

# *Worldwide Tax Summaries*

## Corporate Taxes 2018/19

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

*Central America  
and the  
Caribbean.*



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# ***Worldwide Tax Summaries***

## Corporate Taxes 2018/19

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

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## Foreword

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

Our online version of the summaries is available at [www.pwc.com/taxsummaries](http://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](http://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**  
Global Tax &  
Legal Services Leader



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# ***Territory chapters***

Central America and  
the Caribbean

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# Antigua and Barbuda

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## ***Significant developments***

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

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

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

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## ***Taxes on corporate income***

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

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

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

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

# Antigua and Barbuda

## **Reduced CIT rate for certain financial institutions**

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

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

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## **Corporate residence**

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

## **Permanent establishment (PE)**

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

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

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## **Other taxes**

### **Antigua and Barbuda Sales Tax (ABST)**

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

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

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

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

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

## **Customs duties**

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

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

## **Antigua and Barbuda Revenue Recovery Charge (RRC)**

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

## **Excise taxes**

There are no excise taxes in Antigua and Barbuda.

## **Property taxes**

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

Property tax rates are as follows:

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

Allowances and tax rebates are available as follows:

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

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

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

## **Non-citizens undeveloped land tax**

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

Rates of tax are as follows:

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



# Antigua and Barbuda

- Third and subsequent years of ownership: 20%.

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

## **Stamp tax**

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

## **Transfer of real property**

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

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

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

## **Transfer of shares**

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

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

## **Payroll taxes**

There is no payroll tax in Antigua and Barbuda.

## **Social security contributions**

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

## **Medical benefits**

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

## **Environmental levy**

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

## **Life insurance premium tax**

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

## **General insurance premium tax**

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

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## **Branch income**

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

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

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## **Income determination**

### **Inventory valuation**

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

### **Capital gains**

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

### **Dividend income**

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

### **Stock dividends**

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

### **Interest income**

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

### **Royalty income**

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

# Antigua and Barbuda

## Foreign income

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

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## Deductions

### Depreciation

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

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

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

### Goodwill

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

### Start-up expenses

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

### Interest expenses

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

### Bad debt

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

## **Cultural and social contributions**

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

## **Restriction on rents paid**

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

## **Restriction on compensation**

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

## **Fines and penalties**

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

## **Taxes**

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

## **Net operating losses**

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

## **Payments to foreign affiliates**

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

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## **Group taxation**

Group taxation is not permitted in Antigua and Barbuda.

## **Transfer pricing**

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

## **Thin capitalisation**

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

# Antigua and Barbuda

## **Controlled foreign companies (CFCs)**

There are no special rules relating to CFCs.

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## **Tax credits and incentives**

Tax incentives are currently available under the following legislation.

### **Fiscal Incentives Ordinance (1975)**

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

### **International Business Corporations (IBC) Act (1982)**

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

### **The Investment Authority Act (2006)**

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

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

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

The investment categories are as follows:

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

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

### ***The Tourism and Business (Special Incentives) Act 2013***

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

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

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

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

The investment categories are as follows:

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

## Antigua and Barbuda

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

### ***The Small Business Development Act (2007)***

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

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

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

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

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

### ***International Banking Act (2016)***

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

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

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

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

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

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



# Antigua and Barbuda

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

## Foreign tax credit

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

## Residents

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

## Non-residents

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

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

## Withholding taxes

Tax is currently withheld from income as follows:

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

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

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

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

### ***Tax treaties***

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

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

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

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## ***Tax administration***

### ***Taxable period***

Taxes are assessed on a fiscal-year basis.

### ***Tax returns***

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

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

### ***Payment of tax***

Advance tax is payable in monthly instalments and is ordinarily based on the tax chargeable and assessed in the previous fiscal year. The standard amount of each

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instalment is determined as one-twelfth of the tax chargeable in the previous fiscal year. If the assessment for the prior year has not been finalised, the Commissioner of Inland Revenue can raise an assessment based on best judgment.

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

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

## ***Tax audit process***

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

## ***Statute of limitations***

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

## ***Topics of focus for tax authorities***

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

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## ***Other issues***

### ***Tax Information Exchange Agreements (TIEAs)***

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

### ***Foreign Account Tax Compliance Act (FATCA)***

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

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

### ***Common Reporting Standard (CRS)***

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

# Barbados

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## Significant developments

On 4 July 2017, Barbados joined the Inclusive Framework (IF) on Base Erosion and Profit Shifting (BEPS), becoming the 101st jurisdiction to do so. By joining the IF, Barbados will work on creating an equal footing with all other IF members on the implementation of the BEPS package and on developing further standards to address the remaining BEPS issues.

Effective 1 July 2017, the National Social Responsibility Levy rate was increased from 2% to 10%. The levy is applied on the customs value of all imports and domestic output, with the exception of goods for use in the manufacturing, agriculture, and tourism sectors.

Effective 1 July 2017, a foreign exchange fee of 2% was imposed on the sales of all foreign currency. This rate extends to all wire transfers, credit card transactions, and over-the-counter sales of foreign currencies.

## Taxes on corporate income

Companies resident in Barbados are taxed on income earned from all sources, whether generated within or outside of Barbados, less expenses incurred for the purpose of producing assessable income in a fiscal period not to exceed 53 weeks. Non-resident companies are generally only taxed on income derived from sources and operations conducted within Barbados.

### Corporate income tax (CIT) rates

The following rates apply to taxes on corporate income:

Type of entity	CIT rate (%)
Regular companies	25
Small companies (1)	15
Manufacturing companies (2)	15
Approved developers in special development areas	15
International business companies, international banks, and international societies with restricted liability	0.25 to 2.5
Life insurance companies (computed on gross investment income)	5
Companies engaged in the construction of houses (3)	15
Exempt insurance companies (4)	0

# Barbados

Type of entity	CIT rate (%)
Residential rent	15

## Notes

1. This concessionary tax rate is available to any small company as defined in the Small Business Development Act.
2. This concessionary tax rate is available only to companies registered as manufacturers with the Barbados Customs & Excise Department.
3. Selling price of the houses must be less than 400,000 Barbados dollars (BBD), including the house and land.
4. The exemption is available for a period of 15 years.

## Corporate residence

A corporation is deemed to be resident in Barbados if its management and control is exercised in Barbados.

### Permanent establishment (PE)

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

Under domestic legislation, a non-resident person is deemed to have been carrying on business in Barbados, and hence required to file a CIT return, where in an income year such a non-resident person:

- produced, grew, mined, created, manufactured, fabricated, improved, packed, preserved, or constructed, in whole or in part, anything in Barbados, whether or not they exported that thing without settling it prior to exportation, or
- solicited orders or offered anything for sale in Barbados through a factor, agent, or servant, whether the contract or transaction was to be completed inside or outside Barbados or partly in and outside Barbados.

In either of the circumstances mentioned above, the non-resident shall be deemed to have been carrying on business in Barbados in that income year and the income of that business shall be deemed to be income derived from Barbados for that income year.

## Other taxes

### Value-added tax (VAT)

VAT is levied at the rate of 17.5% on the value of a wide range of goods and services imported or supplied in Barbados by VAT-registered persons.

A number of services, including financial services, real estate, medical services, and education, are exempt. Intergroup transactions are taxable.

Persons operating under Barbados' VAT regime must be registered for VAT. The threshold for VAT registration is BBD 200,000, but voluntary registration is permitted for persons whose annual turnover is less than BBD 200,000.

Certain supplies are zero-rated, including exports, basic food items, prescription drugs, crude oil, and the supply of certain items to the international financial services sector

(e.g. legal and accounting fees). There is a concessionary rate of 7.5% applicable to the supply of accommodation by guest houses, hotels, inns, or any similar place, including a dwelling house normally let or rented for use as a vacation or holiday home. This rate also applies to supplies of certain goods and services related to tourism, provided that the registrant satisfies certain criteria.

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

### **Customs duties**

Customs duty is levied on a wide range of imported goods at rates specified in Part 1 of the First Schedule of the Customs Act. Barbados' Customs Tariff is based on the Common External Tariff of the Caribbean Common Market (CARICOM), with special derogations for certain items (e.g. spirituous beverages). Customs duty is calculated on either an *ad valorem* basis or at specific quantitative rates. The *ad valorem* rates for most items vary between 0% and 20%, but certain goods regarded as luxury items are subject to higher rates (e.g. jewellery 60%). In addition, a select group of items that are produced within Barbados and CARICOM (including some agricultural products) are subject to a duty rate of 60% when imported from outside the region.

Manufacturers and agriculturists, including persons involved in fishing and horticulture, are exempt from the payment of duty on inputs (including packaging materials, machinery, equipment, and spares) imported for use in their businesses.

The various departments and institutions, international bodies, and organisations listed in Part II-B of the Customs Tariff are exempt from the payment of customs duty. Specific goods (e.g. computers), also mentioned in Part II-B, are exempt from customs duty.

### **Excise taxes**

Four categories of goods (both locally manufactured, as well as imported) are subject to excise taxes. These are motor vehicles, spirituous beverages, tobacco products, and petroleum products. Most excisable goods are subject to the tax at a specific rate, with the exception of motor vehicles, which are subject to *ad valorem* rates. A 10% excise tax before VAT is levied on sweetened beverages.

A few persons and goods are exempt from excise taxes. These include motor vehicles imported by the diplomatic corps and other organisations exempt from customs duty under Part II-B of the Customs Tariff, goods imported for temporary use or for a temporary purpose that will be re-exported within three months, and goods (other than spirits) intended to be used as raw materials for the manufacture or production in Barbados of other taxable goods.

### **National Social Responsibility Levy**

National Social Responsibility Levy is applied at 10% on the customs value of all imports and domestic output, with the exception of goods for use in the manufacturing, agriculture, and tourism sectors.

### **Land tax**

The following land tax rates are in effect as of tax year 2017/18:

## Barbados

Land	Land tax rate
On the improved value of each parcel of land on which there is a dwelling house that is used exclusively for residential purposes:	
On first BBD 150,000	0
On amounts between BBD 150,000 and BBD 450,000	0.10% of the improved value
On amounts between BBD 450,000 and BBD 1,000,000	0.45% of the improved value
On amounts exceeding BBD 1,000,000	0.75% of the improved value
On the improved value of each parcel of land on which there is a building other than a residence	0.70% of the improved value
On the site value of each parcel of unimproved land	0.80% of the site value

The following concessions have been granted for land taxes:

- A tax cap of BBD 60,000 has been placed on residential property.
- For villas, as defined by the Tourism Development Act, a rebate of 25% is granted on production of a certificate from the Barbados Tourism Authority.
- For hotels, as defined by the Tourism Development Act, land tax is calculated and payable on only 50% of the tax demanded.
- For pensioners exclusively occupying their own homes, land tax is calculated and payable on only 40% of the tax demanded.
- A 10% discount is granted if the land tax is paid within 30 days from the date of the tax demand notice or 5% if paid within 60 days. Hotels and restaurants are allowed to pay their land tax bills during January to March without losing access to the discount granted.
- Any person certified by the Minister Responsible for Energy to be engaged in the production of solar energy and/or the manufacture of goods to be used in the production of solar energy will be entitled to a rebate of no more than 50% of the tax demanded for that year. Such persons are required to have settled all outstanding liabilities with the Comptroller of Customs and the Commissioner of Inland Revenue to access the rebates.

### Property transfer taxes

Property transfer taxes are levied as set out in the following table:

Property	Transfer tax rate
Shares of companies listed on the Barbados Stock Exchange	Exempt
Shares of private companies *	2.5% of value or amount of gross consideration above BBD 50,000
Land with a building	2.5% of value or amount of gross consideration above BBD 150,000
Land with no building	2.5% of value or amount of gross consideration
Leases of 25 years or more or short-term leases that are continuously renewed for a period equal to 25 years or more	2.5% of value or amount of gross consideration

\* Any transfer of shares to a person who is resident outside of Barbados, whether or not the transferor is resident in Barbados, where the assets of the company concerned consists of foreign assets and its income is derived solely from sources outside Barbados, will not be subject to transfer taxes in Barbados.

### Land development duty

Where a person disposes of property situated in a specially designated development area within 15 years of the date specified by statute, duty may be charged. This may



be at rates of up to 50% on the excess of the value of the consideration over the improved value at the specified base date, plus certain other expenses and an amount representing capital appreciation of the property.

## Stamp duty

Barbados imposes a stamp duty on various instruments, including written documents. The rates imposed vary depending on the document. Stamp duties applicable to documents for the transfer of shares, real estate, and mortgages are set out below:

Instruments	Stamp duty rate
On sale of shares of companies listed on the Barbados Stock Exchange	Exempt
On sale of real estate, leases, and shares in private companies *	BBD 10 per BBD 1,000 or part thereof
On mortgages	BBD 3 on each BBD 500 or part thereof

\* Any transfer of shares to a person who is resident outside of Barbados, whether or not the transferor is resident in Barbados, where the assets of the company concerned consists of foreign assets and its income is derived solely from sources outside Barbados, will not be subject to transfer taxes in Barbados.

## Payroll taxes

Other than employers' National Insurance contributions (*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.

## National Insurance contributions

Every individual between the ages of 16 and 65, who is gainfully employed in Barbados under a contract of service, must be insured under the National Insurance and Social Security Act.

Contributions are determined as a percentage of insurable earnings, up to a maximum of insurable earnings of BBD 4,650 per month or BBD 1,073 per week. Employers must remit National Insurance contributions by the 15th day of the following month. The employee's share is 10.1%, with the employer paying 11.25%.

## Foreign exchange fee

A foreign exchange fee of 2% is charged on the sales of all foreign currencies. This includes all wire transfers, credit card transactions, and over-the-counter sales of foreign currencies.

## Tax on assets

A tax is imposed on the assets of:

- a deposit taking licensee under Part III of the Financial Institutions Act, Cap 324A
- a credit union, or
- an insurance company.

It is charged on the average domestic assets at a rate of 0.35% *per annum* and pro-rated and paid every three months.

# Barbados

## ***Banks tax on assets***

A tax is charged on the average domestic assets of a bank at a rate of 0.35% *per annum* and pro-rated and paid every three months.

## ***Life insurance premium tax***

In addition to the CIT computed on the gross investment income of life insurance companies, a life insurance premium tax is levied on gross direct premium income earned by resident and foreign life insurance companies as set out in the following table:

	Resident life insurance companies (%)	Foreign life insurance companies (%)
New business written for the income year	6	6
Renewal business	3	5

## ***General insurance premium tax***

In addition to the CIT computed on the taxable profits of general insurance companies, a general insurance premium tax is levied on gross direct premium income at a rate of 4.75% in respect of property insurance business and 4% for other general insurance business.

