancing income tax payment due. This amount will be due to be paid within 30 days of the issuing of the final assessment.

Tax audit process
The Income Tax Office will assess each company tax return as and when it is received, and the turnaround time from submission of a return to the issue of a final assessment varies dependent upon the workloads of the Income Tax Office but is generally dealt with in around three months.

Statute of limitations
The Director can raise an assessment in respect of any income that has not been assessed at any time no later than six years after the end of the year of charge in which the income arose.

Topics of focus for tax authorities
There are no current areas that the Guernsey Income Tax Office is particularly focusing on in regards to corporate taxpayer compliance.

Other issues

US-Guernsey intergovernmental agreement (IGA)
On 13 December 2013, Guernsey signed an IGA regarding the implementation of Foreign Account Tax Compliance Act (FATCA). The IGA has been ratified by Guernsey's Parliament and is embodied in The Income Tax (Approved International Agreements) (Implementation) (United Kingdom and United States of America) Regulations 2014. Its operative provisions came into force from 30 June 2014.

UK-Guernsey IGA
On 22 October 2013, Guernsey signed a FATCA-style IGA with the United Kingdom (UK-Guernsey IGA) under which mandatory disclosure requirements may be imposed in respect of 'Investors in the Fund' who are UK resident or who are non-UK entities controlled by one or more UK resident individuals, unless a relevant exemption applies. The UK-Guernsey IGA has been ratified by Guernsey's Parliament and is embodied in The Income Tax (Approved International Agreements) (Implementation) (United Kingdom and United States of America) Regulations 2014. Its operative provisions came into force from 30 June 2014.

Common Reporting Standard (CRS)
Guernsey is committed to the adoption of the global CRS on Automatic Exchange of Information with effect from 1 January 2016, with first reporting taking place in 2017.

As a result of the repeal of the EU Savings Directive, the EU member states committed to the adoption of the EU version of the CRS, which is the Directive on Administrative Cooperation (DAC). The first exchange of 2016 data under the DAC will take place in 2017. The Guernsey tax authorities sent letters to the EU member states to obtain their confirmation that the repeal of the Directive suspends equivalent agreements they might have with Guernsey. The repeal will have no impact on Guernsey as the DAC operates as an equivalent agreement to the CRS.

The exception is Austria, which joined the CRS on 1 January 2017 (with the first reporting taking place next year.). Currently, consultations are taking place between Austrian authorities and Guernsey. The Guernsey authorities requested that the exchange of information with Austria under the CRS shall apply only in relation to data for 2017 and subsequent years. The Austrian parliament has accepted the proposal although no agreements have been signed to date.

It has been agreed with the United Kingdom that for 2016 the CRS reporting requirements should be supplemented by the provision of information on pre-existing individual low value accounts and pre-existing entity accounts in respect of UK residents. This means that the United Kingdom can receive 2016 calendar year information in 2017 solely under the CRS, thus avoiding any need for Guernsey Financial Institutions having to make separate (and possibly duplicate) returns under both the UK IGA and the CRS. As a result of the adoption of the CRS from 1 January 2016, reporting of 2016 data for all relevant UK accounts will be required in 2017, including all UK non-domiciled account holders.

Country-by-country reporting (CbCR)

Guernsey has formally committed to the OECD model of CbCR and has already put in place the relevant implementing regulations for entities with accounting periods commencing on or after 1 January 2016. In addition, Guernsey has signed up to the Multilateral Competent Authority Agreement (MCAA) to assist with the sharing of relevant information in relation to CbCR, as well as broadly adopting the OECD's CbCR implementation package, to facilitate its implementation of this BEPS minimum standard.

Multinationals having global revenues of EUR 750 million or more are required to file annual reports to tax authorities at three levels. The first element (which taxpayers are generally required to provide for fiscal 2016) is a 'country-by-country report' that gives a detailed picture of business results for each country where the business operates (including things like number of employees, revenues, pre-tax profit, and taxes paid). Companies will also need to give an overall picture of their global business, aggregating data from all of the countries where one operates. In addition, companies will be required to report separately to each country where they operate with business and tax information about the local entities and operations in that country.

The disclosure of this business information will be accessible, through automatic information exchanges, to tax authorities wherever they have a presence (subject to certain conditions). Groups will need to consider how to explain their operational purpose of business arrangements, which may include tax advantages.

The deadline for submission of the CBCR report to the Guernsey tax authority is within 12 months of the end of the accounting period to which it relates.

Where there is no reporting obligation, there is a requirement to notify the Director of Guernsey Income Tax of the name of the entity that is undertaking the reporting and to provide certain other information. An entity must notify the Director by 30 November in the year following the last day of the accounting period if it is a constituent entity.

Hungary

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Significant developments

As of 1 January 2017, the corporate income tax (CIT) rate is 9% of the positive CIT base.

As of 1 January 2017, the following significant changes were introduced to the Hungarian tax system. The changes are mainly related to CIT, personal income taxes (PITs) and related contributions, and indirect taxes.

Corporate income tax (CIT)

- The advertisement tax rate has been changed to 0% on up to 100 million Hungarian forint (HUF) of the tax base and 5.3% on over HUF 100 million of the tax base.
- As of 1 July 2017, the advertisement tax rate is increased to 7.5%, the tax liability is discontinued on self-promotion, and the taxes paid in previous years will be refunded.
- International Financial Reporting Standards (IFRS) has been adopted in Hungary. For many companies, the mandatory adoption is postponed from 2017 to 2018.

Local business tax (LBT)

As of 1 January 2017, when deducting the cost of goods sold and the value of intermediated services from their net sales revenue, companies that qualify as related parties under the Corporate Tax Act are only required to determine their local tax base from consolidated data if the related-party relationship was formed after 1 October 2016 as a result of a demerger.

Value-added tax (VAT)

Extending the scope of the reduced VAT rate

On 1 January 2017, the VAT rate on certain goods (poultry, eggs, and fresh milk) was reduced to 5%, and the 27% VAT rate on internet services was reduced to 18%. The catering sector will also benefit from VAT rate cuts: on 1 January 2017, the 27% tax rate was reduced to 18%, and will be reduced once again from 1 January 2018 to 5%, on meals provided and certain non-alcoholic beverages prepared locally in bars and restaurants.

Online data supply

As of 1 January 2017, VAT taxpayers are required to supply data online to the tax authority on invoices that are issued using invoicing software and have a VAT content of at least HUF 100,000. In the first half of 2017, taxpayers may supply such data voluntarily, but will be required to meet this obligation from 1 July 2017.

Online connection of vending machines to the National Tax and Customs Authority
As of 1 January 2017, vending machines (e.g. beverage vending machines) must be equipped with a monitoring device that facilitates data reporting to the tax authority. The amended legislation allows the tax authority to monitor vending machines through telecommunications equipment and to perform direct data queries.

Excise duties

- All consumables that are, even partly, made of tobacco, as well as refill liquids for electronic cigarettes, also qualify as excisable tobacco products.
- The excise duty for tobacco products increased. The duty rates for each product category is as follows:
  - For cigarettes, the previous excise duty rate was HUF 15,700 per 1,000 cigarettes plus 25% of the retail selling price, but not less than HUF 28,400 per 1,000 cigarettes. This increased to HUF 16,200 per 1,000 cigarettes plus 25% of the retail selling price, but not less than HUF 28,800 per 1,000 cigarettes.
  - For cigars and cigarillos, the previous duty rate was 14% of the retail price, but not less than HUF 4,060 per 1,000 pieces. This increased to 14% of the retail price, but not less than HUF 4,120 per 1,000 pieces.
  - For refill liquids, the excise duty is HUF 55 per millilitre.
  - For other consumables that contain tobacco or are consumed with tobacco, the excise duty is HUF 10 per unit for disposable products, and HUF 70 per millilitre for liquids.
  - The excise duty and VAT on tobacco products will have to be paid in accordance with the general rules, and not when receiving the tax stamp.
- As new excise regulations will come into force as of 1 April 2017, the legislation prescribes the record keeping and reporting obligations for holders of excise authorisations.
- For fine-cut tobacco and other smoking tobaccos, the excise duty increased to HUF 16,200 per kilogram from HUF 15,100 per kilogram.

Public health product tax

- The taxable product range of flavoured beers and alcoholic beverages was extended to include products that, fully or partly, contain sweeteners.
- The definition of alcohol products with herbs, which are exempt from the tax, was modified to prescribe, among others, the specific rate of herbs that has to be added to the alcohol.

Environmental protection product fee
The scope of motor vehicles that are subject to a flat fee rate was extended to buses and motor vehicles for the transport of goods.

The requirements on individual waste management was reduced so it is no longer required to collect waste generated from taxable products from end customers only.

Special tax of financial institutions
Decreasing tax rates and a new tax base have been implemented in connection with the special tax of financial institutions.

Social tax

As of 1 January 2017, the social tax rate was reduced to 22%, and will be reduced to 20% a year later. In line with the amendment, there are also several changes that affect the rate of social tax allowances. Instead of the allowances of 27%, 13.5%, or 14.5% available previously, the rate of the social tax allowance will be equal to the tax rate or 50% thereof. This will reduce employers' payroll expenses by 3.9%.

Taxes on corporate income

Resident taxpayers are subject to all-inclusive or unlimited CIT liability. Non-residents are subject to CIT on their income from their Hungarian branch's business activities.

The CIT rate is 9% of a positive CIT base from 1 January 2017.

Minimum tax base

If a company's CIT base or the pre-tax profit, whichever is higher, is less than 2% of its total revenues reduced by the income of its foreign permanent establishments (PEs) (i.e. the 'minimum tax base'), the company can choose to file a declaration and pay CIT according to the general provisions or to pay CIT on its minimum tax base.

Real estate holding companies

The owner of a real estate holding company is subject to Hungarian CIT in the case of alienation or withdrawal of its shares in the real estate holding company.

The tax base of the owner of a real estate holding company in cases of share transfers and share capital decreases is the positive amount of the consideration minus the acquisition price of the shares less the costs of acquisition and of administration. The tax rate is 9%.

A company and its related parties are defined as real estate holding companies if at least 75% of the book value of their assets is domestic real estate and if they have a foreign shareholder that is not resident in a country that has a double tax treaty (DTT) with Hungary or the treaty allows capital gains to be taxed in Hungary.

Please note that the definition of the payer for CIT purposes is very different from the definition used for stamp duty purposes.

Energy suppliers' income tax

Mines, energy producers, and energy distribution system operators are subject to energy suppliers' income tax. The scope of the definition of 'energy suppliers' also includes universal suppliers and authorised distributors of electricity and natural gas.

The base of energy suppliers' income tax is similar to the CIT base, with certain additional adjustments. The tax rate is 31%.

If the energy supplier entity possesses a development tax incentive or a tax incentive in relation to investments aiming for energy efficiency (*see the Tax credits and incentives section*), then it is possible to claim this tax incentive for up to 50% of energy suppliers' income tax liability as well. Additionally, the settled amount of mining royalty can be claimed for up to HUF 1.5 billion from energy suppliers' income tax liability.

From an accounting point of view, energy suppliers' income tax falls under the same treatment as CIT.

Advertisement tax

Advertisement tax applies to certain advertising services, including advertising services made available over the internet. The tax applies in respect of advertisements that are published in Hungarian, or where the advertisement is not published in Hungarian but is available on a website/webpage that is mainly in Hungarian.

In the case of primary taxpayers (*see below*), the tax base is based on net sales revenue. Till an amending act in June 2017, the advertising tax rate was 0% of the tax base up to HUF 100 million, and 5.3% above HUF 100 million. The amending act set a unified tax rate of 0% in the period from 1 January 2017 to 30 June 2017; however, from 1 July 2017, it is increased to 7.5%, while the tax base up to HUF 100 million, under certain conditions, is tax free. Furthermore, the amending act stipulates that taxes declared and paid by the taxpayers for tax years ended before 30 June 2017 are considered overpayments defined by the Act on the Rules of Taxation; consequently, the taxpayers can request a claim on refund, also defined in the Act on the Rules of Taxation, from 1 July 2017.

The amending act discontinues the tax liability on self-promotion as, consequently, after the law came into force, advertisement tax liability arises only for publishing as business activity. The amending act will come into force after the day of its proclamation, while the new tax rate will come into force on 1 July 2017.

Primary and secondary taxpayers

The company providing the advertising service is the primary taxpayer, and the progressive rates above apply to the company's sales that are within the scope of the tax. The tax is not a withholding tax (WHT), and the customer is not obligated to withhold tax on payments made to the advertising service provider.

The person/company that orders and pays for the advertisement is considered to be the secondary taxpayer. Secondary tax obligation does not arise if:

- the secondary taxpayers are in possession of a declaration from the primary taxpayers stating that they are the primary taxpayers and that they will fulfil their obligations under the regulation
- the primary taxpayers apply for a registration to the database of the Hungarian tax authority, stating that they are primary taxpayers and that they fulfil their obligations on time or they do not have advertisement tax payment obligation in the tax year because they will not exceed the HUF 100 million threshold, or
- the secondary taxpayers notify the tax authority with the name of the primary taxpayer and the value of the services and they are able to prove that they requested the declaration but have not received it.

Otherwise, the secondary taxpayer is subject to a tax equivalent to 5% of the value of the advertising fee (provided that the secondary taxpayer spends at least HUF 2.5 million in a month for advertisement services). In addition, such advertisement expense would not be a deductible CIT expense for the secondary taxpayer when filing its CIT return (in cases when such yearly spending exceeds HUF 30 million).

The amended legislation makes it clear that for online advertisements, the person or organisation that has right of disposal over the advertising space qualifies as the publisher of the advertisement (i.e. the subject of the advertising tax). In addition, the obligation to determine the advertising tax base from the consolidated data of related companies no longer applies.

Furthermore, as of 1 January 2017, if a publisher of advertisements fails to comply with its obligation to make a declaration to the advertiser in relation to advertising tax, it must, on request, fulfil that obligation to the national tax authority. Failure to comply with such a request will attract a default fine of HUF 500,000. Repeated failure to comply in respect of the same advertiser will be subject to a further default fine of HUF 10 million, and any further instance of non-compliance will be subject to a fine equalling triple the amount of the previous fine. Failure to comply with the registration obligation will incur fines according to the same regime. Further, in the case of failure to file a return on advertisement taxes, the tax authority will levy a deemed tax of HUF 3 billion, which the taxpayer concerned may challenge by submitting contrary evidence within a statutory deadline of 30 days.

Local business tax (LBT)

All municipalities are entitled to levy LBT. LBT is deductible for Hungarian CIT purposes and is not normally treated as ‘income tax’ in the application of the tax treaties.

The LBT base is the net sales revenue reduced by the cost of goods sold, subcontractors’ work, the costs of materials, mediated services, and research and development (R&D) costs. However, taxpayers are only allowed to deduct from the LBT base part of the cost of goods sold and part of the value of mediated services as calculated based on brackets determined in relation to their annual sales revenues. In the case of related parties, an aggregated LBT base has to be determined if the ratio of the sum of the cost of goods sold and mediated services to the net sales revenue exceeds 50%. This ratio has to be examined separately at the level of each company, and only those related party tax bases that meet the 50% condition have to be aggregated.

As of 1 January 2017, when deducting the cost of goods sold and the value of intermediated services from their net sales revenue, companies that qualify as related parties under the Corporate Tax Act are only required to determine their local tax base from consolidated data if the related-party relationship was formed after 1 October 2016 as a result of a demerger.

General service fees, depreciation, and labour costs are typically not deductible for LBT purposes. 100% of royalty, interest, or dividend income and the LBT base of a foreign PE of a Hungarian company are exempt from LBT.

The amended rules allow credit institutions and financial enterprises that have opted for gross settlement when determining their net revenue to deduct from their LBT base the amount of purchased receivables accounted against expenditure on other financial services. The selected option can be applied retroactively to the LBT bases of tax years beginning in 2015 and 2016.

Furthermore, the amendments have reduced the gap between the rules on adjustments to the LBT base (royalty, R&D) and the corporate tax base. As a result, effective from 1 July 2016, the definition of royalty was made narrower.

In addition, from 1 January 2017, only amounts deducted from the corporate tax base may also be deducted from the LBT base as direct cost of basic research, applied research, and experimental development. As for the definition of royalty, a transitional provision permits application of the previous rules until the tax year ending on or before 30 June 2021.

The LBT rate may differ from municipality to municipality but is capped at 2% by law.

Innovation contribution

Companies defined as such in the Accounting Act, except for small and medium-sized enterprises and branches, are also subject to an innovation contribution. The tax base of the innovation contribution is the same as the LBT base. The tax rate is 0.3%.

Corporate residence

Corporations are residents for CIT purposes if they are incorporated in Hungary, although foreign corporations may also be deemed to be Hungarian residents for CIT purposes if their place of effective management is in Hungary. Tax residents also include the Hungarian trust asset (*see Hungarian trust in the Other issues section for further information*).

Foreign entities may carry out business through resident corporations or through branch offices (PEs for tax purposes). Commercial representative offices may be opened for auxiliary activities that do not create a taxable presence.

Permanent establishment (PE)

Hungary treats PEs as 'distinct and separate enterprises', and profit is attributed to a PE based on the principles set out in the Organisation for Economic Co-operation and Development (OECD) guidelines.

In the CIT Act, a PE is defined as fixed business premises (machinery or equipment) through which the entrepreneurial activity of an enterprise is partly or wholly carried on, regardless of the title of the taxpayer to those premises. A PE may consist of any of the following: a place of management; offices, including representative offices registered in Hungary; factories and workshops; and mines, crude oil or natural gas wells, quarries, or other places from which natural resources are extracted.

Construction sites (including assembly) and related supervisory activities constitute a PE if they last, in the aggregate, for at least three months in a calendar year. All activities carried out at the same construction site qualify together as a single PE, regardless of whether they are based on separate contracts or were ordered by different persons. Construction sites are defined as sites that represent a unit for economic, business, and geographical purposes.

PEs are also created by the direct utilisation of natural resources by a foreign person. A foreign person (except from real estate funds established in a European Economic Area [EEA] member state and not being subject to any tax that may be substituted for CIT) is deemed to have a PE in Hungary if it utilises natural resources or immovable property for consideration, including the alienation or capital contribution of any rights related to the immovable property or natural resources.

A non-resident enterprise is considered to have a PE with respect to activities undertaken on its behalf by another person if its agent is authorised to conclude contracts in Hungary on behalf of the non-resident entity and the agent regularly exercises this right or maintains a stock of goods and products from which it regularly makes deliveries in the name of the non-resident entity.

The insurance of risks occurring in Hungary and insured on behalf of the non-resident person by another person constitutes a PE of the foreign insurer, except for reinsurance activities.

Furthermore, as mentioned above, a foreign taxpayer must also be treated as having a PE if it has a Hungarian branch.

The definition of a PE does not include the following:

- Establishments used solely for the purpose of storing and presenting the goods or products of a non-resident person.
- The stockpiling of goods and products of a non-resident person solely for the purpose of storing, presenting, or processing by another person.
- Establishments used for collecting information, or purchasing goods and products, exclusively for the non-resident person.
- Establishments used for other activities of a preparatory or auxiliary nature.
- Activities of independent agents, provided they are acting in their ordinary course of business.

Note that a different definition of a PE is applicable for LBTs, and no definition is available for special taxes.

Other taxes

Value-added tax (VAT)

VAT is payable on sales of goods and the supply of services. VAT is also payable on the importation of goods, on the intra-Community acquisitions of goods, and on the purchase of certain services provided to Hungarian taxable persons by foreign taxable persons.

VAT rates

The general VAT rate is 27%.

A reduced VAT rate of 18% is applicable for some products (e.g. milk, certain dairy products, products made from cereals, flour, and starch). The 18% VAT rate is also applicable to commercial accommodation services and to services that grant admission to musical and dancing events, for internet access services, and for local dining services (i.e. meals and non-alcoholic beverages prepared locally in bars and restaurants).

A reduced VAT rate of 5% is available for new residential property, certain pharmaceutical products, audio books, printed books, newspapers, district heating services, certain live performance activities, certain products of the animal sector (e.g. live and processed large animals, such as pig, sheep, goats, cattle, poultry, eggs), and fresh milk.

Exempted, out of scope transactions

Certain services are exempt from VAT, including, but not limited to, medical, cultural, sporting, and educational services provided as public services. VAT exemption is also available for financial and insurance services. The intra-Community supplies of goods, services, and exports are also treated as exempt transactions.

Generally, the supply of a building or parts of a building, the land on which it stands, and the rental of real estate are VAT exempted. An option is available to apply VAT on the supply or rental of this real estate. VAT exemption cannot be applied to the supply of building plots.

There are some special transactions that may be out of scope of the Hungarian VAT, provided that special conditions are met. These include the acquisition of any contributions in kind, the acquisition of any assets by way of succession, and the transfer of business as a going concern.

Reverse-charge mechanism

A domestic reverse charge applies between Hungarian taxable persons for the following activities:

- Services related to immovable property (e.g. construction, maintenance).
- Sales of certain steel products.
- Sales of waste materials.
- Sales of carbon quotas.
- Sales of real estate and land if the application of VAT was chosen.
- Sales of certain agricultural products (e.g. maize, wheat, barley, rye).
- Leasing staff or making available personnel and the use of student-work placement offices.

VAT recovery

VAT deduction is available only for the business-related element of purchases that were made partially for non-business purposes.

If a taxpayer has a negative VAT balance in a VAT period, the amount can be recovered, provided that the VAT balance reaches or exceeds an absolute value of HUF 1 million for monthly filers, HUF 250,000 for quarterly filers, or HUF 50,000 for annual filers.

As a general rule, the deadline for remitting VAT reclaims is 75 days, irrespective of the amount concerned. However, if all incoming invoices, regarding which the VAT was deducted in the VAT return, are settled (paid fully to the suppliers) until the due date of the related VAT return, a 45-day deadline can be applied.

Directive for refunds of foreign taxable persons

Taxable persons with their establishment in a European Union (EU) country, other than Hungary, or in Switzerland or Lichtenstein, can recover local VAT. The refund applications have to be submitted electronically. Reclaim requests should be submitted to the tax authority of the country where the EU-registered taxable person is established.

Reporting obligations

All types of intra-Community transactions have to be reported in the periodic Intra-Community List in Hungary.

Taxpayers registered in Hungary have to submit domestic recapitulative statements about those transactions where the VAT amount reaches or exceeds HUF 1 million together with the basic data of the related business partner. In respect of the incoming invoices, those cases also have to be considered and included where the sum of the VAT on all transactions carried out by the same partner in a given VAT period reaches or exceeds HUF 1 million. Taxpayers liable to file the statement may opt to report their transactions even below this threshold to the tax authority. If a domestic recapitulative statement has to be prepared (i.e. there are transactions with a VAT amount higher than the referred threshold), the VAT return can only be submitted in electronic form.

Based on the current regulation, it is expected that, from 1 July 2017, domestic recapitulative statements must be filed only for invoices received from domestic taxpayers and invoices issued on a pre-printed standard form whose VAT content reaches or exceeds HUF 100,000. Further to this, from 1 July 2017, taxpayers will be required to supply data to the Hungarian tax authority through an online connection for invoices issued using invoicing software whose VAT content reaches or exceeds HUF 100,000.

Further amendments of the relevant rules are expected in the near future.

An Electronic Road Freight Control System (EKAER) number needs to be requested from the tax authority for specific road shipments. The taxpayers who do not fulfil this reporting obligation can face serious consequences (e.g. the tax authority is entitled to levy a default penalty of up to 40% of the value of goods transported, and also to seize the goods).

Group taxation

The VAT Act allows all companies that have established business presences in Hungary and qualify as related enterprises to form a VAT group. The essence of a VAT group is that its members act under a single VAT number in their transactions (i.e. they issue invoices under a shared VAT number and submit a single, joint tax return) and the supplies of products and services between the members do not qualify as business transactions from a VAT perspective.

Customs duties

Hungarian customs legislation and policies have been fully harmonised with EU legislation.

As of 1 January 2017, the EU customs legislation comprises the following main regulations:

- Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code.
- Commission Delegated Regulation (EU) 2015/2446 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code.
- Commission Implementing Regulation (EU) 2015/2447 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code.
- Commission Delegated Regulation (EU) 2016/341 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards transitional rules for certain provisions of the Union Customs Code where the relevant

electronic systems are not yet operational and amending Delegated Regulation (EU) 2015/2446.
- Council Regulation 1186/2009/EEC setting up a Community system of reliefs from customs duty.
- Council Regulation 2658/87/EEC on the tariff and statistical nomenclature and on the Common Customs Tariff.

As a general rule, non-compliance resulting in a customs shortfall attract a customs penalty of 50% of the customs duty deficit.

Excise duties

The following goods are subject to excise duty:

- Mineral oils.
- Alcohol and alcoholic beverages. Any product with an alcohol content of 1.2% or more by volume qualifies as an alcohol product.
- Beers.
- Wines.
- Sparkling wines.
- Intermediate alcoholic products.
- Tobacco products.

As of 1 January 2017, the excise duty rates are as follows:

- Mineral oils: HUF 110,350 to HUF 129,200 per thousand litres or HUF 4,655 to HUF 116,000 per thousand kilograms, depending on the world market price of crude oil and on the type of mineral oil.
- Alcohol products: HUF 333,385 per hectolitre of pure alcohol. Special rules are applicable to spirits manufactured in private distilleries and contract distillation.
- Beer: HUF 1,620 per alcohol degree and per hectolitre, HUF 810 per alcohol degree and per hectolitre for beer produced in a micro-brewery.
- Wines: HUF 0 for grape wines and for certain mixtures of grape wines and sparkling water; HUF 9,870 per hectolitre for wines made from other types of fruit.
- Sparkling wines: HUF 16,460 per hectolitre.
- Intermediate alcoholic products: HUF 25,520 per hectolitre.
- Cigarettes: HUF 16,200 per thousand cigarettes plus 25% of the retail sale price, but a minimum of HUF 28,800 per thousand cigarettes. The tax base per cigarette also depends on the length of the cigarette (without filter). It is double if the length of the cigarette is 8 cm to 11 cm, triple if the length is 11 cm to 14 cm, and so on.
- Cigars and cigarillos: 14% of the retail price, but a minimum of HUF 4,120 per thousand cigars or cigarillos.
- Fine-cut tobacco: HUF 16,200 per kilogram.
- Other tobacco: HUF 16,200 per kilogram.
- Refill liquid: HUF 55 per millilitre.
- Other consumables that contain tobacco or are consumed with tobacco: HUF 10 per each tobacco containing product or products consumed along with tobacco products for single use, HUF 70 for liquid per millilitre.

The Customs Body of the National Tax and Customs Authority is responsible for excise duty (and municipal tax authorities for the excise duty of private distillers). The European Union's excise duty rules apply in Hungary.

Property and land taxes

Hungarian municipalities have the right to levy property tax and land tax at their own discretion until the below caps are reached.

Property tax

The owner of a building is subject to property tax liability annually on the first day of the calendar year.

The local government can determine the tax base in either of the following ways:

- The net floor space of the building expressed in square metres, with a maximum tax rate of HUF 1,100 per square metre.
- The adjusted market value of the building, with a maximum tax rate of 3.6% of the adjusted market value.

Land tax

The owner of land is subject to land tax liability annually on the first day of the calendar year. Undeveloped plots of land situated within the area of jurisdiction of a local government, including peripheries, are subject to this tax. The local government can determine the tax base in either of the following ways:

- The actual area of the plot expressed in square metres, with a maximum tax rate of HUF 200 per square metre.
- The adjusted market value of the plot, with a maximum tax rate of 3% of the adjusted market value.

Stamp duties

The most common types of stamp duty are gift duty and duty on transfers of property for consideration. Stamp duty is levied on movable and immovable property and property rights if they were acquired in Hungary, unless an international agreement rules otherwise.

Gift duty

Gift duty arises on the date when a contract concerning a gift is concluded.

Transfers of movable property, immovable property, and property rights without consideration are subject to gift duty. In these cases, however, gift duty is only incurred if the transaction was formally documented; except for movable property with a market value of more than HUF 150,000, where gift duty must be paid in any event.

The base of gift duty is the net value of the gift, which is the market value minus any liabilities related to the gift. The general duty rates vary, depending on the type of property: 9% on residential property and 18% on other assets. In general, the transaction shall be reported to the state tax authority within 30 days.

Transfers of movable assets without consideration and acquisitions of claims without consideration, including waivers of claims and assumptions of debts, are exempt from gift duty, provided that the recipient is a company. However, this exemption only applies if in the country where the non-resident beneficiary is based, both the rate of the tax corresponding to the corporate tax and the rate of the tax on the sale of the shareholding are no less than 10%. The same conditions apply to the exemption of preferential exchange of shareholdings, preferential asset transfer, and transfer of assets between related parties.

Duty on transfer of property for consideration
The obligation to pay duty on the transfer of movable and immovable property for consideration arises on the date when the contract is concluded.

Transfer of real estate, property rights, and the transfer of companies that own domestic real estate are subject to stamp duty. In this latter case, stamp duty only applies for acquisitions of direct or indirect participations (stocks, shares, co-operative shares, investor shares, converted investor shares) of at least 75% in a company that owns domestic real estate. For stamp duty purposes, a company that owns domestic real estate is a company (i) in which the book value of the domestic real estate represents at least 75% of the assets or (ii) that holds at least 75% of the shares of another company in which the book value of the domestic real estate represents at least 75% of the assets. Note that for classification purposes, liquid assets, receivables, prepaid expenses, and accrued income have to be disregarded when determining the 75% ratio. The stamp duty for the transfer of real estate and the transfer of companies that own domestic real estate is 4% up to HUF 1 billion and 2% of the amount exceeding HUF 1 billion, up to a maximum of HUF 200 million per real estate. As of 1 January 2017, in the case of real estate agents, the preferential 2% property transfer duty can only be applicable if they agree to resell the real estate to a buyer or lessee within two years. Otherwise, the duty is 3%.

There are special rules for real estate trading companies and financial leasing service providers. Under certain circumstances, exemptions are available more generally.

Stamp duties are also levied on certain court procedures (e.g. Court of Registration) and on submissions to certain authorities (e.g. appeals to the tax authority). Stamp duty is, for instance, levied in an amount of:

- HUF 100,000 on the registration of a private stock company
- Free of charge on the registration of a limited liability company
- HUF 600,000 on the registration of a European company
- HUF 100,000 on the registration of any other entity with legal personality (except from European companies)
- HUF 50,000 on the registration of a branch office, and
- HUF 50,000 on the registration of a representative office.

Registration tax
Registration tax is charged on passenger cars, motor homes, and motorcycles before they can be registered and put into service in Hungary. The registration tax is also payable by fleet operators. The duty is payable with the first domestic registration, import, intra-Community purchase, or in the case of a conversion.

The registration tax rate is applied as follows:

- Passenger cars: HUF 45,000 to HUF 4.8 million, depending on the technical features of vehicles (cc, engine type) and environmental classification.
- Hybrid cars: HUF 76,000.
- Purely electrical vehicles, plug-in hybrid electrical vehicles, increased range plug-in hybrid electrical vehicles, and zero-emission vehicles: HUF 0.
- Motorcycles: HUF 20,000 to HUF 230,000, depending on technical features of the motorcycles (cc).

The registration tax is levied by the Customs Body of the National Tax and Customs Authority.

Employment-related tax and social security contributions (social tax) payable by employers

The social tax base is the gross income paid to the employee. The tax rate is 22%.

The rate of training fund contribution on employment income is 1.5%. The tax base is the gross income paid to the employee.

Mining royalty

Mineral resources and geothermal energy, at the places where they are found in nature, are state property and subject to concession.

The mining company must pay a mining royalty, based on the quantity of the mineral resources extracted under authority permit.

Public health product tax

The first domestic distributor of certain products, as well as the acquirer of goods that are brought from abroad and used for the domestic manufacture of own products that will be sold in Hungary, are liable to pay a product tax. The duty rates are as follows:

- Beverages (depending on sugar content and tariff number): HUF 7 per litre (HUF 200 per litre for syrups and concentrates).
- Energy drink (depending on tariff number, methyl-xanthine, and taurine content): HUF 40 or HUF 250 per litre.
- Cocoa powder with added sugar (depending on tariff number, sugar, and cocoa content): HUF 70 per kilogram.
- Other pre-packed product with added sugar (depending on tariff number, sugar, honey, and cocoa content): HUF 130 per kilogram.
- Salty snacks (depending on tariff number and salt content): HUF 250 per kilogram.
- Seasonings (depending on tariff number and salt content): HUF 250 per kilogram.
- Flavoured beer and alcoholic beverages (depending on tariff number and sugar or sweetener content): HUF 20 per litre.
- Fruit jam (depending on tariff number and sugar content): HUF 500 per kilogram.
- Alcoholic drinks (depending on tariff number and herb content): HUF 20 to HUF 900 per litre.

Taxpayers are allowed to deduct up to 10% of their tax liability to finance ‘health promotion programmes’.

Environmental protection product fee

The following products are subject to the environmental protection product fee: other crude oil products, tyres, packaging materials, batteries, commercial printing paper, other plastic products, other chemical products (soaps, detergents, cosmetics), printing or copy paper for office use, and electrical and electronic products (based on customs tariff numbers applicable on 1 January 2010).

The following entities are liable to pay the product fee:

- The first domestic distributor or user for own purposes.

- In the case of domestically manufactured other crude oil products, the first buyer from the first domestic distributor or user for own purposes.
- In the case of toll manufacturing, the party that orders the toll manufacturing.

Product fee rates from 1 January 2017 are as follows:

- Tyres: HUF 57 per kilogram.
- Packaging materials: HUF 19 to HUF 1,900 per kilogram.
- Commercial packaging materials (solely metal packaging of beverages): HUF 304 per kilogram.
- Other crude oil products: HUF 114 per kilogram.
- Batteries: HUF 57 per kilogram.
- Paper-based advertisement materials: HUF 85 per kilogram.
- Electrical and electronic products: HUF 57 to HUF 304 per kilogram.
- Printing or copy paper for office use: HUF 19 per kilogram.
- Other plastic products: HUF 1,900 per kilogram.
- Other chemical products: HUF 11 to HUF 57 per kilogram.

The Tax Body of the National Tax and Customs Authority controls the payment and reporting of the product fee and carries out product fee inspections. The product fee is self-assessed. The product fee returns must be submitted quarterly to the tax authority via its electronic system. An advancement payment is payable for the fourth quarter.

The product fee penalty is generally 100% of the product fee shortfall in cases of non-payment or underpayment.

Environmental load charges
Environmental pollution charges were introduced to protect the natural environment, to reduce its impairment, to encourage the users of the environment to engage in activities aimed at the preservation of the natural environment, and to provide funding from the central budget for environmental protection and nature preservation.

Emitting entities liable to pay charges include those who operate point-source emitters subject to registration, pursue activities subject to a water right permit, or who do not use available public drainage systems and dispose of their sewage under a water right permit or a permit from the local water management authorities.

Qualifying materials include sulphur dioxide, nitrogen oxides, mercury, phosphorous, cyanides, and others.

The load charge is calculated on the basis of the quantity of emitted materials multiplied by the fee rate (and, in certain cases, by vulnerability and sludge disposal factors, taking into account average concentration). Basically, the amount of the fee payable depends on the hazard level of the emitted material, e.g. HUF 50 per kilogram for sulphur dioxide and HUF 220,000 per kilogram for mercury.

Energy tax
Goods are subject to energy tax at the following rates:

- Electricity: HUF 310.5 per megawatt hour.
- Coal: HUF 2,516 per thousand kilograms.
- Natural gas: HUF 0.3038 per kilowatt-hour.

The following entities are subject to energy tax:

- Energy traders.
- End-users.
- Producers.

The tax is self-assessed, and the Tax Body of the National Tax and Customs Authority is responsible for the related administration procedures, except in the case of imports.

As of 1 April 2017, the energy tax is a part of the excise duties.

Food chain supervision fee

The purpose of the food chain supervision fee is to raise revenue for the operation of a regulatory body tasked with the official supervision of the food chain.

The supervision fee is payable by the following natural persons, legal persons, or unincorporated organisations:

- Persons who place animals on the market that are kept for food production, breeding, or experimental purposes.
- Persons who place food or fodder crops, seeds, plant products, and planting material on the market.
- Registered or authorised food businesses.
- Registered or authorised feed businesses.
- Persons who manufacture or place on the market veterinary medicines or veterinary medicinal products.
- Persons who manufacture or place on the market 'EEC fertiliser' or other products subject to authorisation.
- Persons involved in the handling, use, further processing, and transport of animal by-products or placing derived products on the market.
- Businesses engaged in the transport of live animals.
- Persons operating facilities for the cleaning and disinfection of vehicles used for transport of live animals, isolation facilities for receiving animals from different stocks, livestock loading ramps, assembly centres, trading sites, feeding and watering stations, rest stations, and livestock fairs.
- Persons manufacturing and storing plant propagation material.
- Persons operating a registered or authorised laboratory.
- Persons placing devices on the market that are used for marking animals.

The annual supervision fee is 0.1% of the net sales revenue (excluding excise duty and public health product tax) derived in the preceding year from these activities.

The taxpayers concerned have to comply with their reporting obligation by 31 May. The annual supervision fee is payable in two equal instalments: the first instalment by 31 July, and the second by 31 January.

Telecommunication tax

The telecommunication tax applies to telecommunications service providers. The telecommunication tax rate is HUF 2 per minute for calls made and HUF 2 per message sent for private individuals, and HUF 3 per minute for calls made and HUF 3 per message sent for parties other than private individuals. The monthly ceiling is HUF 700 per number for private individuals and HUF 5,000 per number for entities other than private individuals.

Tax on financial transactions

The scope of the tax on financial transactions includes payment service providers with a registered address or branch office in Hungary, credit institutions entitled to provide foreign currency services, special services intermediaries entitled to provide intermediated foreign currency services, and financial institutions that engage in the granting and negotiation of credit and cash loans but to not qualify as payment service providers.

The financial transaction tax applies to the following payment services:

- Bank transfers.
- Direct debits.
- Postal cash payments.
- Cash payments from payment accounts (including cash withdrawals using a credit card).
- Cash transfers.
- Bank card payments.
- Letters of credit.
- Cashing cheques.
- Foreign currency exchanges.
- Debt repayments.
- Commissions and banking fees.
- Other transactions in which the amount of the transaction is deducted from the payment account credit balance.

If certain conditions are fulfilled, no tax will be payable for transactions such as:

- Technical transfers between accounts held at the same bank.
- For investment services, transfers between the payment account and the client account if the investment service provider is a related party of the financial service provider.
- Payments from limited purpose accounts (long-term investment accounts, voluntary pension accounts, subsidised accounts for minors [START account], and custodial accounts).
- Cash pool related payment transactions within the same financial service provider.
- Transactions between financial service providers (including, among others, financial institutions, investment companies, etc.).
- Payment transactions from social security and family allowance administrative accounts.
- Unapproved (or approved but incorrectly made) payment transactions and their corrections.

In general, the tax base is the amount of the transaction (debit amount, amount paid, amount of currency sold, etc.). In most cases, the tax rate is 0.3% of the transaction but the amount payable may not be more than HUF 6,000 per transaction. This cap is not applicable to transactions in which the duty is payable by the State Treasury or Magyar Posta Zrt, or in case of cash withdrawal. In the case of (card) payment transactions initiated by the payer through the payee, a flat-rate tax of HUF 800 per year is payable. Also, if such payment includes transactions executed with the use of a contactless payment feature, the duty payable is reduced to HUF 500 per year.

Special tax of financial institutions

In Hungary, there is a special tax levied of financial institutions. The tax base of financial institutions is the amended balance sheet total figure calculated from the financial statements of the second tax year preceding the current tax year. In 2017 and 2018, the tax rate is 0.21% of the tax base exceeding HUF 50 billion. Below HUF 50 billion, the tax rate is 0.15%. Financial institutions are also subject to 30% tax on their profit before taxation; however, this tax liability is deductible from the special tax of financial institutions calculated on the balance sheet totals.

Insurance premium tax

Insurance premium tax is applicable on voluntary vehicle liability insurance policies (CASCO) and on property and casualty insurance policies in Hungary.

The insurance tax should be paid by the insurance companies after the gross insurance premium received on insurance policies insuring risks located in Hungary. Insurance companies subject to the tax include:

- insurance companies headquartered in Hungary
- foreign insurance companies' Hungarian branches, or
- insurance companies providing cross-border insurance services if these entities, which are headquartered abroad, render taxable insurance services in Hungary.

The above-mentioned entities should apply two different tax rates. For voluntary vehicle liability insurance policies, the rate of the tax is 15%; for property and casualty insurance, the rate is 10%.

We note that this tax should be paid neither after the mandatory vehicle liability insurance, nor after life and health insurance.

Accident tax

The base of the accident tax is the yearly fee of compulsory motor vehicle liability insurance. The tax rate is 30%, but the maximum rate shall not be more than HUF 83/day/vehicle.

Branch income

Foreign companies may establish branch offices in Hungary. A branch office is an organisational unit of a foreign company without legal personality, vested with financial autonomy, and registered in the Hungarian companies register as a branch office of the foreign company. The provisions of the Hungarian Accounting Act apply to branch offices, which must prepare reports using double-entry bookkeeping. Statutory audits are obligatory, except for the branches of corporations whose registered office address is in the European Union.

A branch office is regarded as established when it has been entered into the companies register. A branch office may start operating once the application for registering the branch office has been submitted to the Court of Registration, provided that it indicates 'under registration' on its corporate correspondence. Until a branch has been registered, it cannot carry out any activities that are subject to official permission. A branch office is considered dissolved upon its removal from the companies register.

Branch offices are treated as PEs for taxation purposes. They have to determine their tax base according to the general rules applicable to Hungarian companies. The profit for the year (calculated on the basis of the Hungarian accounting system and adjusted by specific provisions of the Corporate Tax and Dividend Tax Act or CDTA) is subject to CIT of 9%. The definition of PE is similar to that in the tax treaties but somewhat broader. For treaty countries, the respective treaty definition applies.

A foreign company's CIT base is determined for all its domestic PEs (except for branches) collectively and for its branches separately. A branch should account for costs and revenues as if it were independent from its foreign parent company.

For a Hungarian PE, earnings before taxes are reduced by cumulated administrative costs incurred proportionately at the headquarters and any of its PEs, with the maximum proportion defined as the revenues of the PE compared to all revenues of the foreign company.

However, if there is a treaty between Hungary and the other country, the provisions of the treaty have priority over domestic law. Consequently, the provisions of the treaty have to be followed in the first instance, and all costs related to the activity of the branch have to be allocated to the branch, without the above restrictions in domestic law, and all profit realised with respect to the branch must also be allocated to the branch. The allocation method must be consistent from year to year, unless there is a good reason for changing it.

The foreign parent must continuously provide the assets and funds required for the operation of the branch office and the settlement of its liabilities. The employees of a branch office are in a legal relationship with the foreign company, and the foreign parent exercises employer's rights. A branch is considered to be related to its parent company/headquarters. Consequently, the prices used in inter-company transactions have to be at arm's length, and the transfer pricing documentation requirements have to be taken into consideration.

Income determination

The CIT base should be calculated by modifying the accounting pre-tax profit by adjustments and deductions as provided by the CDTA.

Inventory valuation
Inventories are generally valued at their historical cost unless their fair market value is significantly lower than their book value, in which case the fair market value should be recorded. Cost may be determined on the basis of first in first out (FIFO) or average cost.

Capital gains
Capital gains (losses) are treated as ordinary income (losses) for tax purposes. The gain on the sale of depreciable assets equals the sales revenue reduced by the net value of the asset for CIT purposes.

If a participation (of at least 10%) is registered within 75 days, or an intangible asset is registered within 60 days, of acquisition and held continuously for at least one year, capital gains from the sale or contribution in kind of the participation, or the intangible asset, are exempt from CIT in general. Any additional acquisitions in the case of a registered participation may also be registered, provided that the 10% participation was already registered.

Stock transactions

Shareholders of a real estate holding company are also subject to CIT on their income from the alienation of the shares in the real estate holding company. Transfers of direct or indirect participations in companies that own real estate may be subject to CIT.

Dividend income

Except in the case of controlled foreign companies (CFCs) (*see the Group taxation section*), dividends received and accounted for as income in the given tax year are tax-free.

Interest income

No specific provision exists in Hungary for interest income; consequently, interest income is taxable for CIT purposes.

Intellectual property (IP) related income

The IP regime has recently changed in Hungary. In the transition period, both the old and new regime may be applicable, as follows:

- The old regime is applicable to IP acquired or produced till 1 January 2016.
- The new regime is applicable to IP acquired or produced after 30 June 2016.
- In the case of IP acquired or produced between 1 January 2016 and 30 June 2016, special rules apply.
- The old IP regime cannot be used after 30 June 2021.

Under the old IP regime, royalty includes the income derived from (i) the licensing of the use or exploitation of patents, industrial design, and know-how; (ii) the right of use of trademarks, trade names, and business secrets; (iii) permission to use copyrights and similar rights attached to protected work; and (iv) transfers of the property described above (except for trademarks, trade names, and business secrets).

Under the new IP regime, royalty includes the profit gained through (i) the licensing of the use or exploitation of patents, utility models, plant variety rights, supplementary protection certificates, patented topography of micro-electronic semiconductors or a copyrighted software, or from registration as an orphan medicinal product (together referred to as 'exclusive rights'); (ii) the sale of exclusive rights, or from their de-recognition as non-monetary, in-kind contribution; and (iii) the supply of goods and services connected to the value of exclusive rights.

Royalty income

50% of the gain (income in case of the old regime) arising from royalty is exempt from tax, but up to 50% of the profit before tax. Based on the new regime, further limitations apply (Nexus approach) to the IP asset related tax incentives if the IP asset is acquired from a related party or R&D services to produce the IP asset are rendered by a related party.

IP reserves

Gain on sale of a non-reported IP asset that is transferred to tied-up reserves and used within five years (three years in the case of the old regime) for the acquisition of another IP asset generating royalty income is exempt from tax.

Reported IP
Gain on sale of a reported IP asset is exempt from tax. *The details of the exemption are described under Capital gains above.*

Development reserve
50% of pre-tax profit may be assigned as development reserve. The maximum value of the reserve is HUF 500 million. In general, the period within which the development tax reserve can be released, consistently with the cost of investment, is four years.

Unrealised exchange gains/losses
Tax deferral may be chosen for unrealised exchange gains/losses.

Foreign income
Taxpayers resident in Hungary and foreign entrepreneurs must calculate their CIT base exclusive of any income that is subject to taxation abroad if so prescribed by an international treaty. In any other case, a foreign tax credit is available for income taxes paid abroad (*see Foreign tax credit in the Tax credits and incentives section for more information*).

In Hungary, there are no provisions under which income earned abroad may be tax deferred.

Deductions

In general, costs and expenses incurred in relation to the taxpayer's income-generating business activity are deductible for CIT purposes.

Accrued expenses are recognised for taxation purposes in the tax year they affect.

Depreciation and amortisation
Accounting depreciation that is accounted as expenditure, and thus included in the accounting profit, should be added to the CIT base. Tax depreciation calculated according to the CDTA reduces the tax base, even if the tax depreciation is higher than the accounting depreciation. The tax depreciation of tangible assets should be calculated using the straight-line method on the basis of the historical value from the time when the asset was first used for business purposes.

Examples of tax depreciation rates include the following:

Assets	Depreciation rate (%)
Computers and other high-tech machinery	33 or 50
Vehicles	20
Other tangible assets	14.5
Buildings (long-life structure)	2
Rented buildings	5

Assets newly acquired since 2003 can be depreciated at 50% annually; these instruments include, among other items, machinery and IP.

Generally, there is no prescribed amortisation rate for intangibles; the historical value, the residual value, and the useful life should be considered. However, goodwill can be amortised at an annual rate of 10%, provided that the business of the taxable person is in line with its intended purpose and that depreciation of goodwill can also be recognised for accounting purposes. Additionally, extraordinary amortisation might also be recognised for CIT purposes.

In the case of transformations, specific amortisation rules apply.

Organisational and start-up expenses
Companies are not obligated to capitalise the costs of formation/reorganisation. The capitalisation of these costs is at the company's discretion, but the company should comply with its accounting policy. Furthermore, only the direct costs of formation/reorganisation that are not classified as investments or renovations and are likely to be recovered ultimately can be capitalised.

Interest expenses
Interest expenses are deductible if the following conditions are met:

- Interest incurs in relation to the company's profit generating activity.
- Thin capitalisation rules are fulfilled (*see Thin capitalisation in the Group taxation section*).
- Interest is not paid to a CFC.

Bad debt
Under the Accounting Act, bad debts are only deductible for CIT purposes if they are supported by legally valid third-party documents stating that the receivable cannot be collected. Expenses claimed that cannot be enforced in court and expired claims are not deductible for CIT purposes.

In addition to the above, 20% of eligible bad debts are deductible from the CIT base if the debt was not settled within 365 days from the due date.

Charitable contributions
Grants made or assets that are transferred without consideration, as well as liabilities assumed or services provided free of charge, will qualify as business expenses if the taxpayer has a declaration from the recipient stating that the recipient's profit will not be negative without the income received.

Grants will always qualify as non-business expenses if they are provided to a foreign person or foreign resident company.

In the case of film and sports (football, basketball, handball, ice-hockey, and water polo) sponsorship grants, the amount of support is deductible both from the CIT base (as an expense) and from the CIT amount, provided that an official sponsorship certificate is available.

Tax base allowance regarding R&D
A tax base allowance is only applicable for R&D activities if the taxpayer carries out basic research, applied research, or experimental research activities within its own scope of activities.

'R&D activities carried out within the taxpayer's operations' shall mean R&D activities carried out:

- using the taxpayer's own assets and employees, at the taxpayer's risk and benefit
- R&D activities carried out by the taxpayer's employees using the taxpayer's own assets on behalf of others, or
- (joint) R&D activities carried out under an R&D agreement (e.g. cost sharing agreement).

The direct cost of the R&D activity or the amount of depreciation on the research activity (if the cost of R&D activity is capitalised) is deductible when calculating the pre-tax profit. Additionally, an extra deduction is granted from the tax bases in the form of a downward tax base adjustment.

300% of the direct costs of research activity (up to a maximum of HUF 50 million) are deductible from the tax base if the research activity is carried out jointly with a higher education institution, the Hungarian Academy of Sciences, or a research institute established by them.

The same deductibility rule is applicable if a cooperation agreement is concluded with a research institution operating either as a central budgetary organ or as a majority state-owned business organisation.

Taxpayers may also deduct from their CIT base the direct costs of R&D activity carried out with own assets and employees of their related parties if, based on the choice and the declaration of the related party, the deduction was not utilised by the related parties and the R&D also serves the business of the taxpayer who utilises the deduction.

As of June 2016, entities with a negative tax base may claim 4.5% of tax base deductions applied on account of R&D activities as a social tax allowance, subject to meeting the following criteria: deriving at least 40% of total revenues from R&D activities, maintaining at least one trainee position, and having no decrease exceeding 10% in the average statistical headcount of R&D personnel in the tax year. If applied, 50% of the above tax base deduction will be regarded as a loss carryforward already used.

Employee benefit expenses
Employee benefits and the fringe benefit tax payable on them are tax-deductible.

Bribes, 'kickbacks', other illegal payments
Bribes, 'kickbacks', and illegal payments are not recognised as business costs for CIT purposes and are non-deductible from the tax base.

Fines and penalties
Fines and penalties are not deductible for CIT purposes.

Taxes
Taxes are usually deductible for CIT purposes, except for CIT, recoverable VAT, and the income tax of energy suppliers and public utility service providers.

Net operating losses

Losses can be carried forward according to the following:

Year the tax loss was generated	Period of utilisation
Before the tax year starting in 2014	Until the tax year including 31 December 2025
During the tax year starting in 2014	Until the tax year including 31 December 2025
During the tax years starting after 2014	During the following five tax years

In the case of acquisition or legal transformation, the company's tax losses carried forward cannot be utilised if:

- the majority of the company's shares are directly/indirectly acquired by an independent entity (an entity who was not one of the company's owners in the preceding two financial years)
- the activity of the company changes significantly in the two years following the transformation, or
- the successor company does not generate any revenue from at least one activity of the predecessor.

Losses carried forward may only be used to offset up to 50% of the tax base calculated without losses carried forward. However, losses carried forward and acquired by the successor company in the course of corporate transformation may be written off in a tax year only in proportion to the ratio of the sales or other revenues gained in the tax year in respect of the continued business activity and the average sales or other revenues gained by the predecessor company in the last three tax years preceding the transformation.

Note that earlier tax losses must be used first (FIFO principle), and the losses of predecessors are also deductible from the successor company's CIT base if the aforementioned conditions are met.

Losses cannot be carried back (except for agricultural companies, who may account for deferred losses by self-revision or by correcting the amount of tax paid in the previous two tax years).

See Tax base allowance regarding R&D above for a new rule in relation to entities with a negative tax base effective as of June 2016.

Payments to foreign affiliates

There is no general restriction on the deductibility of a consideration due to a foreign entity, provided the payment is a justifiable business cost. General anti-avoidance provisions (abuse of law, substance-over-form) may also result in non-deductibility. If the parties are considered to be related parties under the definition of the CDTA, the Hungarian tax office is entitled to adjust the Hungarian party's tax base to reflect the market price (arm's-length price) if the parties did not make the adjustment themselves.

Considerations due for services are only deductible if the actual performance of the services is supported and the Hungarian taxpayer can prove that it benefits from the service.

Thin capitalisation rules may apply to interest on any non-banking debt in excess of three times the equity (*see Thin capitalisation in the Group taxation section*).

The consideration paid to a CFC is not deductible for CIT purposes unless the taxpayer is able to prove and keeps documentation that it serves the purposes of business operations. *For further details on the CFC rules, see the Group taxation section*.

Group taxation

Group taxation is not available for CIT purposes in Hungary. However, in the case of certain taxes (e.g. LBTs), an aggregated tax base has to be determined for related parties if certain conditions are met.

See Value-added tax (VAT) in the Other taxes section for a description of group taxation for VAT purposes.

Transfer pricing

If parties qualify as related parties (as defined in the Hungarian CDTA) and the price applied differs from the arm's-length price, the CIT base must/may be modified by a transfer pricing adjustment. In addition, the foreign PEs of a Hungarian company and the Hungarian head office also qualify as related entities and are subject to transfer pricing regulations.

Taxpayers are obligated to prepare transfer pricing documentation for every transaction between related parties (including in-kind contributions), subject to certain exemptions.

Transfer pricing documentation is not required to be prepared:

- For transactions between a resident taxpayer's PE and a related company if the resident taxpayer under the provisions of an international treaty adjusts the corporate tax base ensuring that it does not include the foreign taxable income.
- For transactions covered by an advanced pricing agreement (APA) issued by the state tax authority.
- If the consideration due for goods or services supplied by a third party is recharged in full to a related party.
- In the case of cash transferred without consideration.
- If the value of the transaction does not exceed HUF 50 million during the tax year.
- In the case of individuals, small or micro enterprises, transactions conducted on the stock exchange, or at an officially set price.

Taxpayers are allowed to prepare consolidated transfer pricing documentation if the consolidation does not jeopardise comparability, and the contracts:

- have the same subject matter and all their terms and conditions are identical and laid down in advance, or
- closely relate to each other.

When determining transfer prices applied between related companies, taxpayers are allowed to apply traditional transaction methods or transactional profit methods. If the above methods are not applicable, companies may use any other method.

Taxpayers are allowed to prepare two types of documentation: standalone or centralised transfer pricing documentation. The documentation does not have to be submitted to the tax authority.

Standalone documentation must include the following:

- Functional and risk analysis.
- Industry and company analyses.
- Economic analysis (including financial analysis, benchmarking analysis, and the process of selecting the most appropriate transfer pricing method).

Centralised transfer pricing documentation must consist of two main parts:

- The core documentation, which includes the standard data for each company within the group that is resident in any EU member state.
- Country-specific documentation, which describes the agreements between the taxpayer and its related parties.

Taxpayers are required to indicate in their CIT returns if they prepare centralised documentation.

In addition to the above, taxpayers are allowed to prepare a so-called simplified documentation for certain low value adding services if criteria set in the Hungarian legislation are met.

As per the CDTA, taxpayers are required to apply the interquartile range when determining and presenting the arm's-length nature of the transfer prices of their inter-company transactions if they meet all of the following conditions:

- The arm's-length price is determined by applying a transfer pricing method other than comparable uncontrolled price (CUP) method.
- The arm's-length price or range is determined based on information from databases that are publicly accessible or verifiable by the tax authority.
- The comparability analysis covers the data of at least ten comparable companies for at least three financial years or the sample range exceeds 15%.

The provisions on interquartile range must first be applied for 2015 tax year documentation purposes.

The transfer pricing documentation has to be available no later than the filing date of the CIT return in any given year; otherwise, the tax authority may assess a default penalty of up to HUF 2 million for missing or incomplete documentation for each year. In the case of a repeat offence, it is up to HUF 4 million for each missing or incomplete documentation. For the repeated offence of the same documentation, the penalty may go up to four times of the penalty levied for the first time.

Country-by-country (CbC) reporting

In addition to the above, Hungary has implemented CbC reporting legislation. The new statutory obligation pertains to Hungarian resident companies that were, in the fiscal year preceding the reporting fiscal year, members of a multinational company group with a total annual consolidated group revenue exceeding 750 million euros (EUR) (or an amount in HUF approximately equivalent to the same, calculated according to the monthly average Hungarian Central Bank exchange rate for January 2015).

Under the general rule, a Hungarian resident ultimate parent entity must file a CbC report with the Hungarian tax authority within 12 months of the last day of its reporting fiscal year. The ultimate parent entity must also notify the tax authority about the last day of the fiscal year and that it is a reporting entity (i.e. an entity required to file a CbC report).

Hungarian resident entities that do not qualify as reporting entities are obligated to notify the tax authority about the name and tax residence of the reporting entity.

The first CbC reports and notifications must be filed for the fiscal year commencing on or after 1 January 2016, within 12 months of the last day of that fiscal year. As a general rule, however, in future fiscal years notifications must be made no later than the last day of the reporting fiscal year. Any change in the information reported must be reported within 30 days of such change occurring.

Failing to submit reports or notifications, late submission, or providing incorrect, false, or incomplete information may be subject to a default fine of up to HUF 20 million.

Thin capitalisation
As a general thin capitalisation rule, interest payable is not a deductible expense for CIT purposes if the amount of a company's outstanding liabilities owed to non-financial institutions exceeds three times the value of the equity.

Debt means the average daily balance of outstanding loans, outstanding debt securities offered privately, bills payable (with the exception of bills payable to suppliers), and any other liability shown in the balance sheet that entails the payment of interest from the taxpayer's profit. Debt includes non-interest bearing loans as well.

Equity means the average daily balance of registered capital, capital reserve, accumulated profit reserve, and tied-up reserve. This means that revaluation reserves and current year profit and loss have to be disregarded when computing the equity for Hungarian thin capitalisation purposes.

Back-to-back arrangements are exempted from the thin capitalisation calculation.

Controlled foreign companies (CFCs)
As of 1 January 2017, the definition of a CFC has been changed.

The new definition and related items adjusting the pre-tax profit/loss rely significantly on the Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market but also shows some differences.

As a general rule, companies that have PEs with a low effective tax rate, and companies that have direct or indirect subsidiaries with a low effective tax rate, can expect adverse tax consequences. Nevertheless, the wording of the legislation raises several interpretation issues, therefore further declaration is needed.

Tax credits and incentives

Foreign tax credit
Foreign tax credit is available for income taxes paid abroad, up to the Hungarian tax payable on the creditable income (at a maximum of 90% of income tax paid abroad).

The foreign income has to be classified by country of origin and revenue type. The deducted tax may not exceed the lesser of either the applicable foreign tax or the applicable tax based on the taxation treaty between Hungary and the given country.

If there is no taxation treaty, 90% of the tax payable abroad is credited against the tax liability, up to a hypothetical tax liability calculated by using the average Hungarian tax rate. Full tax credit is applicable if so described by a tax treaty. The average tax rate is the CIT rate, reduced by the applicable tax allowances, divided by the tax base. Indirect costs should be allocated in proportion to the revenue of the branch office to the total revenue of the whole company.

Development tax incentive

Each development tax incentive may be claimed for a 13-year period (beginning on the completion of the development) on the CIT returns over a maximum period of 16 years from the original application for the incentive. For development incentives that have been submitted to the Ministry for National Economy prior to 1 January 2017, the utilisation period is 10 years from the completion of the investment and 14 years from the application. In any given tax year, the tax incentive is available for up to 80% of the tax payable but is limited, in total, to the state aid intensity ceiling.

Claiming the tax relief is subject to a government decree, based on authorisation by the European Commission, if the total amount of state aid required for the investment project exceeds the amount that can be provided at the same municipality for an investment project with eligible expenses exceeding EUR 100 million. If the investment is below this threshold, taxpayers only need to notify the Ministry for National Economy before starting the investment. However, the beneficiary will also have to obtain prior consent of the European Commission if it has closed down the same or a similar activity in the European Economic Area in the two years preceding the aid application or intends to close down the same or a similar activity elsewhere in the European Economic Area in the two years after the completion of the investment.

Tax incentives are available for investments if:

- the net present value of the investment is at least HUF 3 billion or
- the net present value of the investment is at least HUF 1 billion in certain designated areas and provided that in the four years following the year in which the tax incentive is first used against the tax base:
  - the annual average number of employees has increased by at least 50 compared with either the year before the investment was made or the average number of employees for the three years preceding the investment (by 25 in certain designated areas) or
  - the annual wage costs have increased by 300 times the minimum wage effective on the first day of the tax year (by a multiple of 150 in certain designated areas) compared with either the annual wage costs of the year before the investment was commenced or the average annual wage cost for the three years preceding the investment.

Further incentives may be granted, provided certain criteria are met, to companies that invest:

- at least HUF 100 million in equipment for zoogenic food production
- at least HUF 100 million in environmental protection projects (including energy efficiency)

- at least HUF 100 million in the production of films and videos
- at least HUF 100 million in basic research, applied research, and experimental development projects
- at least HUF 100 million in projects financed by an issue of stock market-quoted shares if (i) the project is started before the last day of the third calendar year following the date of issue, (ii) the total nominal value of the shares issued by the fifth year following the start of the project continuously reaches 50% of the value of the registered shares, (iii) the total issue price reaches 50% of the eligible costs, and (iv) at the date of the application for the incentive the company has at least 25 shareholders or at least 25% of the issued shares are owned by shareholders where each of them does not have more than 5% of the issued shares' nominal value
- at least HUF 500 million in projects initiated by small and medium-sized enterprises, or
- at least HUF 100 million in projects implemented and operated in a free entrepreneurship zone.

Tax incentives may also be granted for projects that create new jobs. The restrictions prescribed in the CDTA regarding the headcount of staff and the percentage of new entrants to the labour market that may be claimed for such investments have been abolished, although the conditions prescribed in the relevant decree must still be met.

In addition, the law stipulates that a taxpayer will be required to submit the details of the investment in their tax returns submitted for the tax year in which the investment is put into operation, including, in particular, the date of completion and the eligible expenses actually incurred at present value.

Regional aid map of Hungary
Large enterprises based in Budapest are not eligible for tax incentives, while those in Pest County are only able to claim tax incentives for projects aimed at starting a new economic activity in certain assisted areas (available tax incentive is 20% or 35%).

Aid intensity is 25% in the Western Transdanubia region and 35% in the Central Transdanubia region. In the Northern Hungary, Northern Great Plain, Southern Great Plain, and Southern Transdanubia regions, the maximum aid intensity is 50%.

Free entrepreneurship zone
The free entrepreneurship zone contains over 900 settlements in the unprivileged areas of Hungary designated by the government and coordinated by the regional business development agency that is comprised of individual regions, separated by public administration, borders, and topographical lot numbers, that are treated jointly for regional development purposes.

Tax Credit for Growth (TCG)
The rules of the TCG entitle the taxpayer to pay the tax on that part of pre-tax profit that exceeds the quintuple of the pre-tax profit of the preceding year (tax falling on the credit for growth) in the following two fiscal years instead of paying it in the current year.

As a consequence, the TCG is, in practice, a deferral of the tax payment liability. The applicant is eligible for payment of the tax according to the TCG rules if: (i) it became subject to CIT at least in the year three years before the current year; (ii) during this period it did not participate in any transformation, merger, or demerger; and (iii) it reports this choice to the tax authority by the deadline of the CIT top-up. Companies that choose to take advantage of the TCG are already entitled to waive payment of the tax falling on the credit for growth at the CIT top-up of the current year. A preferential rule is attached to the TCG: the amount of the tax falling on the credit for growth not yet due can be reduced if the taxpayer engages in fixed asset investment or increases its employee headcount in the two fiscal years following the choice.

Tax credits on investments to comply with energy efficiency targets
A new CIT incentive was introduced on 1 January 2017 for the implementation and operation of investment projects aimed at improving energy efficiency by reducing final energy consumption, as laid down in separate legislation.

The tax incentive can be up to 30% of eligible costs (but not more that the HUF equivalent of EUR 15 million at present value), which can be increased by 20% for small enterprises, and 10% for medium-sized enterprises. The tax incentive can be used at the earliest in the tax year in which the investment became operational, and in the following five tax years.

The project must be operated for at least five years. The tax incentive may only be claimed in connection with projects aimed at energy efficiency and launched.

Tax holidays
Tax holidays may be granted in relation to film and theatre subsidies, developments, and small and medium-sized entities (SMEs).

Other tax incentives

Film, performing arts, and spectator sports incentives
In Hungary, companies are encouraged to subsidise film production, performing arts, and spectator sports through the high rate of tax savings available. As sponsors, companies are able to achieve tax savings of up to 104.75% of the financial support they provide for film makers, performing artists, or sport clubs. Also, the option of allocating some of the payable CIT to support sports and culture is available. These two regimes are not applicable in parallel within the same tax year.

The total amount of donations for performing arts (including supplementary donations and donations in the frame of disposition of tax) shall not exceed 80% of the annual revenue of the association realised from sale of tickets in the European Economic Area in the prior year and it cannot exceed HUF 1.5 billion.

As of 1 January 2017, the period for applying the tax incentive for providing financial support to film productions, performing arts organisations, and sports organisations for popular team sports is extended to include the eighth calendar year (previously it was the sixth tax year) following the year in which the support was provided.

Tax incentive for SMEs
A tax incentive is available for SMEs (basically, those with a maximum of 250 employees; annual net revenue of a maximum of EUR 50 million; or a maximum annual balance sheet total of EUR 43 million). SMEs that take a loan from a financial institution for the acquisition or production of tangible assets may deduct the total amount of the interest paid on the loan from their tax due without any cap. However, taxpayers engaged in certain business sectors cannot use this tax incentive (e.g. transportation, agricultural activity).

In order to be eligible for the above tax incentives, the wages and salaries need to be kept at a certain required level, according to relevant regulations.

Tax incentive for business start-ups
From 1 January 2017, pre-tax profits may be decreased by three times the cost of shareholdings acquired in start-up companies. The tax incentive can be used in four equal instalments, in the tax year of acquisition and in the three subsequent tax years, but only up to HUF 20 million per tax year.

Tax incentive for providing housing assistance for labour mobility purposes and setting up accommodation facilities for workers
From 1 January 2017, the corporate tax base may be reduced by the aggregate of the investment cost and the increment of cost of accommodation facilities for workers, as defined by the Act on Personal Income Tax, rather than the costs and expenditures recognised in the tax year in which the relevant construction or renovation project is completed. The corporate tax base may also be reduced by the rent of property rented for the purpose of providing accommodation facilities for workers.

Withholding taxes

Under the domestic rules, there is no WHT on dividends, interest, or royalties paid to entities.

Tax administration

Taxable period
CIT must be calculated by reference to the accounting year, which is either the calendar year or, for group companies, the group's accounting year.

Tax returns
Returns must be lodged by the last day of the fifth month following the last day of the accounting year (31 May for a calendar year taxpayer). The tax payable is determined by self-assessment.

Tax returns may be submitted either electronically or in paper format. However, those who are legally obligated to submit monthly tax and contribution returns (e.g. employers and payers) may only submit tax returns electronically.

From 1 January 2017, entities subject to LBT may file their tax returns with the competent local municipality through the national tax authority. The national tax authority will forward tax returns to the competent local tax authorities in an electronic format only.

Payment of tax
CIT instalments must generally be reported and paid quarterly or monthly (above HUF 5 million tax payable). The final ('top-up') payment is due by the last day of the fifth month following the last day of the accounting year (31 May for a calendar year taxpayer). In the case of taxpayers with net sales revenues of over HUF 100 million, 100% of the expected final payment is due by the 20th day of the last month of the accounting year. However, a late payment penalty is only levied if the company fails to pay at least 90% of the expected final payment by the above deadline. The late payment

penalty is 20% of the difference between the tax advances paid (including the top-up payment) and 90% of the actual CIT liability.

Tax audit process

Generally, the tax authority selects the taxpayers subject to tax audit based on certain criteria, which are communicated to the public, and an elaborate risk assessment model. Tax audits can vary in the following ways: the tax authority can (i) re-audit tax returns, (ii) monitor the redemption of government guarantees, (iii) audit the fulfilment of certain tax obligations, (iv) gather data and information, (v) monitor compliance with duty payment obligations, or (vi) re-audit previously audited tax periods.

As of 1 July 2016, a new type of tax audit was introduced: binding rulings are now fact-checked to find out whether the events underlying a binding ruling actually occurred, and, if so, whether the ruling in question is binding on the tax authority.

A tax audit period can cover any years that are not lapsed (five years after the last day of the calendar year in which the taxes should have been declared or reported, or paid in the absence of a tax return or declaration) or not closed by a re-audit of tax returns. The tax audit starts when a company receives the notice of audit and finishes when that company receives the report containing the tax authority's findings. The deadline for the completion of the tax audit is between 30 and 90 days, although, in special cases (e.g. related tax audit, request for assistance from foreign tax authorities), it can last over a year.

Once the tax authority has completed the audit process, it issues its minutes. The minutes detail all the findings of facts of the audit and serves as the background of the tax assessment, and the basis on which the tax authority will pass its first-instance resolution. Upon receipt of the minutes, the taxpayer has the opportunity to submit its remarks to the minutes and raise any disagreement with the findings of the audit.

In case of a dispute, the tax assessment of the tax authority may be appealed and challenged before the second-instance tax authority, which has the right to annul the first-instance resolution and decide on the merits of the case, or to instruct the first-instance tax authority to carry out a new audit if the facts and circumstances have not been appropriately and fully developed.

The decision of the second-instance tax authority is final and binding. Following the receipt of this decision, the company may appeal to the court. The court may uphold, amend, or annul the Resolution of Second Instance and, if it is necessary, may order a new process in relation to the tax audit.

The superior tax authority or the minister in charge of taxation (minister appointed for the supervision of the tax authority, i.e. Minister of Ministry for National Economy in Hungary) may take regulatory action on request by the taxpayer. The superior tax authority or the minister can also amend or annul the unlawful resolution, and, if it is necessary, a new procedure can be ordered.

Statute of limitations

In general, the statute of limitations is five years from the end of the calendar year in which the tax return should be filed. Self-revision interrupts the term of limitation.

Topics of focus for tax authorities

The tax authority will take more stringent measures against 'aggressive tax planning' (tax planning that takes advantage of unintended administrative or legal loopholes) using its international experience and cooperation agreements.

Generally, the following categories of taxpayers may expect to be scheduled for tax audits:

- Taxpayers that have significant tax base decreasing items, tax allowances, and subsidies related to investments in relation to royalty.
- Taxpayers that deduct R&D expenses.
- Large taxpayers' transfer pricing documentations.
- Taxpayers whose main activity is selling used cars.
- Taxpayers that provide accommodation or real estate services.
- Taxpayers that provide training services.

The tax authority will also pay more attention to the actual content of transactions conducted between related parties and to the methods companies use to determine the arm's-length price.

Special taxpayer categories

From 1 July 2016, the total tax difference charged to taxpayers classified as 'reliable' has to be reduced by the total tax difference credited to these taxpayers during the current year and the preceding five years. 'Reliable' taxpayers receive benefits, while 'risky' taxpayers fall under stricter rules.

The criteria for classifying taxpayers as reliable or high-risk has changed, along with the related legal consequences.

Reliable taxpayer

The tax authority classifies a taxpayer as 'reliable' if all criteria defined are met, including:

- at least three years of continuous operation (or being VAT-registered)
- no more than HUF 500,000 net tax debt
- not being classified as a risky taxpayer, and
- the balance of the taxpayer's total tax liability is positive.

Further conditions are that in the year in question and in the preceding five years:

- the tax difference on the taxpayer's expense should not be more than 3% of the total calculated tax liability of the year in question
- the taxpayer is not under foreclosure procedure
- the taxpayer is not under bankruptcy or under liquidation procedure, forced cancellation, or enhanced regulatory supervision by the tax authority, and
- the taxpayer's tax number is not under suspension or cancellation procedure.

Furthermore, the taxpayer cannot be classified as reliable if the sum of the default penalties in the previous two years before the year in question is more than 1% of the total calculated tax liability of the year in question.

Risky taxpayer
The tax authority classifies as 'risky' those taxpayers that are not under liquidation or forced cancellation, but are publicly listed due to a high tax deficit, tax debt, or employing an unreported workforce, or if the tax authority has had to apply business closure measures against the taxpayer repeatedly within a year, or the taxpayer's seat is located at a premise of seat service. The classification of a risky taxpayer lasts for one year, but will be cancelled in the subsequent quarter if the taxpayer settles its tax deficit or the tax debt and the related penalty and default.

Other issues

Principal forms of doing business

- Branch.
- Partnership.
- Limited liability company.
- Private company limited by shares.
- Public company limited by shares.

Mergers and acquisitions (M&A) from a business and tax perspective
Mergers in Hungary are tax-free transformations if they qualify under the definition of preferential transformation. Preferential transformation means that a company, without going into liquidation, transfers all its assets and liabilities to another company in exchange for the issue to its shareholders of securities representing the capital of that other company, and a cash payment not exceeding 10% of the nominal value, or, in the absence of a nominal value, of the accounting par value of those securities.

In a preferential transformation, the predecessor company does not have to amend its tax base by the difference between the adjusted book value and the book value. The adjusted book value means the historical value of assets less any depreciation deducted from the tax base plus the readjusted amount of extraordinary depreciation. Furthermore, for shareholders, the income accounted in excess of the historical value of the shares they acquire in the preferential transformation is also not taxable for CIT purposes for as long as the shareholder holds its participation.

In any other case, if two companies merge, the difference between the market value and the book value of the assets and liabilities is taxable for the successor company. Furthermore, the predecessor company may decrease its tax base by the amount of the difference between the adjusted book value of its assets and their book value if the adjusted book value is the higher of the two. The company will increase its tax base if the book value is higher than the adjusted book value.

International Financial Reporting Standards (IFRS) adoption
Companies defined in Section 4 of Decision no. 1606/2002/EC (mainly companies listed on the stock exchange) have to prepare their consolidated annual reports according to IFRS. However, non-listed subsidiaries of EU-listed entities are exempt from the preparation of IFRS consolidated financial statements.

In Hungary, IFRS will be adopted in a multi-stage procedure. From 1 January 2018, the transition to IFRS will be obligatory for credit institutions, financial enterprises, and listed companies. From 1 January 2018, the adoption of IFRS is also mandatory for cooperative credit institutions and other credit institutions taking part in the integration of cooperative credit institutions and smaller credit institutions. The companies applying IFRS for stand-alone purposes will have to base their tax liability calculations (e.g. CIT, LBT, and energy suppliers' income tax) on IFRS as well.

Foreign Account Tax Compliance Act (FATCA) agreement with the United States (US)

Hungary and the United States signed an intergovernmental agreement (IGA) on 4 February 2014 in order to implement the US FATCA. The Hungarian IGA is based on the 'Model 1 A' Agreement, which means a reciprocal information exchange between the Hungarian tax authority and the US Internal Revenue Service (IRS). As part of the negotiations regarding the IGA, Hungary can include further entities and accounts into Annex II of the Agreement with exempted or deemed-compliant status compared to the originally issued Model Agreement. Changes to the local legislation for FATCA and IGA purposes have successfully been adopted by the Hungarian Parliament.

Hungary has reporting obligation by the end of September each year. The first information exchange between the Hungarian tax authority and the US IRS was in September 2015.

Common Reporting Standard (CRS) agreement within the OECD

The CRS, developed in response to the G20 request and approved by the OECD Council on 15 July 2014, calls on jurisdictions to obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis. It sets out the financial account information to be exchanged, the financial institutions required to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions.

Hungary has reporting obligation by the end of September each year. The first information exchange between the Hungarian tax authority and the US IRS will be in September 2017.

Hungarian trust

Under a Hungarian trust contract, the settlor entrusts the trustee to manage (in its own name but for the benefit for the beneficiary) the assets, rights, and receivables (trust asset) transformed thereto by the settlor. A trust contract cannot have a term longer than 50 years.

The trustee can be either a natural person or a legal entity, and its private fortune is handled separately from the trust asset/fortune. The trustee is liable for the tax administration (tax number, tax returns, etc.) and the bookkeeping of the trust. The Hungarian National Bank keeps an authentic registry of the Hungarian trustees.

The trust asset is subject to Hungarian CIT and LBT and is considered to be tax resident under domestic law (thus, may have access to treaty benefits).

The Hungarian trust is a good business opportunity for companies since it may be inserted into a structure tax neutrally.

Iceland

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Significant developments

Permanent establishment (PE)

Definition of a 'permanent establishment' was, for the first time, added to the Icelandic Income Tax Act and is applicable as of 1 January 2017.

Thin capitalisation rules

Thin capitalisation rules are applicable as of 1 January 2017. Specifically, interest deduction and discounts of loans to related parties is limited to 30% of profit, under certain conditions.

Temporary reimbursements of recorded music

As of 1 January 2017, it is possible to apply for a reimbursement of the cost for recorded music in Iceland. *See the Tax credits and incentives section for more information*.

Capital movement

New Rules of Foreign Exchange took effect 14 March 2017. With the new Rules, the restrictions on foreign exchange transactions and cross-border movement of domestic and foreign currency that have been in force since 2008 have largely been lifted.

Statute of limitations

The general statute of limitations is six years; however, in case of income and assets in low-tax jurisdictions, the limitation has been prolonged to ten years.

Double tax treaties (DTTs)

A DTT between Iceland and Albania entered into force 6 January 2016.

A DTT between Iceland and Liechtenstein entered into force 14 December 2016.

Pension contributions

The minimum contribution by employers into their employees' pension fund is 8.5% of each employee's salary until 30 June 2017. The contribution increases to 10% on 1 July 2017 and then to 11.5% on 1 July 2018.

Taxes on corporate income

Resident corporations pay tax on their worldwide income less operating expenses. Deductible operating expenses are comprised of all the expenses and costs needed to provide, insure, and maintain income.

Corporate income tax (CIT) for limited liability companies (LLCs) and limited partnership companies is assessed at a rate of 20%. CIT for other types of legal entities (e.g. partnerships) is assessed at a rate of 36%.

Non-resident corporations receiving payments for services or business operations carried out in Iceland, as well as corporations operating a PE in Iceland or receiving a profit from such establishments, are subject to CIT for their Icelandic income at the same rate as applies to resident corporations.

Corporate residence

In general, all corporations incorporated and registered in Iceland are considered to be tax residents in Iceland. The same applies to corporations that have their home address in Iceland according to their articles of association or if the management of the company is carried out in Iceland.

Foreign corporations are regarded as Icelandic tax residents if the effective management is carried out in Iceland.

The Internal Revenue Directorate can decide with a ruling whether a corporation's residence is in Iceland. The ruling can be appealed to a court of law.

Permanent establishment (PE)

Definition of a 'permanent establishment' was, for the first time, added to the Icelandic Income Tax Act and is applicable as of 1 January 2017. The definition is in order with the Organisation for Economic Co-operation and Development (OECD) definition of a PE in Article 5. The main difference is that a building site or construction or installation project constitutes a PE only if it lasts more than six months, not 12 months as in the OECD Model Treaty. Another difference is that if a foreign company owns servers or similar computer systems to support the business's primary field of business, that in itself does not constitute a PE if used in relation to data storage and gathering.

Other taxes

Value-added tax (VAT)

VAT is a consumption tax levied on all stages of domestic business transactions. VAT is levied on all goods and services, as well as on the imports of goods and services, unless specific exemptions apply.

VAT rates

The general VAT rate is 24%.

The following goods and services are subject to a reduced VAT rate of 11%:

- Rental of hotel and guest rooms and other accommodation.
- Transportation of passengers, such as for whale watching, horseback riding, and snowmobile tours.
- The services of travel agencies and tour operators for services used in Iceland.
- Admission fees to spas, saunas, sanatoriums, and health facilities.
- Subscription to radio and television.
- Newspapers, periodicals, and magazines.
- Books, both Icelandic and translated, musical notation as well as their audio recordings. Same applies to compact discs and other similar media as well as electronic media.

- Geothermal hot water, electricity, and fuel oils used for heating houses and swimming pools.
- Food and other consumables for people as detailed in an addendum to the VAT Act.
- Access to roads and other transport related constructions.
- Compact discs, records, audio cassettes, and other equivalent mediums for music only and not videos. Same applies to electronically published music without video.
- Condoms, reusable cloth diapers, and diapers inserts.
- Admission fees to baths, saunas, and spa areas that are not subject to exemption due to sporting activities.
- Guiding services.

Certain services and goods are zero-rated, which means that there is, in fact, no VAT charge. Zero-rated VAT mainly applies to exported goods and services provided abroad.

VAT entities

Businesses engaged in the trade of taxable goods and services for business purposes must register and collect VAT.

Services exempt from VAT

The VAT Act details certain services that are exempt from the tax, such as healthcare services, social services, the operation of schools, various education services, cultural activities, athletic activities, public transportation, postal services, sale of real estate (not including the rental of hotel and guest accommodation), rental of car parking lot, insurance activities, services of financial banks (as well as securities trading), lotteries and betting pools, artistic activities, funeral services, and all services of ministers of the church.

Those selling taxable goods and services totalling less than 2 million Icelandic króna (ISK) per 12-month period are also exempt from collecting and remitting VAT.

Agent for non-resident parties

Non-residents who are engaged in taxable transactions in Iceland but are neither domiciled nor have permanent residence in Iceland must appoint a VAT agent with residence in Iceland to report on their behalf. Both parties are liable for the VAT payments (responsible for ensuring remittance of VAT). If a non-resident does not appoint a VAT agent, the purchaser of the services/goods is responsible for paying the VAT (reverse charge).

If the non-resident is only providing e-services, one can apply for an Icelandic ID number to report/pay the VAT oneself (i.e. without a VAT agent).

VAT accounting periods and due dates

VAT is generally filed and paid on a bimonthly basis. The due date for payment of VAT is one month and five days after the end of the settlement period. For example, the due date for the January and February payments is 5 April.

If the VAT is not paid on the due date, a 1% penalty charge is added for every day up to a total of 10%. Late penalty interests also apply as of one month after the due date.

A special fee for late filing, ISK 5,000, applies if the tax authorities have estimated the VAT due to non-filing.

VAT reimbursement

Foreign enterprises, which are neither residents of Iceland nor have a PE, may obtain reimbursement of VAT paid on goods and taxable services that have been purchased or imported for the commercial purposes of such enterprises in Iceland.

Such reimbursement can be effected to foreign enterprises that would be subject to registration in Iceland according to Article 5 and Article 6 of the VAT Act if the enterprises in question were engaged in such business in Iceland. This means that such enterprises as travel agencies, insurance companies, banks, and other financial institutions cannot obtain such reimbursement.

Another prerequisite is that the enterprise shall neither have sold goods nor taxable services in Iceland during the period to which the application refers.

Parties domiciled abroad can get partial VAT reimbursement on goods they have bought in Iceland if they take them abroad with them within three months from the date of purchase. They then must provide the goods, along with any necessary documents, to the appropriate reimbursement company or to the customs authorities on the date of departure, and the purchase price must amount to at least ISK 6,000.

Customs duties

The Directorate of Customs controls import, transit, and export and also collects duties, taxes, and various state revenue. The general rule is that import duties (customs, excise duties, VAT, and various other charges) are to be paid on imported goods unless otherwise stated in the law. For import of some products, other conditions, such as an import licence, may need to be submitted.

Iceland, Liechtenstein, Norway, and Switzerland are members of the European Free Trade Association (EFTA). The EFTA Convention established a free trade area among its member states. In addition, the EFTA states have jointly concluded free trade agreements with a number of countries in Central and Eastern Europe as well as in the Mediterranean region, Mexico, and Singapore. Also, the EFTA states entered into the Agreement on the European Economic Area (EEA) in 1992. The current contracting parties are, in addition to the three EFTA states, the European Community (EC) and the 25 EC member states. Iceland also has a bilateral agreement with its two neighbouring countries, Greenland and Faeroe Islands.

Excise tax

The general Icelandic excise tax has been abolished as of 1 January 2015.

Property taxes

A municipal property tax is applied annually on the assessed value of real estate in Iceland.

Stamp taxes

Stamp duty is levied on documents regarding change of ownership of real estate and land and ships registered in Iceland. However, stamp duty is not applicable when the change of ownership is related to a merger or division of a company.

The stamp duty rate is 0.8% and 1.6%, depending on whether the rightful owner is an individual or a legal entity.

When issuing deeds and purchase agreements of real estate and land, the stamp duty is levied on the officially registered value of the real estate and land. The same applies to the deeds and purchase agreements of ships.

All other documents bear no stamp duty.

Turnover taxes

There was an agricultural charge of 1.2% of agricultural turnover, but it was abolished as of tax assessment 2017 (i.e. for turnover in 2016).

Payroll taxes

Social security contributions

Employers are responsible for social security contribution. The general rate is 6.85%. An additional social security contribution for fishermen is 0.65%. The social security contribution for taxpayers who have submitted the A1 form is 0.425%.

Pension contributions

The minimum contribution by employers into their employees' pension fund is 8.5% of each employee's salary until 30 June 2017. The contribution increases to 10% on 1 July 2017 and then to 11.5% on 1 July 2018. An employer's additional contribution into private pension funds is 2% against a maximum 4% contribution from the employee.

Rehabilitation fund

Employers must pay 0.1% of all salaries to VIRK, The Icelandic Rehabilitation Fund.

Taxes on natural resources

Carbon tax

A carbon tax for liquid fossil fuels is paid to the treasury. Liquid fossil fuels are gas and diesel oils, petrol, aircraft and jet fuels, and fuel oils. All importers of fossil fuels are liable for the carbon tax regardless of whether it is for retail or personal use.

Tax on electricity/hot water

A special tax is collected from parties that sell electricity and/or hot water to end users.

Carbohydrate tax

Corporations licensed for carbohydrate research, and/or processing, as well as anyone who directly or indirectly participates in the processing or distribution of carbohydrates, must pay a processing tax, which is independent of processing performance, and a carbohydrate tax on profits.

Bank taxes

Financial services permitted to operate as banks and savings banks are subject to 0.376% tax on total debt exceeding ISK 50 billion at year-end.

Financial Activities Tax (FAT)

A 5.5% tax is levied on all salary payments made by financial institutions, including insurance companies. The tax is collected monthly.

Additional FAT

Additional 6% is levied and collected on total salary payments in excess of ISK 1 billion. This tax is paid by the same entities that are subject to the general FAT.

Accommodation tax

Those who sell accommodation that is subject to VAT are liable to collect and return a tax of ISK 100 for each sold night. As of 1 September 2017, this amount will be ISK 300 for each sold night.

National Broadcasting Fee

There is a National Broadcasting Fee of ISK 16,800 per year.

Branch income

A branch is treated as an extension of a trading activity of the overseas parent company incorporated in another jurisdiction and is not a separate legal entity.

Due to the fact that a branch acts in the name of the overseas parent company, a branch's income is taxable in accordance with the parent company (i.e. if the parent company is an LLC, the branch is subject to a CIT rate of 20%).

Tax treaties may allow Icelandic CIT as a credit against foreign income tax imposed on the parent company.

There is no branch profits remittance tax on the repatriation of profits to the parent company.

Income determination

Inventory valuation

The valuation method of raw materials and finished goods is on a first in first out (FIFO) basis or via the average cost method. When computing the value of produced goods, both direct and indirect production cost must be taken into account. For tax purposes, inventories can be further written down at a rate of 5% of calculated value.

Last in first out (LIFO) is not permitted.

Capital gains

Capital gains are treated as taxable income in the year that transfer of ownership occurs and, as such, taxed as part of the general corporate income. Capital gains are generally not subject to withholding tax (WHT). There are rules that allow full deduction of net capital gains from the sale of shares, so, in general, corporations are not subject to taxation on capital gains from sale of shares.

Dividend income

Dividend income is treated as taxable income and taxed as a part of corporate income. There are extensive rules that allow full deduction of the dividend, so, in general, corporations are not subject to taxation on dividends. Dividends are subject to WHT (currently 20%), which is a temporary payment towards the final tax assessment.

Interest income

Interest income derived from bank deposits, mutual and investment funds, bonds, or other financial deeds; any kind of exchange rate profit; and any other income from monetary assets are subject to 20% tax.

Interest income of foreign parties is subject to 10% WHT in Iceland.

Royalty income

Gross royalties paid to a non-resident are taxable at the standard 20% CIT rate and subject to withholding.

Profit from derivatives

Profits from derivatives are treated as profits/losses from sales and are subject to 20% tax. Losses from derivatives can be used against profits from derivatives within the calendar year.

Foreign income

Income earned abroad is generally taxed as a part of corporate income since a resident company is subject to CIT on its worldwide income.

Controlled foreign company (CFC) rules stipulate that profits of companies in low-tax jurisdictions must pay income tax of such a profit in direct proportion to shares, regardless of distribution. A low-tax jurisdiction is defined as a jurisdiction where the CIT rate is less than two-thirds of Iceland's CIT rate (i.e. 13.3%, being two-thirds of 20%). *See Controlled foreign companies (CFCs) in the Group taxation section for more information*.

Double taxation of foreign income is avoided either through tax treaties or domestic tax provisions.

Deductions

Deductible operating expenses are comprised of all the expenses and costs needed to provide, insure, and maintain income (e.g. interest expense, employee expense, travel expense, insurance expense).

Depreciation

Assets	Depreciation rate (%)
Ships, ship equipment, and personal vehicles	10 to 20*
Aircraft and accessories	10 to 20*
Heavy machinery, industrial machinery, and equipment	10 to 30*
Rigs, pipeline systems, and more for the use of research and production of hydrocarbons	10 to 30*
Office equipment	20 to 35
Machinery, equipment, and vehicles that are not covered in the above categories	20 to 35
Residential, commercial, and office accommodation	1 to 3
Factory buildings, garages, warehouses, etc.	3 to 6
Greenhouses, piers, and lots connected to these assets	6 to 8
Boreholes, powerlines, and temporary work camps	7.5 to 10
Purchased proprietary rights for ideas and trademarks, such as copyrights, publishing rights, information rights, patents, and logos	15 to 20
Purchased goodwill	10 to 20

* The depreciation base for these assets is their purchase value less earlier depreciations (book value).

The method used to calculate depreciation is the straight-line method.

Goodwill
Purchased goodwill can be written down at 10% to 20% per year.

Start-up expenses
Purchased fishing rights (quotas) cannot be depreciated.

Start-up costs for agricultural production rights can be depreciated without revaluation over five consecutive years. The following assets can be depreciated in full in the year they are initiated or paid with steady payments over five years:

- Start-up costs, such as enterprise registration and obtaining operation licences.
- Cost of research, developments, marketing, and obtaining patents and trademarks. If the use of individual assets does not fall into the same depreciation category, the depreciation base will be dependent on how much of it is used, so that if an asset is used for three-quarters or more for the same operation, the whole asset will have the same depreciation percentage.

Interest expenses
Interest expenses are deductible, provided that the loan was taken for business purposes.

Bad debt
As a general rule, 5% of bad debt can be written off. Certain conditions must be met in order to write off a higher percentage of bad debts.

Charitable contributions
Charitable contributions at up to 0.75% of total income are deductible.

Pension expenses
Payments to obligatory pension funds for employees at a minimum of 8.5% of wages (or according to the minimum contribution in a collective agreement) are deductible.

Fines and penalties
Fines and penalties are not deductible.

Taxes
Taxes levied on business profit are not considered to be deductible; consequently, CIT is not deductible. However, social security contributions and other labour taxes are deductible.

Net operating losses
Operating losses may be deducted from income from business and independent economic activity. Tax losses can be carried forward for ten years and utilised over ten years from the year that the loss was incurred.

No carryback of losses is allowed.

Payments to foreign affiliates
An Icelandic corporation can claim a deduction for royalties, management fees, and similar payments made to foreign affiliates, provided that such amounts are made on an arm's-length basis and reflect services received. Interest at normal commercial rates

paid to foreign affiliates generally will be allowed as a deduction on the condition that the loan terms are comparable to those that would have been agreed upon by unrelated parties.

Group taxation

Companies may opt for consolidated taxation if a company owns at least a 90% share in another company. Consolidated taxation means, among other things, that losses of one company can be offset against profits of other companies. Consolidated taxation cannot be extended to non-resident companies or PEs of foreign companies.

Transfer pricing

When pricing or terms of business or financial arrangements between related parties are different from what might be expected to be in similar transactions between unrelated parties, tax authorities have the power to evaluate what the correct pricing should be and reassess taxes of the party in question. This applies to the general purchase and sale of goods and services, tangible and intangible assets, and any financial instruments. Tax authorities can reassess taxes for up to six years prior to the year in which the reassessment takes place.

Legal entities are considered related when they are part of a group, when they are under the direct and/or indirect majority ownership or management control of two or more legal entities within the group, when majority ownership of one legal entity over another is present in a direct or indirect manner, or when they are entities directly or indirectly majority owned or under the administrative control of individuals who have family ties (e.g. individuals in a marriage or registered partnership, siblings and persons related to each other in a direct line).

If a legal entity's operating revenues in one fiscal year, or total assets at the beginning or at the end of the fiscal year, exceeds ISK 1 billion, it is bound to documentation duties from the next fiscal year regarding transactions with related legal entities abroad. The legal entity in question must then record information about the nature and extent of transactions with the related legal entity and information on what the price is based on.

The legal entity is obligated to keep data regarding transactions with related legal entities for seven years. If the tax authorities request access to documentation, the legal entity has 45 days to respond.

In addition to specific rules regarding transfer pricing in domestic law, it should be noted that there are also certain provisions in domestic law that contain the so-called 'arm's-length principle', which states that when a deal or transaction between the parties significantly differs from the norm in such transactions, the tax base can be determined and reassessed according to what the tax authorities consider to be normal in such circumstances.

Thin capitalisation

Thin capitalisation rules were included in the Income Tax Act as of 1 January 2017. The new rules limit interest deduction to 30% of profits.

The rules do not apply if:

- interest payments to companies within arms' length are under ISK 100 million
- the lender is a resident of Iceland
- it is demonstrated that the equity ratio does not deviate more than 2% from the equity ratio of the group, or
- the taxpayer is a financial institution or insurance company or a company owned by such parties and conducts similar operations.

Controlled foreign companies (CFCs)
Any individual who either directly or indirectly owns a share in any kind of a company, fund, or organisation domiciled in a low-tax jurisdiction must pay income tax on the profit of such corporations in direct proportion to one's own share, regardless of distribution.

The same applies to taxpayers chairing companies, funds, organisations, or associations in a low-tax jurisdiction from which they receive direct or indirect benefits. In order for the above to apply, the foreign party must be domiciled in the low-tax jurisdiction, half the ownership of the foreign party must be directly or indirectly in the hands of Icelandic taxpayers, or they must have effective management and executive control within the income year.

CFC regulations do not apply if a fund or an organisation is protected by a DTT between Iceland and the low-tax country or if such entities are registered in another EEA member country where they have legitimate business operations and the countries have assigned a DTT between them.

Tax credits and incentives

Foreign tax credit
The Income Tax Act offers a foreign tax credit to mitigate the potential for double taxation. The credit applies only to taxes of a nature similar to the tax being reduced by the credit (i.e. taxes based on income). This credit is limited to the amount of tax attributable to foreign-source income.

Temporary reimbursements in respect of filmmaking in Iceland
On account of Act No. 43/1999 on Temporary Reimbursement in Respect of Filmmaking in Iceland, it is possible to have 25% (20% prior to 2017) of production expenses incurred in the production of films or television material in Iceland reimbursed. When more than 80% of the total production cost of a motion picture or television programme is incurred in Iceland, the reimbursement shall be calculated from the total production cost incurred within the EEA. Production costs refer to all costs incurred in Iceland deductible from the revenues of enterprises pursuant to the provisions of the Income Tax Act. Payments pertaining to employees and contractors are only to be included in production costs if they are verifiably taxable in Iceland.

Application for reimbursement of production costs shall be submitted to a committee of reimbursements in respect of filmmaking. The application, with supporting documentation, shall be submitted before production commences in Iceland.

Act No. 43/1999 on Temporary Reimbursements in Respect of Filmmaking in Iceland expires at year-end 2021. All projects approved by that date will be reimbursed in accordance with the law.

Temporary reimbursements in respect of music recording in Iceland
On account of Act No. 110/2016 on Temporary Reimbursement of Recorded Music, it is possible to have 25% of cost incurred reimbursed when recording music in Iceland that has been released and made accessible to the general public. When more than 80% of the total recording cost is incurred in Iceland, the reimbursement shall be calculated from the total production cost incurred within the EEA. Reimbursable cost refers to all costs that may be used for calculating the refund amount, cf. Article 6 of Act No. 110/2016.

Application for reimbursement of production costs shall be submitted to the Ministry. The application, with supporting documentation, shall be submitted lo later than six months after the latest audio file for which a refund is applied for.

Act No. 110/2016 on Temporary Reimbursements of Recorded Music expires at year-end 2022. All applications received by the Ministry prior to that time shall be processed.

Support for innovation enterprises
Innovative companies are entitled to a special deduction from CIT amounting to 20% of expenses incurred on the projects, provided certain conditions are met.

The maximum amount on which the deduction is calculated within each company shall not exceed ISK 300 million for each operating year. In the case of purchased research and development (R&D) services, maximum expenses shall not exceed ISK 450 million.

Act. No. 152/2009 on support for innovation enterprises expires at year-end 2019. All support approved by that date will remain valid.

Act on incentives for initial investments in Iceland
Incentives are offered to companies that are investing in commercial operations in Iceland. The investment projects need to meet requirements, such as being beneficial for the Icelandic economy and society, in terms of job creation, rural development, exports, and tax revenues and knowledge.

Approved investment projects will receive benefits in return, including derogations from taxes and charges. In addition, authorisation to fix the rate of income tax, in line with the current rate of income tax, for ten years can be granted, as well as exemption from customs and excise duties on importation or domestic purchase of construction materials, machinery, and equipment for the building and operation of the investment project.

Act. No. 41/2015 on incentives for initial investments in Iceland expires at the end of June 2020. Incentives granted prior to that time shall remain in force for the period according to the agreement in question.

Withholding taxes

Dividends paid to a resident company are subject to 20% WHT. Dividends paid to a non-resident company are subject to 18% WHT. The final taxation of dividends paid to a company within the EEA is nil, as WHT will be reimbursed in the year following payment upon filing a tax return.

Iceland

Interest paid to a resident company is subject to 20% WHT, and interest paid to a non-resident company is subject to 10% WHT.

Gross royalties paid to a non-resident are taxable at the standard 20% CIT rate and subject to withholding.

Recipient	Dividends (%)	Interest (%)	Royalties (%)
Non-resident corporations	18	10	20
Non-resident individuals	20	10	37.13 to 46.25
Treaty rates:			
Albania	5/10 (2)	10	10
Barbados	5/15 (1)	10	5
Belgium	5/15 (1)	10	0
Canada	5/15 (1)	10	0/10 (3)
China, People's Republic of	5/10 (2)	10	10
Croatia	5/10 (1)	10	10
Cyprus	5/10 (1)	0	5
Czech Republic	5/15 (2)	0	10
Denmark	0/15 (1)	0	0
Estonia	5/15 (2)	10	5/10 (4)
Faroe Islands	0/15 (1)	0	0
Finland	0/15 (1)	0	0
France	0/15 (1)	0	0
Georgia	5/10 (2)	5	5
Germany	5/15 (2)	0	0
Greece	5/15 (2)	8	10
Greenland	5/15 (2)	0	15
Hungary	5/10 (2)	0	10
India	10	10	10
Ireland, Republic of	5/15 (2)	0	0/10 (5)
Italy	5/15 (6)	0	5
Korea, Republic of	5/15 (2)	10	10
Latvia	5/15 (2)	10	5/10 (4)
Liechtenstein	0/15 (6)	0	0/5 (9)
Lithuania	5/15 (2)	10	5/10 (4)
Luxembourg	5/15 (2)	0	0
Malta	5/15 (1)	0	5
Mexico	5/15 (1)	10	10
Netherlands	0/15 (1)	0	0
Norway	0/15 (1)	0	0
Poland	5/15 (2)	10	10
Portugal	10/15 (2)	10	10
Romania	5/10 (2)	3	5
Russia	5/15 (7)	0	0
Slovakia	5/10 (2)	0	10
Spain	5/15 (2)	5	5
Sweden	0/15 (1)	0	0
Switzerland	0/15 (6)	0	0/5 (9)
Ukraine	5/15 (2)	10	10
United Kingdom	5/15 (1)	0	5
United States	5/15 (1)	0	0/5 (8)

Recipient	Dividends (%)	Interest (%)	Royalties (%)
Vietnam	10/15 (2)	10	10

Notes

1. The lower rate applies to corporate shareholders with a minimum ownership of 10%.
2. The lower rate applies to corporate shareholders with a minimum ownership of 25%.
3. The lower rate applies to copyright royalties (except films, etc.) and royalties for computer software or patent, or for information concerning industrial, commercial, or scientific experience (except information provided in connection with a rental or franchise agreement).
4. The lower rate applies to royalties paid for the use of industrial, commercial, or scientific equipment.
5. The lower rate applies to the right to use computer software or patent concerning industrial, commercial, or scientific experience.
6. The lower rate applies to corporate shareholders with a minimum ownership of 10%, and which has been held for a period of at least 12 months preceding the date the dividends were declared.
7. The lower rate applies to Russian corporate shareholders with a minimum ownership of 25% of capital in the Icelandic company and the foreign capital invested exceeds 100,000 United States dollars (USD).
8. The higher rate applies to royalties for the use of trademarks, know-how in relation to a trademark, and films, etc.
9. The higher rate applies to royalties for the use of or the right to use any patent, trademark, design or model, plan, secret formula, or process.

Tax administration

Taxable period

The tax year is the calendar year. However, in certain circumstances and upon application, the Internal Revenue Directorate can allow a different fiscal year from the calendar year.

Tax returns

At the beginning of every year, the Internal Revenue Directorate determines the time limit for taxpayers to submit their tax returns and supporting documentation. The deadline for receipt of tax returns from corporations is generally 31 May each year. This deadline is extended upon application. Those who have their tax returns prepared by professional services can generally have the deadline extended until 10 September each year.

The final assessment must be completed no later than ten months after the end of the income year. Tax assessments for corporations will be available at the end of October.

Payment of tax

Advance tax payments are due on the first day of every month, except January and October. Corporations pay income tax in advance, which is in turn deducted from the final tax assessment in October each year. The advance tax is collected in the months of February to September and amounts to 8.5% of the income tax on each due date. In total, the advance tax payments amount to 68% of the income tax. Any deficit remaining when final tax is assessed must be paid in equal instalments by 1 November and 1 December.

Income tax payments on dividends and interest income are due every quarter. Due dates are 20 January, 20 April, 20 July, and 20 October, and the final deadline for payment is 15 days later.

Tax audit process
The Icelandic tax authorities select returns for examination using a variety of methods. Some returns are selected based on electronic selection; some are selected based on a formal supervisory plan. A tax audit can also be traced to information obtained by the tax authorities through efforts to identify participants of tax avoidance transactions.

The examination generally takes place by formal, written communication. The rules of the procedure are very strict, and the process can take from a few weeks to a year/years.

Appeal rights involve two administrative levels and also two judiciary levels.

Statute of limitations
Tax authorities in Iceland have the right to reassess tax returns for CIT six years prior to the year of the assessment (i.e. the statutory period of limitation is six years). The statutory period only reaches a maximum of two years in time if tax returns have been filled out properly and all necessary information presented for tax authorities to establish a correct assessment. This means that in the year 2017, tax authorities can, in theory, reassess the company´s tax back to income year 2011.

However, the limitation has been prolonged to ten years in case of income and assets in low-tax jurisdictions.

Topics of focus for tax authorities
The topic of focus for tax authorities in Iceland is tax avoidance in general.

Other issues

Foreign currency financial statements/Accounting in foreign currencies
Companies can apply to the Registry of Annual Accounts for an authorisation to keep their books and prepare their annual accounts in a foreign currency. An application must be filed no later than two months before the beginning of the company's fiscal year. The authorisation is valid for five years, and the Registry of Annual Accounts is responsible for ensuring that the authorised companies continue to fulfil one or more of the following necessary conditions:

- The company's main business operations take place abroad or the company is a part of a foreign company group.
- The company owns foreign subsidiaries or shares in foreign companies, and its main business transactions are with those companies.
- The company's main place of business is Iceland, while a considerable number of their transactions are in foreign currencies.
- A considerable portion of the company's investments and related debts are in foreign currencies.
- The functional currency is registered at the Central Bank of Iceland or the company's commercial bank.

If the company deems that it no longer fulfils the conditions, it must notify the Registry of Annual Accounts. The Registry can postpone its decision of the authorisation's discontinuance for two fiscal years if the situation that is causing the fact that the company does not continue to fulfil the necessary conditions is deemed to be temporary.

The average exchange rate for the fiscal year must be used when converting income and expenses, depreciations included, into Icelandic króna. The exchange rate at the end of the fiscal year must be used when converting assets, debts, and capital. Exchange rate differences that may arise do not affect income on profit and loss accounts.

Rules of Foreign Exchange

New Rules of Foreign Exchange took effect 14 March 2017.

In 2008, the Central Bank of Iceland issued rules on foreign exchange in order to restrict or temporarily prevent certain types of cross-border capital movements or foreign exchange transactions related thereto, which, according to the Central Bank of Iceland, can cause serious and considerable instabilities in exchange rates and financial matters. These rules were later added to Act No. 87/1992 on Foreign Exchange.

The Act on Foreign Exchange defines capital movements as:

- The issue, sale, or purchase of shares, debt instruments, drafts, unit shares in mutual funds, and other long-term and short-term securities.
- Deposits in and withdrawals from accounts with depository institutions.
- Lending, borrowing, and the issue of securities not related to international transactions with goods and services.
- The import and export of share certificates and domestic and foreign currencies.
- Forward contracts, options, currency and interest-rate swaps, and other related foreign exchange transactions in which the Icelandic króna is one of the denominated currencies.
- Presents, grants, or other transactions equivalent to the ones detailed above.

With the new rules, the restrictions on foreign exchange transactions and cross-border movement of domestic and foreign currency have largely been lifted. Restrictions on the following will remain in place, however: (i) derivatives trading for purposes other than hedging, (ii) foreign exchange transactions carried out between residents and non-residents without the intermediation of a financial undertaking, and (iii) in certain instances, foreign-denominated lending by residents to non-residents.

Cross-border mergers

Rules regarding taxation in relation to cross-border divisions and cross-border mergers between Icelandic LLCs and LLCs from EEA and EFTA countries are now in the Icelandic Tax Act. Tax will be levied on uncapitalised profit, which can be postponed for five years.

Ireland

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Significant developments

Co-operative Compliance Framework (CCF)

In early 2017, the Irish tax authority relaunched the CCF. The Irish authority has invited large businesses to partake in the CCF, which is seen as best practice internationally. The aim of these measures is to continue to strengthen Ireland's position as one of the top countries in the world for ease of doing business by promoting useful collaborative relationships between taxpayers and the Irish tax authority.

Advance Pricing Agreement (APA) program

Ireland has a bilateral APA program with effect from 1 July 2016. The bilateral APA program applies to transfer pricing issues (including the attribution of profits to a permanent establishment [PE]). The program does not cover cases involving the determination of the existence of a PE.

APAs will be granted for a fixed period of time, typically between three and five years, and a roll-back provision can be invoked in certain cases.

Capital gains tax entrepreneur relief

There has been and continues to be a focus by the Irish government to facilitate the creation of employment and encourage entrepreneurship. In 2015, the government introduced a number of improvements for entrepreneurs, including introducing capital gains tax entrepreneur relief. In Finance Act 2016, the government has continued this focus and has reduced the capital gains tax rate to 10% for disposals of chargeable business assets from 1 January 2017 up to a lifetime limit of 1 million euros (EUR). This allows entrepreneurs to free up more capital for reinvestment and builds on Ireland's focus to drive investment in new businesses.

Deposit Interest Retention Tax (DIRT)

The Finance Act 2016 provides for a decrease to the rate of interest withholding tax (DIRT) on certain deposits by 2% *per annum* over a period of four years thereby reducing the rate from the current rate of 41% to 33% in 2020. The rate of DIRT for 2017 will be 39%.

Financial Institutions Levy

The Financial Institutions Levy was introduced for a three-year period with the express purpose of enabling the financial services sector to contribute to economic recovery.

The Finance ACT 2016 extended the annual levy being imposed on certain financial institutions by a period of five years. The annual levy was due to expire at the end of 2016 but will now run until 2021. Prior to the Finance Act, the levy amounted to 35% of DIRT paid by the relevant financial institution based on the 2011 base year.

Under the Finance Act, the levy is being extended for a period of five years from 2017 to 2021 and will be charged at a higher rate of 59% on the DIRT paid in respect of the new base years proposed under the legislation. The base year for 2017/18 will be 2015, with 2017 being the base year for the levies due in 2019/20 and the base year for the tax due in 2021 being 2019.

Taxes on corporate income

Corporation tax is chargeable as follows on income and capital gains:

Standard rate on income ('trading rate')	Higher rate on income ('passive rate')	Capital gains rate
12.5%	25%	33%

Resident companies are taxable in Ireland on their worldwide profits (including gains). Non-resident companies are subject to Irish corporation tax only on the trading profits of an Irish branch or agency and to Irish income tax (generally by way of withholding) on certain Irish-source income.

Non-trading (passive) income includes dividends from companies resident outside Ireland (with some exceptions), interest, rents, and royalties. Legislation provides that certain dividend income (e.g. income from foreign trades) is taxed at 12.5% (*see the Income determination section*). The higher rate (i.e. 25%) also applies to income from a business carried on wholly outside Ireland and to income from land dealing, mining, and petroleum extraction operations.

An additional 'profit resource rent' tax applies to certain petroleum activities. Depending on the profit yield of a site, the tax rate applicable can range from 25% to 40%.

Close companies (*see the Income determination section*) may be subject to additional corporate taxes on undistributed investment income (including Irish dividends) and on undistributed income from professional services. Examples of professional services include professions such as solicitor, accountant, doctor, and engineer.

Local income taxes

Ireland does not levy local or regional taxes on income.

Corporate residence

In an effort to further enhance Ireland's tax regime's transparency, Finance Act 2014 announced changes to Ireland's corporate tax residence rules. Broader corporate tax residence reform was introduced from 1 January 2015 to ensure that Irish incorporated companies can only be considered non-Irish resident under the terms of a double tax treaty (DTT). These provisions are effective from 1 January 2015 for newly incorporated companies. In order to give certainty to companies with existing Irish operations (i.e. incorporated prior to 1 January 2015), the changes include a transition period to the end of 2020. While current Irish companies should not need to take immediate action, in the transitional period to 31 December 2020, all groups with Irish operations need to carefully monitor the corporate tax residence position of Irish incorporated, non-resident companies that do not satisfy the sole exception contained within the Finance Act 2014 provisions. This includes, for example, considering the impact of any proposed merger and acquisition (M&A) transactions involving both change in ownership and business changes/integration measures.

For companies incorporated before 1 January 2015, a company incorporated in Ireland or that has its place of central management and control in Ireland will be regarded as resident in Ireland for the purposes of corporation tax and capital gains tax. However, the link between incorporation and residency does not apply if (i) an Irish incorporated company is considered non-Irish tax resident under the terms of a DTT ('treaty exemption') or (ii) where the incorporated company or a related company carries on a trade in Ireland and either the company is ultimately controlled by a tax resident of a European Union (EU) member state or a country with which Ireland has a DTT, or the company or related company are quoted companies ('trading exemption'). Where the conditions of the trading exemption are met, the company's location of tax residence is determined by the jurisdiction where the company has its place of central management and control. However, the trading exemption does not apply if an Irish incorporated company's place of management and control is in a jurisdiction that only applies an incorporation test for determining residency (and the company would thus not be regarded as tax-resident in any jurisdiction).

Permanent establishment (PE)

Non-resident companies are subject to Irish corporation tax only on the trading profits attributable to an Irish branch or agency, plus Irish income tax (generally by way of withholding, though this is not the case with Irish-source rental profits) on certain Irish-source income.

Subject to the terms of the relevant DTT, a non-resident company will have a PE in Ireland if:

- it has a fixed place of business in Ireland through which the business of the company is wholly or partly carried on, or
- an agent acting on behalf of the company has and habitually exercises authority to do business on behalf of the company in Ireland.

A fixed place of business includes (but is not limited to) a place of management; a branch; an office; a factory; a workshop; an installation or structure for the exploration of natural resources; a mine, oil or gas well, quarry, or other place of extraction of natural resources; or a building, construction, or installation project. A company is not, however, regarded as having an Irish PE if the activities for which the fixed place of business is maintained or which the agent carries on are only of a preparatory or auxiliary nature (also defined in the statute).

Other taxes

Value-added tax (VAT)

VAT is charged at 23% on the supply of most goods and services in the course or furtherance of business.

There are currently two main reduced rates of VAT. A 13.5% rate applies, *inter alia*, to most building services, labour intensive services, domestic fuel, and power. In addition, a reduced 9% VAT rate is applicable to certain supplies in the tourism sector. These include restaurant and catering services, hotel and holiday accommodation, and various entertainment services (e.g. admissions to cinemas, theatres, museums, sporting facilities).

Exports, most basic food items, oral medicines, books, and children's clothing and footwear are zero-rated.

Some supplies are exempt from VAT. The main exempt categories are most banking services, insurance services, medical services, passenger transport, education and training, and letting of immovable goods (although an 'option to tax' may be possible in certain circumstances).

Zero rating is preferable to exemption because most VAT costs incurred in making a zero-rated supply can be recovered, while those incurred in making an exempt supply generally cannot.

If a business is fully engaged in a VATable business (irrespective of the rate), it will be entitled to reclaim VAT incurred, subject to the normal rules of deductibility. Businesses engaged in exempt supplies will not be in a position to reclaim VAT; consequently, it will be a real cost. Any business engaged in both VATable and exempt supplies will be required to apportion the VAT incurred appropriately.

Customs duties

Goods imported into Ireland from countries outside the European Union are liable to customs duty at the appropriate rates specified in the EU's Combined Nomenclature (CN) Tariff. These rates vary from 0% to 14% for industrial goods, with much higher rates applicable to agricultural products. Imports may qualify for a partial or full reduction in rates in specific circumstances.

The three main elements ('customs duty drivers') that determine the duty liability arising on goods imported into the European Union from a non-EU country are (i) the product's commodity code (Tariff Classification), (ii) its customs valuation, and (iii) its origin. Each of these elements will need to be considered when determining the customs duty cost at import.

There are special customs procedures that allow for the import of goods into the European Union from non-EU countries with full or partial relief from customs duty or under a suspension of customs duty. Examples of these are Customs Warehousing, Inward Processing Relief, Processing under Customs Controls, and Outward Processing Relief. There are different conditions attached to each customs special procedure, and an analysis of the trade footprint of the importer of the goods will need to be considered in order to determine whether or not they may avail of one of these reliefs. These procedures are important and are in place with the intention of stimulating economic activity within the European Union.

It should be noted that no customs duties arise on goods 'imported' from other EU member states, provided they originate in the European Union or have been customs cleared in another member state of the European Union.

Excise duties

Excise duties are charged on mineral oils (including petrol and diesel), alcohol products (including spirits, beer, wine, cider, and perry), and tobacco products where they are consumed in Ireland. Reduced rates of excise duty may apply when setting up a microbrewery in Ireland (depending on production quantities).

In addition, a diesel rebate scheme applies in Ireland. It provides hauliers or coach/bus owners with an opportunity to claim a partial refund of excise duty paid on fuel used in specifically designated vehicles for the purposes of transporting goods or passengers.

Excise duties are not charged on the export or sale of excisable goods to other EU countries, but special control arrangements apply to the intra-EU movement of such goods.

In addition, Ireland applies excise duties to electricity, betting, and the first registration of vehicles in the state (the latter is known as VRT). The VRT regime for motor vehicles is based on a CO2 emissions rating system and charged on the 'open market selling price' of the vehicle. Specific reductions in VRT apply to electric and hybrid vehicles, subject to certain conditions being met. In addition, there are reliefs available for cars imported temporarily by non-residents, or imported on transfer of residence to Ireland (such VRT reliefs require prior approval from the Customs authorities).

Stamp duty

Stamp duty is a tax on instruments. It is payable on transfers of land and on other assets where legal title cannot be passed by delivery. It is chargeable on instruments of transfer executed in Ireland and on instruments, wherever executed, that relate to Irish property or relate to matters to be done in Ireland. Stamp duty on the transfer of assets between associated companies may be fully relieved from stamp duty, provided the following key conditions are met:

- The companies have a 90% relationship (that is, one company is, directly or indirectly, the beneficial owner of at least 90% of the ordinary share capital of the other and is entitled to at least 90% of the profits available for distribution and at least 90% of the assets in the case of a winding-up of the other company, or a third company has these rights, directly or indirectly, in respect of both companies).
- This relationship is maintained for a period of at least two years after the transfer of the assets (to avoid the relief being clawed back).

There is an exemption for transfers of intellectual property (IP), and the categories of IP qualifying for this exemption are the exact same as those for which IP capital allowances are available (*see Intellectual property [IP] regime in the Tax credits and incentives section*).

Stamp duty is payable based on the higher of the consideration paid for the transfer or the market value of the assets transferring. Rates of 1% to 2% apply for transfers of residential property, 2% for transfers of non-residential property (commercial/industrial land and buildings, but also business assets, such as goodwill, debtors, contracts, etc.), and 1% on transfers of shares.

Capital duty on share capital

Ireland does not levy capital duty on share capital of companies.

Capital taxes

Ireland does not levy tax on the net worth of companies.

Payroll taxes

The 'pay-as-you-earn' system (PAYE system) places an obligation on employers to make deductions at source of income tax, universal social charge (USC), and pay-related social insurance (PRSI) from payments made to employees and an obligation to remit such deductions to the Irish tax authorities.

Pay-related social insurance (PRSI)
Employed persons are compulsorily insured under a state-administered scheme of PRSI. Contributions are made by both the employer and the employee. The employer is responsible for making PRSI contributions up to a rate of 10.75%, and these are an allowable deduction for corporation tax purposes.

Levies on insurance policies
A levy of 3% of gross premiums received by insurers applies in respect of non-life insurance policies relating to risks located in Ireland. This levy is payable four times *per annum*, within 25 days of the end of each quarter (i.e. within 25 days from quarters ending 31 March, 30 June, 30 September, and 31 December).

A levy of 1% of gross premiums received by insurers applies in relation to certain classes of life insurance policies relating to risks located in Ireland. This levy is payable four times *per annum*, within 25 days of the end of each quarter (i.e. within 25 days from quarters ending 31 March, 30 June, 30 September, and 31 December).

An additional contribution of 2% to the Insurance Compensation Fund applies to premiums received in relation to non-life insurance policies. Similar to the 3% non-life insurance levy, the contribution applies where premiums are received in respect of risks located in Ireland. The contribution is also payable four times *per annum* in conjunction with the non-life insurance levy on premiums.

Reinsurance business is excluded from the levy.

There is also a stamp duty liability of EUR 1 on each non-life insurance policy where the risk is located in Ireland.

Certain voluntary health insurance policies are subject to fixed levies, up to EUR 350 per policy.

Environmental taxes
In Ireland, a levy of 22 cents per bag is imposed upon consumers provided with a plastic bag when purchasing goods in supermarkets and other retail outlets. Under the applicable legislation, retailers are obligated to collect 22 cents in respect of every plastic bag or bag containing plastic, regardless of size, unless specifically exempted, that is provided to customers and remit all plastic bag levies collected to Irish Revenue. As a result of the levy, most non-supermarket retailers provide paper carrier bags, and many retailers provide ‘bags for life’, which are made from non-plastic material and, therefore, not subject to the environmental levy.

Carbon tax
A carbon tax is levied on mineral oils (e.g. auto fuels, kerosene) that are supplied in Ireland. The rates of carbon tax on oil and gas broadly equate to EUR 20 per tonne of CO2 emitted. Relief applies where mineral oils are supplied to an Emissions Trading Scheme (ETS) installation or for electricity generation. Pure biofuels are exempt from carbon tax. There is full relief for the biofuel component of the fuel. Where biofuel has been mixed or blended with any other mineral oil, the relief from carbon taxes shall apply to the biofuel content of the mixture or blend, regardless of the percentage.

A carbon tax is also levied on natural gas and solid fuel where supplied for combustion. Again, reliefs apply where these fuels are supplied to ETS installations or used in electricity generation, chemical reduction, or in the electrolytical or metallurgical processes.

Emissions allowances

Irish legislation defines the tax treatment of emission allowances under the EU Emissions Trading Scheme. The legislation distinguishes between allowances acquired free of charge from the Environment Protection Agency (EPA) under the EU Scheme and those that are purchased.

Emission allowances acquired free of charge from the EPA may not be subjected to taxation. Allowances that are purchased may be treated as trading assets, subject to corporation tax treatment.

Local taxes

Local taxes, known as 'rates', are not based on income but rather are levied on the occupiers of business property by reference to a deemed rental value of the property concerned. The level of rates levied can depend on the region in which the property is located. Rates are an allowable deduction for corporation tax purposes.

Local authorities are also empowered to levy charges on all occupiers for specific services (e.g. water supply). These charges are also deductible for corporation tax purposes.

Branch income

Irish branches of foreign companies are liable to corporation tax at the rates that apply to Irish resident companies. No tax is withheld on repatriation of branch profits to the head office.

Income determination

Irish trading profits are computed in accordance with Irish Generally Accepted Accounting Principles (GAAP) or International Financial Reporting Standards (IFRS), subject to any adjustment required by law. Prior-year adjustments may arise on the first-time adoption of IFRS, which may result in double counting of income or expenses or of income falling out of the charge to tax. Generally speaking, in order to avoid such an outcome, transitional adjustments exist whereby amounts of income or expenses that could be double-counted or that would fall out of the charge to tax are identified and the amounts concerned are taxed or deducted as appropriate over a five-year period.

Inventory valuation

Each item of inventory is valued for tax purposes at cost or market value, whichever is lower, and this will normally accord with the accounting treatment. The method used in arriving at cost or market value of inventory generally must be consistent and must not be in conflict with tax law. The first in first out (FIFO) method is an acceptable method of calculation for tax purposes. The base-stock method has been held to be an inappropriate method for tax purposes, as has the last in first out (LIFO) method.

Capital gains

Companies are subject to capital gains tax in respect of gains arising on the disposal of capital assets. The taxable gain is arrived at by deducting from the sales proceeds the cost incurred on acquiring the asset (as indexed to reflect inflation only up to 31 December 2002). The resulting gain is taxable at 33%. In cases of disposals of interests in offshore funds and foreign life assurance policies, indexation relief does not apply; while a tax rate of 33% applies to non-corporate shareholders in respect of funds and policies located in EU/European Economic Area (EEA)/DTT countries, and a rate of 33% or 40% applies to funds or policies located in all other jurisdictions. A reduced rate of 25% exit tax applies to Irish corporate shareholders investing in Irish funds. Special rules apply to gains (and losses) from the disposal of development land in Ireland.

Companies that are tax resident in Ireland (i.e. are managed and controlled in Ireland or incorporated in Ireland and not qualifying for exclusion from Irish residence by virtue of being resident in a DTT territory) are taxable on worldwide gains. Non-resident companies are subject to capital gains tax on capital gains arising on the disposal of Irish land, buildings, mineral rights, and exploration rights on the Irish continental shelf, together with shares in unquoted (unlisted) companies, whose value substantially (greater than 50%) is derived from these assets. Non-resident companies are also subject to capital gains tax from the realisation of assets used for the purposes of a business carried on in Ireland.

Losses arising on the disposal of capital assets may be offset against capital gains in the accounting period or carried forward for offset against future capital gains. No carryback of capital losses is permitted. There is no facility to offset capital losses against business income or to surrender capital losses within a tax group.

Irish capital gains tax legislation facilitates corporate reorganisations on a tax-free basis in situations where there is a share for share exchange. Assets can be transferred within certain company groups without capital gains tax applying (*see the Group taxation section for further information*).

Participation exemption from capital gains

A participation exemption is available to Irish resident companies on the disposal of a shareholding interest if:

- a minimum of 5% of the shares (including the right to profits and assets on winding up) is directly or indirectly held for a continuous 12-month period
- the shares have been held for a period of 12 months within which the date of the disposal falls or for a period of 12 months ending in the 24 months preceding the date of disposal
- the company whose shares are sold is resident in an EU member state (including Ireland) or in a country with which Ireland has a DTT at the time of the disposal (this includes tax treaties that have been signed but not yet ratified), and
- a trading condition is met at the time of the disposal whereby either: (i) the business of the company whose shares are disposed of consists wholly or mainly of the carrying on of one or more trades or (ii) taken together, the businesses of the Irish holding company and all companies in which it has a direct or indirect 5% or more ownership interest consist wholly or mainly of the carrying on of one or more trades.

If the Irish holding company is unable to meet the minimum holding requirement but is a member of a group (that is, a parent company and its 51% worldwide subsidiaries), the gain arising on the disposal should still be exempt if the holding requirement can be met by including holdings of other members of the group. Thus, the Irish company may be exempt from capital gains tax on a disposal of shares even if it does not directly hold a significant shareholding. The exemption also applies to a disposal of assets related to shares, such as options and convertible debt. However, it does not apply to a sale of either shares or related assets that derive the greater part of their value (more than 50%) from Irish real property, minerals, mining rights, and exploration and exploitation rights in a designated area. Shares deriving their value from non-Irish real property, minerals, and mining rights qualify for exemption if the other conditions are met.

Capital losses arising on the disposal of a shareholding where a gain on disposal would be exempt under the participation exemption are not deductible.

Capital gains tax entrepreneur relief

Capital gains tax entrepreneur relief allows for a reduction in the capital gains rate to 10% on the disposal of chargeable business assets from 1 January 2017, up to a lifetime limit of EUR 1 million. This allows entrepreneurs to free up more capital for reinvestment and builds on Ireland's focus to drive investment in new businesses.

Dividend income

Dividends from Irish resident companies are exempt from corporation tax. Dividends paid out of the trading profits of a company resident in an EU member state or a country with which Ireland has a DTT (or a country with which Ireland has ratified the Convention on Mutual Assistance in Tax Matters) may be taxed at the 12.5% rate, provided a claim is made. The 12.5% corporation tax rate applies to the same type of dividends received from companies resident in non-treaty countries, provided the company paying the dividend is a listed company or is part of a 75% listed group the principal class of the shares of which are substantially and regularly traded on the Irish Stock Exchange, a recognised Stock Exchange in an EU member state or a country with which Ireland has a DTT, or on such other Stock Exchange as is approved by the Minister for Finance for the purposes of this relief from double taxation.

As outlined above, the 12.5% corporation tax rate is also applicable to foreign dividends paid out of trading profits of a company resident in a country that has ratified the Convention on Mutual Assistance in Tax Matters.

Foreign dividends received by an Irish company where it holds 5% or less of the share capital and voting rights in that foreign company are exempt from corporation tax where the Irish company would otherwise be taxed on this dividend income as trading income.

Dividends from Irish resident companies are not liable to further tax, other than a surcharge on close company recipients where the dividend is not redistributed. Broadly speaking, a close company is a company that is under the control of five or fewer 'participators'. Participators can include individual shareholders, corporate shareholders, loan creditors, any person with a right to receive distributions from the company, etc. Where not less than 35% of the shares of a company (including the voting power) are listed, a company will not be regarded as a close company.

A close company surcharge of 20% is payable on certain non-trading income (e.g. rental income, certain dividend income, interest income) if it is not distributed to shareholders within 18 months of the accounting period in which the income was earned. A close company making a distribution and the close company receiving a distribution have the option, jointly, to elect to have the dividend disregarded for surcharge purposes. This can give close companies the option of moving 'trading income' up to a holding company without incurring a surcharge. Generally speaking, close companies avoid the surcharge through the payment of dividends within the prescribed period. Capital gains accruing to a non-resident company that would be close if it were resident can be attributed to Irish resident participators in certain instances.

Stock dividends

Stock dividends taken in lieu of cash are taxed on the shareholder based on an amount equivalent to the amount that would have been received if the option to take stock dividends had not been exercised. If the recipient is an Irish resident company and it receives the stock dividend from a quoted (listed) Irish company, then there will be no tax. For a quoted (listed) company paying the stock dividend, dividend withholding tax (WHT) with the appropriate exemptions and exclusions applies. Other stock dividends (bonus issues) are generally non-taxable.

Interest income

Interest income earned by Irish companies is generally taxable at the rate of tax for passive income of 25% (interest may be regarded as a trading receipt for certain financial trader companies). It is possible to offset current-year trading losses against passive interest income arising in the same year on a 'value basis'. It is not possible to offset prior-year trading losses against current-year interest income unless that interest constitutes a trading receipt of the particular company.

Royalty income

Royalty income earned by Irish companies is generally taxable at the rate of tax for passive income of 25%. However, where an Irish company is considered to be carrying on an IP trade, that company's royalty and other similar income may be subjected to Irish tax at the corporation tax trading rate of 12.5%. Similarly to passive interest income, it is possible to offset current-year trading losses against passive royalty income arising in the same year on a 'value basis'. It is not possible to offset prior-year trading losses against current-year royalty income unless that royalty constitutes a trading receipt of the particular company.

Foreign income

Resident companies are liable to Irish tax on worldwide income. Accordingly, in the case of an Irish resident company, foreign income and capital gains are, broadly speaking, subject to corporation tax in full. This applies to income of a foreign branch of an Irish company as well as to dividend income arising abroad.

In general, income of foreign subsidiaries of Irish companies is not taxed until remitted to Ireland, although there are special rules that seek to tax certain undistributed capital gains of non-resident close companies.

Foreign taxes borne by an Irish resident company (or Irish branch of an EEA resident company), whether imposed directly or by way of withholding, may be creditable in Ireland (*see Foreign tax credit in the Tax credits and incentives section*).

Deductions

In general, expenses incurred wholly and exclusively for the purposes of the trade are tax-deductible.

General accruals and provisions are not tax-deductible.

Capital items expensed to a company's profit and loss account are also not tax-deductible. However, depending on the nature of the capital item, they may qualify for tax depreciation (*see below*).

Depreciation

Book depreciation is not deductible for tax purposes (except in the case of certain IP assets). Instead, tax depreciation (known as capital allowances) is permitted on a straight-line basis in respect of expenditure incurred on assets that have been put into use by the company. The following rates are applicable:

Asset type	Tax depreciation rate (%)
Plant and machinery	12.5
Industrial buildings used for manufacturing	4.0
Motor vehicles	12.5
IP assets	Book depreciation or 7.0

The allowances are calculated on the cost after deduction of grants, except for plant and machinery used in the course of the manufacture of processed food for human consumption. In this case, the allowances are calculated on the gross cost. Allowances on cars are restricted to a capital cost of EUR 24,000 and may be restricted further (to 50% or zero), depending on the level of carbon emissions of the vehicle.

Accelerated capital allowances

A 100% first-year capital allowance is available in respect of expenditures incurred on certain approved energy-efficient equipment up to 31 December 2017.

Leasing

Ireland operates an eight-year tax depreciation life on most assets. A beneficial tax treatment applies to finance leases and operating leases of certain assets. For short life assets (i.e. those with a life of less than eight years), Ireland allows such lessors to follow the accounting treatment of the transaction that provides a faster write-off of the capital cost of an asset rather than relying on tax depreciation over eight years. This effectively allows the lessors to write-off their capital for tax purposes in line with the economic recovery on the asset.

Goodwill

The amortisation of goodwill is generally not allowable as a deduction. However, a tax deduction may be available for capital expenditure on the acquisition of certain goodwill (*see Intellectual property [IP] regime in the Tax credits and incentives section*).

Start-up expenses

A deduction may be allowed in respect of pre-trading expenses that are incurred for the purposes of a trade and within three years of the commencement of the trade. Such expenses may be offset against the income of that same trade.

Interest expenses
A deduction for interest is allowed only to the extent that borrowings are used for the purpose of a trade or acquisition of certain non-trading assets.

Research and development (R&D) expenses
Expenditure on scientific R&D and payments for the acquisition of know-how in general are allowable deductions, as are the costs of obtaining or extending patents and obtaining and renewing trademarks.

Bad debts
A deduction is available for bad debts written off in the accounts of a company as irrecoverable. Specific bad debt provisions may also be deductible once they satisfy Irish GAAP or IFRS accounting standards. The creation of a general bad debt provision is not a deductible expense.

Charitable contributions
Companies are entitled to a deduction, as a trading expense, for qualifying donations to approved charities, educational institutions, schools, churches, research foundations, sports bodies, and other approved organisations that satisfy certain conditions. To qualify for a tax deduction, the donation(s) to an organisation in a 12-month accounting period must amount to at least EUR 250.

Meals and entertainment
Costs incurred for third-party entertainment are not tax-deductible. Entertainment includes the provision of accommodation, food, drink, and any other form of hospitality, including the provision of gifts. Expenditure on *bona fide* staff entertainment is allowable as a deduction, provided its provision is not incidental to the provision of entertainment to third parties. Certain promotional costs are tax-deductible if they are incurred wholly and exclusively for the purposes of the trade.

Pension expenses
Contributions to certain employee pension schemes and the cost of setting up such schemes are deductible. Pension contributions are allowable as a deduction for employers in the year in which they are paid.

Fines and penalties
Fines and penalties imposed for breaking the law, civil penalties, interest, and late filing surcharges imposed by the Revenue Commissioners are generally not deductible.

Taxes
Taxes that are deductible in computing profits for corporation tax include VAT not recovered, the employer's share of PRSI contributions, and local taxes (i.e. rates levied on commercial property and local authority charges).

Net operating losses
Losses are computed for tax purposes in the same way as business profits. Trading losses can be offset against other income of any nature, either in the current or preceding accounting period (of equal length). The amount of losses required to shelter the income is dependent on the tax rate that would have been applied to the income in the absence of the loss relief. Any excess losses can be carried forward indefinitely against future trading income. Certain changes in ownership may prevent the carryforward of losses to future periods. Terminal losses that arise within 12 months of the date a company ceases to trade may be carried back three years.

Payments to foreign affiliates
Generally, deductions can be claimed for royalties, management service charges, and most interest charges paid to foreign affiliates, provided the amounts do not exceed what would be paid to unrelated entities. Depending on the circumstances, certain elections may be required. Ireland does not have any thin capitalisation rules.

Group taxation

The concept of 'fiscal unity' or consolidated group tax does not exist in Ireland. However, trading losses as computed for tax purposes may be offset on a current-period basis against taxable profits of another group company. As with loss relief in a single company, the amount of losses required to shelter the income is dependent on the tax rate that would have been applied to the income in the absence of the loss relief.

A group consists of a parent company and all of its 75% subsidiaries, with all group members being tax resident in Ireland, in another EU member state, in an EEA state with which Ireland has a DTT, or in another country with which Ireland has a DTT. It is also possible to trace through companies quoted on certain recognised stock exchanges (or 75% subsidiaries of companies so quoted). Non-Irish members may only surrender losses from activities that would, if profitable, be subject to Irish tax.

Both the claimant company and the surrendering company must be within the charge to Irish corporation tax. To form a group for corporation tax purposes, both the claimant company and the surrendering company must be resident in an EU country or an EEA country with which Ireland has a DTT ('EEA treaty country'). In addition, one company must be a 75% subsidiary of the other company, or both companies must be 75% subsidiaries of a third company. The 75% group relationship can be traced through companies resident in a 'relevant territory' being the EU, an EEA treaty country, or another country with whom Ireland has a DTT. In addition, in determining whether one company is a 75% subsidiary of another company for the purpose of the group relief provisions, the other company must either be resident in a 'relevant territory' or quoted on a recognised stock exchange.

Capital losses cannot be surrendered within a group.

Relief from capital gains tax is available on intra-group transfers of capital assets. Where a capital asset is transferred from a resident company to another resident company in a 75% group, no capital gains tax charge arises. A group, for capital gains tax purposes, consists of a principal company and its 75% subsidiary companies. A 75% subsidiary is defined by reference to the beneficial ownership of ordinary share capital, owned either directly or indirectly. A capital gains tax group can include companies resident in an EU member state or an EEA DTT country for the purpose of analysing the beneficial ownership of a company.

It also is possible for an Irish resident company and an Irish branch of an EEA company in the same group to transfer capital assets without crystallising a capital gains charge, provided the asset transferred remains within the scope of the charge to Irish capital gains tax.

Subsequent to an intra-group transfer, a charge to capital gains tax will arise when either:

- the asset is sold outside the group, in which case the tax is calculated by reference to the original cost and acquisition date of the asset when first acquired within the group, or
- a company owns an asset that was transferred by a group company and subsequently leaves the group within a ten-year period of the intra-group transfer. The gain on this intra-group transfer crystallises and becomes payable at this point.

Cash pooling and treasury activities

Ireland is a popular location for cash pooling and treasury activities, with a large number of multinationals centralising intra-group treasury activities to avail of the low corporation tax rate of 12.5%. To further enhance the attractiveness of Ireland as a treasury location, Irish tax legislation contains specific provisions to facilitate cash-pooling activities and ensure favourable tax treatment of 'short' interest for tax purposes. Under a typical cash-pool arrangement, interest payments by the Irish cash-pool leader typically would constitute 'short' interest for tax purposes because of the overnight/short-term nature of these arrangements.

Short interest is generally regarded as interest on a loan/deposit where the term is less than a year. Essentially, the Irish company will be entitled to a tax deduction for the interest payable to any group company resident outside the European Union in a non-treaty country, provided the recipient country taxes foreign interest income at a rate equal to or greater than the Irish corporation tax rate of 12.5%. If the recipient country taxes foreign interest at a rate of less than 12.5%, then relief will be given in Ireland at that effective tax rate. If the recipient country exempts foreign interest, then no interest relief will be available in Ireland. It should be noted that this will affect not only cash-pooling operations but all forms of short-term lending (i.e. less than one year). A tax deduction for interest payable to a group company resident in the European Union or in a country with which Ireland has a DTT is also available, regardless of the rate at which the foreign country subjects that interest to tax.

Transfer pricing

Transfer pricing rules have been in place in Ireland since 2011. The legislation endorses the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations and adopts the arm's-length principle. The regime applies to domestic as well as international related-party arrangements.

The transfer pricing regulations only apply to related-party dealings entered into by a taxpayer engaged in a trade that is within the charge to tax under Case I or Case II of Schedule D (typically income and profits subject to tax at the 12.5% standard rate).

Therefore, income that is characterised as 'passive income' subject to tax at a rate of 25% falls outside the scope of the transfer pricing legislation. Passive income for the purposes of these rules may include interest, royalties, dividends, and rents from property where the income arising is not derived from an active trade. For example, interest income arising to a bank will clearly constitute income from an active trade. Consequently, any interest arising to a bank from a related-party arrangement will fall within the scope of the transfer pricing rules.

The rules confer a power on the Irish tax authorities to re-compute the taxable profit or loss of a taxpayer where income has been understated or where expenditure has been overstated as a result of certain non-arm's-length arrangements. The adjustment will be made to the Irish taxable profits to reflect the arrangement had it been entered into by independent parties dealing at arm's length.

The legislation also places an obligation on a taxpayer to provide documentation 'as may reasonably be required' to support the arm's-length nature of the related-party arrangements and that documentation will need to be prepared 'on a timely basis'. Guidance notes issued by the Irish tax authorities on transfer pricing documentation support the legislative basis and indicate that a company is required to have transfer pricing documentation available for inspection if requested by the Irish tax authorities. Notably, the guidance notes state that "it is best practice that the documentation is prepared at the time the terms of the transaction are agreed". Additionally, the guidance notes state that in order "for a company to be in a position to make a correct and complete tax return, appropriate transfer pricing documentation should exist at the time the tax return is filed". It is worth noting that the taxpayer can maintain documentation in the form 'of its choosing'. Additionally, where documentation exists in another territory that supports the Irish arrangement, this will also be sufficient from an Irish transfer pricing perspective, provided that the documentation is in English. The Irish tax authorities have also confirmed that they will accept documentation that has been prepared in accordance with either the OECD Transfer Pricing Guidelines or the code of conduct adopted by the EU Council under the title 'EU Transfer Pricing Documentation'.

Note that arrangements entered into between related parties prior to 1 July 2010 are 'grandfathered' and thereby excluded from the scope of the transfer pricing rules. There is also an exemption from the rules for small and medium-sized enterprises. Broadly speaking, small and medium-sized enterprises include enterprises employing less than 250 people and that have either a turnover of less than EUR 50 million or assets of less than EUR 43 million.

In 2015, a dedicated transfer pricing audit team was formed within the Large Cases Division of the Irish tax authorities and has begun to initiate specific transfer pricing audits to monitor compliance with Irish transfer pricing rules.

Country-by-Country (CbC) reporting
CbC reporting is applicable for Irish-parented multinational enterprises (Irish MNEs). Irish MNEs with consolidated annualised group revenue of EUR 750 million or more are required to comply with the requirements. Irish MNEs must file a CbC report annually to include specific financial data covering income, taxes, and other key measures of economic activity for each territory in which they operate.

In certain circumstances, Irish subsidiaries of foreign headquartered MNEs may also be required to file an 'equivalent' CbC report in Ireland.

Advance Pricing Agreement (APA) program
Ireland has a bilateral APA project with effect from 1 July 2016. The bilateral APA program applies to transfer pricing issues (including the attribution of profits to a PE). The program does not cover cases involving the determination of the existence of a PE.

APAs will be granted for a fixed period of time, typically between three and five years, and a roll-back provision can be invoked in certain cases.

Thin capitalisation
Ireland does not have any thin capitalisation rules.

Controlled foreign companies (CFCs)
Ireland does not have CFC rules.

Tax credits and incentives

The main tax incentives in Ireland are:

- 12.5% corporation tax rate on active business income.
- A 25% credit on qualifying R&D expenditures; total effective tax deduction of 37.5%.
- Ability to exploit IP at favourable tax rates.
- Accelerated tax depreciation allowances for approved energy efficient equipment.
- Ability to carry out investment management activities for non-Irish investment funds without creating a taxable presence in Ireland for such funds.
- An effective legal, regulatory, and tax framework to allow for the efficient redomiciliation of investment funds from traditional offshore centres to Ireland.

R&D credit
A tax credit of 25% applies to the full amount of R&D expenditure incurred by a company. This credit is in addition to the normal 12.5% revenue deduction available for the R&D expenditure thereby resulting in an effective corporation tax benefit of 37.5%.

A separate R&D tax credit is available in respect of expenditure incurred on the construction or refurbishment of a qualifying R&D building. In order to qualify, 35% of the building must be used for qualifying R&D activities, and this threshold is measured over a four-year period. This is of particular assistance where R&D is carried on in a manufacturing environment. The credit available is equal to 25% of the expenditure incurred on the construction or refurbishment of a qualifying building, and the qualifying amount is restricted according to the R&D use. A full volume basis applies to the R&D tax credit for expenditure incurred on qualifying R&D buildings.