## ***Branch income***

Branches are taxed on the same basis as corporations. In addition, a 10% withholding tax (WHT) is imposed on the transfer or deemed transfer to the head office of the after-tax profits that are not reinvested in Barbados, unless a DTA overrides this.

## ***Income determination***

### ***Inventory valuation***

Inventory is generally stated at the lower of cost and net realisable value. First in first out (FIFO) or average values are generally used for book and tax purposes. Last in first out (LIFO) is not acceptable for tax purposes. The Barbados Revenue Authority will normally accept a method of valuation that conforms to standard accounting practice in the trade. Conformity between book and tax values is expected.

### ***Capital gains***

Capital gains are not taxed in Barbados.

### ***Dividend income***

Dividends between two companies resident in Barbados are not taxed in the hands of the recipient. Dividends received by a resident Barbados company from a non-resident entity where the equity interest owned is at least 10% of the non-resident company and the shareholding is not held solely for the purpose of portfolio investments are not subject to tax.

Dividends paid by a regular business company to a non-resident shareholder are no longer subject to WHT when the amount paid as dividends is derived from income earned from sources outside of Barbados.

## Interest income

Amounts received on account of, in lieu of, or in satisfaction of interest are included in the calculation of assessable income. In certain instances (to the extent specified by regulation), certain types of interest may be exempt from inclusion into the calculation of assessable income, including interest on bonds, debentures, or stock of the government of Barbados that is beneficially owned by a non-resident; interest on tax reserve and tax refund certificates; and interest on holdings (within certain limits) of National Development Bonds, National Housing Bonds, Savings Bonds, and Sugar Industry Bonds classified as non-taxable bonds, as well as interest income from some CARICOM countries.

## Royalty income

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

## Partnership income

Amounts received from a partnership or syndicate for the income year, regardless of whether or not these amounts were withdrawn during the income year, are included in the calculation of assessable income.

## Foreign income

A Barbados corporation is taxed on foreign branch income as earned. Double taxation is avoided by means of foreign tax credits or an exemption where DTAs exist.

## Deductions

Business expenses that are reasonable and incurred for the purpose of producing assessable income are deductible for tax purposes unless disallowed by a specific provision of the Income Tax Act. Deduction of capital expenditures is specifically prohibited, but special provisions may allow tax depreciation on these expenditures.

## Depreciation

Depreciation for tax purposes is computed on a straight-line basis at prescribed rates. The process is accelerated by additional initial allowances in the year of acquisition. Conformity between book and tax depreciation is not required. Gains on sales of depreciable assets are taxable as ordinary income up to the amount of tax depreciation recaptured, and losses on sales below depreciated value are deductible.

## Capital allowance

Capital allowance	Rate
Initial allowance:	
Plant and machinery	20%
Industrial buildings	40%
Annual allowance:	
Plant and machinery	Various rates
Industrial buildings	4%
Intellectual property	10% of 50% of the amount expended

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Capital allowance	Rate
Investment allowance * (an incentive allowance limited by statute to entities operating in certain industries, claimed in lieu of initial allowances):	
Basic industry **	20%
Businesses or persons entitled to export allowance for exports outside of CARICOM countries	40%
Businesses engaged in the manufacture and refining of sugar	40%
Businesses engaged in the manufacture of clay and limestone products	40%

\* This allowance is not deducted from the cost of the asset in calculating tax written down value.

\*\* As prescribed by the regulations to the Barbados Income Tax Act.

## Manufacturing allowance

Companies involved in the manufacturing sector are granted an additional 50% of the annual allowance claimed in an income year. Such companies are also often able to claim investment allowances.

## Renewable energy allowance

Companies that have had an energy audit, retrofitted a building, or installed a system to provide electricity from sources other than fossil fuels are granted an additional 50% of the annual allowance claimed in an income year.

## Commercial building allowance

A deduction is available in respect of a commercial building. For each income year, the available allowance is calculated at 1% of the land tax improved value, or 10% of the land tax improved value if the building is registered with the National Trust.

## Depletion

For oil and gas companies, depending on certain circumstances, a depletion allowance of 20% or 10% is given in addition to annual depreciation on prescribed types of capital expenditure.

## Goodwill

Goodwill is not a depreciating asset, and tax amortisation is not available.

## Start-up expenses

There are no specific provisions in relation to deductions for start-up expenses. However, some of these are treated as costs incurred on account of capital expenditure. Such costs are therefore not allowable deductions for tax purposes.

## Interest expenses

A Barbados corporation can claim a deduction for interest expenses. However, where interest claimed as a deduction has not been paid within two years of being accrued (one year if on a loan from a related party), it should be added back to assessable income.

## Bad debts

Amounts representing debts owed that have been established as bad debts during the income year and have been previously included in calculating assessable income for

that income year or a previous income year are deductible in calculating assessable income.

### ***Charitable contributions***

Charitable contributions are generally deductible where they are made to entities that are specifically registered as charities or not-for-profit organisations with the Corporate Affairs and Intellectual Property Office.

### ***Pension expenses***

Contributions made by companies under registered pension schemes are deductible in calculating assessable income.

### ***Fines and penalties***

Fines and penalties imposed are generally not deductible.

### ***Taxes***

Taxes on income are not deductible.

### ***Net operating losses***

From income year 2015, losses can generally be carried forward for seven years (previously nine years) after the income year in which they are incurred and may be applied in full against future taxable profits. Notwithstanding this, a tax loss incurred by a person in respect of residential property can only be deducted against assessable income earned by that person in respect of residential property.

Losses of general insurance companies can only be carried forward for five years, and losses of life insurance companies cannot be carried forward at all.

No carryback is allowed for CIT losses.

### ***Payments to foreign affiliates***

A Barbados corporation can claim a deduction for royalties, management fees, and interest charges paid to foreign affiliates, provided that payments are no greater than what it would pay to an unrelated party.

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## ***Group taxation***

There are no group taxation provisions in Barbados.

### ***Transfer pricing***

Although Barbados has no specific transfer pricing legislation or regulations in place, the Income Tax Act contains a section dealing with artificial transactions. This enables the revenue authorities to amend the assessable income of a person where they believe the main purpose of a non-arm's-length transaction is to artificially reduce that person's assessable income.

In such circumstances, the transaction is disregarded or modified to achieve the effect that no longer results in the artificial reduction of that person's assessable income.

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## ***Thin capitalisation***

Barbados does not have tax provisions relevant to thin capitalisation.

## ***Controlled foreign companies (CFCs)***

Barbados does not have tax provisions relevant to CFCs.

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## ***Tax credits and incentives***

### ***Foreign tax credit***

Barbados allows a credit for foreign taxes (taxes paid in jurisdictions outside Barbados). The credit should not exceed the Barbados tax attributable to the income derived outside Barbados.

### ***Agricultural cash rebate***

The following rebates may be claimed on agricultural or agro-processing machinery or plants that are new or imported onto the island for the first time:

- Sugar cane harvesters: 10% or 15%.
- Other: 18%.

### ***Export allowance***

There is a rebate of tax under the Income Tax Act in respect of income from export sales outside CARICOM. The maximum tax credit on eligible sales is 93%, which is available where eligible sales exceed 81% of total sales.

### ***Exempt Insurance Act***

The Exempt Insurance Act is applicable to companies in Barbados that insure risks and earn premiums outside the island and for companies that own or manage the former. Under the Act, all three types of companies are exempt from exchange control regulations.

In lieu of standard CIT rates, exempt insurance companies are subject to tax at the rate of 0% for the first 15 years; thereafter, the rate is 8% on the first BBD 250,000 of taxable income and 0% on taxable income in excess of BBD 250,000. No WHT is levied on remittances of dividends or interest.

Exempt insurance companies are subject to an annual licence fee of BBD 20,000 for the first 15 years.

### ***Fiscal Incentives Act***

The Fiscal Incentives Act provides to manufacturers of an 'approved product' a full exemption from taxes and duties for varying periods, up to a maximum of 15 years.

### ***Foreign currency earnings credit***

Persons carrying on business in Barbados may claim a tax credit of up to 93% of CIT on net profits from foreign currency earnings derived from construction projects or professional services undertaken outside of CARICOM, international insurance business, or services provided to the international business sector.

### ***Employment tax credit***

Where a person carries on business in an income year and during that income year or any of the following two consecutive income years:

- there is an increase in profits directly attributable to the business
- there is an increase in the number of employees who are employed directly in the operations of the business by an amount of at least 10% of the total workforce employed during the previous year, and
- the increase in the number of employees referred to is maintained for a period of three years,

that person is entitled to a tax credit of 10% of the actual amount of the expenditure incurred in respect of wages for the increase in employees.

The credit is applied in the year in which persons meet the above-mentioned criteria. Any unused credit can be carried forward for three years from the end of the income year in which the credit was obtained, and no cash refund shall be allowed.

### ***Productivity and innovation tax credit***

Entities incurring expenditure that is innovative in nature and leading to the development of a new manufacturing process, product, service, or organisational procedure will be granted a tax credit of 25% of the amount expended in that income year. The credit will only be granted if the innovation was successfully introduced to the market as evidenced by increases in sales, productivity, or organisational efficiency.

Any unused tax credit shall be carried forward for a maximum of three years from the end of the income year in which the credit was obtained, but no cash refund will be allowed. Certification from the Executive Director of the National Productivity Council is required.

### ***Renewable energy***

A number of tax concessions have been enacted with respect to the conservation of energy. These measures include a 150% deduction of actual expenditure, not exceeding BBD 25,000, for each year for five years in respect of the following:

- Energy audits.
- 50% of the cost of retrofitting premises or installing systems to produce electricity from sources other than fossil fuels.

The business must be current in the payment of its CIT, VAT, land tax, and National Insurance contributions, or, where not current, has entered into an agreement with the respective authorities to settle outstanding arrears.

Further tax concessions have been enacted with respect to the generation and sale of electricity from renewable energy sources and installation and sale of renewable energy electricity systems or energy efficient products, including:

- An income tax holiday of ten years granted on the certificate of the Minister Responsible for Energy to a developer, manufacturer, or installer of renewable energy systems and energy efficient products.
- 150% deduction of interest on a loan in respect of the construction of a new or the upgrading of an existing property to generate, supply, or sell electricity from

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renewable energy or for the installation or supply of renewable energy systems or energy efficient products.

- 150% deduction for a period of ten years commencing from income year 2012 of the amount expended on staff training relating to generation and sale of electricity from a renewable energy source or installation and servicing of renewable energy electricity systems or energy efficient products.
- 150% deduction of expenditure on the marketing of products for the generation and sale of electricity from a renewable energy source or products related to the installation and servicing of renewable energy electricity systems or energy efficient products.
- 150% deduction of expenditure on product development and research related to the generation and sale of electricity from a renewable energy source or the installation and servicing of renewable energy electricity systems or energy efficient products.
- Exemption from the payment of CIT by a venture capital fund invested in the renewable energy and energy efficient sectors for a period of ten years commencing from income year 2012.
- Deduction of contributions to a venture capital fund invested in the renewable energy and energy efficient sectors for a period of ten years commencing from income year 2012.
- Exemption from the payment of WHT on dividends earned by shareholders of companies solely engaged in the installation or supply of renewable energy electricity systems or energy efficient products for a period of ten years commencing from income year 2012.
- Exemption from the payment of tax on interest earned by financial institutions for financing the development, manufacturing, and installation of renewable energy systems and energy efficient products for a period of ten years commencing from income year 2012.

### **Housing Incentives Act**

The Housing Incentives Act provides CIT, import duty, WHT, and other concessions to developers who undertake low income housing projects. Approved developers are subject to CIT at a rate of 15%.

### **International Business Companies (IBCs) Act**

IBCs resident in Barbados but deriving income solely from sources outside Barbados are taxed at the following rates:

<b>Taxable income (BBD)</b>	<b>Rate (%)</b>
Up to 10 million	2.50
10 million to 20 million	2.00
20 million to 30 million	1.50
In excess of 30 million	0.25

Freedom from exchange controls is granted to IBCs, as well as duty-free concessions on certain imports. No WHT is levied on remittances of dividends, royalties, interest, management fees, fees, or other income paid by IBCs to persons outside Barbados. IBCs may also claim a credit for taxes paid outside Barbados, provided that this does not reduce the company's rate of CIT in Barbados to less than 0.25%.

IBCs are subject to an annual licence fee of BBD 850.



## ***International Financial Services Act (IFSA)***

The IFSA provides for the establishment of international banking, trust administration, and other related or ancillary services by eligible companies incorporated in Barbados or branches of qualified foreign banks. An annual licence fee of BBD 100,000 is payable by IFSA licensees who are in the business of receiving foreign money deposits, while IFSA licensees who are not involved in deposit taking financial services are required to pay BBD 50,000.

International financial service entities are exempt from exchange controls and are granted duty-free concessions on certain imports.

Profits and gains are taxed at the same rates as for IBCs. No WHTs are levied on remittances of dividends, interest, or fees. International financial service entities may also claim a credit for taxes paid outside Barbados, provided that this does not reduce the entity's rate of CIT in Barbados to less than 0.25%.

## ***International Trusts Act***

The International Trusts Act is aimed at facilitating the use of Barbados trusts for purposes previously made possible in many tax-free financial centres. An international trust is taxed in Barbados as an individual that is resident but not domiciled in Barbados. This allows the trust to take advantage of a network of tax treaties while not subjecting its foreign earnings to Barbados tax unless they are remitted there. The Act exempts trusts from exchange control and WHT requirements. No registration is required.

## ***Shipping (Incentives) Act***

The Shipping (Incentives) Act was enacted to encourage the development of Barbados' shipping activities by granting CIT, import duty, WHT, and other concessions to approved shipping companies for a period of ten years.

## ***Small Business Development Act***

Companies incorporated under the Companies Act with at least 75% of their shares owned locally and having share capital of not more than BBD 1 million, annual sales not in excess of BBD 2 million, and not more than 25 employees may obtain approval as a small business. Such companies pay CIT at a reduced rate of 15% and are exempt from the payment of import duties on equipment imported for use in the business and from stamp duty in some instances. In addition, 120% of certain expenditures directly related to the development of the business are deductible for tax purposes. Investors in such businesses are exempt from WHT on interest and dividends earned on their investment.

## ***Societies with Restricted Liability (SRL) Act***

An SRL is a hybrid entity that can be recognised as a corporation or partnership in certain jurisdictions, depending on the nature of its organisational documents. The entity has limited liability, and membership units are known as quotas. Societies qualifying under this Act may apply for a licence to operate as international SRLs and, as such, are taxed at the same rates as IBCs. No WHT is levied on any distributions, interest, or other income paid by an international SRL to non-residents. International SRLs are granted duty-free concessions on certain imports, and no exchange control requirements are applicable. Entity mobility is also a prominent feature of this

## Barbados

legislation. Qualifying societies organised overseas can be continued into Barbados under the Act.

### ***Special Development Areas Act***

The Special Development Areas Act provides relief for approved developers constructing or improving a building or structure in certain defined locations in Barbados and to persons financing such work (other than a commercial bank). Persons financing such work are exempt from income tax on interest received. Approved developers are exempt from import duties and VAT on inputs for the construction or renovation of buildings, WHTs on repatriation of interest (for a period of 15 years), land tax, and property transfer tax payable by vendors on the initial purchase of the company. An approved developer pays CIT at the rate of 15% and is granted initial and annual allowances on industrial buildings of 40% and 6%, respectively, and on commercial buildings of 20% and 4%, respectively.

### ***Qualifying insurance companies***

Companies registered under the Insurance Act that derive at least 90% of their premiums from sources outside of CARICOM and at least 90% of whose risks originate outside of CARICOM may obtain a certificate of qualification. Such companies are entitled to the same exemptions from WHTs and exchange controls as exempt insurance companies. They are also entitled to the foreign currency earnings credit, which may reduce their CIT rate from 25% to 1.75% for general insurance business. The foreign currency earnings credit can also reduce the rate of tax on gross investment income applicable to life insurers from 5% to 0.35%.

### ***Tourism Development Act***

The Tourism Development Act provides that a qualifying owner of a tourism project or of a completed tourism product may offset expenditures on construction or the provision of certain amenities against its profits.

A tourism project includes the following:

- The construction of a new hotel.
- The alteration or renovation of an existing hotel.
- The conversion of an existing building or buildings into a hotel by reconstruction, extension, alteration, renovation, or remodelling.
- The furnishing and equipping of a building to be utilised as a hotel.
- The provision of tourist recreational facilities and tourism related services.
- The construction and equipping of a new restaurant.
- The alteration or renovation of an existing restaurant.
- The construction of a new attraction or the alteration or renovation of an existing attraction.
- The restoration, preservation, and conservation of natural sites.
- The establishment, restoration, preservation, and conservation of monuments, museums, and other historical structures and sites.
- The construction and furnishing of villas.
- The construction and furnishing of timeshare properties.
- The addition to a tourism product of any facilities or services intended to increase or improve the amenities that the tourism product provides.

Concessions extend to the following:

- The importation of building materials and supplies without payment of customs duty and an exemption from the payment of customs duties on specified supplies to be used for equipping the project.
- A refund of customs duty (including VAT) where the holder of a permit can satisfy the Comptroller of Customs that the building materials and supplies purchased for a tourism product have been purchased in Barbados, or in the case of importation that the customs duty was paid by the holder of the permit.
- Income tax concessions with respect to the write-off of interest, accelerated deduction of expenditure, interest rate subsidy, equity financing, training, and marketing.
- The set off of approved capital expenditures against revenues for a period of 15 years by the owner of a qualifying tourism project (except restaurants), which has a project with a value of up to BBD 200 million. Hotels with capital expenditure over BBD 200 million are allowed one additional year to write off expenditure for each additional BBD 20 million expended, up to a maximum of 20 years.

## Withholding taxes

WHTs are levied as follows:

Recipient	WHT (%)			
	Dividends	Interest	Royalties	Management fees
Residents	12.5	12.5 (1)	-	-
Non-residents:				
Non-treaty	0/15 (2)	15	15	15
Treaty:				
Austria	5/15 (3)	0 (4)	0 (4)	-
Bahrain	0	0	0	-
Botswana *	5/12 (5)	10	10	-
Canada	15	15 (6)	10 (7)	5
CARICOM	0	15	15	15
China, People's Republic of	5/10 (8)	10	10	-
Cuba	5/15 (9)	10	5	-
Cyprus	0 (4)	0 (4)	0 (4)	-
Czech Republic	5/15 (9)	5	5/10 (10)	-
Finland	5/15 (3)	5	5	5
Ghana *	5/7.5 (11)	5/7.5 (12)	7.5	-
Iceland	5/15 (3)	10	5	-
Italy	5/15 (3)	5	5	-
Luxembourg	0/15 (13)	0 (4)	0 (4)	-
Malta	5/15 (14)	5	5	-
Mauritius	5	5	5	-
Mexico	5/10 (15)	10	10	-
Netherlands	0/15 (16)	5	0/5 (17)	-
Norway	5/15 (3)	5	5	5
Panama	5 (18)	5/7.5 (12)	7.5	-
Portugal	5/15 (9)	10	5	-
Qatar	0 (4)	0 (4)	5	-
Rwanda *	7.5	10	10	15
San Marino	0/5 (19)	5	0 (4)	-
Seychelles	5	5	5	-

Recipient	WHT (%)			
	Dividends	Interest	Royalties	Management fees
Singapore	0 (4)	12	8	-
Slovakia *	0/5 (20)	10	0/5 (21)	-
Spain	0/5 (22)	0 (4)	0 (4)	-
Sweden	5/15 (2)	5	5	5
Switzerland (23)	0	0	0	-
United Arab Emirates	0 (4)	0 (4)	0 (4)	-
United Kingdom	0/15 (24)	0 (4)	0 (4)	-
United States	5/15 (25)	5	5	-
Venezuela	5/10 (26)	5/15 (27)	10	-
IBCs, ISRLs, QICs, & EICs (28)				

\* Treaty not yet in force; protocol or treaty awaiting ratification.

## Notes

- The rate is 0% for pensioners aged 60 years and over.
- The rate is 0% if dividends are paid out of income earned from sources outside of Barbados.
- The rate is 15% for portfolio dividends; 5% if the beneficial owner is a company holding at least 10%.
- Taxable only in the state in which the beneficial owner is resident.
- The rate is 12% for portfolio dividends; 5% if the beneficial owner is a company holding at least 25%.
- The rate applies provided that the interest is subject to tax in the other territory.
- The rate applies provided that the royalties are subject to tax in the other territory.
- The rate is 10% for portfolio dividends; 5% if the beneficial owner is a company holding at least 25%.
- The rate is 15% for portfolio dividends; 5% if the beneficial owner is a company holding at least 25%.
- 5% on any literary, artistic, or scientific work, including films or television broadcasting, and 10% on any patent, trademark, commercial, or scientific equipment, among others.
- The rate is 7.5% for portfolio dividends; 5% if the beneficial owner is a company holding at least 10%.
- The rate is 7.5% of the gross amount; 5% if the beneficial owner is a bank.
- The rate is 15% for portfolio dividends; 0% if the beneficial owner is a company holding at least 10% for an uninterrupted period of at least 12 months prior to the decision to distribute the dividend.
- The rate is 15% for portfolio dividends; 5% if the beneficial owner is a company holding at least 5%.
- The rate is 10% for portfolio dividends; 5% if the beneficial owner is a company holding at least 10%.
- The rate is 15% for portfolio dividends; 0% if the beneficial owner is a company (subject to certain restrictions) holding at least 10%, a regulated bank or insurance company, a pension fund that is regulated and whose income is generally tax exempt.
- The rate is 0% for royalties in respect of literary, artistic, scientific work, cinematographic films, and films, discs, or tapes for radio or television broadcasting.
- The rate is 75% of the statutory nominal rate at the time of distribution; 5% if the beneficial owner is a company holding at least 25%.
- The rate is 5% for portfolio dividends; 0% if the beneficial owner is a company holding at least 10% for an uninterrupted period of at least 12 months prior to the decision to distribute the dividend.
- The rate is 5% for portfolio dividends; 0% if the beneficial owner is a company holding at least 10%.
- 0% on any literary, artistic, or scientific work, including films or television broadcasting, and 5% on any patent, trademark, commercial, or scientific equipment, among others.
- The rate is 5% for portfolio dividends; 0% if the beneficial owner is a company holding at least 25%.
- Agreement extended to Barbados by virtue of the agreement between Switzerland and the United Kingdom, on payments to non-residents from Barbados.
- Dividends are only taxable in the state in which the beneficial owner is resident. The rate of 15% applies to dividends paid out of income from immovable property by an investment vehicle that distributes most of this income annually and whose income is exempt from tax, other than where the beneficial owner is a pension scheme.
- The rate is 15% for portfolio dividends; 5% for holdings of at least 10%. Dividends paid by a regulated investment company will bear WHT at a rate of 15%, regardless of the percentage of shares held by the recipient. Dividends paid by a real estate investment trust (REIT) will qualify for the 5% WHT rate only if the beneficial owner is an individual holding less than 10% of the shares in the REIT, otherwise, a 30% WHT rate will apply.
- The rate is 10% for portfolio dividends; 5% if the beneficial owner is a company holding at least 5%.
- The rate is 15% generally; 5% if the recipient is a bank.
- International business companies (IBCs), international societies with restricted liability (ISRLs), exempt insurance companies (EICs), and qualifying insurance companies (QICs) are exempt from WHTs on payments to non-resident persons or international business entities. Specific legislation applies.

## ***Tax administration***

### ***Taxable period***

CIT returns are prepared on a fiscal-year basis.

### ***Tax returns***

Companies with fiscal years ending between 1 January and 30 September (both dates inclusive) are required to file a CIT return on or before 15 March in the year following the end of the fiscal period. Companies with fiscal years ending any time between 1 October and 31 December (both dates inclusive) are required to file a CIT return on or before 15 June in the year following the end of the fiscal period.

The Department of Inland Revenue has instituted an online filing system, which is optional.

### ***Payment of tax***

Companies with fiscal years ending between 1 January and 30 September (both dates inclusive) are required to make an instalment of CIT for the income year in which the fiscal period ends on or before 15 September of that year. The instalment is 50% of the net CIT payable for the preceding income year. The remainder of CIT due (if any) must be paid on filing of the CIT return by 15 March of the following year.

Companies with fiscal years ending between 1 October and 31 December (both dates inclusive) are required to make two instalments of CIT for the income year in which the fiscal period ends on or before 15 December of that year and 15 March of the following year. The instalments are each 50% of the net CIT payable for the preceding income year. The remainder of CIT due (if any) must be paid on filing of the CIT return by 15 June of the following year.

It is possible to apply for a reduction or waiver in the instalments if lower profits are anticipated in the current year when compared with those of the preceding year.

### ***Penalties***

The penalties and interest for failing to file a return on time and pay the CIT due are as follows:

- Penalty for failing to file a CIT return by the due date is BBD 500 plus 5% of the tax assessed at the due date.
- Penalty for failing to pay CIT by the due date is 5% of the tax assessed and unpaid at the due date.
- Interest charge of 1% per month on the tax and penalties calculated for each month during which any amount of tax and penalties remain unpaid on the largest amount of tax and penalties that were due and unpaid at any time during that month.

The penalty for failing to make an instalment of CIT by the due date is 10% of the CIT instalment due, plus interest at 0.5% per month on the CIT instalment and penalty outstanding.

### ***Tax audit process***

A person authorised by the Commissioner may, at any reasonable time, audit the books and records, or other documents that may relate to the information that should be in

## Barbados

the books or records, examine property, request reasonable assistance from the owner, or, as necessary, seize or retain any documents that may be relevant.

### ***Statute of limitations***

Every person required to deliver a return of assessable income for an income year shall keep adequate records and shall retain every such record or voucher for a period of up to five years after the end of the relevant income year, unless the Commissioner otherwise directs, before the disposal of such records. Every person carrying on a business must obtain written permission from the Commissioner of Inland Revenue before disposing of books or records.

### ***Topics of focus for tax authorities***

The Barbados tax authorities have been focussed on the efficient collection of taxes and voluntary compliance.

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## ***Other issues***

### ***United States (US) Foreign Account Tax Compliance Act (FATCA)***

On 27 May 2014, the US Treasury announced that an intergovernmental agreement (IGA) was 'in effect', and, on 17 November 2014, the US Treasury and Barbados signed and released the IGA. The regulations to the Income Tax Act to allow for automatic exchange of information were enacted on 3 September 2015, and the IGA entered into force on 25 September 2015.

### ***Multilateral Convention on Mutual Administrative Assistance in Tax Matters***

Barbados has signed and ratified the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which entered into force, in respect of Barbados, on 1 November 2016 and for taxable periods beginning after 2017. Under the convention, Barbados will exchange tax information based on OECD standards, but is not required to collect taxes on behalf of another country or provide assistance in the service of related documents.

### ***Common Reporting Standard (CRS)***

In November 2014, the G20 countries endorsed a new CRS for automatic exchange of information developed by the OECD. Under the CRS, foreign tax authorities will provide information to the Barbados Revenue Authority relating to financial accounts in their jurisdictions held by Barbadian residents. The Barbados Revenue Authority will, on a reciprocal basis, provide corresponding information to the foreign tax authorities on accounts held by residents of their jurisdiction in Barbados.

The CRS in Barbados is effective from 1 January 2017. However, due to a delay in finalising the logistics in order to successfully fulfil their reporting obligations, the Barbados Revenue Authority has decided to commence exchanging information by September 2018. As of 31 December 2017, Barbadian financial institutions must have procedures to identify accounts held by residents of any country other than Barbados and to report the required information to the Barbados Revenue Authority.

## ***Inclusive Framework (IF) on Base Erosion and Profit Shifting (BEPS)***

On 4 July 2017, Barbados joined the IF on BEPS, becoming the 101st jurisdiction to do so. By joining the IF, Barbados will work on creating an equal footing with all other IF members on the implementation of the BEPS package and on developing further standards to address the remaining BEPS issues. As a signatory to the IF, Barbados has committed to implementing minimum standards related to:

- preferential regimes, including exchange of tax rulings (Action 5)
- treaty abuse (Action 6)
- country-by-country (CbC) reporting to tax authorities allied to wider transfer pricing documentation in Action 13, and
- improved mutual agreement procedures (MAP) for resolving disputes (Action 14).