The R&D tax credit is available for offset against the current year corporation tax liability of the company in the first instance. Any excess can be carried back for offset against the prior-year corporation tax liability to generate a tax refund, and any further excess can be monetised over a three-year cycle. The amount that can be monetised is limited to the greater of the corporation tax payable by the company in the preceding ten years (subject to an adjustment dependent upon previous claims) or the payroll tax liabilities of the company for both the period in which the R&D expenditure is incurred and the prior year (subject to an adjustment dependent upon previous claims).

In addition, companies may account for the R&D tax credit through their profit and loss account or income statement in arriving at the pre-tax profit or loss. This immediately impacts the unit cost of R&D, which is the key measurement used by multinational corporations when considering the locations of R&D projects. Companies that are in receipt of an R&D tax credit have the option, in certain instances, to reward key employees through an alternative use of that credit. In effect, the company may surrender a portion of their R&D credit (that could otherwise have been used to reduce corporation tax) to 'key employees' to reduce their effective rate of tax to 23% (the average effective rate of tax for such employees would typically be in excess of 40% in the absence of such R&D tax credit). In order to qualify as a 'key employee', the individual must perform 50% or more of their employment duties on qualifying R&D activities.

The R&D regime caters for pre-trading expenditure incurred on qualifying R&D activities. Where a company incurs R&D expenditure but has not yet commenced to trade, an R&D claim in this regard must be made within 12 months from the end of the accounting period in which the company first commences to trade.

Sub-contracted R&D costs of up to the 15% of qualifying in-house R&D expenditure incurred by a company or EUR 100,000 (whichever is greater) can qualify for the R&D tax credit.

Payments to third level institutions of up to 5% of qualifying in-house R&D expenditure incurred by a company or EUR 100,000 (whichever is greater) can qualify for the R&D tax credit.

It should be noted that expenditure incurred on the acquisition of intangible assets that qualify for capital allowances under the IP regime and expenditure incurred in registering/applying for legal protection for intangible assets that are developed as a result of R&D activities do not qualify for the R&D credit.

Intellectual property (IP) regime

Legislation provides for a tax deduction for capital expenditure incurred by a company, which is carrying on a trade, on the acquisition of qualifying IP assets. The definition of IP assets is widely drafted and includes the acquisition of, or the licence to use, the following:

- Patents and registered designs.
- Trademarks and brand names.
- Know-how (broadly in line with the OECD model tax treaty definition of know-how).
- Domain names, copyrights, service marks, and publishing titles.
- Authorisation to sell medicines, a product of any design, formula, process, or invention (and rights derived from research into same).
- Applications for legal protection (e.g. applications for the grant or registration of brands, trademarks, patents, copyright, etc.).
- Expenditure on computer software acquired for commercial exploitation.
- Customer lists acquired, other than 'directly or indirectly in connection with the transfer of a business as a going concern'.
- Goodwill, to the extent that it relates directly to the assets outlined above.

Capital allowances will be available at the same rate as the depreciation/amortisation charge for financial accounting purposes. Alternatively, the company may elect to claim allowances over a period of 15 years.

The annual tax deduction available for IP is 100% of the profits generated from the qualifying IP.

A shorter write-off period of eight years has also been retained for acquired software rights under the existing capital allowances regime where the rights are not acquired for commercial exploitation (i.e. were acquired for end use by the company).

Knowledge Development Box

The Knowledge Development Box provides a 6.25% rate of corporation tax to apply to certain profits arising from qualifying assets that are the result of qualifying R&D carried out by the company qualifying for the relief. This is the first Knowledge

Development Box in the world to be compliant with the new standards of the OECD's 'modified nexus' approach.

Exemption for new start-up companies

A corporation tax holiday applies to certain start-up companies that commence to trade between 2009 and 2018. The relief applies for three years where the total amount of corporation tax payable does not exceed EUR 40,000 in each year. Marginal relief is available where corporation tax payable is between EUR 40,000 and EUR 60,000. The relief available is linked to the amount of employer's PRSI paid by a company in an accounting period as it is intended to provide relief at companies generating employment.

The exemption also allows unused relief arising in the first three years of trading (due to insufficiency of profits) to be carried forward for use in subsequent years.

Section 110 company

Ireland has a favourable tax regime for entities known as 'Section 110' companies. A Section 110 company is an Irish resident special purpose company that holds and/or manages 'qualifying assets' and satisfies a number of conditions. A Section 110 company can provide an onshore investment platform, which should be eligible to access Ireland's DTT network where the Irish company is the beneficial owner of the income flow. The Section 110 regime has been in existence almost 25 years and, with appropriate structuring, can provide for an effective corporation tax rate of close to 0%. The regime is widely used by international banks, asset managers, hedge funds, private equity firms, and investment funds in the context of securitisations, investment platforms, collateralised debt obligations (CDOs), collateralised loan obligations (CLOs), acquisition of distressed loan portfolios, big ticket leasing, and capital markets bond issuances.

Section 110 companies are permitted to invest in financial assets, commodities, and plant and machinery. The term 'financial asset' is widely defined and includes both mainstream financial assets, such as shares, loans, leases, lease portfolios, bonds, debt, and derivatives, as well as assets such as greenhouse gas emissions allowances and carbon offsets.

In addition, the inclusion of plant and machinery as 'qualifying assets' within the Section 110 regime has increased the attractiveness of Ireland as the preferred destination for aircraft financing and leasing activities.

With effect from 6 September 2016, an amendment has been made to Irish tax legislation with the effect of restricting the use of profit participating loans where they are used to finance the business of Section 110 companies related to Irish property transactions. No other category of Section 110 business is impacted by these changes.

Transactions of Section 110 companies unrelated to Irish property transactions are not affected by this amendment.

Broadly, the business of a Section 110 company that is impacted by the amendment, referred to as 'specified property business', is that part of the Section 110 company's activity that involves the holding, managing, or both the holding and managing of so-called 'specified mortgages', being any financial asset deriving its value, or the greater part of its value, from land in the state. This part of the Section 110 company's business is to be treated as a separate business from any other business the company may carry on and, with certain exceptions, no interest above an arm's-length rate will be deductible in computing the taxable profits of that part of the business. The profit so calculated for this part of the business will be taxable at the 25% rate of corporation tax.

Certain exceptions are made so that interest on profit participating loans used in a Section 110 company's specified property business will continue to be fully deductible where the interest is paid to (i) a company subject to corporation tax on the interest, (ii) certain approved funds, and (iii) a person resident in another EU or EEA country where a range of conditions are met.

The amendments were signed into law on 25 December 2016 and apply from 6 September 2016.

Grants

Cash grants may be available for capital expenditures on machinery and equipment and industrial premises, training of employees, creation of employment, rent subsidies, R&D, manufacturing and exporting products, providing services to customers overseas, etc. The level of grant aid depends on a number of factors and is specific to each project. Rates depend on the location of the new industry.

Foreign tax credit

Foreign taxes borne by an Irish resident company (or Irish branch of an EEA resident company), whether imposed directly or by way of withholding, may be creditable in Ireland. The calculation of the credit depends on the nature of the income item, but for income sources other than dividends and some related-party interest, the credit is limited to the Irish tax referable to the particular item of income. A system of onshore pooling of excess foreign tax credits applies to dividends from 5% or greater corporate shareholdings, and excess credits in the dividend pool can be carried forward indefinitely. A similar pooling system applies to some related-party interest and also to foreign branch income.

An Irish resident company with a branch or branches outside Ireland is generally taxable in Ireland on the foreign branch profits with a credit for foreign taxes paid on those profits. A unilateral form of credit relief for foreign taxes paid by foreign branches operating in countries with which Ireland does not have a tax treaty is also available. To the extent that there were foreign taxes on branch profits that were not utilised in the relevant period (that is, where credit for foreign tax exceeds the Irish tax payable), these unused credits can be carried forward indefinitely and credited against corporation tax on foreign branch profits in future accounting periods.

A form of pooling of tax deductions in relation to foreign tax on royalties may be applicable where the royalty income is taken into account in computing the trading income of a trade carried on by the company.

An additional tax credit is available on certain dividends received by an Irish Holdco from an EU/EEA subsidiary that is subject to either the 12.5% or 25% rate of Irish tax.

The additional tax credit will provide for a credit up to the amount of Irish tax in instances where the Irish nominal rate is lower than nominal rate of tax on the underlying profits in the country where the profits are sourced.

Withholding taxes

Irish resident companies are required to withhold tax on certain types of payments as set out below (*see sub-sections below for WHT exemptions and table at end of this section for WHT rate reductions*).

	WHT (%)		
Recipient	**Dividends**	**Interest**	**Patents, royalties**
Resident companies	0	20	20
Resident individuals	20	20	20
Non-resident companies and individuals	20	20	20

Dividend WHT

Dividend WHT applies at 20% to dividends and other distributions. However, an exemption may be available where the recipient of the dividend is either an Irish company or a non-Irish company eligible for the Parent-Subsidiary Directive (which in Ireland requires a 5% or greater shareholding).

Exemptions from dividend WHT also are available where the recipient of the distribution falls into one of the categories listed below and provided an appropriate declaration is made to the company paying the distribution in advance of the distribution. In a move to significantly ease the administrative burden in applying for exemption for dividend WHT, this declaration is now self-assessed and valid for up to six years.

- Irish tax resident companies (a declaration is not required for Irish tax resident companies that hold a 51% or greater shareholding of the company).
- Non-resident companies that are resident in a country with which Ireland has a tax treaty or in another EU member state, where the company is not controlled by Irish residents.
- Non-resident companies that ultimately are controlled by residents of a tax treaty country or another EU member state.
- Non-resident companies whose principal class of shares is traded on a recognised stock exchange in a treaty country or another EU member state or on any other stock exchange approved by the Minster for Finance (or if recipient of the dividend is a 75% subsidiary of such a listed company).
- Non-resident companies that are wholly owned by two or more companies the principal class of shares of each of which is traded on a recognised stock exchange in a treaty country or another EU member state or on any other stock exchange approved by the Minister for Finance.
- Individuals who are resident in a tax treaty country or in another EU member state.
- Certain pension funds, retirement funds, sports bodies, collective investment funds, and employee share ownership trusts.

Companies that make a dividend distribution are required, within 14 days of the end of the month in which the distribution is made, to make a return to the tax authorities containing details of the recipient of the dividend, the reason for any exemption from dividend WHT, and to pay over any tax withheld.

Interest WHT

Financial institutions operating in Ireland are obligated to withhold tax (deposit interest retention tax or DIRT) out of interest paid or credited on deposit accounts in the beneficial ownership of resident companies, unless the financial institution is authorised to pay the interest gross. The rate is 41%. There is no DIRT on interest paid to non-residents where a written declaration of non-residence is completed. Certain annual interest payments are subject to WHT at 20%. Interest payments made by companies to companies resident in other EU member states or in treaty countries are generally not subject to WHT. The EU Interest and Royalties Directive may also provide an exemption from WHT for payments between associated companies.

Royalties WHT

Royalties, other than patent royalties, are not generally subject to WHT under domestic law. Patent royalty payments and certain other annual payments are subject to WHT at 20%. Lower WHT rates may be accessed under treaties, subject to certain documentation and reporting requirements. The EU Interest and Royalties Directive may also provide an exemption from WHT for payments between associated companies. Associated companies, for the purpose of this directive, are companies where one can directly control at least 25% of the voting power of the other or at least 25% of the voting power of both companies is directly controlled by a third company. In all cases, all companies must be resident in a member state of the European Union.

WHT on capital gains

Where any of the following assets is disposed of, the person by whom or through whom the consideration is paid (i.e. the purchaser) must deduct capital gains WHT at 15% from the payment:

1. Land or minerals in Ireland or exploration rights in the Irish continental shelf.
2. Unquoted (unlisted) shares deriving their value or the greater part of their value (more than 50%) from assets described in (1).
3. Unquoted (unlisted) shares issued in exchange for shares deriving their value or the greater part of their value from assets as described in (1).
4. Goodwill of a trade carried on in Ireland.

The requirement to withhold tax does not apply where the consideration does not exceed EUR 500,000 or where the person disposing of the asset produces a certificate from the Revenue Commissioners authorising payment in full. A clearance certificate may be obtained by making application on Form CG50 to the Revenue Commissioners supported by a copy of the agreement or contract for sale. The certificate may be obtained on the grounds that the vendor is Irish resident, no capital gains tax is due in respect of the disposal, or the capital gains tax has been paid. WHT is creditable against the capital gains tax liability of the vendor, and any excess is refundable.

To avoid the requirement to withhold, clearance must be obtained before the consideration is paid. There is no exemption from the withholding procedure where the asset is held as trading stock or where the transaction is intra-group and a capital gains tax liability does not arise. Failure to obtain the certificate will lead to the purchaser being assessed to capital gains tax for an amount of 15% of the consideration.

Professional services withholding tax (PSWT)

Individual income tax at the standard rate (currently 20%) is deducted from payments for professional services by government departments, state bodies, and local authorities. Credit is granted for any PSWT withheld against the corporation tax (or income tax for an individual) liability of the accounting period in which tax is withheld.

Relevant contracts tax (RCT)
RCT is a WHT that applies in the construction, forestry, and meat-processing industries in Ireland. It applies where a ‘principal contractor’ engages a sub-contractor under a ‘relevant contract’ to carry out ‘relevant operations’. Compliant taxpayers can obtain Irish Revenue clearance for zero WHT.

The RCT system applies if the ‘relevant operations’ are carried out in Ireland, to include Irish territorial waters and any area over which Ireland has exploration and exploitation rights. Therefore, it is irrelevant whether or not the parties to the contract are resident in Ireland, the parties are liable to tax in Ireland, the contract is executed outside Ireland, or whether payments under the contract are made outside Ireland.

It is important to note that principal contractors who are liable to RCT may not necessarily operate in the above industries. In the case of construction, in particular, relevant contracts may be entered into by a variety of entity types. For example, companies involved in electricity generation, oil and gas exploration, and telecommunications undertakings are all classed as principal contractors. Relevant operations are also broadly defined. Examples are repairs to buildings and structures, ground works, installation alteration and repairs to various systems in buildings (e.g. electrical, ventilation, water supply, telecommunications, burglar and fire protection systems), mining, exploration works, and also certain haulage contracts.

Where RCT applies, the principal contractor must notify the contract and all payments under the contract to Revenue on the eRCT system in advance of payment being made. Once the principal notifies Revenue that they intend on making a payment to the sub-contractor, Revenue will then revert on a real-time basis and issue a Deduction Authorisation to the principal advising of the rate of RCT to be withheld from the gross payment. The current rates of RCT are 20% and 35% and depend on the Irish tax compliance position of the sub-contractor. The 20% rate will apply to sub-contractors who are registered with Revenue and have a good tax compliance record. The 35% rate will apply where the sub-contractor is not registered for tax in Ireland or has an inadequate tax compliance record. The sub-contractor is entitled to credit for, or offset of, the RCT withheld by the principal and paid to Revenue.

If, however, the sub-contractor has applied for and received zero rate authorisation from Revenue, then 0% RCT rate applies and the sub-contractor can receive payment gross without deduction of RCT. If a principal does not notify payments to Revenue in advance of making payment to the sub-contractor, then penalties will apply. It should be noted that the cost of non-compliance with RCT procedures are severe, therefore it is important that RCT is considered before undertaking any construction related activity, in addition to meat-processing and forestry activity.

Financial Institutions Levy
The Financial Institutions Levy was introduced for a three-year period with the express purpose of enabling the financial services sector to contribute to economic recovery.

The Finance ACT 2016 extended the annual levy being imposed on certain financial institutions by a period of five years. The annual levy was due to expire at the end of 2016 but will now run until 2021. Prior to the Finance Act, the levy amounted to 35% of DIRT paid by the relevant financial institution based on the 2011 base year.

Under the Finance Act, the levy is being extended for a period of five years from 2017 to 2021 and will be charged at a higher rate of 59% on the DIRT paid in respect of the new base years proposed under the legislation. The base year for 2017/18 will be 2015, with 2017 being the base year for the levies due in 2019/20, and the base year for the tax due in 2021 being 2019.

WHT rate reductions and exemptions

Exemptions and rate reductions apply under domestic law and under tax treaties. Where an exemption from WHT is not available (*please see sections above for domestic law exemptions*), a reduced rate of WHT may apply under an applicable tax treaty. The table below sets out the reduced rates of WHT that may be available to payments from Ireland of dividends, interest, and royalties under an applicable tax treaty.

	WHT (%)		
Recipient	**Dividends (1)**	**Interest**	**Patents, royalties (3, 4)**
Non-treaty	20	20	20
Treaty:			
Albania	0/5/10	0/7	7
Armenia	0/5/15	0/5/10	5
Australia	0	10	10
Austria	0	0	0
Bahrain	0	0	0
Belarus	0/5/10	0/5	5
Belgium	0	15 (2)	0
Bosnia-Herzegovina	0	0	0
Botswana	0/5	0/7.5	0/7.5
Bulgaria	5/10	0/5 (2)	10 (2)
Canada	5/15	0/10	0/10
Chile	5/15	5/15	5/10
China	5/10	0/10	6/10
Croatia	5/10	0	10 (2)
Cyprus	0	0	0/5 (2)
Czech Republic	5/15	0	10 (2)
Denmark	0	0	0
Egypt	5/10	0/10	10
Estonia	5/15	0/10 (2)	5/10 (2)
Ethiopia	5	0/5	5
Finland	0	0	0
France	20	0	0
Georgia	0/5/10	0	0
Germany	5/15	0	0
Greece	5/15	5 (2)	5 (2)
Hong Kong	0	0/10	3
Hungary	5/15	0	0
Iceland	5/15	0	0/10
India	10	0/10	10
Israel	0	5/10	10
Italy	15	10 (2)	0
Japan	0	10	10
Korea, Republic of	0	0	0
Kuwait	0	0	5
Latvia	5/15	0/10 (2)	5/10 (2)
Lithuania	5/15	0/10 (2)	5/10 (2)

Ireland

Recipient	Dividends (1)	Interest	Patents, royalties (3, 4)
	WHT (%)		
Luxembourg	0	0	0
Macedonia	0/5/10	0	0
Malaysia	10	0/10	8
Malta	5/15	0	5 (2)
Mexico	5/10	0/5/10	10
Moldova	5/10	0/5	5
Montenegro	0/5/10	0/10	5/10
Morocco	6/10	0/10	10
Netherlands	0/15	0	0
New Zealand	0	10	10
Norway	0/5/15	0	0
Pakistan	5/10	0/10	0
Panama	5	0/5	5
Poland	0/15	0/10 (2)	0/10 (2)
Portugal	15	0/15 (2)	0/10 (2)
Qatar	0	0	5
Romania	3	0/3 (2)	0/3 (2)
Russia	10	0	0
Saudi Arabia	0/5	0	5/8
Serbia	5/10	0/10	5/10
Singapore	0	0/5	5
Slovak Republic	0/10	0	0/10 (2)
Slovenia	5/15	0/5 (2)	5 (2)
South Africa	5/10	0	0
Spain	0	0	5/8/10 (2)
Sweden	0	0	0
Switzerland	0	0	0
Thailand	10	0/10/15	5/10/15
Turkey	5/15	10/15	10
Ukraine	5/15	5/10	5/10
United Arab Emirates	0	0	0
United Kingdom	5/15	0	0
United States	5/15	0	0
Uzbekistan	5/10	5	5
Vietnam	5/10	0/10	5/10/15
Zambia	0	0	0

Irish tax legislation allows for favourable treatment in situations where a DTT has been signed but not yet ratified.

Notes

1. Domestic legislation may also provide an exemption from the dividend WHT, subject to providing the necessary documentary evidence of qualification. An exemption may also be available under the EU Parent-Subsidiary Directive.
2. The EU Interest and Royalties Directive may provide an exemption from WHT for payments between associated companies.
3. In general, royalties WHT applies only in the case of patent royalties.
4. Under domestic legislation, WHT will not apply if the loans or advances are for a period of less than one year or if the interest is paid in the course of a trade or business to a company resident in an EU or treaty country and that country imposes a tax that generally applies to foreign interest receivable.

Negotiations with Azerbaijan, Ghana, Kazakhstan, Oman, Turkmenistan, and Uruguay have concluded, and the new agreements are expected to be signed shortly.

Ireland is currently negotiating treaties with the following countries:

- Argentina.
- Jordan.
- Taiwan.
- Tunisia.

Tax administration

Taxable period
The tax accounting period normally coincides with a company's financial accounting period, except where the latter period exceeds 12 months.

Tax returns
Corporation tax returns must be submitted within nine months (and no later than the 23rd day of the ninth month) after the end of the tax accounting period in order to avoid a surcharge (maximum of EUR 63,485) or a restriction of 50% of losses claimed, to a maximum of EUR 158,715.

Payment of tax
Corporation tax payment dates are different for 'large' and 'small' companies. A small company is one whose corporation tax liability in the preceding period was less than EUR 200,000. Interest on late payments or underpayments is applied at approximately 8% per year.

Large companies
For large companies, the first instalment of preliminary tax totalling 45% of the expected final tax liability, or 50% of the prior period liability, is due six months from the start of the tax accounting period (but no later than the 23rd day of the month).

The second instalment of preliminary tax is due 31 days before the end of the tax accounting period (but no later than the 23rd day of the month). This payment must bring the total paid up to 90% of the estimated liability for the period.

The balance of tax is due when the corporation tax return for the period is filed (that is, within nine months of the end of the tax accounting period, but no later than the 23rd day of the month in which that period of nine months ends).

Small companies
Small companies are only required to pay one instalment of preliminary tax. This is due 31 days before the end of the tax accounting period (but no later than the 23rd day of the month).

The company can choose to pay an amount of preliminary tax equal to 100% of the corporation tax liability for its immediately preceding period or 90% of the estimated liability for the current period. As is the case for large companies, the final instalment is due when the corporation tax return is filed.

Tax audit process
A system of self-assessment and Irish Revenue audits is in operation in Ireland.

Statute of limitations
Irish Revenue may undertake an audit of a company's tax return within a period of four years from the end of the accounting period in which the return is submitted.

Topics of focus for tax authorities
In Irish Revenue's Annual Report 2015, a continued priority is to maintain the high levels of voluntary compliance in Ireland aided by an increased focus on non-compliance. The Irish authorities aim to do so by using emerging data sources to risk-assess cases and target new forms of non-compliance and aggressive avoidance.

Another of Irish Revenue's key aims is to make it easier and less costly for voluntary compliance through further use of digital channels and a range of initiatives to lessen the administrative burden for taxpayers.

Internationally, Irish Revenue have committed to further tax transparency and the exchange of information between authorities. Revenue also emphasis a continued focus on transfer pricing issues both at an EU and global level.

General Anti-Avoidance Legislation
The general anti-avoidance provisions are designed to counteract transactions that lack commercial reality and are put in place with a view to reducing or avoiding a charge to taxation.

The impact of the general anti-avoidance rule is that where a person enters into a transaction and it would be reasonable to consider that the transaction is a 'tax avoidance transaction', Irish Revenue may, at any time, deny or withdraw the tax advantage. In order to deny or withdraw that tax advantage, Irish Revenue may:

- make or amend an assessment
- allow or disallow in whole or in part any credit, deduction, or other amount that is relevant in computing tax payable
- allocate or deny in whole or in part any credit, deduction, loss, abatement, relief, allowance, exemption, income, or other amount, or
- recharacterise, for tax purposes, the nature of any payment or other amount.

The assessment made by Irish Revenue will stand unless the taxpayer successfully appeals it to the Appeals Commissioners/Courts.

Mandatory disclosure
In a move to promote transparency between taxpayers, practitioners, and tax authorities, provisions relating to the disclosure of tax schemes are applicable. These require promoters of such schemes to provide information to the tax authorities within a specified time of having made the scheme available. A transaction that comes within the new law and must therefore be reported to Revenue is not necessarily a tax avoidance transaction for the purposes of existing legislation. The rules are wide reaching and essentially cover all tax heads, including corporation tax, income tax, capital gains tax, stamp duty, VAT, customs duties, and excise duties.

Other issues

Asset management

Irish tax legislation contains provisions aimed at promoting Ireland as a leading location for the management of both Undertakings for Collective Investment in Transferable Securities (UCITS) and alternative investment funds (AIFs). The UCITS Directives have brought about fundamental changes to both the management and structuring of UCITS. One of the key reforms introduced permits UCITS management companies located in one EU jurisdiction to manage UCITS domiciled in another EU jurisdiction. One of the areas of concern is whether the activities of the management company could bring a foreign UCITS within the charge to tax in the management company's home jurisdiction (e.g. by creating a branch or agency or causing the fund to be regarded as tax resident there). Irish legislation provides that an Irish management company managing a non-Irish UCITS or AIF will not be regarded as a branch or agency of the non-Irish UCITS or AIF and will not bring the profits of the foreign UCITS or AIF within the charge to Irish tax or treat the foreign UCITS or AIF as an Irish regulated fund.

Following the United States (US) and OECD review of offshore domiciles, which has resulted in increased regulation and tax obligations, many fund managers are considering possible alternative onshore jurisdictions for their investment fund products. Because of the international reputation of its asset management industry and the favourable fund tax regime, Ireland is seeing a significant trend in investment managers moving their investment platforms to Ireland from the traditional offshore jurisdictions. Company law changes also allow corporate funds to migrate to Ireland through a re-domiciliation process, whereby the fund would benefit from its continued existence, including the ability to retain the fund's performance track record post migration and avoid potential adverse tax consequences and costs that typically arise from a merger of an offshore fund with a new onshore fund. The Irish Central Bank has a coordinated authorisation process to facilitate speed to market, which, at present, is a key advantage in comparison to delays being experienced in other EU domiciles.

International funds sector

Recent Irish legislation has introduced a number of provisions designed to support and enhance the international funds sector in Ireland, as set out in further detail below:

Funds re-domiciling to Ireland

Where the Central Bank has authorised an investment fund that has re-domiciled to Ireland from certain offshore centres (*discussed above*), a declaration can be made by the fund stating that the unitholders are non-Irish resident unitholders, to ensure that no Irish tax charge arises in respect of such non-residents, thereby clarifying the tax exemption applying to payments made by Irish funds to non-resident investors. To the extent that there are any Irish resident unitholders, these need to be identified in the declaration and tax accounted for, where appropriate, on any payments made to such unitholders.

Cross-border fund mergers involving Irish funds

Mergers (both inbound and outbound) involving an Irish fund with a fund located in a member state of the European Union, European Economic Area, or an OECD country with which Ireland has entered into a DTT will not give rise to a charge to tax in respect of Irish resident investors. Effectively, the charge to tax is deferred until the ultimate disposal of the replacement units. The calculation of any future gain on such units is calculated by reference to the cost of the original units.

No charge to Irish tax should arise on the transfer of units in the formation of certain master/feeder structures.

A number of significant stamp duty exemptions are also available for collective investment vehicles.

Real Estate Investment Trusts (REITs)
The Irish REIT was introduced in 2013, with the objective of providing access to the property market for smaller investors and to facilitate capital injections into the Irish property market. The first REIT listing on the Irish Stock Exchange took place on 18 July 2013. There are currently three REITs in Ireland, with further REITs expected to be launched.

The REIT must be incorporated and resident in Ireland and listed in an EU jurisdiction.

REITs are exempt from tax on rental income and capital gains accruing on the disposal of assets if certain conditions are met, notably the requirement to distribute at least 85% of property income annually and that at least 75% of the aggregate income of the REIT must derive from carrying on property rental business.

There is no exemption from VAT, property rates, employment taxes, or stamp duty. Stamp duty, which is currently at a rate of 2% (1% for certain residential property), should apply to properties acquired. The REIT is subject to corporation tax on all other income and gains under the usual taxation rules.

There are also requirements regarding the number of investors, properties held, and the financing arrangements that may impact the tax position of the REIT.

Distributions made by the REIT out of rental income and gains are subject to 20% WHT, with exemption/reduced rates available for eligible investors. Distributions out of taxed income are treated as ordinary dividends.

The introduction of the Irish Collective Asset-management Vehicle (ICAV)
The Irish funds industry continues to work with the Irish government to explore new products that could enhance the competitiveness of Ireland's fund offering on the global stage.

In this regard, the ICAV Act 2015 was signed into law on 4 March 2015.

Previously, investment funds in Ireland structured as companies were incorporated as public limited companies ('plc') under the Irish Companies Acts. The ICAV is specifically designed for investment funds and is not subject to the legislation governing other types of companies, thereby removing the need to comply with certain requirements under the Companies Acts. The legislation also increases the range of structures open to investment managers and promoters establishing funds in Ireland.

One of the main advantages of the ICAV is the ability of this structure to 'check-the-box' (an election to be regarded as tax transparent) for US tax purposes, whereas an Irish plc cannot avail of this election. This is seen as a very positive development in the funds industry, particularly in the context of investment funds seeking to re-domicile from traditional tax haven jurisdictions to a regulated jurisdiction like Ireland.

An ICAV may be established as an umbrella structure with a number of sub-funds and share classes. Where an umbrella structure is created, each sub-fund will have segregated liability and also have the flexibility to prepare separate financial statements on a sub-fund basis. The ICAV also qualifies for the tax exemptions that apply to Irish regulated funds.

Irish Real Estate Funds (IREFs)
With the publication of the Finance Act 2016 comes the introduction of a new fund category called an Irish Real Estate Fund.

Under the new legislation, a fund is an IREF where 25% or more of the market value of the assets is derived, directly or indirectly, from Irish property or one of the main purposes of the fund is to acquire Irish property.

Where a fund is categorised as an IREF, 20% WHT must be operated by the fund on distributions of income. Gains derived from the disposal of property held for at least five years are specifically excluded from the scope of the WHT, unless the fund is a personal portfolio IREF (PPIREF). No tax applies in respect of gains on redemption of units in the IREF except where those gains are derived from undistributed income, real estate disposed of within five years of acquisition, or, in the case of a PPIREF, any disposal of Irish real estate.

Broadly, PPIREFs are funds where a unit holder or a person connected with the unit holder has the ability to influence the selection of some or all of the IREF assets.

There are a number of points to emphasise:

- UCITS are specifically excluded from the new rules.
- The vast majority of Irish Qualifying Investor Alternative Investment Funds (QIAIFs) are not significantly invested in Irish property and will be unaffected by the new rules.
- There are significant categories of exempt investors who will not be subject to WHT, and these are currently listed as:
  - Irish and equivalent EU or EEA pension schemes, Personal Retirement Savings Accounts, and EU cross-border schemes holding the IREF directly or indirectly
  - other Irish regulated funds or equivalent funds authorised by a member state of the EU or the EEA
  - Irish life assurance funds and equivalent overseas life assurance funds, and
  - Section 110 companies, credit unions, and charities.

Refunds of WHT are possible where persons who are exempt from WHT hold their units through intermediary vehicles that do not, in themselves, qualify for WHT exemptions.

Where a unitholder holds less than 10% in an IREF and they are treaty entitled, they can make treaty reclaims. Distributions from an IREF to a unitholder with a 10% interest or more in the fund will be designated as income from Irish immovable property and treaty refunds should not be available.

Relief has been provided to enable a reorganisation where an IREF transfers certain assets to companies within the charge to Irish corporate tax or reorganises the IREF into a REIT.

Taxable Irish investors in real estate will continue as before to be taxed under normal rules on distributions of income and gains on redemption of Irish land.

These changes will require very careful consideration. Please get in touch with your usual PwC contact to talk through the fuller implications of the proposed changes.

Investment limited partnership
Irish tax legislation confirms the tax transparency of investment funds structured as investment limited partnerships under the Investment Limited Partnership Act 1994. Prior to Finance Act 2013, such funds were regarded as opaque under Irish tax legislation. There is also an ongoing review of the Irish limited partnership legislation with a view to providing legal and practical enhancements to the limited partnership regime to cater for the increased popularity of Ireland as a platform for private equity investment.

Islamic finance
Irish tax law facilitates most Islamic finance transactions, including *ijara* (leasing), *takaful* (insurance), *re-takaful* (reinsurance), *murabaha* and diminishing *musharaka* (credit arrangements), *mudaraba* and *wakala* (deposit arrangements), and *sukuk*. While there is no specific reference in the legislation to Islamic Finance, rather the reference is to Specified Financial Transactions, overall, the premise of the legislation in Ireland is to ensure that Islamic finance transactions are treated in the same manner as conventional financing transactions.

This legislation also facilitates the taxation (and tax impact) of UCITS management companies. The UCITS structure is one of the most commonly used structures for many different types of Islamic funds, such as retail Islamic equity funds, Shariah-compliant money market funds, Shariah-compliant exchange traded funds (ETFs), etc.

Islamic insurance
The Irish Revenue has provided guidance in respect of the Irish tax treatment of general *takaful* (non-life), *re-takaful* (reinsurance), and family (life) *takaful* arrangements. Legislative changes are not currently required to facilitate Islamic insurance in Ireland.

Choice of legal entity
Foreign investors tend to operate either through an Irish legal entity or as a branch of a foreign entity. Both are equally valid means of doing business in Ireland, and the choice will normally depend on the commercial fact pattern and individual circumstances of the investor parent company.

Foreign Account Tax Compliance Act (FATCA) intergovernmental agreement (IGA)
In December 2012, Ireland signed an intergovernmental agreement with the United States (the US-Ireland IGA), for which enabling provisions were enacted into Irish tax legislation in Finance Act 2013.

The Financial Accounts Reporting (United States of America) Regulations 2014 (‘the Regulations’), together with the provisions of Section 891E Taxes Consolidation Act 1997, give effect to FATCA in Ireland from 1 July 2014. Further guidance is provided in the Irish Guidance Notes issued by Irish Revenue. The due date for reporting accounts is 30 June. The first reporting cycle was completed in 2015 in respect of the period ending 31 December 2014, and reporting is required to be performed by Irish financial institutions annually thereafter.

The IGA changes the way in which FATCA affects Irish financial institutions. Its effect is to give Irish laws and regulations precedence in governing FATCA compliance for Irish entities, and it provides that reporting will be carried out to the Irish Revenue Commissioners, rather than to the US Internal Revenue Service (IRS). The reporting requirements will apply to all Irish financial institutions, as defined, regardless of whether the entity has US account holders or US assets.

US-Ireland IGA

The US-Ireland IGA defined the types of Irish financial institutions that are in scope for FATCA as:

- a custodial institution
- a depository institution
- an investment entity, or
- a specified insurance company.

Specific definitions are attached to each type of entity above.

For the asset management industry, the IGA covers investment funds, their administrators and investment managers, as well as other parties involved in the running of the fund. The Irish regulations clarify that the fund is the party with primary responsibility for complying with the relevant obligations, but that certain due diligence and reporting responsibilities can be delegated to a third party, such as the fund administrator, at the fund's discretion.

The US-Ireland IGA also defines the types of institutions that are either exempt from the scope of FATCA or that can qualify as 'Deemed-Compliant Financial Institutions'. Entities qualifying under the 'Deemed Compliant' status will benefit from a reduced compliance burden under FATCA. Such entities include non-profit organisations, financial institutions with a local client base, and certain collective investment vehicles. Collective investment vehicles may qualify under the 'Deemed Compliant' status where all of the interests in the vehicle are held by or through one or more financial institutions that are not non-participating financial institutions.

IGA benefits

Under the IGA, reporting Irish financial institutions must report account holder information annually to Irish Revenue Commissioners (by 30 June each year in respect of the previous calendar year). The Irish Revenue Commissioners will then collate and exchange this information with the IRS.

Under the US-Ireland IGA, reporting Irish financial institutions are considered to be compliant with local regulations, and, as a result, those entities should not suffer 30% FATCA WHT on US-source income or gross proceeds. Similarly, reporting Irish financial institutions should generally not be obligated to operate 30% FATCA WHT on such payments made to recalcitrant account holders or investors, provided the requirements of the IGA are met.

This is a very positive feature of the US-Ireland IGA, and means that the task of developing complex WHT systems to identify and withhold on payments to certain account holders is avoided in most cases.

IGA requirements
Some of the key requirements of reporting Irish financial institutions under the US-Ireland IGA include the following:

- Register as a reporting Irish financial institution and receive a Global Intermediary Identification Number (GIIN).
- Apply due diligence procedures to identify and report certain information on US Reportable accounts (as defined) and accounts held by non-participating financial institutions.
- Update account on-boarding procedures with effect from 1 July 2014 to identify whether the account holder is considered a US person (individual accounts) and classify and document the account into different categories of account holder (entity accounts).
- Annually report certain details on US reportable accounts.

Reporting
The Guidance Notes include a useful timetable demonstrating the phased in approach to Reporting over the first three years. They also contain a link to the IRS Schema and provide details on the transmission of the report to Revenue via Revenue's Online Service (ROS). Reporting can be done in US dollars or in the functional currency of the financial account. Nil reporting is required where a financial institution has no reportable accounts.

In the case of minor errors discovered by the IRS, the IRS will contact Revenue directly, who will liaise with the financial institution to resolve the issue.

Common Reporting Standard (CRS)
The CRS framework was first released by the OECD in February 2014 as a result of significant political will demonstrated by the G20 members. To date, more than 100 jurisdictions have publically committed to implementation, many of which are early adopter countries, including Ireland. For early adopters, CRS went live on 1 January 2016.

On 21 July 2014, the Standard for Automatic Exchange of Financial Account Information in Tax Matters (the Standard) was published, involving the use of two main elements, the Competent Authority Agreement (CAA) and the CRS. The goal of the Standard is to provide for the annual automatic exchange between governments of financial account information reported to them by local financial institutions relating to account holders who are tax resident in other participating countries.

The OECD leveraged FATCA to design the CAA and CRS, and, as such, the Standard is broadly similar to the FATCA requirements, albeit with numerous alterations. It will result in a significantly higher number of reportable persons due to the increased instances of potentially in-scope accounts and the inclusion of multiple jurisdictions to which accounts must be reported.

Requirements for financial institutions under CRS
A determination is required to be made with regard to whether an entity falls within the definition of a financial institution for CRS purposes. The definition of a financial institution is similar to FATCA, albeit wider in scope. If an entity is regarded as a financial institution and it is located in a participating jurisdiction, CRS requires it to identify account holders who are tax resident in other participating jurisdictions and report their information on an annual basis to their local tax authority, for onward

exchange to the tax authority in which the account holder is resident. CRS therefore has a much larger scope than FATCA. In particular, CRS will require substantially increased reporting on a greater number of customers compared with FATCA, which focuses solely on US 'specified persons'. Irish Revenue has adopted the 'wider approach' with regard to CRS, which means that Irish financial institutions need to report all account holders to Irish Revenue (apart from Irish and US account holders) who will then review this information and pass account information to tax authorities in participating jurisdictions to the extent there are reportable accounts that are resident in that participating jurisdiction.

When opening new financial accounts, financial institutions are required to obtain a CRS self-certification from account holders for all new accounts opened on or after 1 January 2016. There are two types of self-certification forms, individual and entity. If an entity self-certification form is to be completed, then, in the case of passive non-financial entities (Passive NFEs), an individual self-certification must also be completed (along with the controlling persons section) for each of the entity's controlling persons.

Self-certifications must be reviewed for reasonableness against other information known about the account holder. As a result, the collection and validation of self-certifications must be an integral part of the anti-money laundering/know your customer (AML/KYC) process.

CRS requires separate due diligence review and timelines for pre-existing and new accounts, and for individuals and entities similar to FATCA. The first CRS reporting to the relevant tax authorities by financial institutions will be in June 2017 (in respect of 2016). As such, 'new account' opening procedures should be in place from 1 January 2016. For pre-existing accounts, due diligence will need to be completed by 31 December 2016 or 31 December 2017, depending on the type of pre-existing account holder.

Irish Revenue has also recently released details of the new reporting system for 2017, which will include all reporting under FATCA, CRS, and future reporting regimes such as CbC reporting. In-scope financial institutions will be obligated to register as a reporting entity for automatic exchange of information (AEOI) purposes for both FATCA and CRS. *Further details can be found at www.revenue.ie/en/business/aeoi/*.

Isle of Man

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Significant developments

Tax treaties

As of 1 May 2017, the Isle of Man had entered into ten comprehensive double tax agreements (DTAs), 13 limited scope DTAs, and 39 tax information exchange agreements (TIEAs) based on the Organisation for Economic Co-operation and Development (OECD) models. The Isle of Man also has a DTA with the United Kingdom (UK) that predates the OECD model.

Taxes on corporate income

Companies resident in the Isle of Man are taxed on their worldwide income and are required to file an annual income tax return reporting worldwide taxable profits calculated in line with local legislation and practice.

A non-resident company incorporated outside the Isle of Man but having a place of business or a permanent establishment (PE) on the Isle of Man will be taxed on the profit attributable to the Isle of Man establishment.

There are three rates of corporate income tax (CIT).

The 10% rate applies to income from:

- a banking business carried on in the Isle of Man on the basis of a deposit taking licence issued by the Isle of Man Financial Supervision Commission, and
- retail activities (i.e. the sale of goods to consumers through retail premises) carried on in the Isle of Man, but only if that income exceeds 500,000 Isle of Man pounds (IMP) in the year.

The 20% rate applies to income from real estate situated in the Isle of Man.

The 0% rate applies to all other income.

Where an election is made, certain companies subject to Manx income tax at the standard 0% rate can elect to pay tax at the 10% rate.

The general rules for the calculation of taxable income are the same whether a company is liable to tax at 0%, 10%, 20%, or a combination of these rates. Both resident and non-resident companies are taxed on their income at the same rates.

Unilateral relief from double taxation in respect of foreign-source income is given by way of tax credit.

Local income taxes
There are no profit based taxes levied by local government in the Isle of Man. However, commercial business rates are payable. Premises are assessed and given a 'rateable value' that forms the basis of the annual rates charge levied.

Corporate residence

A company incorporated in the Isle of Man is automatically resident for tax purposes and must therefore file an annual income tax return, whether it pays tax at 0%, 10%, 20%, or a combination of these rates.

A company that is incorporated elsewhere will be considered resident in the Isle of Man if it is 'managed and controlled' in the Isle of Man, and will be taxed on its worldwide income accordingly. 'Managed and controlled' is generally interpreted as being the place where the board of directors meets, although this is not always conclusive.

In cases where a company is resident in a country with which the Isle of Man has a tax treaty, then a tie-breaker may operate to determine residence.

Note that a company that is incorporated in the Isle of Man will not be resident if it can prove to the satisfaction of the Assessor that:

- its business is centrally managed and controlled in another country
- it is resident for tax purposes under the other country's law
- either it is resident for tax purposes in the other country under a DTA in which a tie-breaker clause applies or the highest rate at which any company may be charged to tax on any part of its profits in that other country is 20% or higher, and
- there is a *bona fide* commercial reason for its residence status in the other country, which is not motivated by a desire to reduce Isle of Man tax.

Permanent establishment (PE)
A place of business includes a PE, such as a branch office or shop, factory, workshop, or mine. The definition of a PE is not set out in statute, and, in cases where the company is resident in a country with which the Isle of Man has a DTA, the terms of the agreement will determine the company's residence.

Other taxes

Value-added tax (VAT)
VAT is a transaction-based tax applied on the domestic supply of most goods and services and is currently charged at a standard rate of 20%. VAT is designed to be a tax borne by the final consumer, and there is a mechanism for businesses to recover VAT incurred in a supply chain, subject to meeting certain conditions.

For VAT purposes, the Isle of Man forms a single territory with the United Kingdom, and the VAT rules are broadly identical. This means that VAT is charged on supplies between Isle of Man and UK businesses as if they were domestic supplies. The Isle of Man has its own tax authority for VAT and other indirect taxes, which works in conjunction with the UK tax authorities.

Some supplies are charged at 0%, including food, books and publications, and public transport, and there is also a 5% rate applied to domestic property repairs, amongst other things. Finally, some supplies are exempt from VAT, including insurance and financial services, betting and gaming, education, and healthcare.

Customs and excise duties

In addition to VAT, the Isle of Man forms a common jurisdiction for customs and excise duties with the United Kingdom, and, again, the rules are broadly identical. Customs duties are levied on most goods imported from outside the European Union (EU) into the Isle of Man, and there are various rates of duty that apply. Excise duties apply to such things as alcohol, tobacco, and fuels, and there are various rates of duty that apply. There is also a levy on commercial passenger flights known as Air Passenger Duty.

Property taxes

There are no property-related taxes for companies other than (i) income tax payable at a rate of 20% on their profits from the rental or development of land or property situated in the Isle of Man and (ii) business rates *as detailed under Local income taxes in the Taxes on corporate income section*.

Transfer taxes

There are no capital transfer taxes in the Isle of Man.

Stamp taxes

There is no stamp duty payable in the Isle of Man.

Betting duty

There are no other transaction taxes in the Isle of Man other than betting duty on gaming transactions, which is levied at differing rates of up to 15%, depending on the nature of the gaming transaction and whether it is online or land-based.

Payroll taxes

Employers in the Isle of Man are responsible for deducting tax from an employee's remuneration under the Income Tax Instalment Payments (ITIP) scheme. An employer is any person, which includes any individual, company, partnership, or public body, that engages or hires the services of someone and, in return, pays a wage or fixed payment.

The scheme covers everyone who receives remuneration and includes employees, office holders (e.g. directors), and pensioners. Any remuneration is subject to ITIP, and tax should be deducted in accordance with the individual's tax code.

For the purposes of ITIP, 'remuneration' means any payment of salary, wages, fees, commission, pensions, or annuities and some termination payments.

National Insurance contributions

In addition to deducting 'National Insurance' contributions from their employees' earnings, employers in the Isle of Man are required to make a 'secondary' National Insurance contribution in respect of each of their employees, depending on the individual's circumstances.

The standard rate of secondary contribution is 12.8% on earnings over IMP 118 per week, but reduced rates apply in certain circumstances where the employee is a member of a pension scheme.

Branch income

The income of branches is taxed in the same way as other corporate income in the Isle of Man. Foreign companies with branches in the Isle of Man will be taxed at the appropriate rate on the profits attributable to the Isle of Man branch.

Income determination

The general rules for the calculation of taxable income are the same whether a company is liable to tax at 0%, 10%, 20%, or a combination of these rates.

Inventory valuation

Inventories are generally stated at the lower of cost or market value. Any method of valuation that accords with sound commercial principles is acceptable for tax purposes, provided it is adopted consistently at the beginning and end of the accounting period and does not conflict with tax law. In practice, inventories are normally valued for tax purposes at the lower of cost or net realisable value. A first in first out (FIFO) basis of determining cost where items cannot be identified is acceptable, but not the base stock method or the last in first out (LIFO) method.

In general, the book and tax methods of inventory valuation must conform.

Capital gains

There is no capital gains tax in the Isle of Man.

Dividend income

Dividends are taxed at the standard rate of 0%. Dividends received from Isle of Man companies do not suffer withholding tax (WHT).

Banking income

Licensed banks are taxed at 10% on income from deposit taking, any related activities, and interest earned from the investment of regulatory reserves only.

Income earned on capital and reserves in excess of the regulatory capital, group funded lending, fiduciary deposits, assurance, insurance, custody, trust, and corporate services is not classified as banking business and is taxed at the 0% rate.

General expenses are allocated against 0% and 10% income streams on a *pro rata* basis.

The 20% rate applies to income earned by banks from real estate situated in the Isle of Man.

Royalty income

Royalties are taxed at the standard rate of 0%.

Rental income
Companies with profits arising on rental income in respect of land or property situated in the Isle of Man are charged to income tax at a rate of 20%. This rate applies whether or not the company is resident in the Isle of Man.

Foreign income
Resident corporations are liable to tax on their worldwide income (albeit the relevant rate of tax is often 0%).

Deductions

Relief is given in calculating the taxable profit of a company if the expense is incurred in the normal course of the business and is incurred wholly and exclusively for business purposes. However, certain expenses that are deducted in the computation of profits are not allowable for tax purposes. These include depreciation, unpaid but accrued pension and bonus payments, certain lease payments, and customer entertainment costs.

Depreciation
Depreciation charged in accounts in not allowable for tax purposes. Instead, relief for depreciation is given using 'capital allowances' based on a reducing-balance method. Plant and machinery, tourist premises, industrial buildings, commercial buildings within a designated area, fish processing buildings, and agricultural buildings and works have an initial allowance of 100%. There are restrictions on allowances for expensive motorcars.

Isle of Man government grants are not taken into account in determining the amount of expenditure on which allowances may be given.

Tax depreciation is not required to conform to book depreciation.

Upon disposal, allowances will be reclaimed on the sale proceeds, restricted to cost.

Goodwill
No relief is given against trading profits for the purchase of goodwill.

Start-up expenses
Start-up expenses incurred in the three years prior to the commencement of trading, which would have been deductible as a trading expense if incurred after the commencement of trading, are treated as a loss arising in the year trading commenced, and relief for these losses can be claimed, subject to the normal loss-relief rules.

Interest expenses
Interest paid to lenders subject to Isle of Man tax is allowable in full. Interest paid to lenders not subject to Isle of Man taxation is allowable if it is incurred in the normal course of the business and is wholly and exclusively for business purposes. Only interest charged at a reasonable commercial rate will be allowed as a deduction.

Bad debt
Relief against trading profits is only available in respect of specific bad debts. General provisions are not allowable.

Charitable contributions
Broadly, trading companies are able to claim a deduction for donations made to charities, subject to a maximum of IMP 15,000 or 1% of their taxable income, whichever is greater.

Fines and penalties
No relief is available for any payments made in respect of fines or penalties, whether related to income tax compliance or otherwise.

Taxes
Business rates, *as detailed under Local income taxes in the Taxes on corporate income section*, are deductible when calculating net taxable profit.

Net operating losses
Losses can be carried forward indefinitely against future profits from the same trade.

Trading losses incurred may be carried back against preceding year profits. There are additional rules that apply in the opening years of trade. Terminal losses in the last year of trade can be carried back against profits for the previous three years.

Payments to foreign affiliates
There is no formal transfer pricing regime in the Isle of Man, and payments made to foreign affiliates, such as royalties, management charges, and service fees, are deductible under normal principles. If, however, the Assessor of Income Tax is of the opinion that the main purpose, or one of the main purposes, of any transaction is the avoidance or reduction of tax liability, assessments may be made to counteract that avoidance or reduction.

For details of WHTs, please see the Withholding taxes section.

Group taxation

Trading losses and excess capital allowances may be surrendered (subject to certain restrictions) between 75% affiliates resident in the Isle of Man. Similar concessions are available to members of a consortium, but only a fraction of the loss or excess may be set-off, that fraction being equal to the members' share in the consortium in the relevant year of assessment.

Transfer pricing
There is no formal transfer pricing regime in the Isle of Man. If, however, the Assessor of Income Tax is of the opinion that the main purpose, or one of the main purposes, of any transaction is the avoidance or reduction of tax liability, assessments may be made to counteract that avoidance or reduction of tax liability.

Thin capitalisation
There is no specific thin capitalisation rule in the Isle of Man.

Controlled foreign companies (CFCs)
There is no CFC regime in the Isle of Man.

Tax credits and incentives

Land Development Tax Holiday

The Isle of Man 2016 budget introduced a Land Development Tax Holiday, which means, where certain conditions are met, a company can apply for exemption from income tax for up to five years on 'relevant' profits. These include:

- Profits on new commercial developments or improvements to existing commercial developments.
- Rental income received on a new commercial development or improvement to an existing commercial development.

However, both of the above must provide 'additional productive employment' in the Island.

Residential property is excluded as is any business that is beneficially owned by a tax-capped individual. The tax holiday will apply to income that commences after 16 February 2016. It will begin on the first date income is earned from the development and will continue for a period of up to five years.

Foreign tax credit

Foreign tax paid in respect of profits that are subject to tax at a rate above 0% in the Isle of Man will be offset against the liability arising in accordance with any relevant tax treaty in place.

Withholding taxes

WHT should be deducted from certain payments made to non-residents by Isle of Man resident companies as follows:

- Rent from Manx land and property: 20% if paid to either a company or to an individual.
- Dividends: WHT is not required.
- Loan interest and royalties: WHT is generally not required, but there are certain exceptions that may apply.
- Other: The Assessor of Income Tax in the Isle of Man has the power to require WHT, at a rate determined by the Assessor (typically 20%), on payments of taxable income made to a non-resident (e.g. payments made to non-resident sub-contractors).

Tax administration

Taxable period

An accounting period for tax filing purposes can be no more than 12 months.

Tax returns

All companies are required to submit income tax returns on an accounting-period basis, whether they are liable to tax at 0%, 10%, 20%, or a combination of these rates. The tax return is due for submission one year and one day following the end of an accounting period. Where the financial statements cover more than 12 months, two (or more) returns may be required.

Companies are required to file their income tax returns online.

Fixed rate penalties apply if returns are filed late. The Assessor of Income Tax also has the powers to raise a default assessment where a tax return has not been filed.

Payment of tax

Payment of tax is due within one year and one day of an accounting period end. Interest is charged on tax paid late.

Tax audit process

There is no formal regular tax audit process in the Isle of Man. The Assessor of Income Tax can make an enquiry into a return within the time limits set out below.

Statute of limitations

Generally, the Assessor of Income Tax may make an enquiry into a tax return no later than 12 months from the date that the tax return is delivered to the Assessor.

If, however, the Assessor discovers that income tax has not been assessed that should have been assessed, the Assessor is able to make an assessment of that tax within a period of four years from the end of the relevant accounting period.

The Assessor also has powers to require the production of documents.

Topics of focus for tax authorities

The Isle of Man government is focussed on delivering openness and transparency across all areas of Isle of Man taxation. The government and the tax authorities work closely with international bodies such as the EU Code of Conduct group and the EU's Economic and Financial Affairs Council to ensure that the Island is fully compliant with international standards in areas such as tax transparency and exchange of information. The Island is already recognised on the OECD White List as being in the top tier of countries for transparency and information exchange.

The Isle of Man is focussed on reducing the avoidance of income tax and national insurance contributions of individuals using personal service companies and introduced legislation, which came into effect on 6 April 2014, to tackle this issue.

There is also more focus on the taxation of dividends paid to shareholders, particularly in relation to whether a payment is a *bona fide* dividend or disguised remuneration.

Other issues

Tax treaties

As of 1 May 2017, the Isle of Man had entered into ten comprehensive DTAs, 13 limited scope DTAs, and 39 TIEAs based on the OECD models. The Isle of Man also has a DTA with the United Kingdom that predates the OECD model.

Information has been exchanged with the United States with effect from 30 June 2015 under an agreement to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (FATCA).

The UK and Isle of Man governments have been exchanging additional information with effect from 30 June 2016 under an agreement extending the automatic disclosure of tax information. The agreement is modelled on the requirements of FATCA.

The Isle of Man has also committed to adopt the Common Reporting Standard (CRS), the new global standard for tax information agreements.

Choice of business entity

There are several different entities through which businesses may operate in the Isle of Man. These include companies, limited liability companies, partnerships, limited partnerships, and protected cell companies.

Italy

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Significant developments

The major recent changes in the Italian tax rules that occurred in the last 12 months are the following:

- Changes to allowance for corporate equity (ACE).
- Corporate income tax (*imposta sul reddito sulle società* or IRES) rate reduction.
- New tax deadlines.
- Super and hyper tax depreciation.
- New provisions to prevent undue tax credits offsetting.
- New value-added tax (VAT) fulfilments.
- Integrative return 'in favour' of taxpayers.
- Changes to option for special tax regimes.
- Introduction of the European VAT group.
- Broader application of the split payment.
- Reduction of timeline in order to deduct input VAT.

Please note that Italy tax updates are generally expected to occur between November and December in connection with the finance bill and approval of related laws.

Changes to allowance for corporate equity (ACE)

The rate applicable to ACE deduction has been changed from 4.75% in fiscal year (FY) 2016 to:

- 1.6% for FY 2017.
- 1.5% for FY 2018 and onwards.

IRES rate reduction

Starting from FY 2017, the standard IRES rate is reduced from 27.5% to 24%.

New tax deadlines

Starting from 1 January 2017, some tax deadlines are changed. In detail:

- Settlement and first advance payment for IRES and region production tax (*imposta regionale sulle attività produttive* or IRAP) purposes will be due by the last day of the sixth month following the year-end (previously, the 16th day of the sixth month following the year-end).
- VAT return will be filed on 28 February 2017 for FY 2016 and, for the following years, on 30 April (previously, 30 September).

Following the introduction of the new Italian Generally Accepted Accounting Principles (GAAP) as of 2016, the filing of the FY 2016 IRES return is shifted to 15 October 2017.

Super and hyper tax depreciation
For new investments on tangible assets, the additional IRES depreciation (so-called 'super depreciation') has been extended to FY 2017. In this respect, the purchase cost is increased by 40%, bringing the taxable basis of the asset to 140%.

For new investments carried out in FY 2017 in hi-tech, cloud, ultra-broad band, industrial robotics, digital manufacturing, IT security, etc., for tax depreciation, a notional increase of the purchase cost of 150% has been introduced, bringing the IRES base of the asset to 250% (so-called 'hyper depreciation'). Specific supporting documentation is required to benefit from this provision.

New provisions to prevent undue tax credits offsetting
As for the offsetting of tax liabilities with credits related to different taxes (IRES, IRAP, withholding tax [WHT], substitutive taxes, etc.), the threshold beyond which is required the so-called 'conformity mark' (*visto di conformità*) on the related tax return from which such credits arise is reduced from 15,000 euros (EUR) to EUR 5,000 on a yearly basis. In addition, there is the obligation to channel the filing of the F24 through the tax authorities system (so-called *Entratel*) in case of offsetting tax liabilities with other tax credits.

New VAT fulfilments
Starting from FY 2017, new obligations are introduced. In particular, the quarterly communications of:

- VAT balances and
- data of invoices issued and received

will have to be periodically filed to the tax authorities to allow advance controls over the taxpayers.

Integrative return 'in favour' of taxpayers
The possibility to file an integrative tax return in favour of taxpayers within the deadlines of tax assessment has been introduced.

Changes to option for special tax regimes
From FY 2017 onwards, the automatic renewal for special regimes, such as Domestic tax consolidation, is provided.

Introduction of the European VAT group
The European VAT group (art. 11 EU Directive no. 112/2006) has been introduced in Italy. In the case of election of the VAT group, transactions between taxable persons participating in the VAT group are considered as not relevant for VAT purposes, and the VAT group operates as a single VATable person.

Broader application of the split payment
Split payment is now extended to all the administrations, entities, and subjects included in the consolidated accounts of Public Administration. It is also extended to subsidiaries of some entities of Public Administration.

Reduction of timeline in order to deduct input VAT
The right to deduct input VAT may now be exercised at the latest with the VAT return related to the year in which the right arises and under the conditions existing at the time such a right has arisen.

Taxes on corporate income

Applicable rates

Italian corporate entities are subject to a corporate income tax, known as *imposta sul reddito sulle società* or IRES, and to a regional production tax, known as *imposta regionale sulle attività produttive* or IRAP.

The standard rates are as follows:

- 24% for IRES.
- 3.9% for IRAP.

Up to FY 2016, the IRES rate was 27.5%. Specific rules will apply for bank and financial entities.

The following different IRAP rates are applicable for certain entities:

- 3.80% for entities with a determined governmental exclusive right to provide services.
- 4.20% for banks and financial entities.
- 5.30% for insurance corporations.

Regions have the power to slightly increase or decrease IRAP rates.

General rules

IRES

The IRES taxable base is determined according to the worldwide taxation principle, which states that, regardless of the location/jurisdiction where the income is produced, to the extent that the income is legally attributable to an Italian resident entity, the income is taxed in Italy. IRES is charged on the total net income reported in the financial statements of the company as adjusted for specific tax rules. Non-resident companies are taxed only on Italian-source income.

IRAP

There are different methods of computation for the IRAP taxable base, depending on the nature of the business carried out by the taxpayer. Provisions for liabilities and risks, as well as extraordinary items, cannot be taken into account when determining the IRAP taxable base.

For sales and manufacturing companies, the IRAP taxable base is broadly represented by the company's gross margin in its financial statements. In addition to the non-deductible items mentioned above, interest income and expense and provisions for bad debts are excluded for the purposes of the IRAP taxable base.

For banks, the IRAP taxable base is broadly defined as follows:

- Intermediation margin reduced by 50% of dividends.
- 90% of amortisation costs relating to fixed tangible and intangible assets.
- 90% of other administrative expenses.
- Net value of adjustments and reassessments for bad debts.

Special rules apply to financial institutions, other than banks.

IRAP is levied on a regional basis, and regions are allowed to increase or decrease the standard IRAP rate up to 0.92%. Companies with facilities in different regions must allocate their overall taxable base to the different regions on the basis of the employment costs of personnel located at the various sites. Facilities become relevant to the calculation of IRAP if they have been established for more than three months. Italian companies with permanent establishments (PEs) abroad, as well as shipping companies qualifying for the tonnage tax regime (*see Tonnage tax below*), are not subject to IRAP on the income earned through these PEs.

The deduction of labour costs for IRAP purposes depends on the type of hiring contract. In particular:

- Full deduction for costs related to employees hired with an open-ended contract.
- Deduction limited to contributions for compulsory insurance against accidents (i.e. *Istituto Nazionale Infortuni sul Lavoro* or INAIL) for temporary employees.

Moreover, for the companies that have no employees, a tax credit equal to 10% of IRAP is recognised to be used to offset other tax liabilities.

Substitutive tax on reorganisations (mergers, demergers, contributions in kind)

Corporate restructurings, such as contributions in kind, (assets *versus* shares transactions) mergers, and demergers, are, in principle, tax neutral even if, for financial accounting purposes, the transaction results in the recognition of higher values of the assets or of goodwill. Companies may elect to obtain partial or full recognition for tax purposes of the step-up in the financial accounting values of assets or of the goodwill arising from the corporate restructurings, provided they pay a substitutive tax.

The substitutive tax is calculated on the step-up in tax basis and is based on progressive rates of 12% to 16%. The first EUR 5 million is taxed at 12%, the tranche above EUR 5 million but less than EUR 10 million is taxed at 14%, and the amount in excess of EUR 10 million is taxed at 16%. The substitutive tax may also be paid in three annual instalments of 30% in the year of election, 40% in year two, and 30% in year three plus interest at the rate of 2.5% per year on the deferred amounts. The substitutive tax is not deductible for the purposes of IRES or IRAP.

In addition, stepped-up values of goodwill and trademarks, acquired from the reorganisation transactions carried out since 1 January 2016, may be depreciated for tax purposes over five tax years (previous to 2016, up to ten years) instead of the normally allowed 18 years by paying a substitutive tax of 16%. The higher tax depreciation arising from this election is effective from the tax period subsequent to the one in which the substitutive tax is paid. For example, if a merger transaction occurred in year one and the substitutive tax was paid in year two, the increased tax depreciation would begin in year three.

Tonnage tax

Italian tax resident shipping companies, as well as non-resident shipping companies operating in Italy through a PE, can qualify for and then elect to be subject to the Italian tonnage tax regime. The regime basically allows for the determination of presumptive income based on the net tonnage of the qualifying ships apportioned to the effective shipping days (tonnage income). The tonnage income is subject to IRES only.

To qualify for the tonnage tax, ships must: (i) have a net tonnage of more than 100 net tons (NT); (ii) be used for goods transportation, passenger transportation, salvage, towing, and other services; and (iii) operate in international shipping as defined by the rules disciplining Italian International Registry. Ships chartered out on a bare boat charter are excluded. Chartered ships with crew are included in the tonnage tax regime if their global net tonnage is less than 50% of the total net tonnage.

Tonnage income is calculated on the basis of the ship's net tonnage. The daily income is determined according to the following rate system:

Ship's net tonnage (NT)	Daily income in EUR per NT
0 to 1,000	0.0090
1,001 to 10,000	0.0070
10,001 to 25,000	0.0040
above 25,001	0.0020

No deductions are allowed from tonnage tax income.

Income and expenses from the following activities are all deemed to be covered by the tonnage income determined as previously discussed:

- Transport of goods.
- Transport of passengers.
- Salvage and towing.
- Other services that need to be performed on the high seas.
- Charges related to the above-mentioned activities (e.g. administrative and commercial expenses, insurances fees).
- Other operations performed in close connection with the transportation operations (e.g. loading and unloading).
- Other minor activities.

Capital gains or losses arising from the transfer of ships that have been acquired by a company while under the tonnage tax regime are also deemed to be included in tonnage tax income. Conversely, for capital gains arising from the transfer of a ship acquired prior to election for the tonnage tax regime, the difference between the sale price and the net tax cost as of the last tax period prior to the election for the tonnage tax regime is subject to the ordinary tax regime. Tax losses, in this latter case, are tax deductible.

An election for the tonnage tax regime should be made for all of a company's or group's qualifying vessels. So called 'cherry picking' is not allowed. Election for the tonnage tax regime is on a voluntary basis, but, once elected, it remains in effect for ten years. The election is silently renewed at the end of the ten-year period.

Corporate residence

Companies having their legal or administrative headquarters or their principal business activity within the Italian territory are considered to be resident companies and are taxable in Italy on their worldwide income.

A foreign company holding one or more Italian subsidiaries is deemed to be resident of Italy for tax purposes if at least one of the following conditions exists:

- The foreign company is, either directly or indirectly, held by Italian tax resident persons.
- The board of directors of the foreign company is made up mainly of Italian resident individuals.

Non-resident companies are subject to IRES and IRAP only on their Italian-source income. Specifically, Italian non-resident companies having a PE in Italy are subject to IRES and IRAP with respect of the taxable income generated from the PE in Italy.

Permanent establishment (PE)
The domestic definition of PE is substantially aligned with the Organisation for Economic Co-operation and Development (OECD) model.

Corporate residence of a trust
Trusts are considered as persons subject to corporate taxation.

Residence is defined on the basis of the location of the place of management and of the main object of the trust. In the first instance, trusts that operate through an appropriate structure are deemed to be tax resident in Italy if the said structure is located in Italy. In the absence of any such structure, trusts managed by a trustee will be deemed as tax resident in Italy if the trustee is tax resident in Italy. In addition, trusts that have the largest part of their assets located in Italy are deemed a tax resident in Italy.

Note that there are anti-avoidance rules for Italian non-resident trusts, setting out the specific conditions on which these trusts can become Italian tax resident.

Other taxes

Value-added tax (VAT)
Italian VAT (*Imposta sul Valore Aggiunto*) applies to the supply of goods and services carried out in Italy by entrepreneurs, professionals, or artists and on importations carried out by anyone. Intra-Community acquisitions are also subject to VAT taxation under certain situations.

The Italian standard VAT rate is 22%. Reduced rates are provided for specifically listed supplies of goods and services, such as:

- 4% for listed food, drinks, and agricultural products, and e-books/e-periodicals that meet certain requirements.
- 5% for certain health services, for the sale of food herbs, and for certain transport services on sea, lake, and river and lake.
- 10% for electric power supplies for listed uses and listed drugs.

Intra-Community supplies and exports are exempt from VAT.

Specific supplies of goods and services expressly listed in the law are exempt from VAT (e.g. hospital and medical care, education, insurance services, specific financial services, supply, leasing of particular immovable property). Other specifically listed transactions are also out of the VAT application scope (e.g. transfer of money, transfer of going concern).

Input VAT on purchases of goods and services related to business activity generally is allowed for recovery. Special limitations apply in relation to specific items (e.g. cars, entertainment expenses) and to companies carrying out both exempt from VAT with no right to deduct and taxable transactions.

The filing deadline for the 2017 annual VAT return is 30 April 2018.

Service supply rules

Generic services supplied by a taxable person to another taxable person (business-to-business or B2B) are in the scope of the Italian VAT if the services are supplied to Italian taxable persons or to PEs of an Italian non-resident entity.

The specific rules are as follows:

- For services related to immovable property, reference must be made to the place in which the immovable property is located.
- For the transportation of passengers, the place in which the transportation takes place must be identified, including the proportion of the distance covered.
- For catering and restaurant services, the place in which the activity will be physically carried out must be identified.
- For short-term hiring, leasing, and similar means of obtaining transport services, the place in which the vehicle is used must be identified (use and enjoyment rule has been implemented on these services).

The general rule for services supplied by a taxable person to a non-taxable person (business-to-consumer or B2C) identifies the place of taxation with the country of residence of the supplier.

Several rules, in addition to the B2B general rules, exist for the following:

- Brokerage services.
- Goods transport services.
- Services related to movable goods and ancillary activities related to transports.
- Long-term hiring/leasing of means of transport services.
- Electronic services supplied by extra-European Union (EU) suppliers.
- Telecommunications and television/radio broadcast services.

In addition, special rules are provided for certain services rendered to final customers established outside the European Union.

In relation to the VAT treatment of cultural, artistic, sporting, scientific, educational, recreational, and similar services, VAT is due in the country where the activities were physically carried out for B2C activities and VAT is due in the country of the recipient for B2B activities other than admission. For B2B services in respect of admission, the place of supply is where the events take place.

Time of supply for certain services

Time of supply is the time of completion in case of:

- supply of services falling under the general rule (i.e. generic supply of services) rendered by EU and non-EU taxable persons to taxable persons established in Italy, and
- supply of services falling under the general rule rendered by taxable persons established in Italy to EU and non-EU taxable persons.

In case of periodic or continuous supply of services, the time of supply is the date of maturity of the consideration.

Moreover, the above supplies of services, if performed/received by taxable persons established in Italy continuously over a period longer than one year and if no payments are carried out, even partially, in the same period, shall be considered carried out at the end of each calendar year up to completion of the same supplies.

Reporting obligations
Starting from 2017, VATable persons have to submit to the tax authorities, on a quarterly basis (only for the year 2017, the communications of the data of the invoices issued and received have to be submitted twice a year), the communications of:

- periodic VAT balances, and
- a detailed list of the data of the invoices issued and received.

The communications of periodic VAT balances require one to submit electronically to the tax authorities, on a quarterly basis, the summary of VAT balances accounting data (also in case the entity results in a credit position). The deadlines for each quarter are 31 May, 16 September, 30 November, and the last day of February of the following year (in case the deadline is Saturday/Sunday/bank holiday, it is postponed to the first working day).

The communications of the data of the invoices issued and received require one to submit electronically to the tax authorities, on a quarterly basis (starting from the year 2018) based on the above-mentioned deadlines, the data of all the invoices issued during the relevant quarter and of all the invoices received and registered in the VAT ledgers, including customs bills of import, as well as the related credit notes (only for FY 2017, the communications of data of invoices issued and received for Q1 and Q2 are due by 18 September (16 September is a Saturday) and Q3 and Q4 are due by 28 February of the following year).

Reverse-charge mechanism extension
According to the reverse-charge mechanism, the obligations related to supply of goods and provision of services carried out in Italy by non-resident taxable persons towards taxable persons established in Italy are fulfilled by the latter. Due to the implementation of the EU Directive 45/2010, the recipient of goods and/or services has to integrate the invoice received by the EU supplier or has to issue a self-invoice in case of a non-EU supplier and record it in the VAT sales register and VAT purchase register within a defined timeline.

Reverse-charge mechanism also applies to certain domestic supplies between Italian taxable persons (e.g. cleaning, demolition, equipment installation, and completion services related to the buildings).

Introduction of the European VAT group

The European VAT group (art. 11 EU Directive no. 112/2006) has been introduced in Italy (effective from 1 January 2019, where the election for such a regime is opted by September 2018).

In the main, according to the above-mentioned rules, in the case of election of the VAT group:

- transactions between taxable persons participating in the VAT group are considered as not relevant for VAT purposes, and
- the VAT group operates as a single VATable person towards those not participating in the group itself.

There are certain conditions to be met in order to be entitled for the election.

Certain implementing decrees establishing the operating rules have yet to be published.

The current VAT group settlement regime, which consists of settlement of VAT debits and credits among taxable persons meeting certain requirements in terms of chain of controls, will remain in place.

'Split payment' extension

The split payment is the mechanism through which certain bodies/entities (recipient of goods or services) pay to their supplier the consideration, exclusive of VAT, for the purchase of goods and services, while the related VAT, indicated on the invoice issued by the supplier, is paid to the Italian tax authorities by the above-mentioned recipient of goods or services (and not by the supplier).

Before the changes, it was provided that the split payment would apply only to the Public Administrations with deferred payment of VAT.

Split payment is now extended to all the administrations, entities, and subjects included in the consolidated accounts of the Public Administration.

Moreover, the split payment is extended to taxable transactions for VAT purposes carried out towards the following subjects:

1. Subsidiaries directly controlled by the Presidency of the Council of Ministers and Ministries (for the purpose of controlling are needed the majority of the votes that may be exercised at the ordinary shareholders' meeting or, alternatively, sufficient votes to exercise a dominant influence in the ordinary shareholders' meeting).
2. Subsidiaries directly controlled by regions, provinces, metropolitan cities, municipalities, and municipalities unions.
3. Subsidiaries directly or indirectly controlled by the companies mentioned at points 1 and 2 above.

Lastly, the mechanism at issue also applies to the supplies of goods and services rendered to listed companies included in the FTSE MIB index of the Italian Stock Exchange.

The split payment also applies to self-employed services, which are subject to WHT, rendered to the above-mentioned subjects.

The decree that has introduced the above changes is subject to amendments/final approval.

Moreover, implementing regulations have yet to be published.

Taxable persons carrying out supplies of goods and services towards the above-mentioned public subjects:

- have to issue the invoice quoting the wording '*scissione dei pagamenti*' (i.e. 'split payment')
- are not required to pay the relevant VAT, and
- have to book the invoices issued separately on the 'sale VAT register' and the 'purchase VAT registers'.

Reduction of timeline in order to deduct input VAT

A reduction of the time frame for the exercise of the right to deduct VAT has been introduced.

The right to deduct input VAT may be exercised at the latest with the VAT return related to the year in which the right arises and under the conditions existing at the time of such a right has arisen.

Previously, the right to deduct could be exercised at the latest with the VAT return related to the second year following the one in which the right to deduct had arisen.

By way of example, the VAT charged in an invoice related to supply of services dated May 2017 and received in the same month is deducted at the latest in the 2017 VAT return. In the past, the deadline for VAT deduction was the one for the submission of VAT return related to 2019.

Moreover, changes in the timeline for the booking of the invoices have been introduced.

Please note that the above-mentioned new rules may be changed in the near future. In particular, according to the available amendments, the entry into force may be changed retrospectively.

VAT credit offset with other taxes

To offset a VAT credit against other taxes for an amount higher than EUR 5,000, it is necessary to wait until the 16th day of the month following the filing of the yearly VAT return on which the credit is shown.

Furthermore, in order to avoid abuse, taxpayers intending to offset a VAT credit for an amount higher than EUR 5,000 are required to ask their tax advisors or auditors to affix their signature to the VAT return, which is known as the 'conformity mark' (*visto di conformità*).

Electronic invoicing to public entities

There is an obligation to issue electronic invoices to Italian ministers, tax agencies, national public entities, and national social security and welfare entities. The receiving entities are no longer entitled to accept paper invoices and, accordingly, they will not proceed with the payments. Particular conditions apply for the format of the invoices under discussion as well as for the related e-archiving obligations.

Registration tax
Specific deeds and contracts must be filed with the local registration tax office either upon signature or if specific circumstances occur, and the relevant tax must be paid.

Depending on the nature of the contract and on the assets that are the object of the contract, as well as on the form of the contract, registration tax is levied as a fixed amount or as a percentage of the value of the goods and/or rights that are the object of the contract. As a general rule, no proportional registration tax is due in the case of transactions subject to VAT.

VAT and registration tax on lease of immovable properties
Leases of residential and commercial buildings, or portion thereof, generally are exempt from VAT with no right to deduction and subject to the registration tax at 2% or 1% rate.

Different VAT rates, VAT treatment, and registration tax treatment apply depending on the type of buildings the lease refers to (e.g. residential, commercial buildings) and the supplier (e.g. individual, constructions companies, taxable persons other than construction companies).

Specific rules apply in case of financial leases of residential and commercial buildings from a registration tax perspective.

Customs duties
At the moment of the importation of goods into the EU territory, customs duties are applied. The amount of customs duties to pay depends on the value and nature of the goods imported. In particular, for each kind of good, the Common Customs Tariff provides a tax rate to be applied to the value or number of the goods imported.

The correct classification of the goods is one of the most important issues to consider when an economic operator introduces goods in Italy. A wrong classification can give rise to the application of higher customs duties, and the operator could face a tax burden not due, or to the application of lower customs duties, and this situation could lead to a Tax Assessment by Italian Customs Authority.

The value of the goods is represented by the transaction value, hence, the price actually paid or payable for the goods when sold for exportation to the customs territory of the EU, provided that:

- there are no restrictions as to the disposal or use of the goods by the buyer
- the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued
- part of the profits of any subsequent resale, disposal, or use of the goods by the buyer will not be accrued, directly or indirectly, to the seller, and
- the buyer and seller are not related, or, where the buyer and seller are related, that the transaction value is acceptable for customs purposes.

In determining whether the transaction value is acceptable, the fact that the buyer and the seller are related is not, in itself, sufficient for considering the transaction value as not acceptable. Where necessary, the circumstances surrounding the sale are examined, and the transaction value is accepted if the relationship did not influence the price.

The price actually paid or payable is the total transaction amount paid for the imported goods and includes all payments made as a condition of sale of the imported goods by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller.

In determining the customs value, the following items shall be added to the price, to the extent that they are incurred by the buyer and are not included in the price (list not exhaustive):

- Commissions and brokerage.
- Royalties and licence fees related to the goods under assessment.
- The cost of transport and insurance of the imported goods.

At the same time, provided that they are shown separately from the price actually paid or payable, the following items shall not be included in the customs value (list not exhaustive):

- Charges for the transport of goods after their arrival at the place of introduction into the customs territory of the European Union.
- Charges for construction, erection, assembly, maintenance, or technical assistance, undertaken after importation of imported goods such as industrial plant, machinery, or equipment.
- Buying commissions.

A reduced or zero rate of duty at importation can be applied when the goods imported have a preferential origin. The preferential origin depends on the existence of commercial agreements between the European Union and other non-EU states or by facilities provided by the European Union to non-EU states unilaterally.

The application of a reduced or zero rate of duty can even depend on the existence of preferential tariff treatment or on the existence of a particular exemption provided by law for some kind of goods.

Any person may appoint a representative in one's dealings with the Customs Authority to perform the activities and formalities laid down by customs rules. Such representation may be direct, in which case the representative shall act in the name and on behalf of another person, or indirect, in which case the representatives shall act in one's own name but on behalf of another person.

For direct representation, a forwarding agent, holder of a particular licence, must be appointed.

The representative must be established within the European Union.

Excise duties
The following goods are subject to excise duties:

- Energetic products (e.g. petrol, gas oil, natural gas, coal).
- Alcohol and alcoholic drinks (e.g. wine, beer, ethylic alcohol).
- Processed tobaccos (e.g. cigars, cigarettes, tobacco).
- Electric power.

The subjection of a product to excise duties has to be verified on the basis of its customs combined nomenclature code.

The tax liability, depending on the products, arises:

- at the moment of importation or production (and the excise duties must be paid at the moment in which they are released for consumption in Italy)
- when the excisable goods are used for heating or as fuel, and
- when the excisable goods are released for consumption or used for own use.

As a general rule (with exception of natural gas and coal, coke, and lignite), with reference to excise goods released for consumption during a month, the payment of the relative excise duties has to be done within the 16th day of the following month.

With reference to excise goods imported, customs rules are applied as far as the procedure and terms of payment are concerned.

The production, processing, and holding of 'excise goods', except from natural gas, coal, coke, lignite, and electric power, are subject to a suspensive regime performed through a fiscal warehouse.

In order to manage a fiscal warehouse, it is necessary to acquire a licence issued by the Italian Customs Authority, and there are specific obligations for the owner of a fiscal warehouse (e.g. provide for a particular guarantee, keep a particular accounting system for the goods stored, be subject to controls performed by Italian Customs Authority, where requested).

The Italian legislation provides for many exemptions with regards to the use of 'excise goods'.

Furthermore, under certain circumstances, a tax refund is granted to the operator who released for consumption, if, afterwards, the products are not consumed in Italy.

Stamp duty taxes

Stamp duty taxes (*Imposta di Bollo*) apply on a certain list of deeds or documents provided for by the relevant law provision (e.g. checks, bills of exchange, statements of account, certificates, books of account, deeds of transfer of quotas, and, in some cases, invoices).

According to the kind of deed, stamp duty tax is due at the moment of the deeds' origin or in case of use (e.g. if the deed is filed to the Italian Registration Office). Moreover, it can be a fixed amount or as an amount proportional to the value of the deed or document.

Stamp duty tax can be paid:

- ordinarily, through a physical stamp attached on the document, or
- virtually, through electronic means (in this case, a specific authorisation from the Italian tax authorities and a specific process procedure are needed).

Stamp duty tax is usually alternative to VAT; however, in case of considerations partially subject to VAT and partially not subject to VAT, the invoice is subject to stamp duty tax if the total amount of the considerations not subject to VAT exceeds EUR 77.47.

Moreover, some transactions are stamp duty tax exempted (e.g. inter-Community supply of goods). For transactions that are exempted from VAT (with restriction on VAT credit) and for transactions out of scope of VAT, exceeding EUR 77.47, an amount of EUR 2 is due as stamp duty tax for each issued invoice.

Unified municipal tax (Imposta Unica Comunale or IUC)
The IUC is composed of the following different taxes:

- *Imposta Municipale Unica* (IMU): Real estate tax levied on the ownership of immovable properties (buildings, rural land, farmlands), except for immovable properties owned as primary private properties. The standard tax rate is 0.76%. Depending on the municipality and status of the taxpayer, the tax rate can be increased or decreased. The taxable base is generally determined on the basis of the so called 'cadastral value' (i.e. capitalisation of the deemed standard income that is expected to be derived from the real estate).
- *Tributo per i Servizi Indivisibili* (TASI): A service tax due by real estate owners and by tenants, except for immovable properties aimed as private properties (different from immovable properties falling under the cadastral category A/1, A/8, and A/9). The amount due by the tenant can range according to the Regulation stated by the municipality.
- *Tassa sui rifiuti* (TARI): A waste tax levied on the owner or the user of immovable properties.

Financial Transaction Tax (FTT)
Italian FTT applies to (i) cash equities, (ii) derivatives, and (iii) high-frequency trading transactions.

Cash equities FTT applies to the purchase of shares and other equity instruments issued by Italian companies, as well as securities (wherever issued) tracking those Italian shares (e.g. ADRs). The taxable base is the net daily balance of transactions on the same financial instruments by the same person on the same settlement date. The rate is 0.2% on OTC trades or 0.1% on trades executed in a regulated market (or multilateral trading facility).

Derivatives FTT applies to any derivative contract or securitised derivative, whose underlying is directly or indirectly tied to Italian shares. The taxable base is the notional amount of the derivative (no netting applies), and it is subject to a special tax scale, on both the purchase and the sale legs; the amount is reduced to 1/5 for transactions executed on regulated markets and multilateral trading facilities.

High-frequency trading FTT applies to transactions on shares (wherever issued) and share-based derivatives (wherever the underlying share is issued) in the Italian financial markets; trades amended or cancelled within half a second are subject to a 0.02% rate, to the extent they exceed 60% of overall trades.

Payroll taxes

Social security contributions
The Italian employer, in order to pay social security contributions for employees, must register with the Italian Social Security Administration (*Instituto Nazionale Previdenza Sociale* or INPS).

The total social security rate is around 40% of the employee's gross compensation (the rate depends on the work-activity performed by the company, the number of employees of the company, and the employee's position), and is shared as follows:

- Employer's charge is around 30%.
- Employee's charge is around 10%.

Branch income

The tax regime for PEs is the same as for corporate Italian entities (e.g. joint-stock companies). Accordingly, a PE is subject to IRES as well as IRAP. Both taxes are determined on the basis of a specific statutory account prepared according to the accounting principles applying to resident enterprises with similar business activity carried out by the PE.

Transfer pricing principles apply to 'transactions' between the head office and its Italian PE. A PE is now considered a functionally separate entity, independent from its headquarters, and a PE's profits and 'free capital' are attributed to it on the basis of OECD principles.

Income determination

In principle, positive and negative components of a company's income statement are, respectively, taxed or deducted on an accruals basis (under the accrual principle) for tax purposes. Additionally, in order to be taxed/deducted, income items have to be certain under a legal standpoint and either objectively determined or capable of objective determination as to their amount (under the certain and objective determination principle). Income statement items accrued in the statutory accounts not meeting the above criteria are not allowed for tax deduction nor taxed as income in the tax period. Deduction or taxation of income is correspondingly deferred to future tax periods when the criteria are met.

Expenses generally are deductible if they relate to activities generating revenues concurring to the company's taxable income (under the inherence to business principle) and provided they are included in the relevant statutory accounts (under the imputation principle). An exception to this general rule is made for those income statement items accrued in the statutory accounts relating to a tax period different from that in which they become relevant for tax purposes in accordance with the principles of certainty and objective determination as described above. These items are taken into account in determining taxable income in the tax period when the latter conditions are met.

For IRAP purposes, relevant income and expense are those reported in the financial statements.

Specific rules have been released for entities that have adopted International Financial Reporting Standards (IFRS) for Italian statutory financial reporting purposes. These provisions are aimed to align income determination rules with IFRS.

A specific regime is also applicable regarding the waiver of credits (e.g. financial and/ or commercial) towards the company by its shareholder. In particular, the part that exceeds the tax value of the credit is considered taxable income. Furthermore, the shareholder is required to provide a statement to the company pointing out the tax value of the credit. Without such statement, the company will have to tax the full amount of the waiver of the credit.

Inventory valuation
Italian tax law allows the application of all the most commonly used inventory valuation methods: last in first out (LIFO), first in first out (FIFO), average cost. For IRES only, the reference prices used to calculate the written down value of the inventory items cannot be lower than their market prices during the final month of the tax period.

Companies operating in the oil and gas sector are required to adopt either average cost or FIFO for tax purposes.

Capital gains
Capital gains are taxable in the tax period in which they are realised, as follows:

- Fixed assets: The gain realised on the sale of fixed assets is taxable for both IRES and IRAP purposes. Additionally, for IRES purposes, tax on capital gains can be spread over a maximum of five years. This treatment is allowed if the company owned the fixed assets for not less than three years.
- Financial Investments: A specific participation exemption regime (PEX) is applicable. Under this regime, capital gains realised by Italian companies on sales of shareholdings are 95% exempt from IRES.

PEX applies if all of the following conditions are met:

- The shareholding was held uninterruptedly for at least 12 months prior to the sale.
- The investment was classified under financial fixed assets in the financial statements relating to the first tax period of uninterrupted ownership.
- The subsidiary is actually carrying on a commercial activity (e.g. investments in companies mainly performing management of their own real estate are not entitled to PEX benefits).
- The majority of the subsidiary's income is not generated in a tax haven country or one with a privileged tax regime.

The third and fourth conditions must be met both at the time of the sale of the investment and in the three preceding years. If these conditions are not met, the capital gain realised by the company is ordinarily taxed. Capital losses arising from the sale or write-down of shareholdings meeting PEX conditions are basically not tax deductible. Likewise, the capital losses realised on sales of non-PEX investments are tax deductible. Specific exemptions are provided for those entities adopting IFRS for Italian statutory accounts reporting purposes.

Specific anti-dividend washing rules provide that where capital losses arise from the disposal of shareholdings that are not eligible for PEX, such losses are deductible only for the part exceeding the tax exempt amount of dividends (*see Dividend income discussion below*) received from the shares in question in the 36 months prior to the disposal.

Capital gains on financial investments generally are excluded from the IRAP taxable base.

Dividend income
Dividends received by Italian resident companies from Italian companies or from companies resident in countries other than tax havens (i.e. not included in the 'black list') are excluded from the IRES taxable base for 95% of their amount. Conversely, no exemption applies to dividends paid by entities that are resident in tax haven jurisdictions (unless those dividends derive from profits that were already taxed under the Italian controlled foreign company [CFC] rules). There are specific rules for entities adopting IFRS for Italian statutory financial reporting purposes. For such entities, dividends from investments in shares and other financial instruments held for trading are fully taxable.

Dividends generally are excluded from the IRAP taxable base.

Interest income
Interest income is generally part of the taxable base.

Foreign income
An Italian resident corporation is taxable on all income whether produced in Italy or abroad. Profits earned by subsidiaries that are resident or located in countries or territories other than tax havens are taxed only on distribution of the relevant profits. Double taxation is, in principle, avoided by means of foreign tax credits.

An optional branch exemption regime is available, which allows Italian companies to exempt from Italian taxation branch income and losses arising outside Italy, instead of the normal regime, which provides for taxation of worldwide income with foreign tax credit relief. This option affects all foreign PEs of the Italian company and is irrevocable. It must be exercised at the time the branch is incorporated and takes effect from that fiscal year.

Shell companies
Resident companies and PEs of non-resident companies can be qualified as non-operating entities if, alternatively, one of the following conditions is met:

- The entity is in a tax loss position for five consecutive tax periods.
- The average revenues recorded in the current fiscal year and in the prior four years are lower than the amount resulting by applying certain 'deemed return' percentages to the average balance sheet value of specific assets in the current fiscal year and the four previous years.

  The main assets to be taken into consideration are shares and shareholdings, financial receivables, owned or leased real estate, and owned or leased tangible and intangible assets. The value of any assets acquired or sold during the fiscal year must be adjusted according to the ownership period.

These conditions must be checked every year. Therefore, it is possible for an entity to be 'non-operative' in one year and operative in the following year.

The shell company is assessed as having a minimum taxable income for both IRES and IRAP purposes.

For IRES purposes, the taxable income of a non-operative entity is determined as the sum of such values emerging from the application of specific percentages to the book values of the above-mentioned assets.

The current IRES standard rate for entities qualified as shell companies is 34.5% (24% plus surtax of 10.5%).

Tax losses generated in a tax period when the company was deemed to be non-operating cannot be carried forward.

For IRAP purposes, non-deductible items have to be added back to the deemed minimum IRES income as outlined above.

These rules are not applicable in the first year of a company's incorporation. Exemptions from these rules can be achieved:

- by means of an advance ruling from the Italian tax authorities aimed at assessing the specific circumstances that caused the company not to earn the minimum amount of income or
- by specific objective situations provided for by Italian law (e.g. company directly or indirectly held by listed companies).

Shell companies are also subject to limitations in their ability to recover VAT credits.

Deductions

The principles outlined in the section on Income determination also apply for deductible costs.

Depreciation and amortisation

All fixed assets that are used in the business of the company, except land, are depreciable for tax purposes (for both IRES and IRAP).

For IRES, the maximum depreciation rates for fixed tangible assets are set forth in a Ministerial Decree. Such depreciation rates are different, depending on the type of asset and on the economic sector in which the company operates. In the event that financial accounting depreciation exceeds the amounts allowed for tax purposes, temporary differences arise. Tax depreciation of fixed tangible assets is allowed from the tax period in which the asset is first used. In the first tax depreciation period, the depreciation rate cannot exceed one-half of the normal rates.

An additional IRES depreciation is granted for new investments on fixed tangible assets purchased from 15 October 2015 to 31 December 2017. In particular, the relating cost is increased by 40%, bringing the taxable basis of the asset to 140%. The eligible assets are those whose tax amortisation rate is higher than 6.5%.

The benefit is also applicable to investments made by 30 June 2018, provided that, by 31 December 2017, the following conditions are met:

- the purchase order has been accepted by the seller, and
- at least 20% of the purchase cost has been paid.

For new investments carried out in FY 2017 in hi-tech, cloud, ultra broad band, industrial robotics, digital manufacturing, IT security, etc. a notional increase of the purchase cost of 150% has been introduced for tax depreciation, bringing the IRES basis of the assets to 250%.

The benefit applies to eligible investments made from 1 January 2017 until 31 December 2017 or by 30 June 2018, provided that, by 31 December 2017, the following conditions are met:

- the purchase order has been accepted by the seller, and
- at least 20% of the purchase cost has been paid.

A notional increase of 40% of purchase cost of intangible assets (e.g. software, systems, platforms and applications connected to hi-tech investments, etc.) is also possible. The benefit applies to software, IT systems and integration systems, platforms and applications, etc.

As for leasing contracts, the benefit is addressed only to the lessee and not to the lessor. Capital goods acquired with operational lease contracts or rental contracts are excluded from the benefit.

Land is not a depreciable asset. Amortisation of goodwill derived from an asset deal and amortisation of trademarks are deductible for an amount not exceeding 1/18 of the cost in any year.

Patents, know-how, and other intellectual property (IP) may be amortised over a two-year period.

Concession rights may be depreciated with reference to the utilisation period as determined either by law or in the relevant agreement.

For IRAP purposes only, depreciation and amortisation (other than as related to goodwill and trademarks) are deductible in accordance with the amounts reported in the financial statements, regardless of the limits outlined above.

Finance leasing

Leasing expenses booked in the profit and loss statement pursuant to Italian GAAP are fully deductible from the IRES taxable base if the relevant agreement has a minimum duration period. In particular, if the agreement is executed as of 1 January 2014, the duration required is the following:

- For fixed tangible assets, at least half of the depreciation period as set forth in the above Ministerial Decree.
- For real estate, at least 12 years.

Longer minimum duration periods are provided for financial leasing agreements executed before 1 January 2014.

Interest expense

Generally, interest expense is fully tax deductible up to the amount of interest income. Thereafter, excess interest expense is deductible at up to 30% of the gross operating margin (interest deduction capacity) as reported in the financial statements. Gross operating margin is defined as the difference between operating revenues and expenses excluding depreciation of tangible and intangible assets and charges for leased assets as stated in the profit and loss account for the year.

Net interest expense in excess of the yearly limitation is carried forward indefinitely. Hence, net interest expense not deducted in previous years can be deducted in any future fiscal year as long as total interest in that year does not exceed 30% of gross operating margin. If net interest expense is lower than the annual limit (i.e. 30% of gross operating margin), this difference can be carried over to increase the company's interest deduction capacity in future years.

The inclusion of dividends received from foreign subsidiaries in the computation of the 'earnings before interest, tax, depreciation, and amortisation' (EBITDA), used to determine the interest expenses deductibility limit, is allowed.

Where an election is made for the domestic tax consolidation regime (*as discussed in the Group taxation section*), the net interest expense limitation applies to the consolidated tax group. As a consequence, if a company participating in a tax group has an excess interest deduction capacity, this excess may be used against the interest deduction deficit in another company belonging to the same tax consolidation group. Under specific conditions, non-resident subsidiaries can also be 'virtually' included in the tax consolidation for the sole purpose of transferring their excess capacity over 30% of gross operating margin in order to increase the overall interest deduction capacity of the Italian group.

The above-mentioned rules are not applicable for financial institutions, such as banks and insurance companies, where the deductibility of interest expense (for both IRES and IRAP purposes) is limited to a fixed amount of 96% of the interest expense shown in the income statement of these entities. Starting from FY 2017, holdings and banks will be allowed to fully deduct interests.

The tax authorities have provided some general guidelines regarding leveraged buyout (LBO) operations. The latter shall be considered legitimate and interests arising from related acquisition financing shall be considered, in principle, deductible within the ordinary limits (30% of EBITDA, transfer pricing rules, etc.).

Allowance for Corporate Equity (ACE)

The ACE is a deduction that corresponds to the net increase in the equity employed in the entity, multiplied by a rate yearly determined by the Ministry of Finance. This rate is equal to 1.6% for FY 2017 (previously 4.75%) and to 1.5% for FY 2018 and onwards.

The relevant increase is determined by the equity contributions and by the retained earnings (except profits allocated to a non-disposable reserve) less the following items:

- Reductions of the net equity with assignment to shareholders, including, in particular, dividend distribution.
- Investments in controlled companies.
- Certain intra-group business acquisitions.

If the allowance for a year is higher than the net IRES taxable base, the difference will be carried forward to the next periods.

To calculate the equity increase, the reference equity is disclosed in the financial statements for the fiscal year current as at 31 December 2010, net of the profits for the same year.

Bad debts

Yearly provision for bad debts not guaranteed by third parties and relating to sales of goods and services is tax deductible at up to 0.5% of the receivables gross value.

Deduction shall no longer be permitted when the total amount of the bad debts reserve exceeds 5% of the above-mentioned gross value of the receivables as of the end of the fiscal year.

Regardless of the above, losses on bad debts shall be deductible if supported by precise and objective elements or, in any case, if the debtor is subject to bankruptcy proceedings, including foreign ones.

A loss on a bad debt can be deducted for IRES purposes when the following conditions jointly apply:

- The term for payment has elapsed by six months.
- The receivable has a determined threshold. In particular, the item is up to EUR 2,500 for small companies and up to EUR 5,000 for big corporations (with turnover over EUR 100 million).

The loss is tax deductible, regardless of the amount, when the collection right is prescribed.

Further changes are intended to make certain the identification for the year attributable to the deductibility of the loss. Specifically, the deduction of the loss is allowed in the period charged to the balance sheet, even if that offsetting is performed in a tax year following the year in which there are the precise and objective elements, or the debtor is considered subject to bankruptcy proceedings.

Moreover, losses are tax deductible in case of derecognition of bad debts applied in compliance with accounting standards (both Italian GAAP and IFRS), always provided the inherence test is met.

Charitable contributions

Deduction of charitable contributions is allowed. The amounts allowed for deductions depend on the specific features of the recipient entity, and specific limitations are set by the law.

Entertainment expenses

For IRES purposes, expenses for gifts and entertainment that meet the requirements (both qualitative and quantitative) contained in the specific Ministerial Decree are fully deductible in the tax period in which they are incurred. Entertainment expenses that do not meet these requirements cannot be deducted. As of FY 2016, the thresholds for the tax deductibility are increased.

Expenses related to gifts with a value of EUR 50 or less are entirely deductible.

Travel expenses

For IRES purposes, the deduction for travel expenses incurred within the municipality is limited to 75% of the amount incurred. However, the VAT related to such costs is fully recoverable.

Car costs

The IRES deductibility of expenses related to cars used by companies is as follows:

- 20% for cars that are not assigned to employees or are granted to employees solely for business use.

- 70% for cars granted to employees for both business and private purposes.

Car costs may be entirely deducted if (i) automobiles are absolutely necessary for the company's business or (ii) automobiles are an essential element in the company's activity (i.e. vehicles owned by a car rental company).

Telephone expenses
For IRES purposes, up to 80% of the total expenses related to both mobile and landline telephones are deductible.

Fines and penalties
Fines and penalties are generally not considered inherent costs and are, consequently, not deductible for tax purposes.

Taxes
The following IRAP items are deductible in determining the IRES taxable base:

- 10% of IRAP paid during the year.
- An amount determined on the IRAP paid on the cost of employees, net of the relevant deductions.

IMU is deductible for IRES purposes at up to 20% of the amount paid in the fiscal year, whereas no deduction is allowed for IRAP purposes.

Purchases from suppliers resident in tax haven jurisdictions
Expenses incurred for goods and services bought from entities resident in 'tax haven' jurisdictions are fully tax deductible.

Net operating losses
Tax losses can be carried forward for IRES purposes and used to offset income in the following tax periods without any time limitation.

Tax losses can only be offset with taxable income for an amount not exceeding 80% of the taxable income. Thus, corporations are required to pay IRES on at least 20% of taxable income.

Note that losses arising in the first three years of activity can be offset with 100% of taxable income.

For IRAP purposes, tax losses may not be carried forward.

Specific (tax anti-avoidance) rules limit the carryforward of tax losses in the event of:

- change of control and
- an effective change of the main activity (performed by the company carrying forward the losses).

The aforementioned changes must occur together in order for the limitations to be applicable. The change of the main activity is relevant for these purposes if it takes place in the tax period in which the change of control occurs or in the two subsequent or preceding periods.

Specific anti-abuse provisions are also applicable to net operating losses in cases of merger or demerger.

In Italy, tax losses may not be carried back.

Payments to foreign affiliates

Transactions with foreign affiliated companies should be at 'fair market value' and, generally, as defined by OECD Guidelines. *See Transfer pricing in the Group taxation section for more information*.

Group taxation

Domestic tax consolidation

Companies belonging to the same group can elect domestic tax consolidation. This regime allows the determination of a single IRES taxable base comprised of the taxable income and losses of each of the participating entities. The tax consolidation does not operate for IRAP purposes.

Where an overall tax loss position arises, this can be carried forward and used against future consolidated taxable income. Conversely, tax losses arising in fiscal years preceding the domestic tax consolidation election can be carried forward and used only by the company to which these losses belong.

The taxable basis determined by each company participating in the tax consolidation arrangement is included in its entirety. No apportionment is made in relation to the percentage of control.

In order to validly elect the Italian domestic tax consolidation regime, the following conditions must be met:

- The consolidating entity must be an Italian tax resident company, and it must hold, directly or indirectly, more than the 50% of the share capital of the consolidated entities (so called 'legal control').
- This control must be in place from the beginning of the tax period for which the tax consolidation is applied for.
- All of the companies participating in the group must have the same year-end.

The consolidation arrangement operates on an elective basis. Taxpayers may select whether to be included or not, and it is not necessary for all the Italian group/sub-group companies to jointly elect for the tax consolidation.

Once the election is made, it cannot be revoked for three fiscal years.

The election is also allowed to Italian 'sister' companies or PEs in Italy of foreign companies resident in EU/European Economic Area (EEA) countries with which Italy has entered into an agreement that ensures an effective exchange of information. The Italian entity should be designated to exercise the option, acting as consolidating entity.

The election is silently renewed at the end of the three-year period.

Worldwide tax consolidation group

A worldwide tax consolidation group is available, allowing the consolidation of foreign subsidiaries.

In addition to the requirements set out for the domestic tax group system, the following conditions apply:

- The ultimate parent company must be either owned by individuals who are tax residents of Italy or listed on the Italian Stock Exchange.
- The option must be exercised for all foreign companies (under the 'all in, all out' principle).

Income for each company is apportioned in the tax consolidation based on the actual percentage of control exercised by the ultimate parent company that is an Italian tax resident.

A number of additional requirements need to be fulfilled in order for a worldwide tax consolidation to be operative, including a mandatory audit of the financial statements of all the foreign subsidiaries.

Once the election is made, it cannot be rescinded for five fiscal years. The option is silently renewed at the end of the related period.

Country-by-country (CbC) reporting

CbC reporting has been introduced in Italy for multinational enterprise (MNE) groups with consolidated group revenues of at least EUR 750 million. With this report, any MNE group shall disclose annually and for each tax jurisdiction in which it conducts business the information set out therein.

The template of the CbC report includes:

- aggregate tax jurisdiction-wide information relating to the global allocation of the income, the taxes paid, and certain indicators of the location of economic activity among tax jurisdictions in which the MNE group operates (Table 1)
- a listing of all the relevant entities for which financial information is reported, including their jurisdiction of tax residence and incorporation (if different) and their main business activity (Table 2), and
- additional information that may be useful to understand the mandatory information provided in the CbC report (Table 3).

The group entity responsible for the submission of the CbC report is the ultimate parent entity. However, where some conditions are met, the report shall be submitted by the entities resident in Italy for tax purposes.

Penalties are levied in case of missed or untrue communication (penalties can range from EUR 10,000 to EUR 50,000).

With Ministry of Finance Decree dated 23 February 2017, the deadlines for the submission of the CbC report and the notification of the so called 'CbC status' of the Italian constituent entities have been defined. The CbC report shall be filed within 12 months of the last day of the reporting fiscal year of the MNE group. Moreover, the deadline for the notification of the CbC status to the Italian tax authorities is within the deadline for the submission of the income tax return.

Transfer pricing

Income derived from operations with non-resident corporations that directly or indirectly control the Italian entity, are controlled by the Italian entity, or are controlled by the same corporation controlling the Italian entity have to be valued on the basis of the arm's-length nature of the goods transferred, services rendered, and services and good received if an increase in taxable income is derived there from. Possible reductions in taxable income as a result of the arm's-length principle are allowed:

- on the basis of mutual agreement procedures or the EU Arbitration Convention
- on the conclusion of tax audits performed under international cooperation procedures, where the results are agreed by the tax authorities involved, or
- through a specific application filed by an Italian taxpayer where a final adjustment has been made in a country that has a double tax treaty (DTT) in place with Italy that allows an acceptable level of information exchange. Currently, a specific regulation is awaited, setting out the way in which this procedure will operate.

Statutory rules on transfer pricing are set out in the Italian Income Tax Code (TUIR), which has been recently amended, making specific reference to the arm's-length principle. Before this amendment, the Italian Transfer Pricing Law has used the concept of 'normal value' (*valore normale*) as the basis for pricing inter-company transactions. This concept was similar to the OECD arm's-length principle, although not precisely the same and potentially open to various interpretations. The new definition formally endorses the OECD standard by providing that inter-company transactions are determined based on the "conditions and prices that would have been agreed in comparable circumstances between independent parties acting at arm's length".

Penalty protection regime with transfer pricing documentation support
Transfer pricing rules provide for a penalty protection regime in case of transfer pricing audit, provided that the taxpayer has prepared proper documentation detailing the compliance of inter-company transaction to the arm's-length principle.

The Regulation applies to transactions incurred between Italian entities and non-resident entities belonging to the same group (transfer pricing rule are not applicable to domestic transactions). No specific methods have been introduced to test the arm's-length nature of transactions; reference is made to the OECD Guidelines. An exception exists for corporations involved in on-line advertising and related ancillary activities that are required not to use cost-based indicators for transfer pricing purposes, unless an advance pricing agreement (APA) has been defined with the tax authorities on this.

On the base of the transfer pricing Regulation, taxpayers can obtain penalty protection if they provide the Italian tax authorities with:

- Documentation to support the inter-company transactions drawn up in the specific format detailed in a Regulation issued by the Italian tax authorities and drawn up in Italian. The tax authority confirmed that information in annexes (inter-company contracts and transactions diagram) can be in English.
- Notification that documentation has been prepared and available by checking the specific box in the annual corporate income tax return.

The information required is based on the EU Code of Conduct for Transfer Pricing documentation.

Based on the group structure, a Master File and/or Country File have to be prepared.

Italian-based groups and Italian sub-groups owning non-Italian subsidiaries must produce both a Master File and a Country File. Italian subsidiaries of multinational groups need to produce a Country File only.

The sub-group provisions are onerous, especially so where they relate to branches. Where a foreign entity has an Italian branch but the company itself is also a holding company, a Master File is required for the foreign entity's subgroup, even if there is no holding directly attributed to the branch.

Sub-holding companies based in Italy with at least one non-Italian subsidiary, which need to produce a Master File, may instead produce the Master File for the entire group in English. If it does not contain all the information in the Italian Regulation, they will need to supplement it.

Documentation must be signed by the legal representative of the company and provided to the authority upon request within ten days. Also, an electronic copy must be provided upon request.

Transfer pricing documentation must be prepared each year and on a company-by-company basis. Small and medium companies (defined as those with an annual turnover of less than EUR 50 million) can update the economic analysis only every three years, provided that no significant change in the business occurred. Otherwise, it is necessary to update the economic analysis each year. All the other sections of the report have to be updated each year, even for small and medium companies.

Relief from penalties is granted on the additional IRAP applicable to transfer pricing adjustments to taxpayers who have prepared transfer pricing documentation in line with Italian Regulation.

International ruling procedures are available, to agree transfer pricing methodology with the tax authorities.

The agreement executed between the tax authorities and the taxpayer is binding for the fiscal year during which the agreement is executed and for the following four fiscal years and can then subsequently be renewed. From 2015, rollback provisions are available, making it possible to extend the agreement to cover the period between filing the application and signature of the agreement or as agreed by the competent authorities for bilateral or multilateral APAs.

Thin capitalisation

Italy no longer has thin capitalisation rules *per se*. Instead, net interest expense is deductible only up to an amount equal to 30% of gross operating margin (*see Interest expense in the Deductions section for more information*).

Controlled foreign companies (CFCs)

An Italian company that controls, either directly or indirectly, a foreign enterprise, company, or other entity is required to consolidate the taxable income arising in proportion to the percentage of shareholding held, irrespective of whether the profits have been distributed or not.

Income from CFCs is taxed separately from the other taxable income of the business at the standard IRES rate (i.e. other tax losses cannot be used to offset CFC income). Foreign taxes paid by the CFCs are recoverable by way of a corresponding tax credit.

Dividends received by an Italian shareholder from a CFC are excluded from taxable income up to the amount of the taxable income attributed under the above CFC provisions. The excess of any dividends over income already included through the CFC regime is fully taxable in the hands of the shareholder.

Exemption from CFC rules can be achieved by means of an advance ruling from the Italian tax authorities.

The CFC rules are also applied to controlled companies that are located in a jurisdiction in which:

- The nominal tax rate is less than 50% of the nominal tax rate in Italy.
- They are subject to special tax regimes.

Tax credits and incentives

Foreign tax credit

Where foreign-source income definitively is taxed abroad, a tax credit can be claimed for use against a company's IRES liability. The amount of the tax credit that can be claimed is the lower of the foreign tax incurred and the proportion of the IRES liability related to the foreign-source income. For partially exempt income (e.g. dividends), the foreign tax credit is reduced in proportion to the amount of the income taxable in Italy.

If an Italian company receives foreign income from more than one country, this limitation is applied separately to each country.

Foreign taxes borne by the foreign PE of an Italian resident company are allowed to be offset against the overall consolidated tax liability (IRES).

Any excess of foreign tax credit over the maximum amount allowed for recovery in the same tax period can be carried back or carried forward for eight years and recovered if specific conditions are met (e.g. same source country of the income, occurring because of an excess of the IRES liability related to the foreign-source income).

Patent box regime

Italian resident companies and PEs of non-resident entities that carry out research and development (R&D) activity, either directly or by outsourcing it to universities or other research institutes or equivalent institutes, may elect to apply the Italian patent box regime. The regime exempts a portion of the income derived from the exploitation, either directly or by licensing, of 'qualifying intangible assets'.

The general exemption is 50%, but it is limited to 40% for 2016.

The regime can be applicable to PEs only if the non-resident entity resides in a country with which Italy has concluded a tax treaty and that allows adequate exchange of information.

The election is effective for five years and cannot be revoked during that period. Qualifying intangible assets include patents; know-how, such as industrial, commercial, or scientific information, formulas, and processes that are eligible for legal protection; and trademarks.

Taxpayers must request a specific ruling from the Italian tax authorities to benefit from the regime when the qualifying intangible is either used directly by the company or licensed to a related party.

Inward investment, capital investment, and R&D investment incentives
A number of incentives have been established to attract new industry to southern Italy and certain depressed mountain areas in central and northern Italy.

The possibility of taking advantage of these rules, however, depends on the taxpayer fulfilling specific conditions and on the actual availability of financial resources by the Italian state. These financial resources generally are set in the annual state budget.

In particular, from FY 2015 through FY 2019, Italian companies that carry out qualifying R&D activities can benefit from a tax credit computed as a percentage of the R&D expenditures in excess of the company's average R&D expenditures in FY 2012, FY 2013, and FY 2014.

The credit percentage is 25% for depreciation of laboratory equipment and for technical expertise related to industrial or biotech IP. The percentage increases to 50% for costs related to 'highly qualified' personnel and R&D activities outsourced to universities or other similar research institutions.

The tax credit cannot exceed EUR 5 million per year per taxpayer, and requires qualifying R&D costs of at least EUR 30,000 per year.

Withholding taxes

A 26% base standard WHT rate is applicable on the yields on loans and securities (bonds, shares, etc.) paid by Italian resident entities to both Italian and non-Italian resident investors.

The standard WHT rate, however, may be reduced under the applicable DTTs, EU Directives, or other special domestic tax regimes (such WHT exemptions and reductions are only granted to the beneficial owner of the income).

Interest on government bonds is subject to a 12.5% domestic WHT.

WHT chart
Domestic corporations paying certain types of income are required to withhold as shown on the following chart. The numbers in parentheses refer to the notes below.

Recipient	Dividends (%)	Interest (%)	Royalties (%)
Resident corporations	0	0/26 (1)	0
Resident individuals	26 (2)	26 (1)	20 (3)
EU resident corporations	0/1.2 (4, 5)	0 (4)/DTT rates	0 (4)/DTT rates
Swiss resident corporations	0 (6)/DTT rates	0 (6)/DTT rates	0 (6)/DTT rates
Non-resident corporations and individuals:			
Non-treaty countries	26 (7)	26	30 (3)
Treaty countries (8):			
Albania	10	0/5	5
Algeria	15	0/15	5/15

Recipient	Dividends (%)	Interest (%)	Royalties (%)
Argentina	15	0/20	10/18
Armenia	5/10	0/10	7
Australia	15	0/10	10
Austria	15	0/10	0/10
Azerbaijan	10	0/10	5/10
Bangladesh	10/15	0/10/15	10
Belgium	15	0/15	5
Bosnia and Herzegovina (Yugoslavia Ex)	10	10	10
Brazil	15	0/15	15/25
Bulgaria	10	0	5
Byelorussia	5/15	0/8	6
Canada	5/15	0/10	0/5/10
Chile	5/10	5/15	5/10
China, People's Republic of	10	0/10	10
Congo, Republic of	8/15	0	10
Côte d'Ivoire	15/18	0/15	10
Croatia	15	0/10	5
Cyprus	15	10	0
Czech Republic	15	0	0/5
Denmark	0/15	0/10	0/5
Ecuador	15	0/10	5
Egypt	20	0/25	15
Estonia	5/15	0/10	5/10
Ethiopia	10	0/10	20
Finland	10/15	0/15	0/5
France	5/15	0/10	0/5
Georgia	5/10	0	0
Germany	10/15	0/10	0/5
Ghana	5/15	10	10
Greece	15	0/10	0/5
Hong Kong	10	0/12.5	15
Hungary	10	0	0
Iceland	5/15	0	5
India	15/25	0/15	20
Indonesia	10/15	0/10	10/15
Ireland, Republic of	15	10	0
Israel	10/15	10	0/10
Japan	10/15	10	10
Jordan	10	0/10	10
Kazakhstan	5/15	0/10	10
Kuwait	0/5	0	10
Latvia	5/15	0/10	5/10
Lebanon	5/15	0	0
Lithuania	5/15	0/10	5/10
Luxembourg	15	0/10	10
Macedonia	5/15	0/10	0
Malaysia	10	0/15	0/15
Malta	15	26	0/10
Mauritius	5/15	20	15
Mexico	15	0/15	0/15

Recipient	Dividends (%)	Interest (%)	Royalties (%)
Moldova	5/15	5	5
Mongolia	5/15	0/10	5
Montenegro (Yugoslavia Ex)	10	10	10
Morocco	5/15	10	5/10
Mozambique	15	0/10	10
Netherlands	5/10/15	0/10	5
New Zealand	15	0/10	10
Norway	15	0/15	5
Oman	5/10	0/5	10
Pakistan	15/25	30	30
Philippines	15	0/10/15	25
Poland	10	0/10	10
Portugal	15	0/15	12
Qatar	5/15	0/5	5
Romania	10	0/10	10
Russia	5/10	10	0
San Marino	5/15	0/13	10
Saudi Arabia	5/10	0/5	10
Senegal	15	0/15	15
Serbia (Yugoslavia Ex)	10	10	10
Singapore	10	0/12.5	15/20
Slovak Republic	15	0	0/5
Slovenia	5/15	0/10	5
South Africa	5/15	0/10	6
South Korea	10/15	0/10	10
Soviet Union Ex (9)	15	0	0
Spain	15	0/12	4/8
Sri Lanka	15	0/10	10/15
Sweden	10/15	0/15	5
Switzerland	15	12.5	5
Syria	5/10	0/10	18
Taiwan	10	10	10
Tanzania	10	15	15
Thailand	15/20	0/10	5/15
Trinidad and Tobago	10/20	10	0/5
Tunisia	15	0/12	5/12/16
Turkey	15	15	10
Uganda	15	0/15	10
Ukraine	5/15	0/10	7
United Arab Emirates	5/15	0	10
United Kingdom	5/15	0/10	8
United States	5/15	0/10	0/5/8
Uzbekistan	10	0/5	5
Venezuela	10	0/10	7/10
Vietnam	5/10/15	0/10	7.5/10
Zambia	5/15	0/10	10

Notes

1. The actual applicable rate depends on the nature of the recipient. Applicable rates are as follows: 0% applies on loan agreements and ordinary notes when the recipient is a corporation; 26% rate in all other cases.
2. For resident individuals, 26% WHT applies on the taxable part of dividends received by 'qualified' shareholders (i.e. holding more than 20% of voting rights or 25% of the share capital, 2% or 5% in case of listed companies). The rate applicable to 'non-qualified investments' is 26%. Non-residents are always subject to a 26% WHT, irrespective of whether or not they are 'qualified'.
3. The rate is applicable on 75% of the gross amount of the royalty paid.
4. Pursuant to the EU Directives and provided that the requirements set forth therein are met, payments of dividends, interest, and royalties made by an Italian company to an EU resident group company can be WHT exempt. Specifically for the dividends, the minimum shareholding requirement (to benefit from this exemption) is currently equal to 10%; for interest and royalties, it is 25% of voting rights; a one-year minimum holding period applies for both.
5. Should the full WHT exemption not apply, 1.2% is applicable on dividends paid to EU and EEA tax resident corporations.
6. Pursuant to the Swiss EU tax agreement and provided that the requirements contained therein are met, payments of dividends, interest, and royalties made by an Italian company to a Swiss tax resident group company can be WHT exempt.
7. Non-resident persons have the right to obtain reimbursement for up to 11/26 of the withholding effected, upon proof of the actual taxation of the dividends in the foreign country where the recipient is a resident.
8. Provided that all conditions are met, domestic tax legislation is applicable if more favourable for the taxpayer. In a number of circumstances, tax treaties may provide for particular tax rates mainly dependent on the nature of the instruments and on the profile of the recipients/payers. In such cases, the applicable WHT rate must be verified from an analysis of the relevant tax treaty.
9. The treaty with the former USSR remains applicable with respect to Kyrgyzstan, Tajikistan, and Turkmenistan.

Tax administration

Taxable period

The ordinary taxable period is equal to 12 months. Conformity with the calendar year is not requested. In particular cases, the duration of the taxable period can be different from 12 months (e.g. newly established companies may be allowed to have taxable periods of up to 18 months; companies that are involved in extraordinary transactions [merger, de-mergers, etc.], as well as companies that are liquidated, may have taxable periods shorter than 12 months).

Tax returns

IRES and IRAP returns must be filed by the end of the ninth month following the tax year-end. Please note that, following the introduction of the new Italian Generally Accepted Accounting Principles (GAAP) as of 2016, the filing of FY 2016 IRES returns is shifted to 15 October 2017 (for calendar entities).

The ordinary filing deadline for WHT agent returns is 31 July.

Payment of taxes

For IRES and IRAP purposes, the tax law provides for both advance payments and settlement payments. As a general rule, the advance payments are equal to the net tax liability for the previous tax period and are due during the tax period to which they refer. The advance payments due are equal to 100%.

Advance payments are split into two instalments:

- 40% within the end of the sixth month following the tax year-end (up to December 2016, it was by the 16th day of the sixth month).
- 60% by the end of the 11th month following the tax year-end.

Settlement payments are due within the end of the sixth month following the tax year-end to which they refer (previously by the 16th day of the sixth month following the tax year-end).

Tax payments should be performed through a specific form to be electronically filed to the tax authorities (i.e. F24 form).

Offsetting of taxes
Payables and receivables (not claimed for refund) resulting from a return regarding different taxes are allowed for off-setting within a yearly limit of EUR 700,000.

Furthermore, in order to offset tax credits exceeding EUR 5,000, a so-called 'conformity mark' affixed by a qualified professional on the related return is required.

No offsetting is allowed in case of unpaid taxes resulting from an official payment notice and exceeding EUR 1,500.

Administrative penalties
Failure to file a tax return results in a penalty ranging from 120% to 240% of the taxes due. Minimum penalties (ranging from EUR 250 to EUR 1,000) are applicable if no tax liability emerged in the return.

A tax return showing either a taxable income lower than the one assessed or a tax credit higher than those owed to the taxpayer (i.e. an untrue tax return) results in a penalty ranging from 90% to 180% of the higher taxes ultimately due.

Omitted and/or late payments of taxes, of whichever kind and nature, result in a penalty equal to 30% of the unpaid/late paid tax. However, in cases where the delay is within 15 days, the penalty is equal to 1% per day; if the delay is between 15 and 90 days, the penalty is equal to 15%.

Special rules apply where similar violations are repeated over various years.

Self-disclosure of tax law breaches are allowed on payment of the higher taxes and of reduced administrative penalties. The reduced penalties are always computed on the floor of the applicable range of penalties. The starting of an audit does not prevent the possibility to amend tax returns or to carry out late tax payments.

The actual reduction of penalties depends on the time elapsed between the occurrence of the breach and the self-disclosure itself (i.e. different interim thresholds apply). The penalty is reduced from 1/30 (lower floor), if the correction is done within 14 days (for an omitted/lower tax payment only), up to 1/5 (upper floor), if the correction is carried out during a tax authorities audit or after the issue of a tax audit report (i.e. *processo verbale di constatazione*).

In any case, the possibility to apply the self-disclosure is prevented after the issuance of final notice of tax assessment (i.e. *avviso di accertamento*) or tax redetermination (i.e. *avviso di irregolarità*).

Statistical based assessment procedure (so-called 'Studi di settore')
The Italian Tax law provides for special tax control procedures for those enterprises whose total turnover does not exceed EUR 7.5 million. The controls, so-called '*Studi di Settore*', are based on standardised economic models of the different business fields and

are aimed at assessing whether or not a specific subject's taxable income is in line with its own standard model (on statistical basis).

A higher possibility of undergoing tax audit should be considered for entities not meeting the expected profitability and/or turnover resulting from these automated controls.

Starting from FY 2017, this type of assessment is repealed and replaced by a system of indexes to identify and reward reliable taxpayers. Operating instructions will be provided by the tax authorities.

Tax ruling

The tax ruling is an instance where the taxpayer directed a behaviour for tax purposes to the tax authority before implementing it; its scope is to seek clarification on the interpretation of a rule objectively uncertain, related to state taxes, to be applied to concrete and personal cases.

The procedure can also be started by non-resident taxpayers, by WHT agents, and by persons in charge of fulfilling the tax payments.

The tax authorities must admit to the procedure within 30 days from the receipt of the instance; however, tacit acceptance from the tax authorities applies. The procedure that involves a contradictory procedure between the tax authorities and the taxpayer ends within 180 days from the receipt of the instance.

The content of the instance could be on the transfer pricing, the application of rules to attribute profits and losses to a PE, the tax treatment of dividend, interest, royalties, or other incomes, etc.

In particular, a 'ruling on new investments' has been introduced for those enterprises that intend to make new investments in Italy for a value above EUR 30 million, disclosing tax treatment of the investment and all related extraordinary transactions. The tax authorities will be bound not to issue any deed inconsistent with the answers given.

The tax authorities' answer must be notified within 120 days. The deadline can be extended for additional 90 days if the tax authorities asks for new additional information.

Tax audit process

For larger companies having a yearly turnover exceeding specific thresholds (that are in the process of being progressively decreased to EUR 100 million), administrative checks on tax returns may be carried out within the year following that in which the tax return has been filed.

Tax audit can take place at the taxpayer's premises as well as in the tax authorities' offices. The statute of limitations provides that tax auditors can stay at a taxpayer's premises for not longer than 60 working days (30 days ordinary term plus 30 days of extension). At the end of this period, the audit must come to an end. Tax auditors must take note of the observations and requests made by the taxpayer. At the end of their audit, the tax auditors must draw up a tax audit report whereby the outcome of the audit activity must be detailed and the findings (if any) must be illustrated and motivated. A copy of the report has to be filed with the tax office.

The tax office receiving the tax audit report examines the findings reported by the tax auditors and starts the assessment procedure, which may lead to the issuing of a tax assessment notice bearing the request for payment of higher taxes and/or penalties.

Tax controversy and dispute resolutions
Should the taxpayer accept all of the challenges raised by the tax authorities, it may take advantage of the application of reduced penalties. The reduced penalties may range from 1/6 to 1/3 of the minimum applicable penalties, depending on the status of the controversy.

In case the taxpayer decides not to accept the challenges by the tax authorities, a settlement procedure can be initiated. The favourable outcome of the settlement procedure brings forth (in addition to the agreed-upon reduction of challenged taxes) the reduction of penalties: ordinarily down to 1/3 of the minimum applicable penalties.

In case no settlement is either achieved or requested for, the taxpayer may start a tax dispute before the Court. The judicial proceedings are structured in three tiers:

- Provincial Tax Commission, in first instance.
- Regional Tax Commission, in second instance.
- Supreme Court of Cassation.

Statute of limitations
From the fiscal year in progress as at 31 December 2016, the Italian tax authorities are entitled to make an assessment in relation to corporate taxes (IRES and IRAP), VAT, and WHT returns up to:

- the end of the fifth calendar year following the year in which the tax return was filed (previously up to the end of the fourth calendar year), or
- the end of the seventh calendar year following the year in which the tax return would have been filed, for an omitted return (previously up to the end of the fifth calendar year).

Previous rules are applicable until FY 2015.

The possibility to file an integrative tax return in favour of taxpayers within the deadlines of tax assessment has been introduced (e.g. FY 2016 tax return is amendable in favour of the taxpayer until FY 2022).

Topics of focus for tax authorities
Extraordinary transactions (such as mergers, de-mergers, etc.) continue to be a topic of focus for tax authorities due to the potential applicability of tax anti-abuse rules.

As a response to recent cases of carousel-frauds on VAT, cross-border transactions are being more heavily scrutinised.

Over the last few years, we experienced an increasing focus by the tax authorities on transfer pricing and PE related issues.

The beneficial ownership condition is very carefully scrutinised in case of payments where a nil or reduced WHT is applied based on EU Directive or applicable DTT, in particular when the ultimate owner of the group is non-EU.

Cooperative compliance programme

A regime aimed at setting a cooperative compliance programme for Large Business Taxpayers is available.

The regime falls within similar frameworks adopted by other foreign tax administrations, consistent with OECD recommendations.

The regime of cooperative performance represents for taxpayers the opportunity to start a new relationship with the tax authorities based on forms of communication and strengthened cooperation.

Taxpayers who have a turnover of EUR 10 billion are able to join the regime and required to adopt a Tax Control Framework.

The subjects involved in the regime will have benefits in terms of constant and continuous dialogue with the tax authority, reduction of penalties, and elimination of guarantees required for refund.

Other issues

Adoption of IFRS and taxation

Italian tax law provides for two basic principles and some specific rules for taxation of a company adopting International Accounting Standards (IAS)/IFRS in the statutory financial statements:

- Derivation principle (‘*Principio della Derivazione*’): The taxable base of companies is determined starting from the net income arising from the profit and loss, increased or decreased by items directly booked to equity pursuant to the application of IAS/IFRS. To such income, the general tax adjustments set forth by the Corporate Income Tax Law apply. In this respect, as exception to the general tax criteria, the accrual principle, and the qualification and classification criteria stated by the IFRS are relevant for the calculation of the taxable base.
- Neutrality principle (‘*Principio della Neutralità*’): Such principle aims to neutralise the effects deriving from the movement to IAS/IFRS (First Time Adoption or FTA). Conversely, such principle does not grant an equal treatment for companies adopting or not IAS/IFRS (in fact, specific rules are applicable only to IAS/IFRS adopters, e.g. taxation of dividend on held for trading securities, derivatives).

The following specific rules applicable to IAS adopters must be considered:

- Adjustments or recognitions of transactions made in equity and/or in the ‘other comprehensive income (OCI)’ are relevant for tax purposes, to the extent that such items are in compliance with general tax principles.
- For equity instruments, the legal classification is prevailing over the accounting one (debt vs. equity classification).
- Under certain conditions, unrealised profits and losses recognised in the profit and loss become taxable and deductible (e.g. fair value on securities other than shareholdings and on derivatives transactions).
- The tax treatment of transactions between IFRS adopters and non-IFRS adopters is based on the accounting principle adopted by each company (e.g. financial leasing transaction).

- Depreciation and amortisation are permitted within the rates provided by the tax rules and limited to the amount booked in the profit and loss statement. In this respect, the abolition of the imperative systematic depreciation of the goodwill and its substitution by the goodwill's review for impairment does not affect the tax deduction of the goodwill amortisation that should be made solely for tax purposes.
- Negative components booked in the income statement as expenses for personnel settled with equity instrument under IFRS 2 are, in principle, deductible for IRES purposes (stock options).
- In order to identify financial instruments with hedging purposes, IFRS adopters are allowed to give relevance to the classification made in the financial statement. In particular, financial instruments designated in the financial statement as hedging instruments in compliance with IFRS principles are considered also as hedging instruments for fiscal purposes (hedging accounting approach including the fair value option [FVO]).
- Given the possibility, under the IAS 39 accounting principle, to reclassify financial securities in a different portfolio from that of the initial booking, the value at which the security is booked in the new portfolio is tax relevant.

Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standard (CRS)

The FATCA aims to detect and discourage offshore tax evasion by United States (US) citizens or residents for tax purposes in the United States who hold financial assets through foreign financial institutions (FFIs), generally banks, custodial institutions, certain investment entities, and life insurance companies.

In order to simplify the obligations imposed on FFIs, the US Treasury and various foreign governments have entered into intergovernmental agreements (IGAs).

Italy and the United States signed an IGA (Model 1) in order to implement FATCA. The IGA has been ratified by the Italian Parliament in 2015.

For countries that have signed a Model 1 IGA, the United States has granted a number of important simplifications, such as the possibility for FFIs to use information collected for anti-money laundering (AML) purposes and for FATCA customer identification and the suspension of most of the penalties (e.g. account closure) for those account holders who refuse to provide the information required for their correct identification (i.e. recalcitrant).

FATCA obligates Italian financial institutions to identify (starting from 1 July 2014) and classify account holders in order to report certain financial information (e.g. name, address, (e.g. name, address, taxpayer identification number [TIN], account balance) related to US persons to the Italian Revenue Agency (i.e. *Agenzia delle Entrate*). The Italian tax authority will then exchange such information with the US Internal Revenue Service (IRS) by the end of September of each year.

The IGA ratification Law also includes provisions regarding on-boarding and due diligence requirements for CRS purposes. Starting from 1 January 2016, Italian financial institutions are required to identify and report non-resident (non-US) account holders, as provided by the CRS developed by the OECD.

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Significant developments

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

Taxes on corporate income

Resident companies are generally taxed on their worldwide income. A permanent establishment (PE), e.g. a branch of a company, is taxed on profits attributable to the PE. Non-resident companies are taxable on Jersey real estate income.

Companies pay income tax at a rate of 0%, 10%, or 20% on taxable income. The general rate applicable is 0%; the 10% and 20% rates apply to certain companies/ income streams as explained in this section. The tax rate applies to the company as a whole, the only exception being Jersey-source real property income, which is taxed at 20% regardless of the classification of the real property holding company.

Certain Collective Investment Funds and Securitisation Vehicles can elect to be exempt from tax on income, other than income from Jersey land or property, for an annual fee of 500 British pounds sterling (GBP).

The 20% tax rate applies to Jersey-based utility companies, such as telephone, gas, and electricity companies. Additionally, income from Jersey real estate, including rental income, property development profits, and income from exploiting Jersey land (e.g. quarrying activities) is subject to tax at 20%. Companies involved in oil importation and supply are also taxed at 20%.

The 10% rate applies to financial services companies. A company is defined as a financial services company if:

- it is registered under the 1998 financial services law to carry out investment business, trust company business, or fund services business as an administrator or custodian in relation to an unclassified or an unregulated fund
- it is registered under the 1991 banking business law, or
- it holds a permit under the collective investment funds law of 1988 as an administrator or custodian.

The 0% rate applies to all entities that are not exempt, financial services entities, or utility companies, including fund managers who do not hold any of the permits mentioned above.

Local income taxes
There are no parish or local government taxes on income.

Corporate residence

A company is regarded as tax resident in Jersey if it is incorporated in Jersey or if it has its place of central management and control in Jersey. However, a Jersey incorporated company that is managed and controlled elsewhere will not be regarded as a Jersey resident, provided certain conditions are satisfied.

Permanent establishment (PE)
Under domestic legislation, a PE, in relation to a company, includes a branch of the company, a factory, shop, workshop, quarry, or a building site, and a place of management of the company; however, the fact that the directors of a company regularly meet in Jersey shall not, of itself, make their meeting place a PE.

For a definition of PE contained in Jersey's double tax agreements (DTAs), the relevant clause and agreement should be reviewed. In general, it may include a branch, management, or other fixed place of business, but not an agency, unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts or has a stock of merchandise from which the agent regularly fills orders.

Other taxes

Goods and services tax (GST)
The standard rate of GST is 5%.

Companies with taxable supplies of more than GBP 300,000 *per annum* are required to register for GST.

International service entity (ISE) status
To address the difficulty of irrecoverable input tax in the financial services sector, and to mitigate the administrative cost of GST for exporters in general, Jersey has introduced the concept of an ISE. Where an entity qualifies for this status:

- it will not be required to register for GST
- services to it will be zero-rated (i.e. treated as an export) where the supply exceeds GBP 1,000, and
- input tax on purchases of less than GBP 1,000 may be reclaimed.

ISE status is automatically available to a wide variety of service providers and administered entities based in Jersey, upon application and payment of the relevant fee, including licensed banks, licensed trust service providers, licensed fund administrators, fund managers, and managed managers.

Other entities not automatically eligible under one of the categories above, including companies, partnerships, trusts, unrecognised funds, and special purpose vehicles, may still obtain ISE status if they fulfil certain criteria.

The ISE may, at the election of the company, be included on a list maintained by the Comptroller of Taxes. The list will refer either to the entity itself or (e.g. for administered entities) a class of entities as submitted by the administrator.

Customs duties
A common customs tariff is applicable on all goods imported from outside the European Union (EU). The amount is dependent on what the goods are and where they are imported from.

Excise taxes
An excise duty tax is payable on imported items, such as alcohol, tobacco, and fuel, at varying rates.

Property taxes
There are no property taxes in Jersey apart from income tax on Jersey-source property income, stamp duty on Jersey real estate, and rates levied by each parish.

Stamp duty
Stamp duty is payable on the purchase or transfer of Jersey real estate, with rates ranging from 0% to 8%. Mortgages secured by a charge over Jersey real estate are subject to stamp duty at rates of up to 0.5% of the amount borrowed. No stamp duty is payable on the transfer of shares.

Land transaction tax
A land transaction tax applies when shares in companies are transferred and the ownership of which confers a right of occupation of residential real estate in Jersey. The amount of land transaction tax payable is equal to the stamp duty that would have been suffered if the real estate were held directly.

Payroll taxes
Employers are required to deduct tax from salaries paid to employees and remit this to the tax authority to settle the employees' tax liability. Under the Income Tax Instalment System (ITIS), the tax authority issues each employee with an effective rate notice to pass to their employer indicating the deduction rate. If no such notice is provided, the default rate of deduction applied is 20%.

Social security contributions
Employers are responsible for paying employer social security contributions at a rate of 6.5% on each employee's gross earnings, up to the monthly standard earnings limit of GBP 4,180 for 2017 (annual limit GBP 50,160). Employer social security contributions of 2% apply to employees' earnings above the standard earnings limit, up to an upper earnings limit (GBP 13,828 monthly/GBP 165,936 annually).

A long-term care fund has been set up to help those who need long-term care.

Income taxpayers pay into this fund with a long-term care contribution. Those not liable for income tax do not have to pay the contribution.

The maximum long-term care contribution rate was 0.5% in 2015 and is 1% in 2016 of total income (taking into account allowances and reliefs), but it's likely that one's rate will be less than the maximum.

Branch income

Branch income is taxed at the rate applicable to the company. No further tax is withheld on the transfer of profits abroad.

Income determination

Inventory valuation

Inventory is valued at the lower of historical cost or net realisable value. The last in first out (LIFO) method is not permitted. Generally, there are no material differences between accounts prepared on a normal accounting basis and those prepared on a tax basis.

Capital gains

Capital gains are not subject to tax in Jersey.

Dividend income

Under the previous rules, an investment holding company was entitled to claim management expenses. Where an investment holding company was in receipt of a dividend from another Jersey company that carried a tax credit (i.e. a dividend that has been paid out of profits subject to the 10% or 20% tax rates), the investment holding company could set off the management expenses against the dividend and receive a repayment of the tax credit. This rule has been utilised by, amongst others, external investors to create acquisition structures that can result in significant amounts of corporate income tax being repaid.

To address this type of structuring, the 2016 Budget proposed that no tax credits will be repaid in respect of any dividend received by a company taxable at 0% on or after the day that the Draft 2016 Budget was lodged.

Any dividends received before 20 October 2015 will be treated in accordance with the Income Tax Law as it existed prior to that date. Any dividends received on or after 20 October 2015 will be dealt with under the Income Tax Law, as amended.

Furthermore, under the current rules, a financial services company receiving a dividend from which tax has been deducted by another Jersey company is entitled to a tax credit. The calculation of the tax credit available to a financial services company under these circumstances has been amended so as to limit the credit to the lower of the tax deducted from the dividend or the gross dividend at the rate of 10%.

Where a Jersey company is in receipt of a dividend that is paid out of capital profits from a non-resident company, it will be exempt from tax.

Stock dividends

Stock dividends are not taxed as income.

Interest income

Interest income forms part of taxable income and is taxed at the rate applicable to the company.

Royalty income

Royalty income forms part of taxable income and is taxed at the rate applicable to the company.

Rental income

Income from Jersey real estate, including rental income, property development profits, and income from exploiting Jersey land (e.g. quarrying activities), is subject to tax at 20%.

Foreign income

Income tax is levied on foreign branch income when earned and on foreign dividends, interest, rents, and royalties. Double taxation is mitigated by either the granting of unilateral relief to the extent of taxing foreign income net of foreign taxes or by treaty relief, which gives credit for foreign tax. Concessional credit relief might be granted in certain limited circumstances upon application.

Jersey currently has DTAs with Australia, Denmark, Estonia, Faroes, Finland, France, Germany, Greenland, Guernsey, Hong Kong, Iceland, Isle of Man, Luxembourg, Malta, New Zealand, Norway, Poland, Qatar, Rwanda, Singapore, Sweden, the United Arab Emirates, and the United Kingdom. The scope varies from agreement to agreement, but most are of limited scope.

Deductions

Normally, business deductions are allowed if they are incurred wholly and exclusively for trade purposes.

Depreciation and depletion

Capital allowances are available using the diminishing-balance method on machinery and equipment, including vehicles, at a rate of 25%. For this purpose, all such assets are pooled, and the allowance is calculated by reference to the value of the pool.

On disposal of an asset, the lower of cost and sale proceeds of the asset is deducted from the pool. A balancing charge is levied if the proceeds exceed the balance of the pool.

Motor vehicles over a certain value and greenhouses are subject to special rules and are not pooled with other assets.

By concession, an alternative is to claim the full cost of replacement in the year of replacement.

Capital allowances are not applicable to buildings or the depletion of natural resources.

Goodwill

Goodwill expenditure is non-deductible for Jersey income tax purposes.

Start-up expenses

Once a company has commenced its trade, start-up expenditure will be deductible for tax purposes if it is not capital in nature and has been incurred wholly and exclusively for trade purposes.

Interest expenses
Interest expense will be deductible if it is incurred for the purposes of a trade or is paid in connection with a loan taken out for a qualifying purpose. Interest relief may be restricted if the interest exceeds the amount that could reasonably be expected to be charged on a commercial basis.

Bad debts
Trading bad debts are normally deductible for Jersey income tax purposes unless they relate to a general provision.

Charitable contributions
Charitable contributions are generally non-deductible for tax purposes, unless the contribution itself provides a benefit to the trade (i.e. marketing).

Fines and penalties
Fines and penalties are generally non-deductible for tax purposes.

Taxes
Local income tax paid is not deductible in computing taxable income. ISE fees paid are a tax-deductible expense.

Net operating losses
No distinction is drawn between different types of income or losses arising from different trades or sources, apart from Jersey property income, which is separately streamed.

Unrelieved losses may be carried forward and used to offset profits in future accounting periods. Alternatively, losses can be group relieved to group companies in the same income tax rate band.

There are now only very limited circumstances where a company can obtain relief for carrying back losses.

Where a company has sustained a loss, this loss can be carried forward indefinitely and can be set off against future profits in respect of the same trade.

Payments to foreign affiliates
There are no withholding taxes (WHTs) on patent royalties paid by Jersey companies to non-residents.

Group taxation

Group taxation is not permitted in Jersey. However, there are provisions for group relief between group companies subject to the same rate of tax. It is not possible to relieve losses between two companies taxed at different rates. It is not possible for group companies to relieve losses from Jersey property rental income. Also, it is only possible to relieve losses from Jersey property development profits and from quarrying activities against profits arising from the same activities.

Transfer pricing
There are no specific rules in relation to transfer pricing in Jersey. There is, however, a general anti-avoidance provision in Jersey tax law. It may be applied by the Comptroller

of Taxes if a transaction or a combination or series of transactions is entered into for the avoidance or reduction of Jersey income tax. In addition, interest relief may be restricted where the interest incurred exceeds the amount that could reasonably be expected to be charged on a commercial basis.

Thin capitalisation
There are no specific rules in relation to thin capitalisation in Jersey.

Controlled foreign companies (CFCs)
Jersey has no CFC legislation.

Tax credits and incentives

There are generally no special incentives for locally owned businesses in view of the low rate of tax.

Foreign tax credit
There is no local foreign tax credit regime in Jersey. DTAs need to be considered as appropriate. Unilateral relief may be available under very limited specific circumstances.

Withholding taxes

There are no WHTs on dividends or interest paid by Jersey companies.

Tax administration

Taxable period
The tax year is the calendar year. Companies are assessed on income earned in respect of the financial year that ends within the applicable calendar year of assessment.

Tax returns
The system relies on the filing of a return of information with the Jersey tax authority, which then raises an assessment (in the case of companies taxed at 10% or 20% on all or part of their income). Companies taxed at 0% are required to submit a tax return but are not required to submit accounts and tax computations.

There is a filing deadline for the corporate return of 6pm on 31 December following the year of assessment and a late filing penalty of GBP 250.

Payment of tax
For companies, tax is payable in arrears during the calendar year following the year of assessment.

Under the law, tax is due the day after the assessment is made. In practice, an estimated assessment is made by the tax office in February/March, which is then appealed based on information at that time. A payment is suggested based on the appeal with the company making a top up payment (if necessary) prior to the surcharge deadline (the Friday after the first Monday each December in the year following the year of assessment) or once a final computation has been produced and submitted.

Tax paid after a prescribed date (usually the first Friday in the December following the year of assessment) incurs a 10% surcharge.

Tax audit process
There is no formal tax audit process in Jersey.

Statute of limitations
There is no statutory limitation date, as such. If the Comptroller discovers profits have not been fully assessed, the Comptroller can issue an amended/additional assessment at any time not later than five years after the expiration of the year of assessment. If the error involves fraud, wilful default, or neglect, then the assessment can be revised at any time.

Topics of focus for tax authorities
It has been confirmed that a tax disclosure opportunity will be implemented in 2017.

Other issues

Intergovernmental agreements (IGAs)
On 13 December 2013, the Jersey authorities signed an IGA with the United States to facilitate tax reporting under the Foreign Account Tax Compliance Act (FATCA) regime. The Jersey authorities have also signed a similar IGA with the United Kingdom on 22 October 2013. The IGA with the United Kingdom is sometimes known as UK FATCA. This is because the information exchanged under the UK IGA is similar to that exchanged with the United States under FATCA. It's sometimes also referred to as CDOT (crown dependencies and overseas territories).

The overall aim of the UK IGA is to improve tax compliance through the automatic exchange of information.

Jersey is committed to the adoption of the global Common Reporting Standard (CRS) on Automatic Exchange of Information with effect from 1 January 2016, with first reporting of reportable financial accounts in 2017. The CRS will replace UK FATCA from 1 January 2016.