## ***Tax information exchange agreements (TIEAs)***

TIEAs provide for the exchange of information on tax matters. TIEAs with Denmark, the Faroe Islands, Greenland, South Africa, and the United States are in force. The TIEA with Colombia is awaiting ratification; and TIEAs with France and Germany have been initialled and are awaiting signature.

## ***Bilateral investment treaties (BITs)***

Barbados has entered into BITs with Canada, China, Cuba, Germany, Italy, Mauritius, Switzerland, the United Kingdom, and Venezuela. BITs with Ghana and the Belgium/Luxembourg Economic Union (BLEU) await ratification.

BITs typically cover the following:

- Investments of every kind.
- National and most favoured nation (MFN) treatment.
- Compensation for losses owing to war, revolution, state of national emergency, revolt, riot, etc. to be no less favourable than that for residents.
- Expropriation, providing for compensation equal to market value.
- Unrestricted transfer of investments and returns.
- Subrogation.
- Settlement of disputes, either between one state and nationals or companies of the other state, or between the two states themselves.

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# Bermuda

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## **Significant developments**

The Bermuda government has extended the tax exemption granted to Bermuda companies under the Exempt Undertakings Act of 1976 from 28 March 2016 until 31 March 2035. The extended Undertaking provides protection to companies from any newly enacted taxes on income or capital gains until 31 March 2035. Existing companies are required to pay a fee of 179 Bermudian dollars (BMD) with an application for the tax exemption extension in order to benefit from this protection.

The government of Bermuda launched its electronic Tax Information Reporting Portal (Portal) in June 2017. The Portal is currently accepting Common Reporting Standard (CRS) notifications and filings and country-by-country (CbC) reporting notifications and filings.

The 2018/19 Bermuda Budget brings a few updates to the payroll tax. The changes primarily entail reductions to payroll tax for certain individuals, new exemptions, and new payroll tax provisions for taxi operators. *See Payroll tax in the Other taxes section for details.*

Furthermore, the latest Bermuda Budget proposes some changes in the customs duty, a general increase in government fees by 5%, and changes on taxes to commercial properties.

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## **Taxes on corporate income**

Bermuda imposes no taxes on profits, income, dividends, or capital gains, has no limit on the accumulation of profit, and has no requirement to distribute dividends.

The Bermuda government routinely grants Tax Assurance Certificates to exempted undertakings (i.e. exempted companies, permit companies, exempted partnerships, and exempted unit trust schemes) on application to the Minister through the Bermuda Monetary Authority. These Tax Assurances guarantee that any Parliamentary imposition of such taxes will not be applicable to the company and its operations in future years. Currently, the Tax Assurances being granted extend to 31 March 2035. *See details on exempted companies in the Other issues section.*

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## **Corporate residence**

As there are no income or profit taxes on Bermuda corporations, corporate residence is not specifically defined in Bermuda.



# Bermuda

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## **Other taxes**

### **Value-added tax (VAT)**

There is no VAT or sales tax in Bermuda.

### **Customs duties**

Customs import duties are imposed on almost all goods arriving on the island at varying rates. The most common rate of customs import duties is at 25%.

The 2018/19 Bermuda Budget will reduce to 0% the duty tax for certain healthy foods. Furthermore, the Budget proposes a lower duty rate on textiles, increase in duty on tobacco, and raise of 30 cents in duty on wines per litre. Lastly, proposals for an increase in fees and 2.5% fee on the telecom industry are in place.

### **Excise taxes**

There are no excise taxes imposed in Bermuda.

### **Property taxes**

A land tax is imposed on all developed land in Bermuda, with exceptions for government land, Bermudian pensioner's primary homesteads, and certain charitable organisations. The tax is based on an assessed annual rental value (ARV) of each valuation unit.

The progressive scale of tax rates ranges between 0.60% and 23.00% based on the ARV of the unit, while commercial properties are taxed at a single rate of tax of 7%.

The 2018/19 Bermuda Budget imposed a temporary 5% increase in land taxes on commercial properties. This new 12% rate will last for one year automatically reverting at year-end.

### **Transfer taxes**

There is no transfer tax imposed in Bermuda.

### **Stamp taxes**

Bermuda imposes stamp duty on a wide variety of legal instruments, such as transfers of property, deeds, and rental agreements. However, international businesses and partnerships ordinarily register as exempted companies and, as such, are not subject to stamp duty.

### **Payroll tax**

Historically, the Bermuda payroll tax was imposed on the employer, and the employer had the right to recover up to a prescribed percentage of the payroll tax from its employees. Effective April 2017, the payroll tax is 'split' into being imposed upon the employer and the employee; however, the tax payment obligation remains with the employer.

Bermuda imposes a payroll tax on employers at a rate determined by the employer category or the total annual payroll. International businesses, which normally register as exempted undertakings, are liable for the employer category only at a rate of 10.25% of total employee remuneration of any kind. There is an employer portion exception for new Bermudian hires, among other special situations.

<b>Annual payroll (BMD)</b>	<b>Rate (%)</b>
Less than 200,000	1.75
200,000 to 500,000	7.00
500,000 to 1 million	9.00
Greater than 1 million and exempted undertakings	10.25

Employees include officers and directors of exempt companies if there is a contract for services and they regularly perform managerial functions on a day-to-day basis. However, a person who ordinarily works outside of Bermuda and whose period of employment in Bermuda does not exceed four consecutive weeks is exempt from payroll tax entirely. We note the application of these rules is complex; as such, we recommend you consult your tax adviser.

Remuneration is interpreted broadly, and includes salaries and the value of employee benefits paid or given to an employee for services to the employer wholly or mainly in Bermuda. Specifically, employee benefits include, but are not limited to, fees, bonuses, leave pay, profit sharing, redundancy settlements, housing allowances, any positive difference between the fair market value of stock options and the option price as of the vesting date, and all other payments or value given from an employer to an employee. In case of dispute, the burden of proof is on the employer to prove that any payment or benefit from the employer to an employee was not compensation. For further guidance on the details of taxable remuneration, we recommend you consult your tax adviser.

The maximum taxable remuneration per employee is set at BMD 900,000, above which there is no liability for payroll tax.

Payroll tax is payable on a quarterly basis, commencing on the first day of April, July, October, and January. Payments are due within 15 days of the end of each tax period.

Effective 1 April 2018, a reduction from 4.75% to 4% in payroll tax was introduced for all workers earning less than BMD 48,000. As such, the new employee portion of the payroll tax will be calculated using a marginal tax rate structure as follows:

<b>Annual remuneration (BMD)</b>	<b>2018/19 rate (%)</b>
Less than or equal to 48,000	4.00
48,001 to 96,000	6.50
96,001 to 235,000	7.75
235,001 and above	8.75

As noted above, the obligation to remit payroll tax (in its entirety) remains with the employer. Additionally, the cap on total remuneration subject to payroll tax has been raised from BMD 750,000 to BMD 900,000.

Additionally, as the post-April 2017 payroll tax structure now imposes a portion of the tax upon the employee, we believe any portion of the employee payroll tax that is paid by the employer is considered additional remuneration subject to payroll tax.

Additionally, the new Bermuda Budget eliminates the employer portion of payroll tax for all disabled employees and implements an annual charge of BMD 1,000 to taxi operators to be settled upon registration.

# Bermuda

## **Social insurance**

Bermuda's contributory pension scheme requires employers to make monthly contributions to the Contributory Pensions Fund for every employee above 17 years of age for each week in which the employee works more than four hours. An employer must ensure that each qualifying employee registers with the department and obtains a social insurance number. Civil and criminal penalties may apply to employers for failure to register or pay in for each qualifying employee.

Employees contribute a matching sum via weekly payroll deduction, with several exceptions. Full-time students under the age of 26 who are employed during holidays, weekends, and summer breaks, and their employers, are entirely exempt from social insurance contributions. Employees over the age of 65 are exempt from contributing their half, although the employer must still contribute its part.

The current total contribution per employee per week is BMD 64.14. The employer portion is BMD 32.07 and the employee portion is BMD 32.07. This rate has not risen since 2013.

## **Annual company fee**

Bermuda imposes an annual company fee, payable on registration and then every January thereafter. The assessable capital is defined as the total of the company's authorised share capital and its share premium account or the company's reserve account where the company is a mutual company. A mutual company is defined as an insurance or re-insurance company. The current rate schedule, which has not changed since 2008, is:

<b>Assessable capital of the exempted company (BMD)</b>	<b>Annual company fee (BMD)</b>
0 to 12,000	1,995
12,001 to 120,000	4,070
120,001 to 1,200,000	6,275
1,200,001 to 12,000,000	8,360
12,000,001 to 100,000,000	10,455
100,000,001 to 500,000,000	18,670
500,000,001 or more	31,120

## **Annual partnership fee**

Exempted partnership fees are due on registration and annually in January thereafter. This fee is set at BMD 2,235 per year. For an initial registration after 31 August, the fee is half the annual fee.

## **Corporate services tax**

Bermuda imposes a 7% corporate services tax on the providers of corporate services on the gross revenue earned from exempted companies and partnerships. Corporate services are defined to include corporate administration, corporate management, corporate secretarial, the provision of a registered office, and accounting and financial services. Directors and resident representation services are subject to the tax where the provider is in the business of providing corporate services.

## **Financial services tax**

Effective 1 April 2017, a financial services tax is charged on the following financial services providers:

- Banks: 0.02% of assets.
- Domestic insurers: 2.5% of gross premiums written in a tax period, excluding premiums relating solely to health insurance and annuities.
- Money service businesses: 1% of aggregated incoming and outgoing money transmission volume in a tax period.

## **Foreign Currency Purchase Tax**

Foreign Currency Purchase Tax is imposed at the rate of 1% on foreign currency purchased by a resident from a local bank. *See Foreign exchange controls in the Other issues section for exemption information.*

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## **Branch income**

Branches are treated as distinct legal entities doing business in Bermuda.

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## **Income determination**

Since income taxes are not imposed on corporations in Bermuda, income determination is not relevant in the context of Bermuda taxation.

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## **Deductions**

Since income taxes are not imposed on corporations in Bermuda, deductions from income are not relevant in the context of Bermuda taxation.

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## **Group taxation**

Since income taxes are not imposed on corporations in Bermuda, group taxation is not relevant in the context of Bermuda taxation.

Note that a consolidated group cannot obtain one Tax Assurance Certificate for the group. A Tax Assurance Certificate must be obtained for each legal entity in Bermuda.

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## **Tax credits and incentives**

Bermuda offers no specific tax incentives other than the Tax Assurance Certificate described in the *Taxes on corporate income section*.

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## **Withholding taxes**

There are no withholding taxes in Bermuda.

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## **Tax administration**

Since income taxes are not imposed on corporations in Bermuda, tax returns are not required to be completed for corporate income tax compliance purposes.

## **Other issues**

### **Choice of business entity**

Corporations registered in Bermuda are either 'local', 'exempted', or 'permit' companies. International businesses are normally exempted companies and partnerships.

Local companies are incorporated by Bermudians to trade primarily in Bermuda. To meet requirements of a local company, the overall shares must be at least 60% Bermudian owned. We note there are proposals that are reconsidering this 60% requirement.

Exempted companies are often international businesses incorporated by non-Bermudians to conduct business outside Bermuda. Exempted companies are classified as an exempted undertaking and routinely apply for Tax Assurance Certificates. Exempted companies must meet the requirement to retain a minimum of one director, secretary, or representative who is resident in Bermuda.

Permit companies are overseas companies that have received a permit to carry on business in or from within Bermuda. A permit is obtained through application to the Minister of Finance to be able to engage in and carry on any trade or business in Bermuda. A mutual fund is exempt from obtaining a permit if a person who is resident in Bermuda is engaged to be the fund's administrator to perform duties such as corporate secretarial, accounting, administrative, registrar, and transfer agency, or dealing with shareholders.

### **Foreign exchange controls**

Exempted companies and permit partnerships are considered as non-residents for exchange control purposes, unless 80% or greater of the total issued share capital is beneficially owned by Bermudians, or one half or more of the partners are resident in Bermuda. This allows these entities to make dividend payments, distribute capital, open and maintain foreign bank accounts, maintain bank accounts in any currency, and purchase securities without tax or governmental controls. *See Foreign Currency Purchase Tax in the Other taxes section for a description of the tax.*

### **Foreign Account Tax Compliance Act (FATCA) and the Common Reporting Standard (CRS)**

Bermuda has entered into a Model 2 Intergovernmental Agreement (IGA) with the United States (US) to facilitate the implementation of the US's FATCA reporting requirements. This convention provides for both automatic and on-request exchange of information, as well as procedures for tipping off and search and seizure. Further details on the implementation of FATCA was delineated in a separate, highly detailed agreement, which specifies rules and procedures for the reporting of financial accounts held by US persons. With a Model 2 IGA, applicable Bermuda foreign financial institutions (FFIs) must file directly with the Internal Revenue Service (IRS) rather than via the Bermuda Portal utilised for CRS and CbC reporting purposes.

It is important to note that Bermuda also had a similar agreement with the United Kingdom (UK) to facilitate the implementation of the UK's FATCA reporting requirements; however, UK FATCA has now transitioned to the CRS.

In 2014, Bermuda committed to the early adoption and implementation of the CRS, a multilateral automatic exchange of information regime developed by the Organisation for Economic Co-operation and Development (OECD).

CRS reporting requirements have been introduced for financial accounts in existence from 1 January 2016. Applicable financial institutions will need to notify the Bermuda government by 30 April, and reporting is due by 31 May of the following year.

### **Country-by-country (CbC) reporting**

Bermuda has agreed to CbC reporting as part of the Base Erosion and Profit Shifting (BEPS) Action Plan set forth by the OECD. With the goal of promoting transparency and accuracy in tax reporting, CbC reporting requires applicable multinational enterprises to include detailed financial and tax information relating to the global allocation of their revenue, profits, and taxes, among other indicators of economic activity.

Bermuda's competent authority will annually exchange, on an automatic basis, the CbC report received from each reporting entity that is resident for tax purposes in Bermuda with all such other competent authorities of jurisdictions with respect to which Bermuda has an agreement in effect and in which, on the basis of the information in the CbC report, one or more constituent entities of the multinational group of the reporting entity are resident for tax purposes or are subject to tax with respect to the business carried out through a Bermuda permanent establishment (PE).

CbC reporting is in effect for fiscal years beginning on or after 1 January 2016. The due date for reporting is 12 months after the fiscal year end and notification is required no later than the last day of the reporting fiscal year.