Tax information exchange agreements (TIEAs)
The Jersey tax authorities are committed to being tax transparent, with an increased emphasis on agreeing to further DTAs and TIEAs. Jersey has signed TIEAs with 38 countries and is negotiating DTAs with several other jurisdictions (*see Foreign income in the Income determination section for a description of DTAs that have been signed*).

Latvia

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Significant developments

Planned tax reform

Although no draft laws have been passed yet, there are active discussions in place between the Ministry of Finance of Latvia and various working groups aimed at developing the main guidelines for the planned tax reform. According to the timeline set by the officials, it is planned for the draft laws to be developed by the end of spring 2017, and the new tax regime to apply from 1 January 2018.

The list of the proposed amendments is currently under discussion and can be changed, with the institutions involved in tax policy formulation still actively debating issues. Nevertheless, below we have outlined some of the main changes impacting companies that the planned tax reform is aimed at:

Corporate income tax (CIT)

- 20/80 CIT on payment of dividends to individuals and entities.
- 0% CIT on retained earnings.
- 20/80 CIT on entertainment and non-business expenses.
- Tax losses do not accrue/are not available.
- No capital allowances for investment in non-current assets.
- Monthly CIT returns.

Micro-business tax (MBT)

Despite the government's earlier plans to devise a new tax regime for newly formed businesses to replace MBT, the tax reform proposals provide for changes to certain MBT criteria and administration procedures for MBT payers:

- Retain 15% income tax on turnover.
- Lowering the revenue cap to 40,000 euros (EUR) a year.
- Raising the monthly salary cap to EUR 900 a month.
- Option to qualify for exemption from accounting and reporting if a bank is responsible for withholding tax from an MBT payer's business account.

Payments to non-residents

Companies will be required to notify the State Revenue Service (SRS) of all amounts paid to non-residents on transactions made on or after 1 January 2017. This is in line with the requirements of Council Directive 2011/16/EU on administrative cooperation in the field of taxation, which provides for automatic exchange of information on non-residents' revenues.

The use of tax losses
Recent amendments to the Corporate Income Tax (CIT) Act provide that tax losses brought forward will be capped at 75% (of the taxable income for the tax period) starting from 1 January 2017. The remaining tax losses can be carried forward for an unlimited period of time with the above restriction of use in the current taxation period.

Taxes on corporate income

The standard CIT rate is 15%. The tax is assessed on a company's financial profit (loss) that has been adjusted by certain corrections required by law. There are no other taxes on corporate income stated either by the government of Latvia or by local municipalities.

Resident companies are taxed on their worldwide income.

Non-resident companies are taxed on their Latvia-source income through permanent establishment (PE) at the standard CIT rate. If no PE is created, non-residents may be taxed with 0% to 15% withholding tax (WHT) for qualifying payments (e.g. management fees, payments to tax havens).

Micro-business tax (MBT)
The Micro-business Tax Act gives existing and newly-formed businesses the opportunity of acquiring micro-business status and registering for MBT if they meet the following criteria:

- The shareholders are individuals.
- The turnover does not exceed EUR 100,000 in a calendar year.
- The number of employees does not exceed five at any time.
- Members of the board are concurrently employees of the MBT payer.
- Remuneration of each MBT payer employee does not exceed EUR 720 per month.

The standard MBT rate is based on a micro-business's turnover up to EUR 100,000, and covers payroll taxes, business risk duties, and CIT.

As of 1 January 2017, the MBT rate of 12% is applicable on a micro-business's turnover up to EUR 7,000, while the turnover part from EUR 7,000.01 till EUR 100,000 is subject to MBT at 15%.

Starting from 2018, there will be a single MBT rate of 15% applicable to turnover up to EUR 100,000.

The standard rate may be increased in the following cases:

- If its quarterly staff count exceeds five, then 2% per extra employee will be added to the standard rate.
- If the turnover exceeds EUR 100,000 in a calendar year, the excess will attract a rate of 20%.
- If an employee's net income exceeds EUR 720 a month, the excess will also attract a rate of 20%.

There is no extra rate of MBT where a taxpayer has reported a steady revenue growth rate in the financial statements over the last two tax years, capped at 30% per year. Similar rules apply to a micro-business`s headcount growth, capped at one to two employees per year.

If a micro-business has reported no revenue or if its MBT charge for the tax period (calendar year) does not exceed EUR 50, the MBT payer has to pay a charge of EUR 50 within 15 days after the date of filing the tax return for the fourth quarter of the tax year.

Corporate residence

A company is resident in Latvia if it is incorporated or had to be incorporated in Latvia.

Permanent establishment (PE)

Under the Latvian Taxes and Duties Act, a non-resident has a PE in Latvia if all three of the following conditions are met simultaneously:

- The non-resident uses a fixed place for activities in Latvia.
- The place for activities is permanently used or is established for the purpose of being used permanently.
- The place for activities is used for the performance of commercial activities.

In addition, it is considered that a non-resident has a PE in Latvia if the non-resident performs in Latvia at least one of the following activities:

- Uses a construction site or performs building or installation activities or supervision or consultative activities related to the construction site or aforementioned activities.
- Uses equipment or installations, drilling platforms, and special ships intended for the research or extraction of natural resources, or carries out supervisory or consultative work related thereto.
- Within a time period, which together exceeds 30 days in any six-month period, provides services, including consulting, management, and technical services, utilising one's employees or associated personnel.
- Uses the activity of an individual, legal, or other person for the benefit of one's commercial activities, provided that this person is authorised to enter into contracts in the name of the foreign entity and the person regularly (more than once in a taxation period) exercises such an authority.

Note that the PE risk for entities located in treaty countries should be tested in accordance with the relevant double tax treaty (DTT).

Other taxes

Value-added tax (VAT)

The following VAT rates apply in Latvia:

Latvia

Description of goods	VAT (%)
The standard rate on supplies of goods and services, commodity imports, services rendered by non-residents and treated as supplied in Latvia, and intra-Community acquisitions of goods.	21
A reduced rate on medicines, medical devices, specialised baby food, domestic public transport services, household heating charges, firewood and wooden heating material to households, textbooks, original literature publications, accommodation services, newspapers, and other periodical publications, except electronically supplied media information.	12
Exemption with credit on supplies of goods within the European Union (EU) to taxable persons registered for VAT in other EU member states.	0
Exemption with credit on commodity exports and supplier goods not released for free circulation in the European Union, supplies of goods and services to diplomats, and supplies of goods and services financed by foreign aid.	0

A number of services are exempt, including education, financial, medical, and insurance services; nursery fees; and the sale of used real estate, including land (except for building land, which is taxable).

Customs duty

Customs duty is levied on goods imported into Latvia. The rate of customs duty generally is between 0% and 20% of the value of imported goods, depending on the type and origin of such goods. Exports are generally exempt from customs tax.

Excise duty

An excise duty is levied on specific categories of goods, mostly as a fixed amount per unit. Excise duties are applied to the following goods, whether made in Latvia or imported:

Product	Excise amount
Oil and oil products	Up to EUR 455.32 per 1,000 litres, depending on the type of the product.
Alcohol	EUR 64 to EUR 1,400 per 100 litres, depending on the type of alcohol.
Beer	EUR 4.20 for each percent of absolute alcohol, but not less than EUR 7.80 per 100 litres of beer.
Tobacco products	EUR 42.69 per 1,000 cigars or cigarillos.
	EUR 56.20 per 1,000 cigarettes less than 80 mm in length plus 25% of the maximum retail selling price, but not less than EUR 93.70 per 1,000 cigarettes.
	EUR 112.40 per 1,000 cigarettes plus 25% of the maximum retail selling price for cigarettes 80mm to 110mm in length, but not less than EUR 187.40 per 1,000 cigarettes.
	EUR 168.60 per 1,000 cigarettes plus 25% of the maximum retail selling price for cigarettes 111mm to 140mm in length, but not less than EUR 281.10 per 1,000 cigarettes.
	EUR 224.80 per 1,000 cigarettes plus 25% of the maximum retail selling price for cigarettes exceeding 140mm in length, but not less than EUR 374.80 per 1,000 cigarettes.
	EUR 58 per 1,000 grams of fine-cut smoking tobacco intended for the rolling of cigarettes.
	EUR 58 for other smoking tobacco.
Coffee	EUR 142.29 per 100 kg.
Certain soft drinks	EUR 7.40 per 100 litres.
Natural gas	EUR 17.07 per 1,000 m3 for use as heating fuel.
	EUR 99.60 per 1,000 m3 for use as fuel.

Real estate tax

The real estate tax is payable annually for:

- Business properties, such as land and buildings used for economic activities, as well as engineering structures, such as motorways, streets, roads, parking places, bridges, elevated highways, tunnels, pipelines, communication lines, and power lines.
- Buildings that form part of a private dwelling house development (also if owned by a company but not used for living purposes).

Municipalities may determine the real estate tax rate within the interval from 0.2% to 3%. A tax rate above 1.5% may be applied if buildings are not maintained according to maintenance requirements.

If a municipality does not announce the rates until 1 November before the taxation period, then statutory rates apply.

Statutory real estate tax rates are as follows:

- The standard rate of 1.5% on the cadastral value of land, buildings, and engineering structures.
- A progressive rate for dwelling houses, their parts, and any parts of a non-residential building that are functionally used for living and not used in trade or business:
  - 0.2% of cadastral values up to EUR 56,915.
  - 0.4% of cadastral values exceeding EUR 56,915 but not exceeding EUR 106,715.
  - 0.6% of cadastral values exceeding EUR 106,715.
- Up to 3% for uncultivated land capable of agricultural use, unless it is up to one hectare in area or subject to statutory restrictions on agricultural activity. By law, uncultivated land capable of agricultural use is agricultural land that is not used for making or growing agricultural products (including harvesting, grazing, and keeping animals for agricultural purposes) or is not kept in good agricultural and environmental condition. Municipalities may also determine an additional rate of 1.5% for uncultivated land, thus the total rate for this land may reach 4.5%.

A rate of 3% applies for buildings under construction if the permitted construction period has expired. The tax is applicable until the building is accepted for service. The rate will be charged on the highest of cadastral value of the related land and the cadastral value of the building itself.

The residential property owned by companies is eligible for reduced rates (0.2% to 0.6%), but only in cases where the property is rented out and the rent rights are properly registered within the Land Register of Latvia.

Stamp duty

Stamp duties are levied on certain legal and other kinds of services, such as court trials, company formation and registration, licences for certain types of business activity, provision of information, notary services, operation of bills of exchange, and registration of real estate at the Land Registry (e.g. in case real estate is sold: 2% of the higher of deal value or cadastral value, capped at EUR 42,686.15 per property).

Stamp duty is not payable if re-registration of real estate in the Land Registry is necessary due to the reorganisation process. Stamp duty payable for re-registration of the title to immovable property in case of contribution in kind to a company’s capital is 1%.

Payroll taxes

Payroll taxes consist of personal income tax (PIT) and national social insurance contributions (NSIC). The employer is responsible to withhold PIT, at a rate of 23%, and the employee's part of NSIC, at a rate of 10.50%, from gross employment income. The employer's part of NSIC, at a rate of 23.59%, is calculated on top of gross employment income. NSIC is payable on the annual income up to EUR 48,600. A solidarity tax is applicable for annual income exceeding EUR 48,600 at the same rates as NSIC.

Natural resource tax

Any natural resources acquired as a result of economic activities (e.g. surface and underground water, dolomite, quartz sand), the collection of edible park snails, taking advantage of useful features of the bowels of the earth by pumping natural gas or greenhouse gases into geological structures, pollution (waste, emissions, and pollutants), products harmful to the environment (e.g. lubricating oil, electric batteries, oil filters, tyres), electrical and electronic equipment and appliances, radioactive substances, packaging, disposable tableware, means of transport, the volume of emitted greenhouse gasses that is not included in the number of emission quotas surrendered, coal, coke, and lignite are subject to a natural resource tax in Latvia. The rates are specific for each product and are based on weight, volume, or the amount of the product.

The taxpayer may reduce the natural resource tax by taking part in recycling programs for packaging, products harmful to the environment, electrical and electronic equipment and appliances, and means of transport. Taxpayers do not have an obligation to recycle, themselves, to be entitled to the relief; instead, they can conclude an agreement with the recycling company.

For some of the products, the taxpayer must also pay the disposal tax. The rates differ for a large variety of products.

Vehicle taxes

There are two vehicle taxes in Latvia, a vehicle usage tax and a light corporate vehicle tax. The first is payable for exploitation of trucks, and the second is payable for light vehicles held or owned by a company.

Vehicle usage tax

The vehicle usage tax is payable on a yearly basis for the usage of vehicles, and it must be paid in full prior to the state technical inspection.

The vehicle usage (exploitation) tax amount depends on vehicle classification by vehicle features under statutory provisions. The amount of tax depends on various criteria, such as vehicle type (e.g. bikes, cars, trucks), vehicle gross weight, vehicle engine volume, vehicle maximal engine power, etc.

Light corporate vehicle tax (LCVT)

LCVT is paid for vehicle(s) owned or held (e.g. rented) by a person engaged in economic activity, which is registered for the first time after 1 January 2005, and with information on the engine volume in the registration certificate. There is a fixed rate of LCVT calculated according to the engine volume. The fixed rates of LCTV are as follows:

- Up to 2,000 cc: EUR 29 per month.

- From 2,001 cc to 2,500 cc: EUR 46 per month.
- Over 2,500 cc: EUR 62 per month.

For a vehicle in which, according to its construction, power from an electrical energy/power storage device (e.g. battery, capacitor, flywheel, generator) inside the vehicle is used as its only mechanical propulsion power, LCVT is EUR 10 per month.

For vehicles not mentioned in the above criteria, the LCVT will be EUR 46 per month.

Car and motorcycle tax
Cars and motorcycles registered for the first time or after modification are subject to a car and motorcycle tax. This tax is payable by any individual or entity registered as the owner of a car or motorcycle.

The applicable tax rates for new cars or cars registered in foreign countries after 1 January 2009 are calculated based on the carbon dioxide (CO2) on each kilometre constituted by the car. The rates range from EUR 0.43 to EUR 7.11 where the CO2 is from 120 grams to 350 grams for each kilometre. The rate for new motorcycles or motorcycles registered in foreign countries after 1 January 2009 is EUR 0.14 for each cubic-centimetre of the engine's capacity.

For other cars, rates range from EUR 106.72 to EUR 853.72, depending on age and capacity. For other motorcycles, the rate depends on age and is 25% of the rate for cars.

Lottery and gambling tax
A lottery and gambling tax is levied on licensed organisers of games or lotteries. Licence fees range from EUR 2,000 to EUR 427,000. Game organisers, gambling places, and gambling machines are subject to the gambling tax. The tax rates depend on the number and type of gambling machines or percentage of income for several gambling types.

Electricity tax
The electricity tax is levied on electricity supplied to final consumers or consumed by suppliers. The rate is EUR 1.01 per mega-watt-hour. Exemptions are available to producers of electricity and for electricity used by domestic public transport and households.

Local duties
Certain activities are subject to local duties (e.g. construction permits).

Branch income

As a general rule, branches and resident companies are taxed alike, with certain adjustments for payments to the head office. Branch income is subject to a 15% CIT.

Income determination

Inventory valuation
Dictated by the matching and prudence concepts, stock should be valued at the lower of cost or net realisable value. Cost must be computed on a first in first out (FIFO) basis.

Cost can mean purchase price or production cost. Any unrealised losses from stock revaluation are non-deductible.

Capital gains
Capital gains from trading in non-public shares, except shares of companies established in tax havens, are not taxable and losses are not tax deductible. Capital gains from trading in other non-public securities are taxable and losses are tax deductible. Transactions with public EU/European Economic Area (EEA) securities remain tax neutral, capital gains are not taxable and losses are non-deductible. Capital gains from other public securities (except shares) are taxable and losses are non-deductible.

Capital gain on the disposal of a capital asset is calculated as the difference between the sale proceeds and cost. This gain is subject to a 15% CIT as ordinary income. Unutilised losses arising on the sale of securities other than EU/EEA public securities before 2013 may be offset in chronological order against the company's taxable income of future tax periods.

Dividend income
Dividends received from any companies abroad or in Latvia are exempt from CIT, except for dividends from companies registered in blacklisted tax havens (*a list of tax havens is provided in the Withholding taxes section*).

Stock dividends
The distribution of new shares to a company's shareholders in proportion to their existing shareholdings (after a share capital increase by conversion of accrued capital) is not a taxable event for the shareholders.

Interest income
Interest income is taxed at the 15% CIT rate.

Royalty income
Royalty income is taxed at the 15% CIT rate.

Foreign income
Resident companies are taxed on their worldwide income. Income is taxed for the given taxation period; there is no possibility to defer taxation until the profit is repatriated to Latvia. Income tax paid abroad included in the taxable base is allowed as a credit against the CIT charged for the year. However, the credit must not exceed the Latvian tax attributable to the income taxed abroad. Any unused tax credits may not be carried forward.

Deductions

Depreciation and amortisation
Fixed assets may be depreciated for tax purposes according to the reducing-balance method by applying the following rates to tax written-down values:

Types of property	Depreciation rate (%)
Buildings, structures, and perennial plantations	10
Technology and energy installations, fleet, railway	20
Computer hardware and software, information systems, electronic equipment	70

Types of property	Depreciation rate (%)
Light passenger cars (except special purpose vehicles), motorcycles, and air transport means	30
Oil rigs, oil exploration and extraction ships, sea and river transport means	15
Other fixed assets	40

The value of new technological equipment is multiplied by a coefficient (1.5 from 2009 to 2020) before claiming capital allowances. The effect of applying a coefficient is reversed if the new technological equipment is disposed of within five years from acquisition.

Non-business assets are ineligible for capital allowances.

Intangible assets are eligible for capital allowances on a straight-line basis over the following recovery periods:

- Concessions: Ten years.
- Patents, licences, and trademarks: Five years.
- Research and development (R&D) expenses: One year.

Any intangible assets not fitting into any of these categories (e.g. goodwill) are ineligible for capital allowances.

Start-up expenses
There is no specific treatment for start-up expenses. Generally, after registration of the company for tax purposes, expenses are deductible. Expenses accrued before registration of a company cannot be deducted for CIT purposes due to the lack of supporting documentation with company identifying information. However, input VAT on goods purchased or services received prior to registration for VAT purposes is recoverable if the goods purchased and services received or used will further be used for taxable transactions.

Interest expenses
The CIT Act imposes restrictions on deductibility of interest payable on loans or credits, factoring transactions, and finance leases under two methods. *For further details, see Thin capitalisation in the Group taxation section*.

Bad debts
Bad debts may only be deducted for CIT purposes if certain conditions are met.

Charitable contributions
Donations paid to charitable institutions, non-profit making foundations, churches and monasteries, and various other welfare institutions are not tax deductible, but may qualify for a tax relief if certain criteria are met (*see the Tax credits and incentives section*).

Luxury vehicles
Luxury vehicles (i.e. light passenger cars with a value greater than EUR 50,000, excluding VAT) are not eligible for capital allowances. A tax deduction is denied for expenses incurred in using and maintaining luxury vehicles and for lease or hire purchase payments associated with leasing such vehicles. These rules do not, however,

apply to special purpose vehicles (such as emergency vehicles and special passenger vehicles).

Provisions
Any increase in general provisions and reserves for the tax period as compared with the previous tax period is non-deductible. These provisions include accruals for accrued benefits, bonuses and commissions, and other expenses.

Non-business expenses
A tax deduction is not allowed for any expense not directly related to business activities. In fact, non-deductible expenses have to be multiplied by a coefficient of 1.5 (except donations made to qualifying institutions). Effectively, such expenses are taxed at 22.5% (15% x 1.5).

Non-business expenses include costs that are not directly related to commercial activities; all expenses incurred for the leisure and recreation of owners and employees; entertainment trips taken by owners and employees in company vehicles; any benefits, gifts, credits, and loans turned into gifts to owners and employees; and any other disbursements in cash or in kind to owners or employees that are not part of remuneration or that are not related to the taxpayer's commercial activities.

Representation expenses
Under the Latvian CIT Act, representation expenses are costs that a company incurs in developing and maintaining its prestige at a level acceptable to society. Representation expenses include costs incurred in holding public conferences, receptions, and meals, and the cost of producing items to represent the company (e.g. items bearing its logo). 40% of representation expenses are deductible for CIT purposes.

Fines and penalties
Fines, contractual penalties, and statutory interest on arrears (including increase in principal debt) levied under the Taxes and Duties Act and specific tax laws are not deductible.

Taxes
Excise duties, employer's NSIC, natural resource taxes, customs duties, and real estate taxes are deductible.

Net operating losses
Tax losses may be carried forward for an unlimited period of time. The carryback of losses is not permitted.

A company in which more than 50% of shares (a controlling interest) have changed hands may utilise its tax losses if it continues for five years the same business that it carried on during the two years prior to the change of control. When companies are reorganised by a merger or spin-off, it may be possible to utilise losses accrued.

Recent amendments to the CIT Act provide that tax losses brought forward will be capped at 75% (of the taxable income for the tax period) starting from 1 January 2017.

Payments to foreign affiliates
In general, a Latvian company may deduct the full amount of royalties, service fees, and interest (subject to statutory limits) made to related parties to the extent that such payments are made at arm's length. Such payments may be subject to a WHT (*see the*

Withholding taxes section). However, if a taxpayer fails to deduct the WHT due, the amounts paid cease to be deductible for tax purposes.

Group taxation

Group consolidation is not permitted for tax purposes.

Transfer pricing

The Latvian Regulation governing the application of the CIT Act states that, for transfer pricing calculation purposes, use may be made of the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, a document issued by the Organisation for Economic Co-operation and Development (OECD).

Latvian law requires that related-party transactions be in compliance with the arm's-length principle. Under the arm's-length principle, the conditions made or imposed between two related enterprises in their commercial or financial relations must not differ from those that would be agreed between independent enterprises engaging in similar transactions under similar circumstances.

A tax audit may examine and adjust the price of a transaction in the following circumstances:

- The transaction is between related parties.
- Barters and set offs.
- A price deviation exceeds 20% of prices that the taxpayer has applied to similar goods or services over a short period.
- Exports and imports.

The transfer pricing requirements for the arm's-length price of a related-party transaction primarily apply to transactions between two or more related companies. Also, Latvian legislation requires the taxpayer to adjust one's taxable income for the difference between the price applied to a transaction and the arm's-length value if the transaction involves:

- individuals related to the company
- related foreign companies
- companies exempt from CIT or enjoying CIT relief pursuant to other Latvian laws
- a Latvian-related company with which it forms a single tax group, or
- a company located in a jurisdiction with a more favourable tax regime.

This provision may apply to any transaction, including purchases and sales of fixed assets and goods, supplies of services, loans and borrowings, and intellectual property (IP). It is possible to use corresponding adjustments and adjust taxable income if a related party has made adjustments of its income according to transfer pricing rules. It is possible only if the related party is registered in the European Union or a country that has an effective DTT with Latvia and documentary evidence from the respective tax authorities is received.

Latvian taxpayers who enter into transactions with any of the parties listed above and whose annual turnover exceeds EUR 1,430,000, and related-party transactions amounting to EUR 14,300 or more, have to prepare transfer pricing documentation for those transactions exceeding statutory limits.

Within one month after receiving a request from the Latvian tax authorities, a taxpayer must submit full transfer pricing documentation containing the following information:

- Industry analysis giving a general overview of the industry in which the taxpayer operates.
- Company analysis.
- Functional analysis giving information on the related parties' functions, risks, and assets.
- Economic analysis, including:
  - a description of how the transfer pricing method was selected and
  - a benchmarking study.

While the full transfer pricing documentation requirement applies to entities exceeding statutory limits in respect of turnover and the annual amount of related-party transactions, other entities will still be required to prove that their transfer pricing is at arm's length. Normally, Latvian tax authorities expect taxpayers to be able to demonstrate which transfer pricing method is used and how it has been applied (i.e. a benchmarking study of third-party comparables showing that the prices applied by the taxpayer fall within the arm's-length range).

Latvian taxpayers can apply for an Advance Pricing Arrangement (APA) with the SRS. The APA is an administrative act issued by the SRS to address a taxpayer's request in relation to establishing the conditions and methodology to set transfer prices in related-party transactions for a maximum period of three years.

An option to apply for an APA with the SRS is available to companies whose value of the transaction with foreign related parties is expected to exceed EUR 1,430,000 a year.

The fee payable to the SRS for the APA application is EUR 7,114 per APA application, payable in the following manner:

- 20% when submitting the APA application to the SRS.
- 80% after the SRS issues an official decision regarding the initiation of an APA with the taxpayer.

Please also note that in case the SRS refuses to initiate the APA with the taxpayer, they reserve the right not to refund the initial 20% of the APA fee.

Thin capitalisation

Thin capitalisation rules apply when claiming a tax deduction for interest payments on loans and finance leases.

Taxable income should be adjusted for either:

- interest paid in excess of interest calculated by applying to the liability 1.57 times the weighted average annual interest rate applied to domestic non-financial companies as determined by Latvian Bank (weighted average interest rate), or
- interest in proportion to the excess of the average liability over an amount equal to four times shareholders' equity at the beginning of the tax year less any revaluation reserve.

The higher of these calculations should be added to taxable income.

The following interest payments are fully deductible:

- Interest paid on borrowings from credit institutions resident in Latvia, EEA member states, or countries with which Latvia has an effective DTT.
- Interest paid to the Latvian Treasury, Nordic Investment Bank, European Bank for Reconstruction and Development, European Investment Bank, European Council Development Bank, or the World Bank Group.
- Interest paid on Latvian or EEA debt securities in public trading.
- Interest expenses incurred by credit institutions and insurance institutions, regardless of the lender.

Interest paid on borrowings from a financial institution is deductible up to the amount of interest calculated by applying to the liability 1.57 times the weighted average annual interest rate applied to domestic non-financial companies as determined by Latvian Bank (weighted average interest rate). The qualifying financial institution must meet the following criteria:

- It is resident in Latvia, the EEA, or a country with which Latvia has an effective DTT.
- It provides lending services or finance leases and is monitored by the controlling institution that supervises credit institutions or the financial sector.

Controlled foreign companies (CFCs)

There is no CFC regime in Latvia in respect to companies' taxation of their substantial participation. A CFC regime does apply to individual shareholders; *for more information, please see Latvia's Individual tax summary at www.pwc.com/taxsummaries*.

Tax credits and incentives

Foreign tax credit

Tax paid abroad on income included in the taxable base is allowed as a credit against the CIT charged for the year. However, the credit must not exceed the Latvian tax attributable to the income taxed abroad and must be substantiated by confirmation from the foreign tax administration. Any unused tax credits may not be carried forward.

Donations to public benefit organisations

CIT charge may be reduced by 85% of amounts donated to qualifying state-funded institutions; Latvian-registered societies, establishments, and religious organisations; or to institutions qualifying as public-benefit organisations under the Public Benefit Organisations Act. Such a reduction may not exceed 20% of the total CIT charge. When making a donation, the donor is not permitted to impose an obligation on the recipient to carry out any acts that may be classified and treated as consideration.

Donation relief is also available for donations to EU/EEA entities that have statuses similar to public-benefit organisations in the country of residence.

Large investment relief

CIT relief is available for investments over EUR 10 million in qualifying industries in new, unused fixed assets (buildings and structures classified as industrial buildings and new plant and technological equipment) used for business purposes. The available tax relief is 25% of the amount of investments made (15% for investments over EUR 50 million). Investment projects must be completed within five years after the tax relief is granted by the Cabinet of Ministers.

Investments have to enable a company to launch a new line of business or to modernise its existing production, which includes manufacturing new goods, a shift of business activity from producing one type of goods to producing another type of goods, or a complete overhaul of the manufacturing process.

Free ports and special economic zones (SEZs)

Companies operating in SEZs are entitled to CIT and real estate tax relief. These areas include the free ports of Ventspils and Riga and the SEZs of Rezekne, Latgale, and Liepaja.

The qualifying companies may apply CIT relief of 80%. The CIT must be calculated at a 15% rate, resulting in an effective CIT rate of 3%. The companies may also apply 80% WHT relief for payments made to non-resident companies.

Real estate tax relief amounts to 80%, and up to 2016 the municipality could waive the remaining 20%. Consequently, when meeting certain criteria, qualifying companies could decrease real estate tax to zero.

Under the new amendments, a municipality that issues binding rules will have the power to reduce the percentage amount of a real estate tax rebate to 10% of the tax charge (without applying any other rebates). Taking this new option will prevent the municipality from taking the old option of increasing the rebate by 20%.

Municipalities are to publish their binding rules on or before 1 November in the preceding tax year. Thus each free port and SEZ municipality will be able to decide about a real estate tax rebate to apply in the coming year according to its budgetary projections.

The amount of total CIT and real estate tax relief that may be claimed by the company depends on the amount of qualifying investments made by the company in the free port or SEZ area. Depending on the size of the company, the total tax relief available ranges from 50% to 70% from the amount of investments made.

Deferred tax on asset replacements

Latvia will allow a deferred payment of tax on profits arising on the sale of a replaced asset in order to encourage manufacturing companies to replace inefficient and outdated plant and machinery.

If a company acquires a functionally similar asset within 12 months before or after the old equipment is disposed of, then any income (profit) on the disposal of the old equipment is ignored in this tax period (i.e. the profit is deductible from taxable income). Tax payment is deferred until the new equipment is sold and may be further postponed if the equipment is replaced.

Tax incentive for deductibility of research and development (R&D) costs

There is a possibility to apply accelerated amortisation of R&D-related costs (for tax purposes, costs are multiplied by three). This relief is aimed at encouraging R&D and will apply to employment-related costs and R&D service agreements signed with specific scientific institutions registered in an EU/EEA or a tax treaty country. The IP that results from the R&D activity must be the taxpayer's property for at least three years. To qualify for R&D costs relief, the taxpayer must have its own project documentation that meets certain rules.

Withholding taxes

The following types of payments to non-residents and, in some cases according to Latvian transfer pricing rules, to related Latvian companies using CIT reliefs are subject to WHT.

Management fees

Management and consulting fees are subject to a 10% WHT. The term 'management and consulting' means activities carried out by a non-resident directly or by outsourced personnel to ensure the management of a Latvian company or to provide necessary advice.

A Latvian company can rely on a DTT to reduce the rate of WHT to nil for management fees if the non-resident does not create a PE. To this end, the Latvian company must obtain a valid residence certificate for each type of payment to each recipient prior to filing the annual CIT return. A valid residence certificate is one approved by the foreign tax authority and the Latvian tax authority.

Rental payments

Rental payments for movable/immovable property in Latvia are subject to a 5% WHT, except payments for aircraft used in international flights and payments for the rights to use or use of industrial, commercial, or scientific equipment, which are exempt.

Disposal of real estate

A 2% WHT applies to proceeds from real estate disposals. This also applies to income from disposed shares or other participation in a Latvian or foreign-registered company or other entity if real estate in Latvia made up (in the period of disposal or the previous period, whether directly or indirectly, through shareholdings in one or more other entities established in Latvia or abroad) more than 50% of the asset value of the company being disposed of.

Dividends

Only dividends paid to residents of tax havens are subject to 15% WHT.

In case of extraordinary dividends paid to persons that are established, situated, or created in a tax haven, the applicable WHT rate is 30%.

Interest and royalties

Interest and royalty payments attract WHT only if they are made to companies in tax havens. In certain cases, the company may obtain SRS relief from WHT, provided that the payment has not been made to reduce the taxable base. A 5% rate applies on interest payments to tax havens made by Latvian credit institutions; a 15% rate applies on all other interest and royalty payments to tax havens.

Option for EU/tax treaty residents

In case of management fees, rental payments, and real estate disposal, EU/tax treaty residents may choose between a WHT payment calculated on total fees or 15% tax on profit if the non-resident can present proof of expenses. The Latvian company must first withhold the applicable tax, but the non-resident may later recover tax in excess of 15% calculated on profits (income less expenses) by submitting a separate tax declaration.

Reporting payments to non-residents

Companies will be required to notify the SRS of all amounts paid to non-residents on transactions made on or after 1 January 2017 regardless of whether the payment was subject to WHT or not. This is in line with the requirements of Council Directive 2011/16/EU on administrative cooperation in the field of taxation, which provides for automatic exchange of information on non-residents' revenues.

Summary of WHT rates

Please see the following table for WHT rates applicable to the payments described above:

	WHT (%)					
Recipient	Dividends(1)	Interest (1)	Royalties (1)	Rental payments	Management fees (3)	Disposal of real estate
Non-resident companies and related Latvian companies using certain CIT reliefs	0	0	0	5	10	2
Companies in tax havens (2)	15/30	5/15	15	15	15	15

Notes

1. No WHT, excluding companies in tax havens.
2. 15% WHT applies to all payments to companies located in tax havens, with the following exceptions:
   - 5% for interest on deposits and current accounts paid by Latvian banks.
   - Repayments of loan principal are exempt.
   - Goods/securities acquired at market prices are exempt.
   - 30% for dividends that are paid more than once per year.
3. Payments to residents of DTT countries are not subject to WHT, provided the non-resident does not create a PE in Latvia and a residence certificate is available.

Tax havens

The list of tax havens is provided by the Cabinet Regulation No. 276 of 26 June 2001, which lists 68 tax havens in total. However, a country is no longer considered a tax haven from the year that a DTT begins to apply to that country or from the date that country is covered by a tax information exchange agreement (TIEA), unless those agreements provide otherwise.

With many of the blacklisted countries having signed the OECD's multilateral Convention on Mutual Administrative Assistance in Tax Matters, which came into force in Latvia on 1 November 2014, individual checks should be made to see whether a particular country is still considered a tax haven.

Below is an updated list of countries and territories that are considered tax havens:

- Andorra (removed as of 1 December 2016)
- Antigua and Barbuda
- United Arab Emirates
- US Virgin Islands
- Bahamas
- Bahrain
- Barbados (removed as of 1 November 2016)
- Brunei Darussalam
- Dominica
- Djibouti
- Ecuador
- Grenada
- Guam (US)
- Guatemala
- Hong Kong (China)
- Jamaica

- New Caledonia (France)
- Jordan
- Qatar
- Kenya
- Cook Islands (New Zealand)
- Kuwait
- Labuan (Malaysia)
- Lebanon
- Liberia
- Liechtenstein
- Macao (China)
- Maldives
- Marshall Islands
- Monaco
- Olderne (UK)
- Panama
- Samoa (removed as of 1 December 2016)
- São Tomé and Principe
- Saint-Pierre and Miquelon (France)
- Saint Kitts and Nevis (removed as of 1 December 2016)
- St. Lucia
- Saint Vincent and the Grenadines (removed as of 1 December 2016)
- Saint Helena (UK)
- Tahiti (French Polynesia)
- Tonga
- Uruguay
- Vanuatu
- Venezuela
- Island of Zanzibar (Tanzania)

Tax administration

Taxable period

The fiscal year may not exceed 12 months and is normally based on the calendar year. However, companies are permitted to choose alternative start and end dates for the tax year. The first year of trading may last up to 18 months.

Tax returns

Tax returns are filed annually, together with annual accounts, within one month after they have been approved but not later than four months after the end of the financial year. Thus, if the financial year ends on 31 December, the CIT return and annual accounts must be filed not later than by 1 May of the following year. Larger companies may file the CIT return and annual accounts not later than seven months after the end of the financial year.

Payment of tax

CIT is paid monthly in advance on or before the 15th day of each month, with a final adjustment within 15 days after the annual CIT return is filed. Monthly tax instalments are based on the tax liability in the previous fiscal year and adjusted by the consumer price index. A company may choose quarterly instalments if its monthly advances in the previous period were less than EUR 711. For a new company, advance payments are voluntary.

Tax audit process

The tax audit commences with an audit note for open tax years (not more than three years since the tax payment was due, and, from 2013, five years in case transfer prices are audited). The duration of the audit may vary from a few weeks to a few months, in certain cases, not exceeding 90 days. It can be extended to 150 days if information is requested from foreign tax authorities. In case a simultaneous tax audit with a foreign tax administration is initiated, the prolongation of such tax audit is not limited.

Tax authorities should inform a taxpayer of a tax audit no later than ten working days prior to the commencement of the audit with notification about documents the tax authorities may like to receive.

During a tax audit, the auditor notifies the taxpayer about irregularities of calculation of tax payments and any possible fines that could be charged. Prior to issuing the tax audit decision, the auditors invite the taxpayer to final negotiations to discuss the tax audit results.

Following the tax audit and the notification of tax audit findings, the company may in turn:

- Negotiate with the tax authorities with a view to reducing the tax burden and achieve an 'out of court settlement'. The out of court settlement offers the possibility to reduce fines and late payment penalties calculated (not the additional principal amount of tax calculated) by 50% to 85%. The conclusion of such a settlement presupposes that the company accepts the findings of the audit for the audited years.
- Appeal the decision to the Director General of the SRS.
- Only after receiving the decision of the Director General of the SRS, may the taxpayer take the case to court. An advance payment of additional tax calculated and late payment penalties is required. The first decision normally takes up to two years and another two years until a decision by the Court of Appeal and Supreme Court is issued.

Statute of limitations

The right of the Latvian tax authorities to collect unpaid taxes is three years since the relevant tax payment was due. Transfer prices may be examined for five years from 2013 onwards.

Topics of focus for tax authorities

Topics of interest to the Latvian tax authorities include:

- Transfer pricing, non-arm's-length lending, and other arrangements with related parties.
- Non-business, marketing, and representation expenses.
- Payments to and from non-resident companies, including tax haven companies.
- Obligation to register PE in Latvia.
- Unpaid payroll taxes or hidden employment relationships.
- Recoverability of input VAT.

Other issues

Implementation of base erosion and profit shifting (BEPS) provisions

Following the OECD initiative, Council Directive (EU) 2016/881 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation was introduced on 25 May 2016. According to the directive, Latvia is a part of the mandatory automatic exchange of information (AEOI) mechanism in the field of taxation and is required to implement the Country-by-Country (CbC) Report. The Ministry of Finance along with the SRS are currently working on a bill designed to implement the OECD's BEPS Action 13 focusing on CbC Report requirements. The bill amends section 15 of the Taxes and Duties Act to require that Latvian taxpayers should file the CbC Report with the SRS. Approved by the Cabinet of Ministers on 4 April 2017, the bill should soon be presented to Parliament.

The new requirements are expected to come into force on 4 June 2017 for financial years beginning on or after 1 January 2017. Until then, the Cabinet should present exact requirements as to what taxpayers should file what kind of information. We expect that these requirements will be based on the OECD standards with local specific rules.

EU state aid investigations

Latvian law provides the necessary references to EC regulation No.651/2014 that ensures that the EU funding intensity complies with EU rules for state aid. Currently there are no investigations on the part of the European Commission with regard to Latvian tax law.

Double tax treaties (DTTs) and intergovernmental agreements (IGAs)

Latvia has effective DTTs with 59 countries and continues developing its tax treaty network.

Latvia has also signed an IGA with the United States (US) government to implement the tax reporting and withholding procedures associated with the Foreign Account Tax Compliance Act (FATCA). On 2 April 2014, the US Treasury announced that an IGA was ‘in effect’ and, on 27 June 2014, the US Treasury and Latvia signed and released the IGA.

Liechtenstein

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Significant developments

The Liechtenstein Parliament approved the amendments to the corporate tax law on 31 December 2016. The amendments entered into force on 1 January 2017. Amongst others, the amendments consist of the following:

- Introduction of the correspondence principle for dividends to avoid double non-taxation. Investors (shareholders or beneficiaries) shall only benefit from the participation exemption on dividend income if the payment from 25% (or greater) participations is not tax deductible in the source country.
- Abolishment of the intellectual property (IP) box regime. Taxpayers applying the 'old' IP-box in the tax period 2016 can apply it until tax period 2020 (phase-out period).
- Introduction of mandatory transfer pricing documentation requirements.

Furthermore, the Liechtenstein Parliament approved the country-by-country (CbC) reporting law on 23 December 2016, and it entered into force on 1 January 2017. CbC reporting is applicable for Liechtenstein group holding companies with a consolidated turnover of at least 900 million Swiss francs (CHF). The legal basis of the CbC reporting law is the Convention on Mutual Administrative Assistance in Tax Matters (MAC). The MAC entered into force on 1 December 2016 and is applicable for tax years starting 1 January 2017.

Recent developments with regard to tax treaties

- A double taxation treaty (DTT) with Monaco has been signed.
- DTTs with Andorra, Georgia, Iceland, and Switzerland entered into force in 2016 with an effective date of 1 January 2017.

Taxes on corporate income

In principle, all corporations, foundations, and establishments are subject to a profit tax at a flat rate of 12.5%. Resident companies are subject to unlimited tax liability on worldwide income. Non-resident companies are subject to limited tax liability on income from properties or branches within Liechtenstein.

Minimum tax

All legal entities are subject to an annual corporate minimum tax of CHF 1,800 for tax years starting 1 January 2017. This tax can be fully credited to the profit tax.

The full tax amount is due even if the corporation is not resident in Liechtenstein for the whole tax period.

Under a lone exception, minimum tax is not due if the total assets of an operating entity did not exceed CHF 500,000 during the last three years.

Corporate residence

A company is considered to be resident in Liechtenstein if its registered seat (incorporation) or place of effective management is within Liechtenstein.

Companies that have neither a domicile nor effective place of management in Liechtenstein, as well as special asset dedications without legal personality (e.g. trusts), are subject to limited tax liability for the following income:

- Corporate income from the cultivation of domestic real estate used for agriculture and forestry.
- Rental and lease income from real estate situated within Liechtenstein.
- Taxable net corporate income of permanent establishments (PEs) situated in Liechtenstein.

Permanent establishment (PE)

Please note that Liechtenstein has only a limited number of DTTs (*see the Withholding taxes section*). However, Liechtenstein is in the process of negotiating various new DTTs and has generally included PE definitions according to the Organisation for Economic Co-operation and Development (OECD) model treaty.

Other taxes

Value-added tax (VAT)

Liechtenstein has adopted the VAT law of Switzerland, while having its own VAT administration.

The general VAT rate is 8%. A reduced rate of 2.5% is applicable to deliveries of food, drugs, newspapers, magazines, and books. Furthermore, lodging/accommodation is taxed at a reduced rate of 3.8%. Note that various services are VAT-exempt (e.g. health, social security, education, banking, insurance).

Any person who, irrespective of legal form, carries on a business is liable for VAT. Any person liable for VAT that is involved in domestic entrepreneurial activity with a taxable turnover that is less than CHF 100,000 within a financial year can be exempted from taxation. Special regulations apply for non-profit institutions as well as for non-profit sport or cultural clubs. Reverse charge is applicable for services and certain deliveries from an entity domiciled abroad.

Customs duties/import tariffs

Based on the customs union treaty of 1923 between Liechtenstein and Switzerland, Switzerland customs duties and import tariffs are applicable for Liechtenstein as well. The tariffs and duties depend on various specific attributes of the products and are listed on comprehensive tariffs and duties lists; consequently, the specific tariffs and duties must be checked for every case individually.

Excise taxes
Several excise taxes apply in Liechtenstein (e.g. petroleum tax, tobacco tax, car tax, performance-related heavy vehicle fee, beer tax, taxation of distilled spirits).

Property taxes
No property taxes are applicable in Liechtenstein.

Stamp duty
Based on the customs union treaty of 1923 between Switzerland and Liechtenstein, the Swiss stamp duty tax law of 27 June 1927 is applicable in Liechtenstein. The stamp duty law, *inter alia*, includes the issuance stamp tax and the security transfer tax.

Issuance stamp tax
Upon the formation of legal entities whose capital is divided into shares (e.g. company limited by shares, limited liability company, establishment with capital divided into shares), the stamp duty amounts to 1% of the nominal value or the higher amount effectively paid (above par). The first CHF 1 million is tax exempt.

The same duty also becomes due when the capital is increased or when the shareholders make contributions without increasing the capital. There is no stamp duty tax on bonds and money market certificates.

Various exemptions should also be considered.

Security transfer tax
Security transfer tax is due on all transactions of qualifying securities if a security dealer is involved. The tax amounts to 0.15% for domestic securities (Switzerland and Liechtenstein) and 0.3% for foreign securities.

In particular, banks and financial intermediaries qualify as security dealers and are liable for the payment of the security transfer tax. Furthermore, legal entities with qualifying securities with a book value of more than CHF 10 million also qualify as security dealers and are also liable for the payment of the security transfer tax.

Formation tax (Gründungsabgabe)
Unless Swiss stamp duty law applies, a formation tax in the amount of 1% of the statutory nominal capital is levied upon the formation or relocation of legal companies in Liechtenstein (e.g. foundation, establishment) as well as for capital increases.

The general tax rate of 1% is reduced to 0.5% for amounts greater than CHF 5 million and to 0.3% for amounts greater than CHF 10 million. The first CHF 1 million is tax exempt.

Foundations are subject to the formation tax at a tax rate of 0.2%, but at least CHF 200.

Real estate profit tax
Capital gains from the sale of real estate, or equivalent actions with the same result, are subject to a separately assessed real estate profit tax. The taxable gain is generally the difference between proceeds of the sale and the original purchase price of the property plus any capital expenditure incurred. The basic tax rate can be up to 24%, depending on the amount of taxable real estate gain. The transfer of the economic ownership of real estate (e.g. via the sale of the majority of the shares in a real estate company) may trigger real estate tax as well.

Tax on insurance premiums
Liechtenstein levies a tax on certain insurance premiums. The tax rate amounts to 5% of the cash premium (2.5% for life insurance). Cash premiums in foreign currency have to be converted to Swiss francs at the time the tax claims arise.

Various exemptions should also be considered.

Social security contributions
Employers, in general, are required to account for social security contributions on the salaries of their employees. If the employee is subject to the Liechtenstein social security system, the following compulsory social security contributions are concerned:

- Old age, survivors', and disability insurance (9.3%, the employer's share is 4.75% and the employee's share is 4.55%).
- Family compensation fund (1.9%, fully employer financed).
- Unemployment insurance/supplementary unemployment insurance (1%, the employer's share is one half).
- Occupational accident insurance (approximately 0.1%, fully employer financed).
- Occupational pension scheme (2nd pillar) (contributions depend on pension plan, the employer's share is usually one half).

Branch income

The principles applicable to corporations also apply for branch income, provided that transactions with the head office or other branches are at arm's length. Liechtenstein taxation is imposed on the profit attributable to the branch. The annual corporate minimum tax of CHF 1,800 is also applicable.

There is no withholding tax (WHT) on profit transfer to the head office.

Income determination

The corporate profit tax is determined according to the taxable corporate net income, which is based on the financial statements under consideration of the following provisions.

Inventory valuation
Inventories must be stated at the lower of cost or market. Cost is generally determined by the first in first out (FIFO) or by the average cost method. The tax authorities permit a general reserve against stock contingencies of up to one-third of the inventory cost or market value at the balance sheet date without inquiry into its justification, provided a detailed record of inventory is available for review by the tax authorities. The need for a reserve in excess of this amount (e.g. for obsolescence, slow-moving-stocks) must be substantiated to the satisfaction of the tax authorities.

Capital gains
Capital gains derived from the sale of shares are tax-exempt. Capital gains from the sale of real estate are subject to a separately assessed real estate profit tax (*see the Other taxes section for more information*).

Dividend income
Liquidation proceeds are tax-exempt. Dividend income is tax-exempt for corporate investors (shareholders or beneficiaries), provided that the payment from 25% (or greater) participations is not tax deductible in the source country.

Interest income
Interest income is taxable and must be at arm's length if it is in respect to related parties (*for safe harbour rates, see Interest expenses in the Deductions section*).

Royalty income
Royalty income is subject to ordinary income taxation. Prior to 1 January 2017, a deduction of 80% was allowed on the net income from IP rights (e.g. royalty income). With the tax law amendments that entered into force on 1 January 2017, the Liechtenstein IP box regime was abolished, with a phase-out period for existing IP boxes until 2020.

Income from investment funds
For corporate investors, income from investment funds is subject to corporate profit tax at a rate of 12.5%. Since units in investment funds do not constitute participations in legal persons, to the extent that investment funds in turn invest in participations in legal persons, dividends and capital gains (including non-realised capital gains) from such investments are tax-exempt. Since investment funds are subject to proper accounting rules, the net income shown in the financial statements provides for the taxable basis. If in practice, however, based on proper accounting, it is not possible to differentiate between income from dividends, capital gains, or interests, a simplified approach can be used to calculate the taxable basis for the fiscal year 2014 going forward. The simplified approach will be guided by the equity exposure of investment funds. Accordingly, the higher the investments in participations in legal persons are, the higher the lump sum tax exemption for dividends and capital gains will be.

Foreign income
Resident corporations operating locally are generally taxed on their worldwide income. However, income from foreign real estate and PEs situated abroad is exempt from taxation in Liechtenstein.

Deductions

Depreciation and amortisation
Depreciation of tangible fixed assets and amortisation of intangible assets is allowed if it is 'commercially justified'. For tax purposes, either the straight-line (depreciation based on the acquisition value) or the declining-balance method (depreciation based on the book value) may be used. Depreciation and amortisation not recorded in statutory accounts are not deductible for tax purposes.

A special (higher) rate of depreciation may be allowed for assets used only for short periods or for assets for which a rapid decrease in value can be proved.

The depreciation/amortisation rate *per annum* of various property types are provided below. Note that these depreciation rates relate to write-downs on the book value. If the write-down is performed on the acquisition value, then the rates enumerated below should be reduced by half.

Property type	Rate *per annum* (%)
Immovable assets:	
Real estate (dwelling houses, offices, shops, restaurant and hotel buildings, industrial buildings, factories, warehouses, and parking spaces)	5
Movable assets:	
Mobile structures, technical installations (air conditioning plant, gas and electricity mains for industrial purposes), elevators, investments in foreign real estate, high rack warehouses, and airplanes	15
Office furniture and machines, workshop, and storeroom equipment	20
Furniture used for the hotel and restaurant trade	25
Machines and accessories for production purposes, vending machines, telephone installations, and operating applications	30
Machinery used in more than one shift or used under heavy conditions, motor vehicles	35
Information technology (hardware and software), office furniture and machines, workshop and storeroom equipment, hotel and restaurant cookery, cutlery, and linen	50
Officially approved installations and equipment against water pollution, energy-saving equipment, and installations using solar energy	50
Intangible assets:	
Goodwill, patent, licence, and other rights of use	40

Start-up expenses

In general, the expenses for a start-up are tax deductible as long as they are economically justified.

Please see Formation tax (Gründungsabgabe) in the Other taxes section.

Interest expenses

Interest paid by a corporation to a third party is a deductible business expense. Interest paid to related parties (affiliates or shareholder) has to reflect the fair market rate and has to be at arm's length.

With respect to related parties, the tax administration of Liechtenstein annually issues safe harbour interest rates to be used on loans denominated in Swiss francs on the one hand and in foreign currencies on the other hand. The corporation may deviate from these safe harbour rates as long as it can prove that the rates are at arm's length and more appropriate in the present case.

Safe harbour rates 2017

Loans in Swiss francs	Minimum interest rate (%)
For loans made to related parties:	
Financed from equity and no interest-bearing debt capital	1.5
Financed from debt capital:	
Cost price	+ 0.5
At least	1.5

	Maximum interest rate (%)
For loans received from related parties	1.5

For loans in the following currencies, the same mechanism applies:

Currency	2017 (%)	2016 (%)	Currency	2017 (%)	2016 (%)
EUR	2.00	2.00	USD	3.75	3.25
GBP	2.75	3.25	JPY	1.75	2.75
SEK	1.50	2.25	NOK	2.75	3.00
CZK	2.00	2.25	PLN	3.50	3.75
AUD	3.50	4.25	HKD	2.75	3.25
CAD	2.50	3.00	ZAR	9.00	9.50

Furthermore, the tax authorities ask for an economic justification if loans are not in the currency of the statutory accounts.

Notional interest deduction (NID) on equity

The NID on equity is a standardised deduction for interest on equity based on the multiplication of the 'modified' equity by the interest rate (according to the annual finance law). For 2016 and 2017, the equity interest rate is 4%. Losses due to the NID are not accepted; consequently, a negative result due to this deduction does not generate loss carryforward.

To determine the modified equity, the following terms have to be considered:

- Paid-in capital and open reserves plus taxed hidden reserves, such as:
  - Deduction of own shares.
  - Deduction of participations/shares.
  - Deduction of non-operating related assets.
  - Deduction of 6% of total assets (except the above mentioned assets).
- Equity increases and decreases, based on the capital at the beginning of the business year.

	Example 1	Example 2	Example 3	Example 4	Example 5	Example 6
Modified equity	1,000,000	500,000	500,000	1,000,000	1,000,000	1,000,000
Loans	0	500,000	500,000	0	0	0
Profit	100,000	100,000	200,000	1,000,000,000	30,000	60,000
Interest on loans (4%)	0	(20,000)	(20,000)	0	0	0
Profit	100,000	80,000	180,000	1,000,000,000	30,000	60,000
Interest on equity (4%)	(40,000)	(20,000)	(20,000)	(40,000)	(40,000)	(40,000)
Taxable profit	60,000	60,000	160,000	999,960,000	0	20,000
Profit tax rate	12.50%	12.50%	12.50%	12.50%	12.50%	12.50%
Tax burden	7,500	7,500	20,000	124,995,000	0	2,500
Effective tax rate	**7.50%**	**9.38%**	**11.11%**	**12.50%**	**0.00%**	**4.17%**

According to the Liechtenstein Tax Act, modified equity is defined as the equity amount minus own shares, participations in corporations, and assets not operationally necessary.

In addition, modified equity must be further reduced by 6% of all assets qualifying for the NID. This means that, after deducting non-qualifying assets (own shares, participations, non-operating assets), an additional deduction of 6% on the remaining assets has to be made.

Furthermore, if a related-party loan has an interest rate below the level of the NID of 4%, the difference in the amount has to be deducted from the modified equity. However, no deduction has to be made if the loan arises from the operating business of the company.

Provisions

Bad debt provision

It is admissible to set up an accounting provision for specific impaired debt; additionally, it is possible to account for a general bad debt provision of up to 10% on receivables from Liechtenstein and Switzerland and up to 15% on receivables from any other country if no specific provision has been accounted for the corresponding debt. These provisions are not accepted regarding receivables to corporations and institutions under public law, banks, or for inter-company receivables.

Inventory provision

See Inventory valuation in the Income determination section for a description of the inventory provision regime.

Provisions on financial investments

Provisions on financial investments are possible but must be proved by an established corporate evaluation method or other suitable documents.

Other provisions

Provisions at the expense of the profit and loss statement are admissible for obligations during the business year whose amount is not yet determined or for other immediately imminent losses during the business year.

Charitable contributions

Charitable contributions to legal persons and special asset dedications with domicile in Liechtenstein, in another country member of the European Economic Area (EEA), or in Switzerland, which are exempt from tax liability in light of exclusively and irrevocably common-benefit purposes, are deductible, up to the amount of 10% of the taxable corporate net income.

Deduction for income from intellectual property (IP)

With the tax law amendments that entered into force on 1 January 2017, the Liechtenstein IP box regime was abolished with a phase-out period for existing IP boxes until 2020.

Prior to 1 January 2017, a deduction of 80% was allowed on the net income from IP rights that was created or acquired after 1 January 2011. IP rights, in the sense of the tax law, consisted of patents, supplementary protection certificates, utility models, trademarks, and designs, which must be protected by registration in a national, foreign, or international Register, as well as software and technical/scientific databases.

The Liechtenstein IP box was approved by the European Free Trade Association (EFTA) Surveillance Authority (ESA).

Fines and penalties
Fines and penalties are not tax deductible, provided the penal nature predominates.

Taxes
Taxes are not deductible in Liechtenstein.

Net operating losses
A loss can be carried forward and offset against the profits for future years. There is no time limitation of loss carryforwards as well as loss offsetting. Losses cannot be carried back.

The loss carryforward is limited to 70%. The other 30% can still be carried forward indefinitely. As a consequence, 30% of the taxable profit is subject to annual taxation even if corresponding losses from previous years exist.

Losses from foreign PEs and group loss offsetting
Losses from a foreign PE can be offset with taxable net corporate income to the extent these losses were not already taken into account in the country where the PE is situated or in another country. If that PE records profits in the following years, these profits need to be added to taxable net corporate income again. The period a loss can be carried forward is limited up to five years. Afterwards, the losses will be added if not yet added to the taxable profit due to foreign loss offsetting. The same limitation of loss carryforward applies to group taxation as well.

Payments to foreign affiliates
Interest, royalties and licences, and other fees to foreign affiliates are allowed as deductions to the extent that they meet the arm's-length test (i.e. equivalent to charges that would be made by an unrelated third party).

For interest payments between affiliated companies or between shareholders and companies, Liechtenstein tax authorities publish safe harbour rules annually (i.e. generally accepted interest).

Group taxation

Resident and non-resident corporations have the possibility to opt for group taxation (i.e. tax group) if they meet the legal requirements (e.g. more than 50% of capital and 50% of voting rights). The ultimate group leader must either be a corporation domiciled in Liechtenstein or with the effective place of management in Liechtenstein.

In order to form multi-level group structures, sub-groups may also be built. The same rules are applicable for the group leader of the sub-group as for the primary group leader.

A written application for forming a tax group must designate the group leader and group members to be filed with the tax authorities. It is not necessary that all associated companies have to become group members. The group leader can decide, for each company that fulfils the conditions, which company will be included in the group or not. The group leader and the group members need to have uniform business years.

Losses of group members can be offset against profits of the (sub) group leader within the same year. The offsetting is only possible under the following conditions:

- Only losses incurred after the option for group taxation can be considered.
- Losses need to be calculated according to Liechtenstein profit calculation rules.

The losses are allocated to the (sub) group leader according to the direct participation quota of the (sub) group leader to the group member whose losses should be offset. If the losses cannot be used at the level of the (sub) group leader, they can be allocated to other group members. However, the minimum tax is applicable for each group member.

Losses that have been attributed to the (sub) group leader must be adjusted in the following cases:

- Losses can be offset against profits on the level of the group member.
- Exit of group member from the group.
- Reduction of participation quota of a group member.
- Depreciation is made on a participation due to losses.

The (sub) group leader must provide evidence annually that no adjustment needs to be made. Even if the conditions for adjustment are not fulfilled, losses that have been attributed to the (sub) group leader must be adjusted five years after attribution.

Transfer pricing

Until 1 January 2017, Liechtenstein did not have specific transfer pricing rules apart from the rule that intra-group transactions are carried out at arm's-length terms. However, since the tax law amendments entered into force on 1 January 2017, all companies will be obligated to provide, upon request by the tax authorities (i.e. no periodical filing), documentation regarding the adequacy of transfer prices of transactions with related companies or PEs. Large companies have to prepare the transfer pricing documentation based on an internationally accepted standard. If a company exceeds at least two of the following three criteria, it qualifies as a large company (based on Liechtenstein company law):

- Total assets of CHF 25.9 million.
- Net revenue of CHF 51.8 million.
- Annual average of 250 full time employees.

Small companies (i.e. not exceeding two of the above criteria) are not required to prepare transfer pricing documentation in accordance with an international accepted standard.

Country-by-country (CbC) reporting

The CbC reporting law entered into force on 1 January 2017. CbC reporting is applicable for Liechtenstein group holding companies with a consolidated turnover of at least CHF 900 million. The legal basis of the CbC reporting law is the Convention on Mutual Administrative Assistance in Tax Matters (MAC). The MAC entered into force on 1 December 2016 and is applicable for tax years starting 1 January 2017.

Thin capitalisation

Liechtenstein does not have thin capitalisation rules.

Controlled foreign companies (CFCs)

Liechtenstein does not have specific CFC rules. However, legal or actual structures that appear inappropriate to the economic circumstances and whose sole economic purpose consists in attaining tax advantages are considered abusive if:

- the granting of this tax advantage would violate the object and purpose of the tax law, and
- the taxpayer is unable to present any economic or other substantial reasons for the choice of this structure and if the structure does not yield any independent economic consequences.

Tax credits and incentives

The following tax incentives are currently applicable:

- Profit tax exemption for corporations that have an irrevocable charitable, cultural, or ideal purpose without commercial activity.
- Profit tax exemption of dividend income and capital gains on shares/participations (especially interesting for holding companies).
- NID on equity (*see the Deductions section*).
- Private asset structure (PAS).

Private asset structure (Privatvermögensstrukturen or PAS)

Liechtenstein offers tax privileges for PASs. A PAS must not conduct any economic activity. The purpose of a PAS is limited to acquiring, holding, administrating, and selling financial instruments according to the Liechtenstein assets management law as well as cash and bank accounts. Participations may only be held if it can be proved that the shareholders or beneficiaries have no influence on the administration of this company.

The articles of the PAS must contain a clause that the regulations for PASs are applicable. Exemptions of this rule are applicable for legal entities that existed before the introduction of the tax law as of 1 January 2011.

The investors of a PAS must be individuals who administrate their own assets or structures acting in the interest of individuals.

The company or the audit company needs to confirm, upon formation or after major changes, that the conditions for the PAS structure are fulfilled. This is supervised by the tax authorities or a neutral certified accountant.

A PAS only pays the minimum tax of CHF 1,800 annually.

This tax scheme was qualified as in conformity with the provisions on state aid set out in Article 61 of the Agreement on the European Economic Area by the ESA.

Avoidance of double taxation

Foreign taxes shall be allowable against domestic taxes (credit method) under circumstances where (i) the income is derived or wealth is owned in a country that has concluded an agreement for the avoidance of double taxation with Liechtenstein and such agreement provides for a tax credit or (ii) reciprocity is granted. Income or wealth shall be exempted from taxation in Liechtenstein (exemption method) if the agreement for the avoidance of double taxation provides tax exemption or if reciprocity is granted.

Withholding taxes

Liechtenstein does not levy any WHTs.

Tax treaties

Currently, a comprehensive DTT on income is in effect with Andorra, Austria, Czech Republic, Georgia, Germany, Guernsey, Hong Kong, Hungary, Iceland, Luxembourg, Malta, San Marino, Singapore, Switzerland, the United Arab Emirates, the United Kingdom (UK), and Uruguay. Furthermore, a DTT with Monaco has been signed but has not yet entered into force.

Liechtenstein has concluded tax information exchange agreements (TIEAs) with the following governments: Andorra, Antigua and Barbuda, Australia, Belgium, Canada, China, Denmark, Faeroe Islands, Finland, France, Germany, Greenland, Iceland, India, Ireland, Italy, Japan, Mexico, Monaco, Netherlands, Norway, St. Kitts and Nevis, St. Vincent and the Grenadines, South Africa, Sweden, the United Kingdom, and the United States.

Tax administration

Taxable period

The tax year corresponds with the business year. Consequently, the applicable accounting period, which may end at any date within the calendar year, is the basis for corporate taxation.

Tax returns

Corporations resident in Liechtenstein or with PEs in Liechtenstein must file a tax return by 1 July of the calendar year following the fiscal year-end.

Due to a substantiated written request, the tax authorities may extend the submission deadline by six months. A deadline extension requires the payment of the provisional invoice. In especially justified cases, the submission deadline may be extended once again. Such a request must be made before expiry of the first deadline extension.

The tax assessment issued by the tax administration is based on the company's tax return, including the attachments and the financial statements filed.

Payment of tax

Companies must pay tax within 30 days of receipt of the assessment. The defaults charge rate is 4%.

Tax audit process

Generally, the Liechtenstein tax system is based on self-assessment. In the past, the Liechtenstein tax authorities assessed an entity based on the documents and information provided by the entity itself and additional documents or explanations requested by the tax authorities. Currently, however, the Liechtenstein tax authorities aims to carry out external tax audits in-house. However, due to limited resources, profit tax audits happen rarely.

Statute of limitations

The limitation of the right to assess a tax is five years, starting after the end of the tax year in terms of periodic tax and after the end of the year in which the taxable incidence had taken place in terms of non-periodic tax. The tax claims, in any case, are prescribed ten years after the end of the year in which the taxes have been assessed on a final basis.

Topics of focus for tax authorities

The tax authorities especially focuses on payments between affiliated companies (e.g. inter-company loans). Furthermore, all provisions and depreciations will be checked under the premise of economic necessity.

Other issues

Restructurings

Restructurings (e.g. change of corporate form, merger, spin-off) can be carried out tax neutrally, provided certain conditions are met.

All restructurings have in common that they can only be carried out tax neutrally if they are performed at tax book value and if the assets remain taxable within Liechtenstein. Furthermore, specific/additional conditions must be met for each kind of restructuring.

Foreign Account Tax Compliance Act (FATCA)

A Model 1 intergovernmental agreement (IGA) for the implementation of FATCA was signed between the governments of Liechtenstein and the United States on 16 May 2014.

Under the Model 1 IGA, Liechtenstein financial institutions will be required to report to local tax authorities on the accounts of US citizens. The Liechtenstein tax authorities will then send the tax information to the US Internal Revenue Service (IRS).

Automatic information exchange

Liechtenstein, *inter alia*, has committed to implement the Common Reporting Standard (CRS) for automatic exchange of tax information, which the G20 Finance Ministers endorsed on 23 February 2014. Accordingly, Liechtenstein belongs to the group of early adopters leading to the first automatic information exchanges in 2017 for the year 2016. The Liechtenstein Parliament passed the law on the automatic exchange of information (AIA law), with various amendments to the Liechtenstein Tax Act, on 6 November 2015. The AIA law corresponds mainly with the OECD CRS and shall introduce a uniform standard for exchanging tax information with tax authorities of other countries. The AIA law entered into force on 1 January 2016.

Lithuania

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Significant developments

The following recent amendments have been introduced into the Lithuanian tax legislation:

- A new tax administration system (i.MAS) is being introduced in Lithuania, which includes e-services for taxpayers (e.g. like electronic invoicing and transport documents, electronic cash registers), and is expected to improve tax administration capabilities as well as to reduce the administrative burden on the taxpayers.
- As of 1 January 2017, penalties, amounting from 1,400 euros (EUR) to EUR 4,300, for non-compliance with the transfer pricing documentation procedures for transactions between associated persons could be imposed on the CEOs of companies. For a repeated breach, penalties can amount from EUR 2,900 to EUR 5,800.
- As of 1 January 2017, the period to submit annual corporate income tax (CIT) returns was shifted from the first day of the sixth month of the following tax period (1 June for companies using the calendar year) to the 15th day of the sixth month of the following tax period (15 June for companies using the calendar year).
- As of 24 December 2016, dividends paid out to individuals are no longer subject to 15% CIT. Previously, they were taxed by CIT if the profit that is being distributed was subject to a reduced CIT rate or it was reduced by particular incentives specified in Lithuanian Law on CIT.
- As of 1 October 2016, all the tax returns (except annual personal income tax [PIT] returns) are submitted electronically, excluding cases when it is not possible to submit tax returns by electronic means due to objective reasons or the submission of a return by electronic means would cause disproportionate administrative burden.
- As of 26 March 2016, dividends paid out to foreign companies or received from foreign companies are no longer subject to tax exemption in cases where tax benefit is the main or one of the main objectives of a particular structure of companies. Dividends received from foreign companies are also not subject to tax exemption if they were deducted from taxable profit at the distributing company level. The amendments to the Lithuanian Law on CIT are due to the implementation of EU Directive 2014/86/EU and the Organisation for Economic Co-operation and Development's (OECD's) initiative on tax base erosion and profit shifting (BEPS).

Taxes on corporate income

The standard CIT rate is 15%. However, small companies and agricultural companies can apply a reduced CIT rate of 5% if certain conditions are met.

Generally, CIT is applied on taxable income received by a Lithuanian tax resident from its local and worldwide activities. Taxable income is calculated by reducing general income of a certain tax period with deductible expenses and non-taxable income.

Income of a tax resident company is not subject to taxation in Lithuania if it was received from activities through a permanent establishment (PE) in a foreign country that is in the European Economic Area (EEA) or that has a double tax treaty (DTT) with Lithuania and if the income was subject to taxation there.

Furthermore, CIT may be reduced or even not applied if foreign-sourced income received not through a PE is taxed with a withholding tax (WHT) in a foreign country and this country has a DTT with Lithuania.

Non-resident companies are generally taxed on Lithuania-sourced income received through a local PE and reduced by deductible expenses or on income subject to WHT in Lithuania.

Reduced CIT rate for small companies

Entities with fewer than ten employees and less than EUR 300,000 in gross annual revenues can benefit from a reduced CIT rate of 5%.

CIT regime for certain maritime activities

The rate of CIT on certain maritime activities is 15%, with the base set by reference to the functional capacity of the ship. This fixed CIT may be applied to maritime entities that fulfil certain conditions indicated in the law. An election must be made to the tax authorities to apply this regime.

Local income taxes

There is no local or municipal CIT in Lithuania.

Corporate residence

A company is resident in Lithuania if it is incorporated there or its activities create a PE for tax purposes.

Permanent establishment (PE)

According to local legislation, a foreign company is deemed to have a PE in Lithuania when:

- it permanently carries out commercial activities in Lithuania in whole or in part
- it carries out its activities through a dependent representative (agent)
- it uses a building site or construction, assembly, or equipment objects, or
- it uses equipment, including drilling installations and ships, for exploration or extraction of natural resources.

DTTs may establish different rules of PE recognition. According to domestic law, where there is a DTT, the provisions of the treaty take precedence.

A PE must be registered as a taxpayer with the tax authorities in the territory where its activities are carried out. Its profits are subject to CIT at the rate of 15%.

Other taxes

Value-added tax (VAT)

Supply of goods and services for consideration within the territory of Lithuania, performed by a taxable person engaged in economic activity, is subject to VAT in Lithuania.

The standard VAT rate is 21%.

The reduced rate of 9% applies to:

- Books and publications.
- Public transport services.
- Supply of heating to residential premises and supply of hot water (applicable until 1 June 2017).
- Accommodation services.

The reduced rate of 5% applies to:

- Technical aid devices and their repair services for the disabled.
- Pharmaceuticals and medical aid devices (under certain conditions).
- Not compensated prescription drugs, the value of outer packaging of which is above EUR 300 (in force from 1 January 2017).

Supply of goods exported outside of the European Union (EU) as well as supply of goods to VAT payers registered in another EU member state is subject to VAT at the rate of 0% (exempt with credit). There are other supplies of goods and services that are exempt with credit (e.g. goods and services for vessels and aircraft, transportation and linked services related to export or import of goods).

In order to apply zero-rated VAT on goods carried out from Lithuania, VAT payers must hold supporting documents as evidence that these goods were actually exported from the European Union or carried out from Lithuania to another EU member state.

Goods and services that are exempt without credit include, but are not limited to, the following:

- Supply of goods/services related to health care.
- Social services supplied by non-profit entities.
- Education and training services.
- Cultural and sports services rendered by non-profit entities.
- Services provided by political parties, trade unions, and other non-profit membership based legal entities to their members, meeting certain requirements.
- Services provided by religious communities, other communities, and centres to their members, meeting certain requirements.
- Postal services.
- Radio and TV broadcasting services provided by non-profit legal entities.
- All types of insurance and re-insurance services.
- Financial services meeting certain requirements (option to tax may be exercised for some financial services).
- Lotteries and gambling.
- Rent or sale of immovable property (option to tax may be exercised, certain conditions apply).

- Supply of goods where the VAT payer has not deducted any proportion of the VAT on purchases and/or importation thereof (certain conditions apply).

Sale and contribution in kind of a business or part of a business is treated as being out of scope of VAT (under certain conditions).

Customs duties
EU customs law is applicable in full.

EU customs law, also known as the Union Customs Code, compiles the rules, arrangements, and procedures applicable to goods traded between the European Community and non-member countries. The Community Customs Code indicates an obligation on a person to pay the amount of the import or export duties that apply to specific goods under the Community provisions in force. The application of the EU customs law means that:

- trade between Lithuania and other EU countries is customs-free
- imports from non-EU countries are subject to EU customs tariffs, and
- numerous free trade agreements concluded between EU and non-EU countries apply to Lithuania.

Excise taxes
Excise duty is imposed on the following goods produced in or imported into Lithuania: ethyl alcohol and alcoholic drinks, including beer and wine; processed tobacco, including cigarettes, cigars, cigarillos, and smoking tobacco; energy-related products, including petrol, kerosene, gasoline, fuel oil, lubricating oils, natural gas, and their substitutes and additives; coal, coke, and lignite; and electricity. The tax rate depends on the type and quantity of goods.

Land tax
Lithuanian and foreign entities are subject to land tax collected by the municipalities for the land they own in Lithuania. Roads for general use and forestland are exempt. The assessment and payment terms are set forth by the municipalities, which are also entitled to grant land tax incentives.

The annual land tax rate ranges from 0.01% to 4%, depending on local municipalities. Please see the table below describing the main features of the land tax:

Tax rate	0.01% to 4%, defined by municipality.
Taxable value	The average market value determined in the map of values established according to the mass valuation.
	The mass valuation is performed not rarer than every five years.
	A possibility to apply the value determined during the individual valuation if it differs from the market value by more than 20% (principles are similar to real estate tax).
Declaration	Template of a tax return is completed and sent by the tax authorities until 1 November.
Payments	One annual payment due 15 November.

Land lease tax
State-owned land that is leased for Lithuanian and foreign companies is subject to land lease tax at a rate established by the municipalities. The minimum tax rate set by the government is 0.1%, and the maximum rate is 4% of the value of the land.

Real estate tax
The real estate tax rate ranges from 0.3% to 3%. Tax is levied on the value of real estate owned by individuals and used for commercial purposes or owned by legal entities (with certain exemptions). Municipal councils establish a specific tax rate for real estate situated in their territories annually.

State duties (stamp taxes)
There are no stamp duties applied in Lithuania; however, minor fees for the services of state institutions, such as the issuance of documents having legal force and other deeds, may apply (e.g. notary fees apply on share purchase agreements [SPAs] meeting certain criteria).

Payroll taxes
Employers should withhold PIT at the flat rate of 15% from the employee's salary.

There are no additional payroll taxes applicable to an employer other than the employer's part of social security contributions and the contributions to the Guarantee Fund (*see below*).

Social security contributions
The rate of social security contributions ranges from 30.98% to 32.6% for employers and is 9% for employees. At present, there are no lower or upper limits set for social security contributions on employment-related income.

Contributions to the Guarantee Fund
Contributions to the Lithuanian Guarantee Fund are calculated by employers at a rate of 0.2% on the gross salary payable to employees. The Guarantee Fund provides support to employees in case of employer's bankruptcy.

Environmental tax
Environmental tax is imposed on pollutants discharged into the environment, dumped waste, a few specified products (e.g. tyres, batteries), and certain types of packaging.

Tax on natural resources
A tax on natural resources is payable on the value of extracted natural resources.

Branch income

A branch of a foreign company is defined as a structural subunit of a foreign company that has an establishment in Lithuania and is entitled to engage in commercial activities in Lithuania as well as conclude contracts and undertake obligations according to the power of attorney issued to the branch by its founder. A branch does not have the status of a legal person. It is taxed in the same manner as a PE (*see the Taxes on corporate income section*).

Income determination

Inventory valuation
Under domestic accounting legislation, stock used in the production and included in the cost of produced goods is valued in the financial statements by the first in first out (FIFO) method. The last in first out (LIFO), weighted-average, progressive-average,

actual-price, or another method that corresponds to the stocks' movement can also be used. However, the method used must be disclosed in the notes to the annual accounts, and, among other things, the note must report the profit that would have been calculated if the FIFO method of valuation had been used. For CIT purposes, usage of another method than FIFO should be approved by the tax authorities.

Capital gains

Capital gains are taxed as part of the corporate profit of the enterprise.

Capital gains are treated as non-taxable income when they are derived from the transfer of shares in a company incorporated in the European Economic Area or in a country with which Lithuania has a valid DTT and that pays CIT or an equivalent tax. This holds true if the Lithuanian holding company holds more than 25% of voting shares for a continuous period of (i) at least two years or (ii) at least three years when the shares were transferred in one of the established forms of reorganisation. Certain restrictions apply.

Dividend income

The receiving company does not include the dividends received from other entities in its taxable income.

Interest income

Interest income is treated as general taxable income and is subject to 15% CIT.

Royalty income

Royalty income is treated as general taxable income and is subject to 15% CIT.

Exemptions from taxable income

The following additional types of income are exempt from CIT:

- Insurance indemnity not in excess of the value of lost property or other losses or damages, the refunded part of insurance premiums in excess of the premiums deducted from income in accordance with the procedure established, and the part of insurance indemnity in excess of the premiums deducted from income in accordance with the procedure established.
- Proceeds of a bankrupt company received from sale of its property.
- The balance of the formation fund of an insurance company as prescribed by the law on insurance.
- Investment income of investment companies with variable capital and closed-end investment companies acting in accordance with the law on collective investment undertakings and investment income of investment companies acting in accordance with the law on collective investment undertakings for informed investors, except for dividends and other distributable profits.
- Income derived by health care institutions for their services that are financed from the funds of the Compulsory Health Insurance fund.
- Income derived from revaluation of fixed assets and liabilities as established by laws and regulations, except for income derived from the revaluation of derivative financial instruments acquired for hedging purposes.
- Default interest, except for that received from foreign companies registered or otherwise organised in blacklisted territories or residents of such territories (*see Blacklisted territories in the Deductions section*).

- All or part of the profit gained from legal entities of unlimited civil liability that are payers of CIT and with income that is subject to CIT under the law or to a similar tax under respective statutes of foreign countries, with certain exceptions.
- Fees collected by seaports and airports, charges for air traffic navigation services, and funds collected from the lease of seaport-owned land.
- Results arising from adjustments made for the previous tax periods as prescribed by the law on accounting.
- Indemnification for damages received by the company, with certain exceptions.
- Compensation received according to the Lithuanian programmes of the EU financial support relating to taking fishing ships for scrap.
- Life insurance payments received by insurance companies, provided the term of the life insurance policy is valid for not less than ten years or at the date of the receipt of the insurance benefit the recipient has reached the pension age in accordance with the additional law on pensions. Additionally, life insurance investment income of insurance companies, except for dividends and other distributable profit, is exempt along with investment insurance income of insurance companies received according to the contracts of life insurance occupational pensions concluded in accordance with the law on accumulation of occupational pensions.
- Direct and other compensational allowances that are received by units performing agricultural activities to maintain their level of income, which meet the requirements established in the laws and other legal acts of Lithuania.

Foreign income

Income is not subject to taxation in Lithuania if it was received from activities through a PE in a foreign country that is in the European Economic Area or that has a DTT with Lithuania and if the income was subject to taxation there. Since such income is not subject to taxation in Lithuania, costs related to the income cannot be deducted from income that is subject to taxation in Lithuania.

Deductions

Allowable deductions include all the usual costs that an entity actually incurs for the purpose of earning income or receiving economic benefit unless the law on CIT provides otherwise.

Depreciation

Tangible and intangible assets may be depreciated using a directly proportional (straight-line) depreciation method, a production depreciation method, or a double-declining-balance depreciation method. Depreciation may not exceed maximum rates established by the law. For certain typical assets, depreciation rates relevant for tax purposes are shown in the chart below:

Asset	Depreciation period (years)	Annual depreciation rate (%)
New buildings used for business activities	8	12.5
Residential buildings	20	5
Plant and machinery	5	20
Trucks (not older than 5 years)	4	25
Computer and communications equipment	3	33.3
Software	3	33.3

Goodwill
Goodwill can be amortised for tax purposes using a straight-line method over 15 years after a merger of a purchasing company and an acquired company, provided that certain conditions are met.

Start-up expenses
Generally, startup expenses are deductible for tax purposes.

Interest expenses
Interest expenses are generally deductible for tax purposes. Interest expenses should be recognised as non-deductible for tax purposes if, after acquisition, a purchasing company and an acquired company are merged and debt used for acquisition of shares is pushed down to the acquired company and certain conditions are not met.

Interest paid to related parties may be non-deductible for tax purposes if thin capitalisation rules are infringed and the interest rate on a debt from the related party does not correspond to a fair market interest rate (*see Transfer pricing and Thin capitalisation in the Group taxation section*).

Bad debts
Bad debts are deductible only if proved and specific criteria are met. Provisions are non-deductible.

Charitable contributions
Generally, double the amount of donation/sponsorship can be deducted for tax purposes (i.e. 200% deduction is available) but only if donation/sponsorship was provided to registered recipients and only up to a limit of 40% of taxable result before deduction of donation/sponsorship and utilisation of tax losses carried forward.

Fines and penalties
Fines and penalties are generally non-deductible for tax purposes.

Taxes
All taxes, fees, and other compulsory payments to the state budget are deductible for CIT purposes, except VAT paid to the budget and CIT. Note that VAT can be treated as deductible for CIT purposes if it is input or paid import VAT that is non-refundable for VAT purposes and this input or paid import VAT is calculated on deductible expenses.

Other significant items
Limited deductible expenses also include the following:

- Maintenance, repair, and reconstruction expenses of tangible fixed assets: If the repair or reconstruction increase the service period and improve the qualities (useful characteristics of the fixed assets), the value of repair or reconstruction shall be added to the acquisition value of the tangible fixed assets.
- Business travel expenses: Deductible with restrictions.
- Advertising and representation expenses: 75% of representation expenses are deductible.
- Natural losses: Deduction limited to not more than 1% (3% for fresh fruits, vegetables, and some other cases) of turnover.
- Contributions and expenses for the benefit of employees: Deductible with restrictions.

- Special provisions of credit institutions and insurance companies: Calculated according to the methods established by the Bank of Lithuania and the Commission of Insurance Supervision.
- Membership fees, contributions, and premiums: Deductible with restrictions.

Non-deductible expenses also include the following:

- Default interest (forfeit), fines, and late interest paid to the state budget as well as other sanctions imposed for violations of laws and regulations of Lithuania.
- Interest or any other indemnity paid due to non-performance of contractual obligations by related parties.
- Amount of the limited deductible expenses in excess of the established limits.
- Expenses attributed to allowable deductions more than 18 months past, although the payments for goods or services supplied by the entities registered or otherwise organised in blacklisted territories (*see below*) have not been made.
- Sponsorship and gifts that do not correspond to the requirements of CIT law.
- Payments to blacklisted territories (*see below*) if they are not verified and payments are not subject to WHT.
- Indemnification for damages inflicted by the entity.
- Dividends or otherwise distributed profits.
- Other expenses not related to the deriving of income and not attributed to operating activities of the entity, as well as the expenses that are not considered allowable deductions under the law.
- Amounts resulting from adjustments and corrections of errors of previous tax periods.
- Expenses related to revaluation of fixed assets and securities, except for financial instruments acquired for hedging purposes.
- Deductible or limited deductible expenses attributed to non-taxable income.
- Expenses related to income from certain international maritime activities if a maritime entity chose to apply a fixed CIT.

Net operating losses

Operating losses may be carried forward for an indefinite period, provided that certain requirements are met.

Current year operating losses can be transferred to another legal entity of the group if certain conditions are met.

Losses incurred due to the transfer of securities and/or derivative financial instruments may be carried forward for five years (indefinitely for financial institutions).

Reduction of taxable profit by accumulated tax losses is limited to 70% of the taxable profit for the current year (except for entities that are subject to the reduced CIT rate of 5%). The rest of the accumulated tax losses can be carried forward for an unlimited period of time.

No carryback of losses is available in Lithuania.

Payments to foreign affiliates

Payments to foreign affiliates (e.g. interest, royalties, management fees, fees for other services) are deductible for tax purposes if the payment serves a business purpose, provides a benefit to the payer, is at arm’s length, and is substantiated by sufficient documentation. Payments to foreign affiliates may also be subject to various WHTs.

Certain payments to affiliates located in tax haven (blacklisted) countries are subject to a 15% WHT rate.

Blacklisted territories

A blacklisted territory is a foreign country or territory that is included on a list of offshore territories established by the Minister of Finance that meets at least two of the following criteria:

- Similar tax rate in such territory is below 75% of that set in the Lithuanian CIT law.
- In such territory, different rules for levying a similar tax are applied, depending on the country where the parent company (controlling entity) is registered or otherwise organised.
- In such territory, different rules for levying a similar tax are applied, depending on the country where the business is conducted.
- The company (the controlled taxable entity) has entered into agreement with the tax administrator of that territory with regard to the application of a tax rate or tax base.
- There is no effective exchange of information in such territory.
- There is no financial and administrative transparency in such territory, the tax administration rules are not quite clear, and the application thereof is not communicated to tax administrators of other countries.

A list of 58 offshore territories has been published. With certain exceptions specified in the law, all payments to offshore companies or their branches for any work or services, commodities, interest on funding, insurance premiums, guarantees, etc. are non-deductible for CIT purposes unless the Lithuanian entity provides evidence to the state tax authorities that:

- the payments are related to usual activities of the paying and the receiving business entities
- the receiving foreign business entity manages the property necessary to carry out such usual activities, and
- there is a connection between the payment and the economically grounded business operation.

Group taxation

Group taxation legislation and regimes are not available in Lithuania. Each Lithuanian entity is regarded as a separate taxpayer and may not deduct tax losses accumulated from previous tax periods at the level of any other group entity.

Transfer of current year operating tax losses incurred to an entity of the same group of companies is allowed if certain requirements are met.

Transfer pricing

All transactions between associated parties must be performed at arm's length. The tax authorities have a right to adjust transaction prices if they do not conform to market prices.

The Lithuanian rules refer to the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations established by the OECD to the extent that they do not contradict with the domestic rules.

According to the Lithuanian transfer pricing regulations, companies may apply the following methods, although traditional methods should be given preference:

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

All entities with an annual revenue exceeding EUR 2.9 million, as well as all banks, insurance companies, and credit institutions, are required to prepare transfer pricing documentation in a specifically prescribed form. The documentation may be in a foreign language, but has to be translated to Lithuanian upon request.

As of 1 January 2017, new penalties, amounting from EUR 1,400 to EUR 4,300, for non-compliance with the transfer pricing documentation procedures for transactions between associated persons can be imposed. For a repeated breach, penalties can amount from EUR 2,900 to EUR 5,800.

Advance pricing agreements (APAs) and binding rulings are available in Lithuania. Taxpayers can apply for an APA or a binding ruling from the Lithuanian tax authority in respect of future transactions.

Decisions in the form of a binding ruling or APA will be issued by the Lithuanian tax authority regarding the application of tax legislation provisions and pricing principles. The above-mentioned decisions will be particularly relevant to companies planning to undertake new transactions where the taxation principles of such transactions are not clearly defined in the tax legislation and to international companies planning to perform significant transactions with associated parties.

Thin capitalisation

The Lithuanian thin capitalisation rules apply in respect to borrowings from related parties as well as borrowings from third parties guaranteed by related parties. The controlled debt-to-fixed-equity ratio is 4:1. The above provisions do not apply if a Lithuanian company can prove that the same loan under the same conditions would have been granted by a non-related entity.

Controlled foreign companies (CFCs)

Positive income of a CFC, i.e. income not derived from operating activity (including interest, royalties, leasing, dividend income, etc.), shall be included in the taxable income of a controlling Lithuanian company if a CFC is established or organised in a country that is:

- a blacklisted territory (*see Blacklisted territories in the Deductions section)*
- on the 'white' list of countries as defined by the Ministry of Finance but is eligible for special CIT or an equivalent tax relief in a country of establishment, or
- neither on the 'white' list nor on the 'black' list of countries and is subject to a CIT or an equivalent tax lower than 11.25% in a country of establishment.

Certain other conditions apply.

A Lithuanian company may reduce tax payable in Lithuania by the tax paid in a foreign country on the positive income of CFC included in the tax base of that Lithuanian company.

Tax credits and incentives

Foreign tax credit

A company may reduce tax payable on certain foreign-sourced income in Lithuania by taxes paid on that income in a foreign country if that Lithuanian company has received appropriate notice from that foreign country. The tax credit may not exceed the CIT rate payable in Lithuania.

Investment project incentive

Entities involved in an investment project are able to reduce their taxable profits by up to 50% of the actually incurred acquisition costs of long-term assets meeting certain requirements. Please note that depreciation (amortisation) expenses of such assets shall be deducted in a common manner.

Taxable profits can be reduced by such costs incurred from 2009 to 2018.

This relief is applied to the following categories of fixed assets:

- Machinery and equipment.
- Computer and communication equipment.
- Software and acquired intellectual property (IP) rights.
- Lorries, trailers, and semi-trailers.

The costs exceeding the above-mentioned 50% limit can be carried forward for four years.

There are certain criteria defining what could be considered an investment project. The project should be precisely described to meet the criteria allowing a company to use the tax relief, and the tax authorities should be properly notified about the project.

Tax relief for research and development (R&D)

Expenses, except for fixed assets' depreciation (amortisation) expenses, incurred for R&D purposes can be deducted three times in the tax period when they are incurred, provided that R&D works performed are related to ordinary business activities.

A company applying tax relief for R&D has to prepare R&D documentation. This documentation has to cover the performed project, substantiate conformity with certain tax requirements, and specify the amount of expenses for R&D activities.

Funds granted for producing a film or a part of a film

Funds granted for producing a film or a part of a film can be deducted from taxable income and from CIT payable due during the period of 2014 to 2018 if the following conditions are met:

- The film meets the criteria of cultural substance and evaluation of the production.
- Not less than 80% of the film production expenses are incurred in Lithuania, and the amount exceeds EUR 43,000.

- Total amount of funds granted by all companies may not exceed 20% of total expenses of the film production.

Certain restrictions for reduction of taxable income and tax due apply.

Free economic zones (FEZs)
Entities that invest in Lithuanian FEZs are entitled to partial or complete CIT relief (depending on the investment amount), relief of tax on real estate, and 50% relief of land lease tax. In 1996, two FEZs were established for a period of 49 years: one in Kaunas and the other one in Klaipėda. As of 1 January 2012, five more FEZs were established in Akmenė, Kėdainiai, Marijampolė, Panevėžys, and Šiauliai.

An association uniting FEZs operating in Lithuania was established at the end of 2015. Its goal is to create 2,000 new jobs and attract investments of more than EUR 400 million.

Withholding taxes

Domestic legislation
Generally, income of a foreign entity in Lithuania not derived through a PE is deemed to be Lithuanian-source income and is subject to WHT at the following rates:

- Interest on any type of debt obligations, including securities: 10%.
- Proceeds from the sale, transfer (with title), or lease of immovable property located in Lithuania: 15%.
- Income derived from sports activities or performers' activities: 15%.
- Income from distributed profits: 15%.
- Royalties: 10%.
- Annual payments (*tantiems*) to the members of the board or supervisory board: 15%.
- Indemnities received for the infringement of copyrights or neighbouring rights: 10%.

0% WHT is applied on royalties paid to related parties meeting requirements of the European Commission (EC) Interest and Royalty Directive.

Lithuanian WHT on interest paid to EU entities or DTT tax residents is 0%.

WHT is not applied on government securities issued on international financial markets, interest accumulated and paid on deposits, and interest on subordinated loans that meet the criteria established by legal acts adopted by the Bank of Lithuania.

Dividends distributed by a resident company to another resident company are subject to a 15% CIT, which is withheld by a distributing company.

The dividends distributed by a resident company are exempt from WHT if the recipient company has held not less than 10% of the voting shares in the distributing company for at least a 12-month period. However, this relief is not applied if the foreign entity (recipient) is registered or otherwise organised in blacklisted territories (*see Blacklisted territories in the Deductions section*), as specified by the Ministry of Finance. Please note that the requirement of the 12-month holding period does not necessarily have to be fulfilled on the day of dividend distribution.

As of 26 March 2016, dividends paid out to foreign companies or received from foreign companies are no longer subject to tax exemption in cases where tax benefit is the main or one of the main objectives of a particular structure of companies. Dividends received from foreign companies are also not subject for tax exemption if they were deducted from taxable profit at the distributing company level. The amendments to the Lithuanian Law on CIT are due to the implementation of EU Directive 2014/86/EU and the OECD's BEPS initiative.

The receiving company may reduce its CIT payable for that period when dividends were received by the amount of CIT withheld from the received dividends. Any excess credit may be offset with other taxes payable.

Dividends distributed by a foreign entity are generally subject to a 15% CIT that is to be paid by the receiving Lithuanian entity.

Dividends distributed by a foreign company to a Lithuanian company are exempt from CIT if the distributing foreign entity is established in the European Economic Area and related profit is properly taxed in the domiciled country.

The dividends are also exempt from WHT if the recipient company has held not less than 10% of the voting shares in the distributing company for at least a 12-month period and the profit of a distributing entity is subject to CIT or similar tax. This participation exemption satisfies the requirements of the EC Parent-Subsidiary Directive. The exemption also applies to dividends paid by non-EU foreign companies, except those registered or organised in blacklisted territories.

According to the changed provisions of the CIT Law, the payments received by a foreign entity for the activities of the members of the supervisory board in Lithuania are recognised as income of the foreign company in Lithuania, regardless of the frequency of such payments and whether they are paid as *tantiemes* or as other types of payments. These payments are subject to 15% WHT, which should be withheld by the paying company in Lithuania. The tax is applicable only if the member of the supervisory board is a foreign company (not an individual).

Tax treaties

Where a treaty for the avoidance of double taxation and prevention of fiscal infringement with the country in question contradicts the local regulations, the treaty provisions prevail. Lithuania now has 53 DTTs in force with foreign countries.

The following WHT rates apply to dividends, interest, and royalties paid to a recipient or beneficial owner resident in a tax treaty country. The lower of the domestic or the treaty rate is given.

Recipient	Dividends (%) (1)	Interest (%) (2)	Royalties (%) (3)
Non-treaty	0/15	0/10	10
Treaty:			
Armenia	0/5/15	0/10	10
Austria	0/5/15	0/10	0/5/10 (4)
Azerbaijan	0/5/10	0/10	10
Belarus	0/10	0/10	10
Belgium	0/5/15	0/10	0/5/10 (4)
Bulgaria	0/10	0/10	0/10

Recipient	Dividends (%) (1)	Interest (%) (2)	Royalties (%) (3)
Canada	0/5/15	0/10	10
China, People's Republic of	0/5/10	0/10	10
Croatia	0/5/15	0/10	0/10
Cyprus	0/5	0	0/5
Czech Republic	0/5/15	0/10	0/10
Denmark	0/5/15	0/10	0/5/10 (4)
Estonia	0/15	0/10	0/10
Finland	0/5/15	0/10	0/5/10 (4)
France	0/5/15	0/10	0/5/10 (4)
Georgia	0/5/15	0/10	10 (4)
Germany	0/5/15	0/10	0/5/10 (4)
Great Britain and Northern Ireland	0/5/15	0/10	0/5/10 (4)
Greece	0/5/15	0/10	0/5/10 (4)
Hungary	0/5/15	0/10	0/5/10 (4)
Iceland	0/5/15	0/10	5/10 (4)
India	0/5/15	0/10	10
Ireland, Republic of	0/5/15	0/10	0/5/10 (4)
Israel	0/5/15	0/10	5/10 (4)
Italy	0/5/15	0/10	0/5/10 (4)
Kazakhstan	0/5/15	0/10	10
Korea, Republic of	0/5/10	0/10	5/10 (4)
Kyrgyzstan	0/5/15	0/10	10
Latvia	0/15	0	0
Luxembourg	0/5/15	0/10	0/5/10 (4)
Macedonia	0/10	0/10	10
Malta	0/5/15	0/10	0/10
Mexico	0/15	0/10	10
Moldova	0/10	0/10	10
Netherlands	0/5/15	0/10	0/5/10 (4)
Norway	0/5/15	0/10	5/10 (4)
Poland	0/5/15	0/10	0/10
Portugal	0/10	0/10	0/10
Romania	0/10	0/10	0/10
Russian Federation	0/5/10	0/10	5/10 (4)
Serbia	0/5/10	0/10	10
Singapore	0/5/10	0/10	7.5
Slovakia	0/10	0/10	0/10
Slovenia	0/5/15	0/10	0/10
Spain	0/5/15	0/10	0/5/10 (4)
Sweden	0/5/15	0/10	0/5/10 (4)
Switzerland	0/5/15	0/10	5/10 (4)
Turkey	0/10	0/10	5/10 (4)
Turkmenistan	0/5/10	0/10	10
Ukraine	0/5/15	0/10	10
United Arab Emirates	0/5	0	5
United States of America	0/5/15	0/10	5/10 (4)
Uzbekistan	0/10	0/10	10

Notes

1. Dividends are exempt from WHT if the recipient company has held not less than 10% of the voting shares in the distributing company for at least a 12-month period. However, this relief is not applied if the foreign entity (recipient) is registered or otherwise organised in blacklisted territories (*see Blacklisted territories in the Deductions section*), as specified by the Ministry of Finance. If participation exemption criteria are not met, the standard WHT rate of 15% should be applied. However, some of the DTTs allow applying WHT at a reduced rate of 5% or 10%.
2. Under the domestic law, the rate is nil if interest is paid to a company established in a country that has a DTT with Lithuania or is a member of a European Economic Area. In other cases, except for Cyprus, Latvia, and the United Arab Emirates where 0% WHT is established in the DTT, a 10% WHT rate should be applied.
3. Under the domestic law, 0% WHT is applied on royalties paid to related parties meeting requirements of the EC Interest and Royalty Directive.
4. Royalties for the use of industrial, commercial, or scientific equipment: 5%; other royalties: 10%.

Reduction of, or exemption from, WHT under a DTT may be obtained if a special residence certificate (Form DAS-1) is completed and approved by the tax authorities before a taxable payment is transferred. If a payment that would have been subject to a tax treaty has already been made and WHT at the local rate was withheld, it is possible to obtain an appropriate refund (reduction) by completing a special claim for a refund of the Lithuanian tax withheld at source (Form DAS-2) and obtaining the approval of the tax authorities.

In addition, the tax authorities may require completion of a special certificate giving information about income received and taxes paid in Lithuania (Form DAS-3).

Tax administration

Taxable period

The Lithuanian tax year runs from 1 January to 31 December. However, a corporation may apply to adopt a substitute year of reporting (e.g. 1 July to 30 June).

Tax returns

CIT

From 2017, CIT returns must be submitted by the 15th day of the sixth month of the following tax period (15 June for companies using the calendar year). Previously, CIT returns must have been submitted by the first day of the sixth month of the following tax period (1 June for companies using the calendar year).

From 2017, advance CIT due based on activity results for the previous year should be calculated and declared as follows:

- The advance CIT due for the first six months of the tax period should be calculated based on results of the tax period before the last tax period.
- The advance CIT return for the first six months of the tax period should be submitted by the 15th day of the third month of the tax period (usually 15 of March).
- The advance CIT due for the remaining six months of the tax period should be calculated based on results of the last tax period.
- The advance CIT return for the remaining six months should be submitted by the 15th day of the ninth month (usually 15 of September) of the tax period.

Previously, if advance CIT due was calculated based on activity results for the previous year, the advance CIT return for the first nine months of the tax period was to be submitted by the last day of the first month (usually January) of the tax period. The return for the remaining months of the tax period was to be submitted by the last day of the tenth month (usually October) of the tax period. If the taxpayer had chosen to pay the advance amount based on the projected amount of CIT for the current year, the return must have been submitted not later than the last day of the first month of the tax period.

WHT on dividends
A tax-withholding entity must submit to the tax authorities a special form of a return reporting the dividends paid and tax withheld within ten calendar days after the end of the month of the dividend payment.

WHT on payments other than dividends
A tax-withholding entity must submit to the tax authorities a special form of a return reporting the amounts of payments paid and taxes withheld during the calendar month no later than 15 days after the end of the month in which the amounts were paid.

Payment of tax

CIT
The final payment deadline for CIT is aligned with the annual CIT return submission deadline (i.e. from 2017, the 15th day of the sixth month of the following tax period; previously, the first day of the sixth month of the following tax period).

If advance CIT due is calculated based on the activity results for the previous year, the advance amount of CIT for the first six months (previously, for the first nine months) of the tax period is calculated based on the actual CIT amount for the tax period before the previous tax period. For example, the CIT for the first six months of 2017 would be calculated based on the appropriate portion of the actual amount of CIT for 2015. The advance amount for the remainder of the tax period is based on the actual amount of CIT for the previous period, for example, tax for the last six months of 2017 (previously, for the last three months) would be based on the appropriate portion of the actual amount of CIT for 2016. Thus, the advance CIT amount for each quarter would be equal to one-fourth of the actual tax amount calculated for the tax periods discussed.

The taxpayer may choose to pay the advance amount based on the projected amount of CIT calculated for the current year. The advance amount of CIT calculated on the basis of the projected amount of CIT for the tax period shall account for not less than 80% of the actual amount of the annual CIT; otherwise, late payment interest shall be calculated in respect of each amount of advance CIT that was not paid for the quarter.

The advance tax must be paid no later than the last day of the respective quarter, and for the last quarter by the 25th day of the last month of the quarter.

If the amount of tax indicated in the annual CIT return exceeds the amount actually paid during the tax period (i.e. the advance CIT), the taxpayer is obligated to transfer the additional amount no later than the annual CIT return submission deadline (i.e. by the 15th day [previously, by the first day] of the sixth month of the following tax period). Overpaid tax can be offset with other tax dues or refunded in accordance with the law on tax administration.

WHT on dividends
WHT on dividends is to be calculated, withheld, and remitted by a Lithuanian company that pays dividends within 15 (previously, ten) calendar days after the end of the month of the payment.

WHT on payments other than dividends
WHT on payments other than dividends is to be calculated, withheld, and remitted by a Lithuanian company or a PE of a foreign company no later than the return submission deadline.

Tax audit process
The Lithuanian tax system for companies is based on self-assessment; however, the tax authorities undertake ongoing compliance activity to ensure corporations are meeting their tax obligations. The tax authorities take a risk-based and materiality approach to compliance and audit activities, with efforts generally focused on taxpayers with a higher likelihood of non-compliance and/or material consequences of non-compliance. Compliance activities take various forms, including general risk reviews, questionnaires, reviews of specific issues, and tax audits.

Statute of limitations
Generally, the tax authorities may investigate current and five previous tax periods. However, the limit of ten previous tax periods applies where the tax authorities are of the opinion there has been fraud or tax evasion.

Topics of focus for tax authorities
The Lithuanian tax authorities are focusing on the following areas of corporate taxpayers' compliance:

- Topics driven by OECD movement on BEPS (e.g. economic substance of companies, business reasons of transactions).
- Obligation to register PE in Lithuania (investigations of foreign companies that perform activities in Lithuania without registering as local taxpayers).
- Compliance with transfer pricing rules and thin capitalisation rules.
- Applications of tax reliefs (e.g. investment project incentive, relief for R&D).
- Proper recognition of costs for non-business related assets and expenses.
- Social security contributions' optimisation schemes.

Other issues

Foreign Account Tax Compliance Act (FATCA) agreement with the United States (US)
Lithuania signed an intergovernmental agreement (IGA) with the United States under the framework of FATCA. Lithuania and the United States will exchange information about the accounts of foreign (US or Lithuania, respectively) residents held in local financial institutions or local branches of foreign financial institutions.

Implementation of base erosion and profit shifting (BEPS) provisions

The OECD has announced a package of BEPS recommendations aiming to increase transparency of international taxation and prevent tax evasion and aggressive tax planning. Many OECD countries, as well as Lithuania (not an OECD member yet), have already started shifting certain provisions related to implementation of the BEPS recommendation package into their tax legislation. Lithuania started formal OECD accession talks in April 2015.

Luxembourg

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Significant developments

New tax law for 2017

On 14 December 2016, the Luxembourg Parliament approved a law making changes to the Luxembourg corporate and personal tax systems applicable as of 2017. The changes include, notably, a reduction of the corporate income tax (CIT) rate.

Reduction of the CIT rate

The CIT rate will be reduced from 21% to 18% over the next two years. There are no changes to the 'solidarity surtax' on the CIT rate nor any change in the rate of municipal business tax due by companies.

The CIT rate for companies having a net taxable base of more than 30,000 euros (EUR) has been reduced to 19% for 2017, leading to an overall tax rate for companies of 27.08% in Luxembourg City for fiscal year (FY) 2017 (taking into account the solidarity surtax of 7% on the CIT rate, and including the 6.75% municipal business tax rate applicable).

The CIT rate for companies having a net taxable base of more than EUR 30,000 will be further reduced to 18% for 2018, leading to an overall tax rate of 26.01% in Luxembourg City for FY 2018 (taking into account the solidarity surtax of 7% on the CIT rate, and including the 6.75% municipal business tax rate applicable).

Also, the CIT rate for small and start-up companies (i.e. companies having taxable income below EUR 25,000) has been reduced in a single step to 15% for 2017, leading to an overall tax rate of 22.08% in Luxembourg City (taking into account the solidarity surtax of 7% on the CIT rate, and including the 6.75% municipal business tax rate applicable). For companies with a tax base of between EUR 25,000 and EUR 30,001, the CIT would be EUR 3,750 plus 39% of the tax base above EUR 25,000 (for FY 2017) or 33% of the tax base above EUR 25,000 (for FY 2018).

Increase of the minimum net wealth tax (NWT)

As of FY 2017, holding and finance companies (i.e. companies whose sum of fixed financial assets, inter-company loans, transferable securities, and cash at bank exceeds both 90% of their total gross assets and EUR 350,000 are subject to a minimum NWT of EUR 4,815 (including the solidarity surtax).

The minimum NWT applicable to all other corporations having their statutory seat or central administration in Luxembourg remains unchanged (*see Net wealth tax [NWT] in the Other taxes section*).

Restrictions on the use of future losses

The use of losses generated as of 1 January 2017 is limited. Losses generated during and after 1 January 2017 will only be able to be carried forward for a maximum period of 17 years.

It should be noted that the losses that arose before 1 January 2017 are not affected in any way by this limitation.

Other new tax measures

Other measures of the tax reform that would benefit companies are as follows:

- The scope of Article 54bis of the Luxembourg Income Tax Law (LITL), which covers the deferred taxation for foreign-exchange gains on certain assets denominated in a foreign currency, has been extended to all companies as of FY 2016.
- Investment, especially in research and development (R&D), has been further encouraged through the increase of investment tax credits as of FY 2017. Complementary and overall investment tax credits are increased from 12% to 13%, and from 7% to 8%, respectively. The rate of overall investment tax credit for investment exceeding EUR 150,000, however, remains at 2%. The investment tax credit for assets eligible for the special depreciation regime is increased from 8% to 9% (the tax credit for investment exceeding EUR 150,000 remains at 4%). In addition, the scope of eligible investments has been extended to include investments made anywhere within the European Economic Area (EEA).
- In order to make inter-generational transfers of family businesses easier, capital gains linked to real estate assets (both land and buildings) will benefit from a tax-neutral treatment.
- Farming businesses may deduct 30% of the amount of any new investment of up to a total of EUR 250,000 made in the business. Investment above this amount is eligible for a deduction of 20% of the difference between the investment amount and the aforementioned EUR 250,000 limit.
- As of FY 2017, tax returns for companies liable to CIT are no longer allowed to be filed by post; it is mandatory to file them electronically.
- Deferred depreciation would be introduced. Under this regime, taxpayers could opt to defer a deduction deriving from a depreciation. These measures would increase the CIT for a given year and may allow a reduction of the net wealth tax due under certain conditions.

New value-added tax (VAT) measures

The tax reform for 2017 has also introduced new VAT measures, as follows.

Introduction of the personal and joint liability of managers in the Luxembourg VAT Law

Since 1 January 2017, managing directors, managers of companies (established and/or VAT registered in Luxembourg), as well as '*de jure*' and '*de facto*' managers in charge of the daily management of such companies, can be held jointly and personally liable in the event of breach of VAT compliance obligations and/or non-payment of the VAT due by the taxpayer they manage.

Increase of penalties for infringements to the VAT Law

Below are some examples of VAT penalties that apply since 1 January 2017:

- Between EUR 250 and EUR 10,000 per infringement in case of breach of VAT compliance rules (e.g. late VAT registration, invoicing, VAT filing and accounting rules) and VAT payment obligations.
- Daily penalties of maximum EUR 25,000 per day in case of absence of/delay in communicating documents/information upon request by the Luxembourg VAT authorities.

These penalties can be higher if the aim or result of the infringement(s) is to elude the payment of VAT or to recover VAT in an irregular manner (penalties can now reach between 10% and 50% of the VAT avoided or improperly claimed back).

Furthermore, aggravated tax fraud (*fraude fiscale aggravée*) and tax swindle (*escroquerie fiscale*) can now be punished with imprisonment.

Automatic exchange of information with respect to tax rulings and advance pricing agreements (APAs)

The Law dated 23 July 2016 concerning the automatic exchange of information with respect to tax rulings and APAs amends and supplements the Law of 29 March 2013 on the exchange of tax information. The Law dated 23 July 2016 aims at implementing the Amending Directive (European Union [EU]) 2015/2376 ('DAC 3') on administrative cooperation in the field of taxation.

According to this Law, the Luxembourg tax authorities must automatically exchange a detailed set of information with other EU member states' tax authorities and the European Commission (EC) (to a more limited extent) for:

- all cross-border rulings or APAs issued, amended, or renewed after 31 December 2016; such exchanges must occur within three months of the end of the half of the calendar year during which the ruling or APA was issued, amended, or renewed
- existing cross-border rulings and APAs issued, amended, or renewed between 1 January 2012 and 31 December 2013; the information must only be communicated if the ruling or APA was still applicable on 1 January 2014, and
- existing cross-border rulings and APAs issued, amended, or renewed between 1 January 2014 and 31 December 2016; the information must be communicated regardless of whether the ruling or APA is still applicable.

By way of exception, the above communication procedure does not apply in cases where a ruling or APA was issued, amended, or renewed before 1 April 2016 for a specific person or group of persons with a group-wide annual net turnover of less than EUR 40 million in the preceding fiscal year. However, this exception does not apply to persons or groups of persons conducting primarily financial or investment activities. Another exception encompasses cases solely related to the tax treatments of one or more individuals. The set of information to be exchanged is summarised in the Form 777 made available by the Luxembourg tax authorities.

Country-by-country (CbC) reporting obligations

On 13 December 2016, the Luxembourg Parliament passed legislation implementing CbC reporting requirements for Luxembourg entities that are part of a multinational enterprise (MNE) group. The new CbC reporting legislation implements into Luxembourg law Council Directive (EU) 20016/881 of 25 May 2016 regarding the mandatory automatic exchange of information in the field of taxation (DAC 4) and it transposes into Luxembourg law part of the three-tiered standardised approach to transfer pricing documentation introduced in Action 13 of the Organisation for

Economic Co-operation and Development (OECD)/G20 Base Erosion and Profit Shifting (BEPS) Project.

The Luxembourg CbC reporting obligations require Luxembourg ultimate parent entities controlling an MNE group whose total consolidated group revenue exceeds EUR 750 million to file CbC reports with the Luxembourg tax authorities. Other Luxembourg companies that are members of MNE groups may also have obligations to file CbC reports in Luxembourg, though foreign voluntary filings are, in practice, accepted. Both Luxembourg MNE group parents and other Luxembourg companies that are members of MNE groups must also comply with (electronic) notification requirements where relevant.

Penalties up to EUR 250,000 are applicable in respect of the notification or CbC reporting in case of late or no filing, incomplete or incorrect filing, or refusal to provide information in case of application of the 'secondary' mechanism.

Updates to the transfer pricing legislation

On 23 December 2016, the Luxembourg Parliament passed legislation that especially sets out new transfer pricing provisions, augmenting the basic arm's-length rule in force since 1 January 2015 and which formally aims at adopting the OECD standard into Luxembourg law.

Luxembourg's transfer pricing regime has been based on Article 56 LITL since 1 January 2015, which broadly replicates the arm's-length principle wording as set out in Article 9 of the OECD Model Tax Convention. The new legislation now introduces a further Article 56bis in the LITL to bring into Luxembourg law some of the key principles and methodologies set out in the OECD transfer pricing guidelines in their 2016 form.

However, the envisaged introduction of those principles does not represent a radical change, as Luxembourg has already recognised the application of the OECD transfer pricing guidelines previously. The Luxembourg legislation becomes more explicit in this area, and, at the same time, adopts the new recommendations stemming from the OECD BEPS project.

In relation to Article 56bis LITL, the Luxembourg tax authorities issued on 27 December 2016 a new transfer pricing circular (*Circulaire du directeur des contributions L.I.R. n° 56/1 - 56/bis/1* - TP Circular) providing guidance for the tax treatment of intragroup financial transactions. The aforementioned TP Circular is effective as of 1 January 2017 and emphasises the importance of adequate substance and a functional analysis, covering the functions, assets, and risks of the transacting parties and their commercial relationship, to determine the appropriate equity level.

Taxes on corporate income

Luxembourg taxes its corporate residents on their worldwide income and non-residents only on Luxembourg-source income.

Businesses with taxable income lower than EUR 25,000 are subject to CIT at a rate of 15%. Businesses with taxable income between EUR 25,000 and EUR 30,001 are subject to CIT computed as follows: EUR 3,750 plus 39% of the tax base above EUR 25,000 (for FY 2017). The CIT rate is 19% for companies with taxable income in excess of EUR 30,000.

The CIT does not apply to tax-transparent entities (e.g. general or limited partnerships or European Economic Interest Groupings).

Although there used to be a minimum CIT for Luxembourg resident companies, no such minimum CIT is applicable as of 2016. It has been replaced by a minimum net wealth tax (*see Net wealth tax (NWT) in the Other taxes section*).

Solidarity surtax
A 7% solidarity surtax is imposed on the CIT amount.

Taking into account the solidarity surtax, the aggregate CIT rate is 20.33% for companies with taxable income in excess of EUR 30,000.

Municipal business tax on income
Municipal business tax is levied by the communes and varies from municipality to municipality. The municipal business tax for Luxembourg City is 6.75%.

The effective combined CIT rate (i.e. CIT, solidarity surtax, and municipal business tax) for Luxembourg City is 27.08%.

Corporate residence

Based on domestic law, a company is considered to be resident in Luxembourg if either its registered office or place of central administration is located in Luxembourg. The registered office is designated as such in the company's articles of incorporation.

The place of central administration is generally understood to mean the place where the company is managed and controlled. While this term is not legally defined, the location of the company's major establishment is determined by facts and circumstances, including the following:

- The place where meetings of the board of directors are held.
- The place where shareholders meetings are held.
- The place where the company's officers make their decisions.
- The place where the company's books and records are kept.
- The place where other, similar factors evidencing management control occur.

Permanent establishment (PE)
The provisions on PEs included in the tax treaties concluded by Luxembourg generally follow the wording of the OECD model.

Under Luxembourg domestic tax law, a similar PE concept exists but is defined in a broader way and is to be understood as every fixed piece of equipment or place that serves for the operation of an established business.

Other taxes

Value-added tax (VAT)

Supplies of goods and services, which are deemed to take place in Luxembourg, are subject to VAT at the standard rate of 17% (lowest standard VAT rate in the European Union) or, on certain transactions, at 14% (e.g. certain wines, advertising pamphlets, management and safekeeping of securities), 8% (e.g. supply of gas or electricity), or 3% (e.g. food [except most alcohol beverages]; pharmaceutical products; books [except e-books]; radio and television broadcasting services [except adult entertainment]; shoes, accessories, and clothes designed for children under the age of 14). Some transactions, such as export and related transport, are zero-rated.

Taxpayers whose activities are subject to VAT are entitled to offset against their VAT payable the amount of such tax charged to them by their suppliers or reverse charged (i.e. self-accounted) by them on import or acquisitions of goods or services from abroad.

Banking, financial, insurance, and reinsurance transactions are generally exempt activities. The VAT paid on costs that have a direct and immediate link with these transactions cannot be recovered except when related to services performed for persons established outside the European Union. VAT on expenses made in the context of 'passive' holding activities, which are considered as outside the scope of VAT, are not recoverable.

A Circular letter released on 30 September 2016 by the Luxembourg VAT authorities has confirmed that the activity performed by independent directors is an economic activity that makes them VATable persons (irrespective of whether the director is a company or a private individual). This activity is, as a rule, subject to VAT at the standard rate of 17% (there are some exceptions to the principle of taxation). VAT returns must be filed on a monthly basis (as well as a recapitulative annual return). Derogations may be obtained, to file quarterly or only annual VAT returns, subject to certain conditions (level of turnover or incoming transactions subject to VAT and level of purchases of goods and services on which Luxembourg VAT must be self-accounted for).

A Standard Audit File for Tax (SAF-T), containing reliable accounting data, has been implemented by the VAT authorities. This specific .xml file is used by taxable persons to make information available to Luxembourg VAT authorities during a VAT audit. Only specific taxable persons (subject to the Luxembourg Standard Chart of Accounts) having a certain minimum number of transactions (+/- 500) and registered under a 'normal filing regime' with a turnover exceeding EUR 112,000 are currently concerned. On the other hand, some entities (i.e. banks and insurance companies) are not yet subject to these SAF-T obligations, although they may be required to provide all VAT-relevant data to the authorities in a structured electronic file.

Customs duties/import tariffs

Based on a European Regulation, goods entering within the territory of the European Union may be subject to customs duties/import tariffs. Applicable rates are based on the nature and on the quantity of the products.

Excise duties

In addition to VAT, some products are subject to specific excise duties. In Luxembourg, these products are electricity, mineral oils, manufactured tobacco, and alcohol.

Excise duties are not based on the sale price of the products but on the quantity. Excise duty becomes chargeable at the time, and in the EU member state, of release for consumption. Release for consumption occurs in any of the following instances:

- The departure of excise goods from a duty suspension arrangement.
- The holding of excise goods outside a duty suspension arrangement where excise duty has not been levied, pursuant to the applicable provisions of Community law and national legislation.
- The production of excise goods outside a duty suspension arrangement.
- The importation of excise goods, including irregular importation, unless the excise goods are placed, immediately upon importation, under a duty suspension arrangement.

Stamp taxes

There is no stamp duty in Luxembourg.

Net wealth tax (NWT)

NWT regime

Both Luxembourg resident companies and Luxembourg branches of non-resident companies are subject to NWT on their net wealth, based on prescribed valuation methods. The following scale of rates applies for NWT:

- On a taxable base of up to EUR 500 million: 0.5%.
- On the taxable base exceeding EUR 500 million: NWT of EUR 2.5 million, plus 0.05% on the component of the NWT base above EUR 500 million. No cap is set.

In general, assets are to be taken into account at market value (except for real estate, which is subject to a special regime). Shareholdings qualifying for the participation exemption (*see Dividend income in the Income determination section*) generally are exempt from NWT.

Minimum NWT

A minimum NWT charge applies as of 1 January 2016 for all corporate entities having their statutory seat or central administration in Luxembourg.

Entities with aggregated fixed financial assets, transferable securities, inter-company receivables, and cash in excess of both 90% of their total gross assets and EUR 350,000 will be subject to a minimum NWT charge of EUR 4,815.

All other corporations with a statutory seat or central administration in Luxembourg (including securitisation vehicles, *Société d'Investissement en Capital à Risque* [SICARs], *Société d'Epargne-Pension à Capital Variable* [SEPCAVs], and *Association d'Epargne-Pension* [ASSEPs]) will be subject to a minimum NWT charge ranging from EUR 535 to EUR 32,100, depending on company's total gross assets, as follows:

Total gross assets (EUR)	Minimum NWT charge (EUR)
Up to 350,000	535
350,001 to 2,000,0000	1,605
2,000,001 to 10,000,000	5,350
10,000,001 to 15,000,000	10,700
15,000,001 to 20,000,000	16,050
20,000,001 to 30,000,000	21,400

Total gross assets (EUR)	Minimum NWT charge (EUR)
30,000,001 and above	32,100

The minimum NWT charge due by a tax unity (*see the Group taxation section*) is capped at EUR 32,100.

The legislation makes it clear that the balance sheet to be used for these purposes is the closing balance sheet for the tax year concerned that is in conformity with all CIT provisions (n.b. rather than the NWT provisions for computing the normal NWT basis). Consequently, all figures to be used are those as shown in the commercial balance sheet, subject only to any specific revaluations necessary to apply CIT provisions.

In particular, shareholdings that qualify for the participation exemption and Luxembourg-situs real estate must both be included in gross assets for these purposes. Conversely, foreign-situs real estate and other assets, such as those of a foreign branch, the income from which is excluded from the Luxembourg tax base under the provisions of a double tax treaty (DTT), are not to be included in gross assets.

NWT reduction

The CIT due in a given year N-1 (e.g. 2016) represents the limit for the NWT reduction for the following year N (e.g. 2017). The CIT to be taken into consideration for the limit of NWT reduction is the amount due, including the employment fund contribution, before any tax credits. As a second limit, the NWT reduction is limited by the minimum NWT as of 2016 (and to the minimum CIT until 2015). In other words, NWT cannot be reduced down to 0 by constituting a NWT special reserve. The minimum NWT remains due.

The NWT reduction for year N (e.g. 2017) has to be requested in the corporate tax returns of year N-1 (e.g. 2016). The NWT special reserve of year N (e.g. 2016) (for the NWT reduction of year N, i.e. 2016) should be kept during the five-year period following the NWT reduction request (i.e. years N, N+1, N+2, N+3, and N+4). After the five-year period (i.e. as from year N+5), the NWT reserve of year N is released and can be either distributed to the shareholders or used to constitute a new NWT reserve.

Subscription tax

Investment funds are subject to subscription tax (at various rates) on their total net assets valued at the last day of each quarter. Institutional funds and monetary funds are subject to an annual rate of 0.01% and the other funds to an annual rate of 0.05%. Funds of institutional funds and monetary institutional funds are exempt from subscription tax.

Exemptions from subscription tax are available for exchange traded funds, and an extension of exemption is available for funds dedicated to multi-employer pension vehicles or to several employers providing pension benefits to their employees.

Where a foreign Undertakings for Collective Investment (UCI) is managed by a Luxembourg-based management company (or where the foreign UCI's place of effective management is located in Luxembourg), the UCI will not be deemed to be domiciled in Luxembourg and therefore not be subject to subscription tax in Luxembourg.

General registration taxes
A fixed registration duty of EUR 75 is levied on certain transactions involving Luxembourg legal entities (i.e. incorporation, amendment to the articles of association, and transfer of seat to Luxembourg).

Real estate transactions
The sale or transfer of immovable property located in Luxembourg is subject to a proportional registration duty (inclusive of the transcription tax) of 7% (plus a city surtax of 3% if the building is located in Luxembourg City).

Contributions of immovable property located in Luxembourg in exchange for securities are subject to a proportional registration duty (inclusive of the transcription tax) of 1.1% (plus a city surtax of 0.3% if the building is located in Luxembourg City).

Contributions of immovable property located in Luxembourg in exchange for other than by shares are subject to a proportional registration duty (inclusive of the transcription tax) of 7% (plus a city surtax of 3% if the building is located in Luxembourg City).

The contribution of immovable property in the context of restructuring transactions are not subject to proportional registration duty if some conditions are met.

Since 1 January 2017, rental agreements are no longer subject to any registration obligation, with the exception of long-term leasing agreements. Parties still have the possibility to register lease agreements voluntarily, notably to determine the date of an agreement for civil law purpose, or make them enforceable against third parties. If the rental agreement is voluntarily registered, registration duty at 0.6% would remain due, unless a valid VAT option has been duly approved by the Luxembourg VAT authorities. In that case, only the fixed registration of EUR 75 duty will apply.

Commune (municipalities) real estate tax
Communes (municipalities) levy an annual real estate tax, the basis of which is the unitary value of real estate, which represents its estimated value in 1941. The basic rate varies from 0.7% to 1% of the unitary value, according to the category of property, and is multiplied by a coefficient, which varies with communes and different types of property. For commercial property, the coefficient in Luxembourg City is 750%, which should be applied to 1% of the unitary value. The real estate tax is deductible for CIT purposes.

Payroll taxes
Payroll taxes have to be withheld by the employer. The top payroll tax withholding rate is 42%. A solidarity tax of a maximum of 9% of tax must also be applied.

Social security contributions
Compulsory social security contributions for employees are listed below:

- For sickness: 3.05% of gross periodic remuneration, which is limited to a monthly ceiling of EUR 9,992.93 (annual ceiling estimated at EUR 119,915.16 for 2017).
- For pension: 8% of gross remuneration, which is limited to a monthly ceiling of EUR 9,992.93 (annual ceiling estimated at EUR 119,915.16 for 2017).
- For dependency contributions: 1.4% of gross remuneration (reduced by EUR 499.65 per month [i.e. estimated at EUR 5,995.80 for 2017]) with no cap.

The social security contributions have to be withheld by the employer from the employee's gross salary.

Branch income

Income of a Luxembourg-based branch of a non-resident company is generally taxed at normal CIT rates. The municipal business tax generally only applies if the branch is carrying on commercial activity within Luxembourg.

Income determination

Inventory valuation

Inventories generally are valued at the lower of actual cost or market cost. There is no statutory specified method. In general, the first in first out (FIFO), the last in first out (LIFO), and the weighted-average costs methods of inventory valuation are acceptable for income tax purposes, provided the method is in accordance with the facts.

Dividend income

Dividends received by a Luxembourg resident company (or by a domestic PE of a non-resident company in certain cases) should, in principle, be subject to CIT.

Participation exemption regime

Dividends received may be tax exempt in Luxembourg, according to the so-called 'participation exemption' regime, if the conditions described below are satisfied:

- The distributing company is:
  - a collective entity falling within the scope of the EU Council 'Parent Subsidiary Directive'
  - a Luxembourg resident joint-stock company, which is fully taxable and does not take one of the forms listed in the LITL, or
  - a non-resident joint-stock company that is fully liable (in its state of residence) to a tax corresponding to the Luxembourg CIT (i.e. as a general rule, it is required that the foreign tax is compulsorily levied at a rate of at least 10.5%, on a basis similar to the Luxembourg one).
- The beneficiary company is:
  - a Luxembourg resident collective entity, which is fully taxable and takes one of the forms listed in the LITL
  - a Luxembourg resident joint-stock company, which is fully taxable and does not take one of the forms listed in the LITL
  - a domestic PE of a collective entity falling within the scope of the Parent Subsidiary Directive
  - a domestic PE of a joint-stock company that is resident in a country with which Luxembourg has concluded a DTT, or
  - a domestic PE of a joint-stock company or of a cooperative company, which is a resident of an EEA member state (other than an EU member state).
- At the date on which the income is made available, the beneficiary has been holding or undertakes to hold, directly (or through a tax transparent entity, *see Transparent entities below*), for an uninterrupted period of at least 12 months, a participation in the share capital of the subsidiary of at least 10% or with an acquisition price of at least EUR 1.2 million.

Nevertheless, consistent with the general principle under the LITL, which denies the deductibility of expenses connected to exempt income, any expenses incurred during the year in which a dividend is received, and which have a direct economic connection to the exempt participation, may only be deducted insofar as they exceed the exempt dividend for the year in question.

General anti-avoidance regime

The Luxembourg participation exemption regime has been amended in order to introduce anti 'hybrid instruments' and 'common minimum anti-avoidance' rules derived from the amended EU Parent/Subsidiary Directive. These provisions apply to income distributed or received after 31 December 2015.

The 'common minimum anti-avoidance rule' will preclude Directive-based benefits whenever there are any arrangements that, having been put into place with a main purpose of obtaining a tax advantage that defeats the object or purpose of the Directive, are 'not genuine'. A 'not genuine' determination should be based on all relevant facts and circumstances. For the 'common minimum anti-avoidance rule', an arrangement should be considered 'not genuine' insofar as it was not structured for 'valid commercial reasons that reflect economic reality'.

The Luxembourg tax authorities have not provided any substantive guidance or interpretation of these new EU-driven measures.

However, if the 'common minimum anti-avoidance rule' is determined to apply, the exemption from Luxembourg withholding tax (WHT) obligations provided by Article 147 2. (a) (or (d)) LITL will not apply to a distribution made to a corporate entity in another EU member state, even if the participation would otherwise be considered a qualifying participation to which this specific exemption should apply. Exemption under other sub-parts of article 147 2. remains available, notably for distributions to a corporate entity that is fully liable for a tax similar to the Luxembourg CIT and which resides in any country (including one within the European Union) that maintains a tax treaty with Luxembourg.

Dividends received from a corporate entity in another EU member state that normally would qualify for the participation exemption of article 166 LITL will be denied this exemption if the 'common minimum anti-avoidance rule' applies. However, if the corporate entity paying the dividend also is fully subject to a tax similar to the Luxembourg CIT, the participation exemption will remain available, since this alternative provision granting the exemption is not subject to the new anti-avoidance rule.

The Article 166 LITL exemption will not be available if the income flow creates a corresponding tax-deductible expense (i.e. a hybrid mismatch) at its source when the source is a corporate entity in another EU member state.

These measures do not affect capital gains or NWT components for Luxembourg corporate entities.

Capital gains

Capital gains (and losses) generally are taxed as ordinary income (or losses). It is possible to defer the taxation of gains on certain fixed assets where the proceeds are used to acquire replacement items. Under certain conditions, capital gains and hidden reserves may be deferred or exempted and remain untaxed in a merger or another form of reorganisation of resident companies or other EU companies.

In general, capital gains on the disposal of qualifying shareholdings held by entities eligible to the participation exemption regime are tax exempt, provided (i) the shareholding constitutes at least 10% of total ownership in the share capital or an acquisition price of at least EUR 6 million and (ii) the disposing company has held or intends to hold a qualifying shareholding for at least 12 months.

A recapture system exists wherein the capital gain realised will become taxable up to the amount of the aggregate expenses and write-downs in relation to the participation deducted during the year of realisation of the exempt capital gain and in previous years.

The purpose of the system is to avoid a taxation vacuum, which would be the result if the deductibility of expenses and write-downs connected to the participation was allowed, while the income arising from the participation is tax exempt. This system should, in principle, remain tax neutral, as the company should have available carryforward losses for an equivalent amount resulting from the aforementioned deductions (unless previously used to offset other taxable income).

Taxation of non-resident corporate investors on gains upon disposal of shares
In case a non-resident corporate investor (non-treaty protected) derives income from the disposal of an important participation (i.e. representing at least 10% of the share capital) in a Luxembourg company within six months of its acquisition, said capital gain will be subject to CIT in Luxembourg unless a tax treaty provides otherwise.

Non-resident investors are not subject to the aforementioned capital gains tax upon disposal of shares in a Luxembourg *Société d'Investissement à Capital Variable* (SICAV), *Société d'Investissement en Capital à Risque* (SICAR), and *Société de gestion de Patrimoine Familial* (SPF).

Interest income
Under Luxembourg accounting and tax principles, interest income is recognised on an accrual basis and is fully subject to CIT and municipal business tax.

Royalty income
As a matter of principle, royalty income and expenses derived from intellectual property (IP) assets acquired or developed after 30 June 2016 are subject to the standard tax regime (i.e. CIT and municipal business tax) and rates. *For additional details in this respect, see Intellectual property (IP) regime in the Tax credits and incentives section*.

Transparent entities
From a Luxembourg tax perspective, a transparent entity is seen as having no legal personality distinct from that of its partners (those transparent entities are commonly referred to as 'partnerships') for CIT and NWT purposes, although it may be regarded as a separate legal entity from a civil/corporate law point of view. Provided that the partnership carries out a commercial activity, however, it may be liable to municipal business tax on its own.

Foreign income
A Luxembourg tax resident company is liable for CIT on its worldwide income. Foreign-source income is therefore taxable in Luxembourg, unless a DTT provides for an exemption.

Dividends from foreign subsidiaries are taxed when received, except where exempt as mentioned above (under conditions, the exemption method applies in many DTTs of Luxembourg). Profits of a foreign branch that are not exempt by means of a DTT may benefit from a foreign tax credit. Any foreign taxes paid in excess of the tax credit are deductible as expenses. Luxembourg is using the exemption method in most of its DTTs.

Deductions

Depreciation
Depreciation rates must be consistent with economic reality. The depreciation must be calculated on the total acquisition cost, bearing in mind the normal life of the asset and the estimated residual value. As generally provided by the Luxembourg tax law, the accounting depreciation should be followed for tax purposes.

Depreciation normally is calculated using the straight-line method. However, the declining-balance method is permitted for fixed assets, other than buildings and intangible assets. The depreciation rate may not, however, exceed three times the rate applicable according to the straight-line method, or 30% (four times the applicable rate in the case of assets used exclusively for scientific and technical research, or 40%).

It is permissible to change from the declining-balance method to the straight-line method, but the opposite is not allowed.

In the event of a sale of a depreciated asset, the net book value at the moment of the disposal must be compared with the sales price of that asset. If this comparison indicates a profit, corresponding income tax may be due unless the sales price is reinvested in eligible assets. Capital losses are deductible.

Under certain conditions, fixed assets with a value of less than EUR 870 or an economic life that is not in excess of one year can be expensed fully in the year of acquisition. Special accelerated depreciation on 80% of the cost of fixed assets is available for assets that protect the national environment, save energy in Luxembourg, or permit the development of workplaces for handicapped workers, under certain conditions.

Deferred depreciation
The rules governing depreciation of fixed assets for tax purposes have been amended as of 2017 in order to offer the possibility for taxpayers to defer deductions related to depreciation for any given tax year. For this purpose, a specific request needs to be made when filing the tax return for the year concerned.

The deduction can be deferred until, at the latest, the end of the depreciation life of the asset (i.e. any depreciation amounts deferred from previous years have to be deducted at the latest for the last year for which depreciation is allowed).

The application of this measure could potentially result in a timing difference that would increase the CIT and municipal business tax to be paid by a taxpayer for any given year. However, this might allow the taxpayer to reduce its NWT base, assuming certain conditions apply and that the taxpayer decides to book a special NWT reserve to reduce its NWT liability for the year concerned. This measure might also allow taxpayers to use investment and other tax credits during a tax year, whereas the company might otherwise have been unable to do this because it was in a tax loss position.

Goodwill
Goodwill is generally amortised over its useful life. In cases where its lifespan cannot be reliably estimated, goodwill cannot be amortised for a period longer than ten years. The Luxembourg tax treatment will follow the applicable accounting treatment.

Start-up expenses
Formation expenses can either be directly charged to the profit and loss account of the year in which they are incurred or depreciated on a straight-line basis over a five-year maximum period. The accounting treatment is followed for Luxembourg tax purposes.

Interest payments
Interest payments are, in principle, deductible to the extent they comply with the arm's-length principle (*see Transfer pricing in the Group taxation section*).

Non-deductibility of the interest payments may arise in case they depend on the profits realised by the company or are derived from loans structured in the form of bonds or similar securities. Also, the deductibility will be limited in cases where the company is considered as being thinly capitalised (*see Thin capitalisation in the Group taxation section*).

Bad debt
Provisions for bad debts are generally tax deductible.

Charitable contributions
Gifts for scientific, charitable, or public purposes to institutions of general interest are deductible, subject to a maximum of 20% of the net income or up to an amount of EUR 1 million (the minimum being EUR 120), with a possibility to spread the deduction over two years in case of excess.

Shareholdings
Expenses connected to the business activity of a taxpayer are, in principle, tax deductible. However, expenses linked to a shareholding qualifying for the participation exemption, including write-downs in the value of the shareholding booked as a consequence of a dividend distribution, are not deductible, up to the amount of the exempt dividend.

In the event of disposal of a shareholding financed by debt, recapture rules may apply. Basically, the effect of this rule is that the proceeds will become taxable up to the amount of the aggregate expenses and write-downs in relation to the participation deducted during the year of disposal and the previous years.

Luxembourg resident companies are subject to the NWT based on their net wealth.

Severance payouts or 'golden handshakes'
Severance payouts or 'golden handshakes' are deductible for CIT and municipal business tax purposes, up to EUR 300,000.

Fines and penalties
Fines and penalties suffered by the taxpayer are not considered as operating expenses and are therefore not tax deductible.

Taxes
Several taxes are deductible in determining income subject to CIT, including the registration duties and real estate tax. Also, certain taxes are credited against the computed amount of income tax owed, including taxes withheld from Luxembourg dividend income received, tax withheld abroad from dividend and interest income received by a Luxembourg corporation (subject to limitations), and investment tax credits (*see the Tax credits and incentives section*). Foreign taxes are also deductible as expenses if not otherwise credited.

The main non-deductible taxes are CIT, municipal business tax, and NWT, as well as interest and penalties for late payment of said taxes.

Net operating losses
Losses generated as of 1 January 2017 will only be able to be carried forward for a maximum period of 17 years. Losses that arose before 1 January 2017 are not affected by this limitation. Losses cannot be carried back.

Payments to foreign affiliates
Royalties, management service fees, and interest charges paid to foreign affiliates by a Luxembourg company are deductible items, provided they are equal to what the company would pay an unrelated entity for comparable services (application of the arm's-length principle).

Group taxation

Luxembourg permits tax unity. Generally, the conditions to qualify for tax unity include that:

- each company that is part of the tax unity is a fully taxable company that is resident in Luxembourg (the top entity may be a Luxembourg PE of a fully taxable non-resident company)
- at least 95% of each subsidiary's capital is directly or indirectly held by the head of the fiscal unity
- each company's fiscal year starts and ends on the same date, and
- tax unity is requested jointly by the top company and each subsidiary that becomes a member of the group.

Tax unity lasts for a five-year period (minimum), and the taxable income/loss of the tax unity is computed as the sum of the taxable income/loss of each integrated entity. Tax losses incurred before the consolidation period may be offset only against tax profits of the company that incurred the loss. Tax losses that are sustained by a group member during the consolidation period are offset against the tax profits of the other group members. Tax losses arising during the consolidation period that remain after the consolidation remain attributed to the parent company.

The tax unity regime in Luxembourg has been extended since 1 January 2016 in accordance with case law from the European Court of Justice in particular to allow horizontal integration. Qualifying companies that are held by a common parent company established in any EEA country, the latter being subject to a tax comparable to Luxembourg's CIT in its country of residence, may now form a tax unity.

A tax unity also may include a Luxembourg PE of a company established in any country that is subject to a tax comparable to Luxembourg's CIT. The PE would be considered as the 'integrated' entity.

Transfer pricing

At arm's-length principle

Luxembourg transfer pricing legislation provides that transactions between related parties (cross border as well as domestic) have to be governed by the arm's-length principle endorsed by the OECD (restated Article 56 LITL as of 1 January 2015). In essence, this means when the two enterprises are, within their commercial or financial relations, subject to conditions made or imposed that differ from those that would be made between independent enterprises, the profits of these enterprises are to be determined under conditions prevailing between independent enterprises.

As of 1 January 2017, Luxembourg introduced Article 56bis LITL that explicitly brings into the law some of the key principles and methodologies set out in the OECD Guidelines. It implements the requirement for making an accurate delineation of controlled transactions and the OECD concept of comparability analysis. Article 56bis LITL further contains a general anti-abuse rule (GAAR) measure that may disregard a transaction that has been made without any valid commercial rationality.

Luxembourg Transfer Pricing Guidelines

For intra-group financing on-lending transactions, specific guidelines are provided for in a new Circular LITL No. 56/1 - 56bis/1 (TP Circular) issued by the Luxembourg tax authorities on 27 December 2016. This circular replaces the previous transfer pricing circulars published in 2011. According to the new Circular, the OECD arm's-length principle should be applied to determine the compensation of Luxembourg companies engaged in financial on-lending transactions. The remuneration of the Luxembourg companies should be determined based on a return-on-equity approach.

A written clearance (i.e. unilateral APA) from the Luxembourg tax authorities on the set of criteria for the determination of the transfer pricing for the financial on-lending transactions can be obtained, provided that the Luxembourg company meets certain substance and equity-at-risk requirements.

In respect of the equity-at-risk requirement, the former requirement that a Luxembourg company must be at risk for an amount equal to, at least, the lower of (i) 1% of the nominal value of the loan intermediated or (ii) EUR 2 million is no longer applicable.

Absence of meeting the substance and equity risk requirements may result in an exchange of information. In addition, the arm's-length remuneration has to be documented by way of a transfer pricing analysis.

For all other intra-group transactions, Luxembourg generally applies the OECD guidelines.

Documentation
As far as transfer pricing documentation is concerned, new Section 3 of Paragraph 171 of the General Tax Law of 22 May 1931 (*Abgabenordnung*) clarifies that taxpayers are required to:

- disclose their transactions with related parties and
- document their compliance with the arm's-length principle.

No specific guidelines are provided on the nature and extent of the documentation required, which should depend on the circumstances of the case under consideration. In practice, the OECD transfer pricing guidelines should be applied.

Although Action 13 of the OECD/G20 BEPS initiative has not yet been formally implemented in local law, it would be reasonable to expect such to happen.

Burden of proof, statute of limitation, and penalties
In terms of the burden of proof, taxpayers are required to provide the Luxembourg tax authorities with the documentation to demonstrate the application of the arm's-length principle. In the absence of such documentation, the Luxembourg tax authorities can challenge the correct application of the arm's-length principle and, without giving precise explanations, presume a reduction of the taxable income and apply corrections. In effect, this would result in an ultimate reversal of the burden of proof towards the taxpayer.

The statute of limitations is generally five years from the end of the year in which the tax liability arises. This period may be extended if a deferred payment is granted. In case of tax evasion or fraud, as well as in case of incomplete tax returns, the statute of limitations can be extended up to ten years.

There are no specific penalties in relation to transfer pricing in Luxembourg, but the penalty regime under the CIT will be applicable.

Advance pricing agreement (APA)
Taxpayers can file unilateral and bi- or multi-lateral APAs with the Luxembourg tax authorities. An administrative fee in the amount of EUR 10,000 is due to the Luxembourg tax authorities for the filing of the APAs under the new Paragraph 29a of the above-mentioned General Tax Law of 22 May 1931.

The TP Circular provides that any individual decision relating to the arm's-length principle that the Luxembourg tax authorities have made on the basis of the rules applicable before Article 56bis LITL entered into force is no longer binding. The TP Circular further details the requirements applicable to new APAs.

Thin capitalisation
No thin capitalisation ratio is specifically provided by the Luxembourg tax law.

In practice, the tax authorities apply an 85:15 debt-to-equity ratio for the intra-group financing of participations. Should the 85:15 ratio not be complied with by the taxpayer, the surplus of interest can be re-qualified by the tax authorities as a hidden distribution of profits that would be non-deductible and potentially subject to a 15% WHT.

Controlled foreign companies (CFCs)
Luxembourg tax law does not provide for CFC rules.

Tax credits and incentives

Foreign tax credit
See Foreign income in the Income determination section for a description of the foreign tax credit regime.

Inbound and capital investment incentives
Luxembourg tax law provides for various incentives, with specific requirements, in the areas of risk capital, audio-visual activities, environmental protection, R&D, professional training, and recruitment of unemployed persons.

The most commonly used incentives are the investment tax credits. Luxembourg tax law provides for two types of investment tax credits.

First, a tax credit is available that amounts to 13% of the increase in investments in tangible depreciable assets made during the tax year. The increase in investment over a given tax year is computed as the difference between the current value of all qualifying assets and the reference value allocated to the same type of assets.

Independently, the company may benefit from a 8% tax credit on the first EUR 150,000 of qualifying new investments and a 2% tax credit on the amount of new investments exceeding EUR 150,000 in tangible depreciable assets as well as investments in sanitary and central heating installation in hotel buildings and investments in buildings used for social activities. The above 7% and 2% rates are increased to 9% and 4% for investments eligible for special depreciation (i.e. investments favouring the protection of the environment, the realisation of energy savings, or the creation of employment for handicapped workers). However, certain investments are excluded from the credit calculation, including investments in real property, intangible assets, and vehicles (unless specifically allowed by the law).

Domestic law requires that investments be physically operated in Luxembourg or in the European Economic Area in order to be eligible for the incentive, unless the investment consists of shipping vessels operating in international waters. In addition, the tax benefit of the tax credit is limited to investments that are made within a Luxembourg business establishment and that are intended to be used permanently in Luxembourg.

Further to the Court of Justice of the European Union (CJEU) decision dated 22 December 2010 (Tankredeerei, C-287/10), the Luxembourg tax authorities issued a Circular letter confirming that the investment tax credit must be granted to any investment used within the EU and EEA member states.

Intellectual property (IP) regime
The prior Luxembourg IP regime (Article 50 *bis* of the LITL) allowed a tax exemption on 80% of the net income and capital gains derived or deemed to be derived from a wide variety of IP. The regime began to phase out on 1 July 2016, in line with the recommendations of the EU's Code of Conduct for Business Taxation Group and the OECD/G20 BEPS Project Final Report on Countering Harmful Tax Practices.

The prior IP regime was repealed effective 1 July 2016 for CIT and municipal business tax purposes and 1 January 2017 for NWT purposes.

Taxpayers owning IP assets that currently benefit from the prior IP regime will continue benefitting during the transitional period through 30 June 2021.

IP assets acquired after 1 January 2016 also may benefit from the prior IP regime through 30 June 2021, provided that:

- they were developed or acquired from unrelated parties before 1 July 2016, or
- they were acquired from a related party before 1 July 2016 (including through a tax-neutral transaction) and were already eligible for the prior IP regime or benefited from a foreign country's IP regime that was similar to the prior IP regime in Luxembourg before the acquisition.

IP assets acquired from any related party between 31 December 2015 and 30 June 2016 that did not benefit from an IP regime before being acquired will only be eligible for the prior IP regime through 31 December 2016.

IP assets acquired or developed after 30 June 2016 cannot benefit from the prior IP regime. Those assets and related income and expenses will be subject to the standard tax regime and rates or may benefit from a future IP regime that could be based on the 'nexus' approach prescribed by the EU Code of Conduct Group and the OECD to counter harmful tax practices.

R&D incentives

Luxembourg entities involved in innovative and R&D activities can benefit from financial support in addition to the specific IP tax regime and general tax incentives.

Innovation loans may be granted by the *Société Nationale de Crédit et d'Investissement* and may carry a fixed interest rate lower than the market rate. Financial support may also be granted in the form of cash grants or interest subsidies.

R&D projects or programmes receive financial support up to a maximum eligibility (percentage of costs eligible for the incentives) depending on the size of the beneficiary (private research companies or organisations) as follows:

- Large (25% to 100% depending on the investment).
- Mid-size (35% to 100%).
- Small (45% to 100%).

These incentives are available for:

- experimental development
- experimental development and cooperation
- industrial research
- industrial research and cooperation, or
- fundamental research.

Innovation in process and organisation and investment in innovation pools can benefit from financial support of between 15% and 35% (50% for public research companies).

Promotion and development of innovation pools can benefit from financial support of up to 50% for private organisations or 75% for public research companies.

Research regarding technical feasibility can benefit from financial support of up to 40% or 50% if prior to experimental development and up to 65% or 75% if prior to experimental research.

Other incentives by entity

Investment funds

Investment funds resident in Luxembourg generally are exempt from CIT, municipal business tax, and WHT on dividends. These investment funds are subject to the subscription tax and to the general registration duty regime.

Financial participation company (Soparfi)

A Soparfi (*Société de Participation Financière*) is neither a specific type of company nor a special tax regime. It is, rather, a name used to refer to resident companies that hold and manage the shareholdings of subsidiaries. As any Luxembourg resident company, a Soparfi is subject to CIT, municipal business tax, and NWT; it benefits from Luxembourg's DTTs, EU Directives (e.g. Parent Subsidiary Directive), the domestic participation exemption on dividends received, and capital gains on qualifying participations.

Private wealth management company (Société de gestion du Patrimoine Familial or SPF)

The SPF has been tailored to enter the private sphere of individuals for the purpose of wealth management. Its corporate objective is restricted to the acquisition, holding, management, and disposal of financial assets, to the exclusion of any commercial activity. As a general rule, an SPF is exempt from Luxembourg taxation on income and NWT in Luxembourg. A yearly subscription tax of 0.25% is due on the basis of paid-up capital, share premium, and excessive debts. Subscription tax, however, is capped at EUR 125,000. No WHT applies on dividends distributed by an SPF. Non-resident investors are not taxed in Luxembourg on dividends paid by an SPF or on capital gains realised on shares in an SPF.

Securitisation companies (SCs)

An SC is a company that carries out securitisation activities or participates in securitisation transactions. SCs are subject to normal corporate taxation based on their net accounting profit (i.e. gross accounting profits minus expenses). However, the commitment to remunerate the holders of securities (both capital and debt) issued by the SC qualifies as interest on debt even if paid as return on equity. SCs are not subject to NWT in Luxembourg.

Venture capital vehicle (Société d'Investissement en Capital à Risques or SICAR)

The SICAR is an entity mainly used for private equity investments. Incorporated under a corporate form, the SICAR is subject to income tax at the normal rate with the benefit of an exemption on income and gains (e.g. dividends, capital gains, liquidation proceeds, interest) from transferable securities qualifying as investments in risk capital, as well as income arising from investments in liquid assets pending their investment in risk capital for a maximum of 12 months. In addition, it can benefit from the European directives and DTTs. SICARs are exempt from NWT. Under the form of a limited partnership, the SICAR is treated as a tax transparent entity, and investors are taxed according to the rules of their country of residence. SICARs treated as tax transparent entities do not benefit from the European directives and DTTs. The SICAR mainly targets qualified or informed investors (i.e. 'professional' investors).

Financial services companies
Banks, securities depositaries, insurance and reinsurance companies, as well as other financial service companies, may benefit from specific regulations when establishing their taxable basis for CIT (e.g. provision for the neutralisation of unrealised exchange gains, general banking risk provision, provision for guarantee of deposits, mathematical reserves, and/or catastrophe reserves).

Shipping companies
Luxembourg-resident shipping companies are not subject to municipal business tax and can benefit from investment tax credits and accelerated depreciation (even for used assets).

Withholding taxes

Dividends paid by a Luxembourg fully taxable company to its 'corporate' shareholders resident in a treaty country, which hold or commit themselves to hold a participation of at least 10% in the Luxembourg company (or shares with an acquisition price of at least EUR 1.2 million) for an uninterrupted period of at least 12 months, may be exempt from WHT (*see Note 1 below for more details*).

The following taxes are withheld on payments made. The WHT due on dividends paid to residents of a treaty country cannot exceed the non-treaty rate.

	Dividends (%)			
Recipient	**Portfolio**	**Substantial holdings (1)**	**Interest (%) (2)**	**Royalties (%) (3)**
Resident corporations	15	0	0	0
Resident individuals	15	15	20 (4)	0
Non-resident corporations and individuals:				
Non-treaty	15	0/15	0	0
Treaty (1, 5):				
Andorra	15	0/5 (25)	0	0
Armenia	15	0/5 (6)	0	0
Austria	15	0/5 (7)	0	0
Azerbaijan	10	0/5 (8)	0	0
Bahrain	10	0 (6)	0	0
Barbados	15	0 (9)	0	0
Belgium	15	0/10 (10)	0	0
Brazil	25	0/15 (6)	0	0
Brunei (26)	10	0 (6)	0	0
Bulgaria	15	0/5 (7)	0	0
Canada	15	0/5 (6)	0	0
China, People's Republic of	10	0/5 (7)	0	0
Croatia	15	0/5 (6)	0	0

	Dividends (%)			
Recipient	Portfolio	Substantial holdings (1)	Interest (%) (2)	Royalties (%) (3)
Czech Republic	10	0 (11)	0	0
Denmark	15	0/5 (7)	0	0
Estonia	10	0 (6)	0	0
Finland	15	0/5 (7)	0	0
France	15	0/5 (7)	0	0
Georgia	10	0/5 (12)	0	0
Germany	15	0/5 (6)	0	0
Greece	7.5	0	0	0
Guernsey	15	0/5 (6)	0	0
Hong Kong	10	0 (13)	0	0
Hungary	15	0/5 (7)	0	0
Iceland	15	0/5 (7)	0	0
India	10	0	0	0
Indonesia	15	0/10 (7)	0	0
Ireland, Republic of	15	0/5 (7)	0	0
Isle of Man	15	0/5 (6)	0	0
Israel	15	0/5 (6)	0	0
Italy	15	0	0	0
Japan	15	0/5 (14)	0	0
Jersey	15	0/5 (6)	0	0
Kazakhstan	15	0/5 (15)	0	0
Korea, Republic of	15	0/10 (6)	0	0
Laos	15	0/5 (6)	0	0
Latvia	10	0/5 (7)	0	0
Liechtenstein	15	0/5 (16)	0	0
Lithuania	15	0/5 (7)	0	0
Macedonia	15	0/5 (7)	0	0
Malaysia	10	0/5 (6)	0	0
Malta	15	0/5 (7)	0	0
Mauritius	10	0/5 (6)	0	0
Mexico	15	0/5 (6)	0	0
Moldova	10	0/5 (17)	0	0
Monaco	15	0/5 (6)	0	0
Morocco	15	0/10 (7)	0	0
Netherlands	15	0/2.5 (7)	0	0
Norway	15	0/5 (7)	0	0
Panama, Republic of	15	0/5 (6)	0	0
Poland	15	0 (18)	0	0
Portugal	15	0	0	0
Qatar	10	0/5 (25)	0	0
Romania	15	0/5 (7)	0	0
Russia	15	0/5 (19)	0	0
San Marino	15	0 (9)	0	0
Saudi Arabia	5	0	0	0
Serbia	10	0/5 (7)	0	0
Seychelles	10	0 (6)	0	0
Singapore	15	0	0	0
Slovak Republic	15	0/5 (7)	0	0

Recipient	Dividends (%) Portfolio	Substantial holdings (1)	Interest (%) (2)	Royalties (%) (3)
Slovenia	15	0/5 (7)	0	0
South Africa	15	0/5 (7)	0	0
Spain	15	0/5 (20)	0	0
Sri Lanka	10	0/7.5 (7)	0	0
Sweden	15	0 (9)	0	0
Switzerland	15	0/5 (21)	0	0
Tajikistan	15	0 (9)	0	0
Taiwan	10/15 (24)	0	0	0
Thailand	15	0/5 (7)	0	0
Trinidad and Tobago	10	0/5 (6)	0	0
Tunisia	10	0	0	0
Turkey	20	0/5 (7)	0	0
Ukraine (26)	15	0/5 (17)	0	0
United Arab Emirates	10	0/5 (6)	0	0
United Kingdom	15	0/5 (7)	0	0
United States	15	0/5 (22)	0	0
Uruguay (26)	15	0/5 (6)	0	0
Uzbekistan	15	0/5 (7)	0	0
Vietnam	15	0/5/10 (23)	0	0

Notes

These notes are not extensive. The full text of the DTT should be checked for a comprehensive view on the conditions of application of reduced rates.

1. Under Luxembourg domestic law, no WHT is levied on dividends paid by a Luxembourg qualifying subsidiary to an entity that is:
   a. a collective entity falling within the scope of the Parent Subsidiary Directive
   b. a Luxembourg resident joint-stock company, which is fully taxable and does not take one of the forms listed in the LITL
   c. a PE of a collective entity falling under the previous categories
   d. a collective entity that is resident in a country with which Luxembourg has concluded a DTT and is fully liable to a tax corresponding to the Luxembourg CIT, or a domestic PE of such an entity
   e. a Swiss resident joint-stock company that is subject to Swiss CIT without benefiting from any exemption
   f. a joint-stock company or a cooperative company that is resident in an EEA member state (other than an EU member state) and is fully liable to a tax corresponding to the Luxembourg CIT, or
   g. a PE of a joint-stock company or of a cooperative company that is resident in an EEA member state (other than an EU member state), and
   h. at the date on which the income is made available, the beneficiary has been holding or undertakes to hold, directly, for an uninterrupted period of at least 12 months, a participation of at least 10%, or with an acquisition price of at least EUR 1.2 million in the share capital of the income debtor.

   Qualifying shareholders under (b) to (g) above need to be fully taxable collective entities subject in their country of residence to a tax similar to that imposed by Luxembourg. As a general rule, this requirement is met if the foreign tax is compulsorily levied at an effective rate of at least 10.5%, on a basis similar to the Luxembourg one.

2. Interest paid to non-residents generally is not subject to WHT in Luxembourg. However, interest that represents a right to profit participation on a bond may be assimilated to a dividend and subject to WHT. Further analysis should be made to determine the applicable reduced rate on the basis of the treaty (i.e. pursuant to dividend or interest clause).
3. Royalties paid to non-residents are not subject to WHT in Luxembourg, whether the companies are associated or not.
4. A WHT of 20% is withheld on defined interest income paid by a Luxembourg paying agent to resident individuals. Interest indirectly cashed through investment funds are out of the scope of this WHT.

5. DTTs have been concluded with Albania, Botswana, Cyprus, Kuwait, Kyrgyzstan, Oman, and Senegal, but are not yet in force. A new DTT with Hungary was signed, but domestic transposition procedures are still pending.
6. The recipient company (other than a partnership, as the case may be) holds (beneficially; for the DTT with Mauritius, directly) at least 10% of the Luxembourg company's capital (or at least 10% of the voting power in the Luxembourg company, as the case may be).
7. The recipient company (other than a partnership, as the case may be) holds (beneficially; for the DTT with Finland and the United Kingdom, directly or indirectly) at least 25% of the Luxembourg company's capital (or at least 25% of the voting power in the Luxembourg company, as the case may be).
8. The recipient company holds (beneficially), directly or indirectly, at least 30% of the Luxembourg company's capital and with an investment equivalent to at least 300,000 United States dollars (USD).
9. The recipient company (other than a partnership, as the case may be) directly holds (beneficially) at least 10% of the Luxembourg company's capital for an uninterrupted period of at least 12 months prior to the decision to distribute the dividends.
10. The recipient is a company (with the exception of general partnerships, limited partnerships, and cooperative societies) whose direct participation, held since the beginning of its financial year, in the capital of the company (with the exception of general partnerships, limited partnerships, and cooperative societies) paying the dividends is at least 25% or has an acquisition price of at least 250 million francs. The provisions of paragraph 1 (a) shall also apply where the dividends are paid to two or more companies (with the exception of general partnerships, limited partnerships, and co-operative societies) the sum of whose participations, held since the beginning of their respective financial years, in the capital of the company (with the exception of general partnerships, limited partnerships, and co-operative societies) paying the dividends is at least 25% or has an acquisition price of at least 250 million francs and where one of the recipient companies owns more than 50% of the registered capital of each of the other recipient companies.
11. The recipient company (other than a partnership, as the case may be) has held (beneficially) a participation of at least 10% in the distributing company's capital for an uninterrupted period of at least 12 months.
12. The rate of WHT is 5% if the beneficial owner is a company that directly or indirectly owns at least 10% of the capital of the company paying the dividends and made an investment in the capital of the paying company of more than EUR 100,000, or the equivalent in Georgian currency. No WHT is levied when the beneficiary company directly or indirectly owns at least 50% of the capital of the company paying the dividends and made an investment in the capital of the paying company of more than EUR 2 million, or the equivalent in Georgian currency.
13. No WHT is levied if the recipient company (other than a partnership) holds (beneficially) at least 10% of the Luxembourg company's capital or a participation with an acquisition price of at least EUR 1.2 million.
14. The recipient company holds at least 25% of the Luxembourg company's voting shares during the period of six months immediately before the end of the accounting period in which the distribution of profits takes place.
15. The beneficial owner is a company (other than a partnership) that holds at least 15% of the Luxembourg company's capital.
16. No WHT is levied when the beneficiary of the dividend is a company (other than a partnership) that has directly held a participation of at least 10% (or with an acquisition price of at least EUR 1.2 million) of the distributing company's share capital for an uninterrupted period of at least 12 months. The rate of 5% of WHT applies if said participation has been held for less than 12 months.
17. The beneficial owner is a company (other than a partnership) that holds at least 20% of the Luxembourg company's capital.
18. The beneficial owner of the dividends is a company (other than a partnership) that has directly held a participation of at least 10% of the distributing company's capital for an uninterrupted period of at least 24 months preceding the payment date of the dividend.
19. The recipient company holds at least 10% of the Luxembourg company's capital and made an investment in the capital of the paying company of more than EUR 80,000, or the equivalent in roubles.
20. The recipient company (other than a partnership) holds at least 25% of the Luxembourg company's capital for an uninterrupted period of at least one year preceding the payment date of the dividend.
21. The 5% WHT applies if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the Luxembourg company's capital. No WHT is levied if the beneficial owner is a company that is a resident of the other contracting state and that directly holds, for an uninterrupted period of two years, at least 10% of the capital of the company paying the dividends, or if the beneficial owner is a pension fund.
22. A 5% WHT is levied on dividend distributions where the beneficial owner is a company that holds at least 10% of the voting power of the paying company. No WHT is levied when the US company has directly held, during an uninterrupted period of two years preceding the payment date of the dividend, at least 25% of the voting rights of the paying company and certain conditions regarding the nature of activities performed by the distributing company are met.
23. The rate of 5% of WHT applies where the recipient company directly or indirectly owns at least 50% of the share capital of the paying company or has contributed more than USD 10 million, or the equivalent in Luxembourg or in Vietnamese currency, in the capital of the company paying the dividends. The rate of 10% of WHT applies where the beneficial owner is a company that directly or indirectly holds at least 25% but less than 50% of the capital of the company paying the dividends and has contributed not more than USD 10 million, or the equivalent in Luxembourg or Vietnamese currency, in the capital of the company paying the dividends.

24. The 15% WHT applies if the beneficial owner is a collective investment vehicle treated as a body corporate in Taiwan. The 10% WHT applies in all other cases.
25. The 5% WHT applies if the beneficial owner is an individual who directly holds at least 10% of the Luxembourg company's capital and who has been resident in Qatar for a period of 48 months immediately preceding the year within which the dividends are paid. The 0% WHT applies if the beneficial owner is a company that directly holds at least 10% of the Luxembourg company's capital.
26. The DTT will be applicable as of 1 January 2018.

Tax administration

Taxable period

The taxable period for Luxembourg fully taxable resident entities follows the financial year (i.e. accounting year) of the company.

Companies generally use the calendar year for accounting purposes but may apply a different accounting year. The taxable period would, in such cases, correspond to this different accounting year. The tax year is the year in which the accounting year ends.

Tax returns

Companies must file their tax returns by 31 May of each year following the calendar year during which the income was earned. As of FY 2017, tax returns for companies liable to CIT have to be mandatorily filed electronically.

Assessments are issued after the end of the tax year and normally can be finalised within five years, although the delay may extend to ten years if the declaration is found to be incomplete or inexact, with or without the intention of fraud. Once issued, the tax assessment notice is, in principle, final (unless new facts come to light).

Tax assessments are issued by the tax authorities immediately upon receipt of the tax return, based on the taxable profit reported by the company. The tax authorities may then reassess or request more information on the return within the period of five years that follows the receipt of the tax return.

Luxembourg companies are free to choose the currency in which they wish to prepare their commercial accounts to the extent that it is freely tradable currency. Luxembourg companies that expect to conduct most of their business in a currency other than euros will therefore generally opt to use that 'foreign' functional currency to draw up their financial statements. In particular, this will save such companies from having to recognise, for accounting purposes, foreign exchange gains and losses that do not reflect the economic reality of their business.

Nevertheless, as a general rule, Luxembourg taxpayers in such a situation have until now been required to file their tax returns in euros, basing these returns on euro-denominated tax balance sheets. Luxembourg taxpayers are allowed, upon request, to determine their taxable basis solely in a 'foreign' functional currency, and then only having to convert the final basis figure into euros. This has averted the need to establish a euro-denominated tax balance sheet simply for tax filing purposes.

Circular L.G.-A n°60, issued by the Luxembourg tax authorities on 21 June 2016, formalises this well-established practice and provides a clear framework.

Payment of tax

Quarterly tax advances must be paid. These payments are fixed by the tax administration on the basis of the tax assessed for the preceding year or on the basis of the estimate for the first year. This estimate is given by the company pursuant to the request of the Luxembourg tax authorities.

Final payment of CIT must be paid by the end of the month that follows the month of reception by the company of its tax assessment.

Topics of focus for tax authorities

Further to the introduction of a comprehensive legal framework in this respect, Luxembourg tax authorities focus increasingly on transfer pricing matters, and the methods used to determine the arm's-length remuneration of Luxembourg-based companies are being closely assessed by the Luxembourg tax authorities.

Other issues

Implementation of the Foreign Account Tax Compliance Act (FATCA)

FATCA is a set of information reporting rules designed to prevent and detect tax evasion by United States (US) persons. It reflects and promotes a global trend towards greater tax transparency and increased worldwide efforts to combat tax fraud in many sectors of the financial world. It also builds the basis for other international developments in this respect, such as the Common Reporting Standard (CRS) initiated by the OECD.

Even though FATCA originated in the United States, it also affects non-US entities.

Luxembourg signed an Intergovernmental Agreement (IGA) Model 1 with the United States on 28 March 2014 under the terms of which FATCA will be applied in Luxembourg. The IGA was ratified on 24 July 2015 by the Luxembourg parliament.

Based on the IGA, Luxembourg financial institutions (i.e. depositary and custodian institutions, certain insurance companies, and investment entities that do not benefit from an exemption) have to comply with some due diligence and registration duties. In addition, they will have to report on FATCA to the Luxembourg tax authorities by 30 June 2017 (with respect to financial accounts existing in 2016) even though they do not have any US reportable accounts (in this case, a nil report is required). The Luxembourg tax authorities will then automatically exchange this information with the US Internal Revenue Service (IRS) by 30 September 2017. This reporting will be repeated annually.

Apart from Luxembourg banks, insurance companies, or funds, other entities that fall within the definition of investment entities (certain holding companies, securitisation vehicles, etc.) might be subject to full FATCA obligations despite the fact that they have neither US investments nor US investors. If the entity being an in-scope financial institution does not comply with its FATCA obligations as implemented under Luxembourg law, it risks being subject to local penalties (up to EUR 250,000 and 0.5% of the amount incorrectly reported) in addition to a 30% WHT in certain limited cases.

It is worth noting that the IGA provides in its Annex II some deemed-compliant categories (e.g. Collective Investment Vehicle, Sponsored Investment Entity, Investment Advisors and Investment Managers) under which Luxembourg financial institutions, should they qualify for one of these categories, would be subject to lighter FATCA obligations as Non-Reporting Foreign Financial Institutions.

Implementation of the Common Reporting Standard (CRS)

On 21 July 2014, the OECD released the Standard for Automatic Exchange of Financial Account Information in Tax Matters, including the Commentary on the CRS. CRS seeks to establish the automatic exchange of tax information as the new global standard. The automatic exchange of information involves the systematic and periodic transmission of extensive taxpayer information from the country in which a taxpayer's financial accounts are located to that taxpayer's country of residence.

Similar to the provisions of FATCA and the various IGAs between the US government and partner governments around the world, CRS imposes obligations on financial institutions, including some holdings companies, across the financial services market to review and collect information in an effort to identify an account holder's country of residence and then, in turn, to provide certain specified account information to that home country's tax administration.

The CRS has been incorporated in the amended Directive on Administrative Cooperation (DAC 2) officially adopted by the European Council on 9 December 2014. On 24 December 2015, the Luxembourg CRS law of 18 December 2015 was published, enacting the CRS into Luxembourg law with an entry into force as of 1 January 2016. Therefore, Luxembourg financial institutions had, as of this date, to on-board new clients/investors according to specific procedures and review high value individual clients/investors no later than 31 December 2016. In addition, they will have to finalise the CRS due diligence of their other pre-existing clients/investors (including all entities) no later than 31 December 2017.

Based on the result of those on-boarding and due diligence procedures, the Luxembourg financial institutions will have to file their first CRS report to the Luxembourg tax authorities by 30 June 2017 (with respect to financial accounts maintained in 2016). The CRS report will have to comply with the specific format defined by the Luxembourg tax authorities' Circular ECHA 4.

Tax authorities of EU member states will have to first report between themselves under the DAC 2 no later than the end of September 2017, as they will do with other OECD 'early adopter' countries.

FATCA and CRS common data protection treatment

According to the Luxembourg FATCA and CRS Law, as well as Luxembourg data protection rules, each individual concerned (including controlling persons of entities) shall be informed on the processing of one's personal data before a Luxembourg financial institution processes the data for FATCA and CRS purposes.

Each individual subject to the FATCA and CRS reporting (including some controlling persons of entities) will have a right to access and rectify one's personal data.

EU state aid

As at 1 January 2017, the EC has opened four formal state aid investigation involving Luxembourg companies to examine whether there was any breach of the EU rules on state aid.

Amongst these cases, the EC published three opening decisions, and one final decision, which Luxembourg has appealed before the General Court of the European Union. These formal investigations relate in particular to tax rulings (including APAs) granted by Luxembourg.

Upon the publication by the EC of each of the opening/final decision(s), the Luxembourg government consistently stated that Luxembourg is confident that the allegations of state aid are unsubstantiated and that it will be able to convince the EC that no particular tax treatment or selective advantage was granted.

Additional information is available on the website of the PwC EU Direct Tax Group (*https://www.pwc.com/gx/en/services/tax/international-tax-services/eu-direct-tax-group.html*).

Malta

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Significant developments

The following are some of the more significant developments that were introduced in Maltese tax law during 2016 and the first few months of 2017:

- An enabling provision has been introduced in Maltese tax law providing for a notional interest deduction. This would provide the possibility of a tax deduction in respect of a percentage of risk capital. The rules providing for the exact system/mechanics of such deductions are expected to be issued imminently.
- Introduction of a reduced rate of stamp duty of 1.5% with respect to gratuitous transfers of marketable securities owned by individuals and commercial tenements used in a family business, to certain family members.
- Maltese income tax exemption applicable to certain types of collective investment schemes has been extended to also cover alternative investment funds (AIFs) notified in terms of the Investment Services Act (List of Notified AIFs) Regulations.
- The Seed Investment Scheme has been introduced with the aim of encouraging access to finance to small and medium sized enterprises (SMEs). In brief, this scheme provides for the granting of tax credits to individual private investors, residing or operating in Malta, investing in start-up businesses.
- A double taxation treaty (DTT) between Malta and Vietnam was entered into and ratified.

Taxes on corporate income

A company incorporated in Malta is considered as both domiciled and resident in Malta and is consequently taxable on a worldwide basis. A non-Maltese incorporated company that is resident in Malta through management and control is subject to Maltese tax on income arising in Malta and on income received in/remitted to Malta.

Companies are subject to income tax at a flat rate of 35%. There is no corporate tax structure separate from income tax.

Petroleum profits tax

Petroleum profits tax is levied as income tax with similar deductions being allowed in respect of incurred expenditure. In the case of a Production Sharing Contract signed after 1 January 1996, any petroleum profits are taxed at the standard corporate tax rate of 35%. However, all other petroleum profits are subject to a 50% tax rate.

Insurance profits tax

Insurance profits tax is levied as income tax and subject to the normal standard tax rate of 35% as other corporate profits; however, the manner in which such profits are ascertained is subject to a number of detailed rules that take into account the special nature of the insurance industry. In the case of non-resident companies, the computation is applied with reference only to business carried on in or from Malta.

Shipping profits tax

A tonnage tax system is applicable under Maltese law. Such regime covers profits from shipping activities as defined under the applicable regulations that are derived by qualifying Maltese-flagged and European Union (EU)/European Economic Area (EEA) vessels as well as non-EU/EEA vessels satisfying certain additional rules. Furthermore, qualifying ship management activities are also entitled to the tonnage tax system.

Corporate residence

All companies incorporated in Malta are considered to be both domiciled and resident in Malta. Other bodies of persons (including companies incorporated overseas) are considered to be resident in Malta when the control and management of their business are exercised in the country.

Permanent establishment (PE)

Although Maltese tax legislation contains a number of references to the term 'permanent establishment', the term is not defined by Maltese legislation. Indeed, in terms of Maltese domestic tax law, a non-resident is, in principle, subject to Maltese tax on income arising in Malta, irrespective of the existence or otherwise of a PE in Malta (subject to any DTT provisions that would apply if in conflict with Maltese tax law).

In the event the Maltese Inland Revenue is required to interpret such a term, reference would typically be made to the definition contained in the Organisation for Economic Co-operation and Development (OECD) Model Convention.

Other taxes

Value-added tax (VAT)

Supplies of goods and services in Malta are subject to VAT at the standard rate of 18% (7% on accommodation in hotels and licensed premises; 5% on supply of electricity, the importation of works of art, collector's items and antiques, certain confectionery, medical accessories, printed matter, and items for exclusive use by the disabled). Exports to countries outside the European Union, food, and certain other goods and services are exempt from VAT and provide a right to credit of VAT remitted.

Customs duties

Goods imported from outside the European Union may be subject to customs duties. A Customs Code provides for customs procedures and concepts, which are based on European Community requirements.

Excise duties

Excise duties are chargeable on certain energy products, certain alcoholic drinks, certain manufactured tobacco products, and mobile telephony services.

Property taxes

Maltese tax legislation does not contain any wealth taxes or other similar taxes on property, save for the property transfers tax outlined below.

Property transfer taxes
Transfers of immovable property situated in Malta are generally subject to a final withholding tax (WHT), which, in most cases, is charged on the transfer value of the property. In the case of transfers of Maltese immovable property made on or after 1 January 2015, the WHT on such transfer should, in general, be 8% or 10% (the latter rate applying in the case where the property was acquired before 1 January 2004). Certain other rates of WHT may apply in specific circumstances.

Furthermore, as of 1 January 2016, the final tax rate on transfers of regenerated immovable property situated in urban conservation areas has been reduced to 5% of the transfer value, subject to the satisfaction of a number of conditions.

Stamp duty
Stamp duty is charged on, among other transactions, transfers of immovable property (5% for both residents and non-residents; a reduced rate of 2% in respect of transfers of immovable property situated in Gozo) and marketable securities (2%; 5% in the case of transfers of shares in property companies).

In the case of the transfer by gratuitous title of (i) marketable securities owned by individuals and of (ii) commercial tenements (i.e. business property) that had been used in a family business for a minimum period of three years preceding the transfer, to the transferor's spouse, descendants, and ascendants in the direct line and their spouses, or in the absence of descendants to such transferor's brothers or sisters and their descendants, stamp duty chargeable is at a reduced rate of 1.5%.

This reduced rate applies to transfers by gratuitous title made on or after 1 April 2017 but prior to 1 April 2018. Once this reduced rate is applied, no other exemption or duty relief will apply to such transfers.

In addition, in the case of a transfer of immovable property situated within an urban conservation area or scheduled by the Malta Environment and Planning Authority, and where such transfer occurs between 1 January 2016 and 1 July 2017, the stamp duty chargeable is at a reduced rate of 2.5%. Such reduced rate is subject to the satisfaction of a number of conditions.

In the event that the market value of shares held by a person is reduced following a change in the company's issued share capital or voting rights and the value shifts onto the other shareholders, the transferor would be deemed to have transferred the said value to the transferee(s) and such value shifting may be subject to a stamp duty liability (although certain exceptions/exemptions may apply).

Maltese legislation also provides for the possibility of a stamp duty exemption in a number of instances, subject to the satisfaction of certain conditions. Some of the more commonly availed of exemptions include the acquisition or disposal of marketable securities by or in the following: (i) licensed collective investment schemes; (ii) licensed persons providing management, administration, safekeeping, or investment advice to collective investment schemes; (iii) companies being owned more than 50% by non-Maltese residents and satisfying certain other conditions; and (iv) a company being owned more than 50% by non-Maltese residents and that carries on or intends to carry on more than 90% of its business outside of Malta.

Payroll taxes
In terms of the Final Settlement System (FSS) rules, an employer is required to withhold income tax and social security contributions at source from the employees' salaries. Such deductions of tax/social security should be forwarded by the employer to the Maltese Inland Revenue within specific timeframes.

Employer's social security contributions
Employers are required to pay social security contributions at the rate of 10% of the individual employee's salary and at fixed rates of 43.85 euros (EUR) per week for annual salaries exceeding EUR 22,804, in the case where the employee is born on or after 1 January 1962 (note that the employee is also required to pay an equivalent weekly amount).

The rates of social security generally increase annually and take effect from the commencement of the calendar year in question. These rates are generally published at the beginning of the year.

Branch income

The tax rate on branch income for branches set up in Malta is the same as that for Maltese resident companies. Other than the tax charged on a branch's income, no tax is withheld on transfers of profits to the head office.

Income determination

Inventory valuation
Inventory valuations are generally made at the lower of cost or market value. In general, the book and tax methods of inventory valuation will conform. However, the last in first out (LIFO) method is not accepted for taxation purposes. Obsolescence is accepted where proven, but there are no provisions to take into account the effects of monetary inflation on the inventory valuation.

Capital gains
Tax is chargeable on capital gains realised on the transfer of immovable property (real estate), shares and other securities, business, goodwill, business permits, copyrights, patents, trade names, trademarks, any other intellectual property (IP), interests in a partnership, and beneficial interests in a trust.

In respect of transfer of Maltese immovable property, a WHT system applies (*see Property transfer taxes in the Other taxes section*).

Furthermore, *similarly to the stamp duty situation set out in the Other taxes section*, in the event that the market value of shares held by a person is reduced following a change in the company's issued share capital or voting rights and the value shifts onto the other shareholders, the transferor will be deemed to have transferred the said value to the transferee(s) and such value shifting may be subject to a tax on capital gains (although certain exceptions/exemptions may apply).

No tax is levied on investments that yield a fixed rate of return. A tax exemption applies in certain instances and subject to the satisfaction of certain conditions on the capital gain arising on the transfer of shares in a company listed on a recognised stock exchange other than shares held in certain collective investment schemes.

Subject to the satisfaction of certain conditions, if the asset is transferred between group companies, no loss or gain is deemed to arise from the transfer. Note that a provision exists that brings to charge the transfer of shares in property companies (as specifically defined) that were originally subject to intra-group tax deferral when the transferee ceases to be a member of the original group within six years from the date of such intra-group transfer.

Gains realised from the transfer of other assets fall outside the scope of the tax. Gains arising outside Malta and derived by a company that is either not domiciled or not ordinarily resident in Malta are not subject to tax. There are also a number of exemptions provided in the law. For example, gains realised by non-residents on transfers of units in Maltese collective investment schemes, similar investments relating to linked long-term insurance business and shares, or securities in Maltese companies (except for companies holding certain Maltese immovable property) are exempt from tax.

Rollover relief

Rollover relief is granted with respect to capital assets used in a business for a period of at least three years and transferred and replaced within one year by an asset used solely for similar business purposes (i.e. no tax is chargeable on the capital gain). In such instances, the cost of acquisition of the new asset is reduced by the gain on the transfer of the previous asset that would otherwise have been taxable.

Maltese tax law also provides for the surrendering and claiming of allowable losses between companies that form part of the same group (*see the Group taxation section for more information*) as well as for reorganisation relief, subject to certain specific conditions.

Dividend income

Dividends received by one resident company from another, whether or not a subsidiary, are taxable on the gross amount in the recipient's hands. If the distributed profits have been taxed, no further tax should be chargeable to the recipient company. However, for resident shareholders, if the corporate rate of tax in the year in which the profits are earned is lower than that in the year in which they are distributed, an amount equivalent to the difference in rates (topping up) is payable. If the distribution is made from untaxed income, the dividend will be tax-free in the hands of the recipient company.

Dividends and gains on disposal of shares received by a corporate investor from a non-resident company (or from a non-resident limited partnership), as well as profits from a PE, including a foreign branch, may qualify for a participation exemption in Malta, subject to the satisfaction of certain statutory conditions. Instead of claiming the participation exemption, the relevant Maltese tax may be paid and then, upon a distribution of such taxed profits, the shareholder may claim a full refund of the tax suffered on such profits in terms of Malta's system of taxation of dividends.

The participation exemption may also apply to gains upon the disposal of equity holdings in Maltese-resident entities. Distributions of taxed income by Maltese-resident companies are not subject to further tax under the full imputation system.

Stock dividends
A Maltese company may distribute bonus shares from profits, whether of an income or capital nature, and from share premium and capital redemption reserves. When bonus shares represent a capitalisation of profits, they are deemed to be dividends for tax purposes. Such bonus shares are subject to tax in the recipients' hands, gross of any tax paid at the corporate level on the relative profits, but tax credits equivalent to the gross-up of tax are available to stockholders.

Interest income
Interest is chargeable to tax under the provisions of Article 4(1)(c) of the Income Tax Act and subject to the standard corporate tax rate. Nevertheless, in the event the receipt of interest falls within the definition of 'investment income' as established by Maltese tax legislation, a WHT of 15% may be generally applicable. Furthermore, in the case of interest income payable to non-Maltese residents, such interest should be exempt from Maltese tax, subject to the satisfaction of certain statutory conditions.

Royalty income
Similar to interest income, royalty income is chargeable to tax under the provisions of Article (4)(1)(e) of the Income Tax Act (*see Intellectual property in the Deductions section for a description of the possibility of a tax deduction for expenditure of a capital nature on IP or any IP rights*). In the case of royalty income payable to non-Maltese residents, such royalty should be exempt from Maltese tax, subject to the satisfaction of certain statutory conditions.

Rental income
Corporates and individuals in receipt of income from the letting of residential property and of commercial tenements and clubs, provided that such properties are not being rented to or from a related body of persons (as defined), have the option to apply a final 15% tax on the gross rental income (other tax rates may apply in specific circumstances).

Otherwise, the rental income is subject to normal rates of tax, but special tax deduction rules apply.

Foreign income
A company is taxable on its worldwide income when it is ordinarily resident and domiciled in Malta. A company that is either not ordinarily resident or not domiciled in Malta is taxable on its foreign income only insofar as such income is remitted to/received in Malta. Foreign tax is relieved by way of tax credits. This may occur under the terms of a DTT. Where no treaty exists, the foreign tax can be relieved through a system of unilateral relief. Relief for underlying tax is also granted with respect to dividend income, either in terms of a DTT or as unilateral relief. Such relief may be available if, among other things, evidence of tax paid abroad is produced.

Profits of Malta resident companies are subdivided for Maltese tax purposes into five accounts: the Immovable Property Account, the Final Tax Account, the Maltese Taxed Account, the Untaxed Account, and the Foreign Income Account. The last of these includes, among other things, taxable profits of Maltese-resident companies resulting from foreign investments; profits of a foreign PE; and profits resulting from foreign investments, assets, or liabilities of an onshore bank licensed in Malta. Income allocated to the Foreign Income Account for which no evidence of tax paid abroad is available can qualify for a flat-rate foreign tax credit of 25%.

The Immovable Property Account includes profits and income derived directly or indirectly from immovable property situated in Malta. The Final Tax Account includes, among other items, profits that have been subject to a final tax at source or were exempt from tax and such exemption is extended to shareholders upon a distribution of such profits. The Maltese Taxed Account includes any other taxed profits while the Untaxed Account represents the difference between the distributable profits and the profits allocated to the other taxed accounts.

Under Malta's system of taxation of dividends, shareholders receiving distributions from the Maltese Taxed Account and/or the Foreign Income Account may be entitled to a tax refund of part of the tax suffered by the distributing Maltese company on such profits being distributed. The tax refund may be either a six-sevenths refund, a five-sevenths refund, or a two-thirds refund of the tax suffered by the Maltese distributing company on the distributed profits. The type of the tax refund depends on the nature of the income to be distributed.

Deductions

The basic condition for deductibility of expenses is that deductions are allowable only with respect to expenditures that are wholly and exclusively incurred in the production of income.

In order to be in a position to claim a tax deduction, a further new rule has been introduced requiring a valid tax invoice/other equivalent document sustaining the expense. Such documents would have to be provided if requested by the Maltese Inland Revenue.

Apart from the general tax deductibility rule stated above, the Maltese Income Tax Act also provides a number of exceptions whereby specific expenses of a capital nature may also be tax deductible, subject to the satisfaction of the statutory conditions applicable thereto. The following are some further comments on specific items of expenditure.

Depreciation and depletion

Tax depreciation is computed on the straight-line method. The rate of depreciation on plant and machinery varies according to the category of the plant and machinery in question.

Maltese tax law prescribes the minimum number of years over which items of plant and machinery are to be depreciated as follows:

Category	Years
Computers and electronic equipment	4
Computer software	4
Motor vehicles	5
Furniture, fixtures, fittings, and soft furnishings	10
Equipment used for constructions of buildings and excavation	6
Catering equipment	6
Aircraft - aircraft airframe	6
Aircraft - engines	6
Aircraft - engine or airframe overhaul	6
Aircraft - interiors and other parts	4

Category	Years
Ships and vessels	10
Electrical and plumbing installations and sanitary fittings	15
Cable infrastructure	20
Pipeline infrastructure	20
Communications and broadcasting equipment	6
Medical equipment	6
Lifts and escalators	10
Air conditioners	6
Equipment mainly designed or used for the production of water or electricity	6
Other machinery	5
Other plant	10

The wear and tear rate on industrial buildings and structures (including hotels, car parks, and offices) may not exceed 2% *per annum*. New acquisitions of industrial buildings and structures are entitled to a concurrent extra 10% allowance in the year of acquisition. Tax depreciation is not required to conform to book depreciation.

The total allowances over the asset's useful life may not exceed 100% of its cost. If a surplus arises on disposal of a tax-depreciated asset, it is either added to the year's income or utilised to reduce the cost of any replacement. If the asset has been under-depreciated, a balancing allowance is granted.

No deduction is available for the depletion of natural resources.

The rules on tax deductions for wear and tear of plant and machinery provide for certain specific treatment in particular situations, including, among other things, the following:

- To establish the cost of an asset when it is transferred between related companies, the lower of the actual cost of the asset or the tax written-down value adjusted by any balancing charge or allowance incurred by the transferring company should be applied.
- Deductions for wear and tear are allowed only where proper records and documentation have been kept that support the cost of the respective assets.
- A proportional deduction is allowed where an asset is used partly in the production of income and partly for other purposes.

Intellectual property (IP)
Maltese tax law provides for a tax deduction for expenditure of a capital nature on IP or any IP rights incurred in the production of income. Such expenditure should be tax deductible over the life of the relevant IP but, in any case, over a minimum period of three consecutive years.

Goodwill
In the event that goodwill were to fall within the purport of IP for the purposes of the tax deductibility rules under Maltese tax law, then it may possibly be argued that an expenditure on goodwill may be tax deductible. However, this would need to be analysed on a case-by-case basis.

Start-up expenses
Certain pre-trading expenses (i.e. staff training, advertising, salaries/wages) are also allowed as a deduction, subject to the satisfaction of the following conditions:

i. The expenditure is incurred not more than 18 months before the commencement of the trade or business.
ii. The expenditure is not deductible in ascertaining the trading or business income of the person carrying on such trade or business but would have been so deductible under (i) above had it been incurred after that time.

In the event the above conditions are satisfied, such expenditure is treated as incurred on the day on which the trade or business is first carried on by the person.

Interest expenses
Interest on any borrowed money is an allowable deduction if it is paid on capital employed in acquiring income. The expense is allowable even though the borrowing would have been made for a capital purpose, but it is deductible only against the income derived in the same year from the employment of that capital. This special rule is in addition to the deduction for interest paid on money due on revenue account (such interest should be deductible under the general rule of deductibility), such as interest on trade debts or charged on normal business overdraft facilities. There is a restriction in respect of interest deductibility where the relevant advance is in connection with the financing of Maltese immovable property and subject to certain other conditions.

Bad debt
Bad debts incurred in any trade, business, profession, or vocation are allowed in the year they become bad if proved to the satisfaction of the tax authorities. No deduction is given for provisions for bad debts and for bad debts incurred in activities other than a trade, business, profession, or vocation. Any bad debt that is later recovered is deemed as income for the year in which it is received.

Charitable contributions
The general rule is that charitable contributions are not deductible for Maltese tax purposes unless expressly provided for by law.

Fines and penalties
The general rule is that fines and penalties are not deductible for Maltese tax purposes. Nevertheless, there is an exception to this general rule that provides that interest paid or payable by any person in terms of the Maltese VAT Act will be treated as expenses incurred in the production of the income of that person for income tax purposes.

Taxes
Technically, taxes suffered should not be deductible for Maltese tax purposes. However, the typical interpretation of the Maltese Inland Revenue is that as long as no relief of double taxation is claimed for the tax, then such tax should be available as a tax deduction.

Other significant items
Capital expenditures on scientific research and patents are written off over a number of years. In the case of scientific research, a deduction may be granted at 150% of the expenditure.

The Income Tax (Deductions) Rules of 2001 provide for specific conditions on deductions with respect to the use of cars and the payment of employee compensation. The cost on which capital allowances on certain motor vehicles may be claimed is restricted to EUR 14,000. Deductions for lease payments on cars are restricted in a manner that corresponds with the stated restriction of EUR 14,000 that applies to capital allowances on owned cars. With respect to payment of employee compensation, the Deduction Rules require that in order for employee compensation to be allowed as a deduction for tax purposes in the hands of the employing company, it must have been duly accounted for. In particular, the employee compensation must have been reported on the appropriate forms and within the statutory time limit to the Maltese Inland Revenue. The rules also provide for restrictions on deductibility of emoluments with respect to the payment of certain fringe benefits to employees.

Net operating losses

Net operating losses may be carried forward indefinitely until absorbed. There is no carryback of losses, not even in terminal years. Unabsorbed capital allowances may be carried forward only against the same underlying source of income. Where the source ceases to exist, any remaining balance of unabsorbed capital allowances is lost.

Certain rules apply in relation to the discretion of the Commissioner for Revenue to allow tax losses/capital allowances to be taken over by the surviving company following a merger/division.

Payments to foreign affiliates

There are no restrictions on the deductibility of royalties, interest (except for interest, discount, or premium that are in any manner connected to Maltese immovable property and subject to the satisfaction of certain other statutory conditions, in which case, the interest/discount/premium should not be tax deductible in Malta), and service fees paid to foreign affiliates as long as the particular expenses are considered to be incurred in the production of the particular income and satisfy the applicable statutory conditions. Interest, discount, premium, or royalties derived by non-residents are exempt from tax, subject to the applicable statutory requirements.

Group taxation

Two companies that for tax purposes are resident exclusively in Malta, where one company is a 50% plus subsidiary of the other or both are 50% plus subsidiaries of a third Malta-resident company, qualify as members of a group of companies. Allowable losses may be surrendered by a company to another company within the group where both companies have concurrent accounting periods and form part of such group throughout the entire basis year for which this relief is claimed; however, such surrendering of losses may not occur where the surrendering or claimant company is carrying on the business of insurance. The possibility of income tax consolidation is contemplated in Maltese tax law; however, rules covering the precise terms and conditions of such tax consolidation are still to be issued.

Transfer pricing

Malta does not operate a sophisticated transfer pricing regime. There are some general anti-avoidance provisions and brief references to transactions at arm's length. However, the Maltese tax authorities will typically still consider it desirable that transactions between residents and non-residents broadly adhere to the arm's-length principle, that is, prices that would have been concluded between independent enterprises. However, no specific rules are available on the manner in which an arm's-length price is to be established.

Thin capitalisation
The Maltese tax regime does not contain thin capitalisation rules.

Controlled foreign companies (CFCs)
No anti-CFC rules or legislation are applicable in Malta.

Tax credits and incentives

Foreign tax credit
A credit for foreign taxes may be applied against the Maltese tax charge (*see Foreign income in the Income determination section for more information*).

Inbound investment
Investments by foreigners may be readily repatriated together with profits.

The Malta Enterprise Act and other related legislation provide a comprehensive package of incentives for inbound investment. These incentives are reserved for enterprises carrying on certain activities in Malta, mainly manufacturing activities. The focus is on high-value-added activities, and approval of a project's eligibility for benefits by the Malta Enterprise may be required. In general, eligibility does not depend on whether the company produces for the local or for export markets. The main tax incentives include the following:

- Enterprises carrying out qualifying activities, which mainly include manufacturing activities, qualify for investment tax credits whereby a percentage of qualifying expenditures are off-set against the tax charge (not against taxable income). The Investment Aid (July 2014) Regulations, 2014 (the 'Regulations') were issued on 24 October 2014, and guidelines in this regard have been published by Malta Enterprise. Such guidelines form the basis of the investment aid scheme that is in force until 31 December 2020. The Regulations apply to qualifying undertakings, which may benefit from investment tax credits in respect of certain qualifying activities, which are quantified as a percentage of qualifying expenditure incurred in terms of the guidelines. The tax credits range between 15% and 35% of the qualifying expenditure for projects commencing before 31 December 2017 and between 10% and 30% for projects commencing between 1 January 2018 and 31 December 2020, depending on the undertaking's size.
- Certain tax credits and special incentives may be available, subject to certain conditions. These tax credits are calculated on the basis of specific expenditures incurred by a company, while the special incentives grant tax exemptions on all or part of the chargeable income in specified circumstances.
- No further tax is charged on distributions from profits that had previously been taxed at a reduced rate. This benefit is also extended to amounts that were not subject to tax on account of the investment allowance, investment tax credits, and specific tax credits/special incentives.

The combination of certain tax treaties and Maltese domestic law lowers the Maltese tax rate on certain companies receiving certain industrial assistance (i.e. mainly assistance in terms of the Malta Enterprise Act, Business Promotion Act, and Business Promotion Regulations) to 15%.

In addition, the Seed Investment Scheme (Income Tax) rules have been introduced with the aim of encouraging access to finance to SMEs. In terms of these rules, 'qualifying investors' should be entitled to a tax credit amounting to 35% of the aggregate value of their investment in qualifying companies (total tax credit not exceeding EUR 250,000 *per annum*). Such tax credit would be set off against the tax due by the qualifying investor in respect of any income or gains brought to charge to tax in the year of assessment following the basis year when the investments are made. The tax credit may be carried forward until it is fully absorbed. In addition, qualifying investors may be entitled to an exemption from tax in respect of any gains or profits derived from the disposal of their qualifying investments, where such investments are disposed of after the lapse of three years from the date of subscription to the equity shares.

International business profits

Other Maltese tax considerations that may be relevant in an international business context include the following:

- Maltese tax law provides for a beneficial tax treatment in respect of securitisation vehicles and similarly to re-insurance special purpose vehicles.
- A beneficial tax regime is available in respect of collective investment schemes.
- The Maltese fiscal implications relative to trusts and private foundations vary, depending on a number of circumstances, including: (i) the particulars of the parties involved (e.g. domicile or residence of the trustees/administrator or beneficiaries), (ii) the act or event under review (e.g. the settlement of property, transfers of beneficial interests, distributions of trust/foundation assets), and (iii) the nature of the trust/foundation assets. Furthermore, in certain circumstances, tax transparency provisions are set out in the law, particularly so as to allow, among other things, the application of tax exemptions that would have applied to beneficiaries if there was no trust relationship or foundation.
- An option exists for a step-up in the cost of acquisition of assets situated outside Malta (including companies) effecting a change in domicile or residence or becoming Maltese companies as a result of cross-border mergers.

Other tax credits

A tax credit for micro enterprises is provided under the Micro Invest Scheme. The credit is of a maximum of EUR 30,000 over three consecutive years. Such tax credit is increased to a maximum of EUR 50,000 over three consecutive years to self-employed women, businesses that are majority owned by women, and start-ups established in Gozo.

Withholding taxes

Domestic corporations paying certain types of income are subject to deduction of tax-at-source obligations as follows:

Recipient	Dividends (%) (1)	Interest (%)	Royalties (%)
Resident corporations	0	35 (2)	0
Resident individuals	0/15 (5)	25 (2)	0
Non-resident corporations and individuals:			

Recipient	Dividends (%) (1)	Interest (%)	Royalties (%)
Non-treaty	0	0 (3)	0 (3)
Treaty:	(4)	0 (3)	0 (3)
Albania	0		
Australia	0		
Austria	Possible imputation refund of 2.5% of the tax suffered at company level (4)		
Azerbaijan	0		
Bahrain	0		
Barbados	0		
Belgium	0		
Bulgaria	Possible imputation refund of 5% of the tax suffered at company level (4)		
Canada	0		
China, People's Republic of	0		
Croatia	0		
Cyprus	0		
Czech Republic	0		
Denmark	0		
Egypt	0		
Estonia	0		
Finland	0		
France	0		
Georgia	0		
Germany	0		
Greece	0		
Guernsey	0		
Hong Kong	0		
Hungary	0		
Iceland	0		
India	0		
Ireland	0		
Isle of Man	0		
Israel	0		
Italy	0		
Jersey	0		
Jordan	0		
Korea, Republic of	0		
Kuwait	Possible imputation refund of 20% to 25% of the tax suffered at company level (4)		
Latvia	0		
Lebanon	0		
Libya	Possible imputation refund of 20% of the tax suffered at company level (4)		
Liechtenstein	0		
Lithuania	0		
Luxembourg	0		
Malaysia	0		
Mauritius	0		
Mexico	0		
Moldova	0		

Malta

Recipient	Dividends (%) (1)	Interest (%)	Royalties (%)
Montenegro	0		
Morocco	0		
Netherlands	0		
Norway	0		
Pakistan	0		
Poland	0		
Portugal	0		
Qatar	0		
Romania	Possible imputation refund of 30% of the tax suffered at company level (4)		
Russia	0		
San Marino	0		
Saudi Arabia	0		
Serbia	0		
Singapore	0		
Slovakia	0		
Slovenia	0		
South Africa	0		
Spain	0		
Sweden	0		
Switzerland	0		
Syria	0		
Tunisia	0		
Turkey	0		
United Arab Emirates	0		
United Kingdom	0		
United States	0		
Uruguay	0		
Vietnam	0		

Notes

Treaties relating to international air and shipping traffic are in force with Switzerland and the United States (US).

The numbers in parentheses refer to the following notes:

1. No WHT is imposed on dividends distributed by Maltese companies (except for distributions of untaxed income to resident persons other than companies, *refer to Note 5*) because no additional tax is imposed on distributions other than the tax charged on the company with respect to the distributed profits. Malta makes no distinction between portfolio and substantial holdings. Under Maltese law, the dividend is grossed up by a figure representing the tax imposed on the company's profits when these were originally earned thereby. Under Malta's full-imputation system of taxation of dividends, the corporate tax is assimilated with the shareholder's personal income tax with respect to the dividend. In the shareholder's hands, the dividend is taxed at the gross amount, and the relevant amount of corporate tax offsets the shareholder's tax liability on income from all taxable sources with no further tax liability being imposed on the shareholder in respect of such dividends.
2. Withholding of tax may be required only where the interest is debenture interest or interest on any other loan advanced to a corporation for capital purposes. The WHT is, in effect, a prepayment of the recipient's final liability because a reassessment on income is made upon the submission of returns. Any resulting overpayment is refunded.
3. Interest and royalty income derived by non-residents is exempt from tax in Malta as long as certain conditions are complied with (e.g. they are not effectively connected to a PE of the recipient situated in Malta).
4. On the basis that Malta operates the full-imputation system of dividends, dividends are not subject to further tax when distributed by a company registered in Malta to a non-Maltese resident. Furthermore, if the rate provided under the Dividends Article in the respective treaty provides for a lower rate than

the Maltese corporate tax rate incurred by the company on the respective profits (standard corporate tax rate of 35%), then this may result in a refund of Maltese tax in terms of Malta's full imputation system (such a refund situation may arise in the treaties with Austria, Bulgaria, Kuwait, Libya, and Romania). In a number of treaties, the rate of deduction and of tax is reduced to 15% in the case of companies enjoying certain tax incentives. *See also Note 1 with respect to Malta's full-imputation system of taxation of dividends.*

5. Distributions of dividends by a Maltese company where the dividend represents a distribution of untaxed income attracts a 15% WHT where the shareholder is (i) a Maltese resident other than a company, (ii) a non-resident person who is directly or indirectly owned and controlled by, or acts on behalf of, a Maltese domiciled and ordinarily-resident individual, or (iii) an EU/ EEA individual who has declared that at least 90% of worldwide income is derived from Malta.

Tax administration

Taxable period

The year of assessment is a calendar year, but a company may obtain authorisation from the Maltese Inland Revenue to have a different year-end (i.e. other than 31 December).

Tax returns

An income tax return for income earned during the previous year must be filed for every year of assessment. The tax return for a company must be submitted by the later of nine months following the end of the financial year or by 31 March following the year of assessment (however, in recent years, the Commissioner for Revenue has provided concessionary extensions to such statutory deadlines in the case where the tax return is submitted electronically). Penalties are incurred on late filing of returns. The tax return submitted by the company is a self-assessment, and the Commissioner for Revenue will not raise an assessment unless the Commissioner is not in agreement with the self-assessment.

Payment of tax

Companies pay tax in the currency in which their share capital is denominated.

During the basis tax year, a company is generally required to make provisional tax (PT) payments every four months. In general, the PT payments are based on the last self-assessment filed by the company, and payments are divided into three instalments of 20%, 30%, and 50%, respectively. Any tax liability that is still due at the tax return date after deducting all tax credits must be settled immediately with the submission of the return. Interest at 0.54% per month is charged on any unpaid tax.

In certain instances, especially for companies with mostly international operations, PT may not be payable, and the tax payment is normally paid on the earlier of the date profits are distributed or 18 months after the end of the relative accounting period.

Tax audit process

The Maltese Inland Revenue is entitled to raise an investigation and notify the taxpayer in writing that the department is initiating a tax enquiry. In such investigations, the taxpayer will typically be required to provide information and supporting documentation in respect of queries raised by the Revenue. The taxpayer has a right to appoint a representative on their behalf.

Statute of limitations

An assessment may be issued by the Maltese Inland Revenue no later than six years from the end of the respective tax year. In the event of non-full disclosure or wilful incorrect/misleading information, the aforesaid prescription period will not apply.

In respect of the payment of tax, additional tax, interest, or any penalty, an action may be taken during any time from the date on which it becomes due and payable up to eight years from that date or, where an assessment in respect thereof has been made, from the date on which that assessment becomes final and conclusive.

Topics of focus for tax authorities

The Maltese Inland Revenue is following closely international tax developments, such as the OECD Base Erosion and Profit Shifting (BEPS) initiative and the Anti-Tax Avoidance Package, and is also involved in discussions/representations on such matters in various fora.

Other issues

US Foreign Account Tax Compliance Act (FATCA)

The agreement concluded between the Republic of Malta and the United States to improve international tax compliance and to implement the FATCA (the 'Agreement') entered into force on 26 June 2014. On 18 November 2014, the FATCA Regulations were accordingly issued implementing the said intergovernmental agreement (IGA). Guidelines on the implementation and interpretation of the FATCA Regulations and the said Agreement have been issued by the Maltese Inland Revenue.

Furthermore, the Exchange of Information (United States of America) (FATCA) (Amendment) Order was enacted in 2015.

The Common Reporting Standard (CRS) and EU Council Directive 2014/107/EU

By virtue of LN 384 of 2015 entitled the 'Cooperation with Other Jurisdiction on Tax Matters (Amendment) Regulations, 2015', the EU Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (DAC2) and the CRS have been accordingly implemented into Maltese legislation, with effect from 1 January 2016.

Guidelines on the implementation and interpretation of the DAC2 and CRS have also been issued by the Maltese Inland Revenue.

Netherlands

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Significant developments

The corporate tax system of the Netherlands contains a number of well-known features providing for an attractive investment climate, such as: the fiscal unity regime with tax consolidation for group companies, a full participation exemption for capital gains and dividends from qualifying participations, and several favourable tax regimes (e.g. for patent income, investment vehicles, and income from ocean shipping activities). There is no withholding taxation on interest or royalty payments made by the taxpayer.

As of 1 January 2017, most proposals of the 2017 Dutch Tax Package have become applicable to financial years starting on or after that date.

For the application of the interest deduction restriction aimed at profit drainage and in the case of certain acquisition debts, the term 'related entity' is extended to include, among other things, entities that form a collaborating group. The assessment of whether a collaborating group exists takes place on the basis of the facts and circumstances of the individual case. The focus will be mainly on coordinated investments. In addition, the interest deduction rule regarding acquisition debts has become more strict in order to combat abusive situations that are put in place to evade the interest deduction rule.

Also, the Dutch innovation box regime is aligned with the modified nexus approach as described in the Organisation for Economic Co-operation and Development (OECD) report on Action 5. Transitional measures apply to certain assets, especially those created before 1 July 2016 (e.g. the continuing application of the current innovation box regime).

With regards to the Dutch dividend withholding tax (WHT), a new optional withholding exemption from dividend WHT will apply to certain income beneficiary bodies (including comparable foreign entities), which are (in part) not subject to corporate income tax (CIT). The relevant conditions must be satisfied at the time of distribution. The change will enter into force on a date yet to be determined.

As a result of case law of the European Court of Justice (ECJ), on request and under conditions, certain non-resident shareholders who qualify as beneficial owners of revenues on which they do not pay personal income tax (PIT) or CIT in the Netherlands can receive a refund of withheld dividend tax insofar as this levy is higher than the PIT or CIT they would have owed if they would have resided or been based in the Netherlands.

As of 1 January 2017, seaports are no longer be exempt from CIT.

The corporate income tax law now explicitly allows a Dutch fiscal unity between Dutch entities that are linked via a non-Dutch resident European Union (EU)/European Economic Area (EEA) intermediary holding company or via an EU/EEA parent company. The change is a direct result of case law of the ECJ.

The amendments to the EU's Parent-Subsidiary Directive are implemented into national law by the EU member states. For the Netherlands, implementation of the general anti-abuse rule (GAAR) only resulted in some minor substantive changes to the Dutch corporate tax system as per 1 January 2016.

Treaty developments

The Netherlands pursue an active tax treaty policy in order to maintain and extend its wide tax treaty network. Most Dutch bilateral tax treaties are based on the OECD Model Tax Convention. The Netherlands has concluded bilateral tax treaties for the avoidance of double taxation on income and capital (DTCs) with over 90 countries worldwide.

Taxes on corporate income

In general, a Dutch resident company is subject to CIT on its worldwide income. However, certain income can be exempted or excluded from the tax base. Non-resident entities only have a limited tax liability with regard to income from Dutch sources.

Standard corporate income tax (CIT) rate

The standard CIT rate is 25%. There are two taxable income brackets. A lower rate of 20% applies to the first income bracket, which consists of taxable income up to 200,000 euros (EUR). The standard rate applies to the excess of the taxable income.

The first bracket will be increased to EUR 250,000 per 2018, to EUR 300,000 per 2020, and to EUR 350,000 as of 2021.

Fiscal investment fund regime

In general terms, under the existing fiscal investment fund regime, the CIT rate for fiscal investment funds is 0%, provided that their profit is made available to the shareholders and holders of certificates of participation no later than eight months after year end.

Fiscal investment funds may also invest in real estate development (or redevelopment) activities, provided that these activities take place through a subsidiary subject to Dutch CIT and the development (or redevelopment) activities are exercised for the benefit of real estate that is (or will be) forming part of the fund's own portfolio, an affiliated fiscal investment fund's portfolio, the portfolio of a company in which the fund or the affiliated fund has a substantial interest, or for the benefit of the subsidiary's own portfolio ('project development' subsidiary). Fiscal investment funds that invest in real estate are allowed to hold a taxable subsidiary that provides customary services in relation to the real estate held by the Dutch real estate investment trust (REIT). Examples are conference facilities or the exploitation of an in-house restaurant.

Exempt investment fund regime

The exempt investment fund regime exists next to the fiscal investment fund regime described above. In accordance with the exempt investment fund regime, investment funds as defined in the Dutch Financial Supervision Act (*Wet op het financieel toezicht*) that meet certain conditions can request an exemption from CIT. Apart from the exempt status for CIT purposes, the exempt investment fund is not obligated to withhold dividend WHT with regard to profit distributions to its shareholders.

Innovation box regime

A special regime applies with respect to profits, including royalties, derived from a self-developed intangible asset (developed after 31 December 2006). In this so-called innovation box, the taxpayer may opt, under certain conditions, for the application of a lower effective rate on taxable profits derived from these intangible assets. The effective tax rate of the innovation box is 5%.

The innovation box is applicable if at least 30% of the profits have been originated by the patent. Companies that have incurred certain qualified research and development (R&D) costs for the development of intellectual property (IP) for which no patent was granted are also entitled to the favourable effective tax rate. This is subject to the condition that these qualified R&D assets became part of the company's assets after 31 December 2007.

The lower effective tax rate of 5% only applies to positive income, allowing innovation losses to be taken into account in full. It is also possible to include profits from an intangible asset derived in the period between the patent application and the granting of the patent in the innovation box regime (not for R&D assets).

The outcomes of the OECD/G20's base erosion and profit shifting (BEPS) project have influenced the Dutch innovation box regime. As of 2017, the Dutch innovation box regime is aligned with the modified nexus approach as described in the OECD report on Action 5. Transitional measures apply to certain assets, especially those created before 1 July 2016 (e.g. the continuing application of the former innovation box regime).

Tonnage tax regime

In order to stimulate entrepreneurs engaged in ocean shipping, a favourable regime (known as the Dutch tonnage tax regime) may be available to certain shipping companies. Under this regime, the taxable profit of a sea-going vessel is based on its registered net tonnage multiplied by a fixed amount of deemed profit per ton instead of the actual profits from the exploitation. The regime only applies to the calculation of the profit related to the qualifying shipping activities. These activities include operating vessels in international traffic (including transportation for the purpose of the exploitation of natural resources at sea), cable and pipe-laying activities at the bottom of the sea, and towing and dredging and connected activities. The profits from the qualifying activities are taxed at a deemed tonnage profit according to a five bracket regressive scale system. The tonnage tax regime applies upon request and for a fixed period of ten years or multiples of the ten-year period.

Local income taxes

There are no provincial or municipal corporate income taxes in the Netherlands.

Corporate residence

In the Netherlands, corporate residence is determined by each corporation's facts and circumstances. Management and control are important factors in this respect. Companies incorporated under Dutch law are deemed to be residents of the

Netherlands (although not with respect to certain provisions, such as the participation exemption and fiscal unity).

Permanent establishment (PE)

Non-resident companies that are neither incorporated nor effectively managed in the Netherlands are limited in their liability to tax in the Netherlands if they receive Dutch-source income. This could be, for instance, business income derived from a Dutch PE or permanent representative. The definition of a PE for Dutch tax purposes is largely inspired by the OECD Model Convention definition and commentary.

The concept of a PE is also of relevance for resident corporate taxpayers. The Netherlands provides international double taxation relief, amongst others, with respect to income attributable to business activities carried on through a PE abroad.

The outcomes of the OECD/G20's BEPS project may influence the definition of a PE to be included in new or newly renegotiated Dutch tax treaties. The Netherlands has announced that the outcomes of the final report on Action 7 ('Preventing the Artificial Avoidance of Permanent Establishment Status') have now become part of Netherlands' tax treaty policy.

Other taxes

Value-added tax (VAT)

VAT, known in Dutch as the *Belasting over de Toegevoegde Waarde* or BTW, is payable on sales of goods and on services rendered in the Netherlands as well as on the importation of goods and on the 'intra-European' acquisition of goods. There are three VAT rates, which are 21%, 6%, and 0%.

The main VAT rate is 21%.

The reduced 6% VAT rate is applicable on certain prime necessities (and also on certain energy-saving insulation activities on houses).

The special 0% VAT rate is applicable mainly to intra-EU supplies, exports, imports stored in bonded warehouses, services rendered in connection with the above, and certain other services.

The following are exempt from VAT:

- The supply of immovable property two years after putting it into use and lease. However, if the lessee's use of the immovable property is 90% or more for input VAT-deductible purposes, the lessor and lessee may opt to be subject to VAT on rent, in which case the lessor may deduct the VAT charged in respect of the property.
- Medical, cultural, social, and educational services.
- Services provided by banks and other financial institutions in connection with payment transactions and the granting of credit facilities.
- Insurance transactions.
- Transactions in shares.

Customs and excise tax
Many goods imported to the Netherlands from outside the European Union are subject to customs and excise duties. The tariffs and rates that apply to the different goods vary widely and change regularly.

An excise tax is levied on certain consumer goods (e.g. cigarettes, cigars, mineral oils, alcoholic products). If the goods are used solely as raw materials, no excise tax is levied. The excise tax is refundable if the article is exported.

Immovable property tax
Municipalities impose an annual immovable property tax on the owners of immovable property. The rates depend on the municipality. The taxable basis is the market value of the immovable property. Please note that the (assessment of the) value is also of importance for CIT, as depreciation might be limited based on this value (*see Limited depreciation of immovable property in the Deductions section*).

Transfer tax on immovable property
Acquisition of economic or legal ownership of immovable property in the Netherlands is subject to a 6% transfer tax on market value. Some exemptions are available. Real estate transfer tax on dwellings is 2%.

Transfer tax on acquisition of shares in a real estate entity
The acquisition of shares in an entity that owns real estate may also be subject to transfer tax if that entity is characterised as a so-called real estate entity. The threshold for qualifying as a real estate entity is met if more than 50% of the assets of the entity consist of real estate and at least 30% consist of Dutch immovable property.

Stamp duty
There are no stamp duties in the Netherlands.

Capital tax
The Netherlands do not levy capital tax on capital transactions (e.g. issue or increase capital).

Payroll taxes
Employers must withhold wage tax from the employee's gross salary and transfer the amount to the tax authorities. Employees may treat the withheld wage tax as an advance levy of income tax. The income tax due is settled with the withheld wage tax. *The tax tables applicable to individuals are provided in the Taxes on personal income section of the Netherlands Individual tax summary at www.pwc.com/taxsummaries*.

Social security contributions
Employers must withhold national insurance contributions from the employee's salary at an aggregate rate of 27.65% calculated on the first EUR 33,791 of each employee's gross salary and transfer the amount to the tax authorities. The employer bears the burden of the employee's insurance contributions, which are also calculated by reference to the employee's salary. Under circumstances, it may be required to pay or withhold a contribution based on the Health Care Insurance Act.

Insurance tax
An insurance tax is payable on insurance premiums if the insured is a resident of the Netherlands or if the insured object is in the Netherlands. The insurance tax rate is

21%. Several exemptions are available (e.g. insurances of ships and aircraft operated in international traffic are exempt from insurance tax). In certain situations, an insurer outside the European Union may be required to take on a tax representative in the Netherlands.

Waste management contribution

Companies annually bringing 50,000 or more kilograms of packing material on the market must pay a 'waste management contribution' (*Afvalbeheersbijdrage*). The amount payable varies to the total weight and type of packaging. The contribution aims to cover the costs of recycling package materials.

Producers and importers of packaging expecting to exceed the threshold must register with the Packaging Waste Fund (*Afvalfonds Verpakkingen*) upfront. In the current year, they must file an estimation of the expected total volume of packing material. The contribution is then provisionally calculated. Before 1 April of the next calendar year, the actual amount and type of packaging must be reported. The actual contribution payable is recalculated accordingly.

Branch income

Rates for Dutch branch profits are the same as for other corporate profits, but no tax is withheld on transfers of profits to the head office. The tax base is, in principle, calculated on the same rules as for Dutch-resident companies.

Income determination

Inventory valuation

In general, stock/inventory is stated at the lower of cost or market value. Cost may be determined on the basis of first in first out (FIFO), last in first out (LIFO), base stock, or average cost. The LIFO system may be used for commercial/financial and tax purposes.

There is no requirement of conformity between commercial/financial and tax reporting.

Capital gains

Capital gains are taxed as ordinary income. However, capital gains realised on disposal of shares qualifying for the participation exemption are tax exempt (*see Dividend income below*).

The gain on disposal of depreciable assets may be carried over to a special tax deferral reinvestment reserve but must then be deducted from the acquisition cost of the later acquired assets. Except in special circumstances, the reserve cannot be maintained for more than three consecutive years. If the reserve has not been fully applied after three years, the remainder will be liable to taxation.

Capital losses are deductible, unless attributable to the disposal of a shareholding qualifying for the participation exemption.

Dividend income

Subject to meeting the conditions for the participation exemption, a Dutch company or branch of a foreign company is exempt from Dutch tax on all benefits connected with a qualifying shareholding, including cash dividends, dividends in kind, bonus shares, hidden profit distributions, capital gains, and currency exchange results.

Participation exemption

The participation exemption will apply to a shareholding in a Dutch company if the holding is at least 5% of the investee's capital, provided the conditions are met.

As a general rule, the participation exemption is applicable as long as the participation is not held as a portfolio investment. The intention of the parent company, which can be based on particular facts and circumstances, is decisive. Regardless of the company's intention, the participation exemption also is applicable if the sufficient tax test (i.e. the income is subject to a real profit tax of at least 10%) or the asset test (i.e. the subsidiary's assets do not usually consist of more than 50% of portfolio investments) is met.

For portfolio investment participations not qualifying for the participation exemption, double taxation will be avoided by applying the tax credit method, unless the portfolio investment shareholding effectively is not subject to tax at all. For EU shareholdings, it is optional to credit the actual underlying tax.

Due to the amendments to the EU's Parent-Subsidiary Directive, a corporate taxpayer is not eligible for the participation exemption or participation credit for received distributed profits to the extent that such distributed profits are deductible by the subsidiary. Similar rules apply throughout the European Union.

Dividends not qualifying under the participation exemption regime for an exemption or credit are taxable in full at the ordinary CIT rate.

Interests of 25% or more in a company of which the assets consist (nearly) exclusively of portfolio investments should be annually valued, as an asset, at the fair market value.

Costs related to the acquisition and disposal of a participation (e.g. legal fees, compensations, notary fees) are not deductible for corporate tax.

Losses arising from the liquidation of a (foreign) subsidiary are deductible for CIT, subject to certain conditions.

Note that a provision limits the deduction of excess interest on debts that are deemed to be related to the financing of participations (*see Anti-abuse rules regarding interest and loans in the Deductions section*).

Profits derived from a company that was created by converting a foreign PE only qualify for the participation exemption after they exceed the losses from the PE during the previous years insofar as those losses reduced the taxable profits in the Netherlands before 1 January 2012. Under certain circumstances, such as the alienation of (part of) the shares of the company, all non-recaptured losses will be added to the profits of the Dutch parent company at once. Note that the scope of these anti-abuse provisions has been extended by including situations in which a foreign intermediate holding company is interposed.

In April 2015, legislation was adopted introducing the compartmentalisation doctrine, based on case law. The legislation has retroactive effect to 14 June 2013. Based on the compartmentalisation doctrine, a taxpayer that derives income from a participation that first qualified but at a certain point in time no longer qualifies for the participation exemption, or *vice versa*, must attribute the income to the taxable and the tax-exempt period accordingly. The legislation applies to all changes in the application of the participation exemption regime irrespective of whether caused by a change in facts and circumstances or change in legislation. It applies to both capital gains and dividend distributions. Changes that occurred before 14 June 2013 are affected. However, if in favour of the taxpayer, changes caused by modification of legislation before 1 January 2007 are not taken into account. In April 2015, the Dutch State Secretary for Finance announced its willingness to limit the retroactive effects in such cases.

Stock dividends

Stock dividends are taxed as dividend income to the extent that they are paid out of earned surplus. They are not taxable if paid out of share premium ('*agio*'), provided the share premium account was not created pursuant to a share-for-share merger, in which only Dutch companies were involved. In the case of a share-for-share merger, in which shares in foreign subsidiaries were contributed to a Dutch company, the Dutch company can distribute the difference between the fair market value and the paid-in capital of the subsidiaries being contributed as a stock dividend without triggering Dutch dividend WHT (step-up in basis), provided certain requirements are met.

Interest income

Interest income is taxed as ordinary income against the regular CIT rate.

Royalty income

Royalty income is taxed as ordinary income against the regular CIT rate.

Work in progress

Profits with regard to work in progress should be accounted before actual completion, to the extent that the work is completed. All project costs should be recognised in the year the costs occurred.

Foreign income

In general, a Dutch resident company is subject to CIT on its worldwide income. However, certain income can be exempted (e.g. due to the application of the participation exemption described above) or excluded from the tax base.

Certain foreign-sourced income (foreign branch income, real estate income, and other income) is 'excluded' from the Dutch taxable base. The so-called 'object exemption' or 'base exemption', a method to provide relief for international juridical double taxation in situations of Dutch companies with a PE abroad, is designed as a tax base adjustment instead of a real exemption. Consequently, losses of foreign PEs can no longer be offset against profits of the Dutch head office (except for final losses), but currency exchange results are still included in the tax base. Also, if the foreign activities cease, any losses upon 'liquidation' can, in principle, be deducted. For certain low-taxed passive PEs, the object exemption is replaced by a credit system.

Double taxation of foreign dividends, interest, and royalties is relieved by a tax credit provided by Dutch tax treaties or unilaterally if the payer of the income streams is a resident of a developing country designated by Ministerial Order. If no treaty or unilateral relief applies, a deduction of the foreign tax paid is allowed in computing the net taxable income.

However, relief by exemption is given for dividends from foreign investments qualifying for the participation exemption, as discussed above. In that case, there is no Dutch tax to credit against taxes withheld in the subsidiary's country of residence.

In most circumstances, the foreign dividend is exempt for Dutch CIT under the participation exemption, as previously discussed. As a consequence, foreign WHT cannot be credited, and the WHT constitutes a real cost for the companies concerned. A credit of the foreign WHT is granted against Dutch dividend WHT due on the distribution to foreign parents of the Dutch company. The credit amounts to a maximum of 3% of the gross dividend paid, to the extent that it can be paid out of foreign-source dividends received that have been subject to at least a 5% WHT and the foreign company is liable to CIT. This tax credit does not result in taxable income for CIT purposes.

Deductions

Depreciation, amortisation, and depletion

Generally, depreciation may be computed by a straight-line or a reducing-balance method or, in accordance with any other sound business practice, on the basis of historical cost. Depreciation is applied from the date the asset comes into use. Dutch tax law includes specific rules (*see below*) that potentially limit the depreciation of assets (e.g. immovable property, goodwill, and other fixed assets).

A depletion allowance for natural resources may be granted for tax purposes, when it conforms to sound business practice and is appropriate for accounting purposes.

Limited depreciation of immovable property

There are special provisions for depreciation of immovable property. A distinction is made between immovable property held for investment purposes and buildings used in a trade or business.

Investment property cannot be depreciated to an amount lower than the official property's fair market value for tax purposes, which is known as *WOZ-waarde*. In other words, a property will not be subject to depreciation unless the carrying amount of the building and the land on which it is located is higher than its value for tax purposes. This value is determined by the municipal tax authorities annually. As this value is based on the assumption that the property is free of lease, the value for tax purposes of commercial real estate may be lower than fair market value.

Alternatively, the depreciation of buildings employed in a trade or business is limited to 50% of the property's value for tax purposes. It should still be possible to value immovable property at fair market value if this is demonstrably lower than the current book value. In addition, anti-abuse measures apply to prevent the division of land and buildings into separate legal entities or to related individuals.

Note that maintenance costs continue to qualify for tax relief and any maintenance-related value increase does not lead to a compulsory upward revaluation of the property. Moreover, a property is not required to be revaluated as its value increases due to market developments.

Depreciation of land is not permitted.

The sale of depreciated assets triggers tax on the difference between the sale price and the depreciated book value unless a reinvestment reserve is set up (*see Capital gains in the Income determination section*).

Limited amortisation of goodwill and depreciation of fixed assets
With regard to goodwill, the amortisation for tax purposes is limited to 10% of the purchase price *per annum*. Furthermore, the tax depreciation of other fixed assets (i.e. inventory, equipment) is limited to 20% of the purchase price or production costs *per annum*.

Accelerated depreciation
The law provides accelerated depreciation of several specific assets. Accelerated depreciation applies to investments in assets that are in the interest of the protection of the environment in the Netherlands and that appear on the so-called VAMIL (*Vervroegde Afschrijving Milieu-investeringen*) list. From 2011, the accelerated depreciation facility for investments in environment-improving assets is limited to 75% of the total (investment) costs. Prior to 2011, 100% of the investment costs were eligible for the facility.

Accelerated depreciation also is available for certain other designated assets (e.g. investments of starting entrepreneurs).

Also eligible for accelerated depreciation are certain investment made in new business assets in 2009, 2010, and 2011 and between 1 July 2013 and 31 December 2013. Certain conditions apply. Investment costs minus residual value of sea-vessels that are operated mainly from the Netherlands may be depreciated straight-line over five years. Instead of accelerated depreciation, these taxpayers may choose immediate taxation (*see Tonnage tax regime in the Taxes on corporate income section*).

Anti-abuse rules regarding interest and loans
Due to existing anti-abuse rules, the deduction for interest paid on intra-group debts relating to certain transactions is disallowed. However, if the taxpayer provides credible evidence of overriding commercial reasons for the transaction as well as the loan, or of taxation of the interest in the hands of the recipient at an effective tax rate that is considered adequate by Dutch standards, the interest may be deductible.

Furthermore, interest paid on certain profit participating loans will be qualified as a dividend and will not be tax deductible. Interest received upon these loans may meet the definitions for the participation exemption if the creditor also holds a qualifying participation in the debtor. Intra-group conduits may be denied a credit of foreign WHT with respect to royalties or interest received if no economic risk is deployed.

If the interest payment to a group company relates to a loan that is directly or indirectly granted by a group company in order to finance an acquisition or capital contribution, the interest will be deductible only if the loan and the underlying transaction are based predominantly on sound business considerations or if the interest received is effectively and sufficiently taxed by Dutch standards.

When the debt ultimately is financed externally (outside the group) and a direct relationship exists between the internal debt and the ultimate external financing, it can be substantiated that there are sound business reasons for the loan. Furthermore, the use of tax losses or similar relief claims by the recipient of the inter-company interest may adversely affect the deductibility of the interest paid. Also, the law states that the interest deduction related to indebted dividend distributions, paid back capital, and capital contributions is not only possible in case of sound business reasons but also if the interest is taxed in the hands of the creditor at an effective tax rate that is considered adequate by Dutch standards. The latter requirement means that the interest needs to be subject to an effective tax rate of at least 10% over taxable profits determined according to Dutch standards. For the determination of 'a taxable base according to Dutch tax standards', the tax base limitation for the innovation box is not taken into account.

If the taxpayer makes a reasonable case that the interest is taxable at an effective tax rate of at least 10%, the tax authorities, nevertheless, have the option to substantiate that either the liability or the corresponding transaction is not based on sound business reasons. The tax authorities also have the option to substantiate that the liability is incurred in order to compensate losses or other rights that were formed in that year or that will be formed shortly thereafter. This is also applicable to existing loans.

In addition, the deduction of interest (including costs and currency exchange results) on excess acquisition debt is restricted if the acquired company subsequently joins a Dutch fiscal unity with the taxpayer. The acquisition debt is considered excessive in so far as it exceeds 60% of the acquisition price. The interest expenses may only be deducted from the acquiring company's 'own profits', meaning that the profits of the target company that was added to the fiscal unity are not taken into consideration. The restriction is not applicable if the interest on the debt does not exceed EUR 1 million. Contrary to the other existing interest deduction restrictions illustrated above, this measure also relates to interest on loans obtained from third parties.

Furthermore, a provision limits the deduction of excess interest on debts that are deemed to be related to the financing of participations. Under this rule, the taxpayer is deemed to have debt relating to the financing of participations to the extent that the average cost price of its participations exceeds its average equity. This is a mathematical test. However, a few exceptions apply. For example, the cost prices of the participations that at the time of the initial acquisition led to an extension of the operational activities of the group are not taken into account for the purpose of the mathematical test. The 'participation debt' calculated may consist of both loans from affiliated and third parties. The interest on the deemed participation debt is not deductible to the extent the amount of the interest exceeds EUR 750,000. The provision for excessive participation interest also contains a number of specific anti-abuse measures.

Provision for bad debt

It is possible to make a provision for future expenses with a cause existing on the balance sheet of the tax year in question. Therefore, a provision may be made for bad debts.

Charitable contributions

Charitable contributions are deductible if certain conditions are met. The gift must be documented in writing and contributed to a qualifying charity (ANBI or SBBI). The deductible amount may not exceed 50% of the taxable profits, with a maximum of EUR 100,000.

Limited deductibility of costs relating to remuneration by way of shares

Any remunerations by way of shares, profit-sharing certificates, option rights on shares, or similar rights are not deductible. However, grandfathering rules exist for situations where option rights have been granted to employees before 24 May 2006.

Costs related to so-called stock appreciation rights for employees that earn an income that exceeds EUR 500,000 are not deductible.

Fines and penalties
Most criminal fines and penalties are not tax deductible. This applies, for instance, to fines imposed by a Dutch criminal judge, administrative fines, disciplinary fines, and penalties from a European institution.

Taxes
Certain taxes, such as the tax on insurance transactions, are deductible. Tax paid on the transfer of immovable property must be included in the cost price and taken into account in the course of normal depreciation. The CIT itself is not deductible.

Other significant items
Deduction of certain expenses (e.g. costs for food, drink, and entertainment) paid by employers for employees are not deductible, in part. These costs are often referred to as mixed costs. The non-deductible portion is 0.4% of the total taxable wages of all employees but never less than EUR 4,500 per year. Alternatively, the employer may choose to deduct only 80% of the actual expenses.

Net operating losses
Tax losses can be carried back one year and carried forward nine years. This also applies to start-up losses.

With regard to losses arising in the years 2009, 2010, and 2011, corporate taxpayers may opt for a temporary extension of the carryback period for losses from one to three years. This option, however, also means that the maximum period for loss carryforward will be limited to six years (instead of nine). Furthermore, the extended measure is limited to EUR 10 million loss carryback per extra year.

Complex rules may prohibit the utilisation of net operating losses after a change of 30% or more of the ultimate control in a company. Furthermore, limitations exist on loss utilisation for holding/finance companies. Based on these rules, losses incurred by a mere holding or group finance company can be offset only against holding or finance income in preceding and following years, provided that certain strict conditions are met. These conditions are meant to counter tax planning, whereby the Dutch company concerned acquires (e.g. by way of equity contribution or exchange) other assets that enhance its income streams and its capacity to make use of the losses. Companies carrying out significant other activities (with 25 or more full-time employees) are, in principle, unaffected by these loss relief restrictions.

Payments to foreign affiliates
A Dutch corporation generally can claim a deduction for royalties, management service fees, and most other charges paid to foreign affiliates, to the extent that the amounts are not in excess of what it would pay an unrelated entity (i.e. arm's-length principle). Dutch companies are obligated to produce transfer pricing documentation describing the calculation of the transfer price and the comparability of the transfer price with third party prices.

Group taxation

Fiscal unity regime

A Dutch-resident parent company and its Dutch-resident subsidiaries (if the parent owns at least 95% of the shares) may, under certain conditions, file a tax return as one entity (fiscal unity). Group taxation is available for companies having their place of effective management in the Netherlands, both for Dutch tax and treaty purposes.

The main feature of the fiscal unity is that profits of one company can be offset against losses of another company forming part of that fiscal unity. Furthermore, inter-company transactions are eliminated.

A cross-border fiscal unity is not possible. In February 2010, the ECJ decided that the Dutch fiscal unity regime does not violate EU law (the freedom of establishment), insofar as it disallows a cross-border fiscal unity. However, the ECJ has not yet explicitly dealt with the effects of the fiscal unity regime, other than cross-border loss utilisation, such as the transfer of assets between group companies without immediate taxation and the use of 'final losses'. The Dutch Supreme Court will possibly deal with those issues at a later stage.

It does follow from EU law that Dutch resident companies should not be denied a fiscal unity amongst them merely because of a non-resident parent or intermediary company if located within the EU/EEA. On 16 June 2014, the ECJ decided that the Dutch fiscal unity regime does violate EU law to the extent it denies a fiscal unity between a Dutch resident parent company and its Dutch resident subsidiaries because of a non-Dutch resident EU/EEA intermediary holding company and insofar as it disallows a fiscal unity between two Dutch resident 'sister' companies that are held by a non-Dutch EU/EEA parent company.

The corporate income tax law therefore now explicitly allows a Dutch fiscal unity between Dutch entities that are linked via a non-Dutch resident EU/EEA intermediary holding company or via an EU/EEA parent company.

Transfer pricing rules

Based on a general transfer pricing provision in the corporation tax law, all transactions between related parties must be at arm's length. Furthermore, a specific transfer pricing provision exists with respect to the transactions of an interest and royalty conduit company. Dutch companies are obligated to produce transfer pricing documentation describing the calculation of the transfer price and the comparability of the transfer price with third party prices. If a transaction between related parties is not at arm's length, the taxable income may be corrected by the tax authorities. Moreover, transactions that do not meet the arm's-length test may constitute a contribution of informal capital or a hidden profit distribution.

On the basis of a decree of the State Secretary for Finance regarding transfer pricing, companies may request an advance tax ruling (ATR) and an advance pricing agreement (APA). An ATR may be requested on the classification of activities and an APA may be required on the classification of activities and the arm's-length character of the transfer price.

The Netherlands has implemented the OECD outcomes in the area of country-by-country (CbC) reporting. The documentation obligations include the requirement for eligible taxpayers to produce a CbC report, a master file, and a local file.

Thin capitalisation

There are currently no thin capitalisation rules in the Netherlands.

Controlled foreign companies (CFCs)

Dutch tax law does not provide for specific legislation regarding CFCs. However, interests of 25% or more in a company of which the assets consist (nearly) exclusively of low-taxed portfolio investments should be annually valued, as an asset, at the fair market value. The participation exemption is not applicable to portfolio investment participations unless these participations are qualifying portfolio investment participations for the participation exemption. A portfolio investment participation can only qualify for the participation exemption if either the intention of holding the participation is not an investment intention or if the participation is, in itself, either subject to sufficient tax or if the participation holds sufficient qualifying assets. This rule prevents shareholders of low taxed portfolio investment participations from benefitting from the Dutch participation exemption because dividends not qualifying under the participation exemption are taxable in full at the ordinary CIT rate. Double taxation is avoided by applying the tax credit method, unless the portfolio investment shareholding effectively is not subject to tax at all. For EU shareholdings, it is optional to credit the actual underlying tax.

Tax credits and incentives

Foreign tax credit

See Foreign income in the Income determination section for a description of the foreign tax credit regime.

Small investments

There is a system of deductions for small investments, the so-called small scale investment deduction. To calculate this annual deduction, investments of more than EUR 450 each are totalled to determine the percentage of the deduction.

Total of investments (EUR)	Deduction
0 to 2,300	0
2,301 to 56,192	28% of the value of the total of small investments
56,193 to 104,059	EUR 15,734
104,060 to 312,176	EUR 15,734 minus 7.56% of the amount exceeding EUR 104,059
Above 312,177	No deduction

Investments in energy-efficient assets

For investments in new energy-efficient business assets that meet the Energy List requirements, an additional deduction (EIA) from corporate income is available. The minimum investment amount per asset is EUR 2,500. The allowance equals 55.5% of the annual amount, with a maximum of EUR 118 million, of eligible energy investments. Please note that the percentage of 55.5% is announced to apply in 2017, but the actual amendment to the tax law in this respect still needs to take effect. The right to the EIA is declared with the tax return, provided the investment is reported previously in good time to the Netherlands Enterprise Agency (*www.rvo.nl*). An investment can be reported in phases, but the minimum amount for notification is EUR 2,500.

Investments in environmental assets
For investments in certain new environmental improving assets that meet the Environment List requirements, an additional deduction (MIA) from corporate income is available. The minimum investment amount per asset is EUR 2,500. The allowance equals 36%, 27%, or 13.5% (depending on the ministerial classification of the assets) of the annual amount, with a maximum of EUR 25 million, of eligible environmental investments. The right to the MIA is declared with the tax return, provided the investment is reported previously in good time to the Netherlands Enterprise Agency. An investment can be reported in phases, but the minimum amount for notification is EUR 2,500.

New technology

Wage costs
Conducting certain R&D activities on applied new technology is subsidised by a reduction of wage tax to be paid on wages of employees engaged in R&D of technologically new products. The subsidy accrues to the employer when the employee is credited for the normal amount of wage tax. The subsidy is based on specific legislation (WBSO).

To obtain the relief under the R&D incentive programme, taxpayers must file an electronic/online application with the Netherlands Enterprise Agency. The taxpayer will receive an R&D declaration. The budget for this subsidy is fixed, so the amount of the subsidy is dependent on budget availability. Note that self-developed and utilised software falls within the scope of the R&D incentive under certain conditions.

The WBSO application for R&D includes not only salary costs but also other costs and expenses related to R&D. The benefit of the fiscal scheme is awarded in the form of a wage tax reduction. The benefit amounts to 32% of the first EUR 350,000 of R&D costs (both salary and other costs and expenses). For start-ups, this amounts to 40%. For R&D costs above EUR 350,000, this amounts to 16%. The current limit is abolished. However, the maximum benefit cannot exceed the total amount of wage tax due. Instead of applying for the real costs and expenses (non-salary costs), the taxpayer may choose to take into account a fixed amount based on R&D hours. The fixed amount is EUR 10 per hour as long as the total R&D hours do not exceed 1,800 and EUR 4 for every hour above.

Withholding taxes

Dividends from Dutch corporations are generally subject to a 15% Dutch dividend WHT. In general, this does not apply to the Dutch cooperative (i.e. 'co-op') in a business driven structure, a widely used vehicle for holding and financing activities.

The Netherlands does not levy a WHT on interest and royalty payments.

Domestic corporations are required to withhold taxes as follows:

Recipient	Dividends (%) (1)
Resident corporations	0/15
Resident individuals	15
Non-resident corporations and individuals:	

Netherlands

Recipient	Dividends (%) (1)
Non-treaty situations	15
Treaty:	
Albania	0/5/15 (30)
Argentina	10/15 (2)
Armenia	0/5/15 (3)
Aruba	5/7.5/8.3/15 (5, 21, 40)
Australia	15 (5)
Austria	0 (6) or 5/15 (3, 7)
Azerbaijan	5/10 (38)
Bahrain	0/10 (8)
Bangladesh	10/15 (8)
Barbados	0/15 (42)
Belarus	0/5/15 (2, 9)
Belgium	0 (6) or 5/15 (5, 8)
Bosnia Herzegovina	5/15 (2, 4)
Brazil	15 (5)
Bulgaria	0 (6)/5/15 (2)
Canada	5/15 (10)
Caribbean Netherlands (Bonaire, Saint Eustatius, and Saba)	0/15 (41)
China, People's Republic of	10 (5, 11)
Croatia	0/15 (6, 8)
Curaçao	0/15 (5, 46)
Czech Republic	0 (6) or 0/10 (2, 5)
Denmark	0 (6) or 0/15 (8)
Egypt	0/15 (2)
Estonia	0 (6) or 5/15 (2)
Ethiopia	5/15 (45)
Finland	0 (6) or 0/15 (37)
France	0 (6) or 5/15 (2, 5)
Georgia	0/5/15 (31)
Germany	0 (6) or 5/10/15 (12)
Ghana	5/10 (8)
Greece	0 (6) or 5/15 (2)
Hong Kong	0/10 (42)
Hungary	0 (6) or 5/15 (2)
Iceland	0/15 (8)
India	10/15 (32)
Indonesia	10 (2, 5)
Ireland, Republic of	0 (6) or 0/15 (13)
Israel	5/15 (2)
Italy	0 (6) or 5/10/15 (14)
Japan	0/5/10 (15)
Jordan	5/15 (8)
Kazakhstan	0/5/15 (17)
Korea, Republic of	10/15 (2)
Kuwait	0/10 (8)
Kyrgyzstan	15 (5, 24)
Latvia	0 (6) or 5/15 (2)
Lithuania	0 (6) or 5/15 (2)
Luxembourg	0 (6, 18) or 2.5/15 (2, 18)

Recipient	Dividends (%) (1)
Macedonia	0/15 (8)
Malawi	0/5/15 (19)
Malaysia	0/15 (7)
Malta	0 (6) or 5/15 (2)
Mexico	5/15 (16)
Moldavia	0/5/15 (20)
Mongolia	0/15 (44)
Montenegro	5/15 (2, 4)
Morocco	10/15 (2)
New Zealand	15 (5)
Nigeria	12.5/15 (8)
Norway	0/15 (2)
Oman	0/10 (8)
Pakistan	10/15 (2)
Panama	0/15 (42)
Philippines	10/15 (8)
Poland	0 (6) or 5/15 (5, 8)
Portugal	0 (6)/10
Qatar	0/10 (39)
Romania	0 (6) or 0/5/15 (22)
Russian Federation	5/15 (23)
Saint Martin	0/15 (5, 46)
Saudi Arabia	5/10 (8)
Serbia	5/15 (2, 4)
Singapore	0/15 (5, 7)
Slovak Republic	0 (6) or 0/10 (2, 5)
Slovenia	0 (6) or 5/15 (2)
South Africa	5/10 (16)
Spain	0 (6) or 5/15 (5, 25)
Sri Lanka	10/15 (2)
Surinam	7.5/15 (2)
Sweden	0 (6) or 0/15 (2)
Switzerland	0/15 (36, 43)
Taiwan	10
Tajikistan	15 (24)
Thailand	5/15 (34)
Tunisia	0/15 (8)
Turkey	5/15 (2)
Turkmenistan	15 (5, 24)
Uganda	0/5/15 (35)
Ukraine	0/5/15 (26)
United Arab Emirates	5/10 (8)
United Kingdom	0 (6) or 0/10/15 (33)
United States	0/5/15 (27)
Uzbekistan	0/5/15 (28)
Venezuela	0/10 (2)
Vietnam	5/7/15 (29)
Zambia	5/15 (2)
Zimbabwe	10/15 (2)

Notes

1. A 0% WHT rate applies to payments to a resident corporation when its shareholding qualifies for the participation exemption and the shares form part of a company whose activities are carried on in the Netherlands. However, dividend WHT may be levied on certain profit participating loans.
2. The lower rate applies if the foreign company directly owns at least 25% of the capital of the Dutch company.
3. The 5% rate is applicable if the foreign company directly owns 10% of capital of the Dutch company. The 0% rate is applicable if the dividend originates from ordinary taxed profits and the dividend is tax exempt in the hands of the recipient.
4. Based upon the treaty concluded with former Yugoslavia.
5. Negotiations on (revisions of) tax treaties are currently pending with Angola, Aruba Australia, Belgium, Brazil, Chile, Colombia, Costa Rica, France, Indonesia, Kenya, New Zealand, Poland, Saint Martin, Singapore, Slovak Republic, and Spain. The revised treaty with the Czech Republic is signed but not yet effective.
6. Indicates that this country is a member state of the European Union. The EU Parent/Subsidiary Directive applies from 1 January 1992. According to the Directive, dividends paid by a Dutch company (BV or NV) to a qualifying parent company resident in another EU member state must be exempt from Dutch WHT, provided certain conditions are met. Among other things, the EU parent company must hold at least 10% of the Dutch dividend-paying company's capital (or, in certain cases, voting rights) for a continuous period of at least one year. Please note that the Dutch tax legislation is more lenient with respect to the minimum holding; it only requires a holding of 5% at the moment of distribution. A provisional exemption from dividend WHT will apply from the start of the one-year holding period. The exemption will be cancelled retroactively if, following the dividend distribution, the one-year holding requirement is not actually met. The Dutch dividend-distributing company must provide to the Dutch tax authorities a satisfactory guarantee for the payment of dividend WHT that, but for the provisional exemption, would be due. The exemption is also applicable if the parent company is a resident of a EU member state and owns at least 10% of the (voting) shares in the Dutch company but only on the basis of reciprocity (Finland, Germany, Greece, Luxembourg, Spain, and United Kingdom). Should the WHT exemption not be available under the EU Parent/Subsidiary Directive, the treaty rate(s) set out in the right-hand side of the same column (following 'or') will apply.
7. The lower rate applies if the foreign company directly or indirectly owns at least 25% of the capital of the Dutch company.
8. The lower rate applies if the foreign company directly owns at least 10% of the capital of the Dutch company.
9. The 0% rate applies if the foreign company directly owns at least 50% of the capital of the Dutch company, or invested more than EUR 250,000 in the Dutch company or directly owns 25% of the capital of the Dutch company and has a statement indicating that the investment in Dutch capital is, directly or indirectly, guaranteed by the government of Belarus.
10. The 5% rate applies if the foreign company directly or indirectly owns at least 25% of the capital or at least 10% of the voting rights in the Dutch company.
11. The treaty is not applicable for Hong Kong and Taiwan.
12. The 5% of rate applies if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the payer company. The 10% rate applies if the beneficial owner is a pension fund that is resident in the Netherlands. The 15% rate applies in other cases.
13. The lower rate applies if the foreign company owns at least 25% of the voting rights in the Dutch company.
14. The 5% rate is applicable if the Italian company owns at least 50% of the voting shares in the Dutch company for a continuous period of at least 12 months prior to the date chosen for distribution of a dividend. The 10% rate is applicable if the Italian company owns at least 10% of the voting shares in the Dutch company for the continuous period mentioned above. In other cases, the dividend WHT rate is 15%.
15. The 5% rate applies if the foreign company owns at least 10% of the voting shares of the Dutch company for a continuous period of at least six months immediately before the end of the book year to which the dividend distribution relates. No WHT is levied if the foreign company directly or indirectly owns at least 50% of the voting power in the Dutch company distributing the dividends for a period of six months. Also, no WHT is levied if the foreign company is a pension fund.
16. The lower rate applies if the foreign company directly or indirectly owns at least 10% of the capital of the Dutch company.
17. The 0% rate is applicable if the foreign company directly or indirectly owns at least 50% of the capital of the Dutch company or if it has invested more than 1 million United States dollars (USD) in the Dutch company, insofar as the government of Kazakhstan has guaranteed the investment; the 5% rate applies if the recipient company owns at least 10% of the capital of the paying company.
18. These rates do not apply to dividend payments to Luxembourg '1929' holding companies.
19. A 0% rate is only applicable to certain pension funds. The 5% rate is applicable only to shareholdings of at least 10%.
20. The 0% rate is applicable if the foreign company directly or indirectly owns at least 50% of the capital of the Dutch company and invested more than USD 300,000 in the Dutch company. The 5% rate is applicable if the foreign company directly owns 25% or more of the capital of the Dutch company. The 15% rate is applicable on portfolio investments.

21. The rate is 15% unless the dividend is paid to a company holding at least 25% of the paid-up capital in the Dutch company. In this latter case, the WHT rate will be reduced to: (i) 5% if the dividends received are subject to a profits tax in the other state of at least 5.5% on the dividend or (ii) 7.5% if the profits tax is less than 5.5%. The combined CIT of the other state and Dutch dividend WHT for participations of at least 25% must not exceed 8.3%. Depending on the tax percentage levied in the other state, the Dutch dividend WHT will be restituted accordingly.
22. The 5% rate is applicable if the recipient of the dividend is the beneficial owner and directly owns 10% of the capital of the Dutch company. The 0% rate is applicable if the recipient of the dividend is the beneficial owner and directly owns at least 25% of the capital of the Dutch company.
23. The 5% rate is applicable if the recipient of the dividend is the beneficial owner and directly owns at least 25% in the capital of the Dutch company with a minimum investment of at least EUR 75,000.
24. The Netherlands applies the treaty with the former Soviet Union unilaterally to Kyrgyzstan, Tajikistan, and Turkmenistan.
25. The lower treaty rate applies if the Spanish company owns 50% or more of the capital of the Dutch company or if the Spanish company owns 25% or more of the capital of the Dutch company and another Spanish company also owns 25% or more of that capital.
26. The 0% rate is applicable if the foreign company directly or indirectly owns at least 50% of the capital of the Dutch company or invested more than USD 300,000 in the Dutch company. The 5% rate is applicable if the foreign company directly owns 20% or more of the capital of the Dutch company.
27. The lower rate applies if the foreign company directly owns at least 10% of the voting rights in the Dutch company. On 8 March 2004, the Netherlands and the United States signed a protocol amending the applicable tax treaty. Based on this protocol, the WHT on dividends will be reduced to 0% if the receiving company owns 80% or more of the voting power of the distributing company, provided that certain other conditions are also met. This reduction of the dividend WHT has taken effect as of 1 January 2005.
28. The 5% rate is applicable if the foreign company directly owns 25% or more of the capital of the Dutch company. The 0% rate is applicable if the dividend for that company qualifies for the participation exemption in the Netherlands. The 15% rate is applicable to portfolio dividends.
29. The 5% rate is applicable if the foreign company directly or indirectly owns at least 50% of the capital of the Dutch company or invested more than USD 10 million in the Dutch company. The 7% rate applies to the foreign company owning, directly or indirectly, at least 25% of the capital of the Dutch company.
30. No dividend WHT is due if the share in the participation is at least 50% and at least USD 250,000 capital is paid in, in the participation. A dividend WHT of 5% is due if the share in the participation is at least 25%.
31. A dividend WHT of 5% is due if the share in the participation is at least 10%. No dividend WHT is due if the share in the participation is at least 50% and at least USD 2 million capital is paid in, in the participation.
32. Based upon most-favoured nation principle.
33. The 0% rate applies if a company controls at least 10% of the voting power of the Dutch company paying the dividends. The 15% rate applies to dividends arising from income from immovable property, distributed by certain tax exempt real estate investment vehicles (e.g. REITs or FBIs).
34. In case a Thai company holds at least a 25% share in a Thai company, the Dutch dividend WHT rate is 5%.
35. If a share of at least 50% is held by a company, no dividend WHT is due. If the share the company holds is less than 50%, 5% dividend WHT is due.
36. As of 29 December 2004, Switzerland and the European Union concluded a treaty in light of the EU Savings Directive. The treaty, amongst others, contains a clause that no dividend tax is withheld if certain requirements are met. The main requirements are that a shareholding of at least 25% is held directly for a period of at least two years and both corporations are not subjected to a special tax regime. Please note that even though the treatment of dividend appears to be equal to the treatment on the basis of the EU Parent-Subsidiary Directive, the Directive is, in fact, not applicable to Switzerland.
37. The 0% rate applies if the foreign company directly owns at least 5% of the capital of the Dutch company.
38. The 5% rate applies if the foreign company directly owns at least 25% of the capital of the Dutch company with a minimum investment of at least EUR 200,000 in the Dutch company.
39. The 0% rate applies if the foreign company directly owns at least 7.5% of the capital of the Dutch company.
40. The WHT rates are based on the Dutch ‘*Belastingregeling voor het Koninkrijk*’.
41. The WHT rates for the Caribbean Netherlands are based on the Dutch ‘*Belastingregeling voor het land Nederland*’.
42. No WHT is levied if the foreign company (beneficial owner) receiving the dividends directly holds at least 10% (15% threshold for the Panama Treaty) of the shares of the Dutch company, provided that the shares of the foreign company are regularly traded on a recognised stock exchange or at least 50% of the shares of the foreign company is owned by residents of either contracting state or by companies the shares of which are regularly traded on a recognised stock exchange. Also, no WHT is levied if the foreign company is a bank or insurance company, a state or political subdivision, a headquarter owning at least 10% of the shares of the Dutch company, or a pension fund.
43. The 0% rate applies if the foreign company directly owns at least 10% of the capital of the Dutch company, is a pension fund, or, as far as Switzerland is concerned, the beneficial owner is a social security scheme.

44. Because the treaty with Mongolia is not applicable anymore, the national WHT rate applies.
45. The 5% rate applies if the foreign company is the beneficial owner of the dividends and directly owns at least 10% of the capital of the Dutch company or is a pension fund.
46. The 0% rate applies if the shareholder is a pension fund or a governmental entity. The 0% rate also applies if the foreign company is the beneficial owner of the dividends and directly owns at least 10% of the capital of the Dutch company and meets one or more of the following criteria: it is listed on a recognised stock exchange, more than 50 of the shares is held by an entity listed at a recognised stock exchange, is the head office of a multinational or engages in group financing, has at least three qualifying employees, is commercially active and the dividends are connected to the business activities, is commercially active and the main purpose of the entity or shareholding is not the benefits of the tax arrangement, the shares are held for more than 50% by natural persons resident in the Netherlands or the other state.

Tax administration

Taxable period

Generally, the tax year is equal to the calendar year. However, corporate taxpayers may deviate from this by adopting a different financial year.

Tax returns

Corporate taxpayers are required to file a tax return annually. The due date is generally five months after the end of the company's financial year. This filing due date may be extended upon request by the taxpayer.

The Dutch tax authorities generally make a provisional assessment before issuing the final assessment after a full examination of the return. The final assessment must be issued within three years following the financial year. This period is prolonged with the time of the extension for filing the tax return. The Dutch tax authorities may issue an additional assessment if it appears that the amount of CIT payable (as calculated in the final assessment) is too low.

During the current tax year, a provisional assessment can be issued on the basis of prior years' taxable income or on an estimation provided by the taxpayer.

Payment of tax

The CIT assessed must be paid within two months of the date of the provisional or final assessment. Interest is payable on the CIT due. The interest is calculated from six months following the financial year. The minimum interest rate is 8%.

Refund of tax unduly levied

If a corporate taxpayer is entitled to a refund of Dutch CIT or WHT because the levy appeared to be in conflict with EU law, the Netherlands might be obligated to repay with interest for the period from the levy to the refund. The taxpayer must file a request at the Dutch tax authorities within six weeks after the refund.

Interest on late payment dividend WHT

Interest is calculated on late payments or refunds of Dutch dividend WHT.

Tax audit process

Corporate taxpayers might be subject to regular audits by tax inspectors. This forms part of the so-called vertical monitoring tasks of the national tax authorities. In recent years, there has been a tendency towards a more enhanced co-operation between tax authorities and taxpayers in the Netherlands (*see Horizontal monitoring in this section below*). Part of this trend is that there are to be less audits in retrospect.

Statute of limitations
Under certain conditions, the tax administration can impose an additional assessment within five years from the year in which the tax debt originated (if the filing due date was extended on request, this period is added). In case of income from abroad, the period for additional assessment is extended to 12 years. In 2013, the Dutch tax legislator published a proposal to reduce the period for the issuing of an additional assessment to three years after the tax return is received by the Dutch tax authorities. The same proposal also suggests extending that period to 12 years in case the taxpayer intentionally filed an incorrect tax return. The proposal is currently subject to amendments by the Dutch parliament. It is still unclear when or if this proposal will be adopted.

Advance pricing agreement (APA)/Advance tax ruling (ATR)
Taxpayers are able to obtain (legal) certainty concerning their CIT positions. They may request the Dutch tax authorities to conclude an APA with respect to the transfer pricing of controlled transactions. Taxpayers may also request the Dutch tax authorities to provide an ATR with respect to the CIT implications of a (contemplated) set of transactions.

Horizontal monitoring
If the taxpayer is willing, the Dutch tax authorities, in certain cases, shift their method from vertical monitoring to horizontal monitoring. Emphasis is placed on cooperation and on the responsibilities of the parties involved, instead of retrospective control. Horizontal monitoring is based on mutual trust, understanding, and transparency between the taxpayers and the Dutch tax authorities. It aims at reducing administrative burdens and providing legal certainty in advance. Taxpayers need to have a solid Tax Control Framework.

Topics of focus for tax authorities
The topics of focus for the Dutch tax authorities may vary.

Other issues

Foreign Account Tax Compliance Act (FATCA) intergovernmental agreement (IGA) with the United States (US)
The Netherlands signed an FATCA IGA with the United States on 18 December 2013. As of 1 July 2014, banks and insurers must be compliant with the FATCA provisions. This US-based legislation is implemented in Netherlands’ domestic law and applies to all financial institutions worldwide. The FATCA IGA is based on the standard Model 1A IGA of 4 November 2013 and provides for specific exemptions.

Common Reporting Standard (CRS)
The CRS is implemented in Netherland’s domestic law as of 1 January 2016. The same holds true for the amended EU Directive on Administrative Cooperation.

Based on this domestic law, financial service companies in the Netherlands must comply with certain administrative obligations and report information on foreign account holders to the Dutch tax authorities. This information may include account numbers and the balance on a bank account of foreign account holders.

Base erosion and profit shifting (BEPS)
According to the Netherlands, the BEPS issues should be addressed through international cooperation. As a member of the OECD, the Netherlands is an active participant in the BEPS project of the OECD and supporting its goals. As a consequence, the Netherlands will enact legislation when agreement is reached within the OECD on the BEPS project and all parties agreed to implement. One example of this type of legislation is the OECD CbC reporting implementation package that has been published in the OECD report on Action 13 in 2015. As of 1 January 2016, the Netherlands has implemented CbC reporting in domestic law in accordance with the system and methods as prescribed in the OECD CbC reporting package. Another example concerns the OECD recommendations on innovation box rules. As of 1 January 2017, the Dutch innovation box regime is aligned with the modified nexus approach as described in the OECD report on Action 5.

EU state aid
In 2014, the European Commission (EC) opened an investigation to examine whether a specific, individual ruling issued by the Dutch tax authorities on the calculation of the taxable basis for CIT purposes complies with the EU rules on state aid. The EC has concluded that this ruling does, in fact, constitute state aid. The Dutch Ministry of Finance has said that it does not agree with the EC's decision and will appeal.

It is expected that the EC may also investigate other tax rulings. However, the EC has explicitly stated that it does not expect to encounter systematic irregularities in Dutch tax rulings.

Norway

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Significant developments

National Budget for 2017: Tax changes

The National Budget for 2017 included several changes in the Norwegian tax legislation. The main changes are the following:

- The tax rate is reduced from 25% to 24% as of the income year 2017 and applies, in general, to both individuals and enterprises. The tax rate is proposed to be reduced to 23% as of the income year 2018. The resource rent tax for hydropower companies has been increased by 1.3% to 34.3%, and the special tax rate on petroleum is proposed to be increased by 1% to 54%, to ensure that the general reduction of the tax rates are proceeds neutral in relation to these sectors.
- The corporate income tax (CIT) rate for certain entities within the financial sector remains unchanged from 2016 and is assessed at 25%. In addition, a new financial activities tax/special payroll tax of 5% on the company's wage base applies to these enterprises.
- The research and development (R&D) tax credit scheme (*SkatteFunn*) has been strengthened. The upper limit for annual deductible costs under the R&D scheme has been increased to 25 million Norwegian kroner (NOK) for self-developed R&D and NOK 50 million for R&D purchased from approved institutions.

Country-by-country (CbC) reporting

Norway has implemented CbC reporting rules for multinational groups with a joint income of more than NOK 6.5 billion. The report is to be submitted, at the latest, by 31 December of the year after the relevant accounting year. The rules entered into force 1 January 2017, and the first report has to be submitted, at the latest, by 31 December 2017 for the accounting year 2016.

New Tax Administration Act

A new Tax Administration Act entered into force on 1 January 2017. The objective is to unite the tax administration rules in one law and to secure an effective and good tax administration. There are some changes to the former rules. Among others, a five-year general time limit for reassessing tax assessments has been adopted.

Taxes on corporate income

A Norwegian resident company is, as a starting point, subject to CIT on its worldwide income. Non-resident companies are, as a starting point, liable for CIT in Norway when engaged in a business that is either conducted in or managed from Norway.

CIT is, in general, assessed at a rate of 24%. Certain companies within the financial sector are assessed at a CIT rate of 25%.

As a general rule, income is taxable when the right to receive it arises and costs are deductible when the liability to cover the costs arises. The actual payment is generally not relevant.

Petroleum tax regime

All upstream petroleum activity on the Norwegian Continental Shelf (NCS) is taxable to Norway.

Taxation is based on net income at a marginal tax rate of 78%, which is comprised of the ordinary 24% CIT rate and a 54% special tax. All income is subject to 24% CIT, while only income from offshore production and pipeline transportation of petroleum from the NCS (offshore tax regime) is subject to the additional 54% special tax. The ordinary and special tax rates were changed in 2017 (from 25% and 53%). However, the marginal tax rate remains the same, and the purpose of the changes in the special tax rate (from 53% to 54%) and uplift (from 5.5% to 5.4%) is to leave the deduction value of the uplift unchanged (*see below*).

All upstream activity on the NCS must be consolidated within the company. There is no ring fence per oil field, and tax consolidation against other activity is limited. Crude oil sales from most of the fields are taxed at a predetermined market price set by an official board (i.e. the norm price). In theory, a norm price may be imposed on gas sales, but this has not been implemented. Instead, an extensive reporting requirement was implemented in October 2012. Investments in installations for the exploitation and production of petroleum, as well as investments in pipelines, are depreciated linearly over six years.

An investment-based ‘supplementary depreciation’ (uplift) of 21.6% (5.4% per year for four years) is granted on investments in installations for the exploitation and production of petroleum, as well as investments in pipelines. The rate was reduced from 5.5% in 2016 to 5.4% in 2017. The new rate applies for investments made on or after 1 January 2017. Special transitional rules apply for investments made before 5 May 2013, and an uplift rate of 7.5% may still apply in some cases. The uplift is deducted against the special tax base. Losses and unused uplift may be carried forward indefinitely with an annual interest. Both depreciation and uplift may be claimed from the year of the investment, regardless of whether title has passed or the asset has been taken into use. If the upstream activity on the NCS ceases, the tax value of losses carried forward and unused uplift may either be sold or compensated by the Norwegian state. Exploration costs are tax deductible as incurred. If a loss is created due to exploration costs, the taxpayer may claim that the tax value of such a loss is repaid in the year following the income year in which the loss was created.

Special rules apply as to the deductibility of net interest costs in the special tax basis (54%).

A special regime ensures that transfer of licences on NCS is tax exempt; there is no step up in the tax basis.

Note that income taxed under the special tax regime is exempted from dividend withholding tax (WHT).

The Petroleum Tax Office has a special responsibility for the taxation of the petroleum sector. It has a high focus on transfer pricing.

Hydro power tax regime

The hydro power tax regime is applicable for the taxation of income derived from the production, sales, transfer, or distribution of hydro power.

Taxation is based on net income at a marginal tax rate of 58.3%, which is comprised of the ordinary 24% CIT rate and a 34.3% resource rent tax. All income is subject to 24% CIT, while only income from hydro power production is subject to the additional 34.3% resource rent tax.

The resource rent is calculated per hydro power plant. The gross income is, with some exceptions, calculated based on spot market price per hour multiplied by actual production. In addition, actual income from green certificates is included in the gross income. Deductible costs will be the same as for CIT; that is, expenses related to the power plant except for interest expenses, which are not deductible. Uplift is granted. Special rules apply to the depreciation of investments in hydro power plants. Rent expenditure and depreciation related to waterfalls are not deductible, and waterfalls are not included in the basis for uplift. Tax consolidation is mandatory within the company and, provided the conditions for group taxation are fulfilled, available on a group level. Losses (negative resource rent) on a company (eventually on a group) level will be compensated by the Norwegian state.

Shipping tonnage tax regime

The tonnage tax rules in Norway are in line with those found in other European Union (EU)/European Economic Area (EEA) countries and imply that shipping income will be tax-exempt on a permanent basis.

Norwegian tonnage-taxed companies are allowed to keep only certain kinds of assets inside the tonnage regime (legal assets) and are not allowed to have income from non-tonnage-taxed activities except financial income. If the requirements are not fulfilled, the company will fall outside the scope of the model and be taxed at the ordinary rate (24%).

Qualifying assets

A tonnage-taxed company must own at least one qualifying asset (i.e. a vessel, for example bulk tankers, container vessels, car carriers, tugboats, and entrepreneurial vessels and auxiliary vessels for use in the petroleum industry), new building contracts, a 3% share in another tonnage-taxed limited company, or a 3% ownership interest in a qualifying partnership or controlled foreign company (CFC).

In the National Budget for 2017, it was decided that vessels used in the windmill industry will qualify for the shipping tonnage tax regime. The new legislation is currently pending approval from the European Free Trade Association (EFTA) Surveillance Authority, and the Norwegian government is working towards implementing the new legislation within 2017.

Qualifying and legal business activities/income

Qualifying business income is income from the operation of the company's own and chartered vessels. A tonnage-taxed company may, for example, charter vessels in and out on bareboat and time charter terms without limitations. Furthermore, gains upon disposal of vessels and new building contracts are exempt from taxation.

Income from related activities, such as the sale of goods and services onboard vessels, loading and discharging vessels, or leasing out containers and operations of ticket offices, is also exempt from taxation. The exemption also applies to income from the strategic and commercial management of the company's owned and chartered vessels, as well as vessels owned or operated by group companies (more than 50% joint ownership), and vessels operated according to a pool agreement. Pure management companies are not included (i.e. all companies must have at least one qualifying asset).

Financial income is permitted, except for income from shares in unlisted companies and ownership interests in partnerships that are not taxed under the tonnage tax system. The condition is that financial activities do not constitute a separate business. Net financial income is subject to ordinary taxation (24%). Currency gains and losses are partly taxable/deductible, and interest costs are partly deductible, depending on the proportion between the company's finance capital and total book capital.

Entrance into the tonnage tax system

Entry into the tonnage tax system is optional and may take place with effect from 1 January every year, provided that the company has fulfilled the conditions for the application into the tonnage tax system from the beginning of the year. Newly established companies will have direct entry and may enter into the tonnage tax system from the date of incorporation. All qualifying companies within the same group are obligated to make the same election (tonnage taxation or ordinary taxation).

Companies that enter into the tonnage tax system are subject to a formal ten-year lock-in period. If a company exits the tonnage tax system before the lock-in period expires, it will be excluded from the tonnage tax system until after the initial lock-in period has ended.

Upon entry into the tonnage tax system, the difference between market value and tax value of the company's assets (including vessels, new building contracts, ownership interests in partnerships, and shares in CFCs/tax exempt assets) is taxed as a capital gain (24%) that can be transferred to the gain and loss account. 20% of the balance will be entered as income each year (balance method). There is continuity for financial assets and assets covered by the tax-exemption rules (qualifying shares and derivatives).

Exit from the tonnage tax system

A shipping company may exit the regime on a voluntary basis or may be obligated to do so after breaching specific company requirements within the tonnage tax system. There should be no exit charge when leaving the regime, and the tax value on the company's assets will be adjusted to market value at the time of exit. However, a company that has untaxed gains calculated upon entry into the tonnage tax system could have a tax liability upon exit.

Local income taxes

There is no county or municipal CIT in Norway.

Corporate residence

Companies that are registered and incorporated in Norway in accordance with Norwegian company law are, as a general rule, regarded as tax resident in Norway and taxable for their worldwide income. If effective management at the board/director level is carried out outside Norway, residency in Norway for tax purposes may cease, and the company may be subject to exit taxation. Note that several factors should be considered in order to determine whether tax residency has moved (e.g. other management functions and the overall connection to Norway).

Foreign corporations will be regarded as tax resident in Norway if the place of effective management is in Norway. The place of effective management will be deemed to be in Norway if, for example, the board of directors makes its decisions in Norway.

Permanent establishment (PE)

According to Norwegian domestic law, a foreign company is liable to tax in Norway when engaged in a business that is either conducted in or managed from Norway. The tax liability is limited to income that is derived from Norwegian sources. As a general rule, non-residents without a PE are not liable for tax on capital gains when selling Norwegian financial instruments. However, if the financial instrument is connected to a business that is conducted in or managed from Norway, the sale of the financial instrument can trigger taxation in Norway.

The legislation does not contain a reference to the treaty concepts of ‘permanent establishment’ or ‘permanent representative’. The threshold for tax liability is normally lower under Norwegian domestic law than the taxing right afforded to source states under double tax treaties (DTTs).

With respect to DTTs, the Norwegian tax authorities will, to a large extent, follow the Organisation for Economic Co-operation and Development (OECD) Commentaries when interpreting the relevant DTT, if the wording is similar to the OECD Model Tax Convention.

Other taxes

Value-added tax (VAT)

The general VAT rate is 25% and applies to all supplies of goods and services not qualifying for another rate or an exemption. A reduced rate of 15% applies to supply of food and beverages, excluding tobacco, alcohol, medication, and water from waterworks. The reduced rate is not applicable to the supply of food and beverages consumed in restaurants and other food establishments.

A reduced rate of 10% applies to the television licence fee charged for broadcasting services provided by the Norwegian Broadcasting Company (NRK), domestic passenger transport services and procurement of such services, domestic ferry services related to transport of vehicles, accommodation services, cinema tickets, museum and gallery tickets, amusement park tickets, and sports events.

Exemptions with credit (zero-rated) include, but are not limited to, the following (please note that there might be specific conditions for the exemptions to apply):

- Export of goods and services.
- Goods and services for Norwegian offshore and non-resident ships.
- Transfer of a going concern.
- Supply of newspapers (including e-newspapers) and books (does not include e-books, which are subject to the 25% VAT rate).
- Sale of vessels and aircraft for use in taxable activity.

Exemptions without credit include, but are not limited to, the following (please note that there might be specific conditions for the exemptions to apply):

- Supply of works of art owned by the artist.
- Health services.
- Social services.
- Financial services, including banking, insurance, and the sale of shares (entities within the financial services sector are, in general, subject to a special financial activities tax, *see below*).
- Educational services.
- Sale and lease of real estate (accommodation and lease of parking lots are taxable).
- Services supplied by cultural and entertainment institutions.

Exemptions, whereby an option to tax is available, include the letting of immovable property to VAT liable lessees following a specific VAT registration with the VAT authorities. Please note that an ordinary VAT registered business is not required to specifically register for letting of property.

The registration threshold is met when supplies subject to VAT in coherence with the Norwegian VAT legislation (including self-supplies) exceed NOK 50,000 during a 12-month period. For charitable and public utility institutions and organisations, the threshold is set at NOK 140,000.

Customs duties

There are quite extensive customs duties on agricultural products, which must be paid upon importation. However, it is often possible to avoid customs duties on these products partly or completely by applying for an exemption from the agricultural authorities in advance. Some of these exemptions are subject to tariff quotas.

Clothes and some other textile products are also subject to customs duties upon importation to Norway, but imports comprised by free trade agreements (such as the EEA with the EU) and the General System of Preferences (for developing countries) are exempt. As a result, clothes will, as a general rule, not be subject to customs duties as long as the importer presents the necessary certificates of origin.

There are no customs duties on other products than agricultural products, clothes, and textile products.

Excise taxes

Excise taxes are calculated on import and domestic production of the following:

- Petroleum products, including gas.
- Alcoholic beverages.
- Non-alcoholic beverages.
- Ethanol for technical purposes.
- Tobacco.
- Chocolate, candy, sugar, etc.
- Products containing the chemicals TRI/PER.
- Products containing the propellant gases HFK/PFK.

There are also excise taxes related to the following:

- Registration of vehicles.

- Use of vehicles (annual tax).
- Emissions of NOx.
- Sale of electricity.

Property taxes
Real estate may, under certain conditions, be subject to property tax. It is up to the different municipalities to choose whether it wants to impose property tax on real estate. Not all municipalities impose property tax on real estate. The applicable rate varies between 0.2% and 0.7%, which is decided by the municipality. The tax base will normally be the estimated market value (with some adjustments).

Hydro power producers must pay property tax on the hydro power plant's capitalised value using a capital interest rate of 4.5%. However, the basis for the calculation of the property tax should fall in the range of NOK 0.95 to NOK 2.74 per kWh of the power plant average production for the last seven years. For hydro power plants with nominal capacity less than 10,000 kVA, the property tax base will be the same as the tax value for income tax purposes.

Stamp taxes
A tax is levied on the registration of a change of ownership of real estate. The tax is calculated at 2.5% of the fair market value.

Net wealth taxes
There is no net wealth tax or other capital taxes for limited liability companies, investment funds, state-owned enterprises (according to the State-owned Enterprise Act), inter-municipal companies, and companies in which somebody owns a part in or receives income from, when the responsibility for the companies' liabilities is limited to the companies' capital.

Some institutional holders (e.g. mutual insurance companies, savings banks, cooperatives, taxable pension funds, self-owned finance institutions, mortgage credit associations) pay 0.15% (state) net wealth tax. The maximum net wealth tax rate for a corporate body is 0.85% (state and municipal tax figures for fiscal year 2017).

From the income year 2017, shares in quoted limited liability companies and equity funds are valued at 90% of quoted value as of 1 January of the year after the relevant income year for net wealth tax purposes. If quoted both on the Norwegian and a foreign stock exchange, the Norwegian stock exchange value will be applicable. If not quoted, the basis for taxation is, as a rule, the company's net taxable value for wealth tax purposes as per 1 January of the income year in question. The basis for taxation of non-quoted shares in foreign companies is, as a starting point, the assumed market value of the shares as per 1 January of the assessment year.

National insurance contributions
Employers are subject to pay employers' national insurance contributions on the employees' gross salary. The employers' contribution rate varies between 0% and 14.1% based on the municipality of the head office of the business. The contribution shall be reported and paid on a bimonthly basis.

Financial activities tax
From 2017, entities within the financial services sector are in general subject to a new special payroll tax. The tax rate is 5% and shall be calculated on the wage base.

Companies where the employees use more than 30% of their time on financial services exempt from VAT will be comprised by the tax.

Exit tax

The exit rules levy taxes upon the migration of assets or liabilities. The tax is calculated by reference to the accrued but unrealised gains at the time of migration at a rate of 24%/25%. Exit tax is also levied if Norwegian CFC taxation lapses because the control requirement is no longer met or if:

- a Norwegian tax resident company transfers its tax residency (effective management) to another country
- a Norwegian tax resident company has assets or liabilities that are transferred to a PE that is tax exempt pursuant to a DTT, or
- a foreign company has assets or liabilities that are transferred from a Norwegian PE to the head office or a foreign PE of the same company.

Transfer of assets or liabilities from a PE of a Norwegian company to another PE in a country where the DTT in question is based on the credit method is, however, not regarded as a taxable event.

According to the rules, the tax treatment is different depending on the type of assets being transferred. Business-related operational equipment and financial assets being transferred out of Norwegian taxing jurisdiction are considered as taxable events, but the tax charge may be deferred if certain conditions are met. The main conditions are that the taxpayer is resident within the EEA/EU and has provided a guarantee for the deferred tax and interest charge. The transfer of intangible assets and inventory trigger immediate and unconditional exit taxation.

De minimis exception rules apply when determining whether the exit tax may be levied. Exit tax on the transfer of tangible assets is applicable only if the unrealised capital gains exceed NOK 5 million. Exit tax on the transfer of other assets and liabilities is only applicable if the unrealised capital gains exceed NOK 1 million.

Carbon dioxide (CO2) tax

A CO2 tax is calculated on petroleum that is flared and on natural gas emitted into the air, as well as on CO2 that is separated from petroleum and emitted into the air, and on installations used for production or transportation of petroleum. The CO2 tax is regarded as a normal operating cost for CIT purposes and is a fully deductible cost both for corporate and special tax calculations.

Type of Petroleum	NOK per l/Sm3/kg
Petrol	1.04
Petroleum, high rate:	
Aviation turbine kerosene	1.10
Petroleum:	
Light oil, diesel oil	1.20
Residue	1.20
Petroleum, reduced rate:	
Light oil, diesel oil	0.32
Residue	0.32
Aviation turbine kerosene	1.10

Type of Petroleum	NOK per l/Sm3/kg
Domestic used gas:	
Natural gas	0.90
LPG	1.35
Reduced rate natural gas	0.057
Reduced rate LPG	0.00
Continental shelf:	
Light oil, diesel oil	1.04
Residue	1.04
Natural gas	7.16

Natural resource tax

A NOK 0.013 per kWh natural resource tax applies to hydro power activities, based on one-seventh of the produced kWh for the income year in question and the six previous years. The natural resource tax is creditable against the standard CIT.

Branch income

Branch income is taxed at the corporate rate of 24% (25% for certain entities within the financial sector, i.e. the same as Norwegian companies). The basis for taxation is gross income less deductible costs. Both direct and indirect costs related to the activities carried out in Norway may be deductible.

There is no branch profit tax or other repatriation taxes. However, if assets and/or liabilities are transferred from a PE in Norway to the head office or another foreign PE of the same company, this may trigger exit taxation. The transfer of assets to another corporate entity is subject to regular taxation.

Income determination

Inventory valuation

Inventory is valued at cost. Cost is normally determined using the first in first out (FIFO) method. The last in first out (LIFO) method is not acceptable for tax purposes. Conformity between book and tax reporting is not required.

Capital gains

Capital gains realised in the course of a business activity are almost always regarded as taxable income. Gains resulting from real estate transactions are taxed, regardless of whether they are incurred in connection with business activity. Losses may be offset against the taxpayer’s other income.

Capital gains realised on both business-related and non-business-related securities are, in principle, taxable. In general, any capital gains realised on bonds at maturity are regarded as taxable income. Correspondingly, realised losses will be eligible for deductions.

Tax-exemption rules for corporate shareholders

Under the tax-exemption rules, corporate shareholders are generally exempt from tax on dividends received and capital gains on qualifying shares and on derivatives where the underlying object is qualifying shares. Correspondingly, losses on shares are, in general, non-deductible. All operational expenses related to exempt income from shares are fully tax deductible. In order to limit the benefit of these deductions, the tax-exemption method is, with some exemptions, limited to 97% for received dividends, and the remaining 3% is taxable for Norwegian corporate shareholders giving an effective tax rate of 0.72% (0.75% for certain entities within the financial sector). The 3% taxable income is calculated on dividends. Dividend distributions within a tax group (where the ultimate parent company directly or indirectly owns more than 90% of the shares and voting rights) are fully tax exempt. In addition, the tax-exemption method also applies for certain distributions from partnerships and, under certain conditions, to foreign-resident companies with taxable activity in Norway (3% of the income taxable at 24%/25%). However, distributions on hybrid instruments will not be tax exempt if the distribution is deductible for the distributing company.

Note that an investment in a company resident in a low-tax country in the EEA has to fulfil certain substance requirements to qualify for the tax-exemption rules. These requirements are intended to be in line with the substance requirements of the European Court of Justice's (ECJ's) decision in the Cadbury Schweppes case. A country is considered a low-tax country if the level of effective taxation is less than two-thirds of the tax that would have been due had the foreign company been resident in Norway. This is the same test used for the CFC regime (*see the Group taxation section for more information*).

However, for investments outside the EEA, the tax exemption rules apply only if a shareholder owns 10% or more of the share capital and the voting rights of the foreign company for a consecutive period of two or more years. To be able to deduct losses on the realisation of shareholdings outside the EEA, the shareholder and/or a related party may not own 10% or more of the share capital and the voting rights of the foreign company in a two-year period prior to the realisation. For dividends, the holding period of two years does not have to be met when dividends are distributed, but can also be met after the dividend date.

Shareholdings in low-tax countries outside of the EEA do not qualify for the tax-exemption rules. The Directorate of Taxes has published a non-exhaustive list of low-tax jurisdictions (black list) and non-low-tax jurisdictions (white list).

Acquisition and sales related costs (e.g. broker fees) must be added to the cost price of the shares for tax purposes. Costs incurred to manage acquired tax-exempt shares are, however, tax deductible.

Norway's internal tax rules do not allow taxation of a non-resident's capital gain on the disposal of financial instruments, including shares in Norwegian companies, unless the non-resident has a PE to which the financial instrument may be allocated.

Stock dividends

Stock dividends (bonus shares) are not taxable on receipt, provided that the dividends have been distributed in accordance with the Limited Liability Company Acts and distributed in proportion with the ownership level of the shares.

Tax treatment of investments in security funds

The taxation of the investment in security funds will be determined by the share ratio in the fund. Distributions from security funds with a share interest between 20% and 80% will be split between dividend and interest income calculated on a *pro rata* basis based on the share interest in the fund. Furthermore, distributions from funds with more than 80% shares will only be taxed as dividends, and funds with less than 20% shares will only be taxed as interest.

Interest income

In general, interest income is taxable on an accrual basis.

Royalty income

In general, royalty income is taxable on an accrual basis.

Foreign income

A Norwegian resident company is subject to CIT on its worldwide income. Double taxation of foreign-source income, including foreign-branch income and CFC income, is mitigated either through tax treaties or domestic tax provisions. A deduction for foreign tax may either be claimed as an expense or as a credit against Norwegian tax payable on that income. In most circumstances, foreign dividends are exempt according to the tax-exemption rules. As a consequence, foreign WHT may not be credited and constitute a real cost for the companies concerned.

Norway does not have any legislation for the deferral of tax on foreign income.

Deductions

Depreciation

In Norway, the declining-balance method of depreciation is mandatory for capitalised assets. The depreciation rates given below are the maximum rates.

There is a duty to capitalise an asset that has a value of NOK 15,000 or higher and has an economic life of at least three years.

Asset	Depreciation rate (%)
Office equipment machines, etc.	30
Acquired goodwill/business value	20
Trucks, lorries, buses, taxis, vehicles for persons with disabilities	24/30 (1)
Cars, tractors, other vehicular machinery, instruments, fixtures and furniture, etc.	20
Ships, vessels, offshore rigs, etc.	14
Aircraft, helicopters	12
Construction for transmission and distribution of electric power and electronic equipment in a power company	5 (2)
Buildings and construction, hotels, hostels, inns, etc.	4/6/10 (3)
Office buildings	2
Fixed technical installations in buildings, including heating plant, cooling and freezing plant, electrical installation, sanitary installation, elevator, etc.	10

Notes

1. An increased depreciation rate of 30% applies to certain electric delivery trucks (adopted, but not entered into force).
2. Auxiliary and supplementary installations in industrial plants will be depreciated together with the building and constructions group (10% depreciation if expected operating time is less than 20 years). In addition, constructions for transfer and distribution of energy, and electronic equipment, used in other business activities than power generation will be depreciated at 5%.
3. The applicable rate is 10% if, from the date of its erection, the structure has an economic life of 20 years or less.

Norwegian tax regulations allow for accelerated depreciation of wind power plants. According to the rules, the main assets in wind power plants acquired between 19 June 2015 and 31 December 2020 can be depreciated on a linear basis over five years, provided that the project did not commence prior to 19 June 2015.

Special depreciation rules apply to assets moved in and out of Norwegian jurisdiction to and from companies resident outside the EEA.

Goodwill

Acquired goodwill may be amortised according to the declining-balance method at a maximum of 20% *per annum*. The tax authorities have, however, on several occasions recently questioned the allocation to goodwill and claimed that a part of the purchase price should be allocated to intellectual property, concessions, etc. Intangibles other than goodwill are amortisable on the condition that they are subject to an evident loss in value (impairment test) or if they are time-limited.

Start-up expenses

In general, start-up expenses are deductible, provided that the costs are borne by the company. Start-up costs could include costs related to registration in the Register of Business Enterprises, lawyers and accountants fees, drafting articles of association and shareholders agreement, etc.

Interest expenses

In general, interest expenses are deductible. Norway does not have a rule distinguishing between different income categories (as in the United Kingdom). If income is exempt from taxation in Norway pursuant to a tax treaty, corresponding costs or losses are not tax deductible.

Limitations on tax deductible inter-company interest expenses apply. *Please see the detailed description under Thin capitalisation in the Group taxation section for further information*.

Bad debts

In general, receivables are tax deductible if the debt is clearly irrecoverable or realised (e.g. if the receivable is sold to a third party, converted to share capital, or waived) and is sufficiently connected to the company's business (the business requirement). For accounts receivables, a calculated rate multiplied by the total account receivables at year-end may be deducted. The rate is calculated based on the two preceding years losses on such receivables multiplied by a fixed rate set by the Ministry of Finance.

Losses on receivables between group companies (with more than 90% direct or indirect mutual ownership of shares) and partnerships are, as a main rule, not tax deductible. However, trade receivables and losses on receivables created in connection with mergers or demergers are deductible for tax purposes.

Charitable contributions

Donations to certain charitable institutions are tax deductible. The upper limit for the tax deduction per year is NOK 30,000. The same limit applies to individuals and companies. The receiving entity must be pre-approved by the Norwegian tax authorities.

Fines and penalties
Fines and penalties are normally not tax deductible. This also applies to some administrative charges that are penal in nature. Charges that have no statutory basis in Norwegian law may be tax deductible, provided that the general conditions are fulfilled.

Taxes
Real estate tax, as well as foreign income and capital taxes paid by the taxpayer, are deductible when determining corporate income. Foreign taxes derived from income that is taxable in Norway are deductible only if they have not been credited against Norwegian tax payable.

Net operating losses
Losses may be carried forward indefinitely. Losses incurred in the year of ceasing business may be carried back for a period of two years.

Payments to foreign affiliates
Royalties and service fees paid to related foreign companies are fully deductible, provided they meet the arm's-length principle. As regards loans, the tax authorities require that the entity in question is able to service its debts. In addition, any loan terms should be comparable to those that would have been agreed upon by unrelated parties. Interest on financing, to the extent that these rules are not satisfied, may be regarded as dividends and are thus non-deductible and, in certain cases, subject to Norwegian WHT. In addition, limitations on tax deductible inter-company interest expenses apply. *Please see the detailed description under Thin capitalisation in the Group taxation section for further information*.

Group taxation

Income taxes are assessed on companies individually, not on a consolidated basis. This may be avoided through group contributions between Norwegian companies, provided common direct or indirect (including foreign) ownership and voting rights is more than 90%. Furthermore, the Norwegian group contribution rules are, under certain conditions, also applicable to Norwegian branches of foreign companies that are resident within the EEA. Note that group contributions are not deductible for companies engaged in oil and gas producing activities subject to the Petroleum Tax Act.

Assets may, pursuant to the Group Regulations, be transferred tax-free between group companies at tax book value for tax purposes and at market value for financial book purposes. However, a guarantee for the latent tax liability created by the transfer must be provided upon request by the tax authorities.

Payment must equal market value of the assets transferred. The same applies to payment in the form of shares. If the transferee loses the affiliation with the tax group while still owning the transferred assets, the transferor will be taxed for the difference between the tax book value and the market value of the assets.

Transfer pricing
In Norway, the arm's-length principle for related party transactions is incorporated into the Tax Act. The transfer pricing provision of the Tax Act states that the OECD Guidelines 'shall be taken into account' when addressing transfer pricing issues under Norwegian tax law.

Transfer pricing has increasingly become the focus of the tax authorities' attention in recent years. It is fairly common for the Norwegian tax authorities to choose test cases that are subject to substantial investment. During the most recent years, focus has been on business restructuring, commissionaire arrangements, and the financing of operations.

Norway has an advance pricing agreement (APA) regime. It is also becoming more common to discuss complex cases with the tax authorities on a non-binding basis in advance of implementation or before assessment. However, there are no particular Norwegian safe harbour rules or any other official guidance of how to price specific transactions, etc.

Thin capitalisation

There is no fixed debt-to-equity ratio requirement in Norwegian tax law. However, for companies that are part of a group, adjustments may be made under the arm's-length provisions. Generally, these provisions apply only if the company has obtained a larger loan from a group company than an independent credit institution would have granted, or if the agreed level of interest is higher than an independent credit institution would have required. Naturally, this analysis will vary based on the actual company's credit worthiness, which consists of several elements, such as the nature of the business, financial status, future income possibilities, and group relationships. As such, there is no applicable 'safe harbour'. The company must also be able to service its debts.

If a Norwegian entity is regarded as being thinly capitalised, part of the entity's interest and debts may be reclassified to dividend and equity.

Limitations apply to tax deductible inter-company interest expenses. In general, interest expenses to related parties that exceed 25% of a Norwegian company's taxable earnings before interest, taxes, depreciation, and amortisation (EBITDA), with some adjustments, will not be tax deductible. The regulations only apply to companies that have more than NOK 5 million in total net interest expenses.

Two parties are related if one party directly or indirectly owns or controls the other party by at least 50%. Related parties may be resident in Norway or abroad.

External loans can also, under certain conditions, be regarded as intra-group loans if an entity has provided a guarantee for the debt of a related party. However, an exemption applies if the guarantee is provided by a company that is more than 50% owned by the borrower or a company that is controlled by the borrower or if the security is the shares in the borrower.

The interest deductibility limitation is calculated for each entity in the group. Disallowed interest deductions may be carried forward for ten years.

The limitation applies both to local and foreign companies that have a taxable presence in Norway, as well as partnerships, CFCs, etc.

The EFTA Surveillance Authority has issued a reasoned opinion stating that the Norwegian interest limitation rules might violate Norway's obligations under the EEA Agreement. The outcome of the investigation and effect for previous and future years is still pending.

Controlled foreign companies (CFCs)
Norwegian residents are taxed directly on their allocable part of the profits from a CFC's income if the company is resident in a low-tax country, irrespective of whether income is distributed to the Norwegian investor. A low-tax country, in this respect, is a country where the effective foreign income taxation of the company's profits is less than two-thirds of the effective taxation that would have been due had the company been resident in Norway. A condition for such taxation is that 50% or more of the foreign company's shares or capital is held or controlled, directly or indirectly, by Norwegian taxpayers (alone or together), based on the status at the beginning and end of the income year in question.