### **Tax treaties**

Bermuda has a tax treaty with the United States, which was signed in 1986 and entered into force in 1988. The agreement limits its applicability to insurance enterprises and specifically exempts insurance business profits of qualified Bermuda insurance companies from US taxation, unless the company has created a PE in the United States. Of note, the treaty provides no relief for US federal excise tax (FET) on insurance or reinsurance premiums. In brief, the requirements to maintain this tax benefit include greater than 50% direct or indirect ownership by Bermuda residents or US citizens, and that the income is not substantially used to make distributions to non-Bermuda residents or non-US citizens. For further guidance in this complex area, please consult your tax adviser.

Bermuda also has a Mutual Legal Assistance Treaty with the United States, which entered into force in 2012. This agreement provides for cooperation in the area of criminal investigation, including economic crimes and money laundering, and for mutual assistance in document service, search and seizure, evidence production, and potential freezing and forfeiture of assets, which may be the proceeds or instruments of crime.

Bermuda also has tax treaties with the Kingdom of Bahrain and Qatar.

# Bermuda

## **Tax information exchange agreements (TIEAs)**

Bermuda has an extensive tax agreement network via its bilateral TIEAs and participation in the OECD's Convention on Mutual Administrative Assistance in Tax Matters, which includes over 100 countries.

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# Cayman Islands

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## **Significant developments**

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

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## **Taxes on corporate income**

Corporate income, capital gains, payroll, or other direct taxes are not imposed on corporations in the Cayman Islands.

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## **Corporate residence**

Since no corporate income, capital gains, payroll, or other direct taxes are currently imposed on corporations in the Cayman Islands, corporate residency is not relevant in the context of Cayman Islands taxation.

Entities engaged in 'scheduled' trade and business in the Cayman Islands (as defined in the Trade & Business Licensing Law) are required to have a trade and business licence. Effecting and concluding contracts in the Cayman Islands and exercising, in the Cayman Islands, powers necessary for the carrying on of a business outside the Cayman Islands is generally not considered to be engaging in trade and business in the Cayman Islands.

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## **Other taxes**

### **Value-added tax (VAT)**

There is no VAT imposed in the Cayman Islands.

### **Import duties**

Import duty is paid, generally at a rate of 22% to 27%, on importation of most goods. Please refer to the Cayman Islands Customs' website ([www.customs.gov.ky](http://www.customs.gov.ky)) for the latest list of tariff rates.

### **Excise taxes**

There are no excise taxes in the Cayman Islands.



# Cayman Islands

## ***Property taxes***

There are no property taxes in the Cayman Islands.

## ***Stamp duties***

Stamp duty is paid, generally at a rate of 7.5%, on transfers of Cayman Islands immovable property. Stamp duty, in the form of a transfer tax equal to the applicable stamp duty, also applies to transfers of shares in land holding companies.

Cayman Islands stamp duty may also be payable if any documents are executed in, after execution brought to, or produced before a court of the Cayman Islands. Such stamp duty will be nominal in most instances and is capped at 500 Cayman Islands dollars (KYD).

Stamp duties also apply on legal or equitable mortgages or charges of immovable property or debentures. The stamp duty ranges from 1% to 1.5%, depending on the sum secured.

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## ***Branch income***

Branches are treated the same as other corporations doing business in the Cayman Islands.

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## ***Income determination***

Since no corporate income, capital gains, or other taxes are imposed on corporations in the Cayman Islands, income determination is not relevant in the context of Cayman Islands taxation.

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## ***Deductions***

Since no corporate income, capital gains, or other taxes are imposed on corporations in the Cayman Islands, deductions from income are not relevant in the context of Cayman Islands taxation.

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## ***Group taxation***

Since no corporate income, capital gains, or other taxes are imposed on corporations in the Cayman Islands, group taxation is not relevant in the context of Cayman Islands taxation.

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## ***Tax credits and incentives***

Since no corporate income, capital gains, or other taxes are imposed on corporations in the Cayman Islands, tax incentives are not relevant in the context of Cayman Islands taxation. However, Cayman entities carrying on business outside the Cayman Islands can register as 'exempted companies' (i.e. a company formed primarily to do business outside of the Cayman Islands and subject to certain requirements) and can apply under the Tax Concessions Law for an undertaking to be issued by the Governor-in-

Council (i.e. the Cayman Islands government) exempting such company from any tax on profits, income, gains, or appreciation that might be introduced in the period of 20 years following the grant of such concessions. The concession is extendable for a further ten years after expiry. 'Exempted limited liability partnerships' (i.e. certain partnerships formed primarily to do business outside of the Cayman Islands) can apply under the Exempted Limited Partnership Law for a similar concession that is for 50 years (rather than 20 years).

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### ***Withholding taxes***

Currently, no withholding taxes (WHTs) are imposed on dividends or payments of principal or interest.

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### ***Tax administration***

No tax returns, forms, or procedures are required to be completed for tax compliance purposes in the Cayman Islands.

The Tax Information Authority serves as the competent authority in the Cayman Islands.

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### ***Other issues***

#### ***Tax information reporting***

The Cayman Islands currently has 36 signed Bilateral Agreements, of which 29 are in force. Please refer to the Tax Information Authority's website ([http://tia.gov.ky/pdf/International\\_Exchange\\_of\\_Information\\_Instruments.pdf](http://tia.gov.ky/pdf/International_Exchange_of_Information_Instruments.pdf)) for the latest list of Bilateral Agreements.

The Cayman Islands agreed with the United Kingdom (UK) government to implement the Savings Directive, and so the Reporting of Savings Income Information (European Union or EU) Law (2007 Revision) came into force, setting out a reporting regime whereby Cayman paying agents making interest payments to individuals who are tax resident in an EU member state may have to report interest paid. The Cayman Tax Information Authority receives or facilitates submission of such information reporting.

The Cayman Islands will comply with the regulations set forth under the Common Reporting Standard (CRS). The country recognises that the regulations are a key component of the Cayman Islands' implementation of automatic exchange of financial account information in accordance with the internationally agreed standard. The Cayman Islands Tax Information Authority updated guidance on CRS in Q1 of 2017, including updated Cayman Islands entity and individual self-certification forms and other information, which took effect as of 1 January 2016. The Cayman Islands took a similar approach to CRS as with the UK and United States (US) Foreign Account Tax Compliance Act (FATCA) (*see below*), including certain due diligence and reporting obligations.

#### ***Intergovernmental agreements (IGAs)***

The Cayman Islands and the United States signed their Agreement to Improve International Tax Compliance and to Implement the Foreign Account Tax Compliance

## Cayman Islands

Act based on the Model 1 IGA in 2013. To accommodate the non-direct tax system of the Cayman Islands, the IGA is a model 1B (non-reciprocal) IGA. The Cayman Islands and the United Kingdom also signed their Agreement to Improve International Tax Compliance, which is based on the US Model 1 IGA in 2013. Under these Agreements, Cayman Islands financial institutions must provide the Cayman Islands competent authority with the required information. The Cayman Islands competent authority forwards that information to the competent authority in the relevant jurisdiction. Please refer to the Tax Information Authority's website for access to the Agreements and related Guidance Notes ([www.tia.gov.ky/pdf/FATCA\\_Legislation.pdf](http://www.tia.gov.ky/pdf/FATCA_Legislation.pdf)).

### **Country-by-country reporting (CbCR)**

The Cayman Islands has entered into CbCR as part of the Base Erosion and Profit Shifting (BEPS) Action Plan set forth by the Organisation for Economic Co-operation and Development (OECD). With the goal of promoting transparency and accuracy in reporting, CbCR requires multinational enterprises to include detailed financial and tax information relating to the global allocation of their income and taxes, among other indicators of economic activity.

The Cayman Islands' competent authority will annually exchange, on an automatic basis, the CbC report received from each reporting entity that is resident for tax purposes in the Cayman Islands with all such other competent authorities of jurisdictions with respect to which the Cayman Islands has an agreement in effect and in which, on the basis of the information in the CbC report, one or more constituent entities of the multinational group of the reporting entity are either resident for tax purposes or are subject to tax with respect to the business carried out through a Cayman Islands permanent establishment (PE).

CbCR is in effect for fiscal years beginning on or after 1 January 2016. The due date for reporting is 12 months after the fiscal year-end and notification is required no later than the last day of the reporting fiscal year. For reporting fiscal years ending before 1 January 2017, the reporting due date is 31 May 2018.

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# Costa Rica

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## ***Significant developments***

In February 2018, the Congress of the Republic of Costa Rica agreed to give a fast track of approval to the file 20580 called the 'Law of Strengthening of Public Finances', which is a proposal raised by the previous government (which is also the government of the day) through which some measures are intended to be established to try to alleviate the increase in the fiscal deficit, which in recent years has been growing steadily and threatening a short-term economic crisis.

The bill is made up of four bills that can be summarised as follows:

- Transformation of the general sales tax to a value-added tax (VAT).
- Reform of the Income Tax Law to subject capital gains to a special rate.
- Reforms to public employment that seek to grant order and social justice.
- The introduction of a fiscal rule, which seeks to establish a limit to the growth of the budget, depending on the level of indebtedness of the Central Government.

With the impulse given to this project by a new government (which entered into practice on 8 May 2018), a good environment was augured for its approval; however, the change in the Congressmen as a result of the new legislature, coupled with the opposition of some political sectors of the country and the unions of public workers, has generated an impasse in its approval.

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## ***Taxes on corporate income***

The Costa Rican tax system is based on the principle of territoriality, according to which any business that carries on industrial, agricultural, or commercial activity in Costa Rica is subject to income taxation on local income in the same way as a registered business, irrespective of the place of incorporation. Such corporations doing business in Costa Rica are subject to the permanent establishment (PE) rules.

Under the Costa Rican Income Tax Law, income from transactions carried out abroad may be regarded as non-Costa Rican-source income and is not subject to income taxes.

In addition, it is important to bear in mind that Costa Rican income tax applies specifically to those incomes that directly originate in the lucrative activities carried out by the taxpayer within the country's territory.

## Costa Rica

Corporate income is taxed at a 30% rate. However, the law establishes special regulations for small companies whose gross income does not exceed 105,872,000 Costa Rican colones (CRC). For this category, the following rates apply:

- 10% for companies with gross income up to CRC 53,113,000.
- 20% for companies with gross income of more than CRC 53,113,000 but not more than CRC 106,835,000.
- 30% for companies with gross income over CRC 106,835,000.

Please note that these corporate income tax (CIT) brackets are adjusted yearly, effective 1 October to 30 September of the following year. The tax brackets listed are for the 2018 fiscal year (i.e. 1 October 2017 to 30 September 2018).

### **Local income taxes**

There are no provincial income taxes in Costa Rica; however, there is a municipal tax. The rate depends on the municipality in which the company is located, but most apply a percentage of net income or sales.

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### **Corporate residence**

In most cases, the place where a company is incorporated is regarded by Costa Rican authorities as the corporate residence.

### **Permanent establishment (PE)**

According to Costa Rica's tax system, a PE of non-domiciled persons in the country is every office, factory, building, or any other real estate; plantation, mining, forest, agricultural, and farming development; warehouse or any other permanent business centre, included the temporary use of warehouse facilities as well as the ones destined to the purchase and sale of merchandise and products inside the country; and any other company property of non-domiciled persons that develops commercial and lucrative activities in Costa Rica.

The Costa Rican Tax Administration has manifested that the essential characteristic of a PE is given by a territorial criteria, according to which the income and earnings generated in Costa Rica as well as the assets located in it are taxable, not taking into consideration the nationality or domicile of its owner.

The Tax Administration also applies the criteria of the Organisation for Economic and Co-operation and Development (OECD) to determine when a person can be considered a PE of a company in a determined state. Accordingly, the Tax Administration takes into consideration the following conditions to determine the existence of a PE:

- The existence of a business centre (i.e. facilities such as an office or business centre or, in certain cases, machinery).
- Said business centre must be permanent (i.e. must be established in a determined place with a significant level of permanence).
- The company has to develop its essential activity through this permanent centre (i.e. the persons who depend in a way or another on the company [the staff] must develop the company's business inside the country on which the permanent centre is located).

Note that the Costa Rican Tax Administration uses these OECD criteria to support and base its administrative resolutions; consequently, they hold a significant importance for the Costa Rican tax system. Regarding these criteria, the OECD has established as a generally accepted principle that a company will be treated as the owner of a PE in a determined state if a person acts on behalf of that company under certain circumstances, even if they are not in the presence of a permanent business centre in said state. These circumstances are as follows:

- The person has to be an agent on account of the non-domiciled company: A dependent agent, individual, or company, under an employment regime or outside of this, that, due to the nature of its activities or to the scope of its faculties, involves the non-domiciled company in commercial activities of certain significance.
- The person or local company has to be a dependent agent with enough faculties to celebrate and subscribe agreements on behalf of the non-domiciled company. The faculties of the person or local company have to be sufficient to involve the non-domiciled company in business activities inside the country on which the person or local company are situated.
- The agent has to be authorised to negotiate all elements and details of agreements on which the non-domiciled company is involved and obligated, even if said agreement is signed by another person in the country on which the non-domiciled company is located. In other words, it isn't simply a mere authorisation to sign the agreement.
- The faculty to subscribe agreements must include those agreements that are part of the main commercial activity of the company.
- The agent has to take risks on behalf of the abroad domiciled company.
- The agent has to act according to detailed instructions or general control of the abroad domiciled company.
- The concept of PE under this context implies that this agent uses its authority on a repeated basis and not only on isolated cases. The faculties must be exercised regularly in the country on which the agent is located, a characteristic that is determined according to the real commercial situation. A person or company whose activities are limited to the following conditions and circumstances is not considered a PE:
  - Its activities consist only in storage, expose, or delivery of goods and merchandise that belong to the company domiciled in another country.
  - Its activity consists only in purchase of goods or merchandise or compiling information for the abroad domiciled company.
  - Its activity consists only in developing any other auxiliary or preparatory activity for the company.
- To consider a person as a PE of a company in a state, it has to be determined if the activities that this person develops are, by themselves, an essential and significant part of the activities of the company as a whole, which is why every case must be studied and analysed according to its own particular circumstances.