Note that if Norwegian taxpayers own or control more than 60% of the shares or capital at the end of the income year, Norwegian control exists irrespective of the level of control at the beginning of the year. Norwegian control ceases to exist if Norwegian taxpayers own or control less than 50% of the shares or capital at both the beginning and end of the income year or less than 40% of the shares or capital at the end of the income year.

On the condition that Norway has signed a tax treaty with the country involved and the company in question is covered by the treaty, the CFC rules will be applicable only if the income of the entity in question is mainly of a passive nature. Furthermore, CFC taxation may also be prohibited if the company in question is resident within the EEA and cannot be deemed as a wholly artificial arrangement as outlined in the ECJ's decision in the Cadbury Schweppes case. Hence, CFC taxation will be avoided for EEA companies that fulfil certain substance requirements.

Tax credits and incentives

Foreign tax credit
Norwegian limited liability companies that have paid taxes on foreign-source income may, under certain conditions, offset the Norwegian tax paid against the foreign tax paid. The tax credit is limited to the lower of the Norwegian tax paid on the same type of foreign income and the foreign tax actually paid. It is possible to carry forward unused foreign taxes for five years. A credit claimed in accordance with the regulations stated above may not be used in addition to deductions pursuant to other rules and regulations. These rules are very technical, and it should be noted that there are two different 'baskets' of income.

Roll-over regulations
Upon application, the Ministry of Finance has the authority to grant tax relief on the transfer of assets within a group. The transfer may be carried out between group companies (more than 90% ownership and voting rights) or partnerships (with mainly the same owners). If a tax relief is granted, the transfer would not trigger any taxation at the time of the transfer, but all tax positions, including the tax basis of the transferred assets, will be transferred to the acquiring company. A condition for the tax relief is normally that the companies remain within the group.

The Ministry of Finance also has the authority to grant tax relief on the realisation of property, business, shares, etc. during a reorganisation. The reorganisation must improve the efficiency of the business to qualify for tax relief, and, accordingly, administrative effects would not be sufficient. The tax relief must also help companies to carry out the reorganisation. In addition, the tax relief must not reduce the Norwegian tax base; the tax positions would be transferred to the new taxpayer.

SkatteFUNN research and development (R&D) tax incentive scheme

The SkatteFUNN R&D tax incentive scheme is a government program that is designed to stimulate R&D in Norwegian trade and industry. Businesses and enterprises that are subject to taxation in Norway are eligible to apply for tax relief.

All Norwegian companies and branches with R&D projects can apply for a deduction of up to 20% of incurred costs, limited up to a cost base of NOK 25 million for self-developed R&D and NOK 50 million for R&D purchased from approved institutions. If the company does not have taxable income for the income year in question, the company will receive a cash refund for the year following the income year.

The main criterion for applying for SkatteFUNN is that the company has an R&D project with the aim of developing a new or improved asset, service, or production process. There are no requirements regarding type of business. A distinction is made against ordinary product development without developing new knowledge, functions, etc., the ordinary day-to-day business operations, etc.

The application for SkatteFUNN must be approved by Norges Forskningsråd (The Research Council of Norway) and is awarded for a period of a maximum of three years. If the application is approved, there is a requirement to submit a form attested by the company's auditor, together with the ordinary tax return, in order to obtain the tax incentive.

Withholding taxes

Norway levies WHT on dividends. However, no WHT is levied on payments of royalties and interest, except on interest derived from primary capital certificates ('*Egenkapitalbevis*').

The internal WHT rate on dividends is 25%, which may either be reduced under the tax-exemption rules or by an applicable tax treaty. To qualify for the tax-exemption rules, the recipient of the dividends has to be a corporate investor resident in an EEA country and must also fulfil certain substance requirements.

Dividends

Recipient	Regular rate (%)	Parent/subsidiary rate (%)
Non-treaty	25	25
Treaty:		
Albania	15	5 (1)
Argentina	15	10 (1)
Australia	15	0 (11)/5 (4)
Austria	15	0 (1)
Azerbaijan	15	10 (2)
Bangladesh	15	10 (3)
Barbados	15	5 (3)
Belgium	15	5 (1)
Benin	20	20
Bosnia and Herzegovina	15	15

Recipient	Regular rate (%)	Parent/subsidiary rate (%)
Brazil	25	25 (8)
Bulgaria	15	5 (3)
Canada	15	5 (4)
Chile	15	5 (5)
China, People’s Republic of	15	15
Croatia	15	15
Cyprus	15	0 (3)
Czech Republic	15	0 (3)
Denmark	15	0 (3)
Egypt	15	15
Estonia	15	5 (1)
Faroe Islands	15	0 (3)
Finland	15	0 (3)
France	15	0 (1)/5 (3)
Gambia	15	5 (1)
Georgia	10	5 (3)
Germany	15	0 (1)
Greece	20	20
Greenland	15	5 (3)
Hungary	10	10
Iceland	15	0 (3)
India	10	10
Indonesia	15	15
Ireland, Republic of	15	5 (3)
Israel	15	5 (6)
Italy	15	15
Ivory Coast (Côte d’Ivoire)	15	15
Jamaica	15	15
Japan	15	5 (5)
Kazakhstan	15	5 (3)
Kenya	25	15 (5)
Korea, Republic of	15	15
Latvia	15	5 (1)
Lithuania	15	5 (1)
Luxembourg	15	5 (1)
Macedonia	15	10 (1)
Malawi	5	5 (3)
Malaysia	0	0
Malta	15	0 (10)
Mexico	15	0 (1)
Montenegro	15	15
Morocco	15	15
Nepal	15	5 (1)/10 (3)
Netherlands	15	0 (1)
Netherlands Antilles	15	5 (1)
New Zealand	15	15
Nordic Treaty	15	0 (3)
Pakistan	15	15
Philippines	25	15 (3)
Poland	15	0 (10)

Recipient	Regular rate (%)	Parent/subsidiary rate (%)
Portugal	15	5 (13)
Qatar	15	5 (3)
Romania	10	5 (3)
Russia	10	10
Senegal	16	16
Serbia (not Montenegro)	15	5 (1)
Sierra Leone	5	0 (6)
Singapore	15	5 (1)
Slovak Republic	15	5 (1)
Slovenia	15	0 (9)
South Africa	15	5 (1)
Spain	15	10 (1)
Sri Lanka	15	15
Sweden	15	0 (3)
Switzerland	15	0 (3)
Tanzania	20	20
Thailand	15	10 (3)
Trinidad and Tobago	20	10 (5)
Tunisia	20	20
Turkey	15	5 (12)
Uganda, Republic of	15	10 (1)
Ukraine	15	5 (1)
United Kingdom	15	0 (3)
United States	15	15
Venezuela	10	5 (3)
Vietnam	15	5/10 (7)
Zambia	15	15
Zimbabwe	20	15 (1)

Notes

1. 25% of the capital.
2. 30% of the capital and an investment of no less than 100,000 United States dollars (USD).
3. 10% of the capital.
4. 10% of the voting rights.
5. 25% of the voting rights.
6. 50% of the voting rights.
7. 5% for over 70% of the capital; 10% for 25% to 70% of the capital.
8. Internal Norwegian WHT rate (i.e. 25%).
9. 15% of the capital.
10. 10% of the capital for an uninterrupted 24-month period.
11. 80% of voting rights.
12. 20% of the capital provided that such dividends are exempt from tax in the other state.
13. 10% of the capital for an uninterrupted 12-month period.

Tax administration

Taxable period

The income tax year normally runs from 1 January to 31 December, with assessments being issued no later than 1 December in the following calendar year. Companies are liable for both advance payments and final settlements in the calendar year of assessment. Companies with a financial year other than the calendar year may use the financial year for tax purposes in certain instances (e.g. if they belong to a foreign group with a deviating accounting year, they may use the financial year of the group for tax purposes).

Tax returns

Companies are, in general, required to file their tax returns electronically by the end of May in the year following their financial year. Upon application, an extension of the time limit to file the tax return will normally be granted. The tax returns and the basic attachments are obligatory for all corporate taxpayers. Additional requirements may apply for specific business sectors, such as hydro power production. Under the petroleum tax regime, the filing deadline is the end of April.

The taxpayer is responsible for reporting the taxable income in the tax return, which will be the basis for the tax assessment. The taxpayer can voluntarily change information given in the tax return for up to three years after submitting. This does not apply to the income years prior to 2016, where an appeal must be filed in order to amend the tax assessment.

Payment of tax

Companies are required to make advance payments of tax on 15 February and 15 April in the year following the income year. The two payments should together cover all of the expected CIT to be assessed. Any balance must be paid three weeks after the assessment has been made public (i.e. in the autumn of the year following the relevant accounting year).

The above applies to all corporate taxpayers, except for taxpayers under the petroleum tax regime, where tax shall be paid in six instalments.

Tax audit process

The Norwegian tax system is tax return based. The Norwegian tax office carries out tax audits based on different selection criterions. A tax audit can be caused by a review of the tax return, random selection of companies or business sectors, information obtained from other parties, etc.

The tax office normally gives notice of an upcoming tax audit, but it can also be unannounced. The examination generally takes place by formal, written communication, and the process can take from a few weeks to several years.

In general, a reassessment of the tax assessment requires a notice from the tax authorities with a reasonable timeframe for the taxpayer to give a reply to the notified amendments.

Statute of limitations

Norway introduced new statutes of limitations for reassessing tax assessment as of 2017. The general reassessment period is five years (from the year after the income year in question). A ten-year limit applies in cases where the taxpayer has demonstrated gross negligence. The reassessment period will apply to the income year 2015 going forward. For the years 2012 to 2014, the old reassessment period will, in general, apply to the advantage of the taxpayer (*see below*).

After the old statutes of limitations, the tax office has a ten-year limit for reassessing tax assessment (from the year after the income year in question). However, a two-year limit applies for negative adjustments and a three-year limit for positive adjustments if the taxpayer has provided sufficient and correct information in the tax return.

The taxpayer may file an appeal on the resolutions made by the tax authorities within six weeks after they were sent to the taxpayer. The time limit for appealing other decisions is normally three weeks after the tax office's decision. This applies both under the new and previous rule set.

Topics of focus for tax authorities
The tax office's topics of focus can vary each year and from region to region. The primary topics of focus lately have been thin capitalisation/interest limitation, transfer pricing, and (cross-border) reorganisations.

Other issues

Foreign Account Tax Compliance Act (FATCA) agreement with the United States
In April 2013, Norway entered into an FATCA agreement with the United States. The agreement is based on the US FATCA regulations and is the basis for information exchange between the Norwegian and US tax authorities with regards to financial transactions.

According to the agreement, Norwegian financial institutions can report to the Norwegian authorities instead of reporting to the US authorities. It is expected that this will ease the reporting liabilities for Norwegian financial institutions.

Country-by-country (CbC) reporting
Norway has implemented CbC reporting rules for multinational groups with a joint income of more than NOK 6.5 billion. The report is to be submitted, at the latest, by 31 December of the year after the relevant accounting year. The report for the accounting year 2016 has to be submitted by 31 December 2017.

Poland

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Significant developments

Changes in transfer pricing rules

New regulations, binding from 1 January 2017, introduce a number of significant changes to the Polish transfer pricing regulations and impose new requirements on taxpayers conducting related-party transactions.

In general, more information on related-party transactions will need to be disclosed to the tax authorities.

As of 1 January 2017, taxpayers are obligated to prepare expanded transfer pricing documentation covering not only the description of a transaction but also 'other events included in the accounting books' if they were agreed to by related parties and influence the taxpayer's taxable income or loss. If the taxpayer's revenue or expenses exceed 10 million euros (EUR) in the preceding financial year, the requirements increase such that the taxpayer will be obligated to provide a benchmarking study verifying the arm's-length character of related-party transactions. Furthermore, taxpayers whose annual revenues or expenses exceed EUR 20 million in the preceding financial year will also be obligated to provide documentation (master file) presenting the character of settlements from the group perspective. According to the new regulations, taxpayers whose revenue exceeds EUR 10 million will be obligated to attach to their tax return a summary of their related-party transactions using a special form.

15% corporate income tax (CIT) rate for 'small taxpayers'

As of 1 January 2017, a lowered 15% CIT rate was introduced for so-called 'small taxpayers' (i.e. entities whose sales revenue, including output value-added tax [VAT], for the previous year didn't exceed the equivalent in Polish zloty [PLN] of EUR 1.2 million and for taxpayers starting business activity in their first tax year). The lowered CIT rate is not applied within tax capital groups.

Limit on cash transactions between companies lowered

As of 1 January 2017, the maximum value of transactions completed between companies in cash was lowered to PLN 15,000 from EUR 15,000. Any transactions between companies worth more than PLN 15,000 have to be completed via a bank account.

Standard Audit File for Tax (SAF-T)

From 1 July 2016, taxpayers are obligated to implement a SAF-T. The new legislation obligates the VAT-registered taxpayers (except those exempt from VAT) to keep computerised records of all data required to fill out tax returns and recapitulation statements. Taxpayers are obligated to transmit details of VAT records as a SAF-T without any additional request from the tax authorities. The data have to be filed monthly by the 25th day of the next month.

A new obligation to file documents in the SAF-T format, both in the case of an inspection and with respect to the VAT records, was imposed on large enterprises from 1 July 2016. Micro, small, and medium enterprises are given the choice to transmit their data during a tax inspection in the SAF-T format or not. As of July 2018, these three groups will be obligated by law to transmit data in the SAF-T format during tax inspection.

Small and medium enterprises are obligated to file VAT records in the SAF-T format from 1 January 2017. Micro enterprises will have to start filing VAT data in the SAF-T format from the beginning of 2018.

The obligation to transmit data in the SAF-T format also applies to companies whose fixed establishment is outside Poland but which are registered for VAT in Poland.

Retail tax

On 1 September 2016, the Retail Tax Act of 6 July 2016 entered into force, but was quickly suspended for 2016 and 2017 due to European Commission (EC) investigation into the Polish tax on the retail sector. As a result, the new retail tax was postponed until 1 January 2018.

Under the retail tax, retailers are to be taxed on the revenues achieved on retail sales, which should be understood as sales of goods to consumers for remuneration, in case an agreement is concluded on the business premises or away from business premises of the given taxpayer. Thus, e-commerce sales should not be subject to this tax.

The retail tax should be imposed on the excess of revenues over the amount of PLN 17 million, calculated, in principal, based on the turnover registered by the cash registers. The Retail Tax Act introduces two tax rates: 0.8% of the tax base for the given month, for the part not exceeding the amount of PLN 170 million and 1.4% of the excess of the tax base, for the part exceeding the amount of PLN 170 million.

General anti-abuse rule (GAAR)

As of 15 July 2016, the GAAR came into force. According to new regulations, legal transactions with the main purpose of obtaining a tax advantage contrary to the tax regulations shall not result in tax benefit. Tax consequences of such transactions will be assessed as if an alternative ‘appropriate’ transaction had taken place. Furthermore, if transactions carried out by a taxpayer do not have any real economic or business rationale other than tax avoidance, tax authorities may completely disregard them. The GAAR will be applied to the tax benefits received after the new law is introduced.

National Fiscal Administration introduced

As of 1 March 2017, the National Fiscal Administration (*Krajowa Administracja Skarbowa* or KAS) was introduced. The KAS is a specialised government administration engaged primarily with tasks related to obtaining revenues from taxes, duties, fees, and non-tax budget receivables.

Taxes on corporate income

The CIT is the only tax levied on corporate income. The standard CIT rate is 19%.

As of 1 January 2017, a lowered 15% CIT rate was introduced for so-called 'small taxpayers' (i.e. entities whose sales revenue, including output VAT, for the previous year didn't exceed the equivalent in PLN of EUR 1.2 million and for taxpayers starting business activity, in their first tax year).

Polish tax residents are subject to tax on their worldwide income. Non-residents are taxed only on their Polish-sourced income. The tax authorities' right to tax a non-resident is further limited if the non-resident's country of residence concluded a double tax treaty (DTT) with Poland. In this case, the Polish tax authorities are, as a rule, entitled to tax only the portion of the non-resident's income that may be attributed to a permanent establishment (PE) located in Poland if such income has arisen in Poland for the foreign tax resident. Exceptions relate to specific types of income, such as royalties, interest, dividends, and capital gains, which may be in Poland even if no PE exists.

Polish companies with foreign participation may be set up as either limited liability companies or joint-stock companies. There is no limitation on the percentage of foreign participation. Both types are subject to the general CIT rules, including the standard 19% tax rate (and other rates, depending on the type of revenue sourced in Poland). The same rate applies to branches of foreign companies (*see the Branch income section for more information*).

Certain entities are explicitly excluded from the group of taxpayers under the CIT law (e.g. Treasury, National Bank of Poland). Polish and European Union (EU)/European Economic Area (EEA) based investment funds are also exempted on the grounds of such provision.

Local income taxes
There are no provincial or local income taxes in Poland.

Corporate residence

A company is considered to be a resident in Poland if its registered office or management is located in Poland.

Permanent establishment (PE)

PE under Polish CIT law
According to Polish CIT law, the following are understood to be a PE:

- A permanent place of business through which a non-Polish tax resident conducts its business activities, in whole or in part, within the territory of Poland; in particular, a branch, agency, office, factory, workshop, or place of extraction of natural resources.
- A construction site, construction, assembly, or installation works carried on within the territory of Poland by a non-Polish tax resident.
- A person who, on behalf and for the benefit of a non-Polish tax resident, operates in Poland, provided such person holds and exercises a power of attorney to enter into agreements on one's behalf.

We note that Polish CIT law:

- does not encompass any provisions concerning the period required for construction works to create a PE
- does not include provisions indicating that an independent agent does not create a PE, and
- does not include provisions indicating that actions of an auxiliary or preparatory character do not lead to creation of a PE in Poland.

PE from a DTT perspective
In general, the provisions of DTTs concluded by Poland are based on the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention on Income and on Capital (OECD Model), except for provisions related to taxation of royalties, which are based on the United Nations (UN) Model Double Taxation Convention.

As a principle, treaties based on the OECD Model provide for the following concepts, which determine whether activities of a foreign entrepreneur constitute a PE (usually in Article 5):

- Fixed place of business concept.
- Dependent agent concept.
- Construction PE concept.

Note that some DTTs concluded by Poland also encompass other PE concepts (e.g. service PE concept or offshore PE concept).

Other taxes

Value-added tax (VAT)
Polish VAT applies to the following activities:

- Supplies of goods and services within the territory of Poland.
- Exports of goods outside the territory of the European Union.
- Imports of goods from countries that do not belong to the European Union.
- Intra-Community acquisitions of goods (imports from countries belonging to the European Union).
- Intra-Community supplies of goods (exports to the countries belonging to the European Union).

VAT rates
The VAT rates are 23% (standard rate), 8%, 5%, 0%, and exemption.

The standard 23% VAT rate generally applies to the supply of all goods and services, except for those that are covered by special VAT provisions that provide other rates or treatments.

Supplies covered by a reduced rate of 8% include, among others, supplies of pharmaceutical products and passenger transport services and also supply of goods for the Social Housing Programme (no greater than 150 square metres).

Supplies covered by a reduced rate of 5% include books and journals, unprocessed food, and basic food.

Zero-rated activities include, among others, exports of goods to countries outside the European Union.

VAT-exempt supplies include, among others, certain financial, insurance, and educational services.

Basic calculation rules
In general, the VAT due equals the VAT on outputs decreased by the VAT on inputs (in other words, input VAT is deducted from output VAT). Input VAT may be deducted from output VAT when a business (with a VAT payer status) receives an invoice for goods or services purchased. Input VAT may not be deducted unless a purchased supply is linked to the VATable activities. Furthermore, the deductibility of input VAT is restricted by the VAT law with respect to the purchase of certain goods and services. In addition, subject to numerous conditions, output VAT may be reduced when receivables, resulting from VATable sales, become uncollectible.

VAT refunds
The Polish VAT law allows direct refunds when input VAT (available for deduction) exceeds output VAT.

A Polish business may also be entitled to the VAT refund owed by another country under certain circumstances. Likewise, a foreign business having seat or fixed place of business for VAT purposes outside of Poland may be, in most cases, entitled to the refund of Polish VAT. If the respective countries belong to the European Union, the procedure is substantially simplified due to the EU Directive, which provides favourable rules for businesses based in EU countries that are seeking VAT refunds in other EU countries (i.e. electronic VAT refunds are possible).

International services
The treatment of international services largely depends on the place of supply since it is determinative of whether particular services are subject to the Polish VAT. The Polish VAT applies only to those services that are supplied within Poland.

Reporting rules
Generally, the VAT reporting period is one month. VAT returns should be submitted by the 25th day of the month following the VAT reporting period. Legislation obligates the VAT-registered taxpayers (except those exempt from VAT) to keep computerised records of all data required to fill out tax returns and recapitulation statements. The obligation to file documents in the SAF-T format from 1 July 2016, both in the case of an inspection and with respect to the VAT records, is imposed on enterprises classified as large, and from 1 January 2017 on enterprises classified as small and medium.

As of 1 January 2017, the option of selecting quarterly VAT settlements was eliminated for the majority of taxpayers. Quarterly VAT settlements are no longer possible for new businesses (entitled to such settlements during the first year of their operations) and to businesses reporting turnovers in excess of EUR 1.2 million. The new regulation also applies to taxpayers registered after 30 September 2016 (i.e. before the bill became law).

Customs duties
As a member of the European Union, Poland belongs to a customs union, thus only goods imported from non-EU countries or exported from Poland to non-EU countries are subject to customs duties and formalities. Moreover, all the Community customs

regulations are directly applicable in Poland. The most important act is the Community Customs Code and its implementing provisions, as well as the Community Customs Tariff.

These regulations are supplemented with certain Polish national rules, especially in respect to procedures and specific areas that are not defined in the Community customs law (e.g. strict regulations concerning the export of works of art and animals, limits on the amount of cash that may be brought from Poland to non-EU countries).

Excise duties

Excise duties are levied on the production, sale, import, and intra-Community acquisition of 'excise goods', which are listed in the excise duty law and include (among others) alcohol, cigarettes, energy products (e.g. petrol, oils, gas), passenger cars, and electricity.

Depending on the excise goods in question, one of four methods of calculating excise tax may be applicable:

- A percentage of the taxable base.
- An amount per unit.
- A percentage of the maximum retail price.
- An amount per unit and a percentage of the maximum retail price.

The excise rate for car petrol is PLN 1,540 per 1,000 litres.

Passenger cars are subject to the following excise rates:

- 3.1% for cars with engine cubic capacity that does not exceed 2,000 cc.
- 18.6% for cars with engine cubic capacity that exceeds 2,000 cc.

Notwithstanding the above, Polish excise duty law provides for a wide system of excise duty exemptions as well as 0% taxation. Under specified circumstances, such preferential treatment may apply to specified goods that are otherwise taxed based on general rules. This concerns, for example, specific energy products used for other purposes than as a fuel or for heating.

There is also an excise duty placed on coal. Depending on the type of coal product, the excise rates are PLN 30.5 per 1,000 kg of coal, PLN 11 per 1,000 kg of lignite, and PLN 35.2 per 1,000 kg of coke. In practice, there are a wide range of excise duty exemptions (practically, Poland has used all the exemption options provided in the EU Directive); nevertheless, many new administrative obligations have been set for entities producing, distributing, and using coal. The fulfilment of those obligations is necessary in order to apply an excise duty exemption.

Property taxes

Property tax rates are fixed by municipalities within limits set in the Law on Local Taxes and Fees. In 2017, land used for business purposes is subject to a rate limit of PLN 0.89 per square metre. Buildings used for business purposes are subject to a rate limit of PLN 22.66 per square metre.

Transfer taxes
A transfer tax may apply to certain civil law transactions, determined as a percentage of the transaction (i.e. such as sale, loan, donation). A tax obligation on civil law transactions does not arise when one of the parties of the transaction is a VAT payer.

Stamp duty
In Poland, some activities are charged a stamp duty. Payment is required, for example, in connection with the submission of a power of attorney, after completion of an official act, or the issue of a certificate or permit.

Capital tax
A share capital increase (in case of corporations) and contribution/contribution increase (in case of partnerships) is subject to a 0.5% capital tax, payable by a company or partnership that receives a capital contribution. This tax applies equally to limited liability companies as well as joint-stock companies. A merger, division, or transformation of a corporation into another corporation is not subject to capital tax, even if the transaction results in a share capital increase. A similar exemption applies to a capital increase resulting from (i) an in-kind contribution of an enterprise or its organised part or (ii) contribution of shares of the other corporation giving the majority of votes in this corporation or contribution of additional shares in case the corporation to which the shares are contributed already has the majority of votes.

Payroll taxes

Social security contributions
Both the employer and the employee are obligated to contribute to the Polish social security system. Apart from paying its own share, the employer is obligated to withhold the employee‘s share of the social security contributions and remit them to the Social Security Authorities (ZUS). In both cases, the relevant payments shall be made monthly.

The employer pays total contributions in a range of 19.48% to 22.14% of the employee’s gross salary (the employer’s contribution rate includes an accident insurance element that varies according to the number of employees insured and the business sector). The contribution rate for the employee is 13.71% of gross salary. The social security shares payable by the employer and the employee are tax-deductible items in their respective income tax settlements.

The rates apply to salaries below the cap of PLN 127,890 in 2017. The cap changes every year. After exceeding this cap, the salary is subject to a contribution rate of 3.22% to 6.41% payable by the employer and 2.45% payable by the employee.

Tax on certain financial institutions
A tax on certain financial institutions (so-called ‘banking tax’) is levied on:

- Banks, branches of foreign banks, branches of credit institutions, and credit unions.
- Insurance companies, reinsurance companies, branches of international insurance companies and international reinsurance companies, and main branches of international insurance companies and international reinsurance companies.
- The lending institutions within the meaning of the Consumer Credit Act.

Tax at the rate 0.44% per year (0.0366% per month) is levied on the assets of the taxpayers less (i) PLN 4 billion in case of banks, (ii) PLN 2 billion in case of (re-)

insurance companies, and (iii) PLN 200 million in case of lending institutions. In case of (re-)insurance companies and lending companies, tax is levied on the consolidated assets of the capital group companies.

Retail tax

On 1 September 2016, the Retail Tax Act of 6 July 2016 entered into force, but was quickly suspended for 2016 and 2017 due to an EC investigation into the Polish tax on the retail sector (*see below*).

Based on the Retail Tax Act, retailers are to be taxed on the revenues achieved on retail sales, which should be understood as sales of goods to consumers for remuneration, in case an agreement is concluded on the business premises or away from business premises of the given taxpayer. Thus, e-commerce sales should not be subject to this tax. In this context, the services associated with retail sales should also be subject to taxation, unless they are recorded separately than the sale of goods.

Retail tax rates

The retail tax should be imposed on the excess of revenues over the amount of PLN 17 million, calculated, in principal, based on the turnover registered by the cash registers. The Act introduces two tax rates: 0.8% of the tax base for the given month, in the part not exceeding the amount of PLN 170 million, and 1.4% of the excess of the tax base, in the part exceeding the amount of PLN 170 million.

The retailers shall be obligated to submit tax returns and calculate and pay retail tax in the monthly settlement periods. However, no tax return must be submitted in case the revenues in the given month do not exceed the value of PLN 17 million.

Retail tax exemptions

The Retail Tax Act includes certain exemptions from taxation, among others, in respect of:

- energy, water, natural gas, and heat supply to consumers made by network utilities
- supply of some fuels designated for heating fuel purposes, and
- supply of medicines, special purpose nutrition, and reimbursed or partially-refunded medical products.

Retail tax suspended in 2016 and 2017

On 19 September 2016, the EC opened an in-depth investigation into the Polish tax on the retail sector. The EC has concerns that the progressive rates based on turnover give companies with a low turnover a selective advantage over their competitors in breach of EU state aid rules. The EC has also issued an injunction, requiring Poland to suspend the application of the tax until the EC has concluded its assessment. At this stage, the EC has concerns that the application of progressive rates based on turnover confers a selective advantage on companies with low turnover and therefore involves state aid within the meaning of the EU rules. This progressive rate structure has the effect that companies with low turnover either pay no retail tax or pay substantially lower average rates than companies with high turnover.

As a result, the new retail tax was postponed until 1 January 2018. This means retailers are not obligated to pay tax in 2016 and 2017.

Branch income

Foreign businesses are allowed, under certain conditions, to establish their branch offices (exclusively within the scope of their 'foreign' business activity) and representative offices (exclusively with regard to promotion and advertising) in Poland.

A branch office almost always has PE status in Poland. Once a branch is established, the foreign company pays CIT at the standard rate of 19%, based on the income attributable to the operations of the Polish branch. For this purpose, as well as for accounting purposes, a branch is obligated to keep accounting books that include all the data necessary to establish the taxable base. In this respect, general income determination rules relevant to Polish companies apply to branches as well. In the few cases in which a branch can demonstrate, based on a DTT, that its business presence in Poland does not constitute a PE, its profits are not subject to Polish CIT.

Income determination

The tax base for CIT purposes is the overall income, which is the difference between aggregated taxable revenue and aggregated tax-deductible costs. A tax-deductible cost is defined as a cost incurred for the purposes of deriving revenues, as well as for the purpose of securing or preserving a source of revenue.

Subject to numerous exemptions, the tax base includes all sources of income. Consequently, there is no special treatment for income such as capital gains or interest.

In practice, taxable income is calculated by adjusting the profit reported for accounting purposes. The relevant adjustments are necessary due to differences between tax and accounting treatment of numerous revenue and cost items. As a result, the taxable base is usually higher than the accounting profit.

Inventory valuation

Generally, the value of inventory shortages may be included as a tax-deductible cost. Other write-offs in the value of inventory are not recognised for tax purposes until the inventory in question is sold.

When inventory is lost or sold, a tax deduction is allowed for the costs incurred when the inventory was purchased. The methods acceptable for inventory valuation for tax (and accounting) purposes are standard cost, average (weighted) cost, first in first out (FIFO), and last in first out (LIFO).

Capital gains

There is no separate capital gains tax. Capital gains or losses are aggregated with an entity's other taxable income or losses. Capital losses are tax-deductible.

Dividend income

Domestic dividend income

Dividends received from Polish residents (domestic dividends) are excluded from overall income. Instead, such dividends are subject to a 19% withholding tax (WHT), which is withheld and remitted to the tax office by the payer of dividends. Based on a participation exemption, however, domestic dividends are not subject to the 19% WHT if the Polish beneficiary holds at least a 10% share in the paying company for at least two years.

The revenue arising from voluntary redemption of shares is not treated as a dividend for tax purposes and does not enjoy the benefits of the participation exemption (i.e. the method of redemption, whether voluntary or automatic, will matter).

Dividend income from abroad
Generally, dividends received by a Polish corporate tax resident from a non-resident are treated as regular income and taxed at the standard CIT rate. CIT on such dividends paid in other countries may be credited proportionately against Polish CIT.

Additionally, dividends received from entities seated in the European Union (including Poland), EEA member states, or Switzerland can benefit from CIT exemption if the Polish company owns, respectively, at least 10% (in respect to companies seated in the EU/EEA member states) or 25% (in respect to companies seated in Switzerland) in the share capital of the payer for two consecutive years (and certain other conditions are met).

Dividends received from non-EU/non-EEA member states may benefit from underlying tax credit. If a Polish company or a PE of a company from an EU/EEA member state located in Poland receives a dividend from a company seated in a non-EU/non-EEA country, it may deduct the tax paid by the payer on profits out of which the dividend was paid. The deduction is only possible if the Polish company/company from EU/EEA, which PE is located in Poland, holds (for two consecutive works) at least 75% of shares of the dividend payer. The tax may be deducted in an appropriate proportion. Furthermore, the deduction is possible if there is a DTT. Based on the provisions of the relevant DTT or other agreement concluded by Poland, the Polish tax authority may exchange tax information with its counterparty.

Anti-avoidance regulations
The participation exemption on dividends and other profit-sharing payments does not apply to the legal transaction or series of legal transactions that, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage, are not genuine, having regard to all relevant facts and circumstances.

Based on the introduced provisions, a 'not genuine' legal transaction is such transaction that is undertaken in order to benefit from the tax exemption but does not reflect economic reality (i.e. it is not conducted for valid commercial reasons and its result is, in particular, transfer of shares' ownership of the company paying the dividend or achieving, by this company, income [revenue] paid in the form of dividend).

Interest income
Interest income is aggregated with an entity's other taxable income.

Royalty income
A 20% WHT is imposed on royalties paid to non-residents. Royalties paid to resident companies are taxed as ordinary income at the level of the beneficiaries of the royalties. There is no WHT on royalties if the conditions for the application of the EU Interests & Royalties Directive are met.

As of 1 January 2017, amendments to the CIT Act entered into force that introduced the definition of 'beneficial owner'. Now only a beneficial owner is able to apply exemption from WHT on royalties.

Foreign income
Resident corporations are taxed on their worldwide income unless there is an applicable DTT in place between Poland and the relevant country that provides that the foreign income shall be exempt from taxation in Poland (*see Foreign tax credit in the Tax credits and incentives section*).

Controlled foreign company (CFC) rules entered into force as of 1 January 2015 (*see Controlled foreign companies (CFCs) in the Group taxation section for more information*).

Deductions

Generally, a tax-deductible cost is defined as a cost incurred for the purposes of deriving revenues, as well as for the purpose of securing or preserving a source of revenue. The last element of the definition of a tax-deductible cost was added to reduce uncertainties surrounding the deductibility of business expenses that do not directly generate revenue.

The CIT law provides a list of items that are not deductible for tax purposes, even if the items meet the general conditions described above. This list contains over 60 items including, among others, the following:

- Written-off, lapsed accounts receivable.
- Entertainment costs.
- Accrued but unpaid interest.
- Accounting and comparable provisions.
- Tax penalties and penalty interest.
- A portion of the insurance premium paid on a passenger car (i.e. the portion calculated on the excess of the car value over EUR 20,000).
- A portion of the depreciation write-offs made on a passenger car (i.e. the portion calculated on the excess of the car value over EUR 20,000).

Furthermore, expenses incurred in connection with the acquisition of fixed and intangible assets (e.g. licences, trademarks, know-how) are not directly deductible. Instead, the acquired assets are subject to depreciation. If such assets are sold, a business is entitled to deduct the net value (cost of acquisition reduced by the overall value of the tax depreciation allowances made). Similar treatment relates to the acquisition of shares or land, except that these particular assets are not depreciable. Therefore, the full cost of an acquisition of shares or land may be deducted when such assets are sold.

Depreciation
Depreciation write-offs are treated as a tax-deductible cost. Generally, depreciation allowances are calculated based on the straight-line method and the maximum annual rates provided in the CIT law. If this is the case, a taxpayer deducts equal annual write-offs, calculated by multiplying the maximum rate of depreciation by the asset's initial value until the total value of write-offs equals the initial value (typically, the initial value equals the purchase price).

For certain categories of machinery and vehicles (but not passenger cars), the reducing-balance depreciation method may be applied. Under this method, the tax depreciation may be accelerated during the initial period of the asset's use by multiplying the statutory maximum rate by two. The rate is then applied to the net value of fixed assets (i.e. initial value reduced by earlier annual write-offs). The reducing-balance method is applied until the annual depreciation write-off equals the hypothetical write-off that would be made under the straight-line method. From this point, the depreciation allowance is taken based on the straight-line method for its remaining useful life.

The main categories of assets and the related statutory annual tax depreciation rate are as follows:

Assets	Depreciation rate (%)
Various buildings and constructions	1.5 to 10
Machinery and equipment (general)	7 to 20
Machinery for road building and construction	18 to 20
Machinery for paper industry	14
Office equipment	20
Computers	30

Apart from the above, the Polish CIT law includes provisions for accelerated depreciation (within specified limits) for assets used in deteriorated conditions and for second-hand assets.

Goodwill
Under the provisions of CIT law, goodwill is subject to tax amortisation if it is created as a result of acquisition of an enterprise, or its organised part, made in one of the following ways: (i) purchase; (ii) payable use, provided that the user of such enterprise/organised part of an enterprise makes the depreciation write-offs; or (iii) contribution to a company based on commercialisation and privatisation regulations. The goodwill is amortised for tax purposes for a minimum period of five years.

Start-up expenses
There are no specific provisions in the Polish CIT law relating to start-up expenses; the general rules of tax deductibility described above apply.

Interest expenses
Accrued interest on loans and credit that were paid or capitalised are deductible for CIT purposes. Polish CIT law provides some exceptions, such as instances where costs are not associated with earning revenue.

In Poland, there are also some limitations of interest tax deductibility connected with thin capitalisation regulations. *See Thin capitalisation in the Group taxation section for more information*.

Bad debt
As a general rule, debts written off as uncollectable cannot be considered as tax deductible. However, in certain situations, the provisions of Polish CIT law provide some exceptions. According to these provisions, only strictly defined uncollectable debts (which based on the CIT law were booked as taxable revenues) may be considered by the taxpayer as a tax-deductible cost, provided that their uncollectability

was properly documented (e.g. by a court decision). In some cases, uncollectability may be considered probable (e.g. debtor's death).

Charitable contributions

Companies are entitled to deduct donations for the purposes of public benefit and to volunteer activity organisations up to a total amount not exceeding 10% of income; however, deductions may not be made for donations to:

- natural persons or
- legal persons or organisational units having no legal personality who carry on economic activity consisting in the production of electronic goods; fuel; tobacco; spirits, wines, beers, and other alcohol beverages containing over 1.5% alcohol; products made of noble metals or containing such metals; or incomes received from trading in such goods.

Donations for religious practice purposes can be deducted up to a total amount not exceeding 10% of income.

Additionally, the donations of food products made for the purposes of so-called public benefit constitute tax deductible costs in the amount of production costs or purchase price.

Fines and penalties

Fines and penalties can be recognised as tax deductible items if they meet the general conditions. However, the Polish CIT law provides some exceptions, which include contractual penalties and indemnities for defects in supplied goods, works, and services performed; delayed supply of non-defective goods; and delay in the elimination of defects in goods, works, and services performed.

Taxes

Income tax, certain industry-specific taxes (e.g. banking tax), and, in most cases, VAT incurred on purchases are not deductible. However, as a rule, VAT is deductible for CIT purposes if it cannot be offset against the company's output VAT. Other taxes, if paid in the course of business activities, are generally deductible in full.

Net operating losses

A tax loss reported in a tax year may be carried forward over the next five consecutive tax years; however, in any particular tax year, the taxpayer may not deduct more than 50% of the loss incurred in the year for which it was reported. For example, a taxpayer that incurred PLN 100 annual loss in 2017 may carry it forward to 2018 through 2022. However, the maximum loss deduction in any of these years may not exceed PLN 50 (assuming that there are no other losses available for deduction).

Currently, there is no possibility to carry back tax losses in Poland.

Payments to foreign affiliates

Deductions may be claimed for royalties, management services, and interest charges paid to foreign affiliates. However, note that interest expenses are subject to the thin capitalisation restrictions (*see Thin capitalisation in the Group taxation section for more information*). Furthermore, note that transactions with related companies should be made according to the market conditions. Where a company shifts income to another entity (especially a foreign entity), the tax authorities may adjust the taxable base upward (*see Transfer pricing in the Group taxation section for more information*).

As of 1 January 2017, the Polish CIT Law includes a so-called 'beneficial owner' clause with respect to interests and royalties. In line with the relevant provisions, similarly as in many DTTs, only the beneficial owner (i.e. not an agent, representative, trustee, etc.) can benefit from WHT exemptions under the Polish CIT Law.

Cash payments

The Polish CIT Law provides for a cash expense value limit, in line with which transactions having value over PLN 15,000 can only be recognised as tax deductible costs if settled using a bank transfer.

Group taxation

The CIT law includes provisions on group taxation (i.e. in theory, a group of companies). If a group of companies meets certain conditions, it can be treated as a single taxpayer. However, the required conditions are extremely demanding and very few taxpayers of this type exist.

Transfer pricing

Transactions between related parties should be conducted in accordance with the arm's-length principle. The tax authorities may increase the taxable base if the pricing method applied between related parties differs from what would have been applied between unrelated parties in a similar business transaction and the difference results in income being understated by a Polish taxpayer. The regulations apply to domestic transactions as well as cross-border ones. Similar rules also apply to transactions between Polish residents and the residents of tax havens. These transactions may be subject to the transfer pricing principles even if the parties thereto are not related. The CIT law also contains detailed requirements for transfer pricing documentation.

Transfer pricing regulations are currently undergoing major changes resulting from implementation of the Base Erosion and Profit Shifting (BEPS) Action 13 in Poland.

As of 2016, the biggest Polish capital groups (with consolidated revenues exceeding EUR 750 million) are obligated to provide, in Poland, information on their taxable income, tax paid, and their place of business unless the consolidating entity is a subsidiary of a foreign party. In this case, the obligation is shifted abroad.

As of 1 January 2017, taxpayers are obligated to prepare transfer pricing documentation in an extended format (compared to 2016) covering not only the description of a transaction but also 'other events included in the accounting books' if they were agreed to by related parties and influence the taxpayer's taxable income or loss. If the taxpayer's revenue or expenses exceed EUR 10 million in the preceding financial year, the requirements increase. The taxpayer is obligated to provide a benchmarking study verifying the arm's-length character of related-party transactions. Furthermore, taxpayers whose annual revenues or expenses exceed EUR 20 million in the preceding financial year are also obligated to provide group transfer pricing documentation (master file) presenting the character of settlements from the group perspective. Finally, taxpayers whose revenue exceeds EUR 10 million are obligated to attach to their tax return a summary of their related-party transactions using a special form.

The taxpayers are obligated to submit a statement alongside their CIT return, confirming that complete local transfer pricing documentation and benchmarking studies, as required by the transfer pricing regulations, have been prepared.

Although the regulations are generally in line with the OECD recommendations, the transfer pricing documentation and benchmarking studies required by the Polish transfer pricing regulations must meet certain specific Polish requirements as well.

Taxpayers can mitigate the transfer pricing risk by applying for an advance pricing arrangement (APA). The tax authorities may not challenge the methodology agreed upon, but may verify whether the methodology is followed in practice.

Thin capitalisation

As of 1 January 2015, new thin capitalisation rules became effective. The Polish thin capitalisation rules are now considerably stricter than the previous ones, in particular:

- Interest exceeding the debt-to-net equity ratio of 1:1 is non-deductible (the previous allowable ratio was three times share capital).
- A qualified lender is:
  - a direct or indirect shareholder owning at least 25% of the shares in the borrower's share capital, or
  - a sister company, provided that the same entity directly or indirectly holds at least 25% of the shares in the borrower's share capital and 25% in the sister company's share capital (acting as a lender).
- Taxpayers are able to choose an alternative method that would limit interest deductibility (including loans from unrelated entities) to:
  - the amount not exceeding the tax value of assets multiplied by a specific interest rate (i.e. the reference rate of the National Bank of Poland increased by the index of 1.25%), or
  - 50% of operational profit (the maximum limit).
- Grandfathering rules apply to loans granted and cash physically transferred before 2015.
- Applicability of the grandfathering rules to loans with capitalised interest remains unclear.

Controlled foreign companies (CFCs)

An additional income tax is imposed on direct and indirect shareholders (Polish tax residents) of a company/PE from the EU/EEA (or other country that concluded a DTT with Poland) if the following conditions are jointly met:

- Polish company has 25% direct or indirect participation in foreign company's income, voting rights, or capital for at least 30 consecutive days.
- Foreign company derives its income mainly (i.e. at least 50%) from so-called 'passive' sources (e.g. dividends [with an exception for dividends exempt under the Parent-Subsidiary Directive], interest, royalties, capital gains).
- Foreign company's/PE's income is subject to taxation at nominal rates lower than 14.25% (calculated as 75% of the 19% CIT rate applicable in Poland) or is not subject to taxation at all or is exempt from taxation.

The tax regime also affects taxpayers that are owners of foreign companies located in countries recognised as applying harmful tax competition or countries not participating in exchange of tax information with the European Union or Poland under a certain treaty.

Under the regime, income earned by the CFCs is subject to 19% CIT rate. As a general rule, taxpayers are allowed to decrease the tax due in Poland by the amount of tax already paid abroad by the CFCs. The tax base is to cover the whole amount of income earned by the CFCs (including the passive income and the income earned on the actual business) that can be allocated to the Polish shareholders. The tax base is calculated proportionally to the period in which particular taxpayers were foreign entity's shareholders. If the CFCs are located in tax havens, the shareholders are to pay the tax on the whole amount of income earned by the CFCs (independently of their actual share in the income).

In certain cases, tax on income from the CFCs will not be levied if the CFC performs actual economic activity, defined as below, *inter alia*:

- Incorporation must correspond with an actual establishment intended to carry on genuine economic activities. In particular, the CFC should physically exist in terms of premises, staff, and equipment.
- The CFC does not create an artificial arrangement without a link with the economic reality.
- There is proportionality between the actual economic activities carried out by the CFC and the extent to which the CFC exists in terms of premises, staff, and equipment.
- Agreements concluded by the CFC have business justification and are in line with its economic interest.

Furthermore, certain administrative and reporting obligations have been introduced with CFC rules (e.g. obligation to maintain a register of the CFCs, filing separate tax returns presenting the amount of income generated through the CFC).

Tax credits and incentives

Foreign tax credit

Resident corporations are taxed on their worldwide income unless there is an applicable DTT in place between Poland and the relevant country that provides that the foreign income shall be exempt from taxation in Poland. In all other cases (in particular, when the income is not covered by any treaty), Poland uses the ordinary credit method to avoid double taxation. Therefore, a Polish resident is liable for income tax imposed on its worldwide income, but the tax is proportionately reduced by the income tax paid abroad.

Special Economic Zones (SEZs)

Polish legislation provides investment incentives related to business activities carried out in 14 zones defined as SEZs. A business entity can benefit from tax incentives, provided that the entity obtains a permit from the Ministry of Economic Development to conduct business activities there and meets other legal requirements. Note that a CIT credit applies only to income earned on activity conducted within the territory of SEZs and covered by permit.

In general, the amount of the tax incentive depends on project location and size of the enterprise. For large enterprises, it can be 15% to 50% of eligible expenditures (i.e. investment expenditures or two-year labour costs). In other words, the CIT credit allows the investor to avoid paying income tax up to the limit calculated on the basis of eligible expenditures and state aid intensity (percentage as above). In case of investment valued PLN 20 million and intensity aid of 40%, the investor would be entitled not to pay tax due up to PLN 8 million. If the available limit of the tax credit exceeds the annual tax due generated on SEZ activity, the excess may be utilised in the following tax years. Consequently, in the case of significant investments, it is possible for businesses that run activities in the SEZs to enjoy exemption from income tax for a considerable period. According to current regulations, the deadline for utilising the available tax credit is the end of 2026 (previously 2020).

Note that in the case of small enterprises, the limit of the tax credit may be increased by 20%. In the case of medium-sized enterprises, the limit of the tax credit may be increased by 10%.

Tax relief for research and development (R&D)

Since 1 January 2017, entrepreneurs have gained the possibility of a tax deduction from 130% to 150% of costs incurred for R&D. The value of the deduction varies depending on the size of the company and type of eligible costs.

Eligible costs include the following six categories of R&D expenditures:

- Employees' wages and social contributions.
- Purchase of commodities and raw materials.
- Expertise, research, and opinions bought from scientific units.
- Payments for use of research equipment.
- Amortisation of intangible assets and fixed assets, excluding passenger cars, buildings, and constructions.
- Costs of obtaining intellectual property (IP) protection.

To benefit from the tax relief, each entity needs to perform R&D works and prepare a record of the eligible costs incurred in relation to R&D works in a given year. It is not important whether the R&D works end with success or the level of innovativeness of future effects of those works. Tax relief is also allowed for qualifying projects in progress (e.g. projects launched in previous years).

According to current governmental plans (January 2017), the level of tax relief in 2018 should be increased to 200% of costs incurred.

Withholding taxes

Domestic provisions: General rules

The general domestic WHT rate for dividends is 19%. Dividends also encompass income from liquidation of a company and the income from the redemption of shares (with the exception of gain from voluntary redemption, which is treated as a capital gain subject to the 19% CIT rate in Poland if the gain is realised by a taxpayer from a non-treaty country or the treaty includes a so-called 'real estate clause').

The general WHT rate on interest and royalties paid to non-residents is 20% (10% regarding services of sea or air transportation). These WHT rates may be reduced by DTTs.

There is also a 20% WHT on payments made to non-residents for intangible services (such as consulting services). However, if a payment is made to a country that has a DTT with Poland, this tax may be avoided with the completion of certain minimal administrative formalities. Few treaties treat payments for technical services as royalties (e.g. India).

As of 1 January 2017, the definition of 'beneficial owner' was introduced in the glossary of terms of the CIT Act. The 'beneficial owner' definition determines that entities receiving royalties and interests must constitute the beneficial owner in order to apply the exemption from WHT tax on interest and royalties.

Special treatment: EU Directives

The CIT law provisions and certain EU Directives provide special treatment for dividends, interest, and royalties paid to numerous European countries.

In general, the transitional rules on interest and royalty payments paid by Polish corporate residents to associated EU or EEA companies, as well as the full exemption after 1 July 2013, only apply to interest and royalty payments between associated companies (parent-subsidiary relationships or sister-sister relationships) in which capital involvements are significant, i.e. the paying company owns or is owned at least 25% by the company receiving interest or the company that pays interest and the company that receives interest are owned at least 25% by the same parent company. Shareholding should be kept for a minimum of two consecutive years.

Dividends paid to corporate residents of EU and EEA countries are exempt from WHT, subject to certain conditions specified in the CIT law. The basic requirement is that the foreign beneficiary holds at least 10% of the shares in the Polish company for a minimum of two consecutive years.

In relation to all given payments (i.e. dividends, interest, royalties), the condition regarding holding shares is also fulfilled if two years passes after the day of the dividend/interest/royalty payment. If the period is interrupted afterwards, the company is obligated to pay the tax at the standard rate with interest.

Note that several additional conditions have to be met for the reduced rate/exemption from the WHT based on the Directive to be applied (e.g. the company receiving the dividend/interest/royalty cannot be exempt from tax on all its income, regardless of its source; the recipient has to have ownership title to the shares in the Polish company).

Additionally, the CIT law states that in order to enjoy the exemption from WHT on dividends and decreased WHT rate on interest and royalties, based on the Directives' provisions, the relevant DTT or other agreement concluded by Poland should allow exchange of tax information between the tax authorities of Poland and the country of the payment recipient.

Given the fact that Poland did not conclude a DTT with Liechtenstein, payments made to tax residents of Liechtenstein should not benefit from the Directive.

Treaty rates

If EU special rules do not apply, the domestic WHT rates can be decreased by a DTT concluded between Poland and the payment recipient's country of residence if certain administrative conditions are met (i.e. the payer obtains a valid certificate of a fiscal residence of the payment recipient/beneficial owner).

The following table lists the WHT rates as provided in the treaties concluded by Poland. Notably, the following table shows only rates that result from general treaty provisions;

the treaties themselves occasionally include special provisions (applicable in special circumstances or to special entities) that provide lower WHT rates than the ones listed.

Furthermore, if a treaty rate is higher than a domestic one, the latter should apply.

Recipient	Dividends (%)	Interest (%)	Royalties (%)
Non-Treaty	19	20	20
Treaty:			
Albania	5 (1)/10	10	5
Armenia	10	5	10
Australia	15	10	10
Austria	5 (3)/15	0 (4)/5	5
Azerbaijan	10	0 (2)/10	10
Bangladesh	10 (5)/15	0 (6)/10	10
Belarus	10 (7)/15	10	0
Belgium	5 (8)/15	0 (9)/5	5
Bosnia & Herzegovina (Yugoslavian Treaty)	5 (1)/15	10	10
Bulgaria	10	0 (10)/10	5
Canada	0/15	0 (11)/15	0 (12)/10
Chile	5 (13)/15	5/15 (85)	5 (14)/10/15 (86)
China, People's Republic of	10	0 (15)/10	10 (16)/10 of 70 (14)
Croatia	5 (1)/15	0 (15)/10	10
Cyprus	0 (17)/5	0 (79)/5	5 (87)
Czech Republic	5	0 (80)/5	10 (81)
Denmark	0 (19)/5 (20)/15	0 (21)/5	5
Egypt	12	0 (22)/12	12
Estonia	5 (23)/15	0 (24)/10	10
Finland	5 (23)/15	5	5
France	5 (3)/15	0	0 (25)/10
Georgia	10	0 (26)/8	8
Germany	5 (3)/15	0 (27)/5	5
Greece	19 (73)	10	10
Hungary	10	0 (10)/10	10
Iceland	5 (23)/15	0 (10)/10 (74)	10
India	15	0 (28)/15	22.5
Indonesia	10 (13)/15	0 (10)/10	15
Iran	7	0 (29)/10	10
Ireland, Republic of	0 (30)/15	0 (31)/10	0 (82)/10
Israel	5 (32)/10	5	5 (14)/10
Italy	10	0 (33)/10	10
Japan	10	0 (34)/10	0 (35)/10
Jordan	10	0 (10)/10	10
Kazakhstan	10 (36)/15	0 (37)/10	10
Korea, Republic of	5 (3)/10	0 (38)/10	5 (39)
Kyrgyzstan	10	0 (40)/10	10
Kuwait	0 (41)/5	0 (42)/5	15
Latvia	5 (23)/15	0 (43)/10	10
Lebanon	5	0 (37)/5	5
Lithuania	5 (23)/15	0 (10)/10	10
Luxembourg	0 (88)/15	0 (44)/5	5
Macedonia	5 (23)/15	0 (10)/10	10

Poland

Recipient	Dividends (%)	Interest (%)	Royalties (%)
Malaysia	0 (45)	0 (46)/15	0 (47)/15
Malta	0 (77)/10 (76)	0 (2)/5	5 (78)
Mexico	5 (23)/15	0 (48)/5 (49)/15	10
Moldova	5 (23)/15	0 (37)/10	10
Mongolia	10	0 (10)/10	5
Montenegro (Yugoslavian Treaty)	5 (23)/15	10	10
Morocco	7 (18)/15	10	10
Netherlands	5 (3)/15	0 (75)/5	5
New Zealand	15	10	10
Norway	0 (50)/15	0 (4)/5	5
Pakistan	15	0 (51)/20	15 (52)/20 (53)
Philippines	10 (23)/15	0 (54)/10	15
Portugal	10 (55)/15	0 (56)/10	10
Qatar	5	0 (84)/5	5
Romania	5 (23)/15	0 (43)/10	10
Russia	10	0 (57)/10	10
Saudi Arabia	5	0 (83)/5	10
Serbia (Yugoslavian treaty)	5 (23)/15	10	10
Singapore	5 (58)/10	5	2 (14)/5
Slovak Republic	5 (18)/10	0 (43)/10	5
Slovenia	5 (23)/15	0 (60)/10	10
South Africa	5 (23)/15	0 (10)/10	10
Spain	5 (1)/15	0	0 (35)/10
Sri Lanka	15	0 (61)/10	0 (62)/10
Sweden	5 (23)/15	0	5
Switzerland	0 (20, 50)/15	5	5
Syria	10	0 (63)/10	18
Taiwan	10	10	3 (89)/10
Tajikistan	15	0 (40)/10	10
Thailand	20	0 (59)/10	0 (64)/5 (65)/15
Tunisia	5 (1)/10	12	12
Turkey	10 (23)/15	0 (10)/10	10
Ukraine	5 (23)/15	0 (37)/10	10
United Arab Emirates	0 (66)/5	0 (10)/5	5
United Kingdom	0 (67)/10	0 (68)/5	5
United States	5 (69)/15	0	10
Uzbekistan	5 (70)/15	0 (71)/10	10
Vietnam	10 (23)/15	10	10 (72)/15
Zimbabwe	10 (23)/15	10	10

Notes

1. When the beneficial owner is a company that directly holds at least 25% of the capital of the company paying the dividends.
2. When interest is paid to the government, the central bank of the state, including local authorities or other government bodies.
3. When the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends.
4. When interest is paid to the government, a political subdivision, or a local authority in connection with:
   - a loan granted, insured, or guaranteed by a governmental institution for the purposes of promoting exports
   - a sale on credit of any industrial, commercial, or scientific equipment, or
   - any loan granted by a bank.

5. When the beneficial owner is a company that directly holds at least 10% of the capital of the company paying the dividends.
6. When the interest is paid:
   - to the Central Bank of Poland
   - to the Central Bank of Bangladesh
   - to the government of the Republic of Poland or the government of the Republic of Bangladesh, or
   - in respect of a loan made or guaranteed or insured by the government of the other state, or any agency including a financial institution owned or controlled by the government.
7. When the beneficial owner is a company (other than a partnership) that directly holds at least 30% of the capital of the company paying the dividends.
8. When the beneficial owner is a company (other than a partnership):
   - that directly holds at least 25% of the capital of the company paying the dividends or
   - that directly holds at least 10% of the capital of the company paying the dividends, and the value of investments in the company is at least EUR 500,000 or is equal to the amount in the other currency.
9. When interest is paid:
   - on a loan granted, guaranteed, or insured, or a credit granted, guaranteed, or insured, by a general system organised by the state, including political subdivisions or local authorities for purposes of promoting exports
   - on a loan of whatever kind, except in the form of bearer securities, granted by a banking company, or
   - to other states, including political subdivisions and local authorities.
10. When interest is paid to the government, including local authorities, to the central bank or any financial institution controlled by that government, or on loans guaranteed by that government.
11. When interest is paid in respect of a loan made, guaranteed, or insured by the state or agreed public body.
12. Copyright royalties and other similar payments in respect of the production or reproduction of any literary, dramatic, musical, or artistic work (not including royalties in respect of motion picture films and works on film or videotape for use in connection with television).
13. When the beneficial owner is a company that directly controls 20% of the voting stock of the company paying the dividends.
14. For the use of, or the right to use, any industrial, commercial, or scientific equipment.
15. When interest is paid:
   - to the government, a local authority, and the central bank or any financial institution wholly owned by that government or
   - to the other resident of the other state with respect to debt-claims indirectly financed by the government of the other state, a local authority, and the central bank or any financial institution wholly owned by the government.
16. For the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematograph films, and films or tapes for radio or television broadcasting, or any patent, know-how, trademark, design or model, plan, secret formula, or process.
17. The Protocol of 22 March 2012 has entered into force. The Protocol introduces a maximum 5% rate of WHT on dividends and exempts dividends paid to an immediate parent company (other than partnership) that owns at least 10% of the capital of the company paying the dividend.
18. When the beneficial owner is a company (other than a partnership) that directly holds at least 20% of the capital of the company paying the dividends.
19. When the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends, where such holding is being possessed for an uninterrupted period of no less than one year and the dividends are declared within that period.
20. When the beneficial owner is a pension fund or other similar institution providing pension schemes in which individuals may participate in order to secure retirement benefits, when such pension fund or other similar institution is established, recognised for tax purposes and controlled in accordance with the laws of the other state.
21. When interest is paid:
   - on a loan of whatever kind granted, insured, or guaranteed by a financial institution owned or controlled by the state
   - in connection with the sale on credit of any industrial, commercial, or scientific equipment
   - in respect of a bond, debenture, or other similar obligations of the government of the state, or of a political subdivision or local authority, or
   - to the other state, or to a political subdivision or local authority.
22. When interest is paid to the government of the other state, including local authorities and the central bank.
23. When the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends.
24. When interest is paid to the government of the other state, including political subdivisions and local authorities, the central bank, or any financial institution owned by the government or on loans guaranteed by the government.
25. From copyright of literary, artistic, or scientific work.
26. When the beneficial owner is the government of the other state or central bank.
27. When the interest, subject to certain exceptions related to silent shareholders, is paid:
   - to the government of Poland or Germany on a loan of whatever kind granted, insured, or guaranteed by a public institution for purposes of promoting exports
   - in connection with the sale on credit of any industrial, commercial, or scientific equipment

- in connection with the sale on credit goods between companies, or
- on any loan of whatever kind granted by a bank.

28. If the following conditions are met:
    - Interests paid to:
        - the government, a political sub-division, or a local authority of the other contracting state or
        - the central bank of other contracting state.
    - When the beneficial owner is a resident of the other contracting state and is derived in connection with a loan or credit extended or endorsed by:
        - Bank Handlowy (in scope of financing export and import) - for Poland
        - the Export-Import Bank of India (in scope of financing export and import) - for India
        - any institution in the other contracting state in charge of public financing of external trade, or
        - any other person, provided that the loan or credit is approved by the government of the first mentioned contracting state.
29. When the beneficial owner is the government, ministry, other governmental institution, municipality, central bank, or any other bank wholly owned by the government of the other contracting state.
30. When the beneficial owner is a resident of the other contracting state and directly holds at least 25% of the voting power of the company paying the dividends.
31. Interest paid in connection with:
    - the sale on credit of any industrial, commercial, or scientific equipment
    - the sale on credit of any merchandise by one enterprise to another, or
    - on any loan of whatever kind granted by the bank.
32. When the beneficial owner is a company that directly holds at least 15% of the capital of the company paying the dividends.
33. If the following conditions are met:
    - When the payer of interests is the government or contracting state or a local authority of thereof.
    - Interest is paid to the government of other contracting state or local authority thereof (including financing institutions) wholly owned by other contracting state or local authority thereof.
    - Interest is paid to any other entity, including financial institutions, in relation to loans made in application of an agreement concluded between governments of contracting states.
34. When beneficial owner is the government of other contracting state, including local authorities thereof, the central bank, any financial institutions controlled by that government or any resident of the other contracting state with respect to debt-claims, guaranteed or indirectly financed by institutions mentioned above.
35. For payments connected with copyrights, literary, artistic, and scientific activity, including payments connected with films for cinemas and films and tapes for TV.
36. When the beneficial owner is a company that directly or indirectly holds, at least 20% of the capital of the company paying the dividends.
37. When interest is paid to the government or local authorities.
38. Interest arising in a contracting state in respect of loans or credits made, insured, or guaranteed:
    - in the case of Korea, by the Export-Import Bank of Korea, Korea Development Bank, Korea Finance Corporation (KoFC), Korea Trade Insurance Corporation (K-sure), Korea Investment Corporation, and any other financial institution, performing similar functions of a governmental nature, established and owned by the government of Korea, and
    - in the case of Poland, by the *Korporacja Ubezpieczeń Kredytów Eksportowych* S.A (KUKE S.A.), Bank *Gospodarstwa Krajowego* (BGK), and any other financial institution, performing similar functions of a governmental nature, established and owned by the government of Poland, and
    - paid to a resident of the other contracting state shall be taxable only in that other state.
39. If the recipient is the beneficial owner.
40. Interest paid to government or central bank.
41. When the beneficial owner is:
    - the government of the other contracting state, entity, or any governmental institution or
    - a company that is a resident of the other contracting state and at least 25% of its capital is directly or indirectly owned by the entities mentioned above.
42. If the following conditions are met:
    - When the beneficial owner is:
        - the government of the other contracting state, entity, or governmental institution or
        - a company that is a resident of the other contracting state and at least 25% of its capital is owned directly or indirectly by the entities mentioned above.
    - When interest is paid in connection with loans guaranteed by the entities mentioned above.
43. When interest is paid:
    - to the government, including the local authorities, to the central bank or any financial institution controlled by that government, or on loans guaranteed by that government or
    - to the resident in the other contracting state.
44. If the following conditions are met:
    - When the beneficial owner is other contracting state.
    - When interest is paid in connection with loans and credits granted by bank.
45. Dividends paid by:
    - a resident of Poland to a resident of Malaysia who is subject to Malaysian tax in respect thereof or
    - a resident of Malaysia to a resident of Poland who is subject to Polish tax in respect thereof.
46. Interest paid to resident of Poland on an approved loan or a long-term loan.
47. Royalties paid to resident of Poland by resident of Malaysia and approved by the competent authority of Malaysia.

48. If the following conditions are met:
    - When the beneficial owner is:
        - a contracting state, a political subdivision, or a local authority, or The National Bank of Poland or Banco de Mexico or
        - a recognised pension or retirement fund provided that its income is generally exempt from tax in this state.
    - When interest:
        - is paid by any of entities mentioned above
        - arises in Poland and is paid in respect of a loan for a period not less than three years granted, guaranteed, or insured by Banco de Comercio Exterior, S.N.C., Nacional Financiera, S.N.C. or Banco National de Obras y Servicios Publicos S.N.C., or
        - arises in Mexico and is paid in respect of a loan for a period not less than three years granted, guaranteed, or insured by PKO S.A., Corporation of Credit Insurance, and Bank Handlowy in Warsaw.
49. If the following conditions are met:
    - When the beneficial owner is a bank or insurance company.
    - When interest is derived from bonds and securities that are regularly and substantially traded on a recognised securities market.
50. When dividends are paid to the company that directly holds at least 10% of the capital paying the dividends on the day they are paid and has done (or will do) so for an interrupted 24-month period from which that date falls.
51. When interest is paid:
    - by a resident of Pakistan to a Polish company or enterprise on loans approved by the Ministry of Finance of the government of Pakistan
    - to the State Bank of Pakistan from sources in Poland, or
    - to Bank Handlowy in Poland from the sources in Pakistan.
52. For payments of any kind received in consideration for the use of, or the right to use:
    - any copyright, patent, trademark, design or model, plan, secret formula, or process
    - an industrial, commercial, or scientific equipment, or
    - motion picture films, and works on films and videotapes for use in connection with television.
53. For payments received in consideration of technical know-how concerning industrial, commercial, or scientific experience.
54. Interests paid in respect of:
    - a bond, debenture, or other similar obligations of the government, state, political subdivision, or local authority thereof or
    - a loan or credit extended, guaranteed, insured, or refinanced by:
        - Central Bank of Philippines - for Philippines
        - Central Bank of Poland - for Poland, or
        - other lending institutions as specified and agreed in letters of exchange between competent authorities of the contracting states.
55. When dividends are paid to the company that directly holds at least 25% of the capital stock of the company paying the dividends for an uninterrupted 24-month period prior to the payment.
56. If the following conditions are met:
    - When the debtor of such interests is the government, a political subdivision, or local authority.
    - When the interest is paid to the government of other contracting state, a political subdivision, or local authority thereof, or an institution or body in connection with any financing granted by them under an agreement between the governments of the contracting states.
    - Loans or credit made on central banks of contracting states and any other financial institution controlled by the state and financing external business that may be agreed upon between the competent authorities of the contracting states.
57. Interests paid to government, administrative, territorial, or the central bank.
58. Dividends paid by:
    - the company that is a resident of Singapore to a resident of Poland (as long as Singapore does not impose a tax on dividends in addition to the tax chargeable on the profits or income of a company) or
    - to government of either contracting state with respect to shares in joint stock companies of that other state.
59. Interest paid to government.
60. Interests paid to government, local authorities, or the central bank.
61. Interests:
    - received by any banking institution that is a resident of contracting state
    - derived from contracting state of the other contracting state either directly or through any agency, or
    - accruing to any company, partnership, or other body of persons resident in the contracting state for any loans in money, goods, and services or in any other form, granted by them to the government of the other contracting state, or to a state corporation, or to any state institution, or to any other institution, to the capital of which, the other contracting state has made any contribution, or to a credit agency, or an undertaking in that other contracting state with the approval of the government of the same state.
62. For payment in consideration, for the use of, or the right to use, any copyrights or cinematograph films.
63. If the following conditions are met:

- When recipient is a contracting state, or one of its local authorities, or the statutory body of either, including the central bank; or when interests are paid by a contracting state, or one of its local authorities, or the statutory body of either.
- Such interest is paid in respect of any debt-claim or loan guaranteed, insured, or supported by a contracting state or another person acting on state's behalf.

64. Payments payable to contracting state or a state owned company in respect of tape or films.
65. Royalties made as consideration, for the alienation, or the use of, or the right to use, any copyright of literary, artistic, or scientific work, excluding cinematographic films or tapes for television or broadcasting.
66. When the beneficial owner is the government or a government institution.
67. When dividends are paid to a company that is the resident of the other contracting state and that directly holds at least 10% of the capital, paying the dividends on the day they are paid and has done (or will do so) for an uninterrupted 24-month period from which that date falls.
68. When interests are paid to the government, a political subdivision, or a local authority in connection with:
    - a loan granted, insured, or guaranteed by a governmental institution for the purposes of promoting exports
    - the sale on credit of any industrial, commercial, or scientific equipment, or
    - any loan granted by a bank.
69. When the beneficial owner is a company that directly holds at least 10% of the outstanding shares of the voting stock of the company paying the dividends.
70. When the beneficial owner is a company that directly holds at least 20% of the capital of the company paying the dividends.
71. When the beneficial owner is:
    - the government or a local authority or
    - the National Bank of Poland or the Central Bank of Uzbekistan Republic.
72. For payment of any kind, received in consideration, for the use of, or the right to use:
    - any patent, design or model, plan, secret formula, or process or
    - any information concerning industrial or scientific experience.
73. Treaty allows application of the domestic tax rate.
74. As long as Iceland does not levy tax at source of income, interest is taxable only in the contracting state of which the beneficial owner of the interest is a resident.
75. When interest is paid to the government, a political subdivision, or a local authority in connection with:
    - a loan granted, insured, or guaranteed by a governmental institution for the purposes of promoting exports
    - a sale on credit of any industrial, commercial, or scientific equipment
    - any loan granted by a bank
    - in respect of a bond, debenture, or other similar obligations of the government of a contracting state, or of a political subdivision or local authority thereof, or
    - to the other contracting state, or to a political subdivision or local authority thereof.
76. When the tax is charged by Poland.
77. When the dividends are paid by a company resident of Poland to a resident of Malta that directly holds at least 10% of the capital company paying the dividends on the date they are paid and has done so or will have done so for an uninterrupted 24-month period in which that date falls.
78. When the recipient is the beneficial owner.
79. According to the Protocol of 22 March 2012, which has entered into force, the maximum WHT rate on interest paid is 5%. However, when interest is paid to the government, including political sub-divisions and local authorities, the central bank, or any statutory body of the state with respect to loans or credits made or guaranteed by the government of the other state, including political sub-divisions and local authorities, the central bank, or any statutory body of the other state, it shall be exempt from tax in the first mentioned contracting state.
80. There is a WHT exemption on interest payable: (i) on any loan or credit granted by a bank; (ii) to the government of the other contracting state, including any political subdivision or local authority thereof, the central bank, or any financial institution owned or controlled by that government; or (iii) to a resident of the other state in connection with any loan or credit guaranteed by the government of the other state, including any political subdivision or local authority thereof, the central bank, or any financial institution owned or controlled by that government. The maximum rate of WHT on interest is 5%.
81. The maximum WHT rate on royalties is 10%.
82. The lower rate applies to fees for technical services.
83. When interest is paid: (i) by the government of a contracting state, administrative subdivision, or local authority thereof; (ii) to the government of the other contracting state, administrative subdivision, or a local authority thereof; or (iii) to the central bank of the other contracting state or a corporate body (including financial institution) controlled or owned by that state, a political or administrative subdivision, or local authority thereof.
84. If the recipient of the interest is the beneficial owner and interest is paid: (i) to the Republic of Poland or the State of Qatar; (ii) on a loan of whatever kind granted, insured, or guaranteed by a public institution for purposes of promoting exports; (iii) in connection with the sale on credit of any industrial, commercial, of scientific equipment; or (iv) on any loan of whatever kind granted by a bank.
85. The treaty rate is 15% for all types of interest. However, by virtue of a most-favoured-nation clause of the protocol (and since the Chile-Spain treaty provides a reduced rate), the rate is reduced to 5% in respect of interest (i) paid to a bank or insurance company or (ii) derived from bonds or securities that are regularly and substantially traded on a recognised securities market.

86. The general treaty rate is 15%. However, by virtue of a most-favoured-nation clause of the protocol (and since the Chile-Spain treaty provides a reduced rate), the rate is reduced to 10%.
87. The Protocol of 22 March 2012 has not changed the WHT rate in relation to royalties; however, the beneficial owner clause was introduced. Additionally, the new DTT amends the definition of 'royalties'.
88. When the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends, where such holding is being possessed for an uninterrupted period of no less than two years and the dividends are declared within that period.
89. When royalties are paid for the use of, or right to use, industrial, commercial, or scientific equipment.

Tax administration

Taxable period

The taxable period is the calendar year (between 1 January and 31 December). Companies are entitled to choose another (than calendar) fiscal year (e.g. between 1 April and 31 March).

Tax returns

The annual CIT return should be submitted to the tax office within three months following the end of the tax year.

Payment of tax

The same deadline as the CIT return applies to the settlement of the annual CIT liability. In financial terms, the final settlement is not significant since most of the annual liability is paid by CIT advances throughout the tax year.

The CIT advances should be paid for each month by the 20th day of the following month. Entities that started business activities (except for companies organised as a result of certain transformations) and entities whose gross sales revenue (including VAT) in the prior tax year did not exceed EUR 1.2 million are entitled to opt to make advance settlements on a quarterly basis (instead of a monthly basis).

Tax audit process

The tax authorities generally shall notify its intention to initiate a tax audit. The inspection shall be initiated not earlier than after seven days and not later than 30 days from the receipt of the notice.

The duration of all audits in one calendar year may not exceed the following:

- For micro entrepreneurs: 12 working days.
- For small entrepreneurs: 18 working days.
- For medium entrepreneurs: 24 working days.
- For large entrepreneurs: 48 working days.

The rules mentioned above do not apply to the inspection commenced by the customs and revenue office. This kind of tax inspection is initiated without issuing a notification and in practice there is a possibility to prolong the inspection without any specific time limits.

Statute of limitations

Tax liability expires five years after the end of the calendar year in which the tax payment deadline passed. There are also situations when the statute of limitations can be suspended or interrupted (e.g. litigation).

Topics of focus for tax authorities
According to recent statements from the Ministry of Finance, the focus of the tax audit authorities is on transactions between related parties (transfer pricing issues), VAT frauds, and tax restructuring. Moreover, traditionally, tax audits usually cover:

- Validity of the VAT refund.
- Possibility to correct excise duty resulting from post-transaction rebate.
- Correctness of settlements concerning the use of a trademark.

General anti-abuse rule (GAAR)
On 15 July 2016, the bill amending the Tax Ordinance Act and certain other acts, including the anti-avoidance rule, came into force.

According to the bill, legal transactions with the main purpose of obtaining a tax advantage contrary to the tax regulations shall not result in tax benefit. Tax consequences of such transactions will be assessed as if an alternative 'appropriate' transaction had taken place. Furthermore, if transactions carried out by a taxpayer do not have any real economic or business rationale other than tax avoidance, tax authorities may completely disregard them.

The GAAR will be applied to the tax benefits received after the new law is introduced. It means that the sole fact that the transaction was carried out before the new law came into force may not exclude application of the new regulations in case the taxpayer obtains a tax benefit after the GAAR is introduced.

Other issues

United States Foreign Account Tax Compliance Act (US FATCA)
On 2 April 2014, the US Treasury announced that an intergovernmental agreement (IGA) was 'in effect' and, on 7 October 2014, the US Treasury and Poland signed and released the IGA. As of 4 May 2015, the President has signed the bill, which confirmed IGA ratification.

National Fiscal Administration introduced
As of 1 March 2017, the National Fiscal Administration (*Krajowa Administracja Skarbowa* or KAS) was introduced. The KAS is a specialised government administration engaged primarily with tasks related to obtaining revenues from taxes, duties, fees, and non-tax budget receivables.

The following new offices were created as part of the KAS:

- The Head of the National Fiscal Administration (*Szef Krajowej Administracji Skarbowej*).
- Director of the National Fiscal Information (*Dyrektor Krajowej Informacji Skarbowej*).
- Directors of chambers of fiscal administration (*dyrektorzy izb administracji skarbowej*).
- The heads of customs and revenue offices (*naczelnicy urzędów celno-skarbowych*).
- The heads of tax offices (*naczelnicy urzędów skarbowych*).

Portugal

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Significant developments

March-May 2017: Developments regarding anti-money laundering, transparency, and exchange of information

In March 2017, law proposals were approved by the Council of Ministers regarding:

- Transposition of the provisions of Directive (EU) 2015/849 regarding record retention and reporting obligations by the competent authority within the context of information requests.
- Mandatory automatic exchange of information in case of cross-border binding rulings and advance tax and transfer pricing agreements, by transposing Directive (EU) 2015/2376 of 8 December and Directive (EU) 2016/881 of 25 May, both regarding mandatory automatic exchange of information in the field of taxation.

In April 2017, the government submitted to the Parliament a proposal of law regarding the creation of a central register of beneficial ownership, regarding corporate and other legal entities incorporated in Portugal, including details of the beneficial interests held in those entities. The regime results from the transposition of Chapter III of Directive (EU) 2015/849 of the European Parliament and of the Council, of 20 May 2015, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

In May 2017, the following legislation was published:

- The Portuguese tax authorities are required to publish on their website, on an annual basis, all transfers, respective amount and reason, made to offshores, as well as statistics about such transfers, and among other matters the outcome and number of tax audits, as well as corrections to the taxable income and additional assessments of tax raised.
- The issuance of bearer securities is no longer allowed; existing bearer securities must be converted into nominative by November 2017.

March 2017: Tax treaty with Montenegro approved

The tax treaty between Portugal and Montenegro has been approved by the Parliament and ratified by the President, as per publication in the Official Gazette dated 21 March 2017. This tax treaty limits the tax withheld at source to 10% on dividends (5% if the beneficial owner is a company that directly holds at least 5% of the capital of the company paying the dividends), 10% on interest, and 5% on royalty payments derived from any copyright of literary, artistic, or scientific work or 10% on royalty payments derived from any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial, or scientific experience. The entrance into force of this tax treaty is pending on the completion of all formalities required by both states.

February 2017: Agreements with Belize, Turks and Caicos Islands, and the Principality of Andorra
Following the publication in the Official Gazette of 14 February 2017, the following agreements have been concluded by Portugal:

- Agreements for the exchange of information on tax matters with Belize and with Turks and Caicos Islands was approved by the Parliament and ratified by the President. The entrance into force of the agreements is pending on the completion of all formalities as required by the contracting states. Both Belize and Turks and Caicos Islands are black-listed under Portuguese tax law and should remain as such despite the conclusion and subsequent entry into force of the agreements.
- The tax treaty between Portugal and the Principality of Andorra for the avoidance of double taxation was approved by the Parliament and ratified by the President. The tax treaty limits the tax withheld at source to 15% on dividends (5% if the beneficial owner is a company that directly holds at least 10% of the capital of the company paying the dividends for 12 months prior to the date in which entitlement to the dividends was determined), 10% on interest, and 5% on royalty payments. The entrance into force of this tax treaty is pending on the completion of all formalities required by both contracting states. Andorra is black-listed under Portuguese tax law and should remain as such despite the conclusion and subsequent entry into force of the tax treaty.

January 2017: Jersey, Isle of Man, and Uruguay removed from the Portuguese black-list
Following the publication of Decree 354-A/2016, of 30 December, Jersey, the Isle of Man, and Uruguay have been removed from the Portuguese black-list, as all jurisdictions are members of the Organisation for Economic Co-operation and Development's (OECD's) Global Forum on Tax Transparency and Exchange of Information. Jersey and Uruguay have been considered largely compliant, and the Isle of Man has been considered as compliant. The Decree is effective 1 January 2017.

December 2016: 2017 State Budget Law published
The 2017 State Budget Law, published on 28 December 2016 in the Official Gazette (Law 42/2016), introduced several amendments to the tax law, generally applicable as of 1 January 2017, of which we highlight the following:

Corporate income tax (CIT)

- Tax losses carryforward: Following the reduction of the carryforward period for tax losses from 12 to 5 years, the first in first out (FIFO) method was eliminated as the mandatory rule to use for the carryforward of tax losses.
- Conventional remuneration of share capital/notional interest deduction:
  - The deduction to the taxable profit from the conventional remuneration of share capital/notional interest deduction is increased to 7% (instead of the previous 5%), up to 2 million euros (EUR), applicable to cash contributions and conversion of shareholder loans for share capital increases.
  - The deduction to the taxable profit is made in the tax period where the entries are made, as well as in the following five tax periods (previously three).

  - The regime is applicable to all entities (previously only for micro, small, and medium-sized enterprises) and should not be capped by the European Union (EU) *de minimis* rule.
  - The deduction of net financing expenses should be limited by the higher value between EUR 1 million and 25% of the earnings before interest, taxes, depreciation, and amortisation (EBITDA) when benefiting from this tax incentive (it is 30% for the entities that are not benefiting from this regime).
- CIT rate for small and medium-sized enterprises (SMEs) located in inland regions: SMEs located in the inland regions now benefit from a CIT rate of 12.5% on the first EUR 15,000 of the taxable amount (17% for non-inland SMEs).
- Regarding the tax regime for investment promotion (RFAI), the threshold for the amount of eligible investment subject to a rate of 25% increases from EUR 5 million to EUR 10 million.

Value-added tax (VAT)

- In 2018, taxpayers may opt to self-asses VAT due on imports of goods instead of paying it on the moment of the goods' customs clearance in Portugal. For this purpose, the taxpayer must not have restrictions on the right do deduct VAT and should be covered by the monthly VAT regime.

Property tax

- An addition to the real estate property tax (IMI) applies to corporate entities that are the owners, usufructuaries, or have the right of surface of urban property for residential purposes and land for construction located in Portugal. The tax is due at the rate of 0.4% on the sum of the tax-registered value of the relevant property (with reference to 1 January each year). The rate is 7.5% in case of entities resident in black-listed jurisdictions. The tax paid can be deducted against the fraction of CIT corresponding to the income generated by the relevant properties (leasing or lodging), in which case the tax is disallowed as a tax deductible expense.

Tax justice

- The Portuguese tax authorities now have a 75 day limit to reply to an urgent binding ruling request (previously 90 days).

July-September 2016: Portugal increases its network of tax treaties

Between July and September 2016, Portugal increased its network of tax treaties as the Parliament approved and ratified several tax treaties in which administrative cooperation is agreed regarding tax matters in order to increase the fight against tax fraud and tax evasion.

The following tax treaties have been approved and ratified (*see the Withholding taxes section for more information*):

- The treaty between Portugal and the Ivory Coast foresees the limitation of withholding tax (WHT) rates on dividend and interest payments to 10%, while royalty payments will be subject to a WHT rate that may not exceed 5%.
- The treaty between Portugal and São Tomé e Príncipe foresees the limitation of the tax withheld at source to 15% in the case of dividends (10% if conditions are met), 10% on interest, and 10% regarding royalty payments.

- The treaty between Portugal and the Sultanate of Oman foresees the limitation of WHT rates as follows: 15% in the case of dividends (10% or 5% if conditions are met), 10% regarding interest payments, and 8% on royalty payments.
- The treaty between Portugal and the Socialist Republic of Vietnam foresees the limitation of WHT rates on dividends to 15% (10% or 5% under certain conditions), while the WHT rate on interest is limited to 10%. Regarding royalty payments, the WHT rate is limited to 10%, or 7.5% when the payment is related to technical service fees.
- The treaty between Portugal and the Kingdom of Bahrain foresees the limitation of WHT rates on dividends to 15% (10% if conditions are met), 10% on interest, and 5% regarding royalty payments.

The above treaties will enter into force once both Portugal and the other country communicate that the respective formalities required were met.

The treaty between Portugal and the Kingdom of Saudi Arabia is in force as of 1 September 2016, and it generally applies to taxable events taking place on or after 1 January 2017. It foresees the limitation of WHT rates on dividends and royalties at 10% (5% if conditions are met) and 8%, respectively; regarding income from debt claims, the WHT rate at source is limited to 10%.

August 2016: New patent box regime and approval of the Foreign Account Tax Compliance Act (FATCA)

Amendment to the patent box regime
On 22 August 2016, Decree-Law no. 47/2016 was published in the Official Gazette, introducing a new patent box regime in line with the authorisation foreseen in the 2016 State Budget Law and following the latest international agreements within the EU and the OECD. The regime is applicable to intellectual property (IP) registered starting on 1 July 2016.

The new regime foresees a 50% deduction of the total income derived from assets with IP protection with the ratio given by the eligible expenses and the total expenses incurred in the development of those assets.

The tax benefit will be capped at a proportion of the expenses incurred with the development of those assets; however, an additional deduction of 30% of the cap will be available under certain conditions.

The amendment also clarifies that the costs or expenses not directly connected with the activities of research and development (R&D), such as interest, as well as those related to the acquisition, construction, or depreciation of real estate, should be excluded from the assessment of the deduction.

Moreover, the previous regime will still be applicable to IP registered between 1 January 2014 and 30 June 2016 and will remain in force until 30 June 2021.

FATCA - Agreement between Portugal and the United States (US)
The agreement between the Portuguese Republic and the United States of America, signed on 6 August 2015 to improve international tax compliance and to implement the FATCA, was approved by Parliament Resolution no. 183/2016 and published in the Official Gazette on 5 August 2016.

This agreement reinforces the shared goal of preventing and combating tax fraud and evasion on a reciprocal basis by introducing the rules and mechanisms for the mutual cooperation and assistance and for the automatic exchange of foreign financial account information between the United States and Portugal.

The entrance into force will take place once Portugal informs the United States that all the formal requirements are met, the moment from which the local financial institutions should be required to annually disclose the relevant account and balances information.

June 2016: Investment Tax Code of the Autonomous Region of Madeira
Regional Legislative Decree no. 24/2016/M, published in the Official Gazette of 28 June 2016, adapts to the Autonomous Region of Madeira the tax benefits and incentives foreseen for the mainland. This adaptation introduces specificities to the benefits included in the Investment Tax Code regarding contractual benefits, the RFAI, the R&D tax incentives (SIFIDE), and the deduction for the reinvestment of profits and reserves (DLRR).

The changes introduced to these tax benefits specifically applicable to Madeira include, among others, increases in the percentages of the CIT deductions, the reduction of minimum investment thresholds to broaden the scope of projects eligible, the increase in the maximum amounts of eligible investments or that serve as the basis for the deductions, and the reduction of certain thresholds for financial ratios (such as equity in respect of total assets).

It is also foreseen that projects in the 'Brava Valley' region will benefit from an additional deduction of up to 10% in all the tax benefits and incentives available.

Taxes on corporate income

Resident companies in Portugal are taxed on their worldwide income.

There is an optional regime to exclude from taxation the profits and losses allocated to a foreign permanent establishment (PE) of a Portuguese company. The regime applies provided that (i) the profit allocated to that PE is subject to and not exempt from a tax foreseen in Article 2 of the EU Parent/Subsidiary Directive (Council Directive 2011/96/EU), or a tax similar to the Portuguese CIT where the legal rate is not lower than 60% of the standard CIT rate, and (ii) the PE is not located in a black-listed jurisdiction. The regime is not applicable to the profit allocated to the foreign PE up to the amount of the losses allocated to that PE that have been taken into account by the Portuguese taxpayer when computing the respective taxable income of the previous 12 tax years in case of losses generated in tax years starting on or after 1 January 2016. In case of tax years starting on or after 1 January 2017, the period to consider shall be five tax years (12 tax years in case of SMEs). This is an optional regime that must cover, at least, all the PEs located in the same jurisdiction, and is mandatory for a minimum three-year period.

CIT is also applicable to Portugal-source income attributable to a PE of a non-resident company in Portugal. Special WHT rates apply to income generated in Portugal that is attributable to non-residents without a PE in Portugal (*see the Withholding taxes section for more information*).

A flat CIT rate of 21% applies on the global amount of taxable income realised by companies resident for tax purposes in Portugal mainland or in the Autonomous Region of Madeira (also applicable to Portuguese PEs of foreign entities).

A reduced CIT rate of 17% applies to SMEs on the first EUR 15,000 of taxable income (the standard CIT rate shall apply on the excess). Additionally, SMEs that are located in Portuguese inland regions benefit from a rate of 12.5% on the first EUR 15,000 of the taxable amount, also being subject to the standard CIT rate on the excess. In both cases, reference is made to the concept of micro, small, and medium-sized companies as foreseen in the EU Commission Recommendation 2003/361, concerning the definition of micro, small, and medium-sized enterprises.

Entities that do not carry out a commercial, industrial, or agricultural activity as their main activity are subject to a 21% CIT rate on the global amount of their taxable income.

A lower CIT rate of 16.8% applies to companies that are tax resident in the Autonomous Region of Azores, including PEs of foreign entities registered therein.

Surtaxes

The following surtaxes may also apply:

- A local surtax (*Derrama*) of up to 1.5% of taxable income, prior to the deduction of any available carryforward tax losses, is levied in certain municipalities. The local surtax is assessed and paid when filing the CIT return.
- A state surtax (*Derrama Estadual*) applies (prior to the deduction of any available carryforward tax losses) at the following rates:
  - 3% applicable to the taxable profit exceeding EUR 1.5 million and up to EUR 7.5 million.
  - 5% applicable to the taxable profit exceeding EUR 7.5 million and up to EUR 35 million.
  - 7% applicable to the taxable profit exceeding EUR 35 million.

The state surtax is levied on resident taxpayers carrying on commercial, industrial, or agricultural activity and by non-residents with a PE in Portugal. The state surtax is paid in three instalments.

A regional surtax (*Derrama Regional*) applies in the Autonomous Region of Madeira on the same terms as the state surtax.

Autonomous taxation

Autonomous taxation applies at different rates on certain expenses incurred by entities subject to CIT. It is self-assessed in addition to CIT (even if no CIT is due) at the following rates:

- Representation and entertainment expenses: 10%.
- Mileage allowance: 5%.
- *Per diem* allowance: 5%.
- Non-documented expenses: 50% (70% for partially or fully exempted taxpayers).
- Company car expenses (including depreciation, rentals, leasing, insurance, maintenance, repairs, fuel, and taxes), except fully electric cars, vehicles allocated to public transport, or vehicles that are taxed as income in kind for personal income

tax (PIT) purposes, depending on the acquisition cost and regardless of the year of acquisition:
  - Acquisition cost lower than EUR 25,000: 10%.
  - Acquisition cost between EUR 25,000 and EUR 35,000: 27.5%.
  - Acquisition cost of EUR 35,000 or more: 35%.
- Dividends distributed to wholly or partially exempt taxpayers regarding participations held for less than one year: 23%.
- The total amount of the expenses incurred with any compensation paid as a result of the termination of functions of managers or board members if not related to the productivity targets previously established under the existing labour relation; or the amount that exceeds the remuneration that would be received by the manager or the board member until the term of the labour agreement, in case of redundancy prior to that term; or, in all cases, if the liability for the payment is shifted to another entity: 35%.
- The total amount of the expenses incurred with bonuses paid to managers or board members if the respective amount corresponds to more than 25% of the annual salary and exceeds EUR 27,500: 35%.
- Payments made to open accounts of financial institutions in a jurisdiction with a clearly more favourable tax regime, unless proof is made that the operations effectively took place and do not have abnormal conditions or exaggerated amounts: 35%.

All of the above-mentioned rates of autonomous taxation are increased by 10% if the taxpayer has tax losses in the tax year in which the expenses are incurred.

Corporate residence

A resident company is one whose head office or effective management is located in Portugal.

Permanent establishment (PE)

Under Portuguese tax law, any fixed place of business in Portugal through which the business of an enterprise is wholly or partly carried on is deemed to constitute a PE in Portugal.

A fixed place of business comprises, among others, a place of management, a branch, an office, a factory, a workshop, a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources, and also a building site or a construction or installation project if it lasts more than six months (time period may differ considering the applicable tax treaty).

A PE may also be deemed to exist in case of a person (a dependent agent), which is not an independent agent, acting, in the Portuguese territory on behalf of a company, with powers to intermediate and conclude binding contracts for that company, within the scope of its business activity.

No PE should exist where a fixed place of business in Portugal is used solely for carrying out ancillary or preparatory activities, or, in the case of a company, carries out its activities in Portugal through a broker, general commission agent, or other agent of an independent status, acting in the normal course of its business, bearing all related business risks.

Additionally, the term PE shall be deemed not to include the following actions:

- Use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise.
- Maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display, or delivery.
- Maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise.
- Maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise.
- Maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.
- Maintenance of a fixed place of business solely for any combination of activities mentioned above, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

Other taxes

Value-added tax (VAT)

VAT rates

There are three VAT rates: the standard rate of 23% (22% in the Autonomous Region of Madeira; 18% in the Autonomous Region of the Azores), the intermediate rate of 13% (12% in Madeira; 9% in the Azores), and the reduced rate of 6% (5% in Madeira; 4% in the Azores).

The intermediate rate applies to supplies of some foodstuffs and to admissions to concerts, shows, theatre, cinemas, circus, and bullfighting. The intermediate rate is also applicable to pre-cooked meals, in ready-to-eat and take away or home delivery regimes, and to food and beverage services rendered, excluding alcoholic beverages, soft drinks, juices, nectars, and carbonated water, or added carbon dioxide or other substances.

The reduced rate applies to the supplies of some basic foodstuffs, periodical publications, books, pharmaceutical products, hotel accommodation, agricultural goods, and passenger transport.

Exports and intra-EU supplies of goods are zero-rated.

Supplies of goods

Supplies of goods are subject to VAT in Portugal if the goods are located in Portugal at the moment their transport or dispatch to the customer begins. If the goods are located in Portugal and there is no transport or dispatch, then supplies of the goods are subject to VAT at the moment they are put at the disposal of the customer.

Supplies of services

Supplies of services are subject to VAT in Portugal whenever: (i) acquired by taxable persons that have their business, a fixed establishment, domicile, or residence in Portugal to which the services are provided (B2B rule) or (ii) supplied to non-taxable persons if the provider has established its business, a fixed establishment, domicile, or residence in Portugal from where these services are provided (B2C rule).

Regardless of the place where the service provider and the acquirer are established, and of the acquirer being a taxable person, the supply of the following services is subject to VAT in Portugal if physically carried out in Portugal:

- Services connected with immovable property in Portugal.
- Passenger transport for the distances covered in Portugal.
- Admission to cultural, artistic, scientific, sporting, educational, entertainment, or similar events in Portugal.
- Restaurant and catering services in Portugal.
- Short-term hiring of a means of transport (up to 30 days, for boats up to 90 days) if the means of transport are put at the disposal of the customer in Portugal.

The supply of the following services is subject to VAT in Portugal if physically carried out in Portugal and if the acquirer is a non-taxable person:

- Transport of goods, other than intra-Community transport of goods, for the distances covered in Portugal.
- Intra-Community transport of goods, if the place of departure is Portugal.
- Valuations of and work on movable property.
- Services and ancillary services relating to cultural, artistic, sporting, scientific, educational, entertainment, or similar activities, such as fairs and exhibitions, including the supply of services of the organisers; and hiring of a means of transport, other than short-term hiring, when the acquirer is established, has one's permanent address, or usually resides in Portugal.

Telecommunications, broadcasting, television, and electronic services supplied to non-taxable persons are taxed in Portugal when the customer, a non-taxable person, is established, has one's permanent address, or usually resides herein.

Customs duties
Customs duties are regulated by the Community Customs Code. Therefore, the rules foreseen for the import and export of goods in Portugal are similar to the rules applicable in other EU member states.

The customs duties' rates applied in Portugal vary according to the origin of the goods. There are several origin agreements that exempt from customs duties the importation of goods from certain countries or that determine reduced rates.

Excise duties
There are different types of excise duties, such as petroleum and energy products tax, alcohol and alcoholic beverages tax, tobacco tax, and vehicle tax.

The tax applicable to petroleum and energetic products depends on the goods supplied, and it varies for leaded petrol between EUR 359 and EUR 650 per 1,000 kg and is EUR 2.87/gJ for natural gas used as fuel.

Due to the Green Tax Reform, there is an adding factor to excise duties on petroleum and energetic products, which, in 2017, is 2.271654 for gasoline and 2.474862 for diesel. The adding factor is extensive to petroleum, coal, natural gas, coke, liquefied petroleum gas (LPG), and fuel oil.

The excise duty applies on the supply of natural gas to final consumers at the rate of EUR 0.303/gJ.

The tax applicable to alcohol and alcoholic beverages also depends on the type of good supplied, varying between EUR 8.22 per hectolitre for a certain type of beer and EUR 1,367.87 per hectolitre for spirits.

Non-alcoholic beverages with added sugar are also liable to excise duties of EUR 16.46 or EUR 8.22 per 1,000 litres, depending on whether the added sugar amounts exceed the 80g/litre amount or not.

The tax applicable to tobacco (*ad valorem*) also varies in accordance with the type of product supplied, namely it varies between 16% of the sale price for cigarettes, 16% for fine-cut tobacco for the rolling, 25% for cigars and cigarillos, and 50% of the sale price for tobacco used in a water pipe.

The tax applicable to vehicles varies in accordance with the type of vehicle, the fuel used, and the cylinder of the vehicle. The higher taxation is applicable for cars used for the transport of passengers using petrol as fuel and the lower taxation is applicable for motorcycles.

An excise duty on consumption of electricity is due by producers, traders, self-producers, and consumers that buy electricity in organised markets. The tax applicable to electricity varies between EUR 1/kw to EUR 1.1/kw.

Property tax (Imposto Municipal sobre Imóveis or IMI)

IMI is a municipal property tax computed on the tax registration value (TRV) of urban and rural properties located in Portuguese territory. For urban properties, the TRV is determined by means of a valuation, based on the type of property, calculated by reference to a formula based on objective criteria, such as the construction cost per square metre, area, age, construction quality, and comfort indexes. IMI is due by the real estate owner, the usufructuary, or the holder of the surface right of a real estate unit with reference to 31 December of the year that it concerns.

IMI is levied at the following rates, in addition to corporate or individual tax assessed on actual income generated by real estate:

Real estate type	IMI (%)
Urban real estate	0.3 to 0.45
Rural real estate	0.8
Real estate owned by residents in a black-listed jurisdiction (except individuals)	7.5

The list of countries, territories, and regions that provide a more favourable tax regime ('black-listed jurisdictions') is presented below:

- American Samoa
- Andorra (1)
- Anguilla (1)
- Antigua and Barbuda (1)
- Aruba
- Ascension Island
- Bahamas
- Bahrain
- Barbados
- Belize (1)
- Bermuda (1)
- Bolivia
- British Virgin Islands (1)
- Brunei
- Cayman Islands (1)
- Channel Islands (1, 2)
- Christmas Island
- Cocos (Keeling)
- Cook Islands
- Costa Rica
- Djibouti
- Dominica (1)
- Falkland Islands or Malvinas
- Fiji Islands
- French Polynesia
- Gambia
- Gibraltar (1)
- Grenada
- Guam
- Guyana
- Honduras
- Hong Kong
- Jamaica
- Jordan

- Kingdom of Tonga
- Kiribati
- Kuwait
- Labuan
- Lebanon
- Liberia (1)
- Liechtenstein
- Marianas
- Marshall Islands
- Mauritius
- Monaco
- Montserrat
- Nauru
- Netherlands Antilles
- Niue Island
- Norfolk Island
- Pacific Islands
- Palau Islands
- Panama
- Pitcairn Island
- Puerto Rico
- Qatar
- Queshm Island
- Saint Helena
- Saint Kitts and Nevis (1)
- Saint Lucia (1)
- Saint Pierre and Miquelon
- Saint Vincent and the Grenadines
- San Marino
- Seychelles
- Solomon Islands
- Sultanate of Oman
- Svalbard
- Swaziland
- The Maldives
- Tokelau
- Trinidad and Tobago
- Tristan da Cunha
- Turks and Caicos (1)
- Tuvalu
- United Arab Emirates
- United States Virgin Islands
- Vanuatu
- Western Samoa
- Yemen Arab Republic

Notes

1. The Portuguese authorities have signed tax information exchange agreements (TIEAs) with these jurisdictions (in case of the Channel Islands, only with Guernsey and Jersey). The following TIEAs are in force: Andorra, Bermuda, Cayman Islands, Gibraltar, Isle of Man, Jersey, and Saint Lucia.
2. Alderney, Brechou, Great Sark, Guernsey, Herm, Jethou, Lihou, and Little Sark (Jersey has been excluded after being considered as largely compliant under OECD's Global Forum on Tax Transparency and Exchange of Information, while the Isle of Man has been considered as compliant).

IMI rates are annually increased three times when urban real estate is vacant or in ruins for a period of over one year.

IMI exemptions and reductions

Urban real estate subject to urban rehabilitation
IMI exemption applies to urban real estate subject to urban rehabilitation for a period of three or five years, counted from the date of (i) issuance of the municipality's license or (ii) completion of the rehabilitation works.

Real estate part of a tourism complex granted with tourism utility
Real estate that is part of a tourism complex granted with tourism utility benefits from IMI exemption for a period of seven years.

Urban real estate intended for the production of energy from renewable sources
Urban real estate exclusively intended for the production of energy from renewable sources benefits from a 50% reduction of the IMI rate.

Other benefits of environmental nature attributed to real estate
By resolution of the municipal assembly, municipalities may determine a reduction of up to 25% of the IMI rate, applicable to urban real estate with energy efficiency.

Tax incentives for forestry activity
IMI exemption is applicable to rural real estate corresponding to forest areas covered by a forest intervention zone and to rural real estate intended for forestry exploitation under a forest management plan.

Tax regime for investment promotion (RFAI)
Companies with investments that qualify for the RFAI can benefit from an exemption or reduction from IMI for a period of up to ten years regarding real estate acquired and regarded as an eligible investment.

Additional to the IMI (AIMI)

AIMI is due by individuals and corporations, as well as by structures or collective bodies without autonomous legal personality and undivided inheritances, that are owners, usufructuaries, or have the surface right of urban properties located in Portugal.

Urban properties classified as 'trade, industry, or services' and 'others' are excluded from AIMI.

The taxable basis corresponds to the sum of the TRV of all the urban properties held by each taxpayer, reported as of 1 January of each year.

Properties that benefited from IMI exemption in the previous year are excluded from the taxable basis.

The applicable rates are 0.4% for corporations and 7.5% for urban properties owned by entities in tax havens.

AIMI is assessed by the Portuguese Tax Authority (PTA) in June of each year, with the respective payment made in September.

CIT credit

Taxpayers have the option of deduct the AIMI paid, limited to the fraction of the tax corresponding to the income generated by properties subject to AIMI, in the scope of lease or accommodation activities. This deduction option (deduction to the CIT fraction) jeopardises the deduction of AIMI in the determination of CITable income.

Property transfer tax (Imposto Municipal sobre as Transmissões Onerosas de Imóveis or IMT)

IMT is a municipal tax levied on the transfer for consideration of real estate located in the Portuguese territory. The tax is due by the acquirer at the rates shown below, and the taxable basis is the same as for IMI or the price agreed upon by the contracting parties, whichever is higher. Note that the acquisition of more than 75% of the share capital of a company incorporated as a limited liability company (*Sociedade por quotas*), which owns real estate located in Portugal, is also subject to IMT.

Real estate type	IMT (%)
Rural real estate	5.0
Urban real estate (for residential purposes)	up to 6.0
Other urban real estate and other acquisitions for consideration	6.5
The acquirer is a tax resident in a black-listed jurisdiction (except individuals)	10.0

IMT exemptions

- Acquisition of properties for resale by real estate trading companies.
- Acquisition of properties intended for urban rehabilitation.
- Acquisition of property or autonomous fraction of urban property intended to install a tourism complex to which has been attributed tourism utility.
- Acquisition of real estate by Real Estate Investment Funds for Residential Letting (REIFRLs).
- Restructuring operations or cooperation arrangements.
- Acquisition of buildings individually classified as of national/public/municipal interest.

- Exemption or reduction of the IMT rate, regarding the acquisition of property that constitutes eligible investment under the RFAI.

Stamp duty

Stamp duty is payable on a wide variety of transactions and documents, at rates that may be set in specific amounts or on a percentage basis. Important examples include the following:

Item	Stamp duty (%)
Loans (on the principal) (1):	
With determined term, over one year	0.5 to 0.6
Current account/overdraft/credit with undetermined term or determined term under one year	0.04 per month or fraction
Guarantees:	
Undetermined/five or more years	0.6
Over one year	0.5
Under one year or with undetermined term	0.04 per month or fraction
Operations of financial institutions:	
Interest and commissions charged	4
Commission on banking guarantees	3
Commission for insurance brokers	2
Insurance premiums	3 to 9
Real estate transfer for consideration or donation	0.8
Letting or sub-letting (applied on the amount of a month of rent)	10
Donations and inheritances	10
Sale of business as a going concern	5
State’s social gambling, included in the bet price	4.5
State’s social gambling exceeding EUR 5,000	20
Ownership, usufruct, or surface right of urban housing buildings whose tax registration value is equal to or higher than EUR 1 million	1
Collective Investment Vehicles (CIVs) investing in money market instruments and deposits (quarterly, on net asset value)	0.0025
Other CIVs (quarterly, on net asset value)	0.0125
Repos	0.5

Notes

1. In case of loans to consumers, tax rates are increased by approximately 75%.

Stamp duty exemptions

Some acts are exempt from stamp duty, such as the ones mentioned below (the exemption may depend on certain requirements):

- Guarantees on stock exchange dealings regarding securities and derivatives.
- Transactions between financial institutions, when directly related to lending/ security operations.
- Short-term treasury needs (less than one year) granted by venture capital companies to companies in which they hold a participation, as well as granted by any company to companies dominated by them or with a shareholding with voting rights of at least 10% or with a purchase price of at least EUR 5 million, as well as to financing between companies in a dominant or group relationship.

- Short-term shareholders' loans (less than one year) in case of direct shareholding of 10% or more, held for one year or more.
- Shareholders' loans, including the respective interest, not reimbursed before one year, when provided by shareholders, of at least 10%, of the share capital and as long as the shareholding is maintained for a consecutive period of one year, or since the incorporation of the subsidiary, provided that, in this case, the participation has been maintained during that period.
- Interest on loans for permanent housing.
- Free transfer of property to spouse, or *de facto* spouse, descendants, and ascendants.
- Mergers or cooperation operations.
- Warranties provided in favour of the state in the management of its direct public debt, and in favour of the Institute for the Management of Social Security Capitalization Funds, in its own name or on behalf of the funds under its management, for the exclusive purpose of covering its exposure to credit risk.
- Warranties provided in favour of the state or social security institutions upon the payment of debt by instalments under enforcement procedures or relating to the recovery of tax and social security credits.
- Under the RFAI, companies are exempt from stamp duty on the acquisition of real estate property that constitutes relevant investment, according to the terms of this regime.
- Securities repos or similar rights exchanged in stock markets, as well as repo and fiduciary sales in guarantee, performed by financial institutions and intermediated by central counterparts, are also exempt from stamp duty.
- Report agreements traded in an exchange stock.

Payroll taxes

Social security contributions

Employers are required to make monthly social security contributions at the standard rate of 23.75% on the monthly gross remuneration of their employees.

Social security contributions are deductible for CIT purposes.

Financial sector contribution

Portuguese headquartered credit institutions, Portuguese subsidiaries of foreign credit institutions, as well as branches in Portugal of foreign credit institutions, including EU residents, are subject to a financial sector contribution, applicable on a taxable base composed as follows:

- Base I: Liabilities less the amount of the deposits covered by deposit guarantee schemes, such as the Deposit Guarantee Fund, the Mutual Agricultural Credit Guarantee Fund, or other officially recognised deposit guarantee scheme under the EU Directives. For this purpose, liabilities are defined as the set of elements accounted for in the balance sheet representing liabilities towards third parties, irrespective of their form or nature (excluding, amongst others, items accounted for as equity, liabilities for defined benefit retirement plans; provisions, liabilities concerning the revaluation of financial derivatives).
- Base II: The notional amount of off-balance sheet financial derivatives, excluding hedging derivatives and back-to-back derivatives.

The financial sector contribution is applicable at a maximum of 0.11% on Base I and at 0.00030% on Base II.

Branch income

The profits of a Portuguese branch are taxed on the same basis as corporate profits. Income remitted by a Portuguese branch to the foreign head office is not subject to taxation in Portugal.

Income determination

Taxable profit is based on accounting income adjusted according to specific provisions of the tax legislation, when applicable.

Inventory valuation

Inventories are valued at the lower of the following values: cost or net realisable value. The FIFO and average-cost methods of valuation are accepted. The last in first out (LIFO) method is not allowed.

Inventory adjustments are deductible for tax purposes on the amount accounted for in the tax year, capped at the difference between the acquisition or production value and, if lower, the net realisable value (duly documented) with reference to the balance sheet.

Capital gains

Under the participation exemption regime, capital gains and capital losses realised on the transfer of shares can be exempt from taxation. This rule applies to all types of Portuguese companies (holdings and operational companies) and includes capital gains on the transfer of shares derived from a non-tax neutral merger, division, transfer of assets, or exchange of shares, and also in case of a transfer of supplementary capital entries. The regime applies provided that, at the date of the transaction, the following requirements are met:

- The shares are held for a consecutive period of at least one year.
- The taxpayer directly, or directly and indirectly, holds at least 10% of the share capital or voting rights in the entity from which the shares are transferred.
- The taxpayer is not covered by the tax transparency regime (i.e. imputation of profits to individual or corporate shareholders, regardless of effective distribution).
- The entity from which shares are transferred is not resident in a black-listed jurisdiction.
- The assets of the entity from which shares are transferred are not directly or indirectly comprised of more than 50% of real estate located in Portugal and acquired on or after 1 January 2014 (except real estate allocated to an agricultural, industrial, or commercial activity that does not consist of buying and selling real estate).

This regime also applies to capital gains and capital losses realised by a Portuguese PE of:

- An EU resident entity, which complies with the requirements foreseen in Article 2 of the EU Parent/Subsidiary Directive.
- A European Economic Area (EEA) resident entity, subject to tax cooperation obligations similar to the ones established within the European Union, provided that the entity complies with requirements that are comparable to those foreseen in Article 2 of the EU Parent/Subsidiary Directive.

- An entity resident in a state with which Portugal has concluded a double tax treaty (DTT) (except if resident in a black-listed jurisdiction) that foresees exchange of information and is subject and not exempt in its state of residence from an income tax similar to the Portuguese CIT, which legal rate is not lower than 60% of the standard Portuguese CIT rate (meaning 12.6%).

Where the participation exemption regime on the transfer of shares does not apply, the positive net difference between capital gains and capital losses arising from the transfer of shares is taxed as part of normal income. The same applies on the disposal of tangible fixed assets, intangibles, biological assets, and investment properties. In certain circumstances, only 50% of the net gains on disposal of tangible fixed assets, intangibles, and biological assets (investment properties are not covered) is taxed as part of normal income, provided the sales proceeds are reinvested.

The regime also applies to capital gains and capital losses realised and related with shares held by a company with head office or place of effective management in Portugal that transfers its tax residence to another EU member state or to an EEA member state.

Capital gains and capital losses are determined by the difference between the sales proceeds, net of related costs, and the acquisition value, net of impairment losses and tax deductible depreciation or amortisation, adjusted by the inflation index (in the case of at least two years of ownership).

Dividend income

Under the participation exemption regime, profits distributed to a Portuguese parent company are exempt from taxation, provided that the following requirements are met:

- The taxpayer directly, or directly and indirectly, holds at least 10% of the share capital or voting rights in the subsidiary.
- The shares are held for a consecutive period of at least one year (or maintained for that period).
- The taxpayer is not covered by the tax transparency regime.
- The subsidiary is subject to and not exempt from CIT, an income tax mentioned in Article 2 of the EU Parent/Subsidiary Directive (Council Directive 2011/96/EU), or a tax similar to CIT with a legal rate that is not lower than 60% of the standard CIT rate.
- The subsidiary is not resident in a black-listed jurisdiction.

This regime also applies to profits distributed to a Portuguese PE of:

- An EU resident entity, which complies with the requirements foreseen in Article 2 of the EU Parent/Subsidiary Directive.
- An EEA resident entity, subject to tax cooperation obligations similar to the ones established within the European Union, provided that the entity complies with requirements that are comparable to those foreseen in Article 2 of the EU Parent/Subsidiary Directive.
- An entity resident in a state with which Portugal has concluded a DTT (except if resident in a black-listed jurisdiction) that foresees exchange of information and is subject and not exempt in its state of residence from an income tax similar to the Portuguese CIT.

Law 5/2016, dated 29 February 2016, amended the CIT Code in order to deny the participation exemption regime on profits in case of an arrangement or series of arrangements which main purpose or purposes is to obtain a tax advantage that defeats the object and purpose of eliminating double taxation on profits, in case such arrangement or series of arrangements is not regarded as genuine, all facts and circumstances considered. For completeness, an arrangement or series of arrangements is not regarded as genuine if it is not based on valid economic reasons and has no economic reality.

Interest income

Interest income obtained by Portuguese taxpayers is taxed as part of normal income and taxed at the standard CIT rate. Any WHT incurred in interest income received is treated as a payment on account of the final CIT liability, refundable even if no CIT is due, in case of domestic interest income.

Royalty income

Royalty income obtained by Portuguese taxpayers is taxed as part of normal income and taxed at the standard CIT rate. Any WHT incurred in royalty income received is treated as a payment on account of the final CIT liability, refundable even if no CIT is due, in case of domestic royalty income.

Certain royalty income may benefit from the patent box regime (*see the Tax credits and incentives section*).

Foreign income

A Portuguese company is taxed on all its foreign income; however, there is an optional regime to exclude from taxation the profits and losses allocated to a foreign PE (*see the Taxes on corporate income section for more information*).

Taxes paid abroad can be offset against corresponding Portuguese tax (*see Foreign tax credit in the Tax credits and incentives section for more information*).

There are no provisions concerning tax deferral of income earned abroad.

Deductions

Depreciation and amortisation

The qualifying cost of an asset for tax purposes is the acquisition or production cost.

Depreciation must be computed by using the straight-line method or the declining-balance method. The latter cannot be applied to buildings, passenger vehicles, furniture, social welfare equipment, or second-hand assets.

Straight-line rates of depreciation are normally consistent with rates privately used by business and industry and are increased, for the purposes of applying the declining-balance method, by coefficients of:

- 1.5 if assets have a useful life of less than five years.
- 2 if useful life is five or six years.
- 2.5 for useful lives in excess of six years.

Different depreciation methods may be applied without previous approval from the PTA (annual depreciation cannot, however, exceed the depreciation resulting from using either the straight-line or declining-balance methods).

Some examples relating to the maximum straight-line depreciation rate are as follows:

Type of asset	Depreciation rate (%)
Office building	2
Industrial building	5
Electronic equipment	20
Computers	33.33
Ordinary tool and paintings	25
Engines and machine tools	12.5
Office equipment	20
Furniture	12.5
Software	33.33
Passenger vehicles	25

Rates can be reduced by 50% in any one year at the taxpayer's option. If the reduction is more than 50%, the difference is not allowed for tax purposes at a future date. A total of 60% of additional depreciation on revaluation of fixed assets, as permitted by law from time to time, is allowed for tax purposes.

Depreciation rates of tangible assets may be increased by 25% in the case of companies with a schedule of two shifts (for three shifts, 50%), given the faster deterioration of those assets.

Assets with an acquisition value lower than EUR 1,000 can be depreciated in the acquisition year, unless the assets are part of a set of elements that should be depreciated as a whole.

Depreciation of yachts and airplanes that are not essential for business activities is not allowed as a cost for tax purposes.

Depreciation of passenger cars and certain other vehicles on the part of their cost of acquisition that exceeds certain amounts (as defined by law), with reference to their acquisition value, is also disallowed as a cost for tax purposes. The following caps apply (i.e. disallowed cost above the values below):

- EUR 29,927.87 of acquisition cost, in the case of vehicles acquired until 31 December 2009.
- EUR 40,000 of acquisition cost, in the case of vehicles acquired between 1 January 2010 and 31 December 2010.
- EUR 30,000 of acquisition cost, in the case of vehicles acquired between 1 January 2011 and 31 December 2011 (EUR 45,000 in the case of electric vehicles).
- EUR 25,000 of acquisition cost, in the case of vehicles acquired between 1 January 2012 and 31 December 2014 (EUR 50,000 in the case of electric vehicles).
- EUR 25,000 of acquisition cost, in the case of vehicles acquired from 1 January 2015 onwards (EUR 62,500 in the case of fully electric vehicles; EUR 50,000 in the case of hybrid plug-in vehicles; EUR 37,500 in the case of vehicles that use LPG or compressed natural gas).

Development expenses, patents, trademarks, licences, and similar rights may be amortised for tax purposes if acquired for a limited period of time.

The cost of acquisition of certain intangibles with unlimited life (i.e. trademarks, permits, production processes, models, and other industrial property rights) can be amortised for tax purposes over a period of 20 years.

Depreciation of non-consumable biological assets is tax deductible.

Expenses relating to assets generated internally are deductible for tax purposes in the tax year in which the cost is incurred.

Goodwill

Goodwill acquired as a result of a taxable corporate restructure or business combination can be amortised for tax purposes over a 20-year period, except if related with shareholdings.

Start-up expenses

Start-up and research expenses are deductible for tax purposes in the respective tax year.

Limitation on the deductibility of financing expenses

Companies may only deduct net financing expenses up to the higher of the following limits:

- EUR 1 million or
- 30% of the earnings before depreciations, amortisation, taxes, and net financing expenses, adjusted for tax purposes.

In the cases where the taxable year is less than a calendar year, the EUR 1 million limit is reduced proportionally to the duration of the taxable year.

Besides Portuguese tax resident entities, PEs of non-resident entities are also covered by the scope of this rule. Entities subject to the supervision of the Portuguese Central Bank (*Banco de Portugal*) and the Portuguese Insurance and Pension Fund Supervisory Authority (*Autoridade de Supervisão de Seguros e Fundos de Pensões*), as well as Portuguese branches of financial entities or insurance companies resident for tax purposes in the European Union, are excluded from this rule.

No distinction is made between bank and intra-group financing, domestic or foreign financing (EU or non-EU).

Financing expenses considered as excessive (not deductible) in a certain fiscal year may be deductible in the following five fiscal years, provided that, together with the net financing expenses of that year, the above-mentioned limits are not exceeded.

Additionally, where financing expenses do not exceed 30% (or the applicable percentage) of the earnings before depreciations, net financing expenses, and taxes, the unused difference is added to the maximum deductible amount in the following five tax years, until its total deduction.

For the purposes of the regime, net financing expenses consist of, among others, any amounts due in connection to the remuneration of financing, including interest on overdraft facilities, short-term loans, bonds, financial expenses related to financial leases, or exchange losses, deducted from the profits or gains of the same nature.

Where the special regime of group taxation applies, there is the option to make the calculation considering the net financial expenses of the group and the sum of all the respective EBITDA.

Interest on shareholder loans

If the rate applicable to interest and other compensation regarding loans provided by the shareholders to the company is higher than the Euro Interbank Offered Rate (EURIBOR) 12-month rate rounded up with a spread of 2% (at the date the loan was granted), the amount paid in excess is not tax deductible. This rule does not apply when the shareholder is a resident of a tax treaty country or when the interest rate is at arm's length under the transfer pricing provisions.

In the case of SMEs, shareholders' loans with an interest rate of the EURIBOR 12-month rate plus a spread up to 6% are tax deductible.

Bad debt

Impairment losses on doubtful debts are deductible for tax purposes when an insolvency or recovery has been requested or the credits have been claimed in court.

The annual amount of accumulated impairment losses on doubtful debts due for more than six months, with evidence that measures towards its perception were taken, is capped at the following percentages of the debts:

- More than 6 and less than 12 months: 25%.
- More than 12 and less than 18 months: 50%.
- More than 18 and less than 24 months: 75%.
- More than 24 months: 100%.

Amounts guaranteed by insurance or mortgage, or due or secured by the state, autonomous regions, or municipalities, or due by related parties (e.g. 10% shareholding) are not considered as doubtful debts, and the respective impairment loss is disallowed for tax purposes.

The ageing of bills of exchange is calculated from the date when the respective payment is due.

Uncollectable debts are allowed as tax deductible costs if supported under insolvency, recovery enforcement, or in an out-of-court conciliation procedure for the viability of insolvent companies or companies in a difficult economic situation (mediated by the Institute for the Support of Small and Medium-Sized Enterprises or IAPMEI). This rule applies to the amount of the uncollectable debts that were not deducted for tax purposes as impairment losses (or for which the amount was insufficient).

Charitable contributions

Donations to authorised charitable institutions are allowable at up to 0.8% of turnover, with the possibility of the cost being raised up to 150%. Donations to authorised educational, sport, and environmental institutions are allowable at up to 0.6% of turnover, with the possibility of the cost being raised up to 140%.

Donations to the state, municipalities, and foundations where the state or municipalities participate in the initial capital are fully deductible, with the possibility of the cost being raised up to 140%. Special application may be made by certain entities in order to be included under the referred regime.

Donations of computers, software equipment, training, and consultancy in the area of computers granted to the state, municipalities, foundations, museums as well as to authorised charitable and cultural institutions are allowable at up to 0.8% of turnover, with the possibility of the cost being raised up to 140%.

Vacation accrual

Vacation allowance is tax deductible in the year in which the benefit accrues, regardless of the year in which payment is made.

Pension expenses

Pension, invalidity, and health schemes are tax deductible up to a rate of 15% of annual staff expenses, provided that, among other conditions, they are available to all employees and the management and disposition of the benefits are outside the control of the taxpayer, such as under an insured scheme with vested benefits.

Fines and penalties

Fines and penalties for infractions that do not have a contractual nature, including late assessment interest, are disallowed for CIT purposes.

Taxes

All taxes other than CIT, autonomous taxation, state surtax (*Derrama Estadual*), and local surtax (*Derrama*) constitute a normal business expense.

Other significant items

The costs borne from the acquisition of social passes are regarded as tax-deductible costs to the extent the employer attributes them on a general basis.

Uninsured losses, including indemnities to third parties, are disallowed unless the risk could not be insured.

Non-documented expenses are not tax deductible and are subject to a 50% autonomous taxation for fully taxable entities.

Net operating losses

Tax losses generated in tax years starting on or after 1 January 2017 can be carried forward for five years. Tax losses generated in tax years starting on or after 1 January 2016 can be carried forward for 12 years. As of 1 January 2017, there is no obligation to use the FIFO method when using carried forward tax losses, meaning taxpayers may opt to use first the losses with the smaller carryforward period. The deduction of carried forward tax losses is capped at 70% of the taxable income.

Carryback of losses is not allowed.

The tax losses carried forward are lost in case of a change in direct ownership of the company of at least 50% shareholding or voting rights (not applicable in case of changes within the same group of companies, under certain conditions).

In special cases of economical merits, the Ministry of Finance may authorise the use of tax losses upon a request filed by the taxpayer before those changes occur.

Payments to foreign affiliates

A Portuguese corporation is allowed to deduct royalties, interest, and other costs paid to foreign affiliates, provided the amounts are at arm's length. Service fees paid are allowed if there is adequate proof that the service was effectively rendered (an invoice is required in cases where the supplier of the goods or services is obligated to issue such document; otherwise, other supporting documents are required) and has economic substance, as well as if the amount is at arm's length.

Payments to non-residents in a black-listed jurisdiction
Payments made or due, indirectly, to non-resident entities in a black-listed jurisdiction, when the taxable person has or should have had knowledge of the final purpose given to such payments, will be non-deductible for tax purposes, except if the taxpayer demonstrates that such charges relate to genuine transactions and are not of an abnormal or exaggerated amount. Such knowledge is presumed whenever there are special relations between the taxpayer and the entities in a black-listed jurisdiction or between the taxpayer and the legal representative, fiduciary, or intermediary.

Group taxation

Special regime for group taxation
Taxation under the special tax regime for groups of companies is available, upon the filing of a special form with the PTA, to companies with head office and effective management in Portugal.

The group taxation regime may apply, provided one of the companies directly or indirectly holds 75% or more of the statutory capital of the others and more than 50% of the voting rights.

Tax grouping generally enables the group companies to offset losses incurred by one company against profits of another company.

Tax losses obtained prior to the beginning of the tax grouping can be carried forward and offset only up to the particular company's taxable income (*for the carryforward of tax losses regime, see Net operating losses in the Deductions section*).

To be taxed under this regime, the group companies must meet the following conditions:

- Must be tax resident in Portugal (even if held through an EU or EEA group company).
- Must be subject to the normal regime of taxation at the highest corporate tax rate.
- Must maintain a minimum holding participation of 75%.
- All companies must be held by the parent company for more than one year (excluding newly incorporated companies).
- Cannot be dormant for more than one year.
- Cannot be dissolved or insolvent.
- Cannot have tax losses in the three years prior to the regime application, unless the companies have been held by the parent company for more than two years.
- Cannot have a tax period different from that of the parent company.

Additionally, the parent company:

- should not be controlled by any other Portuguese-resident company that fulfils the requirements to be the parent company and

- should not have renounced to the application of this regime in the three previous years.

When the regime comes to an end or when one company ceases to qualify for this regime, the tax losses obtained during the regime cannot be carried forward and deducted against future individual taxable income of the companies. The parent company is responsible for demonstrating that the requirements for the application of the group taxation regime are met.

It is possible to apply the group taxation regime if the dominant company has its registered head office or place of effective management in an EU or EEA country (in the later case, provided there is administrative cooperation on tax matters similar to the one in place with the European Union). In addition, among others, the following requirements must be met:

- The dominant company owns the dominated companies for more than one year with reference to the date at which the regime starts to apply.
- The dominant company is not directly or indirectly 75% held by a Portuguese dominant company.
- The dominant company is subject and not exempt from a tax as per Article 2 of Council Directive 2011/96.
- The dominant company is incorporated as a limited liability company.

Transfer pricing

The PTA is entitled to adjust taxable income if the taxpayer and another individual or entity, due to their special relationship, have established particular conditions that diverge from the conditions normally agreed upon between independent entities and distort the results that would arise if those relations were at arm's length. Portugal's transfer pricing legislation broadly follows the OECD guidelines.

Companies with sales and other profits higher than EUR 3 million are required to prepare transfer pricing documentation, which should be filed with the PTA if requested. Penalties arise from non-compliance with this obligation.

An advance pricing agreement (APA) mechanism allows taxpayers and the PTA to establish agreements on a taxpayer's future transfer pricing policy. This aims to guarantee compliance with the arm's-length principle. This regime applies to transactions carried out with related parties and between a PE and the respective head office.

The conclusion of an APA implies the payment of a charge calculated with reference to the taxpayer's turnover, capped at EUR 35,000. This charge is reduced by 50% in the case of a renewal or revision of an existing APA.

The assessment of an APA procedure takes 180 days for unilateral APAs, and 360 days for bilateral or multilateral APAs. This period is reduced to 100 business days for APAs concluded in connection with a relevant investment project in Portugal, as foreseen in the Tax Investment Code (*Código Fiscal do Investimento*).

For the PTA to confirm compliance of the transfer pricing method(s) with the terms and conditions set out in the APA, the taxpayer must prepare an annual report. The report must be made available to the PTA before the last business day of May in the year following that in which the transactions took place (i.e. when the tax year corresponds to the calendar year). Failure to comply invalidates the APA.

Since 2016, taxpayers are required to submit the country-by-country (CbC) report, which applies to entities belonging to an economic group with an annual consolidated revenue in the preceding tax year of at least EUR 750 million. The report should be filed by the end of the 12th month following the end of the tax year to which it relates (starting in 2016). However, with respect to 2016, taxpayers only had until 31 May 2017 to file.

Thin capitalisation

Thin capitalisation rules have been revoked following the adoption of rules for the limitation on the deductibility of financing expenses. *See Limitation on the deductibility of financing expenses in the Deductions section for more information*.

Controlled foreign companies (CFCs)

Profits or income derived by an entity resident in a black-listed jurisdiction, or in a jurisdiction where it is subject to an effective tax rate equal to or lower than 60% of the Portuguese standard CIT rate, are imputed to the Portuguese taxpayer, provided it holds, directly or indirectly, at least 25% of the share capital (10% if more than 50% of the capital is held by Portuguese taxpayers), voting rights, or rights on income or assets of that entity. Upon distribution of the profits, a deduction is available for previously imputed income.

CFC rules also apply if the controlled entity (*as defined above*) is held by a Portuguese entity through a legal representative, fiduciary, or intermediary.

CFC rules do not apply if the CFC is resident in another EU country or in an EEA member state (bound to administrative cooperation on tax matters), provided that there are valid economic reasons underlying the incorporation and running of such company and it carries out agricultural, commercial, industrial, or services activities.

Upon a dividend distribution by the CFC, the tax credit of the tax paid abroad, which is not used, cannot be carried forward to subsequent tax years.

Tax credits and incentives

Foreign tax credit

International juridical double taxation

Taxes paid abroad can be offset against corresponding Portuguese tax, capped at the lower of (i) the tax liability corresponding to the foreign income, net of costs directly or indirectly incurred, or (ii) the foreign tax paid. In both cases, it is limited to the foreign tax as foreseen in the applicable DTT. This foreign tax credit can be carried forward for five years. The computation of the amount of the tax credit is determined per jurisdiction, considering the total amount of the respective income, except in relation to income obtained by foreign PEs (the deduction in this case is assessed individually).

International economic double taxation

Taxpayers may opt to apply a tax credit (underlying tax credit) for international economic double taxation regarding profits or reserves received, to which the participation exemption regime on profits does not apply, and provided that the taxpayer holds, (or becomes the holder of) at least 10% of the share capital of the subsidiary for a period of one year.

When choosing the abovementioned option, the taxpayer shall add to the taxable income the amount of the income tax related to the distributed profits or reserves that has been effectively paid abroad by the subsidiary.

General tax benefits and incentives

Contractual tax incentives

Relevant investment projects up to 2020 (minimum investment of EUR 3 million) that qualify for strategic economic interest and promote the creation of jobs are eligible for tax incentives, as foreseen in the Tax Benefits Code and the Investment Tax Code. These are granted on a case-by-case basis under a government contract for a period not exceeding ten years and include a tax credit of 10% to 20% of the investment and exemptions or reductions from property transfer tax, property tax, and stamp duty.

Patent box regime

Industrial property rights registered on or after 1 July 2016
The new patent box regime foresees a 50% deduction of the total income derived from the sale or granting of the temporary use of industrial property rights (i.e. patents and industrial drawings and models), limited by the ratio between the eligible expenses and the total expenses incurred in developing or using the IP-protected assets. The new regime also foresees a 30% mark-up of the eligible expenses incurred with the development of the assets with IP protection, capped at the amount of the total expenses incurred with the development of those assets. The regime continues to be applied to income derived from industrial property rights derived from R&D developed internally or contracted from third parties. Transactions with associated enterprises, including entities resident in black-listed jurisdictions, are excluded.

Costs/expenses not directly connected with the activities of R&D are excluded from the computation, such as interest or real estate depreciation.

The applicability of this regime will require a clear distinction in the accounting records in respect of profits associated with the IP in order to be able to distinguish them from other source profits.

This new regime applies only to patents and other industrial models or drawings registered on or after 1 July 2016 and will be in force until 30 June 2021.

Industrial property rights registered on or after 1 January 2014 and up to 30 June 2016
Income derived from the sale or granting of the temporary use of industrial property rights (i.e. patents and industrial drawings and models) is 50% exempt. The regime applies to income derived from industrial property rights derived from R&D developed internally or contracted from third parties. Transactions with associated enterprises, including entities resident in black-listed jurisdictions, are excluded. The regime applies to the above-mentioned industrial property rights registered on or after 1 January 2014 and until 30 June 2016, and is in force until 30 June 2021.

Collective Investment Vehicles (CIVs)

CIT

The taxable profit of a CIV corresponds to the net income of the period, computed in accordance with the applicable accounting standards, while disregarding the following:

- Investment income, rental income, and capital gains (unless if derived from 'offshore' entities).
- Expenses related to the income referred to above.
- Non-deductible expenses under article 23-A of the CIT Code.
- Income and expenses related to management fees and other commissions reverting to the CIV.

Tax losses generated by the CIV follow the regime foreseen in the CIT Code, with the necessary amendments.

The taxable profit assessed by a CIV is subject to the standard CIT rate. CIVs are exempt from municipal and state surtax; however, they are subject to autonomous taxation rates as foreseen in the CIT Code.

CIT due by a CIV is assessed in the periodical CIT return. Respective payment should be made until the last day of the time limit foreseen for the submission of the form.

Stamp duty

Stamp duty is also levied on the net asset value of the CIV, as follows:

- For CIVs investing exclusively in money market instruments and deposits, at a rate of 0.0025%.
- For other CIVs, at a rate of 0.0125%.

The tax is assessed quarterly, in March, June, September and December of each year, and is due by the CIV before the end of the month following the taxable event.

Taxation of a CIV's investors

Regarding the taxation of income obtained by holders of participation units/ shareholdings in the CIV, the taxation 'at exit' rule is applicable.

Income obtained by resident investors is subject to taxation at the PIT level (generally, at the rate of 28%) and CIT level (being considered in the taxable profit of the investors).

Income obtained by non-resident investors without PE benefit from a favourable tax regime:

- Taxation at the rate of 10% in case of income arising from Real Estate Investment Funds (REIFs) and Real Estate Investment Companies.
- Exemption in case of income arising from Securities Investment Funds and Securities Investment Companies.

This regime does not apply, being instead applicable the PIT and CIT regime foreseen for resident investors, whenever the investors are tax residents in 'offshore' jurisdictions or, as a general rule, are held more than 25% by tax residents in Portugal.

Pension funds
Pension funds are exempt from CIT and IMT.

The CIT exemption is applicable to pension funds incorporated under the Portuguese law as well as to pension funds established in another EU country or in an EEA member state (bound to administrative cooperation on tax matters) that cumulatively fulfil the following requirements:

- Exclusively assure the payment of retirement pensions granted from elderly, handicapped, surviving, pre-retired, health, and post-employment benefits, as well as death benefits when complementary and ancillary to the previously mentioned.
- Are managed by pension funds professional institutions to which Directive 2003/41/EC, of the European Parliament and Council, applies.
- Are the effective beneficiaries of the income.
- In the case of dividend distributions, the related shareholding should have been held for a consecutive one-year period.

Contractors for North Atlantic Treaty Organization (NATO) infrastructures
Contractors for NATO infrastructures are exempt from CIT.

Net young employment creation
150% of the costs related to net increase job creation, under labour contracts without term, for employees up to 35 years (including) of age and for long-term unemployed individuals may be deducted from taxable income. For this purpose, the fixed remunerations paid and the contributions made by the employer to social security should be considered. The maximum amount of annual increase on deductible costs for each eligible employee is 14 times the national minimum retribution (EUR 557 in 2017).

The increase in 50% of the expenses incurred with the same employer is applicable to more than one employee, provided that there are no special relations.

This tax benefit is not cumulative with any tax benefits or other incentives (e.g. social security) concerning the same employee.

This deduction applies for a period of five years for each employee.

Research and development (R&D) (Sistema de Incentivos Fiscais em Investigação e Desenvolvimento Empresarial or SIFIDE II)
Portuguese tax resident companies carrying out commercial, industrial, or agricultural activities, and non-resident companies with a PE in the Portuguese territory, are allowed to deduct from the CIT due, up to the respective amount, the value of eligible expenses incurred with R&D, in a double percentage as follows:

- Base rate: 32.5% of the R&D expenses incurred; this rate is increased by 15% in case of SMEs that do not benefit from the incremental rate of 50% (applicable to entities that had completed two years of activity).
- Incremental rate: 50% of the difference between the R&D expenses made in the tax year and the average amount of the R&D expenses made in the previous two years, up to the limit of EUR 1.5 million.

Expenses that, due to insufficient tax due, cannot be deducted in the tax year they were incurred can be carried forward for eight years.

Eligible expenses related to allowances paid to personnel directly involved with R&D tasks are capped at 55% of the operational expenses incurred.

Expenses incurred in connection with projects that include, exclusively, third parties, including contracts and R&D services, are not considered.

Expenses relating to staff with a minimum academic qualification of level 8 of the National Qualifications Framework are considered at 120% of their amount.

Expenses related to the making of eco-design products will be increased by 10%. This increase will depend on the submission and approval of the project to the Portuguese Environment Agency.

Expenses related to demonstrations are eligible for the SIFIDE II regime, provided they are notified up front.

Expenses incurred with the acquisition, registration, and maintenance of patents, essential for the performance of R&D activities and audits, are accepted only for micro, small, or medium-sized companies.

The deduction of R&D expenses requires that the entity develops agricultural, industrial, or commercial activities or services as its main business activity.

The applications should be submitted by the end of July of the year following the year in which the investment was made, and applications referring to years previous to that fiscal year will not be accepted.

The regime applies until 2020.

Incentives for the acquisition of companies in a difficult economic situation
The regime of incentives applicable to the acquisition of companies in a difficult economic situation may also apply to cases approved by IAPMEI within the scope of the Incentive System for the Revitalization and Modernization of Companies (SIRME). Under this regime, the acquiring company may deduct tax losses assessed but not yet used by the acquired company for a period of five years in proportion of its participation in the share capital of the acquired company, capped at 60% of the taxable income.

Tax regime for investment promotion (Regime Fiscal de Apoio Ao Investimento or RFAI)
RFAI establishes several tax incentives to investment realised within specific business sectors.

Among other incentives, companies that invest in certain regions can benefit from a deduction against CIT otherwise payable (capped at 50% of the CIT due) of 25% (for qualified investments lower than EUR 10 million) or 10% (for the part of qualified investments exceeding that limit) of the qualified investment. Companies are also able to carry forward any unused credit for ten years and may benefit from exemptions or reductions from property transfer tax (IMT), property tax (IMI), and stamp duty on the acquisition of real estate for investment purposes. IMT exemptions are subject to the approval of the municipality where the real estate is located and where the investment is made.

Loan interest and lease rentals on imported equipment

When paid by the state, regional authorities, and public services, loan interest and lease rentals on imported equipment can qualify for partial or full exemption from tax upon an appropriate application.

Real Estate Investment Fund for Residential Lease (REIFRL)

A regime is applicable to REIFRL and to Real Estate Investment Companies for Residential Lease (REICRL) incorporated in accordance with the Portuguese law until 31 December 2014.

The following benefits are established for this tax regime:

- CIT exemption on income obtained by REIFRLs.
- CIT exemption for the income obtained by participation unit holders, except for the capital gains arising from the sale of such participation units.

The above-referred tax regime and respective exemptions are not applicable to entities resident in a black-listed jurisdiction.

Incentives to urban rehabilitation

Incentives are applicable to real estate property covered by rehabilitation projects undertaken until 2020.

REIFs that have been incorporated between 2008 and 31 December 2013 may benefit from:

- CIT: The income obtained by REIFs is tax exempt when the funds are incorporated in accordance with the Portuguese law, and respective assets are comprised of at least 75% real estate subject to rehabilitation projects in qualifying areas.
- Property transfer tax: Urban property (buildings or autonomous units) destined for permanent residence and located in a rehabilitation area may benefit from an IMT exemption on the first transfer of such urban property upon undertaking of rehabilitation works. The granting of this exemption depends on a decision in this respect of the municipality of the area of the real estate property.
- Property tax: The IMI exemption granted in respect of urban properties subject to rehabilitation works is extended from eight to ten years (it is granted for a five years term and renewable for an additional five-year period). Again, the granting of this exemption depends on a decision in this respect of the municipality of the area of the real estate property.

Conventional remuneration of share capital/notional interest deduction

This regime foresees a deduction of 7% of cash contributions and conversion of shareholder loans, up to EUR 2 million, upon the incorporation of an entity or on capital increases. The deduction is made in the tax period where the entries are made and in the following five tax periods.

This benefit is applicable to all entities and is not limited to the *de minimis* rule.

This tax benefit will not be applicable when it is or has been applied, in the same tax period or in the previous five tax periods, to entities that hold, directly or indirectly, a shareholding in the beneficiary entity, or are held, directly or indirectly, by the same entity, to the extent of the amount of the capital contributions of the entities that have benefited from this regime.

For the taxpayers that use this benefit, the limitation of the net financing expenses will be the higher value between EUR 1 million and 25% of the income before depreciations, amortisations, net financing expenses, and taxes (instead of the standard 30%).

Tax benefits and incentives for non-resident corporate entities

Capital gains
Capital gains on the sale of shares and quotas held in a Portuguese company by a non-resident company may be tax exempt. However, there are some important exceptions, such as:

- Where the non-resident shareholder (without a PE in Portugal) is owned more than 25%, directly or indirectly, by a Portuguese resident company, except when the following cumulative conditions are met in respect of the non-resident shareholder:
  - Is resident in an EU member state, an EEA member state (bounded by an agreement for administrative cooperation in tax matters similar to the EU's), or a state that has a tax treaty in force foreseeing exchange of information.
  - Is subject and not exempt from corporation tax as foreseen in EU Council Directive (Directive 2011/96/EU, dated 30 November) or a tax similar to the Portuguese CIT (in the latter case, provided that the legal rate is not lower than 60% of the standard Portuguese CIT rate that now stands at 21%).
  - Directly, or directly and indirectly, holds at least 10% of the share capital or of the voting rights of the Portuguese resident entity being sold for a minimum holding period of one consecutive year.
  - Is not part of an artificial scheme which purpose or main purpose does not aim at obtaining a tax advantage.
- Where the non-resident shareholder is located in a black-listed jurisdiction.
- Where the assets of the company sold consist mainly of immovable property located in Portugal.

Government and corporate bonds
Interest and capital gains on government and corporate bonds are tax exempt (where held by entities not located in black-listed jurisdictions) under certain conditions.

Interest paid by resident credit institutions
Interest paid by resident credit institutions to non-resident financial companies deriving from loans as well as gains arising from swap transactions are tax exempt.

Tax regime applicable to external loans
Interest derived from *Schuldscheindarlehen* loan agreements signed by the Public Treasury Institute (IGCP), on behalf of the Portuguese Republic, is tax exempt, provided the creditor is not resident in Portugal and has no PE herein to which the loan can be allocated to.

Special tax regime applicable to debt securities issued by non-resident entities
Income from debt securities representing public and non-public debt issued by non-resident entities is tax exempt, provided that the income is considered to be obtained in Portugal, under Portuguese tax rules, and paid by the Portuguese state as a guarantor of the obligations undertaken by the entities in which it owns a participation, together with other EU member states.

Repo operations

Gains obtained by non-resident financial institutions on securities' repo operations undertaken with resident credit institution are exempt from CIT, provided that such gains are not attributable to Portuguese PEs of non-resident financial institutions.

Securities repos or similar rights exchanged in stock markets, as well as the repo and fiduciary sales in guarantee, performed by financial institutions intermediated by central counterparties, are also exempt from stamp duty.

Madeira International Business Centre (MIBC)

Entities licensed to operate in the MIBC until 31 December 2020 benefit from a special tax regime, which is applicable until 31 December 2027.

The MIBC special tax regime provides a reduced CIT rate of 5% on qualifying foreign-source income, based on thresholds of taxable income and job creation requirements. MIBC-licensed entities also benefit from an 80% exemption from stamp duty, property taxes, and municipal and regional surtaxes.

Non-resident shareholders (except if domiciled in black-listed jurisdictions) of MIBC-licensed entities benefit from an exemption from WHT on dividend distributions, regardless of the percentage of ownership or holding period, and shareholders' loans.

Other non-resident entities, regardless of their tax residence, that carry out business with MIBC-licensed entities benefit from an exemption from WHT on interest, royalties, technical assistance, and service income received, regardless of their tax domicile, provided that the income received is related with the activity of the MIBC-licensed entity.

MIBC-licensed companies generally benefit from Portugal's network of DTTs. EU laws and regulations apply to Madeira.

The MIBC special tax regime is not available to entities pursuing intra-group services (head office activities and business and management consulting), financing, and insurance activities. Certain productive activities are also excluded.

Tax benefits and incentives to investment in the Autonomous Region of Madeira

The Investment Tax Code applicable to the Autonomous Region of Madeira adapts the tax benefits and incentives foreseen for the mainland to the Autonomous Region of Madeira.

The main adjustments are made in the following tax benefits and incentives:

- Contractual tax benefits regime: Investment projects in Madeira Island amounting to EUR 1.5 million and EUR 500,000 in Porto Santo Island in the sectors foreseen under the EU guidelines for regional aid are consider as eligible. The CIT credit is available at up to 35% of the relevant investment, provided some conditions are met. Exemptions or reductions from property taxes and exemptions from stamp duty are also available.
- Tax regime for investment support: Investments in specific business sectors are eligible for a CIT credit of up to 35% of the relevant investments until EUR 1.5 million of investment and up to 15% for the relevant investments above that

amount. The unused credit can be carried forward for a ten-year period. Exemptions or reductions from property taxes and exemptions from stamp duty are available.
- Reinvestment of retained earnings: Micro, small, and medium-sized companies in Madeira that reinvest up to 15% of their retained earnings, capped at EUR 1.5 million, are eligible for a CIT credit of up to 25% of the tax due.
- R&D incentives: 32.5% of R&D expenses, including acquisition of assets, costs with qualified staff and board members involved in the R&D activities, among others, might be deductible to the taxable amount in the period they are incurred or in the following eight years. An additional 50% deduction might be available for increases in the average R&D expenses in comparison with the two previous years, limited to EUR 1.5 million.

Investment projects developed in 'Brava Valley' will benefit from an additional deduction of 10% in all the tax benefits and incentives available. The above incentives are subject to the *de minimis* rule within the context of European Union Commission's (EC) Regulation 651/2014 of 16 June.

Withholding taxes

General WHT rates

Recipient	Residents (%) (1)	Non-residents (%) (1)
Dividends	25 (2)	25 (3, 4)
Interest	25	0 (5)/25 (4)
Royalties	25	0 (5)/25
Banks deposits	25 (6)	25 (4, 6)
Property income	25	25
Service charges	0	25 (7)
Remuneration of board members	21.5	21.5
Other	25	25

Notes

1. For residents, tax withheld constitutes a payment on account of final corporate or individual income tax due. For non-residents, tax withheld is the final tax, except for property income, in which case it is a payment on account.
2. Not subject to WHT in the case of holdings of at least 10% owned for at least one year.
3. Not subject to WHT if the non-resident entity meets the following requirements (the rule also applies to a PE in another EU or EEA member state of an entity that meets the following requirements):
   - Directly, or directly and indirectly, holds at least 10% of the share capital or of voting rights in the Portuguese subsidiary (25% in the case of a parent company resident for tax purposes in Switzerland), for a minimum period of one year (two years in the case of a parent company resident for tax purposes in Switzerland).
   - Is resident in an EU member state, an EEA member state (bounded to administrative cooperation in tax matters similar to the EU's), or a state with which Portugal has concluded a tax treaty that foresees exchange of information.
   - Is subject to and not exempt from an income tax mentioned in Article 2 of Council Directive 2011/96/EU, dated 30 November, or a tax similar to CIT, and in case of a resident in a tax treaty state, the applicable legal rate is not lower than 60% of the standard CIT rate.
4. WHT rate is increased to 35% when the income is paid or due to entities resident in black-listed jurisdictions.
5. Not subject to WHT if the EU Interest & Royalty Directive 2003/49 applies.
6. WHT rate is increased to 35% when the income is paid in bank accounts open in the name of one or more account holders but on behalf of non-identified third parties.
7. Not subject to WHT if a tax treaty is applicable.

Tax treaty rates

Tax treaties reduce the above-mentioned rates as follows:

Recipient	Dividends (%)	Interest (%)	Royalties (%)
Algeria (3)	10/15	15	10
Austria (1, 2)	15	10	5/10
Bahrain, Kingdom of (3, 12)	10/15	10	5
Barbados (3, 12)	5/15	10	5
Belgium (2)	15	15	10
Brazil (3)	10/15	15	15
Bulgaria (3)	10/15	10	10
Cabo Verde	10	10	10
Canada (3)	10/15	10	10
Chile (3, 9, 10)	10/15	5/10/15	5/10
China, People's Republic of	10	10	10
Colombia	10	10	10
Croatia (13)	5/10	10	10
Cuba (3)	5/10	10	5
Cyprus	10	10	10
Czech Republic (3)	10/15	10	10
Denmark (2)	10	10	10
East Timor (3, 12)	5/10	10	10
Estonia	10	10	10
Ethiopia (3)	5/10	10	5
Finland (2, 3)	10/15	15	10
France (2, 4, 5)	15	10/12	5
Georgia (3)	5/10	10	5
Germany (2, 6)	15	10/15	10
Greece (2)	15	15	10
Guinea Bissau	10	10	10
Hong Kong (13)	5/10	10	5
Hungary (3)	10/15	10	10
Iceland (3)	10/15	10	10
India (3)	10/15	10	10
Indonesia	10	10	10
Ireland, Republic of (2)	15	15	10
Israel (11)	5/10/15	10	10
Italy (2)	15	15	12
Ivory Coast (12, 17)	10	0/10	5
Japan (6, 13)	5/10	5/10	5
Korea, Republic of (3)	10/15	15	10
Kuwait (13)	5/10	10	10
Latvia	10	10	10
Lithuania	10	10	10
Luxembourg (2, 6)	15	10/15	10
Macau	10	10	10
Malta (3)	10/15	10	10
Mexico	10	10	10
Moldova (3)	5/10	10	8
Morocco (3)	10/15	12	10
Mozambique	10	10	10
Netherlands (2)	10	10	10

Recipient	Dividends (%)	Interest (%)	Royalties (%)
Norway (14)	5/15	10	10
Oman, Sultanate of (12, 17, 19)	5/10/15	0/10	8
Pakistan	10/15	10	10
Panama (13)	10/15	10	10
Peru (16, 17, 18)	10/15	10/15	10/15
Poland (3)	10/15	10	10
Qatar (13)	5/10	10	10
Romania (3)	10/15	10	10
Russia (3)	10/15	10	10
San Marino (3, 12)	10/15	10	10
São Tomé e Príncipe, Republic of (3, 12, 17)	10/15	0/10	10
Saudi Arabia (13, 17)	5/10	0/10	8
Senegal (3)	5/10	10	10
Singapore	10	10	10
Slovakia (3)	10/15	10	10
Slovenia (3)	5/15	10	5
South Africa (3)	10/15	10	10
Spain (2, 3)	10/15	15	5
Sweden	10	10	10
Switzerland (3, 15)	5/15	10	5
Tunisia	15	15	10
Turkey (3, 8)	5/15	10/15	10
Ukraine (3)	10/15	10	10
United Arab Emirates (13)	5/15	10	5
United Kingdom (2, 3)	10/15	10	5
United States (3)	5/15	10	10
Uruguay (3)	5/10	10	10
Venezuela (7)	10	10	10/12
Vietnam (7, 12, 17, 20)	5/10/15	0/10	7.5/10

Notes

1. The lower of the listed rates applies to royalties when the beneficiary holds 50% or less of the paying company's share capital.
2. There is no WHT on dividends if the EU Parent/Subsidiary Directive applies.
3. The lower of the listed rates applies to dividends when the beneficiary directly holds 25% or more of share capital. Depending on each DTT, a two year holding period may be required.
4. The higher rate applies to interest on debentures raised in France after 1 January 1965 or on significant loans or debentures raised in Portugal or abroad under major development projects listed in the treaty annex.
5. The lower of the listed rates applies to bank loans, but if interest is payable from Portugal, the bank loans must qualify as being of economic or social interest or fall under an approved development plan.
6. The lower of the listed rates applies to interest received by financial institutions.
7. The lower of the listed rates applies to technical assistance.
8. The lower of the listed rates applies on interest related to loans with a minimum maturity of two years.
9. The rate of 5% regarding interest applies to bonds interest or other securities transacted in the stock market. The rate of 10% applies to loans from banks or insurance companies or credit selling of equipment.
10. The rate of 5% regarding royalties applies to equipment lease.
11. The rate of 10% applies if the company that is paying the dividends is a resident of Israel and the dividends derive from profits that are subject to tax in Israel at a rate that is lower than the normal rate of Israel company tax. The rate of 5% applies if the beneficial owner is a company that directly holds at least 25% of the capital of the company paying the dividends.
12. The treaty is signed but not yet in force.
13. The lower of the listed rates on dividends applies if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends.

Depending on each DTT, a one year holding period may be required. In the case of Saudi Arabia, the 10% minimum holding requirement is waived in case the beneficial owner is the state or a public entity.

14. The rate of 5% on dividends applies if the beneficial owner is a company (other than a partnership) that for an uninterrupted period of at least 12 months prior to the payment of the dividends or if the company paying the dividends has existed for less than 12 months, during the lifetime of the company, directly holds at least 10% of the capital of the company paying the dividends, or if the beneficial owner of the dividends is: (i) in the case of Portugal, the state, a political or administrative subdivision, or a local authority thereof, or the Bank of Portugal; and, (ii) in the case of Norway, the government of Norway, a political or administrative subdivision, or a local authority thereof, or the Central Bank of Norway.
15. A WHT rate of 5% on dividends applies in case of shareholdings of at least 25% on the company distributing the dividends, as well as for an exemption on dividends, in case of shareholdings of at least 25% held for at least two years. An exemption from WHT is also foreseen regarding interest and royalties, when paid between associated companies (shareholdings of at least 25% held for at least two years), in line with the Agreement between the European Community and the Swiss Confederation.
16. The lower of the listed rates applies to dividends if the beneficial owner is a company (other than a partnership) that (i) directly holds at least 10% of the capital of the Portuguese company paying the dividends or (ii) directly controls at least 10% of the voting rights of the Peruvian company paying the dividends.
17. The lower of the listed rates applies to interest related to credits of any nature granted by a financial institution or, in the case of the Ivory Coast, Saudi Arabia, the Sultanate of Oman, Vietnam, and São Tomé and Principe, when the beneficial owner or the entity paying the interest is the state or other public body (including the central bank) of the contracting states.
18. The lower of the listed rates applies to royalties paid for technical assistance provided in connection with the use of, or the right to use of author's rights, or information concerning industrial, commercial, or scientific experience.
19. The rate of 5% on dividends applies if the beneficial owner is: (i) in the case of Portugal, the state, a political or administrative subdivision, or a local authority thereof, or the Bank of Portugal; (ii) in the case of the Sultanate of Oman, its government, the Central Bank of Oman, the state's general reserve fund, or the Omani Investment Fund. The rate of 10% applies if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends.
20. The rate of 5% on dividends applies if the beneficial owner is a company (other than a partnership) that directly holds at least 70% of the capital of the company paying the dividends. The rate of 10% on dividends applies if the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends.

Tax administration

Taxable period

The tax year is, as a general rule, the calendar year. A different tax year is allowed in the case of companies obligated to accounting consolidation and of PEs of non-resident entities, which can adopt the tax period of the non-resident company. The different tax year should, however, coincide with the period to which the financial statements concern. If the option of a tax year different from the calendar year is taken, the new tax period must be maintained for a minimum of five years. The five year minimum period is not applicable if the taxpayer is transferred to a group of companies that are subject to consolidation of financial statements and the holding company has a fiscal year different from the one that was being adopted by the taxpayer.

Tax returns

The annual CIT return must be submitted by electronic data transmission by the last day of May of the year following the year of income. Whenever the tax year ends on a date other than 31 December, the annual CIT return shall be submitted by electronic data transmission by the last day of the fifth month following the year end. The system is one of self-assessment.

Payment of tax

Tax is paid in instalments. Three payments on account due in July, September, and up to 15 December of the year in which taxable income arises corresponding to 95% of the previous year's corporate tax assessment (for taxpayers with a turnover above

EUR 500,000; 80% if below this amount). Payments on account are not required if the previous year's corporate tax assessment is less than EUR 200. The third payment may be suspended upon declaring that no further tax is due in respect of the current year. However, interest is assessed at a rate of 4% if this results in postponing more than 20% of the tax that would otherwise have been paid.

A last instalment is paid (or received) through self-assessment upon filing the annual tax return in May of the following year. If the tax year ends on a date other than 31 December, interim payments take place in the seventh, ninth, and up to the 15th of the 12th month of the tax year.

Filing of the annual tax return together with the final payment is in the fifth month following the close of the tax year.

Three additional payments on account of *Derrama Estadual* are due on the same dates as the interim payments mentioned above. The additional payments on account correspond to 2.5% of the taxable profit above EUR 1.5 million and up to EUR 7.5 million, 4.5% of the taxable profit above EUR 7.5 million and up to EUR 35 million, and 6.5% of the taxable profit above EUR 35 million, assessed in the previous year.

In particular situations, a special payment on account is due of a minimum of EUR 850 up to EUR 70,000, paid in March, or in March and October (the third or the third and tenth month of the tax year if it ends on a date other than 31 December).

Interest and penalties

Late assessment interest is due in case of delay on the assessment of taxes due. Late assessment interest is computed on a daily basis. The current rate of late assessment interest is 4% (year).

Late penalty interest is due in case of delay in the payment of the tax assessed. The current rate is 4.966%. Late penalty interest is computed on a daily basis. Tax penalties for companies are capped at EUR 165,000 in the case of intention and EUR 45,000 in the case of negligence. In general, in case of failure or late payment of CIT, companies are liable to a penalty varying between 30% and 100% of the tax due, capped at EUR 45,000 (in case of negligence).

Specific tax penalties apply regarding transfer pricing documentation and the CFC regime (between EUR 1,000 and EUR 10,000 for companies) and regarding omissions or inaccuracies regarding ruling requests (between EUR 750 and EUR 22,500 for companies in the case of urgent rulings or 25% of the previous amounts in the case of non-urgent rulings).

There is the possibility of applying for penalty reduction, provided certain requirements are met (e.g. regularisation of the tax situation/payment of the tax due; situation where there was no damage to the Revenue).

Tax audit process

Taxpayers are audited by the PTA based on several criteria, as detailed in a specific document prepared by the PTA.

The PTA must notify the taxpayers of the preliminary conclusions reached in cases where these may lead to tax assessment acts unfavourable to the taxpayers, further to which taxpayers may present their argumentation.

The PTA must then prepare a final report of the tax audit performed, identifying the facts detected.

Tax audits may be initiated within the statute of limitation (*see below*).

Tax audits must be concluded within six months. A prorogation of the deadline to one year may apply under certain conditions (e.g. complexity of the facts involved, necessity to make use of mechanisms of mutual assistance on tax matters).

The PTA releases, on a periodical basis, a list of taxpayers that, due to the nature of their activities, their turnover, or other criteria, are subject to regular monitorisation. There is also a specific department for major taxpayers.

Statute of limitations

The statute of limitation period is four years, but can be extended in case of tax losses. Regarding facts involving black-listed jurisdictions, the statute of limitation for the right to assess taxes is extended to 12 years while the time period allowed to collect taxes is extended to 15 years. The statute of limitation period is also increased from four to 12 years in case of facts related to deposit and securities accounts in financial institutions outside the European Union.

When a tax inspection is legally suspended, the statute of limitations period is also suspended.

Topics of focus for tax authorities

Currently, the PTA has been exhibiting a more aggressive approach, especially with regards to the fight against tax fraud and evasion, mainly by aggravating taxation in fields where tax avoidance is significant and by introducing additional compliance and reporting obligations.

Increased focus has also been verified on transfer pricing matters, mainly on the transfer pricing policies in transactions with non-resident entities and especially in case of payments made to entities that are resident in black-listed jurisdictions. In this regard, cooperation on transfer pricing matters with other tax administrations has been strengthened.

Situations of recognition of PEs in Portugal, usually triggered by inspections to VAT registers, are recurrent.

Anti-avoidance

A general anti-avoidance provision is in force, pursuant to which contracts and other acts are ineffective whenever it is demonstrated that they were tax driven to reduce taxation that would be due under contracts bearing a similar economic effect, in which case taxation would be based on the latter.

The anti-avoidance procedure is initiated within the general term foreseen (statute of limitation) and is flexible in terms of proof by the PTA.

Anti-avoidance rules are not applicable in cases where a request for obtaining binding information is not answered by the PTA within 150 days.

Binding rulings

Binding rulings can be:

- Urgent: A decision should be taken in 75 days; these are subject to the payment of a fee ranging between EUR 2,550 and EUR 25,500, depending on the complexity of the matter; if no decision is taken within the deadline established, there is a tacit approval of the taxpayer's understanding of the tax matter.
- Non-urgent: A decision should be taken in 150 days; no fees are charged; a decision is required (no tacit approval, as in case of an urgent ruling).

Fight against tax fraud and evasion
It is mandatory that payments above EUR 1,000 are made by a means that allows the identification of the recipient of the income (e.g. bank transfer, nominative cheque, or direct debit).

Council Directive 2011/16/EU, on the matter of administrative cooperation in the field of taxation, has been transposed to the Portuguese legislation, reviewing the exchange information mechanisms between tax authorities and aiming at a more effective action against tax evasion and fraud at an international level.

Other issues

Portuguese base erosion and profit shifting (BEPS) inspired measures
The Portuguese tax legislation includes the following provisions that are in line with BEPS:

- Anti-hybrid rules, very much in line with BEPS Action 2.
- CFC rules, very much in line with BEPS Action 3.
- Interest deduction limitation rules, very much in line with BEPS Action 4.
- Exchange of information, with the conclusion of agreements with blacklisted jurisdictions, transposition of Council Directive 2011/16/EU, introduction of exchange of information clause in existing tax treaties and in the new tax treaties signed, amendment of patent box regime, very much in line with BEPS Action 5.
- Anti-treaty shopping and limitation on benefits clauses in tax treaties, very much in line with BEPS Action 6.
- Mandatory disclosure of aggressive tax planning schemes, very much in line with BEPS Action 12.
- Mandatory CbC reporting, in line with BEPS Action 13.

Foreign Account Tax Compliance Act (FATCA) - Agreement between Portugal and the United States
The agreement between the Portuguese Republic and the United States of America, signed on 6 August 2015 to improve international tax compliance and to implement the FATCA, was approved by Parliament Resolution no. 183/2016 and published in the Official Gazette on 5 August 2016.

This agreement reinforces the shared goal of preventing and combating tax fraud and evasion on a reciprocal basis by introducing the rules and mechanisms for the mutual cooperation and assistance and for the automatic exchange of foreign financial account information between the United States and Portugal.

The entrance into force will take place once Portugal informs the United States that all the formal requirements are met, the moment from which the local financial institutions should be required to annually disclose the relevant account and balances information.

Romania

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Significant developments

Corporate taxation

As of 1 January 2017, the construction tax is eliminated.

Taxpayers that exclusively perform innovation and research and development (R&D) activities on scientific research and technological development and related activities are exempted from profit tax for the first ten years of activity.

The condition regarding the maximum revenues of a company for being considered a micro-enterprise has been changed, increasing the threshold to 500,000 euros (EUR). A new rule has been introduced regarding the classification of a company as a micro-enterprise for fiscal purposes. The tax rates used as of 2017 for micro-enterprise income tax have been changed as well.

Over 100 tariffs and non-tax charges have been eliminated.

As of January 2017, taxpayers requesting either a return to the calendar year or a change in the period of the amended fiscal year must take into account the following:

- If the amended fiscal year becomes the calendar fiscal year, the last fiscal year modified also includes the period between the day following the last day of the amended fiscal year and 31 December of the respective calendar year.
- If the period of the amended fiscal year changes, the first amended fiscal year also includes the period between the day following the last day of the amended fiscal year and the day preceding the first day of the new amended fiscal year.

Additionally, the applicability of the tax exemption incentive for reinvested profits and the right to use computer software has also been extended, together with the unlimited temporal application of this tax incentive.

At the same time, the list of deductible expenses for determining the fiscal result was completed, with the expenses for the organisation and carrying out of vocational and technical education, according to the legal regulations in the field of national education.

Value-added tax (VAT)

Starting 1 January 2017, the standard VAT rate has been reduced to 19%.

Taxes on corporate income

The standard profit tax rate is 16% for Romanian companies and foreign companies operating through a permanent establishment (PE) in Romania. Resident companies are taxed on their worldwide income, unless a double tax treaty (DTT) stipulates otherwise. Non-resident companies are taxed on all income derived from Romanian taxpayers, regardless of whether the services are rendered in Romania or abroad.

The profit tax due for nightclubs and gambling operations is either 5% of the revenue obtained from such activities or 16% of the taxable profit, whichever is higher.

Micro-enterprise tax regime

Micro-enterprises are subject to a mandatory revenue tax rate (*see details below*) in lieu of the standard profit tax.

The condition regarding the maximum revenues of a company for being considered a micro-enterprise has been changed as of 1 January 2017, increasing the threshold to EUR 500,000.

A new rule has been introduced regarding the classification of a company as a micro-enterprise for fiscal purposes. Thus, for 2017, Romanian companies that are profit taxpayers and as at 31 December 2016 fulfil the conditions for being a micro-enterprise as defined by Law 227/2015 become subject to tax for micro-enterprise revenues as of 1 February 2017. They also have the following obligations:

- To submit the statement for changing the taxation system no later than 25 February 2017.
- To submit the tax return for profit tax for taxable profit obtained during the period 1 January 2017 to 31 January 2017 no later than 25 February 2017.

The tax rates used as of 2017 for micro-enterprise income tax are:

- 1% for micro-enterprises with one or more employees.
- 3% for micro-enterprises with no employees.

The capital limit for which start-up companies can opt for paying profit tax, to the detriment of the income tax on micro-enterprises, was amended starting 1 January 2017. More precisely, the minimum ceiling of EUR 25,000 euros, from which the profit tax can be opted, was reduced to EUR 10,000, so only entities with a social capital lower than the latter must now apply the income tax of the micro-enterprise. The measure also applies to already established taxpayers who will increase their share capital to at least 45,000 Romanian leu (RON) (or will lower it to the same amount).

Payment of the tax and filing of the returns is made quarterly, by the 25th day of the month following the end of the quarter for which the tax is calculated.

Newly established companies are required to follow the micro-enterprise tax regime starting with the first fiscal year. Newly incorporated Romanian legal entities that, upon registration with the Trade Registry, are due to perform banking, insurance and reinsurance, consultancy and management, or gambling activities are excepted from this rule. Companies that, at the moment of incorporation, have a share capital of at least EUR 25,000 may opt to apply the profit tax rules during the first fiscal year.

Note that if revenues derived from management and consultancy activities exceed 20% of its total revenues, or a micro-enterprise registers turnover above EUR 500,000, it becomes a profit taxpayer.

Local income taxes

There are no county or local taxes on corporate income.

Corporate residence

A company is considered tax resident in Romania if it was set-up under Romanian law or has its 'place of effective management' (POEM) in Romania. POEM represents the place where strategic economic decisions necessary to ensure the management of the foreign company are taken and/or the place where the most senior person or group of persons who manage and control the activity of the foreign entity operate.

Permanent establishment (PE)

A PE is generally defined as being the place through which the activity of a non-resident company is conducted, fully or partially, directly or through a dependent agent.

Once a PE is created, Romania has the right to tax the profits of the non-resident parent company derived from the activities performed through the PE.

In defining the PE concept, reference can be made to Article 5 - 'Permanent establishment' of the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention, which has been transferred from the Methodological Norms to the Fiscal Code.

The Romanian legislation explicitly states the conditions that trigger a PE:

- Fixed base PE is created through a place of business with a certain degree of permanency through which business is conducted in Romania (with some exceptions).
- Agency PE is created through agents with a dependent status that operate in Romania on behalf of the foreign company.

The registration, reporting, and tax payment requirements for a PE are similar to those for a Romanian company.

Consolidation of PE revenues and expenses belonging to the same foreign legal entity is possible. *For further information, please see the Group taxation section*.

Other taxes

Value-added tax (VAT)

As of 1 January 2017, the standard VAT rate is 19% (previously 20%). The standard VAT rate is applied to all supplies of goods and services (including imports) that neither qualify for an exemption (with or without credit) nor for a reduced VAT rate.

The reduced VAT rate of 9% is levied on supply of medicines for human and veterinarian use; accommodation in hotels or in areas with a similar function, regardless of the type of accommodation (accommodation with/without breakfast, half-board/full-board/all-inclusive accommodation); supply of prostheses and orthopaedic products; restaurants and catering services, except for alcoholic beverages, other than beer classified under CN 22 03 00 10; supply of food, including non-alcoholic drinks, for human and animal consumption; supply of drinking water; and irrigation water used in agriculture.

The supply of school manuals, books, newspapers, and some magazines, as well as the provisions of services consisting of the allowance of access to castles, museums, cinemas, and others, is subject to the reduced VAT rate of 5%. Additionally, sports events are also included in the category of operations subject to the reduced VAT rate of 5%.

VAT exemption without credit applies to a range of activities, including the supply of services in relation to banking, finance, and insurance. However, some financial services are subject to the standard VAT rate of 19% (e.g. factoring, debt collection, managing and safekeeping certain equity papers). The VAT exemption without credit also applies to medical, welfare, and educational activities if performed by licensed entities.

There are also operations exempt with credit (i.e. deduction right for the related input VAT), such as the following:

- Supply of goods shipped or transported outside the European Union (EU), and related services.
- Intra-Community supply of goods.
- International transport of passengers.
- Goods placed into free trade zones and free warehouses.
- Supply of goods to a bonded warehouse, a VAT warehouse, and related services.
- Supply of goods that are placed under suspensive customs regimes.
- Supply of services in connection with goods placed under suspensive customs regimes or goods placed into free trade zones.
- Supply of goods and services to diplomatic missions, international organisations, and North Atlantic Treaty Organization (NATO) forces.

VAT on imported goods will continue to be paid at customs, except for taxable persons registered for VAT purposes that obtain an import VAT deferment certificate from the customs authorities. For these taxpayers, the VAT is not paid in customs but shown in the VAT return as both input and output VAT. The import VAT deferment certificate is available only to companies for which the value of imports (excluding imports of goods subject to harmonised excise) performed in the previous year/previous 12 consecutive months has exceeded the threshold of RON 100 million, to companies with Approved Economic Operators (AEO) status, and to those companies registered for VAT purposes in Romania authorised to perform in-house customs clearance formalities.

VAT consolidation

Companies established in Romania that are legally independent but are closely related in terms of financial, economic, and organisational purposes may choose to form a tax group, as long as they apply the same fiscal period. However, transactions between the members of the group fall within the scope of VAT.

Place of VAT taxation

The rules for establishing the place of VAT taxation for supply of goods and services are determined based on the same rules as those presented in the EU 2006/112/EC and EU 2008/8/EC Directives. Services provided by non-resident entities to Romanian companies with deemed place of supply in Romania are subject to Romanian VAT under the reverse-charge mechanism, provided that no VAT exemption is applicable.

Reverse-charge mechanism
Under the VAT reverse-charge mechanism, VAT is not actually paid, but only shown in the VAT return as both input and output tax, provided that both the beneficiary and the supplier are registered for VAT purposes.

As a general rule, the reverse-charge mechanism applies either for intra-Community acquisitions of goods performed in Romania or for services performed by non-resident entities that are not established, nor have a fixed establishment, in Romania. Under the general rule, the place of supply of services is where the beneficiary is established or has a fixed establishment (e.g. consultancy, marketing services).

Domestic supplies of cereals and industrial plants performed between companies registered for VAT purposes will be subject to the reverse-charge mechanism. The measure applies until 31 December 2018.

The application of the reverse-charge mechanism has been extended to the supply of buildings, parts of buildings, and plots of land, and, until 31 December 2018, to the supply of mobile phones, PC tablets, laptops, gaming consoles, and devices with integrated circuits (provided that the value of such goods, excluding VAT, mentioned on an invoice is equal to/higher than RON 22,500).

Limited VAT deduction right
The VAT deduction right related to the acquisition of road vehicles used for the transport of passengers and vehicles that meet certain characteristics, as well as the acquisition of fuel and all related services used for the respective vehicles, is limited to 50%, except for some specific exceptions (e.g. vehicles used by sales agents, taxi, transport services).

VAT compliance
The annual turnover threshold for VAT registration in Romania is the Romanian leu equivalent of EUR 65,000, computed based on the exchange rate from the date of EU accession (i.e. RON 220,000). Companies surpassing this VAT registration threshold will be liable to charge VAT for the advance payments received before registering for VAT purposes, related to goods delivered/services performed after the registration date.

As a general rule, the fiscal period is the calendar month. For taxable persons registered for VAT purposes whose previous year-end turnover (from taxable operations, VAT exempt, and outside the Romanian VAT scope operations with deduction right) did not exceed EUR 100,000, the fiscal period is the calendar quarter.

Taxable persons must keep complete and detailed records for calculation of VAT liabilities.

VAT returns should be submitted to the tax authorities by the 25th day of the month following the end of the fiscal period; the VAT payment is due by the same date. The VAT return can be submitted by electronic means.

Taxable persons not registered for VAT purposes in Romania and not required to register are liable to pay VAT and to submit a special VAT return in connection to services rendered by/provided to non-residents. These obligations must be fulfilled by the 25th day of the month following that when the services are supplied.

Taxable persons are required to file VAT statements related to acquisitions/supplies of goods/services performed on Romanian territory on a monthly/quarterly basis, based on invoices issued/received to/from taxable persons registered for VAT purposes in Romania. These obligations should be fulfilled within 30 days.

A taxable person registered for VAT purposes who does not exceed the exemption threshold of RON 220,000 during the course of a calendar year may request deregistration from the VAT registered persons record between the first and tenth day of each month following the fiscal period used (month or quarter).

The cash accounting VAT scheme (CAVS)
The CAVS is optional for taxpayers with a turnover lower than RON 2,250,000 registered in the previous year and for newly founded companies. The right to deduct the input VAT for the acquisitions of goods/services from companies applying the CAVS is deferred until the date the payment is performed.

Customs and international trade

Customs duties
The customs duties are those specified in the EU Common Customs Tariff and are expressed as a percentage applied to the customs value (i.e. *ad valorem* taxes), as a fixed amount applied to a specific quantity (i.e. specific taxes), or as a combination of the above.

Agricultural products (i.e. products from chapters 1 to 24 of the EU Common Customs Tariff) are subject to specific taxation.

In certain cases (e.g. meat), the customs duty rate is established with regard to the cost, insurance, and freight (CIF) or the entry price of the products. In other cases, the customs duty rate is established by adding additional duties, such as agricultural components, to the *ad valorem* tax.

Customs value
The customs value is determined and declared by importers in accordance with the provisions of the Union Customs Code and its Delegated and Implementing Regulations, which took over the rules set up by the World Trade Organization (WTO) Customs Valuation Agreement (i.e. the Agreement pertaining to the implementation of Article VII of the General Agreement on Trade and Tariffs [GATT]).

Authorised Economic Operator (AEO) status
Operators that obtain AEO status benefit from simplifications regarding customs inspection, obtaining customs authorisations, and performing customs formalities.

Moreover, through the AEO authorisation, the holder is recognised by the customs authorities as a reliable person, giving comfort as regards observance of the safety and security standards, and can benefit from easier admittance to certain customs simplifications.

In addition, companies certified as AEOs may apply for a certificate granting the benefit to defer the payment of the VAT in customs upon importation. Moreover, in case of imports followed by VAT-exempt intra-Community supplies, companies registered for VAT purposes in Romania and certified as AEOs are not required to lodge a guarantee.

Operators authorised as AEOs will be checked at least once every three years for assessing whether they comply with the certification criteria.

Binding Tariff Information (BTI)/Binding Origin Information (BOI)
Companies can obtain rulings (BTI) from the Romanian customs authorities on the tariff classification of imported goods that are binding for the customs authorities for a three-year period, whenever goods identical to those described in the BTI are imported.

A similar type of ruling can also be obtained regarding the origin of goods (BOI). They are also valid for a period of three years from the data of issue.

The BTI and BOI shall be binding for the holder of the decisions.

Trade measures
For some agricultural products, the European Union generally imposes specific measures (e.g. values or quantitative allowances) on imports from other countries. It is mandatory to obtain an import licence before importing such products.

Moreover, import/export licences from relevant authorities are also required for commodities regarded as potentially hazardous to human health or to the environment (e.g. some chemical products, certain types of waste and scrap), for commodities the end-use of which is controlled (e.g. explosives), or for dual use (i.e. both civil and military) products.

Excise duties

Harmonised excise goods
The following products are subject to harmonised excise duties: alcohol and alcoholic beverages, manufactured tobacco products, energy products (e.g. unleaded gasoline, diesel, gas, coal), and electricity.

Excise duties are due when excise goods are released for consumption (e.g. imported into Romania, taken out of an excise duty suspension arrangement).

Ethyl alcohol and other alcoholic products are exempt from the payment of excise duties if they are denatured and used in the pharmaceuticals or cosmetics industry.

Some energy products subject to movement control are excepted from excise duty, provided that an end-user authorisation is obtained and the payment of excise duties is secured.

Manufactured tobacco is also exempt from excise duties when exclusively intended for scientific and quality testing.

In some cases, traders can claim a refund of the excise duties paid (e.g. excise duty paid for goods released for consumption in Romania, but intended for consumption in other EU member states; excise duties paid for goods released for consumption and then returned to the production tax warehouse for recycling, reprocessing, or destruction; excise duties paid for goods released for consumption in Romania and then exported).

For cigarettes, the excise duty due is equal to the sum of the specific excise duty and the *ad valorem* excise duty. The specific excise duty expressed in RON/1,000 cigarettes is annually determined based on the weighted average retail price, the legal percentage related to the *ad valorem* excise duty, and the total excise duty. The specific excise duty for cigarettes has been set at RON 329.222/1,000 cigarettes for the period 1 April 2017 to 31 March 2018, inclusively.

The excise duty rate for ethyl alcohol is RON 3,306.98/hectolitre of pure alcohol.

The excise duty level for fermented sparkling beverages, other than beer and wines, is set at RON 47.38/hectolitre of product, while the excise duty level for apple and pear cider and mead is nil.

The excise duty level for intermediary products is set at RON 396.84/hectolitre of product, and the level for beer is set at RON 3.30/hectolitre/1 Plato degree.

The current levels of excise duties are RON 1,948.23/1,000 litres for leaded gasoline, 1,656.36/1,000 litres for unleaded gasoline, and RON 1,518.04/1,000 litres for diesel, respectively.

Companies selling fuel in gas stations have to register with the tax authorities. The same obligation applies for companies that market wholesale fuel, alcoholic drinks, or tobacco products.

Other excise goods
Other excise goods are:

- Heated tobacco products, which by heating generate an aerosol that can be inhaled without the combustion of tobacco mixture (falling under CN 2403 99 90).
- Liquids containing nicotine (falling under CN 3824 90 96) for inhaling using an electronic device (i.e. electronic cigarette).

Excise duties should be paid no later than the 25th day inclusive of the month following the one (i) in which they were sold on the national market for domestic products or (ii) when the actual receipt takes place for products received from EU countries, except for the excisable goods imported, for which the excise duty is to be paid when the goods are released for free circulation.

Economic operators performing directly intra-Community acquisitions/imports of such goods are entitled to request a refund of the excise duties paid if the products are exported, supplied to another EU member state, or returned to the supplier. For the production/intra-Community acquisitions/imports of such products, prior authorisation is requested.

Property taxes

Building tax
The building tax calculation method differentiates between buildings depending on their destination usage:

- Residential buildings: Tax rate between 0.08% and 0.2% (applicable to the taxable value as per the specific table provided by the law for individuals and the value resulted from the evaluation report for legal entities).

- Non-residential buildings: Tax rate between 0.2% and 1.3%. In the case of a building used for agricultural purposes, the applicable tax rate is 0.4%.

Local authorities have been granted the authority to increase local tax allowances by 50%.

The increased tax rate for building tax due by legal entities is 5% (if no revaluation was performed during the last three years).

If a building was acquired during a fiscal year, the building tax for the entire year is due by the seller. The buyer is liable to pay the tax starting with the next year.

Building tax is paid annually, in two equal instalments, by 31 March and 30 September. For the payment of the entire annual tax by 31 March, a reduction of up to 10% is granted by the Local Council.

Land tax
Owners of land are subject to land tax established at a fixed amount per square metre, depending on the rank of the area where the land is located and the area or category of land use, in accordance with the classification made by the Local Council.

Similar to building tax, land tax is paid annually, in two equal instalments, by 31 March and 30 September. A 10% reduction is granted for full advance payment of this tax by 31 March.

Construction tax
As of 1 January 2017, the construction tax is eliminated.

Transfer taxes
There are no transfer taxes for companies for the transfer of property. The income derived from such a transfer will be included into the taxable profits of the company and subject to the flat tax rate.

Stamp duty
For judicial claims, issue of licences and certificates, and documentary transactions that require authentication, stamp duty (in the form of notary fee) has to be paid.

Payroll taxes
Employers must contribute mandatory employer's social security contributions and withhold, on a monthly basis, the mandatory employee's social security contributions and the income tax (16%) from the employee's gross salary and wire the amounts to the Romanian tax authorities.

Social security contributions
In Romania, all employers and employees, as well as other categories of taxpayers, have to contribute to the state social security system.

The social security contribution rates due by employers and employees are levied on certain calculation bases that may be capped as stipulated by the Romanian Fiscal Code. As of February 2017, the contribution rates are as follows:

Romania

	Employer contribution	Employee contribution
Social security (pension) contribution	15.8%, 20.8%, or 25.8%, depending on working conditions	10.5%
Unemployment insurance fund	0.5%	0.5%
Health insurance fund	5.2%	5.5%
Medical leave and health insurance benefits	0.85% *	N/A
Guarantee fund to cover salary liabilities	0.25%	N/A
Work accidents and occupational disease fund	0.15% to 0.85%, depending on the risk classification	N/A

* Computation base is capped at 12 minimum gross salaries multiplied by the number of insured employees (minimum gross salary starting February 2017 is RON 1,450).

Environmental taxes

For certain activities (e.g. selling ferrous and non-ferrous waste, dangerous hazardous substances, activities that generate polluting emissions, releasing/introducing packaging materials and packed products/tyres on the national market), companies have the obligation to declare and to pay (as the case may be) related contributions and taxes to the Environmental Fund.

In certain cases (e.g. for the contribution related to packaging materials introduced on the national market and the management of the related packaging waste), the contribution to the Environmental Fund depends on the degree to which companies achieve the annual packaging waste recovery/recycling targets stipulated by the relevant legislation on packaging waste management. Thus, for packaging waste, the contribution to the Environmental Fund is currently RON 2/kg of packaging introduced onto the market and is owed for the difference between the annual packaging waste recovery target stipulated by law and the percentage packaging waste recovery/recycling target actually achieved by companies.

A tax amounting of RON 0.3/kg is levied (one time only) on industrial oils and lubricants placed on the market; the tax must be distinctly stipulated on the purchase documents.

Companies conducting activities that result in the discharge of air-pollutant emissions from fixed sources (e.g. nitrogen oxides, sulphur oxides, persistent organic pollutants, heavy metal emissions, such as lead, cadmium, mercury) have to pay contributions to the Environmental Fund. For air pollutants, the computation is based on the air-emissions methodologies approved by environmental authorities, and the tax is applied based on the nature of the air pollutants.

The contribution for plastic bags placed on the national market amounts to RON 0.1/piece, which is due for bags and shopping bags that have an integrated or applied handle and that are manufactured from non-renewable resources.

All producers/importers/exporters of electric and electronic equipment (EEE) and of batteries and accumulators are required, starting from 2017, to declare to the Environmental Fund the quantities of EEEs and batteries and accumulators introduced on the national market (in 2017) and also the quantities of EEEs actually collected for the purpose of being recycled (starting from 2018). A penalty will have to be paid to the

Environmental Fund authority if this requirements will not be fulfilled by producers of EEEs and batteries.

In order to improve the regulatory system with respect to the Environmental Fund contributions, new modifications and completions of the current regulations are likely to occur in the near future.

Specific tax for certain activities

Law no. 170/2016 on specific tax for certain activities has entered into force.

Specifically, the specific tax, which is calculated on the basis of several variables, such as the surface, the rank of the locality, or the seasonality, is due by all companies that have included in the constitutive act as main or secondary activities one or more activities from eight NACE codes in tourism, hotel, restaurants, bars, and public food.

Starting from 2017, economic operators in the tourism, hotel, restaurants, bars, and catering sector will pay a specific tax, regardless of the size of the turnover and the level of profits. The tax will be calculated according to the area of the business, the place where other variables take place.

Thus, whether or not profitable, the restaurants, bars, or cafés will apply this new tax system, which will negatively affect small businesses, especially.

The declaration and payment of the specific tax will be made half-yearly until the 25th day of the month following the semester for which the tax is due. Thus, the payment amount will be half the annual tax.

Branch income

Branch

A foreign company can set up a branch in Romania, as long as the branch only operates in the same field of activity as the parent company. A branch is considered to have the same legal personality as the parent company and is not a separate legal entity (no own share capital, no separate name, etc.).

Profits derived by the branch are taxed at the standard profit tax rate of 16%.

Representative offices

Representative offices are often established as a first step to operating in Romania. A representative office can undertake only auxiliary or preparatory activities, cannot trade in its own name, and cannot engage in any commercial activities. A representative office can perform only a limited range of activities without being considered a PE for profit tax purposes.

Representative offices are subject to a flat annual tax of EUR 4,000 (payable in local currency, i.e. Romanian leu). The tax is paid in two equal instalments, by 25 June and 25 December. If a representative office is set up or closed down during a year, the tax due for that year is pro-rated for the months that the representative office was operational in that fiscal year.

Income determination

The taxable profit of a company is calculated as the difference between the revenue derived from any source and the expenses incurred in obtaining the taxable revenue throughout the tax year, adjusted for fiscal purposes by deducting non-taxable revenue and adding non-deductible expenses. Other elements similar to revenue and expenses are also to be taken into account when calculating the taxable profit.

For taxpayers that apply International Financial Reporting Standards (IFRS) (i.e. financial institutions and listed companies), there are specific rules in relation to the fiscal value assessment, profit tax computation, adjustments for step-down in value, amortisation, and fiscal treatment of deferred profit tax.

Inventory valuation

The methods permitted for inventory valuation under Romanian law are standard cost, detailed sale price, average (weighted) cost, first in first out (FIFO), and last in first out (LIFO). The accounting method is also recognised for tax purposes.

Assets are generally valued at their acquisition cost, production cost, or market value. Fixed assets may be re-valued at certain points in time for various purposes.

Capital gains

Capital gains earned by a Romanian resident company are included in their ordinary profits and are taxed at 16%. Capital gains obtained by non-residents from real estate property located in Romania or from the sale of shares held in a Romanian company are also taxable in Romania. However, the income may be subject to treaty protection.

Participation exemption applies for capital gains derived by a Romanian legal entity from participations of at least 10%, held for a minimum period of one year, in a subsidiary established in a state with which Romania has a DTT.

Dividend income

Dividends distributed by a company resident in another EU member state to a Romanian company are tax exempt if the Romanian company has held, prior to the time of distribution, a minimum of 10% of the shares in the respective non-resident company for an uninterrupted period of at least one year.

The Romanian Fiscal Code incorporates the amendments to the European Directive no. 2011/96/EU, relating to the application of a common system of taxation in the case of parent companies and subsidiaries of different member states. The legislation introduces the anti-abuse rule for preventing unlawful tax practices used to obtain tax benefits contrary to the Directive's principles. Also, dividends received by a Romanian legal entity from a foreign legal entity under certain conditions mentioned above will not be taxed as long as those dividends are not treated as deductible expenses by the paying subsidiary.

Participation exemption applies for dividends derived by a Romanian legal entity from participation of at least 10%, held for a minimum period of one year, in a subsidiary established in a state with which Romania has a DTT.

The tax rate on dividends is 5% for both dividends paid to Romanian companies and to non-resident companies. Non-residents may be eligible for a reduced rate under DTTs.

Interest and royalty income
Interest and royalty payments made by Romanian companies to other Romanian companies are taxable income in the hands of the beneficiary.

Romanian-sourced interest and royalty payments of an affiliated company, resident in an EU member state, are exempt from withholding tax (WHT), provided that certain conditions are met, e.g.:

- 25% minimum direct holding of the share capital (i.e. one company has a direct minimum holding of 25% in the share capital of the other company or a third company has a direct minimum holding of 25% in the share capital of both companies involved in the payment of the interest and royalties).
- The holding period must be maintained for an uninterrupted period of at least two years prior to the payment of the interest and royalties.
- The company receiving the interest or royalty payments must be the beneficial owner of these payments.

Fiduciary contracts
If the settlor of a fiduciary contract is also the beneficiary, then:

- the transfer of the patrimony from the settlor to the fiduciary is not considered a taxable transfer, and
- the fiduciary will keep separate bookkeeping entry for the fiduciary patrimony and will communicate to the settlor, on a quarterly basis, the income and expenses resulting from the administration of the patrimony.

If the beneficiary is the fiduciary or a third party, the expenses recorded from the transfer of the patrimony from the settlor to the fiduciary is considered non-deductible.

Other significant items
The other most relevant types of non-taxable revenue stipulated by the Romanian Fiscal Code are:

- Favourable fluctuations in the price of shares and long-term bonds registered by the company in which the shares and long-term bonds are held, as a result of capitalisation of reserves, benefits, or share premiums.
- Revenue from reversal or cancellation of provisions/expenses that were previously non-deductible, recovery of expenses that were previously non-deductible, and revenue from reversal or cancellation of interest and late payment penalties that were previously non-deductible.
- Revenue from the annulment of a reserve registered as a result of a participation in nature to the capital of other legal entities.
- Revenue from deferred income tax.
- Revenue resulting from the change in the fair value of real estate investments/ biological assets owned by the taxpayers applying IFRS.
- Non-taxable revenue expressly provided for under agreements and memoranda enforced by regulatory documents.

Foreign income
Resident companies are taxed on their worldwide income unless a DTT provides otherwise. However, in case of foreign subsidiaries of Romanian companies, income is not taxed in Romania until remitted back. Otherwise, there is no specific tax deferral regime in place.

Deductions

Expenses fall into three categories: deductible expenses, limited deductibility expenses, and non-deductible expenses.

Deductible expenses

As a general rule, expenses are deductible only if incurred for business purposes.

Some of the deductible expenses specifically mentioned by the Romanian Fiscal Code include:

- Marketing and advertising expenses.
- R&D expenses that are not recognised as intangible assets for accounting purposes.
- Expenses incurred for environmental protection and resource conservation.
- Expenses incurred for management improvement; updating information technology (IT) systems; introducing, maintaining, and developing quality management systems; and obtaining quality compliance confirmation.
- Losses incurred when writing off client receivables in any of the following cases:
  - The bankruptcy procedure of the debtor was closed due to a court ruling.
  - The debtor is deceased and the receivable cannot be recovered from the heirs.
  - The debtor is dissolved or liquidated.
  - The debtor has major financial difficulties affecting its entire patrimony.
- Expenses related to losses from the valuation of shares and long-term bonds.
- Travel and accommodation expenses related to business; this also includes transportation of personnel to and from the workplace.
- Daily allowances for expenses incurred by employees in connection to travels in Romania and abroad.
- Expenses incurred from professional training and development of employees.
- Expenses related to benefits granted to employees as equity instruments settled with cash, at the moment of the effective granting, if the benefits are subject to personal income tax (PIT).
- Expenses incurred in connection to work safety, prevention of work accidents and occupational diseases, the related insurance contributions, and professional risk insurance premiums.
- Expenses incurred in connection to the acquisition of packaging materials, during the useful life set by the taxpayer.
- Fines, interest, penalties, and other increased payments due under commercial contracts.

Note that credit institutions apply IFRS rules, and certain deductibility rules are provided for this category of taxpayers.

Limited deductibility expenses

The deductibility of the following expenses is limited:

Interest expenses and foreign exchange losses under thin capitalisation rules (*see the Group taxation section for more information*).

- Provision and reserve expenses (*see details below*).
- Depreciation and reduction in value of fixed assets under fiscal depreciation rules (*see details below*).
- Perishable goods and losses resulted from transport/storage, according to law.

- Protocol expenses are deductible at up to 2% of the accounting profit, adjusted with protocol and profit tax expenses. Output VAT related to gifts of at least RON 100 offered by taxpayers fall under the protocol expenses category.
- Social expenses are deductible at up to 5% of salary expenses and include, among other items, maternity allowances, expenses for nursery tickets, funeral benefits, and allowances for serious or incurable diseases and prostheses, as well as expenses for the proper operation of certain activities or units under taxpayers' administration (i.e. kindergartens, nurseries, health services supplied for occupational diseases and work accidents prior to admission to health establishments, canteens, sports clubs, clubs, etc.), gifts represented by money of in kind, including gift tickets given to employees and their children, and medical services granted in case of professional diseases and labour accidents until transfer to a hospital. Expenses incurred for benefits granted under a collective labour agreement are also deductible within the same limits.
- Expenses incurred with lunch vouchers and holiday vouchers given by employers, according to law.
- Technological losses within the internal consumption norm required for the production of a good or provision of a service.
- Expenses incurred for functioning, maintenance, and repairs corresponding to an establishment represented by an individual's personal property, used as well for individual purposes, deductible in the limit of the surfaces at the disposal of the company based on the contractual agreements.
- Expenses incurred with electricity at the level of the technological internal consumption norm or, in case it is missing, at the level of the norm approved by the National Authority for Energy, including the commercial consumption for the taxpayers in the electricity distribution business.
- Taxes and fees paid to non-government organisations or professional associations related to the taxpayer's activity are deductible up to the limit of EUR 4,000 per year.
- All direct expenses attributable to vehicles with up to nine seats that are not used exclusively for business purposes are 50% deductible for profit tax purposes, under certain conditions provided by law. These expenses are fully deductible for vehicles used for the following activities:
  - Emergency, safety and security, courier services, cars used by sales and acquisitions agents.
  - Paid transportation services and taxi activities.
  - Rental.
  - Driving schools.
  - Vehicles used as commodities.
- For vehicles with up to nine seats, tax depreciation is limited to a maximum of RON 1,500 per month for each vehicle starting from 1 February 2013.

Non-deductible expenses

Expenses deemed non-deductible include, among other items, the following:

- Domestic profit tax, including differences from previous years or from the current year, and profit tax paid in foreign countries, deferred tax registered according to accounting standards.
- Expenses with tax not withheld at source in the name of non-resident individuals and legal entities.
- Expenses related to non-taxable revenues.

- Interest, fines, and penalties due to Romanian or foreign authorities, according to legal provisions, with the exception of the ones pertaining to agreements concluded with these authorities.
- Expenses incurred for management, consultancy, assistance, or other supply of services performed by a non-resident located in a state that has no exchange of information agreement concluded with Romania. These provisions are applicable if the expenses are incurred in respect of transactions deemed as artificial.
- Sponsorship and patronage expenses and expenses for private scholarships. Taxpayers are, however, granted a fiscal credit of up to 0.5% of turnover and 20% of the profit tax due, whichever is lower. Taxpayers that do not benefit from fiscal credit in the year when they grant sponsorship according to the law may carry forward the fiscal credit for the next seven consecutive years.
- Losses incurred when writing off client receivables, for the amount not covered by a provision, in any cases other than the following: a reorganisation plan was applied through a court decision in accordance to Law no. 85/2014; the bankruptcy procedure of the debtor was closed due to a court ruling; the debtor is deceased and the receivable cannot be recovered from the heirs; the debtor is dissolved or liquidated; or the debtor has major financial difficulties affecting its entire patrimony.
- Expenses resulting from the adjustment of acquired receivables, provided insurance contracts have been put in place.
- Expenses resulted from benefits granted to employees as equity instruments settled with shares/cash, unless subjected to PIT.
- Expenses in favour of shareholders, other than those related to goods or services provided by the shareholders at market value.
- Expenses incurred with insurance premiums unrelated to the risks and assets of the taxpayer's business, with the exception of those that relate to goods representing a banking guarantee for the loans used for business purposes.
- Expenses registered in the accounting records based on documents issued by an inactive taxpayer, according to the provisions of the Fiscal Procedure Code, with the exception of those representing acquisitions of goods performed during foreclosure procedures or from legal entities in bankruptcy procedure according to Law no. 85/2014.
- Expenses relating to missing or damaged non-imputable inventories or tangible assets, as well as related VAT, if the case. These expenses are deductible in case any of the following conditions are applicable to the inventory/assets:
  - They were destroyed following natural disasters or major force situations in the conditions provided by the methodical norms.
  - Insurance contracts have been set up in respect of these.
  - They were degraded from a qualitative perspective, and the proof of destruction is available.
  - They have a validity/expiry term that has passed, according to law.
- Expenses reflected in accounting records, irrespective of their nature, that later prove to be related to acts of corruption as defined under the law.

Note that credit institutions apply IFRS rules, and certain non-deductibility rules are provided for this category of taxpayers.

Depreciation

Romanian law makes an explicit distinction between fiscal and accounting depreciation. Fiscal depreciation is treated as an expense deductible from the tax base, while accounting depreciation is treated as a non-deductible expense. Companies should maintain a separate record to reflect the separate computation of the fiscal and accounting depreciation. Any accounting revaluations of fixed assets are not taken into account in computing the tax depreciation.

Assets are generally depreciated using the straight-line method. However, accelerated or degressive depreciation methods may be used to determine fiscal depreciation, while the accounting depreciation method may be different.

The useful lives to be used for tax purposes are the ones stated in the Official Fixed Assets Catalogue, published under government decision. Ranges are provided for classes of fixed assets, from which the taxpayers can choose the useful life (e.g. office and housing buildings: 40 to 60 years, commercial buildings: 32 to 48 years, commercial furnishings: 9 to 15 years, automobiles: 4 to 6 years).

For vehicles with up to nine seats, the fiscal depreciation is limited to a maximum of RON 1,500 per month for each vehicle. Certain categories of vehicles are exempt from this monthly deduction limitation (e.g. used exclusively for emergency, security, or delivery service; used for paid passenger transport; or used for paid supply of services).

Land cannot be depreciated.

Accelerated depreciation

Under the Romanian Fiscal Code, machinery and technical equipment, computers and their peripherals, as well as patents, may be depreciated by using the accelerated method, under which a maximum of 50% of the asset's fiscal value may be deducted during the first year of usage, while the rest of the asset's value can be depreciated using the straight-line method over the remaining useful life.

Goodwill

As a rule, goodwill is deemed non-depreciable from a Romanian fiscal perspective.

Start-up expenses

According to accounting rules, start-up expenses may be capitalised and depreciated over a maximum period of five years. However, according to the fiscal rules, start-up expenses should not be depreciated for tax purposes.

Provisions and reserves

As a general rule, provisions and reserves are non-deductible for profit tax purposes. However, there are certain provisions and reserves that are deductible, such as:

- Setting up or increasing the legal reserve fund up to 5% of the accounting profit, adjusted with profit tax expense, and until it reaches 20% of the share capital.
- Provisions related to guarantees for proper execution granted to the clients.
- Provisions for depreciation of receivables are deductible at up to 30% if the related receivables meet the following conditions simultaneously:
  - Not collected for a period exceeding 270 days from the due date.
  - Not guaranteed by another person.
  - Due by a person not affiliated with the taxpayer.
- Bad debt provisions are fully deductible if all the following conditions are met:
  - The debtor is a company declared bankrupt by a court ruling or an individual for whom insolvency procedure has been declared based on:
    - Reimbursement plan.

    - Asset liquidation.
    - Simplified procedure.
  - Receivables are not guaranteed by another person.
  - The debtor is not a related party.
- Specific provisions established by non-banking financial institutions and other legal persons according to their incorporation law.
- Adjustments for impairment set up by credit institutions that apply IFRS and prudential filters set up according to regulations issued by the National Bank of Romania.
- Technical reserves set up by insurance and reinsurance companies, in accordance with their regulatory legal framework, except for the equalisation reserve.
- Risk provisions for transactions carried out on financial markets, in accordance with the rules issued by the Romanian National Securities Commission.
- Provisions and adjustments for impairment of receivables that were acquired by legal persons from credit institutions in order to be collected, for the difference between the receivables value and the amount due to the assignee, provided several conditions are met.
- Reserves from revaluation of fixed assets and land made after 1 January 2004, which are deductible through depreciation or through expenses triggered by assets sold or written off, are taxable at the same time and for the same amount as the tax depreciation deduction (i.e. when the assets are sold or written off).
- In case the level of the subscribed share capital was reduced, the part of the legal reserve corresponding to the reduction that was previously deducted represents an element similar to revenues.

The reduction or cancellation of any provision or reserve deducted from the taxable profit, due to changing the destination of the provision or reserve, distribution towards shareholders in any form, liquidation, spin-off, merger, or any other reason, is included in the taxable revenue and taxed accordingly.

Note that special rules are applicable to credit institutions that are required to apply IFRS rules.

Fiscal losses

Companies are allowed to carry forward fiscal losses declared in the annual profit tax returns for a period of up to five years (for losses incurred prior to 2009) or seven years (for losses incurred after 2009), based on the FIFO method. No related adjustment for inflation is allowed.

Any loss incurred by a PE of a Romanian company located in a non-EU/European Free Trade Association (EFTA) member state or in a country that has a DTT in place with Romania is only deductible for tax purposes from the revenue derived by that PE, and losses can be carried forward only for a period of five years.

For foreign legal persons, carryforward of losses applies only to revenue and expenses attributable to their PE in Romania.

Losses incurred by a company can be transferred within a merger/spin-off operation and can be recovered by the successors, in proportion to the assets and liabilities transferred. The successors of these restructuring operations are able to use such losses during the remaining period.

Carryback of losses is not available in Romania.

Payments to foreign affiliates
Transactions with Romanian-affiliated companies and with non-resident related parties fall within the scope of the investigations regarding compliance with transfer pricing legislation (*see Transfer pricing in the Group taxation section*).

Group taxation

There is no tax consolidation or group taxation in Romania, except for PE consolidation. Members of a group must file separate returns and are taxed separately. Losses incurred by group members cannot be offset against profits made by other members of the group.

Consolidation of PEs
Foreign legal entities that perform economic activities in Romania through several PEs must register one of them as their PE designated to fulfil the fiscal obligations for all the PEs owned.

The revenues and expenses of all the PEs belonging to the same foreign legal entity will be cumulated at the level of the designated PE.

Transfer pricing
Transfer pricing requirements are applicable to transactions between Romanian related parties as well as foreign related parties.

Transactions between related parties should observe the arm's-length principle. If transfer prices are not set at arm's length, the Romanian tax authorities have the right to adjust the taxpayer's revenue or expenses so as to reflect the market value.

Traditional transfer pricing methods (i.e. comparable uncontrolled prices, cost plus, and resale price methods), as well as any other methods that are in line with the OECD Transfer Pricing Guidelines (i.e. transactional net margin and profit split methods), may be used for setting transfer prices.

Transfer pricing documentation
Taxpayers engaged in related party transactions have to prepare and make their transfer pricing documentation file available, irrespective of whether the transfer pricing documentation file has been requested by the Romanian tax authorities.

Transfer pricing audit activity has significantly increased during the past few years, and requests for presenting the transfer pricing documentation file have started to become common practice. We are aware of recent cases where the Romanian tax authorities adjusted the taxable result of local taxpayers in accordance with the applicable regulations.

The content of the transfer pricing documentation file has been approved by order of the president of the National Agency for Tax Administration. The Order is supplemented by the Transfer Pricing Guidelines issued by the OECD and the Code of Conduct on transfer pricing documentation for associated enterprises in the European Union Transfer Pricing Document (EUTPD).

The deadline for presenting the transfer pricing documentation file will not exceed three calendar months, with the possibility of a single extension equal to the period initially established.

Failure to present the transfer pricing documentation file or presenting an incomplete file following two consecutive requests may trigger estimation of transfer prices by the tax authorities on the basis of generally available information.

Advance pricing agreement (APA)
Taxpayers engaged in transactions with related parties have the possibility to apply for an APA. These taxpayers can also schedule a pre-filing meeting to discuss the feasibility of the APA.

The request for an APA is filed together with the relevant documentation and payment evidence of the fee (ranging between EUR 10,000 and EUR 20,000). The required documentation is based on the EUTPD and suggests, up front, the content of the APA.

The term provided by the Fiscal Procedural Code for issuance of an APA is 12 months for unilateral APAs and 18 months for bilateral and multilateral APAs. The APA is issued for a period of up to five years. In exceptional cases, such as long-term agreements, it may be issued for a longer period.

APAs are opposable and binding on the tax authorities as long as there are no material changes in the critical assumptions. In this view, the beneficiaries are obligated to submit an annual report on compliance with the terms and conditions of the agreement.

If taxpayers do not agree with the content of the APA, they can notify the National Agency for Tax Administration within 15 days. In this case, the agreement does not produce any legal effects.

Thin capitalisation
If the company's equity is negative or the debt-to-equity ratio is higher than 3:1, expenses incurred from interest charges and net losses related to foreign exchange differences on long-term loans are fully non-deductible. However, these expenses may be carried forward to the following fiscal years and become fully tax deductible in the year the debt-to-equity ratio becomes lower than or equal to 3:1.

Debt included in the calculation of the debt-to-equity ratio is represented by all such (non-financial institution) loans with a maturity period of over one year.

The equity includes share capital, share/merger premiums, reserves, retained earnings, current year earnings, and other equity elements. Both debt and equity are calculated as the average of values existing at the beginning and at the end of the period for which profit tax is calculated.

Loans with a reimbursement term of longer than one year for which no interest is due according to the contract are also taken into consideration.

The deductibility of interest expenses and net foreign exchange losses related to long-term loans (with a maturity period of over one year) is further subject to the safe harbour rule. The safe harbour rule limits the deductibility of interest on such loans to a maximum of 4% for loans denominated in foreign currency and to the National Bank of Romania's reference interest rate for Romanian leu loans (currently set at 1.75%). Interest expenses recorded over this limit are tax non-deductible and cannot be carried forward in future periods.

Controlled foreign companies (CFCs)
Under Romanian legislation, there are no CFCs rules.

Tax credits and incentives

Foreign tax credits

- Tax credits for taxes paid to a foreign state may be obtained in Romania only if the DTT concluded between Romania and the foreign state applies and only if proper documentation confirming the tax was paid is available.
- A Romanian PE of a legal entity resident in the European Union or the European Economic Area (EEA) that obtains revenues from another EU or EEA member state, taxed both in Romania and in that member state, may claim a tax credit in Romania under the applicable tax law provisions.

Tax exemption for reinvested profits
The profit invested in technological equipment, electronic computers and peripheral equipment, cash registers and machinery, control and invoicing machinery and devices, as well as in software, produced and/or acquired, including on the basis of the financial leasing contracts, and commissioned/used for the purpose of pursuing the economic activity, is tax exempt under the Romanian Fiscal Code. The equipment subject to this incentive cannot be depreciated by using the accelerated method.

Research and development (R&D) incentives
Companies can benefit from an additional deduction of 50% of the eligible expenses for their R&D activities. Moreover, accelerated depreciation may be applied for devices and equipment used in the R&D activity.

In order to benefit from this supplementary deduction, the eligible R&D activities must be applicative research and/or technological development relevant to the taxpayer's activity and must be performed in Romania or in the EU/EEA member states.

The additional deduction for R&D activities is not available if the R&D project's objectives are not met.

Exemption from profit tax for taxpayers engaged exclusively in innovation and R&D activities
Taxpayers that exclusively perform innovation and R&D activities on scientific research and technological development and related activities are exempt from profit tax for the first ten years of activity.

Tax incentives related to professional and technical education
When determining the taxable profit, expenses for organising and developing professional and technical studies as per specific education legislation are considered deductible.

Local tax exemptions for business located in industrial parks

No property tax is due for buildings and constructions located in an industrial park. Also, land within industrial parks is exempt from land tax.

The incentives granted for the set up and development of industrial parks include:

- Local tax exemptions/reductions for immovable assets and land related to the industrial park.
- Other incentives that may be granted by the local tax authorities.
- Development programmes for infrastructure, investments, and equipment endowments granted by local and central public administration, companies, and foreign financial assistance.
- Concessions and structural funds for development.

The companies operating within the industrial park benefit from:

- Various services offered by the park administrator free of charge or with reduced fees.
- Advantageous conditions with regard to location, use of the infrastructure, and communications of the park, with payment in instalments.

Local councils may grant land tax exemptions for owners of land situated in degraded or polluted areas, but not included in the area of improvement, at taxpayer's request and with the approval of the Ministry of Agriculture and Rural Development and the Ministry of Environment.

Land tax exemptions apply from the first day of the month following approval being obtained.

Employment incentives for special categories

For employment of recent graduates, employers can apply for a monthly grant of 1 to 1.5 (depending on the level of educational background) multiplied by the reference social indicator (currently set at RON 500) for each new graduate of a recognised institution for a period of 12 months. Employers benefiting from this incentive are obligated to keep this employment relationship for a time period of at least three years.

Moreover, employers may also be exempt for these 12 months from paying the unemployment contribution due for these graduates. In addition, grants amounting to the social security contributions for two years for recent graduates are available if they are still employed by the company for two additional years after the first three years pass.

The same incentives apply for the employment of recent graduates with disabilities, except that the period for which the exemption from contributions to the unemployment fund and the monthly grants apply is extended to 18 months.

Employers can also apply for exemption from unemployment fund contributions and for a monthly grant equal to the reference social indicator for each unemployed person with an age exceeding 45 years, or for each such person who is the sole family supporter. This monthly grant is available for a period of 12 months. Employers benefiting from this incentive have the obligation to keep this employment relationship for at least two years.

Employers running professional training programmes for their employees may apply for a refund of 50% of their expenses for up to 20% of their workforce, subject to certain conditions and limitations.

Other incentives granted to taxpayers

For justified claims of the taxpayers, the tax authorities may grant incentives for the payment of taxes, such as the rescheduling of tax payments due.

Rescheduling of tax payment obligations may be granted by the tax authorities to individuals and legal entities upon request. The time-frame for the rescheduling is a maximum of five years for taxpayers with tax liabilities below or equal to RON 300 million and up to seven years for taxpayers with liabilities higher than RON 300 million. The time-frame is set after taking into consideration the taxpayer's financial situation and the total tax burden.

In order to benefit from the rescheduling of tax payment obligations, taxpayers must meet certain conditions and also provide a guarantee that covers the rescheduled liabilities, interest, and also a supplementary percentage of the rescheduled liabilities, depending on the duration of the rescheduling time-frame.

Withholding taxes

Domestic dividend tax

The dividend tax rate for the dividend distribution between Romanian legal entities is 5%. The tax is eliminated if there is a shareholding percentage of a minimum of 10% for an uninterrupted period of at least one year.

WHT for non-residents

The provisions of the Parent-Subsidiary Directive (2011/96) and of the Interest and Royalties Directive (2003/49) as transposed into the domestic fiscal legislation apply only to EU member states, with the member states of the European Free Trade Association (Iceland, Norway, and Lichtenstein) being excluded.

All income obtained by non-residents from Romanian taxpayers for the provision of services rendered in Romania or abroad is subject to 16% WHT rate in Romania.

Non-resident companies not operating through a PE are subject to a 16% WHT on revenue sourced in Romania, such as interest, royalties, revenue from services, commissions, and revenue derived from liquidation of a Romanian legal entity.

The tax rate for dividend revenues derived by non-residents from Romania is 5%.

Certain specific provisions and exceptions apply to non-resident WHT, as follows:

- A 50% WHT applies to payments made by Romanian residents (e.g. dividends, interest, royalties, commissions, services) to non-residents in countries that do not have an exchange of information agreement concluded with Romania, regardless of whether the beneficiary of the income is resident of a state with which Romania has concluded a DTT or not. However, this WHT is applicable only to the extent such payments result from artificial transactions.
- As Romania is an EU member state, the provisions of the Parent-Subsidiary Directive apply. Consequently, dividends paid by Romanian companies to companies

resident in one of the EU/EEA member states are exempt from WHT if the dividend beneficiary has held, at the time of distribution, a minimum of 10% of the shares of the Romanian company for an uninterrupted period of at least one year.
- Dividend and interest income obtained from Romania by EEA registered pension funds is exempt from WHT.
- Romania has implemented the Interest and Royalties Directive. Payments of interest and royalties made by a Romanian company to another company resident in an EU member state are tax exempt from WHT if the non-resident company held, for an uninterrupted period of at least two years, at least 25% of the share capital of the Romanian company prior to the time of payment.

In order to apply EU legislation, non-resident recipients of the income are required to present a certificate of tax residence and a declaration attesting to compliance with the necessary requirements provided by the European Directives.

The Romanian Fiscal Code incorporates the recent amendments to the European Parent-Subsidiary Directive no. 2011/96/EU. The legislation introduces the anti-abuse rule for preventing unlawful tax practices used to obtain tax benefits contrary to the Directive's principles. Also, dividends received by a Romanian legal entity from a foreign legal entity under certain conditions will not be taxed as long as those dividends are not treated as deductible expenses by the paying subsidiary.

The following categories of income derived by non-residents from Romania are exempt from WHT:

- Interest income and income derived from the sale of debt instruments issued by the Romanian authorities (e.g. government bonds).
- Revenue from international transportation and accessory services.
- Prizes obtained by individual non-residents from artistic, cultural, or sport festivals/competitions paid from public funds.
- Income obtained from a partnership constituted in Romania by a non-resident company (the related profits are subject to corporate profit tax).

Measures are in place for the purpose of eliminating the discriminatory treatment applied to non-residents deriving interest revenues and/or revenues from freelancing activities in Romania that are subject to WHT applied to the gross value of the income.

Legal entities/individuals resident in member states of the European Union or the Economic European Area deriving interest revenues and/or revenues from freelancing activities in Romania may opt for the regularisation of the WHT by way of declaring and paying in Romania the corporate income tax/income tax related to the revenues obtained.

The tax withheld and paid is deemed as an advance payment in connection with the corporate income tax/income tax.

The possibility for regularisation of the WHT is only applied in the case of revenues derived from Romania by residents of member states of the European Union or the European Economic Area, provided that a Convention for the Avoidance of Double Taxation or a legal instrument for the exchange of information is concluded between Romania and those states.

WHT rates for companies, and rates under some DTTs

	WHT (%)			
Recipient	**Dividends**	**Interest**	**Royalties**	**Commissions**
Non-treaty	5	16	16	16
EU - Parent-Subsidiary Directive	0 (53)	N/A	N/A	N/A
EU - Interest and Royalties Directive	N/A	0 (53)	0 (53)	N/A
Treaty:				
Albania	10/15 (1)	10	15	15
Algeria	15	15	15	N/A
Armenia	5/10 (1)	10	10	15
Australia	5/15 (2)	10	10	N/A
Austria	0/5 (1)	0/3 (3)	3	N/A
Azerbaijan	5/10 (1)	8	10	N/A
Bangladesh	10/15 (4)	10	10	N/A
Belarus	10	10	15	N/A
Belgium	5/15 (1)	10	5	5
Bosnia and Herzegovina (5)	5	7.5	10	10
Bulgaria	5	5	5	N/A
Canada	5/15 (4)	0/10 (6)	5/10 (7)	N/A
China, People’s Republic of	10	10	7	N/A
Croatia	5	10	10	N/A
Cyprus	10	10	5	5
Czech Republic	10	7	10	N/A
Denmark	10/15 (1)	10	10	4
Ecuador	15	10	10	10
Egypt	10	15	15	15 (8)
Estonia	10	10	10	2
Ethiopia	10	15	15	N/A
Finland	5	5	2.5/5 (9)	N/A
France	10	10	10	N/A
Georgia	8	10	5	5
Germany	5/15 (4)	0/3 (10)	3	N/A
Greece	20	10	5/7 (11)	5
Hong Kong	0/5 (55)	0/3 (56)	3	N/A
Hungary	5/15 (12)	15	10	5
Iceland	5/10 (13)	3	5	N/A
India	10	10	10	N/A
Indonesia	12.5/15 (14)	12.5	12.5/15 (15)	10
Iran	10	8	10	N/A
Ireland	3	0/3 (16)	0/3 (17)	N/A
Israel	15	5/10 (18)	10	N/A
Italy	10	0/10 (19)	10	5
Japan	10	10	10/15 (20)	N/A
Jordan	15	12.5	15	15
Kazakhstan	10	10	10	10
Korea, Democratic People’s Republic	10	10	10	N/A
Korea, Republic of	7/10 (13)	0/10 (21)	7/10 (22)	10
Kuwait	0/1 (23)	0/1 (24)	20	N/A
Latvia	10	10	10	2
Lebanon	5	5	5	N/A

	WHT (%)			
Recipient	**Dividends**	**Interest**	**Royalties**	**Commissions**
Lithuania	10	10	10	2
Luxembourg	5/15 (13)	0/10 (25)	10	5
Macedonia	5	10	10	N/A
Malaysia	10	0/15 (26)	12	N/A
Malta	5	5	5	10
Mexico	10	15	15	N/A
Moldova	10	10	10/15 (27)	N/A
Montenegro (37)	10	10	10	10
Morocco	10	10	10	10
Namibia	15	15	15	N/A
Netherlands	0/5/15 (28)	0/3 (29)	0/3 (30)	N/A
Nigeria	12.5	12.5	12.5	N/A
Norway	5/10 (4)	5	5	4
Pakistan	10	10	12.5	10
Philippines	10/15 (31)	10/15 (32)	10/15/25 (33)	N/A
Poland	5/15 (1)	10	10	0/10 (34)
Portugal	10/15 (35)	0/10 (19)	10	N/A
Qatar	3	3	5	3
Russia	15	15	10	N/A
San Marino	0/5/10 (36)	3	3	N/A
Saudi Arabia	5	5	10	N/A
Serbia (37)	10	10	10	10
Singapore	5	5	5	N/A
Slovakia	10	10	10/15 (38)	N/A
Slovenia	5	5	5	N/A
South Africa	15	15	15	N/A
Spain	10/15 (39)	10	10	5
Sri Lanka	15	15	15	N/A
Sudan	5/10 (1)	5	5	N/A
Sweden	10	10	10	10
Switzerland	0/15 (40)	0/5 (41)	0/10 (42)	N/A
Syria	5/15 (39)	10	12	N/A
Tajikistan	5/10 (39)	10	10	N/A
Thailand	15/20 (43)	10/20/25 (44)	15	10
Tunisia	12	10	12	4
Turkey	15	0/10 (45)	10	N/A
Turkmenistan	10	10	15	N/A
Ukraine	10/15 (13)	0/10 (46)	10/15 (47)	N/A
United Arab Emirates	0/3 (48)	0/3 (49)	0/3 (50)	3
United Kingdom	10/15 (51)	10	10/15 (52)	12.5
United States	10	10	10/15 (20)	N/A
Uruguay	5/10 (54)	10	10	N/A
Uzbekistan	10	10	10	N/A
Vietnam	15	10	15	N/A
Zambia	10	10	15	N/A

Notes

1. The lower rate applies to a participation of at least 25%.

2. The lower rate applies to a participation of at least 10% where the dividends are paid out of profits that have been subject to a normal rate of company tax.
3. The lower interest rate applies if one of the following requirements is fulfilled:
   - The payer or the recipient of the interest is the government of a contracting state itself, a local authority or an administrative-territorial unit thereof, or the Central Bank of a contracting state.
   - The interest is paid in respect of a loan granted, approved, guaranteed, of insured by the government of a contracting state, the Central Bank of a contracting state, or any financial institution owned or controlled by the government of a contracting state.
   - The interest is paid in respect of a loan granted by a bank or any other financial institution (including an insurance company).
   - The interest is paid on a loan made for a period of more than two years.
   - The interest is paid in connection with the sale on credit of any industrial, commercial, or scientific equipment.
4. The lower rate applies to a participation of at least 10%.
5. The treaty concluded with the former Socialist Republic of Yugoslavia (Socialist republic) signed in 1986.
6. The zero rate applies to interest paid by public bodies.
7. The lower rate applies to copyright royalties (excluding films), computer software, patents, and know-how.
8. The 15% withheld at source in Romania on the commission paid to an Egyptian resident shall be given as a credit to be deducted from the income tax charged in Egypt.
9. The lower rate applies to royalties for computer software and industrial, commercial, or scientific equipment.
10. The lower rate applies if and as long as Germany, under its domestic law, does not levy WHT on interest paid to a resident of Romania.
11. The higher rate applies to industrial royalties.
12. The lower rate applies to a participation of at least 40%.
13. The lower rate applies if the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends.
14. The lower rate applies if the recipient is a company that directly owns at least 25% of the capital of the company paying the dividends.
15. The lower rate applies for royalties that consist of payments of any kind received as a consideration for the use of, or the right to use, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial, or scientific experience, or for the use of, or the right to use, industrial, commercial, or scientific equipment, cinematograph films, or tapes for television or broadcasting. The higher rate applies if the royalties consist of payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, or scientific work.
16. The lower rate applies if such recipient is the beneficial owner and if such interest is paid:
   - in connection with the sale on credit of any industrial, commercial, or scientific equipment
   - on any loan of whatever kind granted by a bank or other financial institution (including an insurance company)
   - on any loan of whatever kind made for a period of more than two years, or
   - on any debt-claim of whatever kind guaranteed, insured, or directly or indirectly financed by or on behalf of the government of either contracting state.
17. The lower interest rate applies if the royalties are beneficially owned by a resident of a contracting state and refer to the right to use any copyright of literary, artistic, or scientific work, including motion pictures or films, recordings on tape or other media used for radio or television broadcasting, or other means of reproduction or transmission.
18. The lower rate applies to interest paid in connection with the sale on credit of any industrial or scientific equipment, of any merchandise by one enterprise to another enterprise, or on a loan granted by banks.
19. The lower rate applies to interest paid by public bodies.
20. The lower rate applies for cultural royalties; the higher rate applies for industrial royalties.
21. The lower rate applies for interest arising in a contracting state and derived by the government of the other contracting state, including local authorities thereof and administrative-territorial units thereof, the Central Bank of that other contracting state or any financial institution performing functions of a governmental nature, or by any resident of the other Contracting State with respect to debt claims guaranteed or indirectly financed by the government of that other contracting state, including local authorities thereof and administrative-territorial units thereof, the Central Bank of that other contracting state or any financial institution performing functions of a governmental nature.
22. The lower rate applies for royalties related to the right to use any patent, trademark, design or model plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial, or scientific experience.
23. The lower rate applies if the beneficial owner of the dividends is the government of Kuwait or a company in whose capital the government directly or indirectly owns at least 51% and the remaining capital of such company is owned by residents of Kuwait.
24. The lower rate applies if the beneficial owner of the interest is a company, including a bank or a financial institution, that is a resident of Kuwait and in whose capital the government directly or indirectly owns at least 25% and the remaining capital of such company is owned by residents of Kuwait.
25. Interest shall not be taxed in the state where it arises if the indebtedness on which such interest is paid, guaranteed, insured, or financed by the other state or by a financial institution that is a resident of that other state.

26. The lower rate applies for interest to which a resident of Romania is beneficially entitled if the loan or other indebtedness in respect of which the interest is paid is an approved loan or a long-term loan.
27. The lower rate applies for royalties for the use of, or the right to use, any copyright, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, information concerning industrial, commercial, or scientific experience.
28. 0% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends; 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends; 15% of the gross amount of the dividends in all other cases.
29. The lower rate applies if, and as long as, the Netherlands does not levy a WHT on interest/royalties paid to a resident of Romania. Interest paid to a bank or financial institution (including an insurance company) and interest paid on a loan made for a period of more than two years are exempt.
30. The lower rate applies if, and as long as, the Netherlands does not levy a WHT on interest/royalties paid to a resident of Romania.
31. The lower rate applies if the recipient is a company (excluding partnership) and during the part of the paying corporation's taxable year that precedes the date of payment of the dividends and during the whole of its prior taxable year (if any) at least 25% of the outstanding shares of the voting stock of the paying corporation was owned by the recipient corporation.
32. The lower rate applies if such interest is paid:
    - in connection with the sale on credit of any industrial, commercial, or scientific machine or equipment, or similar installation
    - on any loan of whatever kind granted by a bank, or
    - in respect of public issues of bonds, debentures, or similar obligations.
33. 10% of the gross amount of the royalties, where the royalties are paid by an enterprise registered with the Romanian Agency for Development, in the case of Romania and with the Board of Investments, in the case of the Philippines and engaged in preferred pioneer areas of activities; 15% of the gross amount of the royalties, in respect of cinematographic films and tapes for television or broadcasting; 25% of the gross amount of the royalties, in all other cases.
34. As long as Poland does not introduce in its domestic legislation the WHT of commissions paid to non-residents, the provisions of paragraph 2 of Article 13 are not applying and the commissions are taxable only in the residence country of the beneficial owner of the commission.
35. The lower rate applies if the beneficial owner of the dividends is a company that, for an uninterrupted period of two years prior to the payment of the dividends, directly owns at least 25% of the capital stock (capital social) of the company paying the dividends.
36. The lower rate applies to participations of at least 50%; the 5% rate applies to participations of at least 10%.
37. According to the treaty concluded between Romania and the former Yugoslavia (Federal Republic of). This is applicable in Serbia and Montenegro.
38. The lower rate applies to royalties for the use of, or the right to use, any patent, trademark, design or model, plan, secret formula or process, or industrial, commercial, or scientific equipment, or for information concerning, industrial, commercial, or scientific experience.
39. The lower rate applies if the beneficial owner is a company that directly holds at least 25% of the capital of the company paying the dividends.
40. The lower rate applies if the dividends are beneficially owned by a resident of the other contracting state that is:
    - a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends
    - a pension fund or other similar institution providing pension schemes, or
    - the government of that other state, a political subdivision, local authority, or administrative-territorial unit thereof, or the Central Bank of that other state.
41. The lower rate applies to the extent that such interest is paid:
    - in respect of a loan, debt-claim, or credit that is owed to, or made, provided, guaranteed, or insured by that state or a political subdivision, local authority, administrative-territorial unit, or export financing institution thereof, or
    - by a company to a company of the other contracting state where such company is affiliated with the company paying the interest by a direct minimum holding of 25% in the capital or where both companies are held by a third company that has directly a minimum holding of 25%, both in the capital of the first company and in the capital of the second company.
42. The lower rate applies as long as the Swiss Confederation, in accordance with its domestic legislation, does not levy a WHT on royalties paid to non-residents.
43. The lower rate applies if the company paying the dividends engages in an industrial undertaking and the recipient company, excluding partnership, directly holds at least 25% of the capital of the former company.
44. 10% of the gross amount of the interest if it is received by any financial institution (including an insurance company); 20% of the gross amount of the interest in the case of interest on credit sale; 25% of the gross amount of the interest in other cases.
45. Interest arising in Romania and paid to government of Turkey or to the Central Bank of Turkey shall be exempt from Romanian tax.
46. Interest arising in a contracting state shall be exempt from tax in that state if it is derived and beneficially owned by the government of the other contracting state, a local authority or an administrative-territorial unit thereof, or any agency or bank unit or institution of that government,

a local authority or an administrative-territorial unit, or if the debt-claims of a resident of the other contracting state are warranted, insured, or directly or indirectly financed by a financial institution wholly owned by the government of the other contracting state.
47. The lower rate applies for use or lease of any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial, or scientific equipment.
48. 0% if the beneficial owner of the dividends is (i) the government of any contracting state or any governmental institutions or entity thereof or (ii) a company that is a resident of either contracting state and the capital of which is directly or indirectly owned (at least 25%) by the government or governmental institutions of either contracting states.
49. Interest arising in Romania and paid to the government of the United Arab Emirates or its financial institutions shall be exempted from Romanian taxes.
50. The lower rate applies for approved industrial royalties.
51. The lower rate applies if the beneficial owner is a company that directly or indirectly controls at least 25% of the voting power in the company paying the dividends.
52. The lower rate applies in the case of royalties received as consideration for the use of, or the right to use, any copyright of literary, dramatic, musical, artistic, or scientific work (including cinematograph films and films or tapes for radio or television broadcasting).
53. If certain conditions are met.
54. 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that directly holds at least 25% of the capital of the company paying the dividends; 10% of the gross amount of the dividends in all other cases.
55. The lower rate applies to a participation of at least 15%.
56. If and as long as the Hong Kong Special Administrative Region levies no WHT on interest, the percentage shall be reduced to zero. The competent authority of the Hong Kong Special Administrative Region shall inform the competent authority of Romania of any changes made in the internal legislation of the Hong Kong Special Administrative Region regarding the imposition of a WHT on interest.

In order to apply the provisions of the relevant DTT, the non-resident recipient of the income should provide to the Romanian paying company a tax residency certificate attesting its tax residency for the purpose of the DTT.

If the tax rates prescribed by domestic legislation differ from those prescribed by the DTT, then the most favourable rate will apply. The tax rate applicable to income obtained by a resident of an EU member state in Romania is the most favourable rate provided under either domestic legislation, the EU Directives transposed into domestic legislation, or the DTT.

Tax administration

Taxable period

The fiscal year is the calendar year or the period during which the entity existed if it was set up or ceased to exist during that calendar year.

Taxpayers with a financial year different from the calendar year have the option to align the tax year to the financial year. The first amended tax year will start on 1 January and will end on the last day of the amended tax year.

The period in which a taxpayer has to communicate to the territorial tax bodies the intention of changing the fiscal year period is within 15 days as of the beginning of the new fiscal year.

Tax returns

Taxpayers (except for non-profit organisations and taxpayers deriving most of their income from agriculture) must submit the profit tax returns by the 25th day of the first month following the first, second, and third quarters. The annual profit tax return is due by 25 March of the following year.

Non-profit organisations and taxpayers that obtain income mainly from agricultural activities have to declare and pay annual profit tax by 25 February of the year following the reporting period.

Taxpayers (except those specifically mentioned by law) may opt to declare and pay the annual profit tax by making quarterly advance payments (*see Payment of tax below*). The decision to take this option has to be communicated by 31 January of the fiscal year in which the taxpayer wants to apply the option and it has to be maintained for at least two consecutive years.

Large and medium-sized taxpayers have the obligation to submit fiscal forms online, using the *www.e-guvernare.ro* portal. The electronic signature of the tax returns can only be made using a qualified certificate issued by a legally accredited certification services provider. Other categories of taxpayers may file their tax return electronically as an alternative way of compliance.

Taxpayers required to withhold tax, with the exception of salary payers, are required to submit a statement to the tax authorities regarding the tax withheld for each beneficiary of income. This statement must be submitted for the previous year by the last day of February of the current fiscal year and refers to the tax withheld and paid by Romanian residents on income obtained in Romania by non-resident beneficiaries.

If taxpayers have failed to submit their tax returns, the tax authorities will assess, by way of default, all the tax obligations found in the taxpayer's fiscal liability records for each fiscal period in which tax returns were not submitted.

Payment of tax

Taxpayers (except for banks, non-profit organisations, taxpayers deriving most of their income from agriculture) must pay the quarterly profit tax by the 25th day of the first month following the first, second, and third quarters. The annual profit tax has to be paid by 25 March of the following year.

Banks and branches of foreign banks in Romania are required to apply the system of advance quarterly profit tax payments. Other taxpayers, with some exceptions mentioned by law, may use this system as an alternative reporting and payment procedure.

The anticipated quarterly payments are calculated as a quarter of the previous year's profit tax increased by the consumer price index (CPI) inflation rate, with the payments due by the 25th day of the month following the end of the quarter. The CPI inflation rate is published by Order of the Ministry of Finance by 15 April of the year for which the advance payments are made. For 2017, the CPI inflation rate is 101.4%. If taxpayers incur fiscal losses in the first year of the application of the option, the advance profit tax payments are calculated by applying the profit tax rate to the accounting profit for the period in which tax payments are made in advance.

Non-profit organisations and taxpayers that obtain income mainly from crop production have to pay annual profit tax by 25 February of the following year.

Newly established banks and branches of foreign banks in Romania (i.e. without a previous year history) or those that incurred fiscal losses in the previous year make quarterly advance payments at the level of the amount resulted from applying the profit tax rate on the accounting profit for the period for which the advance payment is made.

The deadline for declaring and paying the profit tax due for the last quarter of the fiscal year by taxpayers applying the advance payments system, whereby quarterly payments are determined as one-fourth of the profit tax due for the preceding year, has been amended. For the last quarter of the fiscal year, the deadline for the obligation to declare and make advance payment will be the 25th day of the last month of that fiscal year.

Late-payment penalty

The late-payment interest rate is 0.02% for each day of delay. Subsequent late-payment penalties also apply.

The penalty is set at 0.01% per day of delay. This penalty does not apply to main tax obligations not declared by the taxpayer and is established by a tax inspection authority decision.

A non-declaration penalty is applicable, at 0.08% per day, starting from the day following the due date until the date of payment. This penalty applies to the main tax obligations declared incorrectly or not declared by the taxpayer and is established by a tax inspection authority decision.

Non-resident companies

Non-resident companies deriving income from the sale of real estate located in Romania or from the sale of shares held in a Romanian company (except if participation exemption applies) are subject to a 16% profit tax in Romania and are liable to declare and pay such tax. Non-residents may appoint a tax agent/ representative to fulfil this requirement. However, if the buyer is a Romanian company or a Romanian PE of a non-resident company, the obligation to declare and pay the annual profit tax rests with the buyer.

In case of income from sale/transfer of shares held by a non-resident in a Romanian entity, the obligation of the buyer to withhold the tax (in case the buyer is a Romanian entity) has been eliminated.

For capital gains tax declaration and payment, the Romanian legislation requires the following tax returns to be submitted:

- Quarterly statements, starting the 25th day of the month following the quarter in which the non-resident first earned capital gains taxable in Romania.
- An annual profit tax return.

The quarterly statements and annual return must be submitted during the entire period in which the non-resident is registered with the Romanian tax authorities, even if, throughout that period, it no longer carries out transactions generating taxable revenue in Romania.

Tax audit process

Tax inspections can be carried out in respect of all legal persons, irrespective of their organisational structure, that are bound to determine, withhold, and pay taxes, duties, contributions, and other amounts owed to the general consolidated budget.

The tax authorities may not inspect the same taxes for a period previously inspected unless additional data is obtained of which the tax inspectors were unaware when carrying out the first inspection or calculation errors were made.

Prior to the tax inspection commencing, the tax authorities must notify the taxpayer in writing, by sending a tax inspection notice, except in the cases explicitly laid down in the Fiscal Procedural Code.

Tax inspections are generally carried out at the taxpayer's business premises and may not exceed a six-month period in the case of large taxpayers or three months for other taxpayers. For taxpayers that have secondary offices, the tax inspections may not exceed six months. The tax authorities may suspend the tax inspection if they deem it necessary for the clarification of the taxpayer's tax status.

Before finalisation of the tax inspection, the tax authorities are required to inform the taxpayer of their findings and the tax consequences and allow the taxpayer to express its point of view, within three days from the ending of the tax inspection. Upon completion of the tax inspection, the authorities conclude a tax inspection report, based on which the tax assessment is made, which in turn is to be communicated to the taxpayer within 30 days from the ending of the tax inspection.

Statute of limitations

As a general rule, the statute of limitation is five years and it begins to run on 1 July of the year following that for which the tax obligation is for, if the law does not dispose otherwise. However, the statute can be suspended for the duration of a tax inspection but will recommence after the inspection has been completed.

Topics of focus for tax authorities

Areas of focus during tax audits include:

- VAT reimbursable positions.
- Deductibility of service expenses.
- Transfer pricing.
- Transactions with tax havens.

Other issues

Mergers and acquisitions

Mergers, spin-offs, transfers of assets, and exchanges of shares between two Romanian companies should not trigger capital gains tax.

In the case of a relocation of the registered office of a European Company (SE) and a European Cooperative Society (SCE) from Romania to another EU member state, no tax will apply on the difference between the market value of the transferred assets and liabilities and their fiscal value, if certain conditions are met. There will also be no tax on such movements at the shareholder level. Therefore, a tax basis step-up may be achieved in the case of Romanian shareholders.

If a Romanian company has a PE in another EU member state, and the Romanian company is dissolved as a result of a cross-border reorganisation, the Romanian tax authorities will not have the right to tax the PE.

There are provisions for the recovery of fiscal losses in the case of restructuring operations carried out by Romanian legal entities and those involving Romanian legal entities and residents of other EU member states. Herewith, the right to recover fiscal losses by legal entities that are successors of merger or spin-off operations is regulated.

The recovery is correlated with the assets and liabilities transferred according to the merger/spin-off project. Also, some amendments are provided to the Romanian Company Law simplifying and, in some cases, reducing the time-frame for performing the legal steps that have to be followed in case of mergers and spin-offs.

For taxpayers going through a restructuring process, the right to carry forward non-deductible interest expenses and net foreign exchange losses is split between the beneficiary and the assignor in proportion to the assets and liabilities transferred.

The amendments applicable to domestic mergers, total or partial spin-offs, transfer of assets, and exchange of shares have been harmonised with those applicable to similar cross-border transactions. The neutrality of in-kind contributions to a company's equity has been eliminated, except for cases involving a transfer of a going concern. Transfers carried out during a partial spin-off will not be subject to profit tax only if a transfer of a going concern takes place and the transferor maintains at least one line of activity.

EU State Aid investigation

There are no investigations lunched by European Commission on whether Romania granted selective tax advantages to certain companies in the form of state aid.

Measures taken by Romania in respect to base erosion and profit shifting (BEPS)

Anti-hybrid and general anti-avoidance rules (GAAR) related to BEPS Action 2 and Action 6

The Romanian Fiscal Code incorporates the anti-hybrid provisions and the GAAR of the European Directive no. 2011/96/EU, on the common system of taxation applicable in the case of parent companies and subsidiaries of different member states, with its amendments.

The anti-hybrid rule states that income received by a Romanian entity from its qualifying subsidiary will not be tax exempt if such dividend was treated as a deductible expense by the subsidiary.

The GAAR states that member states shall not grant the benefits of the Directive to an arrangement or a series of arrangements that, having been put into place for the main purpose of obtaining a tax advantage that defeats the object or purpose of the Directive, are not genuine having regard to all relevant facts and circumstances.

Tightened restrictions on interest deductibility related to BEPS Action 4

The restrictions on the deductibility of interest expenses and foreign exchange losses for non-bank loans have been tightened:

- The deductible rate of loan interest has been reduced from 6% to 4%.
- For purposes of calculating the debt-to-equity ratio, loans with a repayment term of longer than one year for which no interest is due under the loan instrument now will be taken into consideration.

Substance over form requirements related to BEPS Action 5 and Action 6

A definition of a cross-border artificial transaction was introduced since 2016 in the Romanian Fiscal Code as well as the possibility of a cross-border transaction or a group of cross-border transactions being reclassified by the tax authorities so as to reflect their true nature. The Romanian anti-abuse rules in the Romanian Fiscal Code define 'artificial cross-border transaction' as a transaction or series of transactions without economic substance that normally would not be used as part of normal business practices and is intended to avoid tax or obtain tax benefits that otherwise could not be achieved. The anti-abuse rules provide that for such transactions advantage of DTTs cannot be taken.

Also, a 50% WHT rate can apply for income paid in a state with which Romania does not have a legal instrument in place for the exchange of information. Specifically, the 50% rate will apply only in situations where the income is paid as part of a transaction deemed artificial.

Transfer pricing related to BEPS Action 13
Taxpayers engaged in related-party transactions have to prepare and make their transfer pricing documentation file available based on certain materiality thresholds.

Large taxpayers that carry out inter-company transactions equal to or above certain thresholds are required to prepare transfer pricing documentation on an annual basis.

The rest of large taxpayers, and also the small and medium-sized taxpayers that carry out inter-company transactions equal to or above certain limits, have an obligation to prepare transfer pricing documentation where a written request is made by the tax inspector during a tax audit. The deadline for presenting the transfer pricing documentation is between 30 and 60 calendar days. A one-off extension of no more than 30 calendar days is allowed.

The content of the transfer pricing documentation file includes the elements referred to in the latest version of 'Chapter V: Documentation of the OECD Transfer Pricing Guidelines'.

Intergovernmental agreements (IGAs)
A Model 1 IGA is treated as 'in effect' by the United States (US) Treasury as of 2 April 2014.

The Model 1 IGA between the US and Romanian governments was signed on 28 May 2015 in order to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (FATCA). The agreement will enhance transparency between the two countries in the field of taxation, promote growing cooperation in combating tax evasion practises, simplify implementation of financial information transmission, and increase legal certainty for financial institutions in Romania.

The agreement between Romania and the United States to improve international tax compliance and implementation of FATCA was ratified by the Romanian Parliament and published in the Official Gazette on 30 October 2015.

Common Reporting Standard (CRS)
The status regarding the implementation of the CRS, as developed by the OECD, is the following:

- On 29 October 2014, the Romanian Minister of Finance signed the Declaration to comply with the provisions of the Multilateral Competent Authority Agreement (MCAA) on Automatic Exchange of Financial Account Information.
- On 1 November 2014, the Convention on Mutual Administrative Assistance in Tax Matters was enforced in Romania.

- In April 2016, the Romania government ratified the MCAA.

These two official documents are part of the process of implementing the CRS issued in February 2014 by the OECD. Further on, Romania will sign bilateral agreements with other states with which the exchange of financial account information will be performed. At this stage, no such agreements have been signed.

Based on the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information, Romania is expected to implement the first automatic information exchange by September 2017.

In addition, Romania transposed the provisions of Directive 2011/16/EU as amended and supplemented by Directive 2014/107/EU regarding the mandatory automatic exchange of information in the field of taxation. As such, Romania introduced in the national legislation a requirement for financial institutions to implement reporting and due diligence rules, which are fully consistent with the CRS developed by the OECD.

Slovak Republic

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Significant developments

A recent amendment to the tax legislation in the Slovak Republic (Slovakia) includes, *inter alia*, the following measures applicable from 1 January 2017:

- Decrease of the corporate income tax (CIT) rate to 21%.
- Taxation of certain dividend payments.
- Cancellation of 'tax licence' / minimum CIT payments (effective as of 1 January 2018).
- Clarification with respect to transfer pricing documentation and advance pricing agreements (APAs).

Note that the legislation is expected to continue to be subject to frequent amendments and new official interpretations; consequently, it is advisable to contact PwC Bratislava for up-to-date information.

Taxes on corporate income

As a member state of the Organisation for Economic Co-operation and Development (OECD), the Slovak Republic's system of corporate taxation generally follows OECD guidelines and principles.

The CIT applies to the profits generated by all companies, including branches of foreign companies.

Slovak tax residents are taxed on their worldwide income. Slovak tax residents may utilise a method of elimination of double taxation if their income is taxed abroad. The exemption or credit method can be used to eliminate the double taxation, depending on the relevant double tax treaty (DTT) and the type of income.

Slovak tax non-residents are taxable in Slovakia on their Slovak-source income only. Slovak-source income is defined by local tax law and includes, *inter alia*, the business income of permanent establishments (PEs) and passive types of income, such as royalties, interest, and income from disposal of assets.

With effect from 1 January 2017, Slovakia has a flat CIT rate of 21% (previously 22%).

Withholding tax (WHT) of 7% may apply to certain taxable dividend payments to individuals.

Further, some income, such as interest or royalties, may be subject to a 19% WHT rate. A specific 35% WHT rate applies for payments to taxpayers from non-treaty jurisdictions (i.e. where no DTT or tax information exchange agreement [TIEA] exists), including payments of taxable dividends.

Tax licence (minimum tax)

A tax licence is applicable to companies and represents a minimum lump sum tax after deduction of tax relief and credit of taxes paid abroad. The respective amounts range from 480 euros (EUR) to EUR 2,880, depending on the entity's turnover and whether the entity is a value-added tax (VAT) payer. The tax licence should be paid regardless of the value of the reported tax base or the tax loss incurred; however, it should be possible to deduct it from future tax liability in the subsequent three years. An entity may not be liable to pay the tax licence only in exceptional cases (e.g. in the first year of its existence, during its liquidation, during bankruptcy, if it operates a subsidised workshop).

Tax licences will be abolished with effect from 1 January 2018.

Local income taxes

Slovakia does not have local, state, or provincial CIT.

Corporate residence

A company is a tax resident in the Slovak Republic if it has its registered seat or effective place of management in the Slovak Republic.

Permanent establishment (PE)

A foreign company may create a PE if (i) its employees (or persons working for it) are present and providing services in the Slovak Republic on behalf of the foreign company where this activity is carried out through a permanent place of business, (ii) the employees conclude and negotiate agreements on the foreign entity's behalf, or (iii) the foreign entity establishes a building site within the territory of the Slovak Republic.

An activity performed in the Slovak Republic in the form of providing services for more than six months may also be considered a PE, irrespective of the existence of the fixed place.

Other taxes

Value-added tax (VAT)

A basic VAT rate of 20% applies to all taxable supplies, with certain exceptions. Certain medical products, printed materials, and 'basic goods' (e.g. milk, butter, meat) have a VAT rate of 10%.

Exempt supplies without credit entitlement include postal services, financial and insurance services, education, public radio and TV broadcasting services, health and social services, the transfer and leasing of real estate (with exceptions), and lottery services. There are also other VAT-exempt transactions without credit entitlement, as well as exempt taxable supplies with credit entitlement.

A special regime for the payment of VAT by a supplier based on the receipt of a payment for supplied goods or services ('cash accounting') is also available. This regime will postpone the obligation to pay VAT until the customer pays the supplier for the supply. This cash accounting scheme can only be used by Slovak-established entities (i.e. with a seat, place of business, or fixed establishment in Slovakia) and if they meet certain conditions.

Reverse-charge mechanism applies for local supplies of any type of goods by foreign persons to a Slovak-established entrepreneur. Foreign companies that only carry out local supplies in Slovakia subject to the local reverse-charge mechanism will not be obligated to register for Slovak VAT. If they are already registered for Slovak VAT, they will not be entitled to deduct input VAT via a Slovak VAT return if this input VAT relates only to the supplies where the reverse-charge mechanism applies. Foreign companies will be able to claim Slovak input VAT using the VAT refund procedure, provided they meet the stipulated conditions.

There is an obligation for the VAT refund's requestors from another European Union (EU) member state and from third-party countries who need to notify the Slovak Tax Office in the case when they receive a credit note for a decrease in the price from their supplier after the VAT has already been paid to the applicant and they have to repay the relevant amount of VAT to the Tax Office. The foreign companies from non-EU countries are able to apply for a VAT refund on a three-month basis under the same conditions as foreign companies from EU countries.

Local reverse-charge applies for the supplies of construction work, supply of building or parts of buildings under construction, and supply of goods with assembly and installation where assembly and installation can be considered as construction work. For such supplies, the supplier will not charge VAT on the issued invoice and the recipient (VAT payer) must apply a reverse-charge.

VAT grouping is possible if certain conditions are met.

Customs duties

Goods imported from non-EU countries are subject to import customs clearance. Goods exported from the EU customs territory have to be declared for export customs clearance.

To communicate with the customs offices, each person must have an Economic Operator Registration and Identification Number (EORI), which is registered by the customs authorities on request. EORI registration is mandatory for customs clearance.

The European customs rate, customs nomenclature, and customs tariffs are set by EU legislation.

Excise taxes

Excise tax is charged on the release to tax-free circulation or import of tobacco products, wine, spirits, beer, mineral oil, electric energy, coal, and natural gas.

Immovable property tax

Immovable property tax, which is divided into land tax, building tax, and tax on apartments, is governed by the Act on Local Taxes. Immovable property tax is calculated based on the area of the real estate, its location, and its type, as well as the tax rate of each self-governing region.

The immovable property tax rate may vary significantly. Please find below the spread of the tax charges per square metre.

Property	Immovable property tax per square metre (EUR)
Four floor office building in centre of city of Bratislava	8.30 *
One floor hall rural area	0.57 to 6.40

* For each additional floor, add an additional tax of EUR 0.33.

Further, starting from 1 November 2016, municipalities may opt to impose a local development levy that applies to real estate developments. If a municipality decides to impose the levy, its rate may be between EUR 10 and EUR 35 per square metre.

Transfer taxes
There are no transfer taxes in the Slovak Republic.

Stamp taxes
There are no stamp duties or similar taxes on share or other property transfers in the Slovak Republic, although small administrative fees are payable to register such transactions.

Turnover taxes
There are no turnover taxes in the Slovak Republic.

Payroll taxes
Taxable remuneration from employment includes all remuneration, whether monetary or non-monetary, including in-kind benefits provided to an employee. Statutory health insurance and social security contributions paid by the employee reduce taxable income. Obligatory employer's health insurance and social security contributions paid by the employer are not part of the employee's taxable income.

Employers must keep Slovak payroll records for employees and members of their statutory bodies.

The tax base up to EUR 35,022.31 is taxed at 19%. The exceeding part of the tax base is taxed at 25%.

A tax rate of 7% or 35% applies to taxable dividend income (e.g. dividends from profits generated from 1 January 2017) of individuals starting from 1 January 2017. The higher tax rate applies in case of dividends received from non-treaty jurisdictions.

Income of constitutional authorities from dependent activity is, in addition to the tax calculated as listed above, subject to a special tax rate of 5%.

Social security contributions
Employer's health insurance and social security contributions total 34.4% of employee remuneration. From 1 January 2017, the maximum assessment base for all types of social insurance was increased to EUR 6,181 monthly. Employers also pay injury insurance contributions of 0.8% of employees' total salary costs per month, which are not capped. The maximum assessment base for the purposes of health insurance is cancelled for all types of income, except dividend income. Dividend income paid out from the profit generated after 1 January 2017 are no longer subject to health

insurance contributions. The rate of health insurance contributions for individuals who receive dividend income paid out from the profit generated before 31 December 2016 (except for dividends from listed shares) is 14% of the assessment base. In general, the payer of the dividend needs to withhold the health insurance contribution on the payment of the dividend. The common maximum health insurance assessment base for 2016 is EUR 51,480.

Special tax on regulated industries

There is a special tax from activities of entities in regulated industries (e.g. energy, insurance and re-insurance, public healthcare insurance, electronic communications, pharmaceuticals, postal services, railway transport, public water distribution and sewerage, air transport). The tax is calculated as a multiple of the tax base, coefficient, and the tax rate. The liability to pay this special tax arises in case the accounting profit exceeds EUR 3 million.

The coefficient (maximum of 1) depends on the amount of income from the regulated activity. The monthly tax rate is 0.00726 with effect from 1 January 2017. Hence, the annual rate of the special tax can be up to 8.712%.

The tax rate will decrease to 0.00545 per month (i.e. maximum 6.54% *per annum*) in 2019 and 2020 and to 0.00363 per month (i.e. maximum 4.356% *per annum*) in 2021.

Special tax on banks

A special tax on banks is charged at a rate of up to 0.4% to the extent that the cumulative amount of special tax collected from all banks by the Tax Office does not reach the EUR 750 million threshold. The tax rate of 0.2% applies in 2017.

The special tax on banks is calculated from the bank's liabilities recognised on the balance sheet net of deductions (e.g. the amount of the bank's equity, provided that its value is positive), the amount of the subordinated debt under a special regulation, and the amount of funds provided to the branch of a foreign bank.

Insurance premium tax (IPT)

IPT of 8% applies to non-life insurance premiums in Slovakia and is payable by insurance companies.

Motor vehicle tax

Vehicle tax applies to vehicles that are registered in the Slovak Republic and used for business purposes. The taxpayer is the entity that uses the vehicle for business purposes. The tax rate depends on engine capacity, vehicle size, etc. The motor vehicle tax is administrated by the Tax Office.

Branch income

A foreign company may trade through a Slovak branch, which must be registered in the Slovak Commercial Register. The taxable income of the branch must not be lower than that which an independent entity (e.g. a Slovak company) would achieve from carrying out similar activities under similar conditions. If the branch's taxable income cannot be assessed based on its income less costs, as adjusted for tax purposes, certain other methods may be used. A taxpayer may ask the tax authorities in writing to approve such a method.

Income determination

The tax base is generally the accounting result as determined under Slovak statutory accounting rules, adjusted for tax purposes.

Inventory valuation

Stock (i.e. inventory) is valuated at cost. Slovak legislation specifically provides for the use of the arithmetical average cost and first in first out (FIFO) methods to value stock. Last in first out (LIFO) may not be used. The tax treatment follows the accounting treatment.

Capital gains

Capital gains from the disposal of assets are included in the CIT base. The tax treatment of capital losses depends on the type of asset on which they arose.

Capital gains on the alienation of shares and participation interest in Slovak companies may be taxed in Slovakia, predominately if sold to a buyer who is a Slovak tax resident or has a PE to which the purchase is attributable.

The income from the sale of shares or participation interest of a company where the value of immovable property is more than 50% of the equity has its source in Slovakia.

Dividend income

As of 1 January 2017, dividends generated from profits arising until 31 December 2003 and from the profit arising in the period started since 1 January 2017 will be subject to taxation.

The tax regime for these dividends is as follows:

- Dividends from profits generated until 31 December 2003 and paid out from a Slovak tax resident company to a Slovak non-resident company will be subject to WHT of 19% (no taxation if subject to EU Parent/Subsidiary Directive exemption). If such dividends are paid to individuals (either Slovak tax residents or tax non-residents), the WHT of 7% will apply.
- Dividends from profits generated until 31 December 2003 and received by a Slovak company from foreign sources will be subject to taxation in Slovakia (no taxation if subject to EU Parent/Subsidiary Directive exemption).
- Dividends from profits generated after 1 January 2017 and received by a Slovak tax resident company from a non-contracting state company will be subject to tax of 35%.
- Dividends from profits generated after 1 January 2017 paid out from a Slovak tax resident company to a non-contracting state company will be subject to WHT of 35%.

However, dividends paid out of profits earned on or after 1 January 2004 and until 31 December 2016, and liquidation surpluses and settlement amounts to which shareholders became entitled on or after 1 January 2004, are not subject to tax.

Moreover, based on the anti-avoidance provisions, any dividends may be taxable in Slovakia if they are received through artificial structures with no genuine business reason and contrary to economic reality.

Interest and royalty income

Slovak-source interest income earned by taxpayers with limited, as well as unlimited, tax liability is subject to withholding at a flat tax rate of 19% (for states without a DTT, *please refer to the Withholding taxes section*), except where the recipient of the deposit interest or the yield is a Slovak investment fund, Slovak supplementary pension fund, Slovak bank or the branch of a foreign bank, or the Slovak Export-Import Bank.

Slovak-source royalty income of tax non-residents is subject to the 19% corporate flat tax rate (for states without a DTT, *please refer to the Withholding taxes section*).

Interest and royalty income is exempt if it is paid by a Slovak payer to a recipient who is a tax resident in the European Union and is a beneficial owner of this income, provided that for 24 months before the payment:

- the payer owns at least a 25% direct shareholding of the recipient of the income
- the recipient owns at least a 25% direct shareholding of the payer of the income, or
- a third entity resident in the European Union owns at least a 25% direct shareholding in both the payer and the recipient of the income.

Unrealised foreign exchange gains/losses

The taxpayer may decide whether to include unrealised foreign exchange differences relating to unsettled payables and receivables in the tax base in the tax period when they are accounted for or in the tax period when they are realised. However, the decision to include/stop including these differences when they are realised must be made on the CIT return.

Foreign income

Companies resident in the Slovak Republic are taxed on their worldwide income, including income of its foreign branches. A Slovak tax resident entity is able to deduct from its tax base a tax loss made by its taxable PE (e.g. branch) outside the Slovak Republic, adjusted for Slovak tax purposes.

Credit relief is available for foreign tax paid under most of Slovakia's DTTs. Alternatively, exemption of foreign income taxed abroad from taxation in Slovakia may apply.

Slovakia does not have provisions related to deferral.

Deductions

Depreciation and amortisation

Tangible fixed assets (acquisition value over EUR 1,700) are classified into six tax depreciation groups to which different depreciation periods apply. The possibility to use accelerated tax depreciation methods is limited to assets belonging to the tax depreciation groups 2 and 3.

Depreciation group	Assets	Depreciation (years)
1	Motor vehicles, office machines and computers, tools and implements	4
2	Combustion engines, outboard engines, most production line equipment, furniture	6

Depreciation group	Assets	Depreciation (years)
3	Electric motors, turbines, air-conditioning systems	8
4	Buildings made of metal, ships, railway locomotives	12
5	Buildings not involved in depreciation group no. 6 and engineer‘s sites not included in other depreciation groups	20
6	Administrative and residential buildings, hotels and buildings for culture, education, health, and public entertainment	40

Taxpayers do not have to depreciate an asset every year. Tax depreciation may be interrupted in any year and continued in a later year without a loss of the total tax depreciation available.

A lessee can depreciate a tangible fixed asset held under a financial lease. The tax depreciation base equals the acquisition value of the leased asset without VAT and financing costs plus expenses related to acquisition of the leased asset that the lessee incurred before the asset was put into use. The assets acquired under finance lease shall be amortised proportionally or using an accelerated method.

The value to be used as the basis for tax depreciation depends on how the asset is acquired and is usually based on one of the following:

- Acquisition costs (i.e. the price for which the asset was acquired).
- The taxpayer’s own costs incurred, if the asset is acquired or produced internally.
- Intangibles (acquisition value of EUR 2,400 or more) and low value assets (acquisition value of EUR 1,700 or less) are amortised for tax purposes in line with their accounting amortisation (i.e. over the useful life of the asset).

Goodwill

Amortisation of purchased goodwill, including the goodwill on purchase of a business as a going concern, if it represents an identifiable intangible asset, is tax deductible over up to seven consecutive tax years.

For goodwill created at the contribution of business as a going concern or goodwill created at a merger, the tax deductibility of the goodwill depends on the method of tax treatment of this reorganisation. If the reorganisation is performed for tax purposes at fair market values, the goodwill created will be tax deductible. On the other hand, if the reorganisation is made at original values (carry-over basis), the goodwill created is not tax deductible.

Start-up expenses

Start-up expenses are tax deductible in the period when incurred.

Interest expenses

In general, interest expenses incurred in order to generate taxable income can be treated as tax deductible, subject to thin capitalisation rules (*see Thin capitalisation in the Group taxation section*).

Bad debt provisions

Provisions for unsecured receivables from loans created by banks, and bad debts of regular commercial companies, are fully tax deductible (subject to certain conditions) once the debt has been overdue for more than 1,080 days (20% of the bad debt is tax deductible when it has been overdue for more than 360 days, and 50% after 720 days), provided certain conditions are met. Provisions for bad debts in other circumstances can also be tax deductible if specific conditions are met (e.g. bad debts registered in bankruptcy proceedings).

Charitable contributions
Charitable contributions are treated as gifts, which are not tax deductible.

Pension expenses
Contributions to supplementary pension savings made by the Slovak employer on behalf of the employee, up to 6% of the gross salary of the employee participating in these plans, are tax deductible.

Fines and penalties
Penalties and fines are not tax deductible.

Allowance for students
Subject to specific conditions, taxpayers may deduct from their tax base a special allowance with respect to practical education provided to students of up to EUR 3,200 per student per year.

Taxes
Road tax, real estate tax, and most other such taxes are tax deductible. Social security contributions paid by an employer with respect to employees are also tax deductible. VAT charged to profit and loss is tax deductible only if certain conditions are met.

Other non-deductible expenses
Expenses are generally tax deductible if incurred to generate, secure, and maintain the entity's taxable income. However, certain other costs are specifically not tax deductible. These include entertainment costs, various provisions (e.g. provisions to tangible and intangible assets, certain bad debt provisions), and various expenses in excess of statutory limits (e.g. employee travel expenses and meal allowances).

Net operating losses
A company or branch may currently carry forward and utilise a tax loss equally over a period of four years following the year in which the loss arose.

For issues related to the interim provision regarding tax losses carried forward from years 2010 to 2013, please contact the local PwC Tax office.

Carryback of losses is not available in the Slovak Republic.

Payments to foreign affiliates
Generally, deductions may be claimed for royalties, management service fees, and interest charges paid to foreign affiliates, provided such amounts are at arm's length and subject to other limitations by the law (e.g. thin capitalisation rules).

Group taxation

There is no concept of group CIT in the Slovak Republic. Each company in a group is taxed individually.

Transfer pricing

Under the transfer pricing rules, prices in transactions between a Slovak company and its related parties should be at arm's length, which means the prices should be at rates similar to those that would be charged between unrelated parties for the same or similar transactions under comparable conditions. Although the OECD Transfer Pricing Guidelines were not formally implemented, these are usually followed for determination of arm's-length prices.

The transfer pricing documentation requirements also apply to domestic-related parties in addition to the rules for foreign-related parties. This means that the prices used between two Slovak related parties need to be set at an arm's-length basis for tax purposes. All provisions of the law on methods of determining such prices for the purpose of adjusting the tax base and the obligation to keep associated transfer pricing documentation also apply to domestic-related parties.

If transactions between the related parties are not made at arm's length, and this results in a reduction in the Slovak entity's corporate tax base, then the tax authorities can adjust the corporate tax base to that which it would have been if arm's-length prices had been used.

Based on the amendment of the Income Tax Act as of 1 January 2017, Slovak tax residents can request approval of an APA by the tax authorities. The amendment also sets fees for such APA approval in an amount of EUR 10,000 for unilateral APA, and EUR 30,000 for multilateral APA approval (approval based on application of DTT).

In some cases, doubled penalties can be imposed for transfer pricing adjustments made by the Slovak tax authorities as a result of a tax audit initiated after 1 January 2017.

Transfer pricing documentation

All Slovak taxpayers must keep sufficient transfer pricing documentation to justify prices charged by or to their foreign-related parties. The Slovak Ministry of Finance has issued a guideline setting out detailed requirements for transfer pricing documentation (the Guideline).

The EU code of conduct was not formally implemented. However, the Guideline requires maintaining transfer pricing documentation in a form generally in line with the EU standards.

Slovak tax inspectors may require transfer pricing documentation. The deadline to provide transfer pricing documentation for taxpayers is 15 days, and the tax authority may request transfer pricing documentation without the formal opening of a tax audit. Without such documentation, transfer pricing adjustments (increased tax base) are much more likely to be imposed.

Country-by-country (CbC) reporting

A newly proposed amendment to the Act on International Cooperation in Tax Administration introduced the CbC reporting based on the Base Erosion and Profit Shifting (BEPS) plan with an aim to introduce automatic exchange of tax information between countries.

If consolidated revenues for a multinational group of entities are higher than EUR 750 million for the immediately preceding financial year, the group is required to file CbC reporting.

The amendment defines parent entity, substitute parent entity, and principal entity. In most cases, the parent entity is obligated to file CbC reporting in the country in which it is the tax resident.

If a Slovak tax resident is not considered to be a parent entity, a substitute entity, or a principal entity (i.e. the entity that is required to file CbC reporting), it must announce to the Financial Directorate of the Slovak Republic the business name, address, identification number, country of tax residence of the reporting entity, by the filing due date of its income tax return. This notification requirement should already apply to the 2016 tax period.

Thin capitalisation

The limit for the maximum amount of tax deductible interest and related fees on credits and loans between related parties is established as 25% of the adjusted earnings before interest, tax, depreciation, and amortisation (EBITDA), i.e. the sum of:

- accounting profit before tax
- depreciation and amortisation, and
- interest expenses included in the accounting profit before tax.

Controlled foreign companies (CFCs)

There is no CFC regime in place in the Slovak Republic.

Treatment of inter-company items

Dividends are not treated as taxable (subject to anti-avoidance provisions) if they are paid out of the profit after tax earned in the years 2004 to 2016. *For tax treatment of dividends paid out from profits realised before 2004 and from 2017 onwards, please see Dividend income in the Income determination section*.

In general, royalties, commissions, and other payments paid to foreign-related parties are tax deductible, provided they are incurred for genuine business reasons and the charges are in line with transfer pricing rules.

Tax credits and incentives

There are several types of investment incentives potentially available, including corporate tax credits, discounts on the price of publicly owned real estate, and financial support for creating jobs or for the acquisition of long-term assets. All of these are treated as state aid.

Various conditions must be met in order for a company to qualify for state aid. These include a minimum amount of investment in fixed assets, where the amount depends mainly on the type of project and where it is located, or a minimum number of newly created jobs.

Investment incentives

Investment incentives (including tax credits) are potentially available for projects in the following areas:

- Industry.
- Technology centres.
- Shared services centres.
- Tourism.

The granting of a tax relief is subject to approval of the Slovak authorities. If certain conditions are met, a taxpayer may apply tax relief in the ten subsequent years following the tax period in which the relief was granted.

Research and development (R&D) super deduction
Taxpayers involved in R&D are entitled to an R&D super deduction of at least 25% of actual qualifying costs incurred.

Foreign tax credit
Foreign tax credits are available if allotted under an applicable DTT.

Withholding taxes

Mainly, the following payments are subject to WHT when made by Slovak companies to foreign parties. According to the amendment of the Income Tax Act, effective from 1 January 2017, dividends will also be subject to WHT. However, a DTT may reduce or eliminate the rate.

Payments	WHT (%)
Fees for services	19/35
Royalties *	19/35
Interest on loans and deposits *	19/35
Dividends **	7/19/35

* Royalties and interest paid to related EU-resident companies are not subject to WHT if certain conditions are met.

** Dividends paid out of profits arising from 2004 to 2016 are not subject to Slovak WHT (subject to anti-avoidance provisions). *Please see Dividend income in the Income determination section.*

A 35% WHT rate applies on payments to taxpayers from non-contracting states (i.e. states that did not conclude either a DTT or TIEA with the Slovak Republic).

Service fees may be subject to tax in Slovakia only if the service is provided in the territory of Slovakia.

WHT should be paid to the Tax Office no later than 15 days from the end of the calendar month following that in which the payment was made. The withholding obligation lies with the Slovak resident taxpayer. The taxpayer must also notify the tax administrator of the tax withheld and transferred. If the tax is not properly withheld, the unpaid tax becomes the Slovak tax resident's tax liability, and a penalty may be assessed.

This table highlights countries with which Slovakia has entered into a DTT.

	WHT (%)		
Recipient	**Dividends (24)**	**Interest**	**Royalties**
Armenia	5/10	10	5
Australia	15	10	10
Austria	10	0	5
Belarus	10/15	10	5/10 (1)
Belgium	5/15	10	5

Recipient	WHT (%) Dividends (24)	Interest	Royalties
Bosnia and Herzegovina	5/15	0	10
Brazil	15	10/15 (2)	15/25 (3)
Bulgaria	10	10	10
Canada	5/15	10	10 (4)
China, People's Republic of	10	10	10
Croatia	5/10	10	10
Cyprus	10	10	5
Czech Republic	5/15	0	10
Denmark	15	0	5
Estonia	10	10	10
Finland	5/15	0	0/1/5/10 (5)
France	10	0	0/5 (6)
Georgia	0	5	5
Germany	5/15	0	5
Greece	Domestic (7)	10	10
Hungary	5/15	0	10
Iceland	5/10	0	10
India	15/25	15	30
Indonesia	10	10	10/15 (8)
Ireland	0/10	0	10
Israel	5/10	2/5/10 (9)	5
Italy	15	0	0/5 (10)
Japan	10/15	10	0/10 (11)
Kazakhstan	10/15	10	10
Korea, Republic of	5/10	10	10
Kuwait	0	10	10
Latvia	10	10	10
Libya	0	10	5
Lithuania	10	10	10
Luxembourg	5/15	0	0
Macedonia	5	10	10
Malaysia	0/5	10	10
Malta	5 (12)	0	5
Mexico	0	10	10
Moldova	5/15	10	10
Montenegro	5/15	10	10
Netherlands	0/10	0	5
Nigeria	12.5/15	15	15
Norway	5/15	0	0/5 (13)
Poland	0/5	5	5
Portugal	10/15	10	10
Romania	10	10	10/15 (14)
Russia	10	0	10
Serbia	5/15	10	10
Singapore	5/10	0	10
Slovenia	5/15	10	10
South Africa	5/15	0	10
Spain	5/15	0	5
Sri Lanka	15	0/10 (15)	0/10 (16)

Slovak Republic

Recipient	WHT (%) Dividends (24)	Interest	Royalties
Sweden	10	0	5
Switzerland	0/15	0/5 (17)	0/10 (18)
Syria	5	10	12
Taiwan	10	10	5/10 (19)
Tunisia	10/15	12	5/15 (20)
Turkey	5/10	10	10
Turkmenistan	10	10	10
Ukraine	10	10	10
United Arab Emirates	0	10	10
United Kingdom	5/15	0	0/10 (21)
United States	5/15	0	0/10 (22)
Uzbekistan	10	10	10
Vietnam	5/10	10	5/10/15 (23)

Notes

1. The 5% rate applies to literary, artistic, and scientific work copyright royalties. The 10% rate applies in other cases.
2. The 10% rate applies to industrial and public works equipment loans granted by a bank for a period of at least 10 years. The 15% rate applies in other cases.
3. The 25% rate applies to trademark royalties. The 15% rate applies in other cases.
4. The reduced WHT rate applies to artistic copyright royalties.
5. The 0% rate applies to literary, artistic, and scientific work copyright royalties. The 1% rate applies to finance leases of equipment. The 5% rate applies to operating leases of equipment, film, and broadcasting royalties, and to computer software royalties. The 10% rate applies to patent and trademark royalties and to information concerning industrial, commercial, and scientific experience.
6. The 0% rate applies to literary, artistic, and scientific work copyright royalties. The 5% rate applies in other cases.
7. The source state may tax the income at its domestic rate.
8. The 10% rate applies to film and broadcasting royalties. The 15% rate applies to copyright, patent, software, and trademark royalties, and to industrial, commercial, and scientific equipment and information royalties.
9. The 2% rate applies to government debt or government-assisted debt, the 5% rate applies when the recipient is a financial institution, and the 10% rate applies in other cases.
10. The 0% rate applies to copyright royalties. The 5% rate applies in other cases.
11. The 0% rate applies to cultural royalties and the 10% rate applies to industrial royalties.
12. See the treaty for applicability of rates.
13. The 5% rate applies to patent and trademark royalties and to industrial, commercial, and scientific equipment royalties.
14. The 10% rate applies to patent and trademark royalties, and to information concerning, industrial, commercial, and scientific experience. The 15% rate applies in other cases.
15. The 0% rate applies to interest received by a bank.
16. The 0% rate applies to copyright royalties and the 10% rate applies in other cases.
17. The 0% rate applies to the credit sale of equipment, merchandise, or services; a loan granted by a financial institution; a pension fund; or to interest paid by a company to a company of the other state that is affiliated with the company paying the interest by a direct minimum holding of 25% in the capital for at least two years prior to the payment of the interest or where both companies are held by a third company that has a direct a minimum holding of 25% for at least two years prior to the payment of the interest, both in the capital of the first company and in the capital of the second company. In other cases, the 5% rate applies.
18. The 0% rate applies to copyright royalties for literary, artistic, or scientific work, including cinematograph films or films or tapes. The 10% rate applies to patent and trademark royalties and to industrial, commercial, and scientific information royalties. However, patent and trademark royalties and industrial, commercial, and scientific information royalties are taxable at 0% if paid by a company resident in a state to a resident of the other state where the beneficial owner is a company that is affiliated with the company paying the royalties by a direct minimum holding of 25% in the capital for at least two years prior to the payment of the royalties or where both companies are held by a third company that has a direct minimum holding of 25% for at least two years prior to the payment of the royalties, both in the capital of the first company and in the capital of the second company.
19. The 5% rate applies to industrial, commercial, or scientific equipment royalties. The 10% rate applies in other cases.

20. The 5% rate applies to literary, artistic, and scientific works copyright royalties. The 15% rate applies in other cases.
21. The 0% rate applies to literary, artistic, and scientific work copyright royalties. The 10% rate applies in other cases.
22. The 0% rate applies to copyright royalties. The 10% rate applies in other cases.
23. The 5% rate applies to patent and secret formula royalties; industrial and scientific information royalties; and industrial, commercial, and scientific equipment royalties. The 10% rate applies to trademark royalties and commercial information royalties. The 15% rate applies in other cases.
24. The lower rate applies if the recipient is a company that directly owns at least a certain amount of the capital or a certain amount of the voting shares of the company paying the dividend.

Tax administration

Taxable period

The standard fiscal year is a calendar year, but a Slovak entity may opt to change this to a different 12-month period.

Tax returns

A corporate tax return must be filed together with the entity's financial statements within three months following the fiscal year-end. The taxpayer may extend the filing deadline by up to three months or six months (in case foreign income is included in the tax return). To extend the filing deadline, the taxpayer must notify the Tax Office before the normal filing deadline. After notification, the deadline is automatically extended.

Payment of tax

The balance of tax due for a fiscal year is payable by the filing deadline.

Advance payments of corporate tax must be paid monthly or quarterly during the current tax period. Instalments are usually based on the last known tax liability of the entity. It is not necessary to pay tax advances if the last tax liability did not exceed EUR 2,500.

Penalties

The penalties levied by the Tax Office will depend on the time elapsed from the deadline for filing the regular tax return to the date of filing the amended tax return or the start of the tax audit. The penalties are:

- 3% a year for self-assessment via an amended tax return.
- 7% a year for self-assessment within 15 days after notification that a tax audit has been opened ('self-disclosure').
- 10% a year for an assessment made by the Tax Office during a tax audit.

The penalties will be levied at a minimum of 1% of the assessed amount and a maximum of 100% of the assessed amount.

An 'aggregated penalty' applies for cases of more than one administrative offence.

Tax audit process

Generally, the tax authority selects the taxpayers subject to tax audit based on certain criteria that are not communicated to the public.

The taxpayers that utilise state aid in the form of tax relief are subject to specific tax audit in the year of utilisation of the tax relief.

The tax audit has to be finalised within one year.

Statute of limitations
A tax may not normally be assessed or additionally assessed more than five years (ten years when DTT treaty was applied, including transactions with foreign-related parties) after the end of the year during which the obligation to file a tax return arose, or during which the taxpayer was obligated to pay the tax. If a tax inspection is undertaken within this five-year period, another five-year period commences from the end of the year in which the taxpayer was notified of this action.

If a taxpayer utilises a tax loss, a tax or additional tax cannot be assessed more than seven years after the end of the year in which the obligation to file a tax return in which a taxpayer reported the tax loss arose.

However, tax may be assessed, or additionally assessed, no later than ten years after the end of the year during which the obligation to file a tax return arose, or during which the taxpayer was obligated to pay the tax.

Topics of focus for tax authorities
The tax authorities, within a tax inspection, generally focus on transfer pricing, VAT, limited tax deductibility of special types of costs (e.g. entertainment, promotion costs), and tax incentives.

Other issues

Business combinations
Two alternative tax treatments may be used for business combinations, including in-kind contributions to a company's share capital, mergers, and demergers.

Under the first alternative, the taxpayer should value assets for tax purposes using their current market values, and the revaluation difference must be reflected in the appropriate company's tax returns within seven years of the transaction.

Under the second alternative, the taxpayer should continue to use the original tax book values of the assets (carry-over basis), and revaluation difference is not taxable/tax deductible.

When selling a business, the purchaser must include goodwill or negative goodwill, acquired as part of the purchase, in its tax base within seven tax periods.

Adoption of International Financial Reporting Standards (IFRS)
Slovakia has adopted most of the principles of IFRS in its accounting law. However, there are still some differences between IFRS and Slovak accounting standards.

Obligation to prepare statutory financial statements according to IFRS
Financial institutions (banks, insurance companies, etc.) must prepare their statutory financial statements according to IFRS. In addition, a company that fulfils two or more of the following conditions, in two consecutive accounting periods, must prepare its statutory financial statements according to IFRS:

- The total value of assets is more than EUR 170 million.
- Net turnover exceeds EUR 170 million.

- The average number of employees in the individual accounting period exceeds 2,000.

An entity may decide to prepare its financial statements under IFRS if certain conditions are met.

If the Slovak taxpayer is obligated to prepare its financial statements under IFRS, the tax base is derived from either:

- the profit before tax under IFRS, adjusted for tax purposes using the 'IFRS Tax Bridge' issued by the Slovak Ministry of Finance, or
- the profit before tax under Slovak statutory accounting standards.

Tax information exchange agreements (TIEAs)

This table highlights countries with which Slovakia has entered into a TIEA.

- Albania
- Andorra
- Anguilla
- Argentina
- Aruba
- Azerbaijan
- Barbados
- Belize
- Bermuda
- British Virgin Islands
- Cameroon
- Cayman Islands
- Chile
- Colombia
- Costa Rica
- Curacao
- Faroe Islands
- Ghana
- Gibraltar
- Greenland
- Guernsey
- Isle of Man
- Jersey
- Liechtenstein
- Mauritius
- Montserrat
- Nauru
- New Zealand
- Niue
- Samoa
- San Marino
- Saudi Arabia
- Senegal
- Seychelles
- St. Kitts and Nevis
- St. Maarten
- St. Vincent and the Grenadines
- Turks and Cacaos Island
- Uganda
- Uruguay

International agreements

The Slovak/United States (US) Intergovernmental Agreement (IGA) entered into force during 2015. However, financial institutions in the Slovak Republic were allowed to register on the Foreign Account Tax Compliance Act (FATCA) registration website consistent with the treatment of having an IGA in effect even earlier.

FATCA was implemented into Slovak legislation with effect from 1 January 2016, with a first reporting deadline of 30 June 2016.

The Common Reporting Standard (CRS) was also implemented into Slovak legislation with effect from 1 January 2016, and the first reporting deadline to the Slovak tax authorities is 30 June 2017.

Slovenia

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Significant developments

Corporate income tax (CIT)

The Tax Procedure Act has been amended to introduce the possibility for taxable entities to conclude an Advanced Pricing Agreement (APA) with the competent authority on the transfer prices set between related entities. Additionally, the possibility is foreseen that an APA is concluded cross border with the competent tax authority in a foreign state. The amendments came into force as of 1 January 2017.

With the amendments of the Tax Procedure Act, which were published in the Official Gazette on 5 October 2016, a country-by-country (CbC) reporting obligation has now been implemented into the Slovene legislation and is in use as of January 2017 onwards. The first submission of CbC reporting is thus required for the financial year 2016, whereas the deadline for the submission of CbC reporting is within 12 months after the end of financial year (i.e. 31 December 2017).

Furthermore, the Slovene CIT Act and Personal Income Tax (PIT) Act have been amended, with the new regulations effective as of 1 January 2017 onwards. As part of the amendments to the CIT Act, the CIT rate has been increased from 17% to 19% from 1 January 2017 onwards. In addition, the special zero tax rate for venture capital companies is abolished, and recognition of expenses from depreciation of goodwill is no longer allowed.

Taxes on corporate income

Slovenian tax residents are liable to pay CIT on their worldwide income. Slovenian tax non-residents are taxed only on income from sources in Slovenia, including income earned through permanent establishments (PEs) in Slovenia.

The CIT rate has been increased from 17% to 19% from 1 January 2017 onwards.

Non-profit taxpayers and charitable organisations, associations, foundations, etc. are exempt from CIT on their non-profit-making activities.

Investment funds, as well as pension funds and pension insurance companies, may be taxed at a rate of 0% if certain conditions are met.

Tonnage tax

A company may request to be subject to tonnage tax instead of CIT if it meets certain conditions (i.e. it operates in maritime transport in international shipping) and notifies the tax authorities in advance.

The tax base for tonnage tax is the sum of the tax bases for each of an entity's ships that are included in the tonnage tax regime. The tax base for a particular ship is calculated by multiplying the number of ship operating days by the daily tax base shown in the following table:

Net tonnage (NT)	EUR*/day for 100 net tonnes
For the first 1,000 tonnes	0.90
For the next 1,001 to 10,000 tonnes	0.67
For the next 10,001 to 25,000 tonnes	0.40
Above 25,001 tonnes	0.20

* euros

Local income taxes

There are no municipal or local taxes on income in Slovenia.

Corporate residence

A legal entity is considered to be a Slovenian tax resident if the entity has its statutory (registered) seat or place of effective management located in Slovenia. These conditions, however, do not exclude a society or any association of persons, including an association under civil or foreign law that does not have legal identity, from also being considered to be a Slovene tax resident.

Permanent establishment (PE)

The Slovene definition of a PE is generally in line with the definition set out in the Organisation for Economic Co-operation and Development (OECD) model tax treaty. Thus, it is a place of business in Slovenia in or through which the non-resident's activities are conducted in whole or in part. The following, in particular, are considered to constitute a PE:

- An office, branch, factory, workshop, mine, quarry, or other place where natural resources are obtained or exploited.
- A building site; construction, assembly, or installation site; or the supervision thereof if the duration of the activities concerned exceeds 12 months.

A place of business is not considered a non-resident's PE if the non-resident:

- only uses the premises in question for storage, display, or delivery of goods belonging to oneself
- only maintains inventories of goods belonging to oneself for the purpose of storage, display, or delivery
- only maintains inventories of goods belonging to oneself for the purpose of processing by third parties
- only maintains the place of business in question for the purpose of purchasing goods or collecting information for oneself
- only maintains the place of business for the purpose of engaging in any other preparatory or auxiliary activity for oneself, or
- only maintains the place of business in question for the purpose of any combination of activities referred to above, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

Other taxes

Value-added tax (VAT)

A basic VAT rate of 22% applies to all taxable supplies.

A lower VAT rate of 9.5% generally applies to foodstuffs, live animals, seeds, plants, water supplies, medicines, medical equipment, transport of passengers, books, admission fees, royalties for writers and performers, certain works of art, certain residential properties, hotel accommodation, use of sport facilities, burial and cremation services, public hygiene services, minor repairs of bicycles, shoes and clothing, domestic care services, and hairdressing services.

Exempt supplies without credit entitlement include financial and insurance/reinsurance services, rent and lease of immovable goods (with exceptions), tax and court stamps, lottery services, trade of land, health and social services, etc. There are also other VAT-exempt transactions without a credit entitlement as well as exempt taxable supplies with a credit entitlement.

VAT grouping is not possible within Slovenia.

The threshold for VAT registration is EUR 50,000.

Customs duties

Goods imported from non-European Union (EU) countries are subject to import customs clearance, and goods being exported from the EU customs territory must be declared for export customs clearance. The person responsible for paying the customs debt is the declarant. The declarant is the person making the customs declaration in its own name or the person in whose name the customs declaration is made. The customs declaration should be made in the prescribed form and manner (in writing or by another action specified by law). Import or export duties are customs duties and other charges payable on the import or export of goods (excise duties, environmental tax, and motor vehicle tax).

For purposes of communication with the customs offices, each person has to be identified by an Economic Operator Registration and Identification (EORI) Number, which is registered by the customs authorities on request. EORI registration is mandatory for customs clearance.

Import VAT is charged based on customs declaration at the time of the import. However, if certain conditions are met, taxpayers are able to pay the import VAT through the VAT return at the end of the month. Accordingly, the importers are not forced to finance their import VAT, as they are able to account for it and deduct it in the same VAT return.

Excise tax

Excise tax is charged on the release into free tax circulation or import of tobacco products, alcohol and alcoholic drinks, fuel and mineral oils, and electricity. The table below presents the valid rates of excise tax.

Product	Excise tax rate
Cigarettes	From EUR 68.8238 per 1,000 pieces. In case the retail price of a pack of 20 cigarettes amounts to less than EUR 3.51, the excise tax is a minimum of EUR 106 per 1,000 pieces
Beer	EUR 12.10 per 1 volume % alcohol in 1 hl
Alcohol drinks (except wine)	EUR 132 per 1 hl
Ethyl alcohol	EUR 1,320 per 100 volume % alcohol in 1 hl
Unleaded petrol	EUR 507.80 per 1,000 l
Natural gas	EUR 0.0184 per m3 for heating purposes and EUR 0.092 per m3 for propelling purposes
Heating oil	EUR 15.02 per 1,000 kg
Electricity	EUR 3.05 per 1 MWh

Property tax

Currently, there is no specific tax levied on immovable property in Slovenia. However, charge for the use of building land is levied on vacant and constructed building land in possession of legal persons and individuals. Charge is set by local communities for vacant building land based on the area of the building land planned for building, and for constructed building land based on the useful area of the residential house or business premises thereon.

Real estate transfer tax

Real estate transfer tax of 2% is charged on real estate transfers and financial leases of real estate, unless VAT has been charged on the transaction.

Stamp tax

There is no stamp duty in Slovenia.

Payroll taxes

There are no payroll taxes other than social security contributions and withholding of personal income tax in Slovenia. *The tax tables applicable to individuals are provided in the Taxes on personal income section of Slovenia's Individual tax summary at www.pwc.com/taxsummaries.*

Social security contributions

Both employer and employee must make social security contributions. Contributions are withheld by the Slovene employer at the payment of income. The basis for calculation of the social security contributions is the gross amount of income. The types of contributions are as follows:

Type of contribution	Employee (%)	Employer (%)
Pension insurance	15.50	8.85
Health insurance	6.36	6.56
Unemployment	0.14	0.06
Injury at work	0	0.53
Maternity leave	0.10	0.10
Totals	22.10	16.10

Financial services tax

Slovenia levies tax on financial services provided by banks and other financial institutions. The tax rate is 8.5% and is applied to the fee of the financial service.

Insurance premium tax

Insurance premium tax is levied on insurance premiums at the rate of 8.5% and paid by insurance companies, unless the insurance lasts for at least ten years.

Environmental tax

Environmental tax is charged on carbon dioxide (CO2) emissions, waste disposal, lubricating oils and fluids, used tyres, and used motor vehicles.

Motor vehicle tax

Motor vehicle tax applies to all vehicles that are registered for the first time in Slovenia. The taxpayer is the entity that imports the vehicle from EU or non-EU countries. The tax rate depends on fuel range, engine power, and emission of CO2 and ranges from 0.5% to 31%.

In addition to the motor vehicle tax described above, the government imposes an additional tax on motor vehicles with engine displacement above 2,500 ccm that ranges from 0% to 16%, depending on the engine size.

Water vessel tax

The existing water vessel tax is imposed on:

- vessels exceeding five metres in length that are entered in vessel registers, with the exception of vessels under construction
- vessels exceeding five metres in length whose owners are residents of the Republic of Slovenia and that comply with the technical conditions required for entry into the vessel registers referred to in the first bullet but have not yet been entered into these registers, and
- vessels exceeding five metres in length whose owners are residents of the Republic of Slovenia and that comply with the technical conditions required for entry into the vessel registers referred to in the first bullet but have not been entered into these registers because they are registered abroad.

In addition to the water vessel tax described above, the government levies an additional tax on water vessels, depending on the length of the vessel:

Class of vessel length (in metres)		General part of tax liability (in EUR)	The liability per metre of length (in EUR)	The liability per kilowatt propulsion power (in EUR)
Above	To			
5	8	2.00	0.50	0.10
8	12	10.00	2.00	1.00
12		20.00	3.50	2.00

The tax liability decreases by 5% per each year of age of the vessel. The tax cannot, however, be lower than 50% of the tax liability calculated for a new vessel.

Branch income

If a branch meets the conditions, as set out in the tax legislation and relevant double tax treaty (DTT), to be treated as a PE, then it will be liable to pay tax in Slovenia on profits that are attributable to the PE.

The profit that is attributed to a PE is determined broadly in line with OECD principles. Generally, the attributable profit is the profit that would be expected to be earned by the PE if it were an independent taxpayer performing the same or similar activities and/or businesses.

A branch whose activities do not create a PE is not subject to CIT in Slovenia.

Income determination

Taxable profits are assessed in accordance with Slovenian Accounting Standards 2006 or International Financial Reporting Standards (IFRS) and modified for certain revenues and certain expenses, which are partly or wholly tax non-deductible.

Inventory valuation

Slovenian law allows the application of all the most commonly used inventory valuation methods, including the first in first out (FIFO), weighted average cost, and floating average prices methods.

Capital gains

Under certain circumstances, the gains made by a Slovenian taxpayer on the disposal of an equity shareholding are effectively 47.5% exempt from taxation. Similarly, 50% of a loss arising on the disposal of such a shareholding would not be deductible for CIT. This treatment applies to the disposal of shareholdings of at least 8% that have been held for at least six months and where the taxpayer disposing of the holding employed at least one person during the six-month holding period.

The above treatment is not available for the disposal of a shareholding of a company that is resident in a country that:

- is outside the European Union
- has a corporate tax rate less than 12.5%, and
- is included in a list published by the Ministry of Finance.

Dividend income

Dividends and similar income received by a Slovenian taxpayer are generally 95% exempt from taxation as long as the distributor was subject to Slovenian CIT or to a comparable profits tax. The exceptions to this are where dividends represent untaxed reserves of the distributor or where the distributor is tax resident in a country that:

- is outside the European Union
- has a corporate tax rate less than 12.5%, and
- is included in a list published by the Ministry of Finance.