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## Other taxes

### Sales tax

A fixed sales tax rate of 13% is applied at all stages of the sale of merchandise or the invoicing of certain limited services. The tax is levied on (i) sales of merchandise within the national territory (except sales of land, buildings, exports, and certain basic necessity items, such as basic foodstuffs, certain medicines, and veterinary products);

## Costa Rica

(ii) the value of services performed by restaurants, bars, motels, printing companies, social and recreational clubs, painting and repair shops, and others; and (iii) imports consisting of merchandise for personal use or consumption or to satisfy commercial needs.

### **Selective consumption tax**

The selective consumption tax may be applied at a rate of up to 100% and is levied on goods that are considered non-essential. The tax base is the cost, insurance, and freight (CIF) price plus import duties for imported items or the sales value for items produced in Costa Rica. The tax is levied at only one stage in the sale of merchandise. Payment of the tax is required at the time of importation or, for articles produced in Costa Rica, within 15 days of the month of the sale.

### **Customs duties/import tariffs**

In Costa Rica, all importation of goods and merchandise, with certain exemptions, are liable for corresponding import tariffs and customs duties. Other taxes (e.g. sales tax, selective consumption tax) are also levied on the importation of said goods and merchandise.

The most important legal instruments for customs regulations are the Central American Uniformed Customs Code, the Customs Law and its rulings, and other administrative rulings that are periodically issued by the Customs Authority.

### **Property tax**

Each local municipal government is in charge of real estate appraisal. The annual property tax to be applied throughout the Costa Rican territory is 0.25% of the appraised value, registered in the respective municipality where the tax liability originates.

### **Real estate transfer tax**

Real estate transfer tax is calculated as 1.5% of the selling price of the real estate or its property tax value, whichever is greater. The tax is triggered by the direct sale of the real estate or through the indirect transfer of real estate when there is a modification in the control of the entity holding the real estate.

### **Stamp duties**

Stamp duties in Costa Rica are determined according to the transaction that is carried out (e.g. property transactions, service contracts, movable assets transactions).

### **Franchise tax**

The payments realised abroad for the use of a franchise will be subject to remittances abroad with a 25% withholding tax (WHT).

### **Withholdings on salary**

Companies are required to withhold from employees the amount corresponding to the tax on salary according to the following progressive table on a monthly basis:

Salary (CRC)	Withholding rate (%)
Up to 799,000	0
799,000 to 1,199,000	10
Over 1,199,000	15

## ***Social security contributions***

Companies must withhold the monthly contribution to social security and submit its own contribution calculated as a percentage of the monthly income received by the employee:

<b>Social security contribution</b>	<b>Contribution rate (%)</b>
Employee's contribution	10.34
Employer's contribution	26.33

## ***Branch income***

Branch income is subject to tax at the same rates as corporate income.

There is a WHT of 15% on dividends distributed within the country and a 15% tax, in lieu of a dividend WHT, on profits transferred abroad.

## ***Income determination***

### ***Inventory valuation***

Inventories are generally stated at cost and can be valued using the compound average-cost method, first in first out (FIFO), retailer method, or specific identification method. Since all entities must keep legal records, any adjustment resulting from different methods of inventory valuation for tax and financial purposes should be recorded.

### ***Capital gains***

There is no capital gain tax on the sale of real estate or securities when such sales are not a habitual activity. There is a capital gain tax, at the regular rate, on the sale of depreciable assets when their sale price is higher than their adjusted basis (book value).

### ***Dividend income***

Dividends are subject to a 15% WHT if the stock is not listed in an officially recognised stock exchange or 5% if the stock is registered in a stock exchange officially recognised by the Costa Rican government.

Dividends between domestic subsidiaries and other domestic corporations are not subject to taxes. There are no ownership requirements to qualify for this exclusion.

### ***Stock dividends***

Dividends paid in the form of stock of the distributing company are allowed and are exempt from taxes.

### ***Interest income***

Interest income coming from sources related to normal business activities is taxable. Interest income coming from investments on financial entities included in the National Banking System is subject to an 8% withholding on the source as definitive tax.

Interest coming from investments abroad is considered non-Costa Rican-source income and is not taxable.



# Costa Rica

## Royalty income

Royalty income coming from sources related to normal business activities is taxable.

## Foreign income

Foreign-source income is not taxable in Costa Rica.

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## Deductions

In general, any costs and expenses that are useful, necessary, and pertinent for the production of actual or potentially taxable income will be deductible from the company's gross income, as long as they are duly supported by documentation authorised by the law and they comply with the following requirements:

- They are necessary expenses to obtain actual or potential income, taxed under the law.
- Any withholding obligations, as stated in other sections of the law, have been carried out.
- The supporting documentation has been authorised by the Tax Administration.

However, the Tax Administration may reject or disregard, in whole or in part, any expenses that it considers excessive, inadmissible, or not indispensable to obtain taxable income.

## Depreciation

The straight-line and sum-of-the-years-digits methods of depreciation are allowed over the following useful lives:

Assets	Useful life (years)
Buildings	50
Machinery and equipment	10
Furniture and fixtures	10
Vehicles	10
Agricultural plantations	2 to 10

The Tax Administration, at the request of the taxpayer, can adopt technically acceptable special depreciation methods in cases duly justified by the taxpayer. In addition, the Tax Administration can authorise, through general resolution, accelerated depreciation methods on new assets acquired by corporations with monetary activities requiring constant technological updates, higher installed production capacity, and productive reconversion processes in order to maintain and strengthen their competitive advantage.

## Goodwill

If the intangible asset can be amortised, the gain is considered taxable and the loss is considered deductible from the income tax base. However, if the intangible asset is not amortisable, the gain is not taxable and the loss is not deductible.

## Start-up expenses

A company's organisational expenses may be deducted in the tax year in which they are paid or credited, or, if they accumulate, in five consecutive tax years, starting from the

date of start of productive operations, until the balance is exhausted. Organisational expenses will be considered to be those costs and expenses that are necessary to initiate the production of taxable income that, in accordance with the law, are deducted from gross income.

### ***Interest expenses***

Interest and other financial expenses paid or incurred by the taxpayer during the fiscal year directly related to the management of their business and the creation of taxable income are deductible from gross income, as long as those interest expenses are not capitalised.

Note that those interest expenses with rates that exceed the usual market rates will not be considered deductible expenses by the Tax Administration.

### ***Bad debt***

Manifestly uncollectible unpaid debt will be deductible as long as this debt is originated in habitual operations from the taxpayer's business and all legal actions towards its collection have been exercised.

### ***Charitable contributions***

All donations duly supported by documentation that are given to the government, public institutions, municipal corporations, public universities, to the Social Protection Board, to the Educational Boards, to the Costa Rican Red Cross, and other institutions, such as those foundations and associations with non-charitable, scientific, and cultural ends that are authorised by the Tax Administration to receive deductible donations, among other entities, will be deductible from gross income.

### ***Taxes***

With the exception of sales tax, selective consumption tax, specific taxes over consumption and special duties established by law, penalties and interest paid over any tax obligation, and the income tax itself, all other taxes that affect the goods, services, and negotiations of the company's habitual commercial activity will be considered deductible.

### ***Net operating losses***

Losses incurred by industrial and agricultural enterprises may be carried forward and deducted from the taxable profits for the following three years for industrial enterprises and five years for agricultural enterprises. Loss carrybacks are not allowed.

### ***Payments to foreign affiliates***

Corporations may claim deductions for royalties, technical and management service fees, and interest charges paid to foreign affiliates, provided that a tax of 25% for royalties, franchises, and other services, and a tax of 15% for interest, is withheld. However, the deductions for technical, management service fees, and royalties may not exceed 10% of gross sales in the aggregate if paid to the parent company.

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## ***Group taxation***

There is no group taxation in Costa Rica.

# Costa Rica

## **Transfer pricing**

Under Decree No. 37898-H 'Provisions on Transfer Pricing', published on 13 September 2013, taxpayers are forced to evaluate the prices agreed upon in operations of goods or services sold to related companies, locally and abroad, considering the prices that will be agreed between independent parties and in compliance with the Principle of Free Competition and Economic Reality.

Additionally, the Decree indicates, in the definition of this principle, that taxpayers must "determine their income considering costs and deductions for these operations using the prices and amounts of considerations that would be agreed upon between individuals or independent entities in comparable operations".

According to the definition related to 'binding parties', legal or natural persons that directly or indirectly participate in the address, control, or capital of the taxpayer, or due to another cause may systematically influence their pricing decisions, shall be deemed to be related. Also, those persons or entities residing in jurisdictions without sufficient powers to exchange tax information are presumed to be related parties. In addition, there are other specific conditions for a person or an entity to be qualified as a binding party.

The Decree establishes the need for an Analysis of Comparability (Functional Analysis) to consider the following elements:

- Characteristics of the operations, products, or services.
- Functions or activities, including assets and assumed risk.
- Contract terms and conditions.
- Economic circumstances.
- Business strategies.
- Identification of prices and comparable transactions (internal and external).

Also, the methods for the determination of prices in comparable operations are established and mentioned in the following list:

- Non-controlled comparable price.
- Additional cost.
- Resale price.
- Split profit.
- Net margin of the transaction.

The Decree authorises the Tax Administration to check the assessment of prices with related parties made by the taxpayer; however, when as a result of the application of a convention for the avoidance of double taxation, an adjustment to the Costa Rican company is generated, the company may request verification of the origin of the adjustment.

The Tax Administration shall dictate the general documentation guidelines that the taxpayer must comply with in relation to the valuation of its transactions with related parties; however, the Decree establishes that it must be made available for the Tax Administration in Spanish and that it must be kept for five years according to the provisions of Article 109 of the Code of Norms and Tax Procedures. Likewise, a list of the information and documentation (formal obligations) that the taxpayer must keep has been established, which includes the details of the activities and

functions, organisational structure, registration information from the parties, financial statements, and method used.

In addition, the Decree establishes an annual informative return for taxpayers who are engaged in transactions with related parties and for large taxpayers, large territorial taxpayers, and companies located within a free zone.

Lastly, the Decree allows the application of advance pricing agreements (APAs) between the taxpayer and the Tax Administration, which will be valid for three years once approved.

The Tax Administration is currently working on a resolution for expanding upon the features and requirements of APAs.

In April 2017, the Tax Administration issued the ruling number DGT-R-16-2017 that regulates the procedures that taxpayers must follow regarding the transfer pricing documentation related to the Master File and the Local File.

### **Country-by-country (CbC) reporting**

According with the Resolution N° DGT-R-001-2018, the CbC report applies for the following companies or entities whose global and accumulated gross revenues are equal to or higher than 750 million euros (EUR) or its equivalent in the local currency during the reporting tax year:

- Each ultimate parent entity (parent company or controlling company) of a group or a multinational group that is a tax resident in Costa Rica; an 'ultimate parent entity' is defined as a parent or controlling company that holds sufficient direct or indirect interest in one or more group entities, and is required to prepare consolidated financial statements under applicable accounting standards, or would be required to do so if the share interest were listed on a stock exchange in its country of tax residence.
- A surrogate parent entity (when designated as a sole substitute by the ultimate parent) if the surrogate parent entity is a constituent entity and tax resident in Costa Rica; 'surrogate parent entity' refers to an entity of the group designated as a sole substitute of the ultimate parent entity for purposes of presenting the CbC report in the tax jurisdiction of the surrogate parent entity on behalf of the group.

The CbC report should include the following information:

- A general overview of the revenues, taxes, and economic activities by tax jurisdiction.
- A list of all the entities that belong to the multinational group by tax jurisdiction.
- Additional information or explanation necessary for a better understanding of the mandatory information requested.

The CbC report must be submitted to the Tax Administration through an XML file that complies with the standard structure established by the OECD, which can be downloaded from the official website. The electronic portal that will be enabled for reception of the XML file will be announced at least one month in advance of the date of presentation of the report.

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The information corresponding to the CbC report required in this Resolution must be provided annually. The deadline for submitting the information required in the CbC report will be as indicated below:

- The group or multinational group, regardless of the month of the closing of the fiscal period, must present its first CbC report no later than 31 December 2018 with information corresponding to the operations of the 2017 tax period.
- For the following fiscal periods following the operations of the 2017 tax period, the group or multinational group must present the CbC report on 31 December of the year following the end of the corresponding fiscal period (e.g. the information on the operations of the tax period 2018 must be submitted by 31 December 2019).

Additionally, the failure to supply the information required in the Resolution corresponding to the CbC report will be punished in accordance with Article 83 of the Code of Norms and Tax Procedures.

### ***Thin capitalisation***

In Costa Rican legislation, there is no mention of thin capitalisation rules. However, as with transfer pricing, the Tax Administration applies general rules and principles for the treatment of these types of situations. For instance, the Income Tax Law gives the Tax Administration the faculty of reviewing and rejecting all expenses that it may consider excessive, not proportional, or unreasonable.

### ***Controlled foreign companies (CFCs)***

In Costa Rican legislation, there is no mention of CFC rules.

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## ***Tax credits and incentives***

### ***Foreign tax credit***

Costa Rica's tax system does not allow for the possibility of foreign tax credits.

### ***Free zones***

Entities covered by the Free Trade Zone Law may enjoy exemption from import duties on goods, income tax, sales tax, export tax, selective consumption tax, real estate transfer tax, and WHT on payments abroad, as well as the discretionary use of foreign currency generated abroad. However, these incentives will be affected by the rules established by the World Trade Organization (WTO) in force in the year 2015, which required for a modification of the Free Trade Zone Law, now enforced, in which it was a requisite by manufacturing companies to be mainly dedicated to exportation. Now, it is possible for manufacturing companies to apply to the Free Trade Zone Regime whether the sale of their products is in Costa Rica or outside Costa Rica as long as they comply with the requisites established in the Law. For service companies, the requirement to be devoted mainly to the export of services is still a must.

### ***Drawback industries***

Special benefits exist for industries that import semi-manufactured materials for assembly in Costa Rica and export finished products. Benefits consist of duty-free imports of raw materials for subsequent export as manufactured products. Machinery for these industries may also be imported duty-free.

## Tourism development

The Incentive Law for Tourism Development grants several tax benefits, such as exemption from import duties on certain tourism service-related goods and from property tax for companies dedicated to tourism, but only for those with a signed tourism agreement.

## Withholding taxes

### Payments to non-domiciled foreign corporations or individuals

Regarding payments to non-domiciled foreign corporations or individuals, taxes are withheld as follows:

Payment	WHT rate (%)
Dividends (1)	5/15
Interest and other financial expenses (2)	5.5/15
Royalties, patents, trademarks, franchises, and formulas	25
Technical service and management fees	25
Personal services from a Costa Rican source:	
Employees	10
Directors	15
Others	30
Transportation and communication services	8.5

#### Notes

- 5% if the stock is registered in a stock exchange officially recognised by the Costa Rican government.
- Interest paid from a financial entity supervised in Costa Rica to a financial entity outside Costa Rica subject to supervision is subject to a withholding of 5.5%. The payments to multilateral entities for development are not subject to withholding.

## Double taxation treaties (DTTs)

Summary of the reduced WHT rates established by DTTs:

Recipient	WHT (%)			
	Dividends	Interest, commission, and financial expense	Financial technical advisory, patents, formulas, trademarks, franchises, royalties	Personal independent work
Treaty:				
Germany	5/15 (1)	5 (2)	10	(3)
Spain	5/12 (4)	5/10 (5)	10	10

#### Notes

- 5% of the gross amount of dividends if the beneficiary is a company (excluding consortiums) that directly holds at least 20% of the capital of the company that pays the dividends. 15% of the gross amount of dividends in all other cases.
- If the beneficiary of the interest is a resident of the other contracting state, the WHT shall not exceed 5% of the gross amount of interest.
- Taxed in the state in which the income is generated.
- The 5% withholding applies when the beneficiary directly has at least 20% of the shareholder's equity of the paying company. In all other cases, the withholding is 12%.
- The 5% withholding applies when the loan has a duration of no more than five years. In all other cases, the withholding is 10%.

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## ***Tax administration***

### ***Taxable period***

The tax year in Costa Rica is a 12-month period from 1 October to 30 September. Current legislation contemplates that another fiscal year (equal to a natural year) may be adopted with the prior approval of the Tax Administration.

### ***Tax returns***

With certain exceptions, all corporations must file a tax return by 15 December on the basis of a fiscal year-end of 30 September. The general rule is that all companies must file the tax return two and a half months after its fiscal closing. Entities with an operating period of less than four months may present a return together with the following year's tax return.

The tax system is one of self-assessment with occasional auditing by the Tax Administration.

### ***Payment of tax***

In March, June, and September, all corporations and taxpayers with a 30 September fiscal year-end must prepay instalments that total 75% of the average income taxes paid in the past three fiscal years, or the amount paid in the prior year, whichever is greater. Failure to pay on these dates results in the accrual of interest unless the taxpayer has requested, on a timely basis, that the Tax Administration eliminate the corresponding payments. Any amount owed in excess of the instalments should be paid by 15 December. For the corporations and taxpayers that have a special fiscal year authorised by the Tax Administration, the first advance payment must be provided six months after their fiscal closure is authorised. If the amount of tax due is determined to be greater than the sum of the instalment payments on the date the taxpayer files the tax return, the taxpayer must pay the difference no later than 15 December, along with the tax return.

For taxpayers with a special fiscal year authorised by the Tax Administration, the first advance payment must be provided within six months of the authorised fiscal year-end.

### ***Tax audit process***

For a tax audit to begin, it is necessary that the Tax Administration send a notification to the taxpayer to be audited. The taxpayer is selected according to one of the selection criteria previously established, and this should be indicated in the communication at the beginning of the tax audit. The Tax Administration must start the audit within two months of the communication to the taxpayer.

Once the audit is completed, the auditors hold a meeting with the company and invite them to correct the issues found.

If the company does not accept the correction, it can start the described procedure and pay the respective tax until that procedure has finished along with the corresponding interest.

### ***Statute of limitations***

The action of the Tax Administration to determine a tax liability will be under the statute of limitations of four years. The same term is valid to demand the payment of the tax and its interests.

The aforementioned term is extended to ten years for taxpayers non-recorded before the Tax Administration, those that are recorded but have filed returns qualified as frauds, or those that have not filed the sworn returns.

The term of the statute of limitations should be counted as of the first day of the month following the date when the tax should be paid.

### ***Topics of focus for tax authorities***

Important topics for tax audits are transfer pricing, sales tax credits, gross margin on sales, employee benefits, and income tax.

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### ***Other issues***

#### ***Common Reporting Standard (CRS) regimen***

Costa Rica has made important steps to comply with the CRS developed by the OECD.

The first step was the reform through Law No. 9296 of 18 May 2015 to article 106 quater to the Code of Tax Rules and Procedures through which the procedure called 'Procedure to request financial information for the exchange with other jurisdictions by virtue of an international agreement', which empowers the Costa Rican Tax Administration to implement the automatic exchange of information that is foreseeably relevant for tax purposes in cases in which an international agreement for the exchange of tax information is executed, and establishes that, for the purpose of implementation of the automatic exchange of information, the Tax Administration will define, by means of a general resolution, the time and manner in which financial entities and any other entity that, even without being classified as financial, carry out some type of financial activity will supply the information.

Taking into consideration that Costa Rica acceded to the Convention on Mutual Administrative Assistance in Tax Matters through Law No. 9118 of 7 February 2013, and by virtue of the adhesion of Costa Rica to the Declaration on the Automatic Exchange of Information in Matter Prosecutor of the OECD, signed in May 2014, Costa Rica has implemented the Standard for the Automatic Exchange of Financial Information in Tax Matters as the tool through which Costa Rica will exchange information automatically with other jurisdictions, annually.

Because one of the core issues that the OECD has recorded in the Multilateral Agreement between Competent Authorities on the Automatic Exchange of Information on Financial Accounts is the implementation of the 'Standard for the Automatic Exchange of Information on Financial Accounts in Tax Matters' or 'Common Reporting Standard for Financial Accounts', known as the Common Reporting Standard (CRS), which establishes that the financial institutions of the countries committed to the exchange of information that is the subject of the mentioned Convention must apply the due diligence procedure to identify the financial accounts that will be subject to the report, and in order to comply with the aforementioned international agreement, the Ministry of Finance of the Government of Costa Rica issued Resolutions No. DGT-R-006-2017 and No. DGT-R-006-2018, referring to the due diligence in the supply of information of the financial and non-financial entities for the automatic exchange of tax information according to the OECD CRS rules.



## Costa Rica

In these resolutions, the Costa Rican tax authorities define the individuals, terms, procedures, and compliance deadlines that must be complied with by entities required to provide the information foreseeably relevant for tax purposes referred to in the financial accounts that they must report, as established by the CRS. The obligation of the institutions of the financial system to submit to the Tax Administration the information referring to the accounts and payments according to the Standard for the Automatic Exchange of Information on Financial Accounts in Tax Matters, adopted by the Council of the OECD, is established and indicates the general requirements of the obligation to report by Costa Rican financial institutions, with respect to each foreign account, the general due diligence requirements, the review procedures for pre-existing accounts of individuals, review procedures for new accounts of individuals, review procedures for pre-existing entity accounts, review procedures for new entity accounts, special due diligence rules, and a series of definitions.

### ***Tax information exchange agreements (TIEAs)***

Costa Rica has a TIEA with the United States (US), effective since 12 February 1991, whereby both countries agree to exchange information, from and/or in relation to public and private entities and individuals, at the request of the party's corresponding authority in relation to any tax relevant issue.

In April 2018, with the objective of meeting the current standard of fiscal transparency established by the OECD with respect to the exchange of information for fiscal purposes and mutual assistance, the governments of Costa Rica and the United States signed a new information exchange agreement between both countries. The agreement was signed but must be submitted to the Legislative Assembly for ratification.

Under this agreement, both countries will offer assistance through the exchange of information in order to determine, settle, and collect taxes, as well as to collect and execute tax claims, or to investigate or prosecute tax matters. All this information will be treated confidentially between both parties.

This new agreement shows the commitment of Costa Rica to carry out an effective exchange of information in accordance with the standards of the Global Forum of Transparency and Exchange of Information of the OECD.

Currently, Costa Rica has valid TIEAs with Argentina, Australia, Canada, Denmark, Ecuador, El Salvador, Faroe Islands, Finland, France, Greenland, Guatemala, Holland, Honduras, Iceland, Mexico, Nicaragua, Norway, South Africa, Spain, and Sweden.

In addition, Costa Rica also signed, in 2013, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, thanks to which Costa Rica can exchange tax information with all the countries that have this convention in force; currently, 117 countries have signed it.

### ***Foreign Account Tax Compliance Act (FATCA) agreement***

In November 2013, Costa Rica's Treasury Department and the Deputy in charge of negotiations of the US embassy in Costa Rica signed an intergovernmental agreement (IGA) in which they committed to share financial information, with the objective of guaranteeing transparency in financial transactions that US citizens perform in Costa Rica, with the aim of justifying and supporting the application of the policy established in the FATCA Law. The IGA will allow Costa Rica's financial entities to comply with the provisions established in FATCA. The IGA was chosen under Model 1, in which each

entity must submit a report to the Treasury Department, and it will be this entity that is in charge of the transfer of information to the United States Treasury Department.

By means of Law No. 9296 of 18 May 2015, a vehicle by which the IGA can be implemented in Costa Rica was created. Under such Law, the Tax Code was modified to include an article 106 quater in which the obligation was established for financial entities (and any other entity that, even without being classified as such, runs any type of financial activity) to provide the Tax Administration with all the information of its clients that is foreseeably relevant for tax purposes and that is required for the implementation of international instruments that contemplate the exchange of information on tax matters in any of its modalities. Thus, such financial information may be transferred by the Tax Administration to jurisdictions with which international instruments have been subscribed that contemplate the exchange of information on tax matters.

In order to obtain said information, the judicial authorisation procedure contained in article 106 ter of this Code, or the authorisation established in article 615 of the Commercial Code of Costa Rica, will not be required.

By means of Law No. 9416 of 14 November 2016, penalties were established for those financial entities that fail to comply with the provision of the pertinent information, and it was also established that said information must be handled in a confidential manner by the tax authorities.

### ***Free-trade bilateral treaties***

Costa Rica is a full member of the Central American Common Market, which guarantees free trade among the countries of the area. It also has a free-trade bilateral treaty in force with Canada, the Caribbean Community (CARICOM), Chile, China, Colombia, the Dominican Republic, the European Free Trade Association (EFTA), Mexico, Panama, Peru, and Singapore. The US-Central American-Dominican Republic Free Trade Agreement (CAFTA-DR) entered into force on 1 January 2009. Additionally, there is a free commerce and cooperation agreement with the European Union (EU) in force since 2013. These agreements aim to provide favourable conditions for the exchange of merchandise between contracting parties.

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# ***Dominica, Commonwealth of***

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## ***Significant developments***

The Tax Information Exchange Agreements (TIEAs) with Sweden, New Zealand, and San Marino entered into force on 1 August 2017, 7 September 2017, and 8 September 2017, respectively.

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## ***Taxes on corporate income***

Resident companies are taxed on gains or profits accrued directly or indirectly from all sources, whether in or out of Dominica, and are subject to tax at a flat rate of 25%.

Non-resident companies are taxed on Dominican-source income. The gross amount of such income is liable to 15% withholding tax (WHT).

Associations of underwriters are taxed at 25% on 10% of the gross premium arising in Dominica, and life insurance companies are taxed at 25% on 20% of the gross investment income arising in Dominica.

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## ***Corporate residence***

Companies are regarded as resident if they are incorporated in Dominica or managed and controlled through a permanent establishment (PE) in Dominica.

### ***Permanent establishment (PE)***

A PE is defined in Dominica as a fixed place or premises through which the business is wholly or partly carried on. A PE includes:

- A place of management.
- A branch or office.
- A factory or workshop.
- Premises used as a sales outlet.
- A building site or construction or assembly project.
- The maintenance of plant and machinery for rental.

# Dominica, Commonwealth of

## Other taxes

### Value-added tax (VAT)

VAT applies to practically all supply of services and the import as well as domestic sale of goods or import of services, other than an exempt import. The tax is imposed at a rate of 15% of the value of every taxable supply by a taxable person in Dominica, except if the supply is classified as accommodations and diving activity, which carries a rate of 10%.

Persons operating under Dominica's VAT regime must be registered for VAT. The threshold for VAT registration is 250,000 East Caribbean dollars (XCD).

Certain transactions are zero-rated or exempt from VAT. Export sales by VAT-registered persons are zero-rated.

Certain supply of services is exempt from VAT, including services provided by financial intermediaries, schools, and medical practitioners. Exempt imports include goods imported by Dominicans returning home for permanent residence, motor vehicles imported by natural persons on change of permanent residence, unconditional gift of goods to an approved charitable organisation, other than for purposes of re-sale, etc.

Every registered person is required to file a tax return for each tax period with the Inland Revenue Division (IRD) within 20 calendar days after the end of the period, whether or not tax is payable in respect of that period. This return should be in the form prescribed by the IRD and should state the information necessary to calculate the tax.

### Customs duties

Customs duties are charged on a wide range of imported goods. On approval by the Cabinet of Ministers (Cabinet), through the advice of Invest Dominica Authority, exemptions are granted for raw materials and plant and machinery used in manufacturing and for certain items imported by hotels under construction, extension, or refurbishing projects.

### Excise taxes

Excise tax is imposed on taxable goods (other than taxable goods previously imported into Dominica) removed for consumption in Dominica from a warehouse of a manufacturer registered or required to be registered and taxable goods imported into Dominica. Excise taxes are calculated either on the chargeable value of the goods or via the authorised tariff code.

For importers, the tax is to be paid to the Comptroller of Customs before the goods are entered for use in Dominica. In the case of local manufacturers, the due date for payment is the 20th day of each calendar month.

Taxable goods include alcohol, cigarettes, petrol, and vehicles.

Tax rates are currently as follows:

Good	Excise tax rate
Stout/beer	XCD 1.2/litre
Wine	XCD 1.2/litre

Good	Excise tax rate
Shandy	XCD 0.28/litre
Brandy/ginger/vodka	XCD 8.5/litre
Whiskey	XCD 12.6/litre
Rum	XCD 2.6/litre
Cigarette	XCD 22/kilogram
Petrol (jet fuel, kerosene)	XCD 1.14/gallon
Petrol (diesel)	XCD 2.38/gallon
Petrol (gas)	XCD 3.00/gallon
Vehicles	15% and 28%
Liquor and cordial	XCD 2.6/litre

## Property taxes

There are no property taxes administered by the IRD. However, there is municipal tax, which is collected by the city and village councils. The rate varies from district to district (e.g. 1.25% on the assessed value of the property).

## Stamp taxes

Stamp tax is charged on any document that evidences a legal or contractual relationship between two or more parties. Additionally, many types of commercial and legal documents must be stamped, denoting the payment of taxes, which may be either at a fixed rate or at an *ad valorem* rate, depending, for example, on the value of the property transferred.