Interest income

Interest and similar income received by a Slovenian taxpayer is included in the taxable base and can, in principle, reduce tax liability in the amount of withholding tax (WHT) paid abroad. Interest between related parties needs to be calculated in accordance with the arm's-length principle.

Royalty income

Royalties and similar income received by a Slovenian taxpayer are included in the taxable base and can, in principle, reduce tax liability in the amount of WHT paid abroad.

Foreign income

Foreign income, except dividends, received by a Slovenian entity from foreign sources is included in taxable income for CIT purposes in the same tax year as it arises unless the applicable DTT provides for an exemption.

Deductions

In general, business expenses that are necessary to generate taxable revenues are fully tax deductible.

Depreciation and amortisation

Depreciation of tangible fixed assets, amortisation of intangible assets, and depreciation of investment property are recognised as expenditures in line with the accounting treatment, up to a maximum of the amount calculated using the straight-line depreciation method and the maximum tax depreciation rates listed below. Any accounting depreciation in excess of these rates is not tax deductible in the period concerned, but may be deductible in subsequent tax periods until the asset is fully depreciated or disposed of.

The maximum annual depreciation rates are as follows:

Depreciation category	Types of assets	Annual depreciation rate (%)
1	Buildings, including investment property	3
2	Parts of buildings, including investment property	6
3	Equipment, vehicles, and machinery	20
4	Parts of equipment, and equipment for research activities	33.3
5	Computer equipment, hardware, and software	50
6	Crops lasting several years	10
7	Breeding animals	20
8	Other fixed assets	10

Goodwill

In general, if goodwill is impaired for accounting purposes, then the impairment cost may be treated as tax deductible. The amount that may be treated as tax deductible in any one tax period is limited to 20% of the initial value of the goodwill.

However, based on the amendments of the CIT Act, recognition of expenses from the amortisation of goodwill are, as of 1 January 2017 onwards, considered as non-deductible expenses.

Start-up expenses

In accordance with Slovene legislation, costs that occur prior to the entry of a legal entity into the court register may not be treated as tax deductible. Such a principle arises from a common legal principle whereby an entity may be subject to rights and obligations only after its establishment date. The date of entry into the court register is deemed to be the date of the establishment.

Related-party interest
Companies may deduct interest expense on loans from their owners or other associated parties up to a maximum of the amount calculated by using the prescribed interest rate published by the Ministry of Finance. Taxpayers must increase taxable profits by the amount of any excess interest expense unless they can prove that they could have received the loan on comparable terms from an unrelated party.

Provisions
Certain provisions are only 50% tax deductible when accrued, with the remaining 50% being treated as tax deductible when the provision is utilised. The provisions that are subject to this treatment are provisions for warranties granted when selling products or providing services, reorganisations/redundancies, anticipated losses from onerous contracts, pensions, long-service bonuses, and severance payments on retirement.

Bad debt
Bad debt provisions are only tax deductible if the amount does not exceed the lower of:

- the arithmetic mean of the bad debts written-off in the past three tax periods, under certain conditions specified in the tax law, and
- the amount corresponding to 1% of taxable revenues of the tax period.

In order to take advantage of this deduction, a company must be able to calculate amounts for both tests and then take the lower of the two amounts so calculated. If the company is not able to determine the amount for either, the cost of the bad debt provision is not tax deductible until the provision is utilised.

Costs of bad debts are tax deductible when the debt is finally written-off, provided there is a finalised court procedure, the creditor can demonstrate that it would cost more to pursue the debtor than the debt is worth, or the creditor can demonstrate that it has done everything required by good business practice to try to recover the debt.

Charitable contributions
A taxpayer may claim a reduction of its taxable profits for donations made for humanitarian, disabled, charitable, scientific, educational, medical, sports, cultural, ecological, and religious purposes to residents of Slovenia or of EU or European Economic Area (EEA) member states, up to 0.3% of the taxable person’s taxable revenues. An additional allowance of 0.2% of the taxpayers’ taxable revenues is available for payments made for cultural purposes and to voluntary organisations that work for the public interest to protect the public from natural and other disasters.

Tax relief for donations to political parties has been abolished with the amendments of the CIT Act in November 2016.

Compensation
Salaries and other payments relating to employment (e.g. wage compensation, holiday allowances, employer’s social security contributions, long-service awards, severance benefits paid upon retirement, solidarity assistance, reimbursement of business related expenses) are generally fully tax deductible.

The costs of benefits in kind are also tax deductible if such benefits are taxed for the individual under the Personal Income Tax Act.

Pension allowances
Under certain conditions, a tax-deductible allowance for voluntary supplementary pension insurance may apply, of up to 24% of compulsory contributions for pension and disability insurance for insured employees, but may not exceed EUR 2,390 annually per employee.

Fines and penalties
Costs relating to compulsory collection of taxes and other levies are, in accordance with Slovene legislation, not tax deductible.

Taxes
Taxes paid by a shareholder as a natural person and VAT that was not deducted as an input VAT, even though there was a right to deduct, are not tax deductible. In addition, interests on late payment of taxes are not tax deductible.

Other significant items
The following expenses are considered unnecessary for the generation of taxable revenues and are not deductible for tax purposes:

- Expenses that are not directly necessary for performing business activities or are not incurred as a consequence of a business activity.
- Expenses of a private character.
- Expenses that do not correspond to standard business practice.

Some of the most common non-deductible expenses include:

- Penalties and the cost of bribes.
- Input VAT that could have been reclaimed in accordance with the VAT Act.
- Entertainment costs, which are only 50% tax deductible.
- Costs relating to the supervisory board, which are only 50% tax deductible.
- Legal and other costs of incorporation, which may be deductible for the parent company but not for the entity being incorporated.

Net operating losses
The use of retained tax losses is limited to a maximum of 50% of the actual tax base. Despite this limitation, tax losses may still be carried forward to subsequent years without a limitation, but loss carrybacks are not permitted. Loss relief may not exceed the amount of current taxable income. Generally, losses that are generated in multiple tax years are absorbed chronologically. The right to carry losses forward may be forfeited if the ownership of the capital or voting power of the taxpayer claiming the loss carryforward changes by more than 50% within the tax period and the taxpayer either has not performed business activities for two years prior to the change of ownership or substantially changes its business activity two years prior to or after the change in ownership.

Treatment of tax losses mentioned in the preceding paragraph does not apply for those losses that are generated in the year of the change of ownership or prior tax periods.

Payment to foreign affiliates
Payments to foreign affiliates are normally subject to WHT if there is no right to apply exemptions in accordance with Slovenian legislation or DTT. Payments similar to dividends, including disguised distribution of profit, are not tax deductible. Any other payments to foreign affiliates are tax deductible if they are made in accordance with the arm's-length principle.

Group taxation

Group tax returns were abolished with the introduction of the CIT Act on 1 January 2007.

Transfer pricing
Prices between a Slovenian entity and its related parties must be set, for tax purposes, at fair market value using the arm's-length principle. Broadly speaking, taxpayers are related by direct, indirect, or common shareholdings of over 25%; through a participation in management; or by control through other means, including through contractual terms.

For transactions between two related Slovenian tax residents, provided neither is in an 'advantaged' position (advantaged usually means having unutilised tax losses), there is no actual requirement for the companies to adjust their tax returns to reflect an arm's-length price.

Taxable persons must prepare transfer pricing documentation. The Slovenian rules regarding such documentation follow the EU Code of Conduct on transfer pricing documentation for associated enterprises in the EU (EU TPD).

Country-by-country (CbC) reporting
From January 2017 onwards, provisions of the Slovene Tax Procedure Act are in force imposing a CbC reporting obligation on the multinational enterprises with annual consolidated group revenue equal to or exceeding EUR 750 million. The first submission of CbC reporting is thus required for the financial year 2016, whereas the deadline for the submission of CbC reporting is within 12 months after the end of financial year (i.e. 31 December 2017). The CbC report will be first communicated to other member states in the year 2018 for the 2016 fiscal year.

Thin capitalisation
Interest payments on loans granted, or guaranteed, by a related party (a party that directly or indirectly owns at least 25% of the shares or voting rights in the taxpayer) are not tax deductible to the extent that the loan amount exceeds the thin capitalisation threshold specified in law. This does not apply to loan recipients who are banks or insurance companies.

Sister entities (i.e. entities with the same owner) also fall under the definition of the above-described rules.

Generally speaking, the thin capitalisation threshold is exceeded if the debt-to-equity ratio exceeds 4:1.

Controlled foreign companies (CFCs)
There are no specific provisions in Slovenia regarding CFCs; however, there are general anti-abuse provisions in place.

Tax credits and incentives

Foreign tax credit
Tax paid abroad can be credited against tax liability in Slovenia. The amount of tax that can be credited is the amount of final and actually paid tax. If there is a DTT made between countries in question, the amount of tax that can be credited is the amount calculated at the rate determined in the DTT. A taxpayer needs to provide proof of the amount of foreign tax, the basis for calculation of the tax, and the amount of the tax paid.

Investment allowances
A tax allowance for investment in equipment and intangible assets is available for investments made after 1 January 2008. The tax allowance is limited to 40% of the value of the assets (also intangibles) invested into.

Research and development (R&D) allowances
A 100% investment allowance is granted for investments in R&D within the tax period, regardless of the location of establishment of the company within Slovenia. Such an investment tax allowance may be obtained for expenditures on:

- internal R&D activities within the company and
- the purchase of R&D equipment from related or unrelated parties or from a private research institution.

Allowances for employing certain individuals
A taxpayer that employs trainees or students to undertake practical work may reduce its taxable profits by an additional 20% of the average monthly payment paid to such persons for every month the person carries out the work.

A taxpayer that employs disabled persons may decrease its taxable profits by an additional 50% of the salary paid to such persons (in addition to the deduction for their actual salary cost). A taxpayer that employs a severely disabled person or a person with a combination of total hearing loss and speech impairment may reduce its taxable base by an additional 70% of the salary paid to such a person (in addition to the deduction for their actual salary cost).

Tax relief for investments in the Pomurje region
Entities based in the Pomurje region of Slovenia may claim additional employment incentives and additional tax relief for investments. These extra benefits are available from 2010 to 2017. As a result, provided certain conditions are met, entities with their seat in Pomurje are entitled to a 70% tax allowance for investments in equipment and intangible assets as well as to certain employment allowances.

Tax relief for employment of hard-to-place workers
A taxpayer who employs a hard-to-place worker may be able to benefit from a tax allowance for both CIT and tax on activity. A hard-to-place worker is a person younger than 26 or older than 55 who has been registered as unemployed for at least six months and who has not been employed by the taxpayer or a related party in the past 24

months. The tax allowance equates to 45% of the salary paid to the person during the first 24 months of their employment, up to the amount of the tax base.

As of the beginning of 2016 and until the end of 2017, an additional tax relief is available for taxpayers employing a person older than 55 who has been registered as unemployed for at least six months prior to employment. A taxpayer will be exempt from paying all compulsory social security contributions (16.10%) for the first two years after employing such a person in case the employment contract is concluded during the above-mentioned period.

Withholding taxes

In Slovenia, tax must be calculated and withheld on the payments made by residents and non-residents on Slovenian-sourced income to recipients outside Slovenia.

Payments to which the WHT rules apply include payments for dividends, interest, copyrights, patents, licences, leases on real estate situated in Slovenia, services of performing artists, and services charged from low-tax jurisdictions.

The WHT rate is 15%.

If a DTT exists, the WHT rate may be reduced in line with the provisions of the treaty. Similarly for payments of interest, royalties, and dividends within Europe, the Interest and Royalties Directive and the Parent Subsidiary Directive, respectively, may also reduce this WHT rate to zero.

Furthermore, WHT is not deducted on dividends paid to a parent company in another EU member state if those dividends are subject to an exemption from tax in the hands of the recipient, provided certain conditions are met.

Subject to certain conditions, tax is not required to be withheld on interest on non-exchangeable debt securities issued outside Slovenia by a Slovenian tax resident corporation through a public placement on an international clearing system (i.e. Euroclear).

WHT is applicable only for explicitly determined types of services (i.e. consulting, marketing, staffing, administration, information, and legal services), provided they were made to countries with an average CIT rate not exceeding 12.5%, where such a country was also stated on a separate list published by the Ministry of Finance.

Treaties in force

Recipient	Dividends (%) (1)	Interest (%) (2)	Royalties (%)
Albania	5/10	7	7
Armenia	5/10	10	5
Austria	5/15	5	5
Azerbaijan	8	8	5/10 (8)
Belarus	5	5	5
Belgium	5/15	10	5
Bosnia and Herzegovina	5/10	7	5
Bulgaria	5/10	5	5/10 (5)
Canada	5/15	10	10

Recipient	Dividends (%) (1)	Interest (%) (2)	Royalties (%)
China, People's Republic of	5	10	10
Croatia	5	5	5
Cyprus	10	10	10
Czech Republic	5/15	5	10
Denmark	5/15	5	5
Estonia	5/15	10	10
Finland	5/15	5	5
France	0/15	5	5
Georgia	5	5	5
Germany	5/15	5	5
Greece	10	10	10
Hungary	5/15	5	5
Iceland	5	5	5
India	5/15	10	10
Iran	7	5	5
Ireland	5/15	5	5
Israel	5/10/15 (4)	5	5
Italy	5/15	10	5
Kazakhstan	5/15	10	10
Korea	5/15	5	5
Kosovo	5/10	5	5
Kuwait	5	5	10
Latvia	5/15	10	10
Lithuania	5/15	10	10
Luxembourg	5/15	5	5
Macedonia	5/15	10	10
Malta	5/15	5	5
Moldova	5/10	5	5
Netherlands	5/15	5	5
Norway	0/15	5	5
Poland	5/15	10	10
Portugal	5/15	10	5
Qatar	5	5	5
Romania	5	5	5
Russian Federation	10	10	10
Serbia/Montenegro	5/10	10	5/10 (6)
Singapore	5	5	5
Slovakia	5/15	10	10
Spain	5/15	5	5
Sweden	5/15	0	0
Switzerland	0/15	5	5
Thailand	10	10/15 (9)	10/15 (7)
Turkey	10	10	10
Ukraine	5/15	5	5/10 (6)
United Arab Emirates	5	5	5
United Kingdom and Northern Ireland	0/15	5	5
United States	5/15	5	5
Uzbekistan	8	8	10

Treaties not yet in force (4)

Recipient	Dividends (%) (1)	Interest (%) (2)	Royalties (%)
Egypt	8/13	13	15
Morocco	7/10	10	10

Notes

1. Under certain treaties, the WHT rate depends on whether, and to what extent, the recipient participates in the capital of the distributor. Generally, if the recipient holds a participation of more than 25% in the distributing company, the dividends are subject to a lower 5% WHT rate. The higher WHT rate is, however, normally due when the participation is less than 25%.
2. Some DTTs include specific provisions whereby interest payments are subject to a 0% WHT rate if certain conditions are met.
3. Ratified international treaties that are not yet in force and are not used in Slovenia.
4. 5% rate if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividend; 10% rate if the beneficial owner is a company that directly holds at least 10% of the capital of the company paying the dividends and the dividends are paid out of profits which by virtue of the law of the state in which the payer is a resident are exempt from company tax or subject to company tax at a rate that is lower than the normal rate in that state; 15% rate applicable in all other cases.
5. 5% rate applicable to the gross amount of: (i) royalties paid for the use of, or the right to use, any copyright of literary, artistic, or scientific work (but not including cinematograph films) and (ii) royalties paid for the use of, or the right to use, industrial, commercial, or scientific equipment, 10% rate applicable in all other cases.
6. 5% rate applicable to royalties for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematograph films or films or tapes used for radio or television broadcasting; 10% rate applicable to royalties for the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial, or scientific experience.
7. 10% rate applicable to royalties for the use of, or the right to use, any copyright of literary or artistic work including motion pictures, live broadcasting, film, tape, or other means of the use or reproduction in connection with radio and television broadcasting, and for the use of, or the right to use industrial, commercial, or scientific equipment; 15% rate applicable to royalties in all other cases.
8. 5% rate applicable to copyright, as defined by the Copyright and Related Rights Act; 10% rate applicable to other property rights.
9. 10% rate applicable to the gross amount of interest if received by a financial institution (including an insurance company); 15% rate applicable to the gross amount of interest in all other situations.

Tax administration

Taxable period

The tax period should be the calendar year. However, a tax period may differ from the calendar year but may not exceed a period of 12 months. In this case, the tax authorities must be informed about the chosen tax period, and the taxable entity will not be allowed to change its tax period for the following three years.

Tax returns

A tax return must be submitted to the tax authorities by the end of the third month following the end of the tax year.

Payment of tax

CIT is paid in advance in monthly instalments (if the amount of prepayment exceeds EUR 400 per month) or in quarterly instalments (if the amount of prepayment is less than EUR 400 per month) determined on the basis of the previous year's assessment.

The final CIT payment must be made within 30 days of the tax return submission.

Tax audit process

Slovene legislation does not define an audit cycle. However, we understand that the Slovene tax administration has its own criteria for how to determine audit targets, which is in accordance with their annual tax plan.

Statute of limitations

Under Slovene legislation, a tax inspection may be initiated within five years from the date when a tax return was due for submission to the tax authorities. However, the five-year period runs following each interrupting act (generally, certain actions by the Tax Office or the taxpayer within the tax period may be considered as interrupting acts), but may not surpass a maximum of ten years counting from the date when the tax return is due. A concluded tax inspection will foreclose any further tax authorities' inspection only for the period and the items that were subject of the concluded tax inspection. Any issue not examined remains open for a future tax inspection. The right of the tax authorities to assess and collect tax permanently expires after ten years counted from the date when the tax return is due.

Topics of focus for tax authorities

Recently, we have noticed that tax authorities focus on appropriateness of transfer pricing for multinational companies.

Fiscal verification of invoices

According to the Act on Fiscal Verification of Invoices, all legal and natural persons that perform cash transactions and are obligated to keep books and records must use certified tax registers. No exceptions are envisaged, so electronic confirmation of invoices applies to anyone that is obligated to use receipts in accordance with the VAT Act. Certified cash registers are connected to the central information system of the financial authority via the Internet, so processed invoices are verified and saved in real time.

Other issues

State aid

Slovene law does not regulate state aid specifically, but as the EU Treaty, relevant EU Regulations and Directives, and EU Court case law are of direct application in Slovenia, Slovene courts follow the same policy as reflected in the noted documents and case law. Thus, state aid in Slovenia is defined as an advantage in any form whatsoever conferred on a selective basis to undertakings by national public authorities and causing distortion of the competition.

Base erosion and profit shifting (BEPS)

The transfer pricing landscape of Slovenia remains relatively unchanged, but is nonetheless dependent on the updated or added guidance published by the OECD as a result of the BEPS action plan. It can be anticipated that the changes due to the BEPS project will also have an appropriate impact on the transfer pricing environment, legislation, and practices in Slovenia.

United States (US) Foreign Account Tax Compliance Act (FATCA)

On 2 June 2014, the Republic of Slovenia concluded an Agreement to Improve International Tax Compliance and to implement FATCA (the Agreement) with the United States that entered into force on 1 July 2014, which further defines the obligations of Slovenian financial institutions and the Financial Administration of the

Republic of Slovenia related to FATCA implementation. The Agreement supplements the existing rules on cooperation between the Republic of Slovenia and the United States in the field of avoidance of double taxation and exchange of information and will contribute to the reduction of administrative burden to Slovenian financial institutions.

The conclusion of the Agreement, which is based on the Model 1 Intergovernmental Agreement (IGA), ensures the implementation of FATCA provisions on the basis of reporting and exchange of information in accordance with the convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital. According to the Agreement, Slovenian financial institutions are required to report information as determined in the Agreement to the Financial Administration of the Republic of Slovenia, which reports the information to the US Internal Revenue Service (IRS). Reciprocally, Slovenia is receiving information from the US IRS about the funds of Slovenian taxpayers in the United States.

Spain

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Significant developments

Over the past year, the following significant amendments have been made to Spanish law on the taxation of companies:

- On 6 December 2016, Royal Decree 596/2016, of 2 December 2016, for the modernisation and improvement of the use of electronic means, was published in the Official State Gazette.

  As of 1 July 2017, this regulation introduces a new online information system wherein certain companies are obligated to notify the tax administration of their billing records in real time.

  Specifically, this new system, which represents a substantial change in value-added tax (VAT) management, is compulsory for those taxpayers obligated to submit their VAT returns (i.e. Form 303) on a monthly basis because: (i) they are large companies, (ii) they are included in the VAT Monthly Refund Register ('REDEME'), or (iii) they apply the VAT group regime.

- On 3 December 2016, Royal Decree-Law 3/2016, of 2 December 2016, adopting tax-related measures aimed at consolidating public finances and other urgent measures on social matters, was published in the Official State Gazette. The main measures contained in this law that affect company taxation are the following:
  - Limit on the offsetting of tax losses: For tax years commencing on or after 1 January 2016, the offsetting of prior-year tax losses will be subject to the following limits for large companies:

    - Companies with a net turnover of at least 60 million euros (EUR): 25% of their tax base.
    - Companies with a net turnover of at least EUR 20 million but less than EUR 60 million: 50% of their tax base.
- Limit on the application of deductions for double taxation: For companies with a net turnover of at least EUR 20 million, a new limit of 50% of gross tax payable is established for the application of deductions for international or internal double taxation (generated or pending application). The limit will also be applicable in tax years commencing on or after 1 January 2016.
- Reversal of impairment on shareholdings: For tax years commencing on or after 1 January 2016, impairment on shareholdings that was tax deductible in tax periods prior to 2013 should be reversed over a maximum of five years on a straight-line basis.
- Non-deductibility of losses arising from the transfer of shareholdings in entities: With effect for years commencing on or after 1 January 2017, capital losses

associated with the sale of shareholdings cease to have a tax effect when the dividends or positive income deriving from the transfer of such shareholdings have benefited from the exemption for double taxation or if they relate to entities located in tax havens or territories that do not reach a level of taxation of 10%.
- With respect to excise duty, there is a 5% increase in the tax levied on the consumption of intermediary products and alcohol and derived beverages in both the Peninsula and Canary Islands. Likewise, the weight of the specific component in the tax on manufactured tobacco is increased with respect to the *ad valorem* component, and the minimum level of taxation increases both for cigarettes and fine-cut tobacco.
- The deferral or payment in instalments of the following tax debts is eliminated as of 1 January 2017:

  - Debts resulting from the enforcement of non-appealable rulings disallowing, totally or in part, an appeal or economic-administrative claim, which were suspended during the processing of such appeals or claims.
  - Debts deriving from taxes that should be charged in accordance with applicable law, unless it may be duly evidenced that such taxes have not actually been paid.
  - Debts relating to tax obligations that must be met by the party required to make payments in instalments of corporate income tax (CIT).

  The above changes entered into force on 1 January 2017.

  Likewise, the exception envisaged in the General Tax Law in relation to the impossibility of deferring or paying in instalments tax debts relating to tax obligations that must be fulfilled by the withholder or party required to make interim payments is eliminated with effect from 1 January 2017.

  A transitional arrangement is established for all the above cases, under which deferrals or payments in instalments in respect of which proceedings were instigated before 1 January 2017 will be regulated by legislation in effect prior to such date until their completion.

- With effect from 1 January 2017, payments in kind will not be allowed in respect of tax debts that have non-deferrable status in accordance with the provisions of Article 65.2 of the General Tax Law. In such cases, requests for payments in kind will be disallowed.
- Cadastral values are updated through this Royal Decree-Law so that the increase takes effect as regards property tax, a tax that accrues on 1 January. According to the Land Registry Law, the values should have been updated by the Budget Law. However, because of the delay in forming a government, it was impossible for the Bill to pass through Parliament before the end of the year.

Taxes on corporate income

The general CIT rate in Spain is 25%. Other tax rates may apply, depending on the type of company that is taxed and the type of business carried out.

Resident companies are taxed on their worldwide income.

For permanent establishments (PEs) in Spain of foreign companies, non-resident income tax (NRIT) is chargeable on income that may be allocated to the PE at a 25% tax rate.

NRIT is also chargeable on non-established foreign companies/individuals that obtain income in Spain (*see the Withholding taxes section*).

Small companies

Companies with a turnover under EUR 10 million in the preceding tax year (considering, in the case of a group of companies, the group companies' total turnover) are considered small companies for CIT purposes and are taxed at a 25% tax rate.

Newly created companies

Newly created companies are taxed at a 15% tax rate for tax periods starting on or after 1 January 2015, provided that they have been set up after that date, for both the first tax period in which they obtain a profit and the following tax period. This tax rate is not applicable to companies that, by law, are considered equity companies. Newly created companies that are set up in tax periods starting prior to that date will continue to be taxed at a 15% tax rate on their tax base up to EUR 300,000 and a 20% tax on any excess in these two periods.

Business and professional activities tax

The business and professional activities tax is a local direct tax levied annually on the performance in Spain of business, professional, or artistic activities, regardless of whether or not they are carried out in a particular premises. The tax payable depends on different factors, such as the type of activity carried out and the location and size of the premises where the activity is carried out. As regards limits, it may not exceed 15% of the presumed average profits of the professional/economic activity.

CIT payers and non-resident companies carrying on an activity in Spain through a PE are exempt from this tax if their net turnover for the tax year of the last CIT/NRIT return filed prior to the date of accrual of the local tax (1 January) was less than EUR 1 million.

Corporate residence

A company is resident in Spain and subject to CIT on its worldwide income when:

- it has been incorporated in accordance with Spanish law
- its registered office is in Spain, and/or
- its 'effective' head office is in Spain.

Under Spanish law, a company's 'effective' head office is in Spain when its business activities are managed and controlled from Spain.

Companies established in a country or territory where no tax is levied or that is a tax haven are deemed to be tax resident in Spain in the following cases:

- When the company's main assets consist, directly or indirectly, of property located or rights fulfilled or exercised in Spain.
- When the company's core business activity is carried on in Spain.

This presumption may be refuted by the company if it can prove that it is effectively administered and managed in the country or territory in which it is established and that it was incorporated and operates for valid economic and business reasons and not merely for the purpose of managing securities or other assets.

Permanent establishment (PE)

Taxpayers operating in Spain through a PE are subject to NRIT.

Most Spanish tax treaties for the avoidance of double taxation contain a definition of PE in line with Organisation for Economic Co-operation and Development (OECD) criteria.

In the absence of a tax treaty, internal law states that an individual or company is considered to operate through a PE when, by any legal means, one has continuous or habitual work facilities in Spain or a place to do any kind of work where one performs all or part of one's activity, or when one acts in Spain through an agent with powers to enter into an agreement in the name and on behalf of the non-resident individual or company, provided said powers are exercised on a regular basis.

In particular, management offices, branches, offices, factories, workshops, warehouses, shops or other establishments; mines, oil or gas wells, quarries, farms, forestry facilities, livestock farms, or any other site where natural resources are collected; and construction, installation, or assembly sites whose duration lasts more than six months will be considered PEs.

It should be noted that the Spanish High Court has issued several judgements and is adopting a functional approach to the subject of the existence of a PE. In this regard, it has afforded a flexible interpretation of what has to be considered a PE, and specifically, of the concepts of dependent agent and fixed place of business.

Other taxes

Value-added tax (VAT)

Spanish VAT is payable on supplies of goods and services carried out in Spanish VAT territory and on imports/intra-European Union (EU) acquisitions of goods and services. There are three rates for the different types of goods and services, which are as follows:

- Ordinary rate of 21%, applied on regular supplies of goods and services.
- Reduced rate of 10%, applied on basic necessities (e.g. food and agricultural products not included in the 'super reduced' 4% rate, dwellings, other qualifying services).
- Super reduced rate of 4%, applied on basic necessities other than those classified under the reduced rate (e.g. bread, milk, books, medicine).

In the Canary Islands, a specific tax is applied instead of VAT, called the Canary Island General Indirect Tax (IGIC). The ordinary IGIC rate is 7%, and the other IGIC rates are 0%, 3%, 9.5%, and 13.5% (20% for tobacco). IGIC is similar to VAT, but it has some significant differences, such as the exemption established for telecommunications services. Imports of tangible goods into the Canary Islands are subject to this tax.

In Ceuta and Melilla, sales tax is applied instead of VAT.

Customs duties
Many goods imported into Spain from outside the European Union are subject to customs duties. The rates of duty are provided by the EU's Common Customs Tariff and vary widely.

Excise duties
Excise duties are chargeable on most hydrocarbon oil products, alcoholic drinks, and tobacco products imported into or produced in Spain. Purely as examples, most road fuels carry a duty of about EUR 0.33 per litre, cigarettes carry a duty of about EUR 24.7 per thousand plus 51% of the maximum retail sale price (with a minimum tax of EUR 131.5 per 1,000 cigarettes, to be increased up to EUR 141 if the retail price is less than EUR 196 per 1,000 cigarettes), tobacco of about EUR 23.5 per kg plus 41.5% of the maximum retail sale price (with a minimum tax of EUR 98.75 per kg, to be increased up to EUR 102.75 if the retail price is less than EUR 165 per kg), most wines of EUR 0 per litre, and spirits of about EUR 9.59 per litre of pure alcohol included.

Tax on tax-haven-resident companies owning real estate in Spain
Companies resident in a tax haven for tax purposes that own real estate or hold real property rights in Spain are subject to a special levy accrued on 31 December and declared and paid in January of the following year in the place and manner established by law. The tax is equal to 3% of the assessed value of the real estate.

Transfer tax
A transfer tax, which is usually 5% to 10%, depending upon the region, is generally levied on *inter vivos* transfers, including real estate transfers and real estate leases that are exempt from VAT.

Second and subsequent transfers of buildings are exempt from VAT; consequently, they are, in principle, subject to transfer tax.

Residential leases are exempt from VAT and therefore subject to transfer tax.

Transfers of quoted or unquoted (listed or unlisted) securities are, in principle, exempt from both transfer tax and VAT. This exemption will not apply for transfers of unlisted securities of a company in the secondary market that tries to evade the tax that is payable on a direct transfer of real estate that it owns. For this purpose, Spanish law establishes certain cases where it is understood that there is an intention to evade tax.

This exception will not apply to transfers of securities received as a result of the incorporation by banks of asset management companies and to transfers of securities of banks affected by the integration plans regulated by Royal Decree-Law 9/2009, which will therefore be exempt from transfer tax. In addition, acquisitions of assets in the Canary Islands may be exempt from transfer tax (and from IGIC) when certain requirements are complied with.

Restructuring transactions are also exempt from transfer tax. For these purposes, mergers, spin-offs, exchanges of shares, and certain in-kind contributions are considered to be restructuring transactions.

Stamp duty
Stamp duty is mostly levied on notarial instruments and records documenting transactions that have an economic value and need to be registered in public registries (e.g. company, land, and industrial property registries). Stamp duty is incompatible

with transfer tax and capital duty, but compatible with VAT. The general rate is between 0.75% and 1.5%, depending on the region of Spain and the taxable event.

Stamp duty is also levied on certain commercial (e.g. bills of exchange, promissory notes), court, and administrative documents.

Capital duty

1% capital duty is levied on capital reductions and company dissolution, and is payable by the shareholders.

Capital duty is incompatible with transfer tax and stamp duty in certain cases, but it is compatible with VAT.

Payroll taxes

Employers are required to withhold a percentage of their employees' salaries and benefits as a payment on account of their personal income tax (PIT). The rate of withholding is a progressive rate of between 19% and 45%, depending on the employee's personal circumstances and income.

Social security contributions

Employers are required to pay social security contributions. The rate of the contributions under the general social security contribution regime is the fixed rate of 29.9% plus a variable rate for occupational accidents (e.g. 1% for office work).

Employees are also required to pay social security contributions. Under the general social security contribution regime, the rate of social security contributions is 6.35%. Employers should deduct this amount from the amounts that they pay to employees.

The rates of social security contributions stated above should be applied on the employee's total monthly gross employment income, whether in cash or in kind, with a minimum monthly contribution base of between EUR 825.55 and EUR 1,152.79, depending on the employee's professional category, and a maximum monthly contribution base of EUR 3,751.26.

Both parts of the social security contributions (employer and employee) should be paid by the employer to the Social Security Treasury.

Other local taxes

In addition to the taxes stated above, the following other local taxes may be charged on companies:

- Real estate tax, levied annually by local authorities on the ownership of real estate.
- Local tax levied on the increase in the value of urban land, chargeable when urban real estate is sold.
- Motor vehicle tax, charged on the ownership of vehicles.
- Tax on constructions, installations, and building works, charged on the cost of certain works that require town planning licences.
- Waste collection fees.

Branch income

Income obtained by a branch in Spain of a non-resident company is taxed at the standard CIT rate of 25%.

When calculating the tax base for taxpayers resident in other EU member states that do not have a PE, a distinction is made between individuals and companies, and tax deductible expenses are established in accordance with PIT and CIT legislation, respectively.

Payments made by a branch to its head office or a PE of its head office for royalties, interest, commissions, or technical assistance fees are not tax deductible. Management and general administrative expenses incurred by the foreign head office that can be allocated to the branch are tax deductible if the payments for these expenses are made following a criteria of continuity and rationality and provided that certain documentary requirements and other formalities are fulfilled.

Under Spanish law, income obtained by a branch that is repatriated to its head office is taxed at source at the general withholding tax (WHT) rate of 19%. This tax is not chargeable in the case of a PE of a company resident in the European Union (unless the company is resident in a tax haven). Most tax treaties signed by Spain do not establish any provisions on this matter, and, in such cases, no tax is chargeable on income repatriated by branches. Some tax treaties, such as the treaties with Canada, Indonesia, and the United States (US), expressly establish a tax on income repatriated by branches. For example, US head offices are taxed at a 10% rate on the repatriated profits of a Spanish branch under the US/Spanish tax treaty.

Income determination

The general rule for determining income for CIT purposes is that accounting rules must be followed unless tax law establishes otherwise. In order to maintain this consistency, CIT/PE NRIT returns include pages in which the company's accounting/commercial balance sheet and profit and loss account figures must be entered.

In Spain, the tax authorities are authorised to modify accounting results exclusively for the purpose of determining tax results if they observe that a company's accounting results have not been calculated in accordance with Spanish Generally Accepted Accounting Principles (GAAP).

Inventory valuation

Inventory is valued at acquisition price or production cost under the average and first in first out (FIFO) valuation methods (the replacement and base stock valuation methods may only be used in exceptional cases). Again, since there are no specific tax rules for determining taxable income, accounting rules are also applicable for calculating valuation and obsolescence provisions for inventory.

Capital gains and losses

Capital gains are taxable in the tax year in which they arise. They are treated as normal income and taxed at the standard CIT rate of 25%.

For operations where payment is deferred or paid in instalments, the income is obtained proportionally as the corresponding payments are made, unless the taxpayer opts to be taxed in accordance with the accrual criteria.

Capital losses arising from the transfer of shares will only be tax deductible if they relate to shareholdings of less than 5% (with a cost of less than EUR 20 million) and, in the case of holdings in the capital or equity of non-resident entities, the investee entity has not been subject to and is not exempt from a foreign tax identical or analogous in nature to CIT at a nominal rate of, at least, 10% and is not resident in a country with which Spain has concluded a double tax treaty (DTT), and it contains an exchange of information clause.

Negative income generated in the event of the extinguishment of the investee entity will, in any event, qualify for deduction for tax purposes unless such extinguishment results from a restructuring operation.

In such cases, the negative income will be reduced by the amount of the dividends received in the ten years prior to the date of extinguishment, unless such dividends have reduced the acquisition value, and provided that they qualified for the application of an exemption or deduction regime for the elimination of double taxation for the same amount.

Tax losses generated on transfers of assets to another company in the same corporate group are not tax deductible when the transfer takes place. Their tax deductibility is deferred to the moment when the assets are written off the acquirer's balance sheet transferred out of the group or when the transferor or acquirer cease to form part of the group. In the case of depreciable/amortisable assets, however, the undeducted amount should be included in line with its depreciation/amortisation by the acquirer.

Dividend income

Dividends received from companies resident in Spain in which at least a 5% interest has been held for at least one year, including ownership by other group companies, (or with an acquisition value of over EUR 20 million) are exempt from tax. Dividends received from companies resident in Spain in which an interest of less than 5% is held (and with an acquisition value of less than EUR 20 million) are taxable in their entirety for the recipient.

As a general rule (there are certain exceptions), capital gains arising on the transfer of companies resident in Spain in which at least a 5% interest has been held for at least one year (or with an acquisition value of over EUR 20 million) are exempt from tax. The period during which the interest is held by another group company is also taken into consideration for this rule.

Special rules apply to, amongst others, the following:

- Dividends received from companies that obtain dividends or capital gains generated from transfers of interests in other companies, provided that such dividends and capital gains exceed 70% of the company's gross income.
- Capital gains arising from transfers of interests in companies that receive dividends or capital gains generated from transfers of interests when such dividends and capital gains exceed 70% of the company's gross income.

Please see Foreign income below for a description of the taxation of dividends received from foreign companies.

Stock dividends
CIT is not levied on bonus shares (i.e. shares partially or totally given to shareholders in a capital increase charged against distributable reserves), although they must be taken into account when calculating the average cost of shares held for the levying of tax when the shares are sold.

Interest income
Interest income is treated as normal income and taxed at the standard CIT rate of 25%.

Royalty income
Royalty income is included in the taxable base jointly with the other kinds of income.

However, a 60% reduction may be applied on the net income obtained from licensing certain intangible assets if certain requirements are met (the effective tax on this net income would generally be 10%).

Effective as of 1 July 2016, the rules to calculate the patent box tax incentive have been modified to bring this tax incentive in line with the EU and OECD Agreement. With this reform, income generated from assigning the use of certain intangible assets may be eligible for a reduction in the taxable base of the percentage resulting from multiplying by 60% a coefficient that may not be greater than one (i.e. the maximum reduction will be 60%).

Other significant items
The following items, amongst others, are excluded or deferred from taxable income:

- Distributed dividends corresponding to profits obtained by companies in tax periods in which the flow-through tax regime (internal and international) has been applied.
- Assets written up in accordance with revaluation laws and tax-protected restructuring transactions involving accounting capital gains.

Foreign income

Tax relief on foreign income
Resident companies are taxed on their worldwide income. For foreign-source income, total or partial tax relief in the form of tax credits or exemptions is given if tax is levied on the income in both Spain and the foreign country where the income has been generated.

This tax relief may be available for the following:

- Economic double taxation, which is when the same income is taxed in the hands of two different taxpayers. For example, another government taxes a foreign company on the income earned in that country and a Spanish resident shareholder is taxed on the dividends that it receives from the foreign company or the capital gains from transfers of its shares.
- Juridical double taxation, which is when the same income is taxed in two countries in the hands of the same taxpayer. For example, the income is taxed (via a WHT) in the country where the income is generated and again in the other country where the recipient is resident.

The main characteristics of double tax relief are discussed below.

Dividends or profit-sharing income received by a Spanish company from a foreign company are tax exempt, subject to compliance with the following requirements:

- The Spanish company has at least a 5% interest in the foreign company, which has been held for at least one year. This one-year holding period is deemed to be complied with if it is completed after the dividend is distributed. The period in which the interest is held by another group company is also taken into consideration for this rule.
- The investee has been taxed by a tax that is identical or similar to Spanish CIT at, at least, a 10% nominal tax rate in the tax year in which the distributed profits were obtained. This requirement is complied with when the investee is resident in a country with which Spain has signed a tax treaty containing an exchange-of-information provision.

Capital gains arising from the sale of shares in foreign companies also qualify for a tax exemption if the requirements stated above are complied with during the holding period.

Both the dividends and capital gains exemptions are not applicable when the investee company is resident in a tax haven, unless it is an EU member state and the company can prove that it has been incorporated and operates for valid business reasons and that it carries on business activities.

Tax exemption is limited in certain cases.

Special rules apply to, amongst others, the following:

- Dividends received from companies that obtain dividends or capital gains generated from transfers of interests in other companies, provided that such dividends and capital gains exceed 70% of the company's gross income.
- Capital gains arising from transfers of interests in companies that receive dividends or capital gains generated from transfers of interests when such dividends and capital gains exceed 70% of the company's gross income.

As an alternative to this 'tax exemption' regime and applicable to dividend distributions only, a tax credit based on imputation is established. This tax credit allows the crediting of the foreign tax paid abroad on the income from which the dividends are paid and the foreign WHT paid on the profit distribution, up to the limit of the tax that would have been paid on the gross amount in Spain. The only requirement for the application of this 'tax imputation' regime is that the Spanish company has at least a 5% interest in the foreign company during the 12 months prior to the date on which the dividend is due and payable. This one-year holding period is deemed to be complied with if it is completed after the dividend is distributed. The tax credit can be carried forward for an unlimited number of years.

Spanish legislation provides for CIT relief on 'juridical' double taxation by applying the 'tax imputation' regime. Under this regime, gross foreign income (including foreign WHT paid) is included for Spanish tax calculation purposes, and a tax credit for the foreign WHT paid is applicable up to the amount of the CIT that the company would have paid if such gross income had been obtained in Spain. The part of the tax paid abroad with respect to which the taxpayer is not entitled to this tax credit may be considered tax deductible, provided that it corresponds to the foreign company's business activities carried out abroad. The tax credit can be carried forward for an unlimited number of years.

Under Spanish tax treaties and implemented EU tax directives, several methods have been established to avoid double taxation. The main one is the traditional deduction of a tax credit from tax effectively paid. However, some treaties establish a tax exemption or the exclusive right to tax. Also, a tax-sparing clause is included in some treaties, which allows for the deduction of not only the tax actually paid but a higher amount of tax.

Deductions

Depreciation, amortisation, and depletion

All assets, except land, are depreciable/amortisable for tax purposes. Guideline tables of tax depreciation/amortisation rates are established that state maximum *per annum* rates and maximum years of useful life for each asset type, classified by business sector.

Please see the table below as an example of the maximum *per annum* rates and maximum years of useful life established in the tables for some assets that are typically depreciated/amortised:

Asset	Maximum *per annum* depreciation/ amortisation rate (%)	Maximum useful life (years)
Industrial buildings	3	68
Warehouses	7	30
Administrative and commercial buildings	2	100
Internal transport elements	10	20
External transport elements	16	14
Furniture	10	20
Computers	25	8
Software	33	6
Tools	25	8

The straight-line depreciation/amortisation method is normally used, calculated over the asset's useful life and applied on the asset's cost or written-up value (if such a write-up is acceptable for tax purposes). Off-book adjustments must be included in tax assessments if accounting depreciation/amortisation exceeds tax depreciation/amortisation.

Qualifying assets with a useful life of more than one year can also be depreciated/amortised using declining-balance methods. Buildings, furniture, and fittings cannot be depreciated using the declining-balance methods.

For tax periods starting in 2013 and 2014, the tax deduction of recorded depreciation of tangible fixed assets and investment property was limited to 70% of the maximum depreciation permitted by the regulations implemented under Spanish CIT law. This limitation did not apply to small or medium-sized companies. Recorded depreciation that was not deducted as a result of this limitation could be carried forward and is deductible either on a straight-line basis over ten years or, alternatively, over the asset's useful life, from the first tax period starting in 2015. For tax periods starting in or after

2015, a deduction may be applied on gross tax payable. The deduction is 5% of the amounts included in the tax base resulting from depreciation charges not deducted in tax periods starting in 2013 and 2014. This deduction compensates the reduction of CIT rates and ensures that the 70% tax depreciation limit only has a financial effect.

Mining assets and assets used for research and development (R&D), amongst others, but not including buildings, can be freely depreciated/amortised for tax purposes.

Free depreciation
Unrestricted depreciation of investments in new tangible fixed assets and investment property was regulated for investments made by taxpayers in tax periods starting in 2011, 2012, 2013, 2014, and 2015. This tax relief was also available for tax periods starting in 2009 and 2010, but it could only be availed of if the requirement that the taxpayer's staff levels were maintained or increased was met.

Due to the tax reform carried out by Royal Decree Law (RDL) 12/2012, this tax incentive was repealed effective 31 March 2012.

A transitional regime is provided for investments made prior to that date. Under this transitional regime, unrestricted depreciation tax relief may be applied to these investments, although with certain limits.

Amortisation of intangibles
For tax years starting in or after 2016, goodwill is amortised under Spanish GAAP during its useful life, which is estimated to be ten years unless otherwise proven. However, it can be amortised for tax purposes at a maximum annual rate of 5%, irrespective of whether or not the assets in question were acquired from a company of the same corporate group. Goodwill acquired from another group company in tax periods starting prior to 1 January 2015 does not qualify for a deduction.

Intangible assets may be amortised during their useful life. When the useful life may not be reliably estimated, the assets will be amortised over ten years, unless otherwise established by law or the regulations implemented under law. This amortisation is tax deductible irrespective of whether or not the assets in question have been acquired from a group company. When the useful life of intangible assets cannot be reliably estimated, the amortisation is tax deductible up to the limit of 5%.

The amortisation of intangible assets acquired from another group company in tax periods starting prior to 1 January 2015 is not tax deductible.

For tax periods starting in or after 2015, taxpayers to whom the 70% limit for tax deductible amortisation applied in 2013 and 2014 are entitled to a deduction against their gross tax payable of the amounts included in their tax base resulting from amortisation not deducted in tax periods starting in 2013 and 2014. The deduction is 5% for tax periods starting in or after 2016. This deduction compensates the reduction of CIT rates and, consequently, ensures that the 70% tax deductible amortisation limit only has a financial effect.

Depletion
Depletion is allowed for mining companies and companies involved in exploring/investigating natural oil resources as established in applicable legislation.

Financial goodwill

To promote the internationalisation of Spanish companies, in 2002 a rule was introduced that financial goodwill arising from the acquisition of an interest in a non-resident company (financial goodwill being, in this case, the excess price paid for the acquisition of the business over its net book value at the date of the acquisition that cannot be allocated to the non-resident company's assets in Spain) could be amortised up to a maximum of 5% per year.

To apply this tax relief, the following requirements had to be met:

- A minimum 5% interest had to be held in the non-resident company.
- The non-resident company had to be subject to a similar tax to Spanish CIT.
- The income obtained by the non-resident company had to be generated from business activities carried out abroad in accordance with Spanish CIT law.

Decisions of the European Commission dated 28 October 2009 (regarding interest in non-resident EU companies) and 12 January 2011 (regarding interest in non-resident non-EU companies) considered that this tax relief was unlawful state aid.

According to the Commission's decisions, only acquisitions of interests in non-resident companies carried out before 21 December 2007 (or before 21 May 2011 for majority interests in non-resident companies established in countries with explicit obstacles to cross-border business combination transactions outside the European Union) can continue applying this tax relief until the financial goodwill is wholly amortised.

The provisions related to financial goodwill tax relief laid down in the CIT Act were amended by Law 31/2011, passed on 4 October 2011, and take effect for tax periods ending on or after 21 December 2007. Under the amended regulation, the financial goodwill tax relief is not applicable for acquisitions of interests in non-resident companies carried out on or after 21 December 2007 (or on or after 21 May 2011, when there is evidence which proves that there is an explicit obstacle for cross-border business combination transactions outside the European Union).

In its decision of 17 July 2013, the Commission has asked the Spanish tax authorities to suspend their rule that allowed for the tax deduction of financial goodwill arising from second or bottom-tier non-resident companies.

On 7 November 2014, two resolutions from the EU General Court annulled the aforementioned decisions of the European Commission on the grounds that the Spanish financial goodwill tax relief did not constitute state aid that was incompatible with the internal market, amongst other reasons, because it could not identify a category of undertakings that benefited from the measure or selectivity.

However, in a decision delivered on 21 December 2016, the Court of Justice of the European Union concludes that the fact that the European Commission failed to identify a particular category of undertakings that benefitted from the financial goodwill amortisation was not an appropriate ground for annulment of the European Commission decisions. The EU General Court should have instead examined whether the European Commission had effectively analysed and established that the measure at issue was discriminatory.

The Court of Justice of the European Union has not given a final judgment in the cases that have now been sent back to the EU General Court for a second hearing.

Start-up expenses

According to Spanish GAAP, start-up expenses are considered to be expenses in the financial year in which they are incurred. As no special rule is provided for tax purposes, they are deductible for CIT purposes in the year in which they are incurred.

Financial expenses

General limits on the deduction of financial expenses

The amount of net deductible financial expenses in the tax period is generally reduced to 30% of operating profit (similar to earnings before interest, taxes, depreciations, and amortisation [EBITDA], applying certain adjustments) for the year, financial expenses of less than EUR 1 million (or the proportional part for tax periods of less than one year) being deductible regardless of the 30% limit. For such purposes, net financial expenses will be considered to be the excess of financial expenses (excluding the non-deductible expenses mentioned below) with respect to income deriving from the assignment of capital to third parties accrued in the tax period.

For companies taxed under the tax consolidation regime, the deduction limit will refer to the tax group. Nonetheless, the company's net financial expenses available for deduction at the time of its inclusion in the group will be deducted, up to the limit of 30% of its operating profit. When a company stops forming part of the group or the group is extinguished and there are net financial expenses available for deduction, the rule will be similar to that for assigning tax losses to the companies that formed part of the group.

Limits on the deduction of financial expenses will not be applicable for dissolved companies for the tax period in which they are dissolved, unless the company is dissolved as a result of a restructuring operation.

Finally, limits on the deduction of financial expenses will not apply to (i) insurance companies or to (ii) credit institutions. Financial expenses that have not been deducted due to the application of this limit can be deducted in subsequent tax periods for an unlimited period of time.

Specific limit on the deduction of financial expenses on the acquisition of interests in the capital or equity of any type of company

A specific limit is introduced for financial expenses generated from debts incurred to acquire interests in the capital or equity of any type of company. These expenses are deductible, subject to an additional limit of 30% of the acquirer's operating profits, excluding the operating profits of any company that may merge into the acquirer or that may join its tax group during the four years following the acquisition (besides this specific limit, the general limit on tax deductibility will also apply to these financial expenses).

This specific limit is not applicable when the debt associated with the acquisition of the interest reaches a maximum of 70% and is reduced, as of the time of the acquisition, by at least the proportional part corresponding to each of the following years until a level equal to 30% of the acquisition price is reached.

This specific limit does not apply to restructuring operations carried out before 20 June 2014 or to restructuring operations carried out on or after 20 June 2014 between companies that formed part of a tax consolidation group during tax periods starting before that date.

Financial expenses that have not been deducted due to the application of this limit can be deducted in subsequent tax periods for an unlimited period of time.

Specific limit on the deduction of intra-group financial expenses on acquisitions of interests in other group companies or contributions to capital or equity of other group companies

Over the past few years, a large number of tax inspections have adjusted the tax effects of acquisitions of shares from group companies with intra-group debt. Many of these operations were acquisitions of shares in non-resident companies, so that the dividends and capital gains arising from the acquisition of the shares were covered by the exemption for the avoidance of double taxation established in Article 21 of the Spanish CIT Act. In addition, the lenders of these operations were usually located in low-tax territories.

In the absence of specific limitation rules on the tax deductibility of financial expenses in previous years, the reaction of the tax authorities to these kinds of operations has been to apply general anti-abuse rules.

With this scenario, RDL 12/2012 introduced a limitation rule for the deduction of intra-group financial expenses that is applicable for tax periods starting on or after 1 January 2012. In accordance with this rule, financial expenses arising from debts with group companies generated from acquisitions of interests in other group companies or contributions to capital or equity of other group companies will not be deductible unless there is evidence that there are valid economic reasons for such expenses.

Participating loans

Interest on participating loans contracted by group companies on or after 20 June 2014 is, by law, a return on equity and is not deductible for tax purposes. In the recipient's tax returns (if the recipient is a Spanish CIT payer), they should be treated as dividends and the recipient may be eligible, when appropriate, for a tax exemption for the avoidance of double taxation of dividends.

Bad debt provisions

Provisions for covering the risk derived from possible bad debts are tax deductible when, at the time the tax accrues, any of the following circumstances exists:

- Six months have elapsed since the obligation became due.
- The debtor is declared bankrupt.
- The debtor is prosecuted for an offence of embezzlement.
- The obligations have been claimed judicially or are the subject of a legal dispute or arbitration proceedings, and collection depends on the solution thereof.

Provisions for the credits listed below are not tax deductible:

- Credits owed by public law entities, unless they are being examined in an arbitration or court proceeding brought to establish their existence or amount.
- Receivables from related persons or companies, unless they are going through bankruptcy proceedings and the court has declared the initiation of the liquidation phase.
- Credits based on overall estimates of the bad debt risk corresponding to trade and other debtors.

Special rules apply to bank entities.

Time apportionment of certain allocations or welfare system provisions
Positive adjustments arising from certain allocations to bad debt or welfare system provisions that are non-deductible under the Spanish CIT Act should be reversed in the corresponding year in accordance with this Act, up to a maximum, which depends on the company's net turnover in the 12 months prior to the start of the tax period:

- If net turnover is less than EUR 20 million, positive adjustments to these provisions may be reversed up to 70% of the tax base prior to the capitalisation reserve adjustment and to the offset of tax loss carryforwards (60% for years commencing in 2016).
- If net turnover is at least EUR 20 million but less than EUR 60 million, positive adjustments to these provisions may be reversed up to 50% of the tax base prior to the capitalisation reserve adjustment and to the offset of tax loss carryforwards.
- If net turnover is at least EUR 60 million, positive adjustments to these provisions may be reversed up to 25% of the tax base prior to the capitalisation reserve adjustment and to the offset of tax loss carryforwards.

In all cases, positive adjustments to these provisions may be reversed up to EUR 1 million. Any excess will be allocated to subsequent years, subject to the same limits and provided that a deferred tax asset has been recognised.

Equity investments in companies
Impairment allowances for share capital or equity investments in companies are generally not deductible.

As an exception, if the shareholding is less than 5% and, in the case of shareholdings in the capital of non-resident entities, if the investee entity has been subject to and not exempt from a foreign tax identical or analogous in nature to CIT at a nominal rate of at least 10% or is resident in a country with which Spain has concluded a DTT, which contains an exchange of information clause, the impairment will be deductible as a result of the transfer or disposal of the shareholdings, provided that the above requirements are met during the year prior to the transfer or disposal.

Impairment on shareholdings that was tax deductible in tax periods prior to 2013 is reversed: (i) in the case of unlisted entities, when there is an increase in equity or payment of dividends, and (ii) in the case of listed entities, when there is an increase in the book value of the shareholding.

However, the obligation concerning a minimum annual reversal of impairment losses on securities that were considered deductible for tax purposes is introduced. Thus, the net amount of the valuation adjustment that would have been tax deductible will be included, as a minimum, in equal parts in the tax base for each of the five tax periods commencing as of 1 January 2016.

Severance pay
Severance pay is tax deductible for CIT purposes when it does not exceed, for each recipient, EUR 1 million or, if it exceeds this amount, up to the amount that is exempt under Spanish PIT law.

Charitable donations
Donations are considered to be non-deductible expenses for CIT purposes.

This notwithstanding, a tax credit may be availed for donations to non-profit organisations that comply with certain requirements. The tax credit in this case is 35% of the donation. However, if during the two immediately preceding tax periods, deductible donations or contributions have been made to the same company for an amount equal to or exceeding, in each case, those made in the previous tax period, the deduction percentage applicable to the deduction base for the company is 40%.

In addition, the tax credit is not limited to 25% of the donating company's gross tax payable less the deductions for international double taxation and tax relief for income obtained in Ceuta and Melilla, for export activities, and for local public services, which is applicable for other tax credits (*see CIT relief in the Tax credits and incentives section*).

The tax credit base cannot exceed 10% of the taxable income of the financial year. Any excess may be carried forward for a period of ten years.

For donations to listed priority sponsorship activities, the tax credit may be increased by 5% and the 10% tax credit base limit can be increased to 15%.

Fines and penalties

Penalties imposed due to the failure to pay taxes and surcharges for late filing/payment or for other tax infringements are not tax deductible.

The Spanish tax authorities usually consider that late payment interest recorded as an expense is tax deductible; however, some case law in Spain questions whether this interest is a taxable expense.

Taxes

Taxes, other than CIT, that are recorded as an expense due to their nature (e.g. business and professional activities tax, but not withholdings) are tax-deductible expenses. In some cases, indirect taxes, such as non-deductible VAT or transfer tax, can be added to the value of assets for depreciation purposes.

Net operating losses

Tax losses may be carried forward for an unlimited amount of time. As a general rule, tax losses cannot be carried back. There are no tax loss 'baskets' (operating/capital). Notwithstanding, for tax periods starting in or after 2015, companies whose turnover in the previous tax period was under EUR 10 million may reduce their positive tax base by up to 10% of their amount by establishing a non-distributable reserve for the amount of the reduction (reserve for the levelling-off of tax losses). The reduction may not exceed EUR 1 million and should be reversed in line with the tax losses obtained by the company, subject to a five-year time limit.

For tax periods starting in or after 2016, the tax losses of any type of company can be offset against positive income generated in the ensuing tax periods. The amount of tax losses that may be offset will depend on the company's net turnover in the 12 months prior to the start of the tax period:

- If net turnover is less than EUR 20 million, the previous regulations will apply, i.e. tax loss carryforward may be offset up to 70% of the tax base prior to the capitalisation reserve and their offset (60% for years commencing in 2016).
- If net turnover is at least EUR 20 million but less than EUR 60 million, tax loss carryforward may be offset up to 50% of the tax base prior to the capitalisation reserve and their offset.

- If net turnover is at least EUR 60 million, tax loss carryforward may be offset up to 25% of the tax base prior to the capitalisation reserve and their offset.

In any event, tax losses for an amount of up to EUR 1 million may be offset.

The above limits do not apply: (i) in the tax period in which the company is extinguished, unless this is due to a restructuring operation carried out under the tax neutrality regime, and (ii) to any income corresponding to debt relief or deferral resulting from an agreement with creditors.

Complex rules may limit the use of tax losses of a company dissolved as a result of a restructuring operation and, in certain circumstances, when it has a change of shareholders.

Payments to foreign affiliates
Supplies of goods or services by a company not established in Spain to a Spanish group company must be valued at arm's length. If recorded expenses for such goods/services exceed the arm's-length price, the tax deductibility of the excess amounts could be challenged in a tax inspection. The tax deductibility of expense charges received from tax havens is fully disallowed unless proper evidence of an actual service valued at arm's length can be provided.

Management services received from outside Spain and recorded as distributions of costs of a group centre do not have to be documented in a written agreement entered into before the commencement of the services to ensure the tax deductibility of the expenses (as previously was the case), although it would be recommendable to have such an agreement. For any other types of services, an agreement recorded before a notary public is not obligatory under Spanish law, but it is advisable.

As regards the taxation in Spain of the foreign company that supplies services, the WHT rate to be applied on the gross income obtained by the company is 24% (19% for residents in other EU member states or European Economic Area [EEA] countries with which there is an effective exchange of tax information). Dividends, interest, and capital gains generated as a result of a transfer of assets are taxed at a 19% WHT rate. If management services, technical assistance, or the performance of studies are solely used outside Spain and are linked to business carried on abroad, then no WHT is applicable. In addition, under most tax treaties signed by Spain, 'business profits' obtained in Spain by non-residents are exempt from WHT. However, 'business profits' is a miscellaneous residual category. For instance, if the amount obtained qualifies as a royalty payment, WHT is applicable at the reduced tax treaty rates if the foreign company can obtain a document from the tax authorities of its country of residence certifying its tax residence. If no tax treaty applies, then the above 24% (19% for residents in other EU member states or EEA countries with which there is an effective exchange of tax information) WHT rate is applicable (*see the Withholding taxes section for more information*).

PEs and interests in joint ventures
Losses obtained outside Spain by means of a PE are not tax deductible. Losses generated from interests in joint ventures that carry on a business activity outside Spain are not tax deductible either.

Negative income generated from the transfer of a PE is not tax deductible.

Negative income derived from the discontinuation of the PE's activity is deductible. However, such negative income will be reduced by the amount of the net positive income obtained previously that has qualified for the exemption or deduction for double taxation.

Group taxation

Tax groupings for CIT purposes

Under Spanish tax law, companies can form a group and apply a special tax consolidation regime for CIT purposes. Companies forming a tax group must formally pass a resolution agreeing to do so before the beginning of the first tax year in which the tax consolidation regime will be applied.

To apply the tax consolidation regime, the controlling company of the tax group must hold a 75% or higher interest, either directly or indirectly, and the majority of the voting rights in the companies forming the tax group at the beginning of the first tax year in which the tax consolidation regime is applied, and this interest and voting rights must be maintained during the year unless the dependent company is dissolved. The interest requirement is 70% for companies listed on a stock exchange.

A non-resident company can also be the controlling company of a tax consolidation group, provided that it has legal personality, is taxed by Spanish CIT, and is not resident in a tax haven. When the controlling company is a non-resident company, the group is made up of all the resident controlled companies and one of the companies is required to be appointed as the representative of the group and will be responsible for complying with all of the group's obligations and formalities.

Resident companies that meet the minimum holding and voting rights requirements through non-resident companies should be included in the tax consolidation group.

These rules allow for the possibility of horizontal consolidation.

The main characteristics of the tax consolidation regime are as follows:

- The taxable income of the tax group is the sum of the taxable incomes of each of the companies forming the group.
- The tax losses of any of the companies forming the group can be offset against the tax profits of any of the other group companies.
- For the calculation of consolidated taxable income, the tax profits (losses) generated from transactions carried out between group companies are eliminated and only included in consolidated taxable income when:
  - they are carried out with third parties
  - a group company participating in the internal operation ceases to form part of the tax group, and
  - the tax consolidation regime is no longer applied by the group for whatever reason.
- Specific limitations apply regarding the offsetting of tax losses or the application of tax credits generated by the group companies before they formed part of the tax group. Tax credits may be applied by the tax group up to the limit that would have applied to the entity that generated the tax credit in the general CIT regime, taking into account the relevant eliminations and additions corresponding to such entity.

As regards tax losses generated by a group company before it entered the group, they may be offset up to the following limits:

- If net turnover in the 12 months prior to the start of the tax period is less than EUR 20 million, besides the general limits that apply at the group level, the offsetting of prior tax loss carryforwards will be subject to the limit of 70% of the individual tax base (60% in the 2016 tax period), taking into account any eliminations and additions that correspond to such entity.
- If net turnover is at least EUR 20 million but less than EUR 60 million, besides the limits on the offsetting of tax loss carryforwards that apply at the group level, the offsetting of prior tax loss carryforwards will be limited to 50% of the individual tax base, taking into account any eliminations and additions that correspond to such entity.
- If net turnover is at least EUR 60 million, besides the limits on the offsetting of tax loss carryforwards that apply at the group level, the offsetting of prior tax loss carryforwards will be limited to 25% of the individual tax base, taking into account any eliminations and additions that correspond to such entity.

- No WHT is chargeable on payments made between companies of the tax group (e.g. interest, dividends).

Tax groupings for VAT purposes

Groups of companies may also choose to be taxed under a special tax consolidation regime for VAT purposes. This special regime is optional, but once it has been opted for, it must be applied for a minimum of three years, which is extendible unless it is expressly waived by the companies.

The VAT consolidation regime may only be applied by companies resident in Spanish VAT territory that do not form part of any other VAT grouping.

The controlling company of the group must be a legal entity or PE that is not dependent on any other entity established in Spanish VAT territory, and its interest in the capital or voting rights of the subsidiary companies of the group should be over 50% for the entire calendar year. Group companies should be associated in three different ways: economic, financial, and organisational.

With the application of the VAT consolidation regime, there are two different options for taxation:

- The aggregation system, where the balances of the VAT returns of the individual companies of the group are totalled. The right to a tax deduction is exercised by the individual companies.
- The consolidation system, where an individual company can opt to reduce VATable income for inter-company operations, which is limited to the ‘external’ cost.

Transfer pricing

All related-party transactions must be valued at market price, following the arm’s-length principle (e.g. the value that in normal market conditions would have been established between unrelated parties).

For this purpose, related persons or entities shall be:

- A company and its shareholders or members.
- A company and its board members or directors, except insofar as concerns the remunerations of the latter.

- A company and the spouses of or persons related to its shareholders or members, board members, or directors, either in a direct line or collaterally, by consanguinity or affinity up to the third degree.
- Two companies of a group.
- A company and the board members or directors of another company, when both companies form part of a group.
- A company and the spouses of or persons related to the shareholders or members of another company, either in a direct line or collaterally, by consanguinity or affinity up to the third degree, when both companies form part of a group.
- A company and another company in which the former company has at least a 25% holding, held indirectly, in its share capital or shareholders' equity.
- Two companies in which the same shareholders or members or their spouses, or persons related to them either in a direct line or collaterally, by consanguinity or affinity up to the third degree, have at least a 25% holding, whether directly or indirectly, in their share capital or shareholders' equity.
- A company resident in Spanish territory and its PEs abroad.
- A company not resident in Spanish territory and its PEs in Spanish territory.
- Two companies forming part of a group taxed under the tax regime for groups of cooperative companies.

For cases where association exists as a result of a shareholder/member-company relationship, the shareholding must be 25% or more. The reference to directors shall include *de facto* and *de jure* directors.

The determination of the market value by taxpayers must be done through the application of one of the following transfer pricing methodologies: comparable uncontrolled price (CUP) method, cost plus (CP) method, resale price method (RPM), profit split method (PSM), or transactional net margin method (TNMM). There is no longer an order of priority in the use of these valuation methods. When it is not possible to apply one of the methods established by the law, other generally accepted valuation methods and techniques based on the arm's-length principle can be used.

Documentation is also a requirement, with taxpayers required to produce group-level and taxpayer-specific documentation for each tax year. Related persons or entities must keep such documentation available for the tax authorities as of the end of the voluntary return or assessment period in question. Some exceptions are established for these documentation requirements.

Documentation is always required for transactions with entities, whether related parties or otherwise, that are resident in tax havens.

Spanish resident parent companies of a commercial group that are not controlled by another company and Spanish resident subsidiaries controlled by a non-resident company that, at the same time, is not controlled by another company or by PEs of non-resident companies must submit information annually 'country by country' whenever the group's turnover during the 12 months before the beginning of the tax period is at least EUR 750 million.

Please note that specific penalties may be imposed in the event of the absence of documentation or where data are omitted, inaccurate, or false.

Thin capitalisation

Thin capitalisation rules have been repealed.

Controlled foreign companies (CFCs)

Spanish CFC rules seek to avoid the effects produced when Spanish tax resident companies or individuals place their capital in low-taxed foreign companies to avoid including passive income generated by such capital in their taxable bases or the effects produced when a subsidiary located in a low-taxed jurisdiction provides services to its Spanish resident parent company that reduces the latter's taxes.

Under this regime, Spanish tax resident companies pay Spanish CIT on the income obtained by a non-resident subsidiary upon meeting certain requirements, including, specifically, the requirement that the Spanish parent company must own, individually or together with other related companies or individuals, over 50% of the non-resident subsidiary's share capital, equity, profits, or voting rights, and the CIT payable by the non-resident subsidiary must be under 75% of the tax that would be payable in Spain.

CFC rules are not applicable to EU resident companies if they are set up for economic reasons and carry on a business activity or to the Collective Investment Institutions regulated in EU Directive 2009/65/CE other than those established in Section 54 of the Spanish CIT Act and domiciled in an EU member state.

There are two types of CFC:

- A 'global CFC' regulation applies if the non-resident company does not have at its disposal an adequate structure of material and human resources unless it can justify that its operations are performed using material and human resources existing in a non-resident company of its same corporate group or that there are valid economic reasons for its incorporation and operations. With this regulation, all income obtained by the company not resident in Spanish territory should be included in the Spanish company's tax base. However, dividends, stakes in profits, or income arising from the transfer of an interest should not be included when the interest exceeds 5%, the minimum ownership period is one year, and the interest is held for the purpose of directing and managing the investee if the investee has an adequate structure of material and human resources and, by law, it is not an equity company.
- When the conditions for applying the international tax transparency regime are met and the requirements for the application of the 'global CFC' are not met, the following income obtained by non-resident investees should be included in the Spanish company's tax base:
  - Income generated from real estate assets not assigned to a business activity.
  - Income generated from an interest held in the equity of any type of company and from the assignment of own capital to third parties.
  - Capitalisation and insurance operations in which the beneficiary is the company itself.
  - Income generated from industrial and intellectual property, technical assistance, real estate, image rights, and the leasing or sub-leasing of businesses and mines.
  - Income generated from transfers of the aforementioned assets and rights.
  - Income generated from lending, financial, and insurance activities and the provision of services if they generate a taxable expense in the Spanish resident company. The positive income obtained in this case will not be included if over 50% of the gross income obtained by the non-resident company due to these services comes from services provided to non-related companies.
  - Income generated from derivative financial instruments.

The types of income indicated above should not be imputed when the sum of these amounts is less than 15% of the total income obtained by the non-resident company, unless the income is generated from derivative financial instruments, which should be imputed in its entirety.

In addition, the ordinary level of CFC will not apply if the income indicated above corresponds to non-taxable expenses incurred by Spanish tax resident companies.

Tax credits and incentives

Foreign tax credit

See Foreign income in the Income determination section for a description of double tax relief.

CIT relief

No specific tax relief is established in Spanish law for foreign investors. Relief may be availed of by Spanish and foreign-owned companies alike. The tax relief available under CIT law in Spain is as follows.

Most of the tax credits that have been established to promote certain investments have been eliminated. However, the largest tax credits are maintained (tax exemption/deduction credit to prevent internal and international double taxation, tax credit for R&D, and tax credit for technological innovation).

Tax relief for business activity/place of business activity

- 50% tax credit on CIT levied on income obtained in Ceuta and Melilla through companies established and carrying on activities during a full business cycle in these enclaves because of their specific geographic location.
- 99% tax credit on the CIT levied on income obtained from the supply of local public services, except when the state company in question is owned, partially or wholly, by a quoted/non-quoted company or individual.

R&D and technological innovation credits

A 25% tax credit can be availed of for expenses incurred from R&D activities. If the expenses are higher than the average R&D expenses incurred by the company during the previous two years, the tax credit is 42% for the excess amount.

An additional tax credit of 17% can be availed of for staff expenses incurred for staff exclusively carrying out and qualified to carry out R&D activities.

An 8% tax credit can be availed of for investments made in tangible fixed assets (excluding buildings) and intangible assets that are exclusively assigned to R&D activities.

A 12% tax credit can be availed of for technological innovation activities.

Tax relief for R&D and technological innovation can be excluded from the limits on tax relief applied on tax liabilities (*see below for Limits on the amount of tax credit applied*), which will have a cost of 20% of the tax relief applied, meaning that, if certain requirements are met, 80% of the tax relief for R&D and technological innovation may reduce tax liability after double tax deductions and tax allowances to zero, and any excess tax relief (up to its 80%) may be refunded by the tax authorities.

The requirements for the exclusion of the R&D and technological innovation tax reliefs from the tax relief limits are as follows:

- One tax period has passed since the tax relief was generated and the tax relief has not been applied.
- An amount equal to the tax relief applied or paid has been allocated to R&D and technological innovation expenses or to investments in tangible fixed assets or intangible assets used exclusively for R&D and technological innovation activities, excluding real property, within 24 months of the end of the tax period when the tax relief was applied or paid.
- The taxpayer's average number of staff (staff in general or staff assigned to R&D and technological innovation activities) has not decreased between the end of the tax period when the tax relief was generated and the end of the reinvestment period.
- The taxpayer has a report that certifies that the activities are R&D and technological innovation activities or it has made an advance agreement with the Spanish tax authorities regarding the valuation of the expenses and investments of the project.

The following should also be taken into consideration:

- The tax relief applied or paid for technological innovation in accordance with the foregoing comments may not exceed a total of EUR 1 million per year.
- The sum of the tax relief applied or paid for technological innovation and the tax relief applied or paid for R&D innovation in accordance with the foregoing comments may not exceed a total of EUR 3 million per year.

If R&D expenses for the year exceed 10% of turnover, an additional amount of EUR 2 million per year of tax credit for R&D can be applied or paid without limitation and with a 20% discount.

Tax relief for invested profits

Tax relief for invested profits has been eliminated for tax periods starting on or after 1 January 2015.

This tax relief gave small companies a 10% reduction of their taxable profits, provided that such profits were reinvested in new tangible fixed assets or real property investments used for business activities and certain requirements were met.

Taxpayers may avail of this tax relief for profits generated in tax periods starting between 1 January 2013 and 31 December 2014 even when the investment is made and the other requirements are met in tax periods starting in or after 2015.

Reinvestment of extraordinary income

The tax credit for reinvestment of extraordinary income has been eliminated for tax periods starting on or after 1 January 2015.

Taxpayers may continue to avail of the tax credit for income obtained in tax periods starting prior to 1 January 2015 when the reinvestment is made and the other requirements are met in tax periods starting after that date.

The tax credit can also be applied for sales with instalment payments, although, in this case, the tax credit is 10% if the income is included in the tax base for tax periods starting in or after 2016.

Capitalisation reserve
The tax base can be reduced by 10% of the increase in equity made in the preceding year, provided that the equity is maintained for a period of five years (except when losses are made), subject to a limit of 10% of the positive tax base of the period prior to this reduction. If this tax base is insufficient, pending amounts may be offset in subsequent tax periods. To apply this tax relief, a reserve should be allocated for the amount of the reduction, which should be undistributable for a period of five years.

Tax credits for film productions and live performing arts and musical shows
Investments in Spanish feature-length film productions and the production of audio-visual fiction, animation, or documentary series, where physical copies can be produced prior to serialised industrial production, entitle the producer to a 20% tax credit on the first EUR 1 million of the tax credit base and an 18% tax credit for any excess tax credit base. The tax credit may not exceed EUR 3 million.

A territory requirement is introduced, and this tax relief may only be applied for productions mainly carried out in Spain.

For foreign productions, a tax credit of 15% of expenses incurred in Spain can be applied if certain requirements are met. The tax credit may not exceed EUR 2.5 million. The limit of 25% of gross tax payable does not apply in the case of this tax credit, meaning that gross tax payable may be reduced in its entirety, and if tax payable is not sufficient, the taxpayer may request the difference from the tax authorities in its CIT return.

Taxpayers are eligible for a 20% tax credit for expenses incurred for producing and performing live performing arts and musical shows. This tax credit may not exceed EUR 500,000.

Tax credit for increases in the number of disabled workers
A tax credit can be applied for increases in the number of disabled workers contracted per year on a permanent and full-time basis. The tax credit is EUR 9,000 per worker contracted whose level of disability is 33% or more, but less than 65%, and EUR 12,000 per worker contracted whose level of disability is 65% or more. This increase is calculated by taking the average number of company workers of each of these categories in the tax year in question that meet the established requirements and comparing it with the company's average number of staff in the same category in the previous tax year.

Reserve for levelling-off of tax losses
The possibility of reducing the positive tax base of small companies by up to 10% by establishing a non-distributable reserve for the amount of the reduction is introduced (reserve for the levelling-off of tax losses). The reduction may not exceed EUR 1 million and should be reversed in line with the tax losses obtained by the company, subject to a five-year time limit.

Limits on the amount of tax credit applied
The combined sum of all investment tax credits may not exceed 25% of the company's gross tax payable less deductions for international double taxation and tax relief for income obtained in Ceuta and Melilla, for export activities, and for local public services. When R&D and technological innovation tax credits for expenses and investments in the year exceed 10% of the company's gross tax payable, less tax credits and relief mentioned above, the limit will be 50%.

In addition, a limit of 50% of gross tax payable is established for the application of deductions for international or internal double taxation (generated or pending application). This limit will only apply to companies with a net turnover of at least EUR 20 million.

Time limits for the application of tax credits

Tax credits that are not applied in the tax period owing to insufficient tax payable may be applied in tax periods ending in the 15 years immediately thereafter. However, R&D and technological innovation tax credits may be applied in tax periods ending in the 18 years immediately thereafter, and tax credits for the avoidance of double taxation may be applied in the ensuing tax periods with no time limits.

Special tax regimes

Special tax regimes are applicable, among others, in the following cases:

Spanish and European Economic Interest Groupings and Temporary Consortia of Entities

- Spanish Economic Interest Groupings (SEIGs) that meet certain requirements will not be subject to Spanish CIT on the part of the taxable income that corresponds to members resident in Spain for tax purposes. Such part of the positive or negative taxable income shall be deemed to be the profits/losses of the SEIG members. The proportional part of tax credits and payments in advance will also be assigned to the Spanish tax resident members of the SEIG where they are subject to CIT or PIT. Dividends distributed to SEIG members that have been subject to imputation will not be taxed under CIT or PIT on distributions. Dividends distributed to Spanish non-resident SEIG members will be taxed in accordance with the Spanish NRIT law and Conventions for the Avoidance of Double Taxation.
- European Economic Interest Groupings (EEIGs) will be taxed under the above-mentioned regime with the following exception: EEIGs will not be subject to Spanish CIT.

  If the EEIG is not resident in Spain for tax purposes, Spanish tax resident members will include the corresponding part of the profits or losses determined for the grouping, corrected by applying the rules for determining taxable income for CIT or PIT purposes, as applicable. When the activity carried out by the members through the grouping determines the existence of a PE abroad, the rules provided for in this law or in the respective treaty for the avoidance of double international taxation will be applicable.

  Non-Spanish tax resident members will only be subject to Spanish NRIT when the activity they perform through the grouping determines the existence of a PE in Spanish territory.

  Dividends distributed to non-Spanish tax resident members that have been subject to imputation will not be taxed in Spain on the distribution.

- Temporary Consortia of Entities (TCEs) are taxed under the SEIG regime. Members of a TCE operating abroad may apply the exemption for double taxation on income obtained by the TCE abroad through a PE or the deduction for the avoidance of international double taxation on income obtained by the TCE abroad. Losses obtained abroad by members of TCEs are not tax deductible.

Restructuring transactions

The special tax regime for restructuring transactions is a tax neutrality regime implemented under EU Directive 2009/133. As a general rule, under this regime, asset transfers carried out through such transactions do not have any tax implications (either from a direct, indirect, or other Spanish tax perspective) for the parties involved (transferor, beneficiary, and shareholder), until a subsequent transfer takes place that is not protected by this regime.

The transactions that can be taxed under this regime are mergers, global transfers, spin-offs of business units/majority interests, splits, share-to-share transactions, contributions of business units, and contributions of assets (this last transaction is not fully tax-protected). Each of them must comply with a series of requirements for the application of the regime.

Transfers of registered offices of an EU company or cooperative society between EU member states will not generate any tax for the company/cooperative society's shareholders on their income, profits, or capital gains.

The tax credit position of a company dissolved as a result of a tax-protected restructuring transaction is 'acquired' in full by the beneficiary company in the case of universal succession.

The 'acquired' tax credits only include tax credits that are obtained in relation to assets transferred in transactions where the transferor is not dissolved or the succession is not a full succession for Spanish commercial purposes.

Tax losses may be transferred not only when the transferring company is dissolved but also when a line of business is transferred (in the latter case, only tax losses related to this line of business will be transferred), subject in both cases to certain restrictions.

Financial goodwill arising in a merger transaction in which the acquirer owns an interest of at least 5% in the capital of the transferor is amortised for tax purposes at a maximum annual rate of 5% at the level of the Spanish beneficiary company of the merger, provided that such interest was acquired in a tax period that, for the transferor, commenced before 1 January 2015. Amortisation of financial goodwill does not have to be recorded in the income statement for it to be tax deductible.

When the interest has been acquired in a tax period that, for the transferor, commenced on or after 1 January 2015, this tax incentive, which aims to correct double taxation, will not be applicable, as, initially, the whole transferring company's capital gain will benefit from the tax exemption for the avoidance of double taxation, provided that the transferring company is a Spanish CIT payer.

This tax regime cannot be applied if the transaction is carried out for the purpose of tax fraud or evasion (anti-abuse clause). An additional anti-abuse clause in line with the clause established by the EU directive is established in Spanish law to ensure that the tax regime cannot be applied if the transaction is not carried out for valid economic reasons, such as the streamlining of activities or group restructuring to gain efficiency, but to obtain a tax benefit. If the tax authorities decide, as a result of its verification procedures, that the special tax regime is not applicable, either fully or partly, as there are no valid economic reasons for the transaction, the only implication will be that the effects of the tax benefit obtained will be eliminated.

The special tax neutrality regime is applicable by default to restructuring operations. When these operations are carried out, the tax authorities should be notified of the type of operation and, when the case, whether the taxpayer opts not to apply the special tax regime. Failure to notify the tax authorities of this matter is a serious tax offence and carries a fine of EUR 10,000.

For debts incurred to acquire companies, the interest should be deducted for tax purposes taking into consideration the acquirer's operating profits, excluding the operating profits of any company with which the acquirer may merge during the four years following the acquisition. These financial expenses should also be taken into account for the purpose of the general financial expenses limit applicable.

Expenses that are not tax deductible owing to the application of this special rule can be deducted, subject to the above limits, in subsequent tax periods for an unlimited period of time. The limit is not applicable when the debt associated with the acquisition of the interest in the company reaches a maximum of 70% and is reduced, as from the time of the acquisition, by at least the proportional part corresponding to each of the following years until a level equal to 30% of the acquisition price is reached.

This limit does not apply to restructuring operations carried out before 20 June 2014 or to restructuring operations carried out on or after 20 June 2014 between companies that formed part of the same tax consolidation group in tax periods starting on or after that date.

Tax transparency

Tax transparency (under international CFC rules) is not applicable for companies resident in the European Union, provided that the taxpayer can prove that the non-resident company has been set up and operates for valid economic reasons and carries out a business activity or that it is a collective investment institution regulated in EC Directive 2009/65/CE and not established in Section 54 of Spanish CIT Act that has been set up and is domiciled in an EU member state.

See CFCs in the Group taxation section for more information.

Venture capital companies and funds

Venture capital companies (VCCs) and funds (VCFs) may benefit from the following tax regime if certain requirements are met:

- Dividends from target companies may benefit from the tax exemption for the avoidance of double taxation, irrespective of the percentage of the interest or the holding period.
- Capital gains arising from the transfer of shares in target companies that do not meet the requirements for the application of the tax exemption for the avoidance of double taxation may be 99% exempted from CIT, provided that such shares have been held for a period between two and 15 years.
- Profit distributions to VCC and VCF shareholders may benefit from the tax exemption for the avoidance of double taxation, irrespective of the percentage of the interest or the holding period, if the shareholders are Spanish tax residents or have a PE in Spain. Income from profit distributions to non-Spanish tax resident shareholders without a PE in Spain is not subject to taxation in Spain unless it is obtained through a tax haven. The same regime applies to the transfer of shares in VCCs and VCFs.

Collective Investment Institutions (CIIs)

CIIs are subject to CIT at a reduced rate of 1%. They are not entitled to apply the tax exemption for the avoidance of double taxation on dividends and capital gains arising from the transfer of shares or a deduction for the avoidance of international double taxation. Dividends distributed by these institutions are subject to the general WHT regime. Shareholders are taxed on dividends received from the CII and on capital gains obtained for the transfer of the CII without being entitled to the application of the tax exemption for the avoidance of double taxation on dividends and capital gains arising from the transfer of shares or a deduction for the avoidance of international double taxation.

Lease transactions

Financial leasing contracts with a purchase option that may be exercised at the end of the lease period may benefit from a special tax regime if they meet certain requirements. According to this regime, the lessee may deduct the following expenses from its taxable income:

- The part of the lease payments that corresponds to the financial charge (interest) paid to the lessor.
- The part of the lease payments that corresponds to the recovery of the cost of the leased object. Tax deductibility for this amount may not exceed the result of applying twice the straight-line depreciation/amortisation rate applicable on the leased object in accordance with the official depreciation/amortisation tables.

Spanish holding companies of foreign companies (Entidad de Tenencia de Valores Extranjeros or ETVE) regime

Spanish resident companies whose corporate purpose includes the holding and management of foreign companies' shares and that, by law, are not equity companies (i.e. companies that do not carry on a business activity) are granted some tax benefits, subject to compliance with certain requirements.

The tax authorities must be notified of the application of this tax regime.

In addition, the distribution of profits by the holding company to non-resident companies or individual shareholders is not taxable in Spain if such profits come from income generated from non-resident companies and may benefit from the tax exemption for the avoidance of double taxation on dividends and capital gains arising from the transfer of shares or from income obtained abroad through a PE that may benefit from the exemption for the avoidance of international double taxation of income obtained through a PE unless the profits are distributed to a tax haven. Resident company shareholders are entitled to an internal tax credit on dividends under Spanish law.

Small and medium-sized companies

Small and medium-sized companies are eligible for tax relief, such as accelerated depreciation/amortisation or more favourable bad debt provision treatment. To be eligible for this relief, turnover in the previous tax year must not exceed EUR 10 million and, by law, the company must not be considered an equity company (a company that does not carry on a business activity). In the case of a group, the turnover of all the companies must be considered for this purpose. Companies that generate a turnover of EUR 10 million that have met the requirements to be considered small and medium-sized companies in the tax period in which they obtained such turnover and in the two previous tax periods may be eligible for this tax relief during the three periods immediately after the period in which they obtain this turnover.

The applicable CIT rate is the general rate (25%).

Special tax regime for companies that lease housing
Companies whose main business activity is the lease of housing located in Spain that they have constructed, promoted, or acquired may apply a special tax regime that significantly reduces CIT liability, provided that certain requirements are met.

Real Estate Investment Trust Regime (SOCIMI)
A special tax regime is established in Spain for listed companies that make investments in the real estate market (called SOCIMIs in Spain) and meet certain requirements. SOCIMIs apply a 0% CIT rate and have strict profit distribution obligations.

Special economic and tax regime of the Canary Islands
Due to the remoteness and isolation of the Canary Islands, they have traditionally enjoyed a special economic and tax regime with specific economic and tax measures different to those established for the rest of Spain. As a result, they have one of the most profitable tax regimes in Europe.

Regarding direct taxes, the Canary Island economic and tax regime establishes the following tax benefits for companies and businesses domiciled in the Canary Islands or with a PE in the Canary Islands:

- Up to 90% of annual undistributed accounting profits can be allocated to a special investment reserve and not taxed, provided that they are invested within a four-year period (including the period during which the profits are obtained) in qualifying assets in the Canary Islands or in certain public debt securities or shares in other companies operating in the Canary Islands that invest in qualifying assets.
- Most Spanish CIT deductions are 80% higher for companies and businesses located in the Canary Islands (the tax credit is increased by at least 20%).
- A 25% tax credit can be availed of for investments in new tangible fixed assets and, subject to compliance with certain requirements, second-hand assets.
- A tax credit of 50% of the CIT liability is granted for taxable income generated from the production of tangible goods while carrying on agricultural, farming, industrial, and fishing activities.
- A tax credit of 90% of the CIT liability is granted for profits of shipping companies generated from ships registered in the Canary Islands Special Ships and Shipping Companies Register. For sailors of such ships, a 50% tax exemption can be applied to PIT levied on their employment income and a 90% reduction to the part of their Social Security contributions paid by their employers.
- A CIT credit is applicable for companies that make investments in certain countries in Africa. The tax credit is 15% of the investments made.
- Another CIT credit is applicable for advertising expenses incurred for product launches, opening and prospecting of markets abroad, and attending exhibitions and fairs. This tax credit is 15%.

Regarding indirect taxes, in addition to lower taxation through the Canary Island general indirect tax (IGIC at the general rate of 7%) compared to VAT and specific IGIC exemptions, the following should be noted:

- Companies domiciled in the Canary Islands that are CIT payers and are newly incorporated, start new activities, or improve their existing activities may benefit from the following tax relief:
  - Exemption from IGIC/transfer tax on supplies and imports of capital goods if the company has a deduction percentage that is not 100%.
  - Shipping companies qualify for an exemption from transfer tax for any contracts related to ships registered in the Canary Islands Special Ships and Shipping Companies Register.
  - Customs Free areas are available. Upon EU demand, there are restrictions on the application of certain tax relief (special investment reserve, tax credits for production, and new business indirect tax relief) for the following industrial sectors: shipbuilding, synthetic fibres, automobile, iron and steel, and coal.

Canary Islands Special Zone tax regime

In January 2000, a Canary Island Special Zone tax regime (ZEC) was approved by the European Union. The main regulations of this regime, established by the Spanish government, are as follows:

- New companies and branches may qualify for the application of this tax regime and, on the approval of the tax authorities, may be registered up to 31 December 2020 (applying the tax regime up to 31 December 2026). This may be extended by the European Union.
- To qualify for this tax regime, the company must:
  - covenant to make an investment in fixed assets of at least EUR 100,000 in Gran Canaria or Tenerife, or EUR 50,000 in Fuerteventura, Lanzarote, La Palma, El Hierro, or La Gomera, within the first two years of their business activity
  - covenant to create at least five new jobs in Gran Canaria or Tenerife, or three in the other islands
  - provide a description of the business activities to be carried out that support the company's solvency, viability, international competitiveness, and contribution to the economic and social development of the Canary Islands
  - establish its registered office and place of effective management in the Special Area
  - have at least one company director who resides in the Canary Islands or a legal representative in the case of branches, and
  - carry out one of the qualifying business activities.
- The territory where this tax regime can be applied includes all the Canary Islands.
- Companies applying the tax regime may operate outside the Canary Islands through branches if separate accounting books are kept.
- Activities for which the tax regime can be applied include a wide range of industrial and commercial activities, most services and holdings. Credit and insurance entities are excluded, and no stock exchanges are allowed.
- The tax liability on which the Canary Island Special Zone tax regime will apply is determined in accordance with the following rules: (i) companies that meet the requirement of creating a minimum number of jobs may apply the special tax regime on a tax liability of EUR 1.8 million, (ii) the tax liability on which the special tax regime will be applied is increased by EUR 500,000 for each job created over the minimum threshold, up to 50 jobs. If more than 50 jobs are created, the Canary Island Special Zone tax regime will apply to the full amount of tax liability even if another limit, which in practice is not applied so often, may apply. These thresholds are considerably high and the tax relief is not usually capped. The general CIT

regime establishes a 25% tax rate for Spanish companies, while the ZEC tax rate applicable to the valid ZEC tax base amounts to 4%.
- Under this tax regime, companies can avail themselves of large tax exemptions for IGIC, transfer tax, and stamp duty, and large reductions and simplified regulations for local taxes.
- Interest and some other returns from moveable goods paid by companies under this tax regime are exempt from Spanish NRIT, except when paid to residents in tax havens.
- Benefits established in the EU Parent-Subsidiary Directive are extended to non-EU residents. These benefits are not applicable when the income is paid to residents in tax havens.
- A fee of EUR 850 is payable to be registered as a company that applies this tax regime, and an annual fee (EUR 1,500 for companies in Tenerife and Gran Canaria and EUR 1,300 for companies on other islands) is payable to continue to be registered as qualifying for the tax regime.

Withholding taxes

Ordinarily, WHT is the mechanism by which the Spanish tax authorities collect the final tax levied on non-residents. In the case of resident beneficiaries, however, it is simply an advance payment of a tax that is then normally self-assessed by the resident taxpayer in the final annual tax return.

The advance payment system of WHT for resident beneficiaries referred to above also applies if non-resident companies/individuals not established in Spain sell their title to Spanish real estate. In this case, the acquirer of the real estate must levy a 19% WHT on the selling price on account of the tax chargeable to the seller on its capital gain. Other capital gains (for instance, from a sale by a non-resident of a substantial interest in a Spanish company where neither a tax treaty nor internal rules establish a tax exemption) are taxed in the hands of the non-resident transferor, but the mechanics of levying the tax are not those of a WHT. In this case, the non-resident's tax is paid directly, through its representative or by the depositor or manager of the assets in question, if any.

The following table states the general WHT rates on income obtained by resident/non-resident companies. The most significant peculiarities regarding the rates for each type of income are stated in footnotes to the table.

Withholding rates

Recipient	Dividends (%)	Interest (%)	Royalties (%)
Resident corporations and individuals	19 (1a)	19 (2a)	19 (2b)
Non-resident corporations and individuals:			
Non-treaty	19 (3)	19 (4)	24 (1b, 5)
Treaty *:			
Albania	10 (6)	6 (10, 22)	0
Algeria	5 (7)	5 (8, 9, 10, 11)	7 (12)
Andorra	5 (7)	5 (8, 9)	5
Argentina	10 (106)	12 (107)	15 (108)
Armenia	10 (104)	5	10 (105)
Australia	15	10	10

Recipient	Dividends (%)	Interest (%)	Royalties (%)
Austria	10 (3, 16)	5 (4)	5 (5)
Barbados	0 (98)	0	0
Belgium	15 (3, 15, 18)	10 (4, 18, 19)	5 (5, 18)
Bolivia	10 (13, 18)	15 (8, 9, 10, 14, 18)	15 (17, 18, 20)
Bosnia	5 (21)	7 (22)	7
Brazil	10 (13, 17)	15 (9, 24, 25)	15 (17, 26)
Bulgaria	5 (3, 27)	0 (4)	0 (5)
Canada	5 (121)	10 (122)	10 (20, 28)
Chile	5 (29)	15 (17, 30)	10 (17, 31)
China	10	10	10 (32)
Colombia	5 (33)	10 (17, 34, 123)	10 (17)
Costa Rica	12 (17, 35)	10 (17, 34, 36)	10 (17)
Croatia	0 (13, 18)	0	0
Cuba	5 (13, 18)	10 (18, 37)	5 (18, 20)
Cyprus	0 (110)	0	0
Czech Republic	5 (3, 27)	0 (4)	5 (5, 38)
Dominican Republic	10 (111)	10 (112)	10
Ecuador	15	10 (39)	10 (40)
Egypt	12 (41)	10 (42)	12
El Salvador	12 (17, 43)	10 (17, 22)	10 (17)
Estonia	5 (3, 13, 17, 18)	0 (4, 9, 10, 11, 18)	0 (5, 17, 18)
Finland	10 (3, 13)	10 (4)	5 (5)
France	15 (3, 45)	10 (4, 46)	5 (5, 47)
Georgia	0 (99)	0	0
Germany	5 (3, 7, 48)	0 (4, 48)	0 (5)
Greece	5 (3, 49)	8 (4, 50)	6 (5)
Hong Kong	10 (15)	5 (59)	5
Hungary	5 (3, 13)	0	0
Iceland	5 (13, 18)	5 (9, 18)	5 (18)
India	15	15 (9, 51, 52)	10 (17, 53)
Indonesia/Timor Oriental	10 (13)	10 (9, 54, 55)	10
Iran	5 (56)	7.5 (9, 10, 11)	5
Ireland	15 (3, 18)	10 (4, 18, 55)	10 (5, 18, 57)
Israel	10 (18)	10 (9, 18, 58)	7 (18, 40)
Italy	15 (3)	12 (4, 9)	8 (5, 60)
Jamaica	5 (17, 49, 61)	10 (17, 22, 61)	10 (17, 61)
Japan	10 (23)	10	10
Kazakhstan	5 (90)	10 (8, 9, 97)	10
Kuwait	5 (84)	0	5
Latvia	5 (3, 18, 49)	10 (4, 9, 10, 17, 18, 124)	10 (5, 17, 31)
Lithuania	5 (3, 13, 18)	10 (4, 9, 10, 17, 18)	10 (5, 17, 18, 31)
Luxembourg	10 (3, 62)	10 (4, 9, 63)	10 (5, 64)
Macedonia	5 (7)	5 (65)	5
Malaysia	5 (18, 66)	10 (8, 9, 17, 18)	7 (18, 67)
Malta	5 (3, 68)	0	0
Mexico	5 (13)	15 (8, 9, 17, 69, 125, 126, 127, 128, 129, 130)	10 (17, 20, 38)
Moldova	0 (70)	5 (22)	8

Recipient	Dividends (%)	Interest (%)	Royalties (%)
Morocco	10 (13)	10	10 (40)
Netherlands	15 (3, 71, 131)	10 (4)	6 (5, 72)
New Zealand	15 (17)	10 (17)	10 (17)
Nigeria	10 (17, 114, 117)	7.5 (17, 115, 117)	3.75 (17, 116, 117)
Norway	10 (13)	10 (9, 10, 55, 132)	5 (64, 73a)
Oman	0 (119, 120)	5 (9) (119)	8 (119)
Panama	5 (100, 101)	5 (10, 44)	5
Pakistan	10 (73b)	10 (8, 9, 97)	7.5
Philippines	10 (74)	15 (75)	15 (76, 133)
Poland	5 (3, 13)	0 (4)	10 (5, 20)
Portugal	10 (3, 13, 18)	15 (4, 18)	5 (5, 18)
Romania	10 (3, 13)	10 (4, 77)	10 (5)
Russian Federation	15 (18, 78)	5 (8, 9, 18, 79)	5 (18)
Saudi Arabia	5 (68)	5 (8, 9)	8
Senegal	10	10 (113)	10
Serbia	5 (17, 134)	10 (9, 17)	10 (17, 80)
Singapore	0 (102)	5 (103)	5
Slovakia	5 (3, 27)	0 (4)	5 (5, 38)
Slovenia	5 (3, 13, 18)	5 (4, 8, 9, 18)	5 (5, 18)
South Africa	5 (13, 18)	5 (18, 81)	5 (18)
South Korea	10 (13)	10 (9, 82)	10
States of the former USSR (except Russia)	18	0	5
Sweden	10 (3, 16)	15 (4)	10 (5)
Switzerland	15 (83)	0	5 (85)
Thailand	10 (17)	15 (86a)	15 (86b)
Trinidad and Tobago	0 (70, 87a)	8 (8, 9, 63, 82, 87a)	5 (87a)
Tunisia	5 (87b)	10 (88)	10
Turkey	5 (13)	15 (89)	10
United Arab Emirates	5 (9, 90)	0	0
United Kingdom	10 (3, 109)	0	0
United States	10 (13)	10 (8, 9, 65)	10 (57, 91a)
Uruguay	5 (91b)	10 (8, 9, 92)	10 (93)
Uzbekistan	5 (23)	5 (118)	5
Venezuela	0 (49)	0 (17, 94, 95)	5
Vietnam	7 (17, 18, 96)	10 (9, 17, 18, 63)	10 (17, 18, 31, 135)

Notes

The general rates in the table above are for guidance only and should not be treated as tax advice.

The rates above are for income obtained by non-residents that is not related to any PEs that they may have in Spain.

* Aside from these tax treaties, the following tax treaties are not yet in force, as they are currently being negotiated or are not yet approved or published: Azerbaijan, Bahrain, Belarus, Cabo Verde, Montenegro, Namibia, Peru, Qatar, and Syria.

1.
   a. If a corporate taxpayer, as a shareholder, is entitled to a tax exemption for the avoidance of double taxation on the dividends received, no WHT is levied. As a general rule, corporate shareholders with at least a 5% interest held for at least one year may apply this tax exemption on the dividends received.

   b. For residents of other EU member states or EEA countries with which there is an effective exchange of tax information, the rate is 19%.
2.
   a. The 19% WHT rate does not apply if, amongst other cases, the recipient is a resident bank or savings or other financial institution subject to CIT, provided that this income is not portfolio income. In addition, no WHT is levied on interest arising between companies taxed under the tax consolidation regime.
   b. A 19% WHT rate is levied on income generated under royalty and technical assistance agreements, from leases or from the granting of rights when ownership is not transferred. A 24% rate is levied on fees received by a company for the transfer of rights to an image or consent or authorisation to its use.
3. Implementation of the EU Parent-Subsidiary Directive in Spanish law gives EU shareholders a WHT exemption on dividends from Spanish companies, subject to compliance with certain requirements. Luxembourg recipients of income that are companies under paragraph 1 of the Protocol to the Tax Treaty with Spain (holding companies) are not allowed this exemption.
4. The EU Interest and Royalties Directive WHT exemption for interest obtained by EU lenders is applicable when appropriate.
5. Taxable income from supplies of services, technical assistance, or assembly/installation work under engineering contracts provided or carried out by non-resident companies with no PE in Spain does not follow the general rule for gross income. In such cases, total income can be reduced by related staff costs, certain supplies (water, electricity, telephone), and materials used for the services/work, provided that, in the case of staff costs, evidence can be furnished that they were actually taxed in Spain. According to the EU Interest and Royalties Directive, royalties paid to other EU member state associate companies are exempt from WHT.
6. A 5% WHT is levied if the recipient is a company that holds at least 10% of the capital of the company paying the dividends; no WHT is levied if the recipient company holds at least 75% of the capital of the company paying the dividends.
7. Levied if the recipient is a company holding at least a 10% interest in the paying company; otherwise, a 15% rate is levied.
8. Interest paid by certain public institutions is tax exempt.
9. Interest paid to certain public institutions is tax exempt.
10. Interest arising from the acquisition of commercial, industrial, or scientific equipment is tax exempt.
11. Interest paid on loans granted by a bank or other financial institution is tax exempt.
12. For royalties for any copyright of artistic, scientific, or literary work (including cinematograph films and films or tapes for radio or television broadcasting), the rate levied is 14%.
13. Levied if the recipient is a company holding at least a 25% interest in the paying company; otherwise, a 15% rate is levied.
14. No WHT is levied on interest when both contracting states agree this and the loan is for no less than five years.
15. No WHT is levied on dividends if the beneficial owner is a company (other than a partnership) that holds at least 25% of the capital of the company paying the dividends.
16. Levied if the recipient is a company holding a direct interest of at least 50% in the paying company for at least one year; otherwise, a 15% rate is levied.
17. A 'most-favoured nation' clause is included in the Convention or Agreement for the Avoidance of Double Taxation between this country and Spain.
18. Reduced WHT rates or exemptions are not levied/applied if the income is paid to a company resident in a contracting state more than 50% of whose shares are directly or indirectly held by non-residents. This clause will not apply if the company can prove that it carries out important industrial or commercial activities and does not merely manage or hold shares.
19. A tax exemption can be applied to interest on commercial loans, loans guaranteed by public bodies for the promotion of exports, and on current accounts in banks or nominative advances between banks of both contracting states.
20. Royalties for any copyright of literary, theatrical, musical, or artistic work (with some exceptions, such as films and TV programs) are exempt from WHT.
21. 5% WHT is levied if the recipient (beneficial owner) is the shareholder of the paying company with at least a 20% interest; otherwise, 10% WHT is levied.
22. No WHT is levied on interest if: (i) the recipient is the other contracting state, its central bank, or its political divisions; (ii) the payer is a contracting state or its political divisions; (iii) the interest arises from a loan or credit granted or guaranteed by a contracting state or its political divisions; (iv) the recipient is a financial institution; or (v) the recipient is a pension fund qualifying for tax purposes in a contracting state and the income from such fund is tax exempt in the contracting state paying the dividend.
23. Levied if the recipient is a company that directly holds at least 25% of the capital of the paying company; otherwise, a 10% rate is levied. However, if, under the provisions of Spanish CIT legislation and any future amendments, a company resident in Spain is not taxed by Spanish CIT on the dividends that it receives from a company resident in Uzbekistan, the 5% WHT rate shall be reduced to 0%.
24. The maximum WHT is 10% for interest paid to financial institutions for loans and credits granted for a minimum term of ten years for the purchase of capital equipment.
25. Interest arising from securities issued by a contracting state is exempt from WHT.
26. A 10% WHT rate is levied on royalties for copyrights of any literary, scientific, or artistic work (including films and TV programs).
27. Levied if the beneficial owner is a company (excluding partnerships) with at least a 25% interest in the paying company held directly or indirectly; otherwise, a 15% rate is levied.

28. A reduced WHT rate is only levied if the income is taxed in Canada; otherwise, the general rate is levied.
29. Levied if the recipient is a company with at least a 20% interest in the paying company held directly or indirectly; otherwise, a 10% rate is levied.
30. Interest arising from bank or insurance company loans, bonds, some securities that are regularly negotiated on stock markets, and credit sales of industrial equipment are taxed at a 5% tax rate.
31. A 5% WHT rate is levied on royalties for the use of industrial, commercial, or scientific equipment.
32. A 6% WHT is levied on gross royalties for the use of industrial, commercial, or scientific equipment.
33. A 0% WHT rate is levied if the recipient is a company with at least a 20% interest in the paying company held directly or indirectly.
34. No WHT is levied if: (i) the beneficiary is a contracting state, one of its political subdivisions or one of its local entities; (ii) interest is paid in connection with the sale on credit of merchandise or equipment to a company of a contracting state; or (iii) interest is paid on a loan granted by a bank or financial institution resident in a contracting state.
35. A 5% WHT is levied if the beneficial owner is a company that directly holds at least 20% of the capital of the company paying the dividends.
36. 5% WHT is levied if the interest is paid on a long-term loan (more than five years).
37. No WHT is levied if: (i) the beneficiary is a contracting state, one of its political subdivisions or one of its local entities; (ii) interest is paid in connection with the sale on credit of merchandise or equipment to a company of a contracting state; or (iii) interest is paid on a long-term loan (five or more years) granted by a bank or financial institution resident in a contracting state.
38. Royalties for copyrights of any literary, theatrical, musical, or artistic work, excluding films and TV programs, are tax exempt if the recipient is resident in the other contracting state and taxed on such income in such state.
39. A 5% WHT rate is levied on interest arising from the sale of industrial, commercial, or scientific equipment, the sale of merchandise from one business to another business, or the financing of construction, installation or assembly works. No WHT is levied if the interest is paid on a long term loan (more than five years) or if the interest is paid to the other contracting state or one of its political subdivisions or a financial institution totally owned by the other contracting state or one of its political subdivisions.
40. A 5% WHT rate is levied on royalties for copyrights of any literary, theatrical, musical, or artistic work (excluding films and TV programs).
41. A 9% WHT rate is levied on the gross amount of the dividends if the beneficiary owner is a company (other than a partnership) that has at least a 25% direct interest in the company paying the dividends.
42. WHT is not levied on interest if the recipient is a contracting state, one of its political subdivisions, or one of its public bodies or local authorities, or if the interest is paid to the Central Bank of the other contracting state.
43. No WHT is levied if the recipient is a company with at least a 50% direct interest in the company paying the dividends, provided that the dividends are distributed from profits taxed in Spain.
44. No WHT is levied on interest if: (i) the recipient is the other contracting state, its central bank, or its political divisions; (ii) the payer is a contracting state or its political divisions, (iii) the interest arises from a loan or credit granted by a contracting state or its political divisions, (iv) the recipient is a qualifying financial institution; or (v) the recipient is a pension fund qualifying for tax purposes in a contracting state and the income from such fund is tax exempt in the contracting state paying the dividend.
45. No WHT is levied if the French company has at least a 10% direct interest in the company distributing the dividend.
46. No WHT is levied if the French company receives interest (i) from the other contracting state or any of its political divisions; (ii) from a resident in the other contracting state from an underlying commercial or industrial activity; (iii) in connection with a credit sale of industrial, commercial, or scientific equipment; or (iv) for a loan granted by a financial institution.
47. No WHT is levied on royalties on copyright of any literary or artistic work (excluding films and TV programs) if the recipient is the beneficiary owner or royalties paid for the use or licensing of containers and bare hull vessels or aircraft used in international trade.
48. Dividends and interest may be taxed at source under domestic law when (i) they are generated from any right (including credits) that allows for shares in profits (such as shares, bonds, or participating loans) and (ii) they are tax deductible for the debtor. Notwithstanding, WHT may not exceed 15% when the beneficial owner is tax resident in the other contracting state.
49. Levied if the recipient is a company with at least a 25% direct interest in the paying company; otherwise, a 10% rate is levied.
50. No WHT is levied on interest if: (i) the interest is paid by a contracting state, one of its political subdivisions, or one of its local entities; (ii) the interest is paid to the other contracting state, one of its political subdivisions, or one of its local entities or to a body (including financial institutions) of such contracting state; or (iii) the interest is paid to another body (including financial institutions) in relation to loans granted by virtue of an agreement between both contracting states.
51. No WHT is levied on interest paid to the Central Bank of the other contracting state.
52. No WHT is levied on interest paid to companies in the other contracting state if the operation that generates the debt has been authorised by the government of the state where the company paying the interest is resident.
53. The 10% WHT rate will be applicable to all royalties due to the most favoured nation clause.
54. No WHT is levied on interest if the recipient is a contracting state, one of its political subdivisions, or one of its local entities or if the interest is paid to the Central Bank or a financial institution controlled by the other contracting state, its political subdivisions, or its local entities.

55. No WHT is levied on interest arising from the credit sale of industrial, commercial, or scientific equipment.
56. Levied if the recipient is a company with at least a 20% interest in the paying company; otherwise, a 10% rate is levied.
57. Royalties for copyright on literary, theatrical, musical, or artistic work are taxed at a 5% WHT rate. Royalties on films or other means of audio or video transmission, for the use or right to use industrial, commercial, or scientific equipment, or on scientific works or under agreements between both states are taxed at an 8% rate.
58. A 5% WHT rate is levied on interest arising from the sale of industrial, commercial, or scientific equipment, the sale of merchandise from one business to another business, or loans granted by a financial institution.
59. No WHT is levied on interest if the beneficial owner of the interest is a resident of the other contracting state and: (i) the beneficial owner of the interest is that contracting state, its central bank, a political subdivision, or a local authority; (ii) the interest is paid by the contracting state in which the interest arises or by a political subdivision, a local authority, or non-profit-making statutory body thereof; (iii) the interest is paid in respect of a loan, debt-claim, or credit that is owed to, or made, provided, guaranteed, or insured by that contracting state or a political subdivision, a local authority, or an export facilitating agency thereof; (iv) the beneficial owner of the interest is a financial institution; or (v) the beneficial owner of the interest is a qualifying pension fund and the income of that fund is generally exempt from tax in that other contracting state.
60. A 4% WHT rate is levied on royalties for copyright on literary, theatrical, musical, or artistic work (excluding films and TV programs).
61. Reduced WHT rates are not levied when more than 75% of the shares of the recipient company resident in a contracting state are owned, directly or indirectly, by non-residents and the income generated by the paying company is not taxed in its country of residence.
62. Levied if the recipient is a company with at least a 25% interest in the paying company; otherwise, a 15% rate is levied.
63. No WHT is levied on interest arising from a loan guaranteed by a contracting state.
64. Consideration received for waiving, either totally or partially, the use or right to use goods or rights is considered to be a royalty.
65. No WHT is levied on interest paid in connection with the sale on credit of merchandise or equipment to a company of a contracting state or on interest paid on a long-term loan (five or more years) granted by a bank or credit institution resident in a contracting state.
66. No WHT is levied if the recipient is a company with at least a 5% direct interest in the paying company.
67. A 5% WHT rate is levied on royalties for technical services.
68. No WHT is levied on dividends paid to a shareholder resident in the other contracting state of the company distributing the dividend with at least a 25% interest.
69. Due to the application of the most favoured nation clause, a 5% WHT rate is levied on certain interest, such as that received by a bank (beneficial owner).
70. Levied if the recipient is a company with at least a 50% direct interest in the paying company. A 5% WHT rate is levied if the recipient is a shareholder with at least a 25% direct interest; otherwise, a 10% rate is levied. WHT is reduced to 5% if the recipient company is not taxed in the Netherlands for this dividend.
71. WHT is reduced to 10% if the recipient is a Dutch company with at least a 50% direct interest in the paying company or if the recipient holds 25% of its capital and another Dutch company holds at least the other 25%.
72. No WHT is levied on capital gains from sales of assets/rights when they are considered to be a royalty.
73.
    a. No WHT is levied on fees paid for the use or licensing of containers and bare hull vessels or aircraft used in international trade.
    b. A 5% WHT is levied if the beneficial owner is a company that has owned directly, during a period of six months, at least 50% of voting shares of the company paying the dividends; a 7.5% WHT is levied if the beneficial owner is a company that has owned directly, during a period of six months, at least 25% of voting shares of the company paying the dividends.
74. Levied if the recipient is a shareholder of the paying company holding voting rights with at least a 10% direct interest; otherwise, a 15% rate is levied.
75. A 10% WHT rate is levied on interest paid for bonds or similar securities generally offered to investors and related to transfers of industrial, commercial, or scientific equipment. No WHT is levied on interest from bonds or similar securities issued by the state or a local entity or from loans given or guaranteed by either of the two contracting states, Central Banks, or financial institutions as agreed between the contracting states.
76. A 20% WHT rate is levied on royalties for films or audio or TV tapes.
77. No WHT is levied on interest from loans granted or guaranteed by a contracting state.
78. If the recipient has invested more than EUR 100,000 in the company that pays the dividend or the dividend is tax exempt in its country of residence, the WHT rate levied is 10%. If both of these requirements are fulfilled, the rate applicable is 5%.
79. Interest on loans with a maturity period of over seven years is tax exempt.
80. A 10% WHT rate is levied on any patents, trademarks, designs or models, plans, secret formulae, or processes and computer software, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial, or scientific experiences. A 5% WHT rate is levied on any copyright of literary, artistic, or scientific work, excluding computer software and including cinematographic films or tapes used for radio or television broadcasting.

81. No WHT is levied on interest paid to a contracting state, one of its political subdivisions, or one of its local entities or interest paid in connection with the sale on credit of merchandise or equipment to a company of a contracting state or interest paid on any long-term loan (seven years minimum) granted by a bank resident in a contracting state.
82. No WHT is levied on interest arising from the credit sale of industrial, commercial, or scientific equipment or merchandise.
83. No WHT is levied on dividends when they are paid to a shareholder with at least a 10% interest held for at least one year, provided that the company distributing the dividends is effectively taxed.
84. No WHT is levied on dividends when they are paid to a shareholder with at least 10% direct interest.
85. No WHT is levied if the royalties are paid between associated companies, affiliated by at least a 25% direct interest held for at least two years or both held by a third company with at least a 25% interest in both companies held for at least two years, and CIT is levied on all of the companies.
86.
    a. A 10% WHT rate is levied on interest received by financial and insurance entities. No WHT is levied on interest from loans granted by the government, Central Bank, or certain institutions.
    b. A 5% WHT rate is levied on royalties for any copyright of literary, artistic, theatrical, musical, or scientific work (excluding cinematograph films and films or tapes for radio or television broadcasting); an 8% WHT is levied on financial leasing related with the use or the right to use industrial, commercial, or scientific equipment.
87.
    a. Reduced WHT rates or exemptions are not levied/applied if the income is paid to a company resident in a contracting state more than 75% of whose shares are directly or indirectly held by non-residents and such income is not subject to taxation in such contracting state.
    b. Levied if the recipient is a shareholder of the paying company with at least a 50% interest; otherwise, a 15% rate is levied.
88. A 5% WHT rate is levied for long-term loans (more than seven years).
89. The WHT rate is 10% if the interest arises from a loan granted by a bank or is related to a credit acquisition of merchandise or equipment.
90. Levied if the recipient is a shareholder of the paying company with at least a 10% interest; otherwise, a 15% rate is levied.
91.
    a. No WHT is levied on royalties paid for the use or licensing of containers used in international trade.
    b. No WHT is levied on dividends when they are paid to a company holding at least a 75% direct interest in the paying company.
92. No WHT is levied if the interest is paid on a long-term loan (more than three years) to finance investment projects if the interest is paid to a pension fund that meets certain requirements or if the interest is paid in relation to a credit acquisition of merchandise, equipment, or services.
93. A 5% WHT is levied on royalties for any copyright of literary, artistic, or scientific work.
94. No WHT will be applicable on any interest due to the application of the most favoured nation clause.
95. No WHT is levied on interest if: (i) the recipient is the other contracting state, its central bank, or its political divisions; (ii) the interest is paid by one contracting state or its political divisions, (iii) the interest arises from a loan or credit granted or guaranteed by a contracting state to promote exports and development, (iv) the recipient is a pension fund qualifying for tax purposes in a contracting state and the income generated from the fund is tax exempt in the contracting state paying the dividend, or (v) the interest is paid in relation to the credit acquisition of industrial, commercial, or scientific equipment.
96. Levied if the recipient is a shareholder of the paying company with at least a 50% interest. A 5% WHT is levied if the recipient is a company with at least a 70% interest. A 10% WHT rate is levied if the recipient is a company with at least a 25% direct interest; otherwise, a 15% rate is levied.
97. No WHT is levied on interest arising from loans granted or guaranteed by qualifying public institution or interest paid to public financial institutions.
98. No WHT is levied if the recipient is a company (other than a partnership) with at least a 25% direct interest in the paying company; otherwise, a 5% rate is levied.
99. No WHT is levied if the recipient is a company with at least a 10% direct interest in the paying company; otherwise, a 10% rate is levied.
100. 5% WHT rate is levied if the recipient (excluding partnerships) is a shareholder with at least a 40% direct interest in the paying company; otherwise, a 10% rate is levied. No WHT is levied if the recipient is a shareholder with at least an 80% direct interest in the paying company, and (i) its shares are listed on a stock exchange, (ii) the recipient is at least 50% owned by residents from either of the two countries, (iii) the recipient is owned by shareholders resident for tax purposes in third countries by a proportion of less than 25%, and (iv) the recipient is owned (an interest of more than 25%) by residents in third countries, provided that a tax treaty for the avoidance of double taxation has been signed with the country of the company paying the dividends and that this tax treaty establishes the same or more favourable conditions. No WHT is levied for dividends paid to pension funds.
101. Reduced rates/exemptions are not applicable when a Panama tax-resident company pays dividends, interest, or royalties to a Spanish tax resident and such income has been obtained either in Spain or in a country that has not signed a tax treaty for the avoidance of double taxation with Spain.
102. Levied if the recipient is a company (excluding partnerships) with at least a 10% direct interest in the paying company; otherwise, a 5% rate is levied. In the case of distributions made out of a real estate investment trust, 5% is levied if the beneficial owner holds, directly or indirectly, less than 10% of the value of the capital in such trust.
103. No WHT is levied on interest if: (i) the recipient is a contracting state of the treaty, its central bank, or its political divisions; (ii) the payer is a contracting state or its political divisions; (iii) the payer is a financial

institution of a contracting state and interest is paid to a financial institution of the other contracting state; (iv) the recipient is a pension fund qualifying for tax purposes in a contracting state and the income from such fund is tax exempt in the contracting state paying the dividend; (v) the interest is paid in respect of a loan, debt-claim, or credit that is owed to, made, provided, guaranteed, or insured by an export financing agency of a contracting state or political division, or guaranteed or insured by that state or political division; (vi) the recipient is an institution wholly or mainly owned by a contracting state as may be agreed from time to time between the competent authorities; or (vii) the recipient is the government of Singapore Investment Corporation Pte Ltd.

104. No WHT is levied on dividends if the beneficial owner is a company resident in the other contracting state whose capital is wholly or partly divided into shares and it has held at least 25% of the capital of the company paying the dividends for at least two years before the date of such payment and such dividends are not subject to profit tax in the other contracting state.
105. 5% WHT rate is levied on royalties paid for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematographic films or films and tapes used for radio or television broadcasting.
106. Levied if the recipient is a company with at least a 25% direct interest in the paying company; otherwise, a 15% rate is levied.
107. No WHT is levied on interest if: (i) the interest is paid by a contracting state, one of its political subdivisions, or one of its local collectivities; (ii) the interest is paid to the government of the other contracting state or one of its local collectivities or to a body (including financial institutions) fully owned by such contracting state or its local collectivities; (iii) the interest is paid to another body (including financial institutions) in relation to loans granted under an agreement signed between both contracting states for a term of at least five years; or (iv) the interest is paid in relation to the acquisition of industrial, commercial, or scientific equipment.
108. (i) 3% WHT is levied on royalties paid for the use of, or the right to use, news; (ii) 5% WHT is levied on royalties paid for the use of, or the right to use, copyright on literary, theatrical, musical, or artistic works; and (iii) 10% WHT is levied on royalties paid for the use of, or the right to use, patents, designs, models, plans, secret formulae, processes or computer software, or for the use of, or the right to use, industrial, commercial, or scientific equipment or for information concerning industrial, commercial, or scientific experiences or technical assistance services.
109. 15% WHT is levied if the dividends are paid out of income generated, either directly or indirectly, from immovable property through an investment vehicle that distributes most of its income annually and whose income is tax exempt. In addition, no WHT is levied if the recipient is a company that directly or indirectly holds at least a 10% interest in the paying company or if the recipient is a pension plan of the other contracting state.
110. Levied if the recipient is a company with at least a 10% direct interest in the paying company; otherwise, a 5% rate is levied.
111. No WHT is levied on dividends if the beneficial owner is a company (excluding unlimited liability companies) that directly holds at least 75% of the capital of the company paying the dividends.
112. No WHT is levied on interest if: (i) the recipient is the other contracting state, its central bank, or its political divisions; (ii) the payer is a contracting state or its political divisions; (iii) the interest arises from a loan or credit granted or guaranteed by a contracting state, its political divisions, or an export credit agency; (iv) the interest is paid in relation to the acquisition of any equipment, goods, or services; or (v) the recipient is a pension fund qualifying for tax purposes in a contracting state and the income from such fund is tax exempt in the contracting state paying the dividend.
113. No WHT is levied on interest if: (i) the interest is paid by a contracting state or one of its political divisions or (ii) the interest is paid to the government of the other contracting state or one of its political divisions or to a body (including financial institutions) fully owned by such contracting state or its political divisions.
114. 7.5% WHT rate is levied if the recipient is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividend.
115. No WHT is levied on interest if the recipient is the beneficial owner and it is the government of the other contracting state, one of its political subdivisions, one of its local entities, the Central Bank, or a financial institution controlled by the other contracting state.
116. 7.5% WHT is levied on royalties if the recipient is a company.
117. If under any agreement or arrangement between Nigeria and a member state of the OECD Nigeria declared exempt from taxation the dividends, interest, or royalties from a Nigerian source, or limited the tax charged in Nigeria on such dividends, interest, and royalties at rates below those established in the DTT with Spain, such exemption or lower rate shall automatically apply to dividends, interest, or royalties from the Nigerian source beneficially owned by a Spanish resident.
118. No WHT is levied on interest if: (i) the recipient is the other contracting state, its central bank, or its political divisions; (ii) the payer is a contracting state or its political divisions; or (iii) the interest arises from a loan or credit granted by a contracting state or its political divisions.
119. The provision in this article shall not apply if: (i) a company of a contracting state paying dividends, interest, or royalties to a company resident in the other state has generated its income from a jurisdiction that does not have a double taxation agreement with that other contracting state; and (ii) that income is exempt from or not subject to tax in the first contracting state.
120. No WHT is levied if the beneficial owner is a company that directly holds at least 20% of the capital in the paying company; otherwise, a 10% rate is levied.
121. 5% rate is applicable if the beneficial owner is a company that directly holds at least 10% of the capital in the paying company; otherwise, a 15% rate is levied.

122. Notwithstanding:
    a. Interest arising in a contracting state and paid to a resident of the other contracting state shall not be taxable in the first-mentioned contracting state if the beneficial owner of the interest is a resident of the other contracting state and is dealing at arm's length with the payer. This shall not apply where all or any portion of the interest is paid or payable on an obligation that is contingent or dependent on the use of or production from property or 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 company.
    b. Interest arising in Spain and paid to a resident of Canada shall be taxable only in Canada if it is paid in respect of a loan made, guaranteed, or insured, or a credit extended, guaranteed, or insured by Export Development Canada.
    c. Interest arising in Canada and paid to a resident of Spain shall be taxable only in Spain if it is paid in respect of a loan, debt-claim, or credit that is owed to or made, provided, guaranteed, or insured by Spain or a political subdivision, local authority, or export financing agency thereof, provided the loan, debt claim, or credit is in respect of exports.
123. 5% WHT is levied on interest received by assurance institutions.
124. 5% WHT is levied on interest received by banks or paid to banks.
125. Interest paid on loans granted (three years) by public institutions are tax exempt.
126. Interest paid by Pension Funds is tax exempt.
127. 5% WHT is levied on interest received by an assurance institution (beneficial owner).
128. 5% WHT is levied on bond interest.
129. 10% WHT is levied on interest paid by a bank.
130. 10% is levied on interest paid in connection with the sale on credit of merchandise or equipment.
131. WHT is reduced to 5% if the recipient is a Spanish company with at least a 50% direct interest in the paying company or if the recipient holds 25% of its capital and another Spanish company holds at least the other 25%.
132. No WHT is levied if the interest is paid on a long-term loan (more than five years).
133. A 10% WHT rate if royalties are paid by a company registered with the Philippine Board of Investments.
134. Levied if the recipient is a company holding at least a 25% interest in the paying company; otherwise, a 10% rate is levied.
135. 5% WHT is levied on royalties paid for the use of, or the right to use, patents, designs, models, plans, secret formulae, processes, and industrial or scientific experiences (not commercial).

Tax administration

Taxable period

The tax year for CIT purposes is the company's accounting year. The tax year cannot exceed 12 months. Incorporation, change of accounting year, or dissolution of a company can give rise to a period of less than one year.

Tax returns

The tax system in Spain is a self-assessment system, and tax returns may be inspected by the tax authorities.

Annual CIT returns must be filed within 25 calendar days following the six months subsequent to the end of the tax year (i.e. if the tax year coincides with the calendar year, the return must be filed between 1 July and 25 July of the following calendar year).

Payment of tax

For CIT, three advance payments of the annual tax payment must be made during the first 20 calendar days of April, October, and December. The final CIT payment must be made with the annual CIT return.

For companies whose turnover, in accordance with Spanish VAT law, for the 12 months prior to the beginning of a tax period exceeds EUR 6,010,121.04, the advance payments are calculated by applying 17% to the taxable income (reduced by any applicable tax-loss carryforwards) for each advance-payment period, i.e. at 31 March, 30 September, and 30 November (percentage applicable to companies that are taxed at the general CIT rate).

Small and medium-sized companies can opt to calculate their advance payments in the same way as large companies (applying a percentage of 17%) or to apply a rate (currently 18%) on the tax liability of their last advance CIT return filed on 1 April, 1 October, or 1 December.

Variable capital investment companies, financial investment funds, real estate investment companies, real estate investment funds, mortgage market regulation funds, and pension funds that meet certain requirements and are taxed at a 1%, or even a 0%, tax rate should not make advance payments and are not required to file the corresponding tax return.

EUR 2,500 limit on cash payments

Payments in cash over EUR 2,500 are not allowed for transactions in which at least one of the parties is a person carrying on a business or professional activity, and fines of up to 25% of the amount of the transaction can be imposed on both the payer and the recipient of these cash payments.

Tax inspections

The Spanish tax authorities have a tax inspection department that is responsible, amongst other things, for verifying that taxpayers' obligations are correctly complied with and, if necessary, for making adjustments to their tax affairs by issuing one or more tax assessments.

As part of its responsibilities, the tax inspection department may investigate a taxpayer's tax affairs to ensure that they are correct and verify the accuracy of filed tax returns.

Taxpayers' tax returns to be examined by the tax inspection department are chosen on the basis of different criteria, such as: (i) by random sample, (ii) if debt push down restructuring transactions have been carried out that involve Spanish companies with material debt levels, (iii) if companies have recurring tax-loss carryforwards, or (iv) if companies are related to a family group and lack a production or commercial structure and where their personal and business assets are not clear.

If taxpayers disagree with a tax assessment issued by the tax inspection department as a result of a tax inspection, they may file an appeal firstly with the Spanish economic-administrative tribunal for tax appeals and then, if the appeal is not upheld by the tribunal, with the ordinary courts.

If taxpayers have paid incorrect amounts of tax to the tax authorities, they may claim a refund of any excess tax paid from the authorities within the statute of limitation period (four years) by means of a special procedure that commences with the filing of a request with the tax authorities.

Statute of limitations

The statute of limitations for taxes in Spain is generally (with some exceptions) four years starting from the day following the date of termination of the voluntary tax filing period.

This four-year period may re-start for a tax if the tax authorities carry out any actions or procedures, with the formal acknowledgement of the taxpayer, to acknowledge, adjust, review, inspect, guarantee, or collect all, or any part of, a tax obligation, or due to actions by the taxpayer, such as the filing of a new or late tax return, that alters or rectifies a previous tax return or the filing of an appeal or claim by the taxpayers regarding the tax.

The tax authorities' entitlement to verify or investigate tax-loss carryforwards, tax relief availed of for carrying on certain activities, and deductions for the avoidance of double taxation is time barred after ten years.

At the end of the ten-year period, evidence of the origin and amount of tax losses must be given by presenting the relevant tax assessment or self-assessment and accounting records and, in addition, giving evidence that such assessments and records were filed and deposited with the Companies Registry during this period.

This amendment will apply to verification and investigation proceedings ending after 1 January 2015, provided that no tax assessment has been formally proposed for such proceedings before that date.

Topics of focus for the tax authorities

Every year, the Spanish tax authorities issue general guidelines on the authorities' annual tax and customs control plan. These guidelines identify areas where the tax authorities intend to adopt a greater role of verification, inspection, and monitoring during a certain tax year.

Obligation to disclose assets located overseas

Assets, such as accounts, shares, or real estate, that are located overseas must be disclosed. Severe fines are imposed (a minimum of EUR 10,000) for breaching this obligation.

In addition, assets regarding which the information disclosure obligation is not complied with by the established time limits are treated as unreported income for CIT payers and allocated to the earliest tax period of those that are not statute barred. Breaches of the obligation to declare this income are a very serious infringement, and fines of 150% of the gross tax liability are imposed.

Other issues

Automatic and standardised exchange of tax information agreements

The US Foreign Account Tax Compliance Act (FATCA) was enacted in 2010 to detect and prevent offshore tax evasion. Although, due to its name, it may seem that FATCA is for financial institutions, many global companies outside the financial services industry may be affected by FATCA if companies of their worldwide network fall under the purview of FATCA or have operational areas that make or receive payments subject to FATCA.

Multinational companies that are withholding agents are already required to report, withhold on payments, and record payees, but FATCA requires that changes be made to these activities. FATCA has established that multinational businesses should assess company payees differently, engage in withholding on certain gross proceeds transactions (a change from historic processes), and report other information to the US Internal Revenue Service (IRS).

The withholding provisions of FATCA came into effect on 1 July 2014. Compliance with FATCA may require changes to existing systems and processes across business units and regions, the renewal of policies and day-to-day practices, as well as other new tasks, such as registering with the IRS.

Spain and the United States have signed an intergovernmental agreement (IGA) aimed at improving compliance of international tax laws and enforcing FATCA. Under this agreement, published in the Spanish Official State Gazette on 1 July 2014, financial institutions in Spain and the United States are required to provide their tax authorities with information on taxpayers from the other signatory country. This information will then be automatically exchanged between those tax authorities through a standardised procedure.

Special tax regime applicable in the Basque Country

The three provinces that make up the region of the Basque Country (Álava, Guipúzcoa, and Vizcaya) have an 'economic agreement' with Spain's central government (laid down in and regulated by Law 12 of 23 May 2002) in accordance with which these provinces are entitled to establish their own tax regimes.

There are certain provisions in Law 12 of 23 May 2002 regarding CIT that make this region of Spain more attractive for companies, and three CIT Acts have come into effect for each of the three provinces for tax periods beginning on or after 1 January 2014.

General tax rate

The general tax rate is 28%.

Lower tax rates and other tax benefits

Small companies

A reduced rate of 24% is levied on small companies. A small company is considered to be a company that meets the following requirements in the year prior to the application of the special tax regime:

- It carries on a business activity.
- Its net turnover or assets is under EUR 10 million.
- Its average number of staff is under 50.
- An interest of 25% or more in the company is not held, directly or indirectly, by a company that does not meet the above requirements.

Other benefits are as follows:

- Free depreciation for new tangible fixed assets (except buildings).
- General bad debt provision of up to 1% of credit sales and services.

Micro companies

A reduced rate of 24% is levied on micro companies. A micro company is considered to be a company that meets the following requirements in the year prior to the application of the special tax regime:

- It carries on a business activity.
- Its net turnover or assets is under EUR 2 million.
- Its average number of staff is under 10.
- An interest of 25% or more in the company is not held, directly or indirectly, by a company that does not meet the above requirements.

Other benefits are as follows:

- General bad debt provision of up to 1% of receivables.
- Total depreciation/amortisation charges of up to 25% of net tax value or free depreciation for new tangible fixed assets (except buildings).
- General tax relief of 20% of prior positive taxable income given as a 'tax compensation' for the difficulties faced by companies of this size.

Holding companies
For holding companies, including, amongst others, real estate companies, the tax rates are as follows:

Taxable income (EUR)	Tax rate (%)
0.00 to 2,500.00	20
2,500.01 to 10,000.00	21
10,000.01 to 15,000.00	22
15,000.01 to 30,000.00	23
30,000.01 and over	25

The requirements to be taxed under these rates are as follows:

- The company's shareholders representing at least 75% of its capital are persons, holding companies, or other companies associated with such persons or companies. This requirement should be met throughout the tax period.
- For at least 90 days of the tax period, over half of the company's assets are made up of securities or are not used to carry on business activities. Leased real estate is not considered to be used to carry on a business activity when the company does not have at least five employees on average in a year who work exclusively for the company on a full-time basis.
- Companies where at least 80% of their income is generated from assignments of use of real estate that is not considered to be a real estate leasing business activity (*see previous paragraph*) or is generated from transfers of own capital to third parties or from provisions of services to associated parties and that do not have sufficient personal and material resources may also be taxed under this tax regime.

This tax regime establishes the following rules, which are applicable to these types of companies:

- All expenses, excluding those stated below, cannot be considered tax deductible.
- An amount equal to 20% of gross income generated from leases of housing and their financial expenses may be considered tax deductible.
- An amount equal to 30% of gross income generated from leases of other real estate and their financial expenses may be considered tax deductible.
- Net income for each leased property cannot be negative.

Tax-loss carryforwards
Tax losses may be carried forward for the following 15 years. Tax-loss carryforwards pending offset in the first tax period beginning as of 1 January 2014 may be carried forward for the following 15 years as of such tax period.

Tax deductibility of amortisation of goodwill and intangible assets
According to a recent amendment of the Audit Law, intangible assets should be considered to have a definite useful life.

Amortisation recorded for intangible assets is considered tax deductible over the assets' useful lives. However, if the useful life cannot be determined, amortisation would be tax deductible up to a maximum annual limit of 10% if the following requirements are met:

- The assets have been acquired for consideration.
- The acquiring and transferring companies are not associated companies.

Furthermore, due to the above-mentioned amendment of the Audit Law, goodwill is amortisable assuming a useful life of ten years. However, this accounting amortisation would not be tax deductible, and the corresponding book-to-tax adjustment should be made.

From a tax perspective, goodwill amortisation is tax deductible up to a maximum annual limit of 12.5% if the following requirements are met:

- The goodwill has been acquired for consideration.
- The acquiring and transferring companies are not associated companies.

It is not required to recognise an unavailable reserve for this purpose.

However, if an impairment loss is recognised or if the goodwill is transferred, the tax amortisation should be reversed.

Financial goodwill
Financial goodwill is tax deductible up to a maximum annual limit of 12.5% when at least a 5% interest is acquired in a company and the shares are not quoted on a stock exchange or at least a 3% interest if the shares are quoted on a stock exchange.

If the company from which the shares have been acquired has an interest in another company, the equity, assets, and rights recorded in the group's consolidated annual accounts must be taken into consideration when calculating the financial goodwill. The part of the financial goodwill for income obtained by previous owners that have availed of a double tax exemption for income obtained from transfers of shares will not be tax deductible. Amounts deducted for this concept will increase taxable income if there are impairment losses (*see Impairment losses below*).

The requirements for the shares are as follows:

- A 5% interest (or 3% in the case of quoted companies) should be held for one year.
- The subsidiary should be subject to and not exempt from CIT or a similar tax.
- At least 85% of the subsidiary's income should be generated from business activities.

If the shares are not acquired on a stock market, the company that acquires the shares must not be in any of the situations provided for in Article 42 of the Spanish Commercial Code in relation to the transferring company.

Depreciation/amortisation periods
Depreciation/amortisation periods for assets are shorter than those established by state CIT law.

Reinvestment of extraordinary income
Income obtained from the sale of tangible fixed assets or intangible assets can be deducted from taxable income if the following requirements are met:

- The amount obtained from the sale is reinvested in similar types of assets or in the acquisition of shares that comply with certain requirements within a four-year period (as of one year prior to the sale up to three years after the sale).
- The asset in which the reinvestment is made is held for five years (three in the case of movable assets) or, if less, the asset's useful life.

Income generated from intellectual or industrial property
From 1 July 2016, companies may deduct 70% of income (revenue less amortisation and expenses) obtained from transfers of intellectual or industrial property rights from taxable income upon complying with certain requirements only if the company has created the intellectual or industrial property itself.

If the intellectual or industrial property has been partially acquired or developed by related companies, this 70% reduction can only be applied if the ratio of expenses incurred with related parties does not exceed 30% of the expenses incurred in the development carried out by third parties or by the company on its own. However, if this ratio exceeds 30%, the reduction will be reduced proportionally.

The following features regarding this reduction have also been introduced:

- The income to be reduced will be determined as the difference between the revenues obtained and the amortisation and expenses directly related to the intellectual or industrial property that is transferred.
- This reduction is no longer applicable to the income obtained as a consequence of the transfer of trademarks.
- Certain limitations are applicable if a company applies this reduction and obtains negative income in previous or future years.
- A transitional regime is envisaged for the transfers of intellectual or industrial property rights carried out before 1 July 2016. This transitional regime is applicable until 30 June 2021 and its application is optional.

In addition, in Bizkaia and Alava, companies may reduce taxable income by 5% of the acquisition price or production cost of intellectual or industry property assets used to carry on their own business activities if they fully own such assets. This reduction cannot exceed 0.5% of income obtained from the business activity in which these assets are used.

The additional reduction envisaged in the last paragraph is not applicable in Gipuzkoa.

Limit for tax relief for financial expenses (thin capitalisation rules)
A general thin capitalisation tax system is established to restrict the tax deductibility of financial expenses, which establishes a 3:1 debt-to-equity ratio for tax purposes.

This limit applies to borrowings with any associated companies, whether they are resident in Spain, the European Union, or any other countries. The limit does not apply when a company's net borrowing with associated companies does not exceed EUR 10 million at any time during the tax period.

Companies may ask the tax authorities to propose a different ratio that they can apply.

Limit for tax relief for expenses incurred for representation, gifts, and certain transportation
Expenses incurred for representation, gifts, and certain transportation are tax deductible, with certain limits.

In addition to these limits, the allocation rule is maintained for 50% of vehicles used for both business activities and private purposes. In addition, for passenger and other similar cars, the maximum amount of what is understood to be a reasonable acquisition price (EUR 25,000) is maintained, and only expenses for vehicles that do not exceed this acquisition price will be tax deductible.

Impairment losses
Losses for impairment of shares in companies are tax deductible in accordance with the following regulations:

- If an interest of less than 5% is held in unquoted companies or, otherwise, in quoted companies that are group companies, jointly-controlled companies, or associates, then the difference between shareholder's equity at the beginning and the end of the year in proportion to the interest held is tax deductible, taking into account any capital contributions or reimbursements made.
- If an interest of 5% or more is held in unquoted companies or 3% in quoted companies, then the difference between the acquisition price and shareholder's equity is deductible in proportion to the interest held, adjusted for tacit capital gains at the valuation date.

Shareholder's equity shall be the shareholder's equity recorded in the consolidated annual accounts (*see Financial goodwill above*).

Elimination of double taxation for dividends and income obtained from transfers of shares in resident and non-resident companies in Spain (exemption mechanism)

Dividends or shares in profits
To apply the tax exemption for interests in companies resident in Spain, the following requirements established for interests in non-resident companies should be met:

- A 5% interest (or 3% in the case of quoted companies) should be held for one year.
- The subsidiary should be subject to and not exempt from CIT or a similar tax.
- At least 85% of the subsidiary's income should be generated from business activities.

Notwithstanding, for dividends generated from resident subsidiaries that do not comply with these requirements, 50% of the amount of the dividends may be deducted from taxable income. This rule therefore applies to:

- Interests below 5% (or 3% in the case of quoted companies) in companies resident in Spain.
- Interests in companies resident in Spain that do not comply with the requirement that 85% of their income is generated from business activities.

For companies taxed at a tax rate lower than 10%, except for residents in a country that has an international DTT, the tax exemption for double taxation does not apply.

Income obtained from transfers of shares
Capital gains obtained from disposals of interests in resident and non-resident companies are not included in taxable income. The requirements to be met to not include them are the same as the requirements for the application of dividend exemption, which should be met for all financial years when the interest is held, except for the requirement regarding the percentage of the interest (5%, or 3% in the case of quoted companies), which should be met on the day when the transfer is made.

If any of the requirements are not met, the part of the income corresponding to a net increase of undistributed profits will not be included in taxable income in proportion to the profits generated in financial years when the requirements are met, and the part that does not correspond to such net increase will be presumed to be generated linearly during the time when the interest is held. In the case of resident subsidiaries that do not comply with the requirements of being subject to CIT or a similar tax and of carrying on business activities, an amount equal to the net increase of undistributed profits that may be allocated to the interest in the subsidiary generated during the time when the interest is held (excluding the part that would not have been included in taxable income with the offsetting of tax-loss carryforwards) will not be included in taxable income (up to the limit of calculated income).

Participating loans to carry out new business activities or projects
Income generated from variable interest on participating loans is not included in taxable income if it is related to the borrower's profits. The exemption does not apply to remuneration generated from fixed interest.

The following requirements should be met in this case:

- The lender should have a 25% direct or indirect interest in the borrower (15% for quoted subsidiaries, and this participation should be held for one year).
- The loan should be used to finance new business activities or projects.
- The exempt income not included in taxable income should be used to grant new participating loans, with the same requirements, or be set aside to the special reserve to foster business capitalisation or the special reserve to boost entrepreneurship and production activities (*see below*).
- The variable interest may not exceed the following limits:
  - 20% of profits (before interest on the participating loan) of the borrower for the percentage of the lender's interest.
  - 1.5 times the late payment interest on the average balance of the loan during the tax period.

The withholdings made on interest not included in taxable income are not deductible (general 19% tax rate).

Measures to foster companies' capitalisation
Some measures were introduced to improve the tax treatment of structures based on an increase in shareholder's equity and a reduction of the need to resort to borrowing. These measures are:

Reserve to foster business capitalisation
Companies may reduce their taxable income by an amount equal to 10% of the amount by which shareholder's equity is increased for tax purposes compared to the shareholder's equity of the previous year, and this amount should be set aside to a non-distributable reserve for at least five years. During this five-year period, the company's shareholder's equity should remain the same or be increased unless it is decreased due to accounting losses.

The application of this deduction may not give rise to a negative taxable income or an increase in negative taxable income although amounts not deducted due to insufficient taxable income may be deducted in the following tax periods.

Special reserve for levelling-off of profits
Companies may reduce taxable income by the amount of accounting results set aside to the special reserve for 'levelling-off of profits' up to a maximum amount of 10% of the part of these results that may be freely distributed under company law and up to the limit of 15% of taxable income for the financial year. In addition, the balance of the special reserve may not exceed 20% of shareholder's equity for tax purposes at all times.

This reserve will be allocated to offset tax-loss carryforwards, in which case such tax-loss carryforwards cannot be offset in future years. Consequently, this is a way to offset tax-loss carryforwards earlier. If, within a period of five years, the company does not generate tax-loss carryforwards, the reserve will be treated as taxable income. In this case, the effect will be a temporary deferral of tax.

Special reserve to boost entrepreneurship and production activities
Companies may reduce taxable income by 60% of the accounting profit of the year, which should be set aside to the special reserve to boost entrepreneurship and production activities, up to a maximum amount of 45% of their taxable income. In addition, the balance of this reserve may not exceed 50% of shareholder's equity for tax purposes at all times.

This reserve is not freely distributable and should be used within a period of three years for, amongst others, new non-current assets, assets that give rise to a tax credit for environmental investments, or for investments in companies under development.

Investments in new tangible fixed assets
A 10% tax credit can be applied for investments in new tangible fixed assets upon complying with certain requirements. The minimum depreciation period for the assets, excluding computer equipment, is five years. The tax credit is 5% for investments in non-current assets that are considered to be improvements or investments in leased assets carried out by lessees.

The investment should exceed 10% of the carrying amount (less depreciation/amortisation) of the company's tangible fixed assets, buildings, and software recorded for the previous year.

Research and development (R&D)
A 30% tax credit can be availed of for expenses incurred from R&D activities. If the expenses are higher than the average expenses incurred by the company during the previous two years, the tax credit is 50% on the excess amount.

An additional tax credit of 20% can be availed of for the following expenses:

- Staff expenses incurred for staff exclusively carrying out and qualified to carry out R&D activities.
- Expenses incurred for projects contracted from certain universities and public organisations.

A 10% tax credit can be availed of for investments made in tangible fixed assets (excluding buildings) and intangible assets that are exclusively assigned to R&D activities.

Technological innovation
A 20% or 15% tax credit can be availed of for certain expenses incurred for technological innovation.

Expenses incurred for environmental conservation and improvement and for conservation of energy
Companies are eligible for a 30% tax credit for investments made in the equipment listed in the Basque List of Environmental Technologies upon complying with certain requirements.

Companies may also qualify for a 15% tax credit for investments made and expenses incurred in respect of tangible fixed assets upon complying with certain requirements.

Job creation
The following tax credits can be availed of for job creation upon complying with the requirements stated:

- EUR 4,900 for each job created, provided that a permanent employment contract is signed with the employee.
- EUR 9,800 for each job created, provided that a permanent employment contract is signed with the employee and a person who has special difficulties in finding employment is contracted.

The company's average number of staff with permanent employment contracts must be increased by at least the same number of contracts that generated the tax credit, and this increase must be maintained by the company for two years.

Time limits for the application of tax credits
Tax credits can be carried forward for a period of 15 years as of the date on which the company qualifies for them. For tax credits generated before 1 January 2014, the 15-year period starts as of this date.

Limits on the amount of tax credit applied
For a tax year, the combined sum of all investment tax credits, excluding tax credits for R&D and technological innovation, may not exceed 45% of a company's CIT liability.

Effective tax rate and minimum tax
The CIT reform establishes a minimum tax to determine a company's effective CIT liability. Tax credits applied in the tax period cannot reduce effective CIT liability below this minimum although this limit does not apply for R&D and technological innovation tax credits.

The application of tax credits to determine the effective tax liability of a company that obtains positive taxable income (except for R&D and technological innovation tax credits) cannot give rise to an effective CIT liability that is lower than the following rates:

	General tax rate (%)	Minimum tax rate (%)	Minimum reduced tax rate (%)
General companies	28	13	11
Small and micro companies	24	11	9

The minimum reduced tax rate applies to companies that maintain or increase their average number of staff of the previous year indefinitely.

Advance CIT payments

There is no obligation to make advance CIT payments.

Tax groups

The economic agreement establishes that the same rules should apply to the Common Territory and Basque companies regarding the composition of tax groups, the definition of controlling and subsidiaries, and the tax treatment of internal operations carried out in tax groups.

Therefore, the recent tax reform for the Spanish Common Territory would apply to Basque tax groups. On this matter:

- A non-resident company or company resident in the Spanish Common Territory may be the controlling company of a Basque tax group (horizontal consolidation).
- The incorporation in a Basque tax group of companies indirectly owned by companies that do not form part of the group (non-resident or resident in the Spanish Common Territory) is permitted.

As established in the Spanish Common Territory regulations, when the controlling company is a non-resident company, one of the companies that makes up the group is appointed as their representative and is responsible for complying with the group's statutory requirements and formalities. Under Basque regulations, the representative company of a Basque tax group should be:

- The controlling company if this company is resident in the Spanish territory, or
- The Basque company of the tax group with the highest turnover in the previous tax year (if no other company resident in the Spanish territory complies with the requirements established in the tax regulations to be considered the controlling company).

However, the non-resident controlling company may appoint any other company of the Basque tax group of companies as the group's representative as long as the appointed company is subject to the tax regulations applicable to the company of the tax group with the highest turnover in the previous tax year.

Obligation to disclose assets located overseas

The obligation to disclose assets located overseas, such as accounts, shares, real estate, or vehicles, is also established in the three Basque territories. Taxpayers in these territories should file a tax return (Form 720) annually between 1 January and 31

March to disclose these assets. Severe fines are imposed (a minimum of EUR 10,000) if CIT payers fail to comply with this obligation.

In addition, assets regarding which the information disclosure obligation is not complied with by the established time limit will be treated as unreported income for CIT payers and allocated to the earliest tax period of those that are not statute barred. Failure to comply with the obligation to declare this income is a very serious infringement and fines of 150% of the gross tax liability are imposed.

Sweden

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Significant developments

Interest deductibility matters

In June 2014, a governmental committee presented a first proposal on further strengthened interest deductibility restrictions. The new proposal has suffered heavy criticism. New rules limiting interest deductibility can be expected to be introduced by 2017 at the very earliest, perhaps with applicability only in 2018, but more likely in 2019. If this timing expectation is true, the international business community would have to continue to rely on the vague applicability status of the current, 2013, interest deductibility regime, which is litigated heavily in the tax courts and, furthermore, is subject to European Union (EU) infringement procedures.

Country-by-country (CbC) reporting

In line with base erosion and profit shifting (BEPS) action points, new CbC reporting legislation entered into force on 1 April 2017. A multinational group with a Swedish parent company, with annual group consolidated revenue exceeding 7 billion Swedish kronor (SEK) shall, within 12 months after the closing of the financial year, submit certain financial data about their business for each tax jurisdiction in which the group operates, on an annual basis. A CbC report shall, for the first time, be provided for the financial year beginning after 31 December 2015. All Swedish entities and foreign permanent establishments (PEs) within a multinational group shall notify the Swedish Tax Agency which entity within the group is submitting the CbC report.

For the first financial year covered by the CbC legislation, the Swedish Parliament has extended the notification period to 30 April 2017, for financial years ending before the legislation becomes effective.

Taxes on corporate income

State (national) income tax

Resident legal entities are liable for tax on their worldwide income unless tax treaties or special exemptions apply. Non-resident entities are taxed on income that is deemed to have its source within Sweden.

Taxable income is subject to corporate tax at a flat rate of 22%. All income of corporate entities is treated as business income.

Local income taxes

No municipal or local income taxes apply to Swedish corporations.

Corporate residence

A company is considered to be a tax resident in Sweden if it is incorporated in Sweden.

Permanent establishment (PE)

The term 'permanent establishment' is defined in Sweden as a fixed place of business through which the business is carried on from a specific establishment, such as a place of management, branch, office, factory, or workshop. Places where construction work is carried on are also regarded as PEs, as well as if an agent who is dependent upon the foreign company habitually exercises authority in Sweden.

Other taxes

Value-added tax (VAT)

The Swedish VAT system is harmonised with the EU rules. The general VAT rate of 25% is chargeable on most goods and services. Reduced rates apply to a few goods and services, such as hotel accommodation, foodstuffs (excluding alcoholic beverages), restaurant meals, and low or non-alcoholic drinks (12%), as well as newspapers, magazines, books, passenger transport, maps, musical notes, some cultural services, transport in ski lifts, etc. (6%). Certain financial and insurance services are exempted from VAT.

VAT returns are filed and tax is paid monthly or quarterly. VAT returns must be filed monthly if the VATable turnover is estimated at more than SEK 40 million (estimated yearly sales excluding any reverse charge or import acquisitions). Companies with VATable turnover below SEK 40 million report VAT quarterly or may choose to report VAT on a monthly basis. For companies with a turnover of less than SEK 1 million, VAT is reported on a yearly basis in the VAT return, and these companies may also choose to report VAT quarterly or on a monthly basis.

New definition of 'property'

A new definition of the term 'property' was implemented in the Swedish VAT Act and entered into force on 1 January 2017. The new definition is based on an EU regulation (no. 1042/2013) and will affect the VAT liability regarding letting and transfer of properties, reverse-charge mechanism in the building sector, as well as the provisions regarding adjustment of investment made on properties.

In connection hereto, the provisions stating that electricity, gas, water, and heat supplied as part of a letting of property are exempted from VAT have been removed.

New amounts for deductions regarding business entertainment with food and beverage

In case of external and internal business entertainment, the new provisions allow reasonable VAT deductions; however, not on a tax base exceeding SEK 300 per person.

Customs duties

As a member of the European Union, Sweden is also part of the Customs union enforcing the Community Customs code. Most EU Customs duties are calculated as a percentage of the value of the goods being imported. All imported goods must be classified according to the EU Customs tariff (TARIC), and the duty rates applied depend on the economic sensitivity of the goods. The actual duty rate to be applied also depends on other factors, such as the country of origin of the product and any free trade agreements that may be applicable.

Excise duties
The three main Swedish excise duties are harmonised with EU rules. These are the alcohol tax, the tobacco tax, and the tax on fuels and electricity. There are, however, still differences in local legislation between the member states, and the taxation of fuels is partly EU harmonised, partly national. Fuels are subject to energy tax, carbon dioxide tax, and sulphur tax. Depending on the use of fuels, taxes may be partly or fully reduced. For bio-fuels, certain exemptions may also apply.

Real estate tax
The annual real estate tax rate on business premises is 1% of the tax assessed value. For industrial property, the tax rate is 0.5%. Other rates exist for special property.

Stamp tax
Stamp tax at 4.25% is payable on a direct transfer of real estate. The tax base consists of the highest of the purchase consideration or the tax assessed value of the real estate. Stamp tax on an intra-group transfer of real estate may be deferred as long as the real estate remains within the group.

Payroll taxes

Social fees
Mandatory social security charges payable by employers on remuneration to employees (or by the self-employed) are levied at approximately 31%. A reduced rate is applicable for very old people. Social security charges are deductible for corporate tax purposes.

Pension benefits beyond the mandatory system are customary amongst most Swedish employers. A special salary tax is levied at approximately 24% on these additional pension premiums/commitments and is deductible for corporate tax purposes.

Branch income

Branch income (i.e. PE income) is taxed at the corporate tax rate of 22%, and general corporate tax rules apply for branch offices in Sweden. No withholding tax (WHT) is levied on the outbound repatriation of taxed profits.

The receipt of Swedish-source royalties or fees for use of tangible or intangible assets by a foreign resident is also (subject to treaty restrictions) regarded as a special form of PE income.

Income determination

Inventory valuation
Inventories (stock-in-trade) are valued at acquisition cost or market value, whichever is lower. As an alternative, inventories may be valued at 97% of the total acquisition cost, which is determined on a first in first out (FIFO) basis. The last in first out (LIFO) method is not permitted. Generally, inventories should be stated at the same amount for tax and accounting purposes.

Capital gains
There is a capital gains tax exemption for Swedish corporate entities on gains related to the disposal of shares held for business reasons.

Shares in Swedish corporations can qualify as shares held for business reasons. Unquoted/unlisted shares will always be considered as held for business reasons. Quoted/listed shares are considered held for business reasons if the company has a holding corresponding to at least 10% of the voting rights or the shares are held in the course of the business. An additional condition regarding quoted/listed shares is that the shares must be held for a period of at least one year. Under certain conditions, tax exemption also applies to shares in foreign companies.

Note that non-tax-exempt capital gains are included in business income and taxed at the corporate tax rate of 22%.

Shares in partnerships (tax transparent entities) and indirect holdings via partnerships are also included in the participation exemption regime.

An exception from the capital gains tax exemption applies for the sale of shares in a 'shell company', which is a company or partnership where the market value of cash, shares and other marketable instruments (other than shares held for business reasons), and similar assets exceeds 50% of the consideration paid for the shares. The sale of a shell company results in harsh taxation of the gross consideration. Provided certain formalities are fulfilled, however, it is possible to avoid such taxation.

A consequence of the participation exemption is that capital losses on shares or participations held for business reasons are not deductible.

Capital losses on portfolio holdings of shares, share options, convertible debentures, and similar financial instruments are allowed only as an offset to capital gains on the same group of financial instruments.

Certain special rules apply to computation of capital gains and losses on real estate.

Dividend income
A participation exemption applies for dividends received on shares held for business reasons (*see above*) and on qualifying holdings via partnerships. A tax deductible dividend paid by a foreign company (i.e. not only EU/European Economic Area [EEA] companies) under a hybrid arrangement is though subject to Swedish corporate tax for the recipient Swedish company.

Interest income
Interest received by a corporation is included in the corporate tax basis.

Royalty income
Royalty received by a corporation is included in the corporate tax basis.

Foreign income
Companies resident in Sweden are taxed on their worldwide income. Non-resident entities are taxed on income that is deemed to have its source within Sweden.

A Swedish corporation is taxed on foreign branch income. Double taxation normally is avoided by means of either a deduction of foreign tax, or a foreign tax credit.

Dividends and capital gains from foreign subsidiaries are generally exempt from taxation according to the participation exemption provisions applicable to shares held for business reasons (*see above*).

Deductions

Depreciation, amortisation, and depletion

Depreciation on fixed assets
Land improvements may be depreciated at the rate of 5% per year of the acquisition cost. The maximum allowance is 100% of the tax basis of the improvement.

Buildings may be depreciated at rates between 2% and 5% per year of the taxable basis, depending on type and usage of the building. The maximum allowance is 100% of the tax basis of the building.

For machinery and equipment, the depreciation for tax purposes should correspond to the depreciation charged in the books and accounts, as long as the total net value of the assets is not less than the 70% of net value in previous accounts plus additions less proceeds of sales (i.e. 30% declining-balance depreciation) or cost less 20% per year (i.e. 20% straight-line depreciation on remaining assets). An alternative 25% declining-balance method without correspondence to the books also exists.

Immediate deduction of certain assets
The cost of assets having an expected life of no more than three years and the cost of assets not exceeding certain limits, depending on size of operations, may be deducted immediately. Certain costs for repairs, maintenance, and modifications of buildings may also be deducted immediately.

Amortisation of intangibles and goodwill
The amortisation of patents, leaseholds, and acquired goodwill follows the same rules as depreciation for machinery and equipment, provided these assets have been acquired from another party (*see above*).

Depletion of mines and quarries
The entire cost of mines and quarries may be depleted over their expected exploitation period. These depletion amounts may be deducted annually but are limited to 100% of the acquisition cost of the mine or quarry.

Start-up expenses

General start-up expenses for generating and maintaining business income are, as a rule, deductible for Swedish tax purposes.

Interest expenses

Interest expenses on external loans are fully deductible, whereas interest paid to affiliated companies are deductible only if an exception applies under the Swedish interest stripping restrictions and to the extent that the arm's-length principle is complied with. Under the interest stripping restrictions, and in brief, a deduction is not allowed for interest accruing on an intra-group loan unless the true creditor within the affiliated group (i.e. the person entitled to the interest) is taxed on the interest income at a rate of at least 10% or it is shown that the debt is based on commercial reasons.

Regardless, a deduction may be refused if the debt structure has been put in place mainly for the group to achieve a substantial tax benefit.

Bad debt
Business bad debts are deductible if they are proven wholly or partially worthless.

Charitable contributions
Purely charitable contributions are generally non-deductible.

Fines and penalties
Fines and penalties are non-deductible for Swedish tax purposes.

Taxes
Generally, Swedish taxes are not deductible for tax purposes. However, specific taxes, fees, and foreign taxes may be deductible. Recoverable VAT is not treated as an expense or cost.

Net operating losses
Tax losses may be carried forward indefinitely but may become subject to restrictions and/or forfeiture upon ownership changes, mergers and demergers, dispositions with creditors, and certain other reorganisations. No carryback of losses is possible.

Payments to foreign affiliates
Transactions with affiliates not liable to tax in Sweden must be at arm's length. Formal transfer pricing documentation requirements apply.

Group taxation

Swedish companies are not taxed on a consolidated basis. However, it is possible for qualifying groups (i.e. a holding greater than 90% of the capital, which must have been upheld during the whole fiscal year) to effectively offset operating losses of one Swedish company against operating profits of another Swedish company by way of group contributions, which are tax deductible for the contributor and taxable for the recipient. EEA companies are regarded as Swedish companies for these purposes if the recipient is taxable in Sweden.

A similar Swedish deduction is, under certain circumstances, also available for cross-border group relief at the Swedish parent's level within the EEA for final foreign subsidiary losses.

Transfer pricing
The Swedish transfer pricing regime is generally an Organisation of Economic Co-operation and Development (OECD) type of regime. Sweden has formal transfer pricing documentation requirements in place.

Thin capitalisation
There are no thin capitalisation rules for tax purposes in Sweden; however, interest stripping restrictions exist (*see Interest expenses in the Deductions section*).

Controlled foreign companies (CFCs)
Sweden's CFC provisions aim at taxing a Swedish resident shareholder for shareholdings in low-taxed foreign entities. A Swedish resident shareholder with a

holding in a CFC entity will annually be taxed for its ownership portion of the CFC's income, according to provisions applicable to a Swedish corporation. For a corporation, the portion will be taxed at the Swedish corporate tax rate. Only holdings, direct or indirect through other foreign entities, corresponding to at least 25% (capital or voting rights) in the foreign entity could lead to CFC taxation. A foreign company is considered low taxed if the income in the company, calculated in accordance with Swedish provisions, is taxed at a rate below 12.1%. However, if the foreign entity is resident in an 'approved country', CFC taxation should not arise. Approved countries appear in an official 'black/white' list. Active EEA entities are, under certain circumstances, not considered low taxed.

Tax credits and incentives

There are no specific tax incentives in Sweden for corporations. However, some generally applicable regimes exist.

For example, Sweden has an accruals reserve regime. The accruals reserve regime allows for a tax-deductible appropriation for corporations of 25% of the taxable profit before appropriation to a reserve. Each year's appropriation forms a separate reserve that must be reversed to income no later than the sixth year following the appropriation. However, a standardised interest income is imposed on former years' appropriations at 72% of the interest rate on governmental debt notes.

Foreign tax credit

A foreign tax credit is generally available, provided certain conditions are fulfilled, and the tax credit allowed is limited to an amount corresponding to the Swedish tax on the foreign income. Unutilised foreign taxes may be carried forward for five years. Tax treaty implications may exist.

Withholding taxes

There are no Swedish taxes on interest and service fees paid to non-resident corporations or individuals. Such payments to resident corporations and individuals are taxed as ordinary income.

WHT on dividends, royalties, and certain rentals vary according to domestic law and tax treaties, as shown below.

Pursuant to the amendment of the Parent Subsidiary Directive (EU general anti-avoidance rule [GAAR]), a minor change in the Swedish WHT Act (for outbound dividends) has been made, targeting structures put in place to obtain WHT exemption through the use of decoy arrangements. This anti-avoidance provision has long existed under current Swedish law, but an explicit clarification is made as of 1 January 2016 that the provision can also be applicable in cases covered by the Parent Subsidiary Directive.

Apart from the highlighted treaties, Sweden has concluded agreements on exchange of information in tax matters and partial tax treaties. Since 1 April 2017, when the tax information exchange agreement (TIEA) with the United Arab Emirates entered into force, Sweden has information exchange agreements with all the world's tax jurisdictions. It could also be noted that amendments to the EU Directive on administrative cooperation in the field of taxation have been implemented in Swedish legislation with effect as of 1 January 2017.

Recipient	Cash dividends (%) (1, 2)	Royalties, certain rentals (%) (3)
Resident corporations	0 (4)	0 (5)
Resident individuals	30 (4)	0 (5)
Non-resident corporations and individuals:		
Non-treaty	30	22 (5)
Treaty:	(6)	
Albania	5/15	5
Argentina	10/15 (7)	3/5/10/15 (7)
Armenia (28)	0/5/15	5
Australia	15	10
Austria	5/10 (6)	0/10 (8)
Azerbaijan (29)	5/15	5/10 (34)
Bangladesh	10/15	10
Barbados	5/15	0/5 (9)
Belarus	0/5/10	3/5/10 (10)
Belgium	5/15 (6)	0
Bolivia	0/15	15
Botswana	15	15
Brazil	15/25	15/25 (27)
Bulgaria	10 (6)	5
Canada	5/10/15	0/10 (11)
Chile (12)	5/10	5/10 (31)
China, People’s Republic of (13)	5/10	10
Cyprus	5/15 (6)	0
Czech Republic (14)	0/10 (6)	0/5 (9)
Denmark (15, 16)	0/15 (6, 16)	0 (16)
Egypt	5/20	14
Estonia	5/15 (6)	5/10 (17)
Faroe Islands (15, 16)	0/15 (16)	0 (16)
Finland (15, 16)	0/15 (6)	0
France	0/15 (6)	0
Gambia	0/5/15	5/12.5 (18)
Georgia	0/10	0
Germany	0/15 (6)	0
Greece	0 (6)	5
Hungary	5/15 (6)	0
Iceland (15, 16)	0/15 (16)	0 (16)
India	10	10
Indonesia	10/15	10/15 (19)
Ireland, Republic of	5/15 (6)	0
Israel	5/15	0
Italy	10/15 (6)	5
Jamaica	10/22.5	10
Japan	0/10	0
Kazakhstan	5/15	10
Kenya	15/25	20
Korea, Republic of	10/15	10/15 (20)

Recipient	Cash dividends (%) (1, 2)	Royalties, certain rentals (%) (3)
Latvia	5/15 (6)	5/10 (17)
Lithuania	5/15 (6)	5/10 (17)
Luxembourg	0/15 (6)	0
Macedonia	0/15	0
Malaysia (12)	0/15	8
Malta	0/15 (6)	0
Mauritius	0/15	0
Mexico	5/15	10
Namibia	0/5/15	5/15 (21)
Netherlands	0/15 (6)	0
New Zealand	15	10
Nigeria	7.5/10	7.5
Norway (15, 16)	0/15 (16)	0 (16)
Pakistan	15/30	10
Philippines	10/15	15
Poland (12)	5/15 (6)	5
Portugal	0/10 (6)	10
Romania	10 (6)	10
Russia	5/15	0
Saudi Arabia	5/10	5/7 (32)
Singapore	10/15	0
Slovak Republic (14)	0/10 (6)	0/5 (9)
South Africa	0/5/15	0
Spain	10/15 (6)	10
Sri Lanka	15	10
Switzerland	0/15	0
Taiwan	10	10
Tanzania	15/25	20
Thailand	15/20/30	15
Trinidad and Tobago	10/20	0/20 (22)
Tunisia	15/20	5/15 (23)
Turkey	15/20	10
Ukraine	0/5/10	0/10 (33)
United Kingdom	0/5/15 (6, 30)	0
United States	0/5/15	0
Venezuela	5/10	7/10 (24)
Vietnam	5/10/15	5/15 (25)
Yugoslavia (former) (26)	5/15	0
Zambia	5/15	10
Zimbabwe	15/20	10

Notes

1. According to domestic law, there is no WHT on dividends to a foreign company on shares held for business reasons (*for the definition of shares held for business reasons, see Capital gains in the Income determination section*), provided that the foreign company is similar to a Swedish limited liability company (and some other legal entities) and is subject to income tax at a level similar to that imposed on a Swedish company. Further, there is no tax liability for a legal entity of a member state of the European Union if the entity owns 10% or more of the share capital in the distributing company and fulfils the conditions of the Directive (90/435) regarding a parent company and subsidiaries.
2. The reduced rate shown before a stroke (/) refers to payments to corporations having requisite control. Where appropriate, the particular treaty should be consulted to see whether the reduced rate is applicable.

3. Swedish-source royalties and certain rental fees are treated as a special form of PE, taxable at the corporate tax rate, subject to treaty reduction or waiver. Royalties paid from Sweden to a company within the European Union should not be taxed in Sweden if one of the companies holds at least 25% (capital) of the other or, where there are two companies concerned, at least 25% are held by another company within the European Union. Indirect participation does not benefit from the legislation. Both the payer and the recipient must be legal entities under the EU directive.
4. Payments to resident corporations and individuals are taxed as ordinary income. Only resident banks and similar entities are required to withhold tax on payments of cash dividends to resident individuals.
5. Royalties and certain rentals paid by Swedish licensees are treated as business income taxable in Sweden and do not incur WHT (*see Note 3*).
6. Note also the domestic provision stating a 0% WHT on dividends distributed to qualifying entities based on EU Directive (90/435) and/or where the shares are held for business purposes (*see Note 1*).
7. Dividends: 10% of the gross amount if the company receiving the dividends owns at least 25% of the foreign company's capital.

   Royalties: of the gross amount paid for the use of, or the right to use:
   - News: 3%.
   - Copyright of literary, dramatic, musical, or other artistic work: 5%.
   - Any patent, trademark, design or model, plan, or secret formula or process; industrial or scientific equipment or information concerning industrial, commercial, or scientific experience; payments for the rendering of technical assistance: 10%.
   - All other cases: 15%.
8. Royalties are normally taxable only in the recipient's home country. However, where the royalty is paid by a Swedish legal entity that is more than 50% owned by one Austrian recipient, entity or individual, the tax in Sweden is a maximum of 10%.
9. Literary, artistic, or scientific royalties: 0%; other royalties: 5%.
10. Royalties for use of industrial, commercial, or scientific equipment: 5%; with respect to patents, secret formulas or processes, or for information concerning industrial, commercial, or scientific experience: 3%; other royalties: 10%.
11. Royalties for use of copyright and literary, dramatic, musical, and artistic royalties: 0%. Other royalties: 10% (treaty should be consulted).
12. The treaty has effect on income derived on or after 1 January 2006.
13. The double taxation treaty does not include Hong Kong.
14. The same treaty is applicable to the Czech Republic and the Slovak Republic.
15. According to the Nordic multilateral tax treaty.
16. Dividends are exempt from tax if the recipient of the dividends is a company directly owning at least 10% of the capital of the company paying out the dividends. Certain rentals are subject to tax if there is a PE in a country other than the home country and the claim is connected with the business carried on from the PE. Concerning Iceland, dividends are normally exempt from tax for companies, but the tax rate is 15% if the dividends have been deducted from the income of the distributing company.
17. Royalties for the use of industrial, commercial, or scientific equipment: 5%; other royalties: 10%.
18. Royalties with respect to patents, secret formulas or processes, or for information concerning industrial, commercial, or scientific experience: 5%; other royalties: 12.5%.
19. Royalties for the use of industrial, commercial, or scientific equipment or for information concerning industrial, commercial, or scientific experience: 10%; other royalties: 15% (treaty should be consulted).
20. Literary, artistic, or scientific royalties including films: 15%; other royalties: 10% (treaty should be consulted).
21. Royalties with respect to patents, secret formulas or processes, or for information concerning industrial or scientific experience: 5%; other royalties: 15%.
22. Commercial royalties, including films: 20%; copyright, literary, dramatic, musical, or artistic royalties: 0%.
23. Commercial royalties, including films: 15%; literary, dramatic, musical, or artistic royalties: 5%.
24. Literary, artistic, scientific, or film royalties: 10%; other royalties: 7%.
25. Royalties with respect to patents, designs or models, secret formulas or processes, or for information concerning industrial or scientific experience or for the use of industrial, commercial, or scientific equipment involving a transfer of know-how: 5%; other royalties: 15%.
26. Former Yugoslavia refers to the countries of Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia, Slovenia, and the autonomous province of Kosovo. The treaty is applicable to all republics and autonomous provinces of the former Yugoslavia with the exception of Macedonia, with which Sweden has concluded a bilateral treaty.
27. Royalties arising from the use or the right to use trademarks: 25%; other royalties: 15%.
28. The first tax treaty between Sweden and Armenia was signed on 9 February 2016 and has been approved by the Swedish Parliament as per 12 October 2016. The Swedish legislation implementing the treaty will enter into force as per the date the Swedish government will decide.
29. The first tax treaty between Sweden and Azerbaijan entered into force on 31 December 2016.
30. Dividends are exempt from tax if the beneficial owner is a company that controls at least 10% of the voting power of the paying company. For other cases, dividends are taxable at a maximum rate of 5%. A maximum rate of 15% applies to dividends paid out of income (including gains) from immovable property by an investment vehicle that distributes most of the income annually and whose income from the immovable property is tax exempt.

31. Royalties for the use of, or the right to use, industrial, commercial, or scientific equipment: 5%; other royalties: 10%.
32. Royalties for the use of, or the right to use, industrial, commercial, or scientific equipment: 5%; other royalties: 7%.
33. Royalties for patents relating to industrial know-how of manufacturing methods and royalties attributable to agriculture, pharmaceuticals, computers, computer software and construction, secret formula or processes, or for information concerning industrial, commercial, or scientific nature: 0%. Other royalties: 10%.
34. Royalties paid for the use of, or the right to use, patent, trademark, design or model, plan, or secret formula or process, or information concerning experience of industrial, commercial, or scientific nature: 5%. Other royalties: 10%.

Tax administration

Taxable period

If the income is derived from business, the basis for tax assessment is the financial year. The year-end for a company may be fixed at any calendar month ending, provided it comprises 12 calendar months and ends on the last day of a month. Swedish subsidiaries of foreign parents may generally be permitted to adopt the same year-end as the parent company.

Tax returns

Every corporate entity or registered branch must file an annual corporate tax return. The applicable due date for tax return submissions depends on the month in which the financial year ends: tax returns for financial years ending in January through April are due on 1 November in the same year; tax returns for financial years ending in May or June are due on 15 December in the same year; tax returns for financial years ending in July or August are due on 1 March in the following year; and tax returns for financial years ending in September through December are due on 1 July in the following year. The financial year of most Swedish companies follow the calendar year; consequently, most tax returns are subject to the 1 July due date.

The annual assessments are made by the Swedish Tax Agency during the calendar year following the income year and should be completed about a year after the expiry of the financial year.

Payment of tax

Income taxes are collected during the year in which the income is earned, under a preliminary tax system. A corporate entity's preliminary tax liability is determined by a preliminary tax assessment based either on the latest available final tax assessment or on a preliminary tax return filed by the company. The preliminary taxes are payable in monthly instalments. Interest surcharges on underpayment of preliminary taxes, however, generally apply after two months from the end of the fiscal year (the end of a fiscal year is one of 30 April, 30 June, 31 August, or 31 December).

Once a tax assessment decision has been made by the Swedish Tax Agency, any balance owed by the taxpayer is payable in 90 days. Any balance owed to the taxpayer is automatically refunded within a year from the end of the fiscal year.

Tax penalty

A taxpayer that submits incorrect or insufficient information in a tax return is charged a penalty of up to 40% of the tax that, if the incorrect information had been accepted, would have been imposed or credited. The penalty and the rate may vary depending on the type of the shortcoming. Late filing fees also apply.

Appeals
Taxes are assessed by the Swedish Tax Agency. Depending on the circumstances, reassessments and/or appeals generally can be initiated within two and/or six years after the expiry of the calendar year during which the financial year ended. The extended six-year period can generally be applied by the Swedish Tax Agency to the disadvantage of the taxpayer in cases of erroneous or misleading information having been provided by the taxpayer or the taxpayer's omission of information. Appeals can be made to the Administrative Court, onwards to the Administrative Court of Appeal and, in case granted trial dispensation, onwards to the Supreme Administrative Court.

Topics of focus for tax authorities
The Swedish Tax Agency has, for quite some time, focused on challenging interest deductions on inter-company loans made under the view that the interest rate deviates from the arm's-length rule. This particular focus has resulted in a number of court cases. The Swedish Tax Agency is currently also focusing on interest deduction restrictions under current limitation rules.

Another focus of the Swedish Tax Agency has been to challenge individual owners of private equity companies on the taxation of carried interest.

Other issues

United States (US) Foreign Account Tax Compliance Act (FATCA)
On 8 August 2014, Sweden signed a Model 1A FATCA agreement with the United States. The intergovernmental agreement (IGA) has been implemented through legislative means that entered into force as of 1 April 2015.

EU state aid
There is no Swedish-specific legislation regarding EU state aid.

Base erosion and profit shifting (BEPS)
Amendments to the Swedish tax legislation, due to the BEPS action points, are currently being prepared by the Swedish government. However, there is no official information on how the new rules may be designed available yet.

Switzerland

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Significant developments

Base erosion and profit shifting (BEPS)

Based on the results of the BEPS project, Switzerland has launched several actions in order to implement BEPS measures into the Swiss tax law, in particular:

- Country-by-country (CbC) reporting: In April 2016, the Federal Council launched the consultation process with respect to the multilateral agreement and the respective Swiss act in order to implement the exchange of CbC reports. On 23 November 2016, the Federal Council approved the corresponding dispatch, including a draft of the federal law, both subject to parliamentary discussions. It is expected that multinationals, which are required to prepare a CbC report, will have to draw up a first CbC report in the year 2019 for the year 2018. The automatic exchange of these reports between the partner states shall start in 2020.
- Spontaneous exchange of information: In April 2016, the Federal Council launched the consultation with respect to the implementation of the legal framework and the procedures required for the spontaneous exchange of information. The new rules shall be based on the Organisation for Economic Co-operation and Development (OECD)/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters and the revised Swiss Tax Administrative Assistance Act. The new law entered into force as of 1 January 2017. The spontaneous exchange of information will start as of 1 January 2018.

The implementation of further BEPS actions into the Swiss tax law and double tax treaties (DTTs) is an ongoing process. Switzerland is further expected to sign the Multilateral Instrument (MLI).

Corporate tax reform III / Tax proposal 17

After having implemented two favourable corporate tax reforms, the Swiss people, on 12 February 2017, voted on the so-called 'corporate tax reform III', and 59.1% rejected this initial reform package.

The need for a reform remains, however, undisputed by all political parties. Consequently, right after the poll, the Federal Department of Finance decided to draft a new corporate taxation proposal, called 'tax proposal 17' (TP17) with the aim to align Switzerland's tax laws to the latest intentional developments and to strengthen Switzerland's fiscal competitiveness as a business location with a focus on innovation and value creation.

The federal government has already announced that the Federal Council will determine the cornerstones of TP17 in June 2017. The new cornerstones will be fully aligned with the latest international tax standards and will ensure replacement of the current tax privileges (*see Privileged cantonal tax regimes in the Tax credits and incentives section*) with new state of the art measures, including, for example, a patent box at the cantonal and communal level as well as the possibility for cantons to apply super deductions for research and development (R&D) expenditures.

Value-added tax (VAT) law changes

A partial revision of the Swiss VAT act is currently subject to parliamentary debates. The draft law contains, amongst others, the following suggested changes:

- Foreign companies generating a total taxable turnover of at least 100,000 Swiss francs (CHF) per year in Switzerland and abroad shall be subject to Swiss VAT. This will, however, allow them to recover related Swiss input VAT.
- Foreign online retailers generating a turnover of more than CHF 100,000 per year with tax exempt deliveries to Switzerland due to the low value of the goods (i.e. less CHF 200 per shipment) shall be subject to Swiss VAT.

The suggested changes are likely to enter into force no earlier than 2018.

Taxes on corporate income

Resident companies are subject to Swiss corporate income tax (CIT) on their taxable profits generated in Switzerland. CIT is levied at the federal, cantonal, and communal level. Foreign-source income attributable to foreign permanent establishments (PEs) or real estate property located abroad is excluded from the Swiss tax base and only taken into account for rate progression purposes in the cantons that apply progressive tax rates.

Non-resident companies may be subject to Swiss CIT if they are (alternatively) partners of a Swiss business, have a PE in Switzerland, own real estate property in Switzerland, have loan receivables secured by a mortgage on Swiss real estate property, or deal with or act as a broker of Swiss real estate property. Non-resident companies are taxed on their income generated in Switzerland only (*see the Branch income section*).

Federal level

Switzerland levies a direct federal CIT at a flat rate of 8.5% on profit after tax. Accordingly, CIT is deductible for tax purposes and reduces the applicable tax base (i.e. taxable income), resulting in a direct federal CIT rate on profit before tax of approximately 7.83%. At the federal level, no corporate capital tax is levied.

Cantonal/communal level

In addition to the direct federal CIT, each canton has its own tax law and levies cantonal and communal income and capital taxes at different rates. Therefore, the tax burden of income (and capital) varies from canton to canton. Some cantonal and communal taxes are imposed at progressive rates.

Overall tax rates

As a general rule, the overall approximate range of the maximum CIT rate on profit before tax for federal, cantonal, and communal taxes is between 11.5% and 24.2%, depending on the company's location of corporate residence in Switzerland.

Corporate residence

A company is considered resident in Switzerland if its domicile is in Switzerland. Residency is also linked to the place of effective management, which may be the centre from which day-to-day activities are directed or the place from which managerial decisions are taken.

Permanent establishment (PE)

For Swiss tax law purposes, the term 'permanent establishment' means a fixed place of business through which the business activity of an enterprise is wholly or partly carried on. In particular, PEs are branches, factories, workshops, sales agencies, permanent representations, mines and other places of extraction of natural resources, as well as building or construction sites that last at least 12 months. This definition is generally in line with the criteria according to the current Article 5 paragraph 2 of the OECD Model Tax Convention on Income and Capital.

Other taxes

Value-added tax (VAT)

As a matter of principle, proceeds of sales and services conducted in Switzerland are subject to VAT at the standard rate of 8%. Goods for basic needs are subject to VAT at the rate of 2.5%. These rates include a temporary increase that went into effect on 1 January 2011 and will at least remain applicable until 31 December 2017. Furthermore, services in connection with the provision of lodging are subject to VAT at the rate of 3.8% (also technically limited until 31 December 2017). All above rates are expected to remain unchanged going forward.

Any person, regardless of legal form, objects, and intention to make a profit, is liable to VAT if that person carries on a business and is not exempt from the tax liability. A person carries on a business if one independently performs a professional or commercial activity with the aim of sustainably earning income from supplies and acts externally under one's own name. Persons who are taxable must register with the Swiss Federal Tax Administration of their own accord in writing within certain deadlines. Anyone who in Switzerland generates less than CHF 100,000 in turnover within a year from taxable supplies is exempt from the aforementioned liability. A registered taxpayer generally is entitled to offset the amount of VAT charged by suppliers or paid on imports against the VAT payable.

The VAT rates are dependent on the goods sold or the services provided. Some supplies are exempt from the tax without credit (e.g. hospital treatment, cultural services, insurance and reinsurance turnovers, specific turnovers in the field of money and capital transactions) and some supplies are fully exempt from the tax (e.g. supply of goods that are transported or dispatched directly abroad). The difference relates to the fact that the input VAT related to supplies exempt from the tax without credit cannot be deducted, whereas supplies exempt from the tax are fully eligible for input VAT deduction.

Customs duties

All goods arriving in Switzerland from abroad are generally subject to customs duty and import VAT. The customs duty is calculated on the gross weight of imported goods, where category-specific weight rates apply. Products like alcoholic drinks, tobacco products, food, and textiles are typical categories of higher duty rates. Furthermore, imported goods are subject to import VAT of generally 8%. A reduced rate of 2.5% applies on certain goods (e.g. food, non-alcoholic beverages, books, magazines, pharmaceutical products).

Excise taxes

In Switzerland, various excise taxes are levied. To name a few, the following excise taxes are levied at the federal level:

- VAT (*see above*).
- Petroleum tax.
- Performance-related Heavy Vehicle Fee.
- National road tax (motorway tax sticker).
- Beer excise tax/Tax on alcohol.
- Tobacco excise tax.

Property taxes

With regard to the ownership and the transfer of real estate property in Switzerland, property taxes may apply. Depending on the location of the real estate property, ownership related property taxes are levied at the cantonal and/or communal level or do not exist at all.

In case of the sale of real estate property, real estate transfer tax and taxes on the capital gain may apply.

At the federal level, capital gain realised on the sale of real estate property is subject to ordinary CIT. At the cantonal and communal level, depending on the canton concerned, capital gain realised is either subject to the ordinary CIT (dualistic method) or subject to a special real estate capital gain tax (monistic method).

It is at the discretion of the authority of the cantons to decide how real estate capital gains shall be taxed within their territory.

Securities transfer tax

Swiss securities transfer tax (often known as ‘securities turnover tax’ or ‘transfer stamp tax’) is levied on the transfer of Swiss or foreign securities, in which Swiss security dealers participate as contracting parties or as intermediaries. The ordinary tax rate of Swiss securities transfer tax is 0.15% for securities issued by a tax resident of Switzerland and 0.3% for securities issued by a tax resident of a foreign country.

Swiss security dealers are defined as any person professionally engaged in the buying or selling of securities for one’s own account or for another person, including Swiss banks and other Swiss bank-like institutions. The definition also includes companies holding taxable securities whose book value exceeds CHF 10 million and remote members of a Swiss stock exchange.

Taxable securities include, but are not limited to, shares and bonds. Options and many other derivative instruments are not subject to Swiss securities transfer tax. However, the exercise of such financial instruments or derivatives may result in a taxable transfer of a security.

Various transactions are exempt from the Swiss securities transfer tax. Generally, no Swiss securities transfer tax is levied in the case of a merger or a reorganisation in which a Swiss security dealer is involved and taxable securities (including participations) are transferred. Furthermore, the like-kind exchange of a participation by a Swiss security dealer is also exempt from the Swiss securities transfer tax. This is particularly important for holding companies, which may qualify as Swiss security dealers.

Issuance stamp tax

Issuance stamp tax (often known as 'capital duty') on the issuance and the increase of the equity of Swiss corporations is levied at the rate of 1% on the fair market value of the assets contributed, with an exemption on the first CHF 1 million of capital paid in, whether it is made in an initial or subsequent contribution.

A multitude of transactions qualify for an issuance stamp tax exemption. In particular, special tax provisions allow for most reorganisations to take place on a tax neutral basis. In addition, an existing non-resident company may generally transfer assets to Switzerland without incurring Swiss issuance stamp tax. However, if the company was formed abroad and re-domiciled to Switzerland exclusively or mainly in order to avoid Swiss stamp taxes, issuance stamp tax may apply.

The issuance of Swiss bonds and money market instruments is not subject to Swiss issuance stamp tax.

In addition, the conversion of certain contingent convertible bonds (CoCos) into equity will also not trigger Swiss issuance stamp tax on the newly created equity. In more detail, this relief applies to CoCos according to the Swiss banking law only; other convertible bonds will still trigger Swiss issuance stamp tax if converted into equity.

Capital tax

Corporate capital tax is only levied at the cantonal and the communal level (not at the federal level). It is based on a corporation's equity (i.e. the taxable equity corresponds to the sum of nominal capital, paid in surplus, retained earnings, other equity reserves, and, according to Swiss thin capitalisation rules, potential deemed equity). The ordinary capital tax rates vary between 0.001% and 0.525%, depending on the company's location of corporate residence in Switzerland. Reduced capital tax rates usually apply for companies subject to a special cantonal tax regime (e.g. holding companies, domicile companies, mixed trading companies).

The cantons are allowed to foresee in their tax law that CIT is creditable against a corporation's capital tax. As of 1 June 2017, the following cantons have implemented such credit system: Argovie, Appenzell Innerrhoden, Bern, Basel-Land, Geneva, Neuchâtel, St. Gallen, Solothurn, Schwyz, Thurgau, and Vaud.

Payroll taxes

Wage tax withholding (tax at source)

Employees meeting certain criteria (e.g. Swiss tax resident foreign nationals without a permanent residence permit, non-Swiss tax resident individuals) are subject to wage tax withholdings. In such case, it's the employer's obligation to withhold the appropriate wage tax on the employee's gross salary. The wage taxes cover the employee's federal, cantonal, and communal taxes as well as church tax (if applicable) (*see the Taxes on personal income section of Switzerland's Individual tax summary at www.pwc.com/taxsummaries*).

Social security contributions
Employers, in general, are required to account for social security contributions on the salaries of their employees. If the employee is subject to the Swiss social security system, the following compulsory social security contributions are concerned (*see the Other taxes section of Switzerland's Individual tax summary at www.pwc.com/taxsummaries*):

- Old age, survivors', and disability insurance (10.25%; the employee's share is one half).
- Unemployment insurance/supplementary unemployment insurance (approximately 2.2%; the employee's share is one half).
- Family compensation fund (0.1% to 4%; usually fully employer financed).
- Occupational accident insurance (approximately 0.17%; fully employer financed).
- Occupational pension scheme (2nd pillar) (contributions depend on pension plan; the employee's share is usually half of the total contribution, where the employer bears the other half).

Branch income

Foreign legal entities having a branch in Switzerland become subject to limited taxation in Switzerland. Such branches generally qualify as PEs in line with the OECD Model Tax Convention on Income and Capital. The branch's income is, in general, subject to the same CIT rules that apply for Swiss corporations. It is worth noting that there is no Swiss withholding tax (WHT) on profit transfers from the Swiss branch to its foreign head office.

Income determination

The statutory accounts of a Swiss company (or in the case of a non-resident company, the branch accounts) serve as the basis for determining taxable income. There are generally very few differences between statutory profit and taxable profit apart from the participation relief for dividend income and capital gains (*see below*), adjustments required by the tax law, and the usage of existing tax loss carryforwards (*see Net operating losses in the Deductions section*).

Inventory valuation
Swiss CIT treatment does, in principle, follow underlying Swiss statutory accounting treatment. Inventory valuation is therefore determined according to the accounting rules of the Swiss code of obligations. As the Swiss code of obligations, hence the Swiss accounting rules, favour the prudence principle, a valuation allowance is allowed to be recorded on the inventory in excess of the actual devaluation of the inventory due to a lower market value (*see Obsolete inventory provision in the Deductions section*). Such valuation allowance is accepted for tax purposes at up to a maximum of one-third of the inventory's acquisition costs or its productions costs, respectively its lower market value.

Accordingly, the maximum inventory value represents the inventory's acquisition costs or its production costs. In case these costs exceed the inventory's market value at the balance sheet date, the latter lower market value must be applied. In order to determine the inventory's acquisition or production cost, various methods exist.

It is at the corporate taxpayer's discretion to determine which method shall apply (e.g. weighted average method, first in first out [FIFO], last in first out [LIFO], highest in first out [HIFO]).

Participation relief

Participation relief is the name generally attributed to the tax relief on qualifying dividend income and capital gains from the disposal of a subsidiary. Participation relief is not an outright tax exemption, but rather a tax abatement mechanism. It is therefore also commonly referred to as 'participation deduction' or 'participation exemption'.

Participation relief is a percentage deduction from CIT that is equal to net participation income divided by taxable income. Net participation income consists of the gross participation income from qualifying dividends and (usually) qualifying capital gains less related administration and financing costs and any depreciation of the participation that is linked to the dividend distribution. In most cases, participation relief results in a full exemption of participation income from CIT, or one close thereto. Note that participation relief may be diluted in certain cases (e.g. if tax loss carryforwards are offset).

The participation relief on dividend income is mandatory at the federal CIT as well as at the cantonal/communal level. The participation relief on capital gains is voluntary for cantonal/communal tax purposes, but nonetheless implemented by all cantonal tax acts. Specific privileged cantonal/communal tax regimes may foresee more favourable rules for dividend income and capital gains than the participation relief (*see Privileged cantonal tax regimes in the Tax credits and incentives section*).

Dividend income

Dividends qualifying for participation relief are those from participations representing at least 10% of the share capital or 10% of profits and reserves of another company or those having a market value of at least CHF 1 million. Note that there is neither a minimum holding period nor a requirement that the dividend paying subsidiary is liable to income tax in its jurisdiction of residence.

Capital gains

Capital gains derived from the disposal of a qualifying participation are generally entitled to participation relief if the following conditions are cumulatively met:

- The participation sold was owned by the company for a period of at least one year.
- The participation sold constitutes at least 10% of the share capital or 10% of profits and reserves of the underlying subsidiary. If a residual participation is less than 10% due to a previously qualifying partial sale, further participation relief on a capital gain is only possible if the residual participation's market value at the beginning of the year amounted to at least CHF 1 million.

It is noteworthy that capital gains are only entitled to participation relief to the extent the sales price exceeds the original investment costs (commonly also referred to as 'acquisition costs') of the participation, whereas the so-called 'recaptured depreciation' (i.e. the amount of former depreciations) is taxable.

Interest income

Interest income earned is taxable income. It is of no relevance whether the payment of the interest was made by a related party (affiliated company or shareholder) or by a third party (*see Interest expense in the Deductions section*).

Royalty income
Royalty income represents taxable income. It is generally subject to ordinary CIT at the federal, cantonal, and communal level. As an exception to the rule, the canton of Nidwalden has introduced a patent box regime. This regime provides for a lower taxation of royalty income from the exploitation of intangible property at the cantonal and communal level.

Foreign exchange gains
Realised foreign exchange gains in relation to a transaction (transaction gains) are included in the tax basis of a corporation as taxable. Realised and, as a result of the prudence principle of the Swiss accounting rules, unrealised transactional foreign exchange losses are tax deductible. Based on a federal court decision in 2009, foreign gains (or losses) resulting from the translation of financial statements in a foreign (functional) currency to Swiss franc (presentation currency) are not taxable (respectively tax deductible).

Foreign income
Swiss tax resident corporations are basically taxed on their worldwide income. However, income attributable to a foreign PE (i.e. a PE outside of Switzerland) is not taxed in Switzerland. It may only be taken into account to determine the applicable tax rate, in case progressive tax rates apply. The same rule applies for income from real estate property situated abroad.

Dividends, interest, and royalties from Swiss or foreign sources are included in taxable income. However, in certain cantons, special methods of assessment may apply for dividend and other income originating outside Switzerland. For dividend income, a relief generally is available at the federal income tax level as well as at the cantonal/communal level (*see Participation relief above*). The irrecoverable portion of foreign WHT of most treaty countries can be credited against the related Swiss income taxes on the same income. Foreign WHT of non-treaty countries generally is not creditable, but is deductible for income tax purposes.

There are no controlled foreign company (CFC) rules in Switzerland. Consequently, undistributed income of foreign subsidiaries is usually not taxed in Switzerland (*see Controlled foreign companies [CFCs] in the Group taxation section*).

Deductions

The statutory accounts of a Swiss company are the basis for determining taxable income. To be tax deductible, an expense has to be booked in the statutory accounts accordingly.

Generally, all business expenses that are booked in the statutory accounts are tax deductible, assuming they are economically/commercially justified from a tax perspective. If an expense is not a justifiable business expense in the sense of the tax law, it will be added back to taxable income. Examples typically include excessive depreciation, non-justified payments to related parties (e.g. hidden profit distributions), etc.

Depreciation and amortisation
Maximum depreciation/amortisation rates allowed for tax purposes are issued by the Swiss Federal Tax Administration. Higher depreciation/amortisation is allowed for

tax purposes if the taxpayer can prove that such higher depreciation/amortisation is required (not only allowed) from a statutory accounting perspective. Some cantons follow the federal guidelines, whereas some cantons apply their own (more liberal) depreciation/amortisation rates.

The following summary of the rates specified by the Swiss Federal Tax Administration provides the general range of tax-accepted depreciation:

Assets	Declining-balance (%)	Straight-line (%)
Commercial buildings:		
Buildings alone	4	2
Buildings and land combined	3	1.5
Equipment:		
Office furniture and equipment	25	12.5
Computer hardware and software	40	20
Other assets:		
Motor vehicles	40	20
Intangible assets	40	20

Some cantons (e.g. Basel-City, Bern, Grisons, Zurich) take a more liberal approach and even permit, for tax purposes, an immediate write-down of certain assets (including fixed assets) to 20% or nil of the purchase price in the first year, provided that such write-downs do not, in the aggregate, result in a drastic decline in taxable income or even a tax loss. For tax purposes, such immediate write-downs must be booked in the statutory accounts and generally disclosed in the tax return. As the cantonal tax authorities are responsible for assessing not only cantonal/communal CIT but also federal CIT, the immediate write-down will typically be accepted for federal CIT purposes as well.

Goodwill

Only acquired goodwill (derivative goodwill) may be capitalised in the statutory accounts and be amortised. Amortisation is generally allowed straight-line over five years. Special limitations apply to acquired shares, where the purchase price for these shares partly represents inherent goodwill.

Start-up expenses

The Swiss code of obligations does not contain any specific Swiss statutory accounting provision with regard to start-up expenses. For Swiss statutory accounting purposes, start-up expenses shall be expensed as incurred. For Swiss CIT purposes, business related start-up expenses as booked in the statutory profit and loss statement are likely fully tax deductible.

Interest expense

Interest paid by a corporation to a third party is a deductible business expense. Interest paid to related parties (affiliated company or shareholder) has to reflect the fair market rate and is subject to limitations (*see Thin capitalisation in the Group taxation section*).

With respect to related parties, the Swiss Federal Tax Administration annually issues safe harbour interest rates to be used on loans denominated in Swiss franc on the one hand and in foreign currencies on the other hand. The corporation may deviate from these safe harbour rates as long as it can prove with hard facts that the rates used are at arm's length and more appropriate in the present case. The cantons usually follow these federal guidelines.

The safe harbour rules for loans denominated in Swiss franc applicable as of 1 January 2017 are as follows:

For loans to related parties	Minimum interest rate (%)
Financed from equity	0.25
Financed from debt (actual costs plus at least):	
On amount up to and including CHF 10 million	0.50
On amounts of more than CHF 10 million	0.25
But in all cases at least	0.25

For loans from related parties	Maximum interest rate (%)	
Type of loan	Home construction/ agriculture	Industry and business
Real estate loans:		
A loan up to the amount generally acceptable for mortgages (i.e. 2/3 of the market value of the real estate)	1.00	1.50
Rest, whereby the following maximum interest rates for debt are applicable:		
Land, villas, condominiums, vacation homes, business premises up to 70% of the market value	1.75*	2.25*
Other real estate up to 80% of the market value		
Operational loans up to CHF 1 million:		
Granted to trading and production companies	-	3.00*
Granted to holding and asset administration companies	-	2.50*
Operational loans above CHF 1 million:		
Granted to trading and production companies	-	1.00*
Granted to holding and asset administration companies	-	0.75*

* In calculating the amount of the maximum interest permissible from a tax perspective, any potentially existing hidden equity (under Swiss thin capitalisation rules) has to be considered.

Bad debt provision
Based on a longstanding practice in Switzerland, it is admissible to set up a statutory accounting provision for specific impaired receivables, which will be accepted for income tax purposes. Unlike most other countries, it is also possible to account for an additional ('lump sum') bad debt provision of 5% on all domestic and 10% on all foreign receivables (i.e. a provision in addition to the provision for specific impaired receivables), except for inter-company receivables and receivables to the public, enabling the taxpayer to defer the related tax liability until this provision has been released. Some cantons, such as Zurich, accept an even higher reserve (i.e. 10% on domestic and 20% on foreign receivables). This additional bad debt provision may have the character of a 'hidden' (i.e. undisclosed) reserve and is appropriate because the Swiss statutory accounting standards favour prudence over true and fair view accounting principles.

Obsolete inventory provision
Similarly to the bad debt provision, it is possible to account for a 'hidden' (i.e. undisclosed) reserve on a company's inventory. This provision, which must also be booked in the statutory accounts, is accepted for tax purposes (similar to the bad debt

provision). Specifically, a company may book a provision for specific obsolete inventory as well as a general provision of 33.3% of the inventory value after deduction of the obsolete inventory.

Charitable contributions

At the federal level, charitable contributions of up to 20% of the net profit (after tax) of a company are tax deductible, provided certain criteria are met. In particular, the charitable contribution has to be remitted to (i) Swiss legal entities that are exempt from taxation based on their public welfare or exclusively charitable objective or to (ii) the Swiss Federation, a Swiss canton or municipality, or their agencies (*'Anstalten'*). The cantons usually apply the same rules and similar thresholds.

Sponsoring contributions are only tax deductible if commercially justified (without specific thresholds).

Royalties

Royalty payments are generally deductible for tax purposes as long as the royalty rate is at arm's length.

Costs of employee share plans and stock option plans

The cost of employee share plans and stock option plans are generally deductible, assuming the employees eligible for the plan are employed by the Swiss company. The same holds true for the recharge of costs for plans covering local employees.

Costs for job-related training and continuing education of employees

As far as they are recognised as an expense in the statutory books, costs incurred for job-related training and continuing education of employees are generally tax deductible.

Fines and penalties

Under Swiss tax law, tax fines are not tax deductible. The potential tax deductibility of other fines or penalties has to be analysed with respect to the specific case.

Tax expenses

Corporate income and capital taxes paid to the federal government, as well as to the cantons and the municipalities, are tax deductible. Indirect taxes (e.g. real estate transfer tax) are tax deductible as well.

Net operating losses

Tax losses can be carried forward for a maximum of seven years and can be offset against the taxable income of the following seven years. There is no carryback of tax losses in Switzerland.

Payments to foreign affiliates

Management and services fees paid by a Swiss company to a related party are generally tax deductible as long as the fees are at arm's length.

Group taxation

Tax is levied on each corporation as a separate entity. A parent company and its Swiss subsidiaries are taxed separately, and only the dividends from the subsidiaries (but not their profits) are taxable in the parent company's hands. However, usually for dividend income, participation relief is available (*see Participation relief in the Income determination section*). For corporate income and capital taxes, no rules on group taxation exist.

Transfer pricing

So far, Switzerland has not introduced specific transfer pricing regulations. There is, however, an increasing awareness of the issue and concern on the part of the Swiss tax authorities that taxpayers may transfer profits without sufficient economic justification either to countries with strict transfer pricing rules and documentation requirements in order to avoid challenges by the respective local tax authorities or to offshore locations. In this context, Swiss tax authorities take an increasing interest in a company's transfer pricing position in order to defend their own position. Some cantonal, as well as the federal, tax authorities have started to particularly focus on low risk/low profit entities located in Switzerland.

Switzerland follows the OECD Guidelines as closely as possible and recognises the arm's-length principle based on interpretation of actual legislation. To clarify transfer pricing issues, Switzerland offers an informal procedure for agreeing to pricing policies in advance. Such agreements are subject to the spontaneous exchange of information (*see Automatic information exchange in the Other issues section*).

Thin capitalisation

Swiss thin capitalisation rules are, in general, only applicable for related parties. In case of a thin capitalisation, the related party debts can be treated as taxable equity. The respective circular letter issued by the Swiss Federal Tax Administration provides for debt-to-equity ratios as safe harbour rules. As an example, the debt-to-equity ratio is generally fixed at 6:1 for finance companies (safe harbour). Interest paid on loans that exceed the relevant ratios are generally not tax deductible; further, such interest may be deemed as a hidden distribution subject to Swiss WHT. There are no limitations on the financing of Swiss corporations by independent third parties (e.g. banks).

Interest rates paid to affiliated companies are also subject to periodically fixed safe harbour interest rates (*see Interest expense in the Deductions section*). The tax deduction of interest in excess of the permitted safe harbour rate may be disallowed and treated as a hidden distribution subject to Swiss WHT.

Controlled foreign companies (CFCs)

In Switzerland, no CFC or 'subject to tax' rules exist. Foreign companies are therefore recognised for Swiss tax purposes if they are managed and controlled offshore and are not set up purely for the reason of avoiding Swiss taxes.

Tax credits and incentives

Generally, cantons offer competitive CIT rates for cantonal and communal tax purposes. Depending on the specific cantonal and communal tax location in Switzerland, the ordinary overall (federal, cantonal, and communal) CIT rates applicable on profit before tax may vary between 11.5% and 24.2% (*see the Taxes on corporate income section*). The cantons continually try to improve their attractiveness as business locations. It is at the sole discretion of the cantons to credit CIT against the capital tax to reduce the overall tax burden (*see Capital tax in the Other taxes section*). As a further example, the canton of Nidwalden introduced a tax relief for certain licence income (so-called 'patent box'), whereupon net licence income from the use of intangible assets is taxed separately at a reduced CIT rate of one-fifth of the regular cantonal/communal rate (*see Royalty income in the Income determination section*).

In addition, many cantons offer tax incentives for newly established companies or for expansion investments, such as tax holidays or significant tax relief for cantonal and communal tax purposes for up to ten years. In some specific economic development regions and regional centres, a tax holiday may even be granted for federal CIT purposes if certain conditions are met.

Privileged cantonal tax regimes
Many cantons offer privileged corporate tax regimes. Upon request, it is usually possible to get an up-front confirmation from the relevant cantonal tax authorities that the planned business activities of an entity are meeting the requirements as foreseen by the relevant cantonal tax laws for a specific privileged tax regime.

One can expect that 'tax proposal 17' (TP17) will abolish the privileged cantonal tax regimes, replacing them with other measures. Furthermore, transitional rules will be available (*see Corporate tax reform III / Tax proposal 17 in the Significant developments section*). The content of TP17 is still in the drafting process, and it has not yet been defined by when TP17 shall enter into force. The federal government has, however, announced that the Federal Council will determine the cornerstones of TP17 in June 2017 and decide on the next steps.

Holding company tax regime
A qualifying holding company is exempt from all cantonal/communal CIT (with the exception of income from Swiss real estate, which is subject to tax after deduction of typical mortgage expenditures on such real estate).

Consequently, a holding company is, in principle, only subject to an effective CIT rate of 7.83% (i.e. federal CIT rate) prior to participation relief for qualifying dividends and capital gains. Further, usually a reduced capital tax rate at the cantonal/communal level applies.

Companies that meet the following conditions are eligible for the holding company tax status:

- The primary purpose of the company must be to hold and to manage long-term equity investments in subsidiaries, and this purpose must be stated in the by-laws.
- The company must not be engaged in a commercial activity in Switzerland.
- The company must pass an alternative asset or income test, whereby either two-thirds of the company's assets must consist of substantial shareholdings or participations or two-thirds of total income of the company must consist of participation income (dividend income or capital gains) from such shareholdings and participations.

An advance confirmation is obtainable from the cantonal tax authorities clarifying that a specific company will qualify for the criteria of the holding company status as foreseen by the relevant cantonal tax laws prior to forming such holding company.

Domicile company tax regime
Companies that only carry out administrative functions in Switzerland but have no commercial activities are typically eligible for the domicile company tax status.

Insofar as a company fulfils the above-mentioned criteria, it may apply with the cantonal tax authorities for taxation based on the domicile company tax regime, which, if applicable, has the following implications at the cantonal/communal CIT level:

- A modest portion of foreign-source income (i.e. from 0% to 15%) is subject to tax in accordance with the importance of the administrative function in Switzerland.
- Income from qualifying participations (including dividends, capital gains, and re-evaluation gains) is usually tax exempt (whereas losses deriving from qualifying participations usually are not tax deductible).
- All income from Swiss sources is taxed at ordinary rates.
- Expenditures that are justified for business purposes are deductible from the income to which they have a business correlation.
- Reduced capital tax rates usually are applicable.

The conditions to qualify as a domicile company vary from canton to canton. This is particularly the case with regard to determining the percentage of income from foreign sources subject to tax in Switzerland and to the definition of exactly what type of income is considered foreign-source income.

A domicile company can be expected to be subject to an effective tax rate of 7.83% to 11% on foreign-source income.

Mixed trading company tax regime

The mixed trading company tax status, which is very similar to the domicile company tax status, was given different names by the cantons. Internationally, it is most often referred to as the ‘mixed trading company’ tax status.

Contrary to a company benefiting from the classical domicile company tax status, a company benefiting from the mixed trading company tax status is allowed to undertake limited commercial activities in Switzerland. As a general rule, at least 80% of the income from commercial activities of a mixed trading company must derive from non-Swiss sources (i.e. a maximum of 20% of income may be linked to Swiss sources). Many cantons additionally require that at least 80% of the costs must be related to activities undertaken abroad.

Insofar as a company will fulfil the above mentioned criteria, it may apply with the relevant cantonal tax authorities for an advance confirmation that it will be entitled to the mixed trading company tax status. Depending on the concrete Swiss activity and infrastructure, the portion subject to cantonal and communal income taxes generally varies between 5% and 25% of the foreign-source income and is normally higher than it is for domicile companies. The exact portion, based on the specific business activities of a company, needs to be clarified with the responsible cantonal tax authorities.

Foreign tax credit

Swiss tax resident corporations may suffer foreign non-recoverable WHTs on dividend, interest, and royalty income derived from foreign sources. As such foreign-source income is generally subject to corporate income taxation in Switzerland, a double taxation occurs. In case a DTT exists and in order to reduce or to eliminate double taxation, Switzerland usually applies the credit method. Specific conditions and formalities will need to be met to benefit from foreign tax credits.

Withholding taxes

This section shall provide a general overview and an indication of the residual WHT on outbound payments from Switzerland. There might be certain exceptions or further reductions available in the DTT, which, for the sake of clarity, are not reflected in the table below. Accordingly, the table below does not replace a thorough assessment of a specific case based on the applicable DTT in force.

The statutory rate of Swiss WHT is 35%. Relief, if any, is generally granted by refund. With respect to dividends between qualifying related companies, a mere notification/reporting procedure may be requested for the fraction of the Swiss WHT exceeding the residual WHT. The table further below shows the residual/remaining tax for the recipient. Credit for the unrelieved portion of Swiss WHT may be available in the country of the recipient.

In Switzerland, there is no WHT on interest deriving from regular loan agreements. Swiss WHT of 35% is only levied on interest paid by banking institutions (or paid by entities tax-wise qualified as 'banking institutions') to non-banks, interest on bonds, and interest on bond-like loans. The residual rates in the table below show the standard treaty rates and do not reflect further reliefs available in certain DTTs (e.g. on traded bonds or other traded securities).

Many of the DTTs concluded between Switzerland and other jurisdictions contain a full relief if dividends or interest is paid to governments (including political subdivisions and other governmental institutions), central banks, or pension funds.

Note that in the DTTs concluded between Switzerland and other jurisdictions, the reduced WHT for substantial holdings usually is only available if the recipient of the dividend is a corporate body (e.g. not taxed as a partnership).

Interest paid on CoCos and on write-off bonds (bonds with claim waiver) of systematically important banks is exempt from Swiss WHT. The WHT exemption is restricted to bonds issued by the respective institutions between 2013 and 2021. Additionally, interest of certain bail-in bonds issued by the respective institutions between 2017 and 2021 is not subject to WHT. These bonds must, furthermore, fulfil specific criteria in order to benefit from the WHT exemption.

Capital contribution principle

The capital contribution principle allows the repayment of qualifying shareholders' capital contributions without deduction of Swiss WHT at the level of the distributing company and without income tax implications at the level of Swiss individual shareholders (holding the shares as private wealth). In general, the capital contribution principle applies for premiums, additional paid-in capital, and contributions into the reserves of a company without increasing the nominal share capital.

Treaties in force (as of 1 June 2017)

	Dividends				
		Substantial holdings			
Recipient	**Portfolio (%)**	**(%)**	**Minimum shareholding (%)**	**Interest (%)**	**Royalties (%) (1)**
Resident corporations and individuals	0/35 (2)	0	(3)	0	0
Non-resident corporations and individuals:					
Non-treaty	35	35	-	0/35 (17)	0
Treaty:					
Albania	15	5	25	5	0
Algeria	15	5	20	10	0
Argentina	15	10	25	12	0
Armenia	15	5	25	10	0
Australia	15	5	10	10	0
Austria *	15	0	20	0	0
Azerbaijan	15	5 (4)	20 (4)	10	0
Bangladesh	15	10	20	10	0
Belarus	15	5	25	8	0
Belgium *	15	10	25	10	0
Bulgaria *	10	0 (5)	10 (5)	5	0
Canada	15	5	10	10	0
Chile	15	N/A	N/A	15	0
China	10	5	25	10	0
Colombia	15	0	20	10	0
Croatia *	15	5	25	5	0
Cyprus *	15	0 (5)	10 (5)	0	0
Czech Republic *	15	0 (5)	10 (5)	0	0
Denmark *	15	0	10	0	0
Ecuador	15	N/A	N/A	10	0
Egypt	15	5	25	15	0
Estonia *	10	0 (5)	10 (5)	0	0
Finland *	10	0	10	0	0
France *	15	0/15 (6)	10	0	0
Georgia	10	0	10	0	0
Germany *	15	0 (5)	10 (5)	0	0
Ghana	15	5	10	10	0
Greece *	15	5	25	7	0
Hong Kong	10	0	10	0	0
Hungary *	15	0	10	0	0
Iceland	15	0 (5)	10 (5)	0	0
India	10	N/A	N/A	10	0
Indonesia	15	10	25	10	0
Iran	15	5	15	10	0
Ireland *	15	0	10	0	0
Israel	15	5	10	10	0
Italy *	15	N/A	N/A	12.5	0
Ivory Coast	15	N/A	N/A	15	0
Jamaica	15	10	10	10	0
Japan	10	0/5 (7)	10/50 (7)	10	0

	Dividends				
		Substantial holdings			
Recipient	**Portfolio (%)**	**(%)**	**Minimum shareholding (%)**	**Interest (%)**	**Royalties (%) (1)**
Kazakhstan	15	5	10	10	0
Korea (South)	15	5	10	10	0
Kuwait	15	N/A	N/A	10	0
Kyrgyzstan	15	5	25	5	0
Latvia *	15	5	20	10	0
Liechtenstein (15)	15	0	10 (5)	0	0
Lithuania *	15	5	20	10	0
Luxembourg *	15	0/5 (8)	10	10	0
Macedonia	15	5	25	10	0
Malaysia	15	5	25	10	0
Malta *	15	0 (5)	10 (5)	10	0
Mexico	15	0	10	10	0
Moldova	15	5	25	10	0
Mongolia	15	5	25	10	0
Montenegro	15	5	20	10	0
Morocco	15	7	25	10	0
Netherlands *	15	0	10	0	0
New Zealand	15	N/A	N/A	10	0
Norway	15	0	10	0	0
Oman (16)	15	5	10	0/5 (14)	8
Pakistan	20	10	20	10	0
Peru	15	10	10	15	0
Philippines	15	10	10	10	0
Poland *	15	0 (9)	10 (9)	0/5 (13)	0
Portugal *	15	0 (9)	25 (9)	10	0
Qatar	15	5/10 (10)	10	0	0
Romania *	15	0	25	0/5 (14)	0
Russia	15	5 (11)	20 (11)	0	0
Serbia	15	5	20	10	0
Singapore	15	5	10	5	0
Slovakia *	15	0	10	0/5 (14)	0
Slovenia *	15	0	25	0/5 (14)	0
South Africa	15	5	20	5	0
Spain *	15	0 (5)	10 (5)	0	0
Sri Lanka	15	10	25	10	0
Sweden *	15	0	10	0	0
Taiwan (Chinese Taipei)	15	10	20	10	0
Tajikistan	15	5	20	10	0
Thailand	15	10	10	15	0
Trinidad and Tobago	20	10	10	10	0
Tunisia	10	N/A	N/A	10	0
Turkey	15	5	20	10	0
Turkmenistan	15	5	25	10	0
Ukraine	15	5	20	10	0
United Arab Emirates	15	5	10	0	0
United Kingdom *	15	0	10	0	0

Switzerland

Recipient	Dividends: Portfolio (%)	Dividends: Substantial holdings (%)	Substantial holdings: Minimum shareholding (%)	Interest (%)	Royalties (%) (1)
United States	15	5	10	0	0
Uruguay	15	5	25	10	0
Uzbekistan	15	5	20	5	0
Venezuela	10	0	25	5	0
Vietnam	15	7/10 (12)	20/50 (12)	10	0

* Switzerland and the European Union (EU) signed an Agreement regarding the Introduction of the Global Automatic Exchange of Information Standard on 27 May 2015, applicable as of 1 January 2017. The Agreement signed is a protocol of amendment that replaces the Savings Agreement between Switzerland and the European Union, which has applied since 1 July 2005. Article 9 of the Automatic Exchange of Information Agreement provides the same benefits as the former Savings Agreement, as follows:

Upon request, Swiss WHT on dividends paid by a Swiss subsidiary company to its EU parent company may be reduced to 0% (reduction at source) and is only subject to a notification/reporting procedure, provided the following key conditions are cumulatively met:

- Direct minimum holding of 25% of the subsidiary's capital for at least two years.
- Both companies are subject to CIT.

Upon request, WHT on interest and royalty payments made between associated companies or their PE resident, respectively situated in Switzerland and the European Union, may be reduced to 0% (reduction at source) in the source state, provided the following key conditions are cumulatively met:

- Direct minimum holding of 25% for at least two years (parent/subsidiary) or direct holding by a third company of minimum 25% in the capital of both companies for at least two years (sister companies).
- Both companies are subject to CIT.

The application of the Bilateral Agreement is subject to foreign and Swiss misuse conditions.

DTTs between Switzerland and EU countries with more favourable tax treatment of dividend, interest, and royalty payments remain unaffected.

Notes

1. There is no Swiss WHT on royalties, licences, and similar fees payable by Swiss individuals or corporations (provided that the dealing at arm's-length principle is met).
2. The statutory Swiss WHT rate of 35% is levied but refunded, provided that the respective earnings are declared as income for tax purposes.
3. Between Swiss group companies, Swiss WHT of 35% is usually fully refundable. Furthermore, in many cases, the tax liability can be met by the notification/reporting procedure. For this purpose, a direct investment of at least 20% in the share capital of the payer of the dividend is required.
4. 20% minimal shareholding plus foreign investment of at least 200,000 United States dollars (USD).
5. Only applicable if holding period is at least 12 months.
6. 15% residual tax for companies with more than 10% shareholding if the company receiving the dividend is directly or indirectly controlled by a shareholder not resident in the European Union or Switzerland and cannot prove that the company is not set up only to benefit from the 0% WHT on dividends.
7. 0% WHT if minimum shareholding is at least 50% for at least six months. 5% WHT if minimum shareholding is at least 10% for at least six months.
8. 5% WHT if the shareholding of 10% was held less than two years; 0% WHT if the shareholding of 10% was held longer than two years.
9. Only applicable if holding period is at least 24 months.
10. 5% WHT if dividend recipient is a corporate body; 10% WHT if dividend recipient is an individual.
11. 20% minimal shareholding plus foreign investment of at least CHF 200,000.
12. 10% WHT for shareholdings between 20% and 50%; 7% WHT for shareholdings of more than 50%.
13. Full relief if paid to a related entity in the form of a corporation.
14. 0% WHT if certain criteria are met.
15. New DTT between Switzerland and Liechtenstein, in force since 22 December 2016 and applicable as of 1 January 2017.

16. New DTT between Switzerland and Oman, in force since 13 October 2016 and applicable as of 1 January 2017.
17. Switzerland levies a WHT on interest paid on bonds issued in Switzerland and on bank accounts with Swiss banks. Generally, no WHT is levied on interest paid on loans. However, from a Swiss WHT perspective, a loan may be requalified as a bond under certain circumstances.

Tax administration

Taxable period

The tax year is the business year. Thus, the basis for corporate taxation is the applicable accounting period, which may end at any date within a calendar year.

Tax returns

The tax system for corporate income and capital taxes is based on taxpayers' declarations, with subsequent assessments being issued by the tax authorities on the basis of the tax returns filed. The tax return has to be filed annually (an exemption exists in the first business year in case an extended business year shall apply). The filing deadlines vary from canton to canton (usually between six and nine months after the close of the business year). Companies are initially assessed on a provisional basis, with the final assessments being issued after the tax base was either subject of a tax audit or declared final by the authorities.

Payment of tax

Unless instalment payments are specifically requested, federal, cantonal, and communal taxes on income and capital are, in most cantons and for federal tax purposes, payable only upon receipt of a demand based on a provisional or final assessment.

Note that cantonal exceptions apply. As an example, based on the date of maturity of the respective tax year (30 September), the canton of Zurich levies late payment interest to the extent that the full (final) tax amount had not been paid in time (independent from any earlier provisional tax invoices). About one month before the due date, a (provisional) tax bill based on the latest tax return filed or the assessment of the preceding period is sent to the taxpayer. Payment is usually made in two or three instalments. If the entire amount is paid up front, a discount may be granted.

The provisional federal CIT is usually due by 31 March of the year following the tax period at question. The due date of the final federal CIT and the provisional or final cantonal CIT varies.

Tax audit process

Swiss CIT law does not outline specifics of the tax audit process. At first, the tax authorities review the tax return and its enclosures as filed by the taxpayer. Such review is usually desk-related work. The competent tax authorities are obligated and entitled to clarify all relevant information necessary to assess taxpayers on a true and complete base. The tax authorities may request further information/documentation or may inspect the taxpayer's premises.

Statute of limitations

As a general rule, the right to assess a taxpayer in relation to corporate income and capital taxes expires five years after the end of the corresponding tax period (relative statute of limitations). Under certain conditions (e.g. where the relative statute of limitations is interrupted), the absolute statute of limitations of 15 years applies.

In case of tax fraud ('*Steuerbetrug*') or tax evasion ('*Steuerhinterziehung*'; e.g. where specific information was not available to the tax inspector at the time of the assessment), finally assessed tax periods can be reopened. The statute of limitations to reopen finally assessed tax periods is ten years after the end of the corresponding tax period.

Topics of focus for tax authorities

The Swiss tax authorities do not communicate specific topics of focus. The tax authorities do normally start their assessment with reviewing the tax return and its enclosures as filed by the taxpayer (*see Tax audit process above*).

Other issues

Reorganisations

Most corporate reorganisations (e.g. mergers, de-mergers, transfer of business assets within a group of companies, vertical and horizontal spin-off of business or part of business, share-for-share transactions and cross-border reorganisations where the Swiss tax residence is maintained, and like-kind exchange of participations) are typically possible without triggering adverse Swiss tax consequences (tax neutrality). In addition, special rules provide for a legal framework to tax neutrally substitute assets and qualifying shareholdings. For reorganisations, it is best practice to apply for advance tax rulings with the competent tax authorities.

Foreign Account Tax Compliance Act (FATCA)

In 2013, Switzerland and the United States (US) signed a bilateral FATCA agreement. The FATCA agreement will help Swiss financial institutions by means of simplifications in the implementation of the US FATCA legislation. The FATCA agreement and the implementing Swiss act entered into force on 2 June 2014 and 30 June 2014, respectively.

The FATCA agreement shall ensure that accounts held by US persons with Swiss financial institutions are disclosed to the US tax authorities either with the consent of the account holder or through ordinary administrative assistance channels (no automatic information exchange).

Automatic information exchange

In view of the OECD's developments on a new standard for the automatic exchange of information, Switzerland will switch to an automatic exchange of information between the competent authorities on a reciprocal basis.

Switzerland has agreed on the automatic exchange of information in respective agreements with numerous partner states (e.g. the EU member states, many offshore countries, as well as most of the OECD member states).

The first automatic exchange of information between Switzerland and its partner states shall occur in 2018.

WHT agreements

Switzerland has concluded WHT agreements with the United Kingdom and Austria that define a WHT procedure for the future and a tax-related regularisation of the past related to investment income of foreign bank clients. On 1 January 2017, these two WHT agreements were repealed. This repeal is a result of the agreement with the

European Union on the automatic exchange of information, which entered into force on 1 January 2017.

United Kingdom

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Significant developments

Extensive and far reaching reforms to the United Kingdom's (UK's) corporate tax system have been made in recent years. The reforms have a stated aim of "creating a tax system that is easy to understand, simple to engage with, and hard to evade, [and] successfully supports investment in business, as well as those who work hard and save" (Financial Secretary to the Treasury, December 2015). The reforms are also intended to maintain the UK's competitive position. The main areas of reform have included:

- Reductions in the rate of corporation tax.
- Redefining the corporate tax base, including aspects of the Organisation for Economic Co-operation and Development (OECD) base erosion and profit shifting (BEPS) project.
- Policy and practice concerning tax evasion and unacceptable tax avoidance.
- Administration and collection, including plans for increased use of digital systems.

Because the UK legislative process can lag behind the announcement of proposals, certain changes are already law, others are very likely, or practically certain, to become law, whilst others are issues announced for wider consultation and future enactment into law.

Most of the reforms to tax rules are typically announced in November/December and March each year before becoming law in the Finance Act, usually in the following July. This pattern is disrupted in years of a general election. So, a truncated Finance Act 2017 became law in April 2017 ahead of the June 2017 general election. A second, and more extensive, Finance Act is expected to become law in September/October 2017. This will likely include enactment of a range of reforms previously announced, possibly together with other measures, but possibly with amendments to the original proposals. Several of those reforms are intended to be effective from 1 April 2017. Any reforms of significance, and proposals for important reforms, included in those processes, are discussed below.

In a referendum on 23 June 2016, voters in the United Kingdom chose to leave the European Union (EU) (so-called 'Brexit'). The United Kingdom invoked Article 50 of the Treaty on the Functioning of the European Union (TFEU) in March 2017, and this triggered a two year exit procedure. The implications will depend to a substantial extent on the terms on which exit is agreed and, therefore, remain unclear at this stage. The information included below assumes, for now, the continuance of the UK's membership in the European Union. Comments on the impact of leaving the European Union would be entirely speculative.

United Kingdom

Changes that have taken effect in the past year
Reforms that took effect in the past year include:

- Reduction in the rate of corporation tax to 19% with effect from 1 April 2017.
- Introduction of the apprenticeship levy of 0.5% of total payroll costs of employers in excess of 3 million pound sterling (GBP) *per annum* with effect from 1 April 2017.
- Introduction of anti-avoidance provisions in respect of hybrid mismatches from 1 January 2017.
- Introduction of UK withholding tax (WHT) on a wider range of royalty payments, and consequential amendments to the diverted profits tax rules, for payments made on or after 28 June 2016.
- The patent box rules are amended with effect from 1 April 2017 to address cases where research and development (R&D) is developed under a cost sharing arrangement.
- The extension of the scope of corporation tax to non-UK resident companies that carry on a trade of dealing in or developing UK land with effect from 5 July 2016.
- Introduction, with effect from 1 April 2017, of a corporate criminal offence of facilitating tax evasion.
- Double taxation treaty passport (DTTP) scheme was extended from 1 April 2017 to all borrowers, and provides a simplified procedure to obtain approval for the payment of interest overseas without deduction of WHTs.

Changes enacted but not yet in force
Changes enacted but not yet in force include:

- A reduced rate of corporation tax for businesses based in Northern Ireland may be introduced. This is subject to joint approval by the Northern Ireland government and the UK Treasury. The commencement date is uncertain.
- Introduction, from April 2018, of a levy on producers of soft drinks.

Consultations and proposals - ongoing
The most significant proposals, which include announced proposals and those in draft legislation, and those subject to consultations include:

Measures focused on domestic matters

- The rate of corporation tax is proposed to reduce to 17% from April 2020.
- Revised loss utilisation rules from 1 April 2017 to allow more flexible use of losses carried forward, but with a restriction on the utilisation of carried forward losses to 50% of the relevant profits. The restriction will apply only to profits in excess of GBP 5 million. For banks, the maximum loss offset will be limited to 25%.
- Relaxation of the conditions for the substantial shareholding exemption to make it simpler, more coherent, and more internationally competitive. It was originally proposed that such changes are effective from 1 April 2017.
- Continued reform of the collection of unpaid or disputed tax liabilities.
- Additional tax incentives for the creative sectors.
- A range of specific and narrow anti-avoidance rules.
- Further reforms regarding collection of taxes, application of penalties, and related issues focused on tax evasion. This includes the introduction of a 60% automatic penalty for transactions subject to the general anti-abuse rule (GAAR).
- Plans to move all tax reporting, compliance, and payments onto a digital platform by 2020.

Measures focused on international measures

- Proposed introduction from 1 April 2017 of new interest deductibility rules (BEPS Action 4), including a fixed expense ratio of 30% of UK earnings before interest, taxes, depreciation, and amortisation (UK EBITDA), a group ratio rule for highly geared groups, and an overall cap that will limit UK net interest deductions to the worldwide group's net interest expense.
- Introduction of secondary adjustments to the UK's transfer pricing legislation. In June 2016, the European Union adopted an anti-tax-avoidance Directive (ATAD), which sets out minimum standards for rules to address key international tax and BEPS-related issues: (i) deductibility of interest, (ii) exit taxation, (iii) a GAAR, (iv) controlled foreign company (CFC) rules, and (v) a framework to tackle hybrid mismatches. Member states have until 31 December 2018 to implement these provisions to come into effect from 1 January 2019 (with one additional year for exit charges and the potential for some countries to delay the interest deduction restrictions). The United Kingdom already has a GAAR and CFC rules, and, as noted above, rules to address hybrid mismatches and interest deductibility will likely enter into effect during 2017. It remains to be seen whether the United Kingdom will introduce legislation to implement the exit tax requirements of the ATAD.
- In October 2016, the European Commission (EC) published four draft directives as part of an EU corporate tax reform package. The proposals include: a common corporate tax base (CCTB) to harmonise the corporate tax base across the European Union from 1 January 2019; a consolidation of the results of entities in a corporate group in the European Union under a single filing and apportionment of the aggregate profits to individual member states via a common consolidated corporate tax base (CCCTB) from 1 January 2021; measures to address hybrid mismatches in relation to non-EU countries from 1 January 2019; and extending existing double taxation dispute resolution mechanisms in the European Union by 31 December 2017. It remains to be seen whether these proposals will be adopted, and, if so, whether there will be amendments to the content or timetable, and how this will interact with the UK's negotiations for leaving the European Union.

Taxes on corporate income

Resident companies are taxable in the United Kingdom on their worldwide profits (subject to an opt-out for non-UK permanent establishments [PEs]), while non-resident companies are subject to UK corporate tax only on the trading profits attributable to a UK PE plus UK income tax. In practice, for many companies, the application of a wide range of tax treaties, together with the dividend exemption, makes the UK corporate tax system more like a territorial system.

General corporation tax rates

The normal rate of corporation tax is 19% for the year beginning 1 April 2017. It is proposed that this rate will fall to 17% for the year beginning 1 April 2020.

Where the taxable profits can be attributed to the exploitation of patents, a lower effective rate of tax applies. The rate is 10% from 1 April 2017. Profits can include a significant part of the trading profit from the sales of a product that includes a patent, not just income from patent royalties. This scheme was revised from June 2016 (*see Patent box in the Tax credits and incentives section for more information*).

Special corporation tax regimes

Apart from the four specific exceptions noted below, there are no special regimes for particular types or sizes of business activity; in general, all companies in all sectors are subject to the same corporate tax rates and rules. However, certain treatments and reliefs do vary according to size, including transfer pricing, R&D credits, and some targeted anti-avoidance rules.

For large companies, there are some additional compliance and reporting requirements. Some elements of Her Majesty's Revenue and Customs' (HMRC's) organisational structure and approach to avoidance and compliance are arranged by size of business (e.g. Large Business Strategy).

Oil and gas company regime

Profits that arise from oil or gas extraction, or oil or gas rights, in the United Kingdom and the UK Continental Shelf ('ring-fence profits') are subject to tax in the United Kingdom in accordance with rates applicable in 2006, i.e. a full rate of 30% and a small profits rate of 19%. Such activities also attract 100% capital allowances on most capital expenditure. A supplementary tax charge of 10% applies to 'adjusted' ring fence profits in addition to normal corporation tax.

Petroleum revenue tax is now set at 0% but is retained for technical and historic reasons in relation to certain old oil fields.

Life insurance company regime

Life insurance businesses are also taxed under a special regime, which effectively includes different corporate tax rates as well as special rules for quantifying profits.

Tonnage Tax regime

Companies that are liable to corporation tax and operate qualifying ships that are strategically and commercially managed in the United Kingdom can choose to apply Tonnage Tax in the place of corporation tax. Tonnage Tax is an alternative method of calculating corporation tax profits by reference to the net tonnage of operated ships. The Tonnage Tax profit replaces the tax-adjusted profit/loss on a shipping business and certain related activities, as well as the chargeable gains/losses made on Tonnage Tax assets. Any other profits are taxable under the normal corporate tax regime.

Banking sector

A supplementary tax is applicable to companies in the banking sector at 8% on profits in excess of GBP 25 million. Also, loss utilisation is restricted for banks; it is proposed that, from 2017, carried forward trading losses can be set against only 25% (previously 50%) of profits in a period.

Income tax for non-resident companies

A non-resident company is subject to UK corporation tax only on the trading profits of a UK PE. Any other UK-source income received by a non-resident company is subject to UK income tax at the basic rate, currently 20%, without any allowances (subject to any relief offered by a double tax treaty [DTT], if applicable). This charge most commonly arises in relation to UK rental income earned by a non-resident landlord (NRL). The United Kingdom therefore operates an NRL scheme that requires the NRL's letting agent or tenants to withhold the appropriate tax at source unless they have been notified that the NRL has applied for and been given permission to receive gross rents.

Diverted Profits Tax (DPT)

DPT is separate from other corporate taxes. It is levied at 25% (or 55% in the case of UK ring fence operations, i.e. broadly oil extraction operations) on diverted profits (as defined) and may apply in two circumstances:

- where groups create a tax benefit by using transactions or entities that lack economic substance (as defined), and/or
- where foreign companies have structured their UK activities to avoid a UK PE.

Companies are required to notify HMRC if they are potentially within the scope of DPT within three months of the end of the accounting period to which it relates (extended to six months for the first year). The legislation is complex and subjective in places, and has the potential to apply more widely than might be expected.

Local income taxes

There are no local or provincial taxes on income, although legislative powers are in place to introduce a reduced rate of corporation tax in Northern Ireland. It is not clear when the reduced rate will be introduced or at what rate.

Corporate residence

UK incorporated companies are generally treated as UK resident. However, companies resident in the United Kingdom under domestic law, but treated as solely resident in a different country under that country's DTT with the United Kingdom, are not treated as UK resident for the purposes of UK domestic tax law.

Additionally, subject to the above exception, companies incorporated overseas are also treated as UK resident if their central management and control is situated in the United Kingdom. This means if the place of the highest form of control and direction over a company's affairs, as opposed to decisions on the day-to-day running of the business, is in the United Kingdom.

Permanent establishment (PE)

For non-resident companies, the liability to corporation tax depends on the existence of any kind of PE through which a trade is carried on. The meaning of PE for UK tax purposes is set out in statute; it is largely based on the OECD Model Tax Convention definition, but is not identical in all respects. Subject to the terms of the relevant DTT, a non-resident company will have a PE in the United Kingdom if it either:

- has a fixed place of business in the United Kingdom through which the business of the company is wholly or partly carried on, or
- an agent acting on behalf of the company has and habitually exercises authority to do business on behalf of the company in the United Kingdom.

A fixed place of business includes (but is not limited to) a place of management; a branch; an office; a factory; a workshop; an installation or structure for the exploration of natural resources; a mine, oil or gas well, quarry, or other place of extraction of natural resources; or a building, construction, or installation project. However, a company is not regarded as having a UK PE if the activities for which the fixed place of business is maintained or which the agent carries on are only of a preparatory or auxiliary nature (also defined in the statute).

The OECD, under Action 7 of its BEPS Action Plan, has recommended a widening of the scope of the PE definition in Article 5 of the OECD Model Tax Convention. It is intended that the amended definition will be incorporated into bilateral double taxation conventions via a multilateral instrument. The United Kingdom has not yet, however, announced any changes to the domestic statutory definition of PE to reflect the OECD recommendations.

Special rules exist to explain how the PE's profits should be evaluated for UK tax purposes (*see the Branch income section for more information*).

Other taxes

Value-added tax (VAT)

The standard VAT rate of 20% applies to most goods and services, apart from domestic fuel and power and certain other reduced-rate supplies, which are subject to VAT at 5%.

Certain small traders (supplies less than GBP 150,000 *per annum*) with a limited range of expenses may adopt a special flat rate scheme, which computes VAT at a sector-specific flat rate.

Most exports, most food, most public transport, books and publications, and certain other essential goods and services are zero-rated. Some supplies are exempt, the main categories being the grant of certain interests in land, insurance, financial services, betting and gaming, education, certain sports services, cultural services, and health and welfare. Zero-rating is preferable to exemption because the VAT on costs incurred in making a zero-rated supply can be recovered while that incurred in making an exempt supply cannot.

VAT is chargeable on the supply of most goods and services made in the United Kingdom by 'taxable persons' in the course of business, when their taxable turnover exceeds the registration thresholds. Taxable persons include individuals, companies, partnerships, clubs, associations, or charities.

Taxable persons who are not normally resident in the United Kingdom, do not have a business establishment in the United Kingdom, and, in the case of companies, are not incorporated in the United Kingdom, but who make taxable supplies, sales to unregistered persons in the United Kingdom, or acquisitions of goods in the United Kingdom above the relevant limits, may be required to register and account for VAT in the United Kingdom.

If the value of taxable supplies is over a specified limit, registration for VAT is compulsory unless the taxable supplies made are wholly or mainly zero-rated, in which case it is possible to apply for exemption from registration. A zero VAT registration threshold applies for businesses not established in the United Kingdom.

The rules applying to VAT and territoriality are different to those applying to direct tax in that they derive from the principles of the place of supply in EU law, as enshrined in EC VAT Directives. Having determined that a supply of goods or services has taken place, the second condition to be determined, if the transaction is to fall within the scope of UK VAT, is whether the supply takes place within the United Kingdom. The place of supply rules are different for goods and for services. A person or business belonging outside the United Kingdom, with no place of business in the United Kingdom, may, nevertheless, be liable to UK VAT registration where the place of supply of those goods or services is in the United Kingdom.

For goods, the basic rule is that a supply of goods is taxable in the territory where those goods are physically located at the time of supply. Hence, if goods are supplied in the United Kingdom by a non-established taxable person, there will still be a liability for VAT purposes, and the person must register for VAT in the United Kingdom if the taxable supplies exceed the current UK VAT registration thresholds. A zero VAT registration threshold applies for businesses not established in the United Kingdom.

For services, the basic rule is that services are treated as made where the customer 'belongs' or is established for VAT purposes, and the customer is responsible for accounting for the VAT due via the reverse-charge procedure. However, this is subject to a number of special rules and exceptions. Determining where a business is established for VAT purposes is based on EU law criteria.

For business-to-consumer (B2C) supplies, the basic rule is that services are treated as made where the supplier 'belongs' or is established for VAT purposes. B2C supplies of telecommunications, broadcasting, and electronic services are taxed where the customer is located or is normally resident.

VAT returns and payments
VAT returns must be completed at pre-set intervals (usually every three months). Larger companies may be required to file monthly returns or make monthly payments on account. All businesses are required to file VAT returns online and make electronic payments. Smaller enterprises can apply for annual returns. VAT returns are usually required to be filed 30 days after the end of the period.

Annual accounting is available for taxable persons with annual turnover (taxable supplies, excluding VAT) not exceeding GBP 1,350,000.

Cash accounting is available for taxable persons with annual turnover (taxable supplies, excluding VAT) not exceeding GBP 1,350,000.

In addition, a flat rate scheme operates for small businesses and is intended to simplify VAT accounting procedures.

Customs and excise duties
Many goods imported into the United Kingdom from outside the European Union are subject to customs duties. The rates of duty are provided by the EU's Common Customs Tariff and vary widely.

Excise duties are chargeable on most hydrocarbon oil products, alcoholic drinks, and tobacco products imported into or produced in the United Kingdom. Examples include the following:

Products	Excise duty (GBP)
Road fuels	0.5795 per litre
Cigarettes	207.99 per thousand (plus 16.5% of the retail price) or 268.63 per thousand if greater
Tobacco (hand rolling)	209.77 per kg
Wines (5.5% to 15%)	2.89 per litre

United Kingdom

Products	Excise duty (GBP)
Spirits	28.74 per litre of pure alcohol included

Soft drinks industry levy
The government has introduced legislation in Finance Act 2017 to encourage the reformulation of drinks that are high in added sugar by levying a unit charge on UK producers and importers of such drinks. There will be an exemption for smaller producers. The levy will come into effect in April 2018.

Stamp taxes
Stamp duty is charged at 0.5% on instruments effecting sales of shares. Agreements to sell shares usually attract stamp duty reserve tax (SDRT) at 0.5%. The liability to SDRT may be cancelled by paying the stamp duty due on a stock transfer form (or other transfer instrument) executed in pursuance of the agreement. Stamp duty is not usually charged on an issue of shares. Issues or transfers of shares to clearance services or depositary receipt systems may attract SDRT at 1.5% (stamp duty at 1.5% may be payable on instruments effecting transfers of shares to such services or systems). Transfers of bearer shares also attract stamp duty at 1.5%.

Acquisitions of non-residential or mixed land and buildings in England, Wales, and Northern Ireland are charged stamp duty land tax (SDLT) at rates of up to 5%. Acquisitions of residential property by companies and similar non-natural persons and by individuals acquiring second homes are charged at rates of up to 15% (whereas acquisitions by individuals who do not own any other properties or who are replacing their main residence are capped at 12%). Grants of new commercial leases are charged SDLT at 1% of the net present value of the rents payable in excess of GBP 150,000 up to GBP 5 million and 2% of the net present value in excess of GBP 5 million. SDLT is also payable at up to 5% on any premium paid. Grants of residential leases are charged at 1% of the net present value of the rents payable in excess of GBP 125,000 plus up to 15% on any premium paid.

Land and buildings in Scotland are subject to Scottish land and building transactions tax (LBTT) in place of SDLT. Rates are graduated up to 12%, which applies to a transaction value for residential properties in excess of GBP 1 million (or up to 15% where the additional 3% for second homes or buy-to-lets applies).

Annual tax on enveloped dwellings (ATED) and related capital gains tax charge
An annual tax on enveloped dwellings is charged on the acquisition and holding of high-value residential properties (property over GBP 500,000) through a company or other ‘non-natural’ person. Broadly, this will be based on the 1 April 2012 value, in bands starting at GBP 500,000 and increasing to GBP 20 million. The charge on a property worth GBP 20 million or more cannot exceed GBP 220,350 *per annum*. The minimum charge is GBP 3,500 for a property valued at GBP 500,000.

In addition, a disposal of such a property or an interest in such a property by a company or other non-natural person will be subject to capital gains tax at 28% on any gains accruing after 5 April 2013. Relief will be available from ATED and the capital gains tax extension for most property used for commercial, charitable, or public use.

Payroll taxes
Other than employers' national insurance contributions (NICs) (*see below*), there are no other payroll taxes, the burden of which falls on the employer. Employers are, however, responsible for deducting the employees' income tax liability at source, through the pay-as-you-earn (PAYE) system. The employer may also be required to deduct other amounts from pay (e.g. court orders).

Employers' national insurance contributions (NICs)
Employers are obligated to pay NICs based on a percentage of each employee's earnings. For the year ending 5 April 2018, the rate is 13.8% on all earnings above GBP 157 per week. Businesses are exempt from the first GBP 3,000 *per annum* (maximum) of this liability.

Apprenticeship levy
From 1 April 2017, employers will pay 0.5% of their total payroll in excess of GBP 3 million to create a fund to support apprenticeships.

Pension protection fund levy
All defined benefit pension schemes pay a levy, based on pension fund liabilities and the financial risk of the employing company. This levy funds a compensation fund for pensioners and employees of failed schemes.

Bank levy
A bank levy takes the form of an annual tax on certain liabilities of most UK-based banks and building societies. The tax is levied at the following annualised rates (for 2017):

- 0.17% of a bank's short-term relevant liabilities.
- 0.085% of long-term equity and liabilities.

Staged reductions down to 0.105% and 0.05% by 2021 are proposed.

The levy is not charged on the first GBP 20 billion of chargeable liabilities and is not deductible for corporation tax purposes.

Bank profits are also subject to an 8% supplementary corporation tax charge on profits above GBP 25 million from 1 January 2016.

Insurance premium tax (IPT)
IPT at the standard rate of 10% (increasing to 12% from 1 July 2017) applies to premiums for most general insurance, such as for buildings and contents and motor insurance, where the insured risk is in the United Kingdom. Life assurance and other long-term insurance remain exempt, though there are anti-avoidance rules surrounding long-term medical care policies. As an anti-avoidance measure, a higher rate of 20% applies to insurance sold by suppliers of specified goods or services, e.g. mechanical breakdown insurance, travel insurance (irrespective of supplier), insurance sold with TV and car hire, and 'non-financial' guaranteed asset protection (GAP) insurance sold through suppliers of motor vehicles or persons connected with them. Further anti-avoidance rules affect administration or similar fees connected with contracts of insurance, charged under separate contracts by brokers and other intermediaries.

Airport passenger duty
Individuals leaving the United Kingdom by air are obligated to pay a duty, which, in practice, is invariably included in the cost of the air ticket. Typically, such taxes are borne by employers in respect of employee's business travel. Further, significantly higher rates apply for travel in certain 'executive jets'.

Environmental taxes
There are several environmental taxes, including the following.

Landfill tax
The landfill tax is a tax on waste disposal in landfill sites. The standard rate increased to GBP 86.10 per tonne from 1 April 2017. The reduced rate for inert waste is GBP 2.70 per tonne.

Climate change levy
The climate change levy is a tax on energy used in the United Kingdom, such as electricity, gas, coal, etc., and is charged at rates that depend on the nature of the fuel used. There are reduced rates and exclusions from the charge, e.g. supplies to domestic or charitable users, renewable source energy, and energy-intensive sectors committing to specific emissions/energy-saving measures.

Aggregates levy
The aggregates levy is a tax on the extraction or importation of sand, gravel, and crushed rock for commercial exploitation in the United Kingdom. The rate of tax is GBP 2.00 per tonne.

Carbon Reduction Commitment
The Carbon Reduction Commitment is a mandatory scheme for large businesses with financial, reputational, and behavioural drivers aimed at improving energy efficiency.

Local municipal taxes
Local taxes are not based on income, but rather are levied on the occupiers of business property by reference to a deemed annual rental (or 'rateable') value for the property concerned. These taxes (known as 'business rates') are administered by regional local government authorities rather than central government. The amounts paid are deductible for corporation tax purposes, provided they meet all the usual requirements for deductibility.

Branch income

Tax rates on the profits of UK PEs of non-resident corporations are the same as for domestic corporations.

There are specific rules setting out how the PE's profits should be evaluated for UK tax purposes, which broadly seek to treat the business as if it were a standalone company. Financing arrangements between the PE and head office must be disregarded, and there are special rules for banks to stop under-performing loans being allocated to the UK PE in a way that is considered unacceptable and similar potential manipulations. However, a deduction is given for a proportion of head office costs.

Tax is not generally withheld on transfers of profits from a UK PE to the head office. However, Finance Act 2016 amends the rules for deduction of UK income tax as tax at source on royalty payments made after 15 September 2016, which could result in tax being withheld on royalty payments made by a foreign company in connection with activities carried on through a UK PE.

Taxable income determination

A UK resident company is taxed on its worldwide total profits.

Total profits are the aggregate of (i) the company's net income from each source and (ii) the company's net chargeable gains arising from the sale of capital assets.

The main sources of income are (i) profits of a trade, (ii) profits of a property business, (iii) non-trading profits (or losses) from loan relationships, mainly interest receivable or payable, (iv) non-trading gains (or losses) on most intangible fixed assets, and (v) non-exempt dividends or other company distributions. The amount of income for sources (i) to (iv) is measured based on the company's accounts, with specific adjustments. Taxable income from non-exempt dividends and calculating chargeable gains or income from other sources is based on actual amounts.

The rules for measuring the gross income are different for each category, and there are subtle differences in the rules about tax deductions and how gains are calculated. Because of this continuing reliance on taxing companies on a 'source-by-source' basis, it is difficult to explain the rules about income determination and deductions as two wholly separate topics.

Basic rules for accounts-based sources

The main source of profits is often from trading. A company's trading profits are based on its worldwide profit before tax in its accounts. Adjustments are made for non-trading receipts (such as dividends from other companies and income from property) and non-deductible expenditure (such as capital expenditure). Depreciation for tax purposes (known as capital allowances) is calculated and substituted for the depreciation charged in the accounts. A number of other statutory adjustments are made; three important ones are that pension contributions, deferred pay, and benefits in kind are broadly deductible only when paid, that a deduction is available for the notional cost of certain share awards to employees, and that, where certain acquired intangibles (but, in particular, not goodwill and customer-related intangible assets acquired on or after 8 July 2015) are not depreciated in the accounts, a 4% flat-rate deduction can usually be claimed. There are many other adjustments.

Similar principles apply in relation to the calculation of profits of a property business.

Financial profits from a company's trading and non-trading loan relationships and related matters are usually based on the accounts, and the distinction between 'capital' and 'revenue' receipts and deductions is not relevant. Instead, all credits and debits in the accounts are aggregated in order to find the net profit or deficit. Certain statutory adjustments have to be made, which include an interest capping limitation ('debt cap').

For traders, any profit or loss on loan relationships, and/or on intangibles, is generally included within the trading profits. If the company doesn't have a trade, then loan relationships and intangibles are treated as a separate source of income or loss.

Income losses

Where a loss arises in respect of a particular source of income, there are detailed rules regarding the possible offset of the loss. Carryback and sideways reliefs are often allowed within limits; carryforward is generally allowed and carried forward losses do not time expire. Losses can also be utilised by other group companies (*see the Group taxation section*).

More specifically, dealing with the main sorts of income losses,

- trading losses may be set off against any other source of profit or gains in the same year, may be carried back one year (three years on the cessation of the trade) against any other source of profit or gain, or may be carried forward without time limit against profits of the same trade only
- property losses may also be set off against any other source of profit or gains in the same year, or may be carried forward without time limit against profits of any sort; they cannot, however, be carried back, and
- non-trading deficits (i.e. interest and financing losses) can again be set off against any other source of profit or gains in the same year, may be carried back one year against non-trading credits (i.e. interest and financing profits), or may be carried forward without time limit against non-trading profits.

Non-trading companies may deduct non-capital management expenses incurred in managing their investments from their total profits. Any excess management expenses can be carried forward without limit to set against profits in future years.

While income losses can generally be offset against capital gains of the same accounting period, capital losses are never available for offset against any type of income.

There are complex anti-avoidance rules that restrict the utilisation of all types of losses where there is a change in ownership of the company. Specific rules can also deny or limit loss relief or deductions arising from brought forward losses or potential losses where certain conditions are met.

Proposals were made in March 2016 for significant reform to the treatment of losses from April 2017. Whilst these proposals are not yet law (because of delays in the legislative process), it is anticipated that these reforms are likely to be implemented, and that the effective date will be 1 April 2017. However, further changes to the provisions may be made before implementation. The reforms include:

- allowing losses to be more flexibly set off against other income, including setting carried forward loss against taxable income of other UK group companies, and
- for companies with profits over GBP 5 million, restricting the utilisation of losses brought forward to GBP 5 million plus 50% of the current year profits in excess of that amount.

Inventory valuation

In general, the book and tax methods of inventory valuation will conform. In practice, inventories are normally valued for tax purposes at the lower of cost or net realisable value. A first in first out (FIFO) basis of determining cost where items cannot be identified is acceptable, but not the base-stock or the last in first out (LIFO) method.

Capital gains

Gains on capital assets are taxed at the normal corporation tax rates. The chargeable gain (or allowable loss) arising on the disposal of a capital asset is calculated by deducting from gross proceeds the costs of acquisition and subsequent improvements, plus the incidental costs of sale and indexation allowance. Indexation allowance compensates for the increase in costs based on the percentage rise (if any) in the UK retail prices index to the date of disposal. Indexation allowance is, however, limited; it cannot create or increase a capital loss, it can only reduce or eliminate a chargeable gain. Generally, these calculations must be done in sterling, so any foreign exchange gains and losses will be taxed (or relieved) on disposal.

Special rules apply to assets held at 31 March 1982.

Most acquisitions and disposals between UK group companies are treated as made on a no gain no loss basis (i.e. at base cost plus indexation). Otherwise, acquisitions from, or disposals to, affiliates are treated as made at fair market value, as are other acquisitions or disposals not at arm's length.

Capital losses are allowed only as an offset to capital gains. An excess of capital losses over capital gains in a company's accounting period may be carried forward without limitation but may not be carried back. There is no ability to surrender capital losses to fellow group members, but gains or losses arising on a particular asset can be allocated to another group member. So, the capital losses of one company can sometimes be set against the gains of a fellow group member in the same or subsequent period.

There is a good deal of anti-avoidance legislation concerning the computation of chargeable gains, notably to stop losses being created or gains avoided where assets are depreciated by intra-group transactions, or where losses are 'bought in' from third parties.

Gains realised on certain types of assets can be deferred where all or most of the proceeds are reinvested in other assets of those types within a specified period (generally three years). The 'rolled-over' gain then crystallises as and when the latter assets are sold. At present, the main asset categories qualifying for roll-over are land and buildings used for a trade.

Most disposals by trading groups of shareholdings of 10% or more are exempt from tax. The main exceptions will be those of non-trading subsidiaries or subgroups, or of companies acquired within the previous year. Note that gains on goodwill and other intangibles acquired after March 2002 are taxed as income, not as capital gains.

Dividend income

Most foreign and UK dividends received by UK companies are exempt from corporation tax; however, one of several criteria has to be met, but these are widely drawn (one test, for example, is that the recipient controls the payer). For non-exempt, foreign-source dividends, double tax relief (DTR) will be available on a dividend-by-dividend basis. It is unusual for companies to be taxed on UK dividends because of the breadth of the exemption; however, where they are taxed, there is no concept of DTR for UK dividends.

Royalty income

Royalty income received by corporates will normally be taxed in the same way as other forms of income. To the extent it arises from a trade, it is taxed as trading profits.

Royalties from intellectual property (IP) not comprising a trade will be taxed as income from intangible fixed assets.

Realised and unrealised exchange gains/losses

Unrealised exchange gains and losses tend to arise on debts and derivatives; they are then taxed or allowed, together with realised amounts, on an accounts basis in the same way as other debits and credits arising out of loan relationships. Where gains or losses arise on other payables or receivables, to a trader or property investor, they will again generally be taxed or allowed on an accounts basis. For a trader, the taxable or allowable amount will become simply part of the trading profit or loss; for other companies, it will become a separate source of taxable profit (a 'non-trading credit') or loss (a 'non-trading deficit').

Where unrealised differences arise on other capital assets, they will not generally be taxable or allowable at that stage; instead, the exchange difference becomes part of the computation and is effectively taxed or allowed when the asset is disposed of and any difference is realised.

Partnership income

In broad terms, if companies participate in UK partnerships (whether general partnerships, limited partnerships, or limited liability partnerships [LLPs]), they will be taxed on a flow through basis. This will, in very broad terms, mean that UK corporate partners will be taxed on trading, property, or financing income as it arises in the partnership accounts, and on non-exempt dividends on a receipts basis. There are specific anti-avoidance provisions in respect of LLPs with both corporate and individual partners.

When considering overseas entities, the UK authorities will not be bound by how the entity is classified in its country of origin. Case law has determined a number of matters that should be considered when establishing whether a non-UK entity should be taxed in the United Kingdom as if it were a company or a partnership. HMRC also maintains a public list of non-UK entities and the decisions it has previously made regarding their classification. However, if the parties have flexibility regarding the constitution of such entities, then their classification may be viewed differently, either by HMRC or the courts. This area is complex; consequently, specialist advice should be sought.

Foreign income

In principle, the United Kingdom taxes on a worldwide basis, although non-UK PE profits can be exempted from UK taxation by election. The election applies to all accounting periods starting after the election is made and to all the PEs of the company (so it cannot be made on a PE-by-PE basis). The election is irrevocable and has the effect of exempting all profits of the PE, including gains, subject to certain adjustments. Equally, relief for PE losses will be denied. Profits will be measured by reference to DTTs, or, in absence, OECD principles. The adjustments include:

- Gains attributable to a foreign branch of a close company are not exempt.
- Profits attributable to a foreign branch of a small company are not exempt if the PE is in a territory other than a 'full treaty territory' (broadly, a territory that has a DTT with the United Kingdom that has an exchange of information article).
- If the branch concerned has previously been in a loss making position, loss transitional rules may prevent the exemption being available immediately.

- To the extent the branch profits are considered to have been artificially diverted from the United Kingdom, the anti-diversion rule will stop them qualifying for the exemption (akin to the CFC rules that apply to profits of subsidiaries).

Where no election is made, profits from non-UK PEs are computed and taxed in the normal way for UK tax resident companies. However, UK tax will generally be reduced by credit for local direct taxes paid, either under a treaty or via the UK's unilateral relief rules (*see Foreign tax credit in the Tax credits and incentives section for more information*).

General rules for deductions

As noted above, the UK tax system requires taxable profits to be calculated by aggregating (i) the company's net income from each source and (ii) the company's net chargeable gains arising from the sale of capital assets. This approach gives rise to a particularly complicated regime so far as deductions are concerned. Expenses are usually allocated to the source of income (or occasionally by reference to income generally) or to the particular gain to which they relate. The rules governing their deductibility differ according to whether the expense relates to a capital gain or to income, and, indeed, according to the particular source of income concerned. For example, there is a considerable difference in the manner in which tax relief is given for expenses incurred by companies trading in property as compared to those that invest in property. The regime also has a large number of specific rules dealing with particular types of deductions that take priority over the more general rules for each type of income.

We have therefore set out the general rule for trading expenses, being the most common category, and, following that analysis, considered some specific common exceptions.

General rules for trading expenses

A trading company is generally permitted to deduct expenses that are incurred wholly and exclusively for the purposes of the company's trade, provided those costs are not capital in nature and are charged to the profit and loss account. There is a significant amount of case law surrounding whether expenses have been incurred wholly and exclusively for the purposes of a company's trade and whether they are capital or not.

Relief is generally given in the period the expenses are accrued in the accounts, subject to some specific exceptions. In particular, contributions to a registered pension scheme are only allowed on a 'paid' basis, with some further provisions under which some contributions may be spread over a number of years; and if bonuses and other staff costs are paid out more than nine months after the end of the accounting period in which they are accrued, they are only allowed on a paid basis.

The general rule is made subject to a range of specific statutory provisions, some of which allow deductions and others of which limit them; some of the more important of these are discussed below, but there are many others. One example is that the costs of business entertainment cannot generally be deducted.

Depreciation and amortisation

Depreciation of fixed assets (other than of goodwill and other assets within the intangible fixed asset regime, *see below*) is not allowable as a deduction from any source of income. However, traders, and most non-traders, are instead allowed specified rates of annual deduction in respect of specified classes of assets, together referred to as 'capital allowances', that are deducted in calculating trading income for traders and (broadly) against income derived from the use of the fixed assets for non-traders.

Capital allowances for machinery and equipment can be disclaimed in whole or in part, thereby deferring allowances.

In the period of expenditure, capital allowances are available, generally at 18% of the cost of machinery and equipment acquired for use in a trade or property rental business; thereafter, capital allowances are taken generally at 18% *per annum* on the reducing-balance basis. With some exceptions, the rate of capital allowances for machinery and equipment with an expected useful life when new of at least 25 years is 8%. This 8% rate also applies to certain integral features in buildings and thermal insulation.

All businesses, regardless of size, can claim an annual investment allowance of 100% on the first GBP 200,000 per year of most qualifying expenditure. This is restricted to a single allowance for groups of companies or associated businesses.

Capital allowances are given on cars at rates dependent on emission levels.

Enhanced allowances, typically at a rate of 100%, are available for expenditure on certain energy saving plant and other specific categories. The products and technologies supported by this regime are reviewed and updated regularly.

No capital allowance is normally allowed on buildings, apart from certain machinery and equipment embodied in the fabric of the buildings. In some buildings (e.g. hotels, retail, offices), such deductions may be significant.

Capital allowances may also be available in respect of the cost of the acquisition of mineral assets and extraction, generally at the rates of 10% and 25%.

Excess capital allowances are generally recaptured on disposal. The recapture is calculated on a 'pool' basis for most machinery and equipment, in which case there is no recapture unless the sale proceeds exceeds the total tax written down value of the pooled assets.

Where assets are leased, capital allowances are generally available to the lessor rather than the lessee. The rate of capital allowance of most plant or machinery leased to non-residents is generally restricted to 8%, but in some cases to nil.

Intangible fixed assets

A special regime applies to intangible assets, such as patent rights, know-how, and trademarks, and (prior to 8 July 2015) goodwill. Royalties are generally deductible on an accounts basis, and, except in relation to 'grandfathered' assets owned by the group on 31 March 2002, the accounts' amortisation of intangible assets is also deductible (with an option to take a flat 4% deduction even if not amortised in the accounts). Traders will take the deductions in computing trading income; non-traders will create a 'non-trading loss on intangible fixed assets' that can be relieved as a loss against any profits of the year, carried back one year, or carried forward indefinitely.

With effect for acquisition of goodwill and customer-related intangibles on or after 8 July 2015, amortisation, impairment, and certain other charges will not be deductible for tax. Subsequent profits and losses on disposals of such goodwill remain taxable/ deductible.

Income costs relating to R&D are normally deductible in any event, but there is a special incentive connected with R&D that generally allows additional tax relief (*see the Tax credits and incentives section for more information*).

Management expenses

Holding companies and companies with investment business can deduct expenses if they are expenses of managing the company's investment business and are not capital in nature. Such costs would typically include audit fees, directors' costs, rent, local rates, and office costs. These costs can be set against any sources of profit the company may have, including gains and financing income.

If the company has inadequate income, excess expenses can be surrendered as group relief or carried forward to set against future income, with no time limit.

Many of the specific rules on the deduction of trading expenses also apply to management expenses. Many rules giving traders specific deductions for certain costs also apply, but this is not always the case.

Employee share schemes

The actual and deemed costs of an employing company for the deemed cost of providing shares or options to employees is usually deductible, depending on the nature of the share plan and the accounting. This will generally allow a deduction to a subsidiary company whose employees receive shares or options in the parent company.

Funding costs

Funding costs (primarily fees and interest) are broadly deductible on an accounts basis, even if capital in nature, but subject to thin capitalisation constraints (with no explicit safe harbours) and a worldwide interest cap based on the group's external debt levels (*but see the proposal to replace this from April 2017 below*). This extends to foreign exchange deductions relating to debts owed and receivable.

Traders will generally take the deductions in computing trading income (which is also accounts based). Deductions relating to loans not used for trading purposes will give rise to 'non-trading deficits' that, if not group relieved, can be offset against profits of that year generally, carried back one year (against that year's funding profits), or carried forward indefinitely against non-trading profits.

There are complex and specific rules dealing with financial instruments, derivatives, cross-border transactions, etc.

There is a proposal to introduce, from 1 April 2017, a fixed ratio limiting corporate tax deductions for net interest expense to 30% of UK EBITDA, and a group ratio rule for highly geared groups. This will replace the worldwide interest cap and will often operate to reduce the amount of tax deductions achieved by UK taxpayers. Whilst these proposals are not yet law (because of delays in the legislative process), it is anticipated that these reforms are likely to be implemented, and that the effective date will be 1 April 2017. However, further changes to the provisions may be made before implementation.

Bad debts, provisions, and reserves
Provisions for future costs can be deducted for tax purposes if they:

- are in respect of allowable revenue expenditure
- are made in accordance with acceptable accounting practice
- do not conflict with any statutory rule governing the timing of relief (e.g. in relation to payment of staff costs), and
- are estimated with sufficient accuracy.

This rule extends to bad debts on trading account. Generally, however, bad debts are dealt with under the 'loan relationships' rules for financing costs and financing income. The rules there, however, are broadly the same; if the bad debt can be identified specifically enough to allow a bad debt provision that satisfies UK accounting standards, it should be deductible.

Charitable donations
Most donations to charities by companies are deductible.

Fines, penalties, and bribes
Any payments that constitute a criminal offence (e.g. a bribe) are not deductible for tax. Fines and penalties imposed for breaking the law are also not deductible, although a deduction is usually available for legal costs incurred in defending such an action. Usually, there is no deduction for civil penalties, interest, and similar surcharges (e.g. relating to VAT). Fines for regulatory breaches are not allowed for tax, but the costs of compensating customers, etc. are usually deductible.

Damages that are compensatory rather than punitive (e.g. damages for defamation payable by a newspaper company) are often deductible, as are payments for breach of contract. Payments to employees for wrongful dismissal, etc. are usually deductible.

Taxes
Local municipal taxes (business rates) may be deducted from taxable income.

Net operating and capital losses
See Income losses above for a description of the treatment of income losses and capital losses.

Payments to foreign affiliates
There are no special rules for payments to foreign affiliates, so their tax treatment follows the basic rules for deductions set out above. The transfer pricing rules will impose an arm's-length price.

Group taxation

Each individual corporate group member is required to submit their own tax return on a stand-alone basis, with the exception of the election available with respect to VAT (*discussed below*). However, there are a variety of ways in which one's relationship with fellow group members is recognised in the UK tax system for the purposes of corporation tax, VAT, SDLT, and stamp duty.

Corporation tax

The corporation tax system includes a number of measures that advantage UK members of qualifying groups, all of which are subject to anti-avoidance measures.

Operating taxable profits and losses arising in the same period can usually be offset between UK resident 75% affiliates within a worldwide group. This extends to offsetting the UK profits attributed to a UK PE of a non-UK resident group member. There are some restrictions, primarily where one of the two companies is not an economic 75% subsidiary of the group or is subject to arrangements under which it might leave the group.

Intra-group transfers of capital assets between UK companies, including UK PEs, are normally tax-free, though the definition of group for these purposes is slightly different than the definition of group relief for losses. This treatment is also extended to intra-group transfers of loan relationships, derivatives, and intangibles. There is generally a ‘degrouping’ charge if the transferee company leaves the group within six years.

There is no automatic offset of capital gains and losses where these arise in different group companies, but it is normally possible for offset to be arranged either by actual transfer of the asset prior to disposal or by election.

A UK resident group company is potentially able to claim group relief for income losses of a non-UK subsidiary that is resident in the European Economic Area (EEA) or has incurred the relevant losses in a PE within the EEA, provided that all possibilities of non-UK relief for the losses have been exhausted and future relief is unavailable.

In addition, the corporation tax system also has a number of measures that seek to prohibit groups unfairly manipulating the tax system by shifting profits between group members (either internationally or within the United Kingdom) in a way that is considered unacceptable.

A debt cap limits the aggregated UK tax deductions group members may claim for finance costs to the level of a group’s external finance expense, although proposals have been made to replace this with a fixed ratio interest expense limit. *This is discussed under Funding costs in the Taxable income determination section*.

VAT

Group companies can, subject to certain requirements, elect to account for VAT as if they were one taxable person; where this is done, no VAT is charged on intra-group supplies of goods or services. The registration is made in the name of the representative member, who is responsible for completing and rendering the single return on behalf of the group. All the companies are jointly and severally liable for any VAT debts. VAT grouping is subject to detailed anti-avoidance provisions.

Stamp duty and SDLT

Transfers of shares or real estate within worldwide 75% groups are generally exempt from stamp duty or SDLT, respectively. For SDLT, the relief can be retrospectively withdrawn in certain circumstances, primarily where the transferee leaves the group within three years of the transfer.

Transfer pricing and thin capitalisation

The United Kingdom has widely drafted transfer pricing rules that are intended to apply to almost any kind of transaction made or imposed between related parties that gives rise to:

- a provision that differs from one that would have been made between third parties and
- a UK tax advantage (potential or actual) to one or more of the parties.

These rules apply to UK-to-UK transactions as well as cross-border transactions.

The regime therefore applies not only to the provision of products and services but also to finance arrangements, including both the rate of return charged and the amount of loan principal (or equivalent) made available. It is therefore the mechanism by which the UK's revenue authorities address the issue of thin capitalisation. Currently, unlike many other territories, the United Kingdom does not currently operate any 'safe harbours' of any kind in relation to the amount of debt or interest (or equivalents) it considers demonstrates that a UK company or group is not thinly capitalised. However, HMRC have announced the introduction of a new UK interest deductibility rule, effective from April 2017. *This is discussed under Funding costs in the Taxable income determination section*.

Parties are considered related for the purpose of transfer pricing rules where either one controls the other or both are under common control. Control here is not confined to situations in which one party is the majority shareholder in the other. Effectively, control exists where one party has the power to ensure that the affairs of another party are conducted in accordance with the first party's wishes. The concept is also subject to two important extensions:

- The rules apply to many joint venture companies where two parties each have an interest of at least 40%.
- There are attribution rules to trace control relationships through a number of levels in determining whether parties are controlled for the purposes of the transfer pricing rules.

In addition, the regime restricts interest deductions to an arm's-length basis where a financier and persons who collectively control a company or a partnership have 'acted together' in relation to the financing arrangements of that company or partnership. The financier (usually a bank) can then be taken as controlling the company or partnership, and the loan becomes subject to transfer pricing limitations.

There are a number of exemptions that essentially exclude small or medium-sized enterprises (SMEs) and dormant companies from the regime.

The effect of the rules is to require an arm's-length provision to be substituted for the actual one, thereby increasing the party's UK tax liability and cancelling out the UK tax advantage that would otherwise have arisen.

Where both parties to the transaction are UK taxpayers, the disadvantaged party will generally be entitled to claim a compensating adjustment (except where the transaction falls within the transfer pricing regime because of the 'acting together' provisions), but only after the UK adjustment has been made. The legislation also provides that parties may make balancing payments to each other in such circumstances, of any amount up to the transfer pricing adjustment, which will neither be taxable for the recipient nor tax deductible for the payer.

Where the disadvantaged party is outside the UK tax net, they can pursue a claim for relief under the relevant DTT if it provides a mechanism for such relief; where the adjustment in the United Kingdom is to reduce a deduction for an amount paid under deduction of UK tax, the compensating adjustment rules should allow the overseas party to reclaim any WHT paid on the disallowed amount, subject to time limits and other criteria.

UK taxpayers are required to self-assess their compliance with this arm's-length principle. Companies and partnerships must therefore identify and make transfer pricing adjustments when submitting their tax returns. This is the case even where the disadvantaged party would be entitled to claim a compensating adjustment equal to the transfer pricing adjustment. An important implication of this approach is the potential for interest and penalties if the adjustment made is subsequently held to be wrong.

Controlled foreign companies (CFCs)

Under the CFC regime, a UK resident company may be taxed on a proportion of the profits of certain UK-controlled, non-resident companies in which the resident company has an interest. The overall intention is to tax profits that have been artificially diverted from the United Kingdom.

Broadly, profits of a non-UK resident CFC will be taxed, using normal corporation tax rates and rules, on the persons controlling the CFC if (i) the profits pass through the CFC 'gateway' and (ii) are not exempt.

The 'gateways' are a series of tests that identify profits that are, broadly, artificially diverted from the United Kingdom. For example, where profits are attributable to UK significant people functions, those profits will be taxed in the United Kingdom unless one of four conditions are satisfied (the first of which is that obtaining a tax advantage is not the main purpose or one of the main purposes of the arrangement). A range of other tests may capture other profits.

Various exemptions exist for certain types of companies, those coming into the regime for the first time, CFCs with low profits or low margins, CFCs in excluded territories, or others with corporation tax rates similar or above UK rates.

There is a special exemption for intra-group financing profits that can result in an exemption of between 75% and 100% of the financing profits on qualifying loans.

Tax credits and incentives

Foreign tax credit

The United Kingdom has an extensive network of DTTs. Unilateral relief is generally available, in any event, to credit overseas tax paid on non-UK source profits against the UK tax on the same profits; while the relevant treaty might sometimes extend that relief, their main function for UK companies is to limit overseas WHTs that would otherwise be payable on passive income.

The United Kingdom has a complex regime allowing 'underlying' tax relief in respect of foreign dividends, so that tax suffered at lower levels can be relieved (at least in part) where dividends flow to the United Kingdom via a chain of companies. This exemption is of limited application because most foreign dividends are exempt from tax.

Enhanced capital allowances

A variety of tax incentives are given in the form of enhanced tax depreciation allowances (known as capital allowances, *see Depreciation and amortisation in the Taxable income determination section*). Some of these incentives are given by reference to the expenditure concerned and others by reference to the size of the company incurring that expenditure.

For example, a full write-off can be claimed in the year of expenditure on a range of ‘green’ products and technologies. The list of items supported in this way is reviewed annually. It includes designated energy saving equipment, designated environmentally beneficial plant and machinery, and cars with low emissions.

Annual investment allowance

All businesses, regardless of size, can claim an annual investment allowance of 100% on the first GBP 200,000 tranche *per annum* of capital expenditure incurred on most qualifying expenditure. This is restricted to a single allowance for groups of companies or associated businesses.

Research and development (R&D) incentives

SMEs, as defined, are entitled to a deduction equal to 230% of the qualifying expenditure on R&D in the year in which it is incurred, which can be surrendered for a cash payment (at a rate of GBP 33.35 for each GBP 100 of qualifying R&D spend) by companies that are trading at a loss or have not yet started to trade.

Large companies are granted an ‘above the line’ tax credit of 10% of their qualifying expenditure.

Patent box

Where the taxable profits can be attributed to the exploitation of patents, a lower effective rate of corporation tax applies. For 2017/18, the rate is 10%. Profits can include a significant part of the trading profit from the sales of a product that includes a patent, not just income from patent royalties. This scheme closed to new entrants from June 2016 (but will continue until 2021 for existing taxpayers), when a new arrangement was introduced. The new scheme retains several of the features of the earlier scheme, but will focus more on UK-based activities and meet revised OECD principles.

Other incentives

A deduction equal to 150% of the qualifying expenditure on the remediation of contaminated or derelict land is given in the year incurred, which can be surrendered for a cash payment (at a rate of GBP 24 for each GBP 100 of qualifying land remediation spend) by companies that are trading at a loss.

There are special tax reliefs available for certain expenditure on UK film production, high-end television, animation, video games, and proposals for additional deductions and tax credits for certain theatre and other creative sector activities.

There are no tax holidays and no foreign investment incentives in the United Kingdom.

Withholding taxes

Under UK domestic law, a company may have a duty to withhold tax in relation to the payment of either interest or royalties (or other sums paid for the use of a patent). The circumstances in which such a liability arises are discussed below.

There is no requirement to deduct WHT from dividends. Therefore, dividends may always be paid gross, regardless of the terms of the applicable DTT.

Please note, however, that this is not an exhaustive list of all the deductions that might be required to be made in respect of UK tax from payments made to or by companies. In particular, non-resident companies that are subject to UK income tax on UK-source rental profits (*see the Taxes on corporate income section for more information*) will find their letting agent or tenants are obligated to withhold the appropriate tax at source (currently 20% without any allowances) from their rental payments unless the recipient has first applied and been given permission to receive gross rents under the NRL scheme. Two other important examples are the UK's deduction at source regime for entertainers and sportsmen, and the scheme under which payments to unregistered subcontractors working on big building projects may need to have tax deducted at source.

Interest WHT

As a general rule, UK domestic law requires companies making payments of interest to withhold tax at 20%. However, there are a number of exceptions to this general rule. The key exclusions are:

- Payments of interest by UK resident companies if the beneficial owner of the interest is also a UK resident company, or a UK PE, provided the interest concerned will be taxed in the United Kingdom as part of the PE's trading profits.
- Payments of interest on a quoted Eurobond.
- Payments of interest that qualify for exemption under the EU Interest and Royalties Directive.
- Payments of interest paid to or by a UK bank (or a UK PE of a foreign bank).
- Payments of 'short' interest. This is, broadly speaking, interest on loans that will not be in place for more than a year. However, the definition can be contentious, and detailed advice should be taken on this if intending to utilise this exemption.
- Payments of interest that do not 'arise' in the United Kingdom. Whether a payment constitutes UK-source interest is a complex issue, and specialist advice needs to be taken if seeking to use this exception.
- Payments of interest on private placement debts (widely defined) of UK companies.

If none of these exceptions apply, a payment of interest must be made after the deduction of WHT unless (or until) HMRC has given authorisation that the payment may be made gross (or with a reduced rate of WHT) because of the applicability of treaty relief for the recipient.

Royalties WHT

UK domestic law requires companies making payments of patent, copyright, and design royalties that arise in the United Kingdom to deduct WHT at 20%. In addition, there is also the possibility that other royalties that arise in the United Kingdom may also be subject to the same rate of WHT if they constitute 'qualifying annual payments', so specialist advice will be needed to clarify this. However, certain types of royalties, such as film royalties and equipment royalties, will generally not be subject to UK WHT.

Unlike the rule regarding interest, a company may make a royalty payment gross of WHT (or subject to a reduced rate of WHT under a treaty) without prior clearance having been given by HMRC if they reasonably believe at the time the payment is made that the payee is entitled to relief under the treaty. However, if that belief is later found to be incorrect, HMRC may direct that the payment must be made net of WHT, with the WHT paid to HMRC, and the payer may be subject to interest and penalties in respect of the WHT that should have been withheld (even if their belief was reasonable).

From September 2016 (and earlier for cases involving avoidance), a wider class of royalties, including trademarks and brand names, have been subject to deduction of income tax at source.

Double taxation treaties (DTTs)

The tables below set out the rates of WHT applicable to the most common payments of dividends, interest, and royalties under UK domestic law where such a liability arises and the reduced rates that may be available under an applicable DTT. Please refer to specific treaties to ensure the values are up to date.

Dividends

There is no requirement to deduct WHT from dividends. Therefore, dividends may always be paid gross, regardless of the terms of the applicable DTT.

Interest

WHT applies only to 'annual interest' (i.e. excluding interest on certain short-term loans). Banks and similar financial institutions are also normally able to pay annual interest to non-UK residents free of WHT. In addition, most of the UK treaties provide for a zero-rate of withholding on interest paid to governmental and quasi-governmental lenders. Such exemptions are not separately indicated in the tables below.

Resident recipients

Resident recipient	Interest (%)	Royalties (%)
Corporations	0/20 (1)	0/20 (1)
Individuals	20	20

Note

1. Payments to any UK resident company can be made free of WHT if the recipient is chargeable to tax on the interest or royalty.

Non-resident recipients

Non-resident recipient corporations and individuals	Interest (%)	Royalties (%)
Non-treaty territories	20	20
Treaty territories:		
Albania	6	0
Algeria	7	10
Antigua and Barbuda	20	0
Argentina	12	3/5/10/15 (1)
Armenia	5	5
Australia	0/10 (2)	5
Austria	0	0/10 (3)
Azerbaijan	10	5/10 (4)

Non-resident recipient corporations and individuals	Interest (%)	Royalties (%)
Bahrain	0	0
Bangladesh	7.5/10 (2)	10
Barbados	0	0
Belarus	0	0
Belgium	0/10 (5)	0
Belize	20	0
Bolivia	15	15
Bosnia-Herzegovina	10	10
Botswana	10	10
British Virgin Islands	20	20
Brunei	20	0
Bulgaria	5	5
Canada	0/10 (7)	0/10 (4)
Cayman Islands	20	20
Channel Islands:		
Guernsey (includes Alderney and Hern)	20	20
Jersey	20	20
Chile	5/15 (2)	5/10 (6)
China (excludes Hong Kong)	10	6/10 (4)
Colombia (not yet in force)	10	10
Croatia	5	5
Cyprus	10	0
Czech Republic	0	0
Denmark	0	0
Egypt	15	15
Estonia	10	0
Ethiopia	5	7.5
Falkland Islands	0	0
Faroes	0	0
Fiji	10	0/15 (7)
Finland	0	0
France	0	0
Gambia	15	12.5
Georgia	0	0
Germany	0	0
Ghana	12.5	12.5
Greece	0	0
Grenada	20	0
Guyana	15	10
Hong Kong	0	3
Hungary	0	0
Iceland	0	5
India	10/15 (2)	10/15 (6)
Indonesia	10	15
Ireland, Republic of	0	0
Isle of Man	20	20
Israel	15	0
Italy	0/10 (6)	0/8 (7)
Ivory Coast (Côte d'Ivoire)	15	10
Jamaica	12.5	10

Non-resident recipient corporations and individuals	Interest (%)	Royalties (%)
Japan	0/10 (10)	0
Jordan	10	10
Kazakhstan	10	10
Kenya	15	15
Kiribati	20	0
South Korea (Republic of Korea)	10	2/10 (8)
Kosovo	0	0
Kuwait	0	10
Latvia	0/10 (2)	0/5/10 (6, 7)
Lesotho (new treaty not yet in force; royalty rate will be 7.5%)	10	10
Libya	0	0
Liechtenstein	0	0
Lithuania	0/10 (2)	0/5/10 (6, 7)
Luxembourg	0	5
Macedonia	10	0
Malawi	0/20 (3)	0/20 (4)
Malaysia	10	8
Malta	10	10
Mauritius	20	15
Mexico	5/10/15 (7)	10
Moldova	5	5
Mongolia	7/10 (2)	5
Montenegro	10	10
Montserrat	20	0
Morocco	10 (6)	10
Myanmar	20	0
Namibia	20	0
Netherlands	0	0
New Zealand	10	10
Nigeria	12.5	12.5
Norway	0	0
Oman	0	8
Pakistan	15	12.5
Papua New Guinea	10	10
Philippines	10/15 (2)	15/25 (9)
Poland	0/5 (2)	5
Portugal	10	5
Qatar	0	5
Romania	10	10/15 (4)
Russian Federation	0	0
St. Kitts and Nevis (St. Christopher and Nevis)	20	0
Saudi Arabia	0	5/8 (6)
Senegal	10	10
Serbia	10	10
Sierra Leone	20	0
Singapore	0/5 (2)	8
Slovak Republic	0	0
Slovenia	0/5 (2)	5
Solomon Islands	20	0
South Africa	0	0

Non-resident recipient corporations and individuals	Interest (%)	Royalties (%)
Spain	0	0
Sri Lanka	10	0/10 (9)
Sudan	15	10
Swaziland	20	0
Sweden	0	0
Switzerland	0	0
Taiwan	10	10
Tajikistan	10	7
Thailand	25	5/15 (9)
Trinidad and Tobago	10	0/10 (9)
Tunisia	10/12 (2)	15
Turkey (excludes North Cyprus)	0/15 (2)	10
Turkmenistan	10	10
Tuvalu	20	0
Uganda	15	15
Ukraine	0	0
United Arab Emirates	0	0
United States	0	0
Uruguay	10	10
Uzbekistan	5	5
Venezuela	5	7
Vietnam	10	10
Zambia	10	5
Zimbabwe	10	10

Notes

UK domestic law generally charges WHT on patent, copyright, and design royalties, although there can be definitional uncertainties. Many treaties allow reduced rates for a wider range of royalties. These are mentioned in this table, even though there may be no UK WHT applied under domestic law.

1. 3% for news; 5% for copyright; 10% industrial; 15% other royalties.
2. Lower rate for loans from banks and financial institutions.
3. Higher rate applies if recipient controls more than 50% of payer.
4. Lower rate applies to copyright royalties.
5. 0% on loans between businesses.
6. Lower rate applies to industrial, commercial royalties.
7. Specific additional conditions apply for lower rate.
8. Lower rate applies for equipment royalties.
9. Lower rate applies to films, TV, and radio.
10. Higher rate applies to certain profit related interest.

Tax administration

Taxable period

Companies are assessed by reference to accounting periods. Normally, the accounting period is the period for which the company makes up its accounts. However, an accounting period for corporation tax purposes cannot exceed 12 months, so companies preparing statutory accounts for longer than 12 months need to prepare more than one corporation tax return.

Tax returns

Companies must file their statutory accounts and tax return within one year from the end of the accounting period; the return must include a self-assessment of the tax payable, eliminating the need for assessment by HMRC (though HMRC retains assessing powers for certain cases where it is not satisfied with the return, or where the company fails to make a return).

Electronic filing requirements

Returns must be filed online, and such returns must be filed in a specified format that is machine readable by the tax authorities. The accompanying accounts must also be in iXBRL format.

Payment of tax

For smaller companies, corporation tax is payable nine months and one day after the end of the accounting period to which it relates (i.e. before the return must be filed). For larger companies and groups, a system of quarterly payments on account (based on estimated profits) is in place, with the first payment being due in the seventh month of the accounting period concerned. A company will generally be considered large for this purpose in any accounting period in which it has taxable profits in excess of GBP 1.5 million (that limit being reduced by reference to the number of companies under common control, where relevant).

It has been proposed, although the present status of the proposal is unclear, that from 2019 the largest companies with profits over GBP 20 million will have earlier quarterly payments dates, with tax due in the third, sixth, ninth, and 12th months of the period concerned.

Penalties

The UK tax system can impose numerous penalties for failing to adhere to the self-assessment system. These include penalties for late filing of returns, failing to maintain appropriate records, submitting an incorrect return, making errors in certain documents sent to HMRC, unreasonably failing to report errors in assessments by HMRC, and failing to respond to a notice of enquiry from the tax authorities within the specified time limit.

Other filing requirements

Large companies (those with turnover greater than GBP 200 million or balance sheet assets over GBP 2 billion) are required to notify HMRC of the identity of their senior accounting officer, who must certify annually that the accounting systems are adequate for the purposes of accurate tax reporting. Penalties are chargeable on the officer and the company for careless or deliberate failure to meet these obligations.

Certain tax planning and structuring transactions and arrangements must be disclosed to HMRC either before or on implementation of the transaction under the Disclosure of Tax Avoidance Schemes (DOTAS) regime. This scheme covers most taxes and is a reporting system only, with responsibility placed on taxpayers and advisors to report. HMRC are not required to respond to the reporting, and this is not an advance clearance or approval process. It is a reporting mechanism only, and, on occasions, new legislation has been introduced to block specific arrangements reported.

Tax audit process

The UK corporate tax process is one of self-assessment. Following filing of the tax return, HMRC has a period of (usually) 12 months in which to raise formal enquiries. These can range from simple information requests to detailed technical challenges over treatments adopted in the tax return.

These enquiries are often settled between the taxpayer company and HMRC by exchange of information and correspondence. Where agreement cannot be reached, arbitration or litigation may be necessary.

HMRC has certain powers to demand information and, in some circumstances, to enter premises to obtain documents, etc. These powers are rarely used, and there are no routine visits by HRMC officials to taxpayer premises.

General anti-abuse rule (GAAR)
The GAAR applies to income tax, corporation tax, capital gains tax, petroleum revenue tax, inheritance tax (IHT), SDLT, and ATED, but not VAT. It is targeted at changing behaviour of taxpayers who enter what might be considered to be abusive tax avoidance arrangements. The process includes a quasi-judicial review of the arrangements, the outcome of which must be used as evidence in any related tax litigation.

The government has stressed that the GAAR is only intended to apply to abusive tax avoidance arrangements, which are measured by reference to various indicators, some of which are subjective.

Statute of limitations
For companies that are members of medium or large groups, there is generally a period of one year after the statutory filing dates for the tax authorities to start an enquiry into any aspect of the return. For other companies, enquiries can be started up to 12 months after the date of actual filing. These periods are extended for returns submitted after the filing deadline, that are amended by the taxpayer, or where an issue is subsequently discovered that was not sufficiently disclosed within the standard period. Longer periods apply in the event of inadequate disclosure or deliberate misfiling.

Other issues

Adoption of International Financial Reporting Standards (IFRS)
IFRS is mandatory for the consolidated financial statements of listed UK companies.

All companies have the choice of adopting IFRS or adopting the new UK Generally Accepted Accounting Principles (GAAP) - FRS 102 - for their non-consolidated (solus) accounts. Many groups therefore continue to apply UK GAAP in their solus accounts.

UK companies have a choice of either using full IFRS or the FRS 102 for their accounts. UK companies that are subsidiaries will also have an option to prepare accounts under either IFRS or FRS 102 methodologies with reduced disclosures. There are also additional accounting options available for small companies and micro entities. However, the options available to a company are subject to the requirements of the UK Company Law framework for consistency of GAAP within a group.

Intergovernmental agreements (IGAs) and cooperation
The United Kingdom has a wide range of international agreements, alongside DTTs, for the exchange of information about taxpayers. In addition, the United Kingdom seeks to take a participative role in the European Union and within the OECD with regard to the development of international tax principles.

The United Kingdom has implemented the United States (US) Foreign Account Tax Compliance Act (FATCA) arrangements with effect from June 2014. The FATCA legislation is being introduced by the US authorities to prevent tax evasion by US citizens who use offshore accounts, and UK-based financial institutions must comply with its requirements or face suffering WHTs on interest or dividends from US corporations.

UK tax legislation

Announcements of proposed new legislation generally occur at least once a year. The main announcement is made on Budget Day (previously, generally in March, but it is anticipated this will move to October from 2018), when tax rates are set for the coming year. Other announcements can be made at other times and, subject to becoming approved and adopted law, can apply from a specified date. The new legislation is then included in an annual Finance Act, which is normally finalised in July. Much of the legislation introduced in recent years has been due to challenges under the EC treaty, or as a result of the tax planning being notified under the UK's tax avoidance disclosure regulations. In the year of a general election (like 2017), there may be additional Budget Days and Finance Acts.

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Worldwide Tax Summaries – Corporate Taxes 2017/18 represents the combined efforts of more than 500 local PwC tax specialists in over 150 countries and territories. While too numerous to name individually, we thank them for their efforts in preparing this guide.

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