For a conveyance or transfer on sale of any property (except stock and debentures), a stamp duty of 6.5% on the value of the property, real or personal, transferred shall be paid, of which 2.5% shall be paid by the transferor and 4% by the transferee. A judicial fee of 2.5% and an assurance fee of 1% are also paid by the transferee. Stamp duty, as set out above, shall also be paid on any stock or shares of a company or corporation whose assets consist of 50% or more real property.

## Payroll taxes

Other than employers' social security contributions (*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.

## Social security contributions

An employer is required to remit a social security contribution (for retirement, sickness, and disability benefits) equal to 7% of an employee's gross income. The employee's share is 5%. The employer is responsible for remitting the total amount (12%) to the Dominica Social Security on or by the 14th day of the following month.

## Branch income

The tax rate on branch income is the same as that on income earned by resident companies. Every non-resident company carrying on business in Dominica is liable to WHT of 15% on such part of the profits of the business for any year of assessment as is remitted out of Dominica.

## Dominica, Commonwealth of

Where a controlled company fails to make a sufficient distribution in relation to any year of assessment, it is liable to pay tax on the undistributed profits of that year of assessment at the rate of 15%. A 'controlled company' means a resident company that is owned by not more than five shareholders, excluding the government and any company that is not itself a controlled company.

In determining the amount of a sufficient distribution, the Comptroller of the IRD shall give regard to the nature of the sources of its income and the financial resources available to it and may, where satisfied that it would be detrimental to the business of the company to regard the whole of its chargeable income after deduction of the tax payable thereon as a sufficient distribution, direct that such proportion thereof as the Comptroller may specify (hereinafter referred to as 'a retention allowance') may be retained for the purpose of the business without liability to tax.

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### ***Income determination***

#### ***Inventory valuation***

Stocks generally are valued at the lower of cost or market value. The first in first out (FIFO) and average cost methods of valuation are generally used for book and tax purposes. Obsolescence is permitted where it occurs, but there are no provisions to account for monetary inflation on inventory valuation.

#### ***Capital gains***

There is no tax on capital gains except in instances where such gains comprise a portion of the income-earning activities of the business. In such instances, the corporate tax rate applies.

#### ***Dividend income***

Dividends may be subject to tax. However, there is a tax credit given that is equal to the amount by which the tax payable of a company has been increased by the inclusion of such dividend in its taxable income.

#### ***Interest income***

The corporate tax rate applies to interest income. However, income earned on securities issued by member governments of the Eastern Caribbean Central Bank and any income accruing to the buyer, seller, or issuer from any transfer of securities that are listed on the Eastern Caribbean Securities Exchange through the facilities of that Exchange is tax exempt.

Any expenditure incurred for the purpose of producing exempt income is not deductible.

#### ***Royalty income***

Royalties received by a corporation are taxable as income from a business or property. Royalties received from Caribbean Community (CARICOM) sources are normally exempt from the payment of corporate tax.

## ***Foreign income***

Resident companies are taxed on foreign branch income as earned. Double taxation is avoided by means of foreign tax credits. There are no provisions in Dominica for deferral of foreign-source income.

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## ***Deductions***

### ***Depreciation and amortisation***

Capitals allowances are available in Dominica.

Annual allowances for wear and tear, ranging from 3% to 20%, are granted on the acquisition of industrial and commercial buildings; on plant and machinery, including motor vehicles and furniture; and on fixtures and equipment.

The Comptroller of the IRD may also grant, on application, a higher rate for annual allowance for assets that have higher or abnormal wear and tear.

### ***Goodwill***

Neither the amortisation of impaired goodwill nor the related write-off of it is an allowable deduction.

### ***Start-up expenses***

All expenditures incurred in connection with incorporation costs for the establishment of a company are deductible unless considered as capital expenditure.

### ***Interest expenses***

Interest on any loan, including interest payable on debentures, is an allowable deduction to the extent that the amount of such loan was used for the purpose of producing assessable income.

### ***Bad debt***

Bad debt expense is deductible, provided it has been brought to account in generating the company's assessable income for any income year.

### ***Subscriptions or donations***

Subscriptions or donations are an allowable deduction when made to a business or professional organisation approved by the Comptroller, where it is satisfied that the organisation is a non-profit body established with the object of maintaining and advancing the standards of the business or profession.

Contributions or donations to any charitable institution designated as an approved charity by the Order of the Cabinet are also allowable.

### ***Fines and penalties***

Fines and penalties are not allowable deductions.

### ***Taxes***

Taxes are not allowable deductions, except taxes imposed on any immovable property used for the purpose of producing assessable income.

# Dominica, Commonwealth of

## **Net operating losses**

Net operating losses may be carried forward up to a maximum five years. In carrying losses forward, the amount that can be claimed in any subsequent year is the full amount of the available loss. Losses cannot be carried back.

## **Payments to foreign affiliates**

There are no restrictions on the deductibility of interest paid to foreign affiliates if the transaction is carried out at arm's length and at commercial rates. However, deduction for management charges, which is subject to 15% WHT, is restricted to the lesser of such charges or 5% of all allowable deductions, excluding such charges and capital allowances.

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## **Group taxation**

Group tax filing is not allowed in Dominica.

## **Transfer pricing**

Related party transactions are accepted if they are made on an arm's-length basis. The Comptroller of the IRD has the power, under the Income Tax Act, to make any adjustment deemed necessary to place such transaction at arm's length.

## **Thin capitalisation**

No provision exists for thin capitalisation in Dominica.

## **Controlled foreign companies (CFCs)**

Dominica does not have tax provisions relevant to CFCs.

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## **Tax credits and incentives**

### **Foreign tax credit**

Dominica is signatory to the CARICOM Double Taxation Agreement (DTA) Order 2008, which provides relief against double taxation and seeks to prevent fiscal evasion with regard to taxes on income, profits, or gains. Where income has accrued to a resident and has been taxed in a foreign country with which there is no DTA, or is income to which a DTA, if there is one, does not relate, credit for tax on such income is allowed for the lesser of the tax payable in the foreign country or the tax charged under Dominican tax law.

### **Tax holidays**

Tax holidays are available for various types of business activities, including manufacturing companies. In the case of a manufacturing company, the incentives are aimed at increasing the manufacturing base of Dominica, the level of exports, and the use of local materials and labour in production. An approved manufacturing enterprise will be granted a tax holiday up to a maximum of 15 years. In determining the length of the tax holiday, the extent of the local value added to approved products is taken into account.



## Investment incentives

Income tax incentives and other fiscal concessions are provided under the Fiscal Incentives Act and other concessions granted by the Cabinet. The extent of the incentives and concessions granted are specific to the legislation or Cabinet conclusions and depend on the impact that the investment would have on local employment, exports, and the generation of foreign exchange earnings. The incentives granted include the following:

- Duty free importation of raw materials, machinery, components, and spare parts and other inputs used in manufacturing, and the duty-free importation of construction materials, equipment, and other inputs used in the construction and operation of hotels and other hospitality products.
- Income tax waivers of up to 100% of the taxable income of companies engaged in manufacturing, tourism, and agriculture and other employment generating activities, for periods of up to 15 years.
- Whole or partial waivers of stamp duties, Alien Landholding License fees, and WHT with respect to investments in specific areas, or in specific industries and activities.
- Export allowances for goods manufactured in Dominica and exported. Companies that engage in such activity are given tax exemption on the export of such goods up to a maximum of 10 to 15 years.

## Withholding taxes

Resident corporations and persons that make certain payments of an income nature to non-residents are required to withhold tax on these payments:

Payment	WHT (%)
Dividend	15
Interest or discounts	15
Rental, lease, premium, or licence in relation to immovable property	15
Rental of plant, machinery, equipment, or other movable property	15
Royalty	15
Management charge	15
Commission or fee, not being in respect of employment	15
Annuities or other periodic payments	15
Distribution of income of a trust	15
Any other payment of an income nature	15
Profits of a non-resident company from carrying on business in Dominica that is remitted out of Dominica	15

There is a multilateral tax treaty in existence between the member states of CARICOM that limits the WHT on interest, royalties, and management fees to 15% at source. There is no WHT on CARICOM-sourced dividend income.

There are no WHTs on payments to residents.

## ***Tax administration***

### ***Taxable period***

Returns must cover a 12-month period, which may be changed only with the Comptroller's permission.

### ***Tax returns***

Tax returns must be filed within three months of the company's fiscal year-end. An extension of the filing date may be obtained.

Financial statements must be submitted with the returns, together with a schedule reconciling taxable income with book income and various other schedules of additional information.

The system is one of self-assessment. Upon receipt of the returns, the IRD examines the information provided and issues a notice of assessment at any time, subject to the statute of limitations. The IRD may also issue assessments in the absence of returns.

### ***Payment of tax***

Tax is payable in instalments on 31 March, 30 June, and 30 September in each income year (or the end of the third, sixth, and ninth month where the accounting year of the company is other than a calendar year), based on the tax payable in the preceding income year or the estimated tax payable for the current year. Any remainder is payable on or before 31 March of the subsequent year (or the end of the third month after the end of the accounting year where the accounting year of the company is other than a calendar year).

### ***Tax audit process***

The IRD carries out audits of a selection of tax returns, usually at the taxpayer's place of business. Audits may be carried out at any time prior to the expiration of the statute of limitations, whether or not notices of assessment have been issued. The IRD has wide powers in determining the information it requires for these audits.

Within 30 days after the date of service of a notice of assessment or reassessment, the taxpayer may submit a written objection to the IRD on any matters in such assessment or reassessment. If the IRD confirms its assessment, the taxpayer may file an appeal with the Appeal Commissioners, which comprises persons appointed by the Cabinet. A decision by that body may be further appealed to the High Court. An appeal against an order from this Court may be made to the Court of Appeal.

### ***Statute of limitations***

Assessments are not final until six years after the end of the income year, within which period assessments may be made at any time. In cases of misrepresentation or failure to disclose any material fact, a reassessment can be made at any time.

### ***Topics of focus for tax authorities***

The IRD does not have any specific compliance program; however, when an audit is done, the focus is on returns that may have an incidence of tax risk, such as returns with huge losses, large refunds, questionable reporting of tax liability, and omission of income.

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### ***Other issues***

#### ***Tax Information Exchange Agreements (TIEAs)***

TIEAs provide for the exchange of information on tax matters. TIEAs with Australia, Belgium, Canada, Denmark, Finland, France, Iceland, Ireland, the Netherlands, New Zealand, Norway, San Marino, Sweden, the United Kingdom (UK), and the United States (US) are in force.

#### ***US Foreign Account Tax Compliance Act (FATCA)***

As of 19 June 2014, the United States and Dominica have reached an agreement in substance regarding FATCA, and Dominica has consented to disclose this status. In accordance with this status, the text of such intergovernmental agreement (IGA) has not been released, and financial institutions in Dominica 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.

#### ***Common Reporting Standard (CRS)***

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

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# ***Dominican Republic***

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## ***Significant developments***

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

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## ***Taxes on corporate income***

The Dominican Republic follows a territorial concept (i.e. resident companies, branches, and permanent establishments [PEs] are generally subject to taxation on Dominican-source income only); consequently, the tax treatment for corporations, partnerships, and limited liability companies is similar in most aspects.

The corporate income tax (CIT) rate is 27%.

In addition, the 1% rate assets tax is considered an alternative minimal income tax, payable when the CIT is lower than the assets tax.

Dividends/profits remitted abroad or paid locally are subject to a withholding tax (WHT) of 10% as a definitive tax payment. Free trade zone (FTZ) entities should also make the 10% withholding on profit remittance (in case of branches) or dividend distribution (subsidiaries).

## ***Local income taxes***

In the Dominican Republic, provincial and local government income taxes do not apply.

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## ***Corporate residence***

A company is considered resident when it is registered or incorporated under the laws of the Dominican Republic. Foreign entities are considered as domiciled when they are registered in the Dominican Republic as a branch or PE, and they are subject to local tax in the same manner.

## ***Permanent establishment (PE)***

According to local tax legislation, which follows the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention on Income and on Capital, a PE is defined as a fixed place of business where a foreign entity or individual performs all or part of its activities, such as:

- An address in the Dominican Republic.

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- Office.
- Branches.
- Workshop.
- Mine.
- Petroleum or gas well.
- Quarry or any other natural resource extraction place.
- Assembly projects, including supervision activities of such projects.
- Construction/supervision activities derived from the sale of machinery and equipment when its cost exceeds 10% of the sale price of such equipment.
- Consulting services, provided these exceed six months within the same fiscal period.
- Representatives or dependent or independent agents, when these act on behalf of the entity.

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## Other taxes

### **Value-added tax (VAT)**

Tax on the Transfer of Industrialised Goods and Services (ITBIS) is a VAT applied to industrialised goods (movable) and services at a rate between 16% and 18%, with exemptions established by law to certain goods and services.

Exempt goods include a wide variety of goods, among which are basic products (eggs, milk, grains, live animals, frozen meats), seeds for planting, fruits and vegetables, medicine, insecticide and pesticides, books/magazines, educational material, wheelchairs, and prosthesis.

Exempt services include educational, health, financial (including insurance), pensions, ground transportation of people and cargo, electricity, water and waste pick-up, housing rental and personal care, and exported services.

A 0% rate applies to exports, including sales to FTZs.

### **Tax on gross sales made by FTZs to local market**

A 3.5% tax was created on the gross sales of goods and services made by companies in Dominican FTZs to individuals and legal entities in the local market.

### **Customs duties**

Customs duties are assessed at various rates depending on the nature of the goods and their country of origin. Free trade agreements exist (e.g. the Central America-Dominican Republic-US Free Trade Agreement [DR-CAFTA]) that decrease the customs duty rates for goods imported from the member countries.

### **Selective consumption taxes (Impuesto Selectivo al Consumo or ISCs)**

ISC is applied to the acquisition or import of certain goods and services.

There is an ISC for alcoholic goods and cigarettes, adjusted by inflation annually:

- Alcohol: Ranges from 498.40 Dominican pesos (DOP) to DOP 540.00 for every litre of pure alcohol.
- Cigarettes: DOP 50.15 for a 20 pack and DOP 25.00 for a 10 pack.

There is a 16% *ad valorem* ISC for fossil fuel and petroleum derivatives. A DOP 2 tax (adjustable by inflation on a quarterly basis) is charged per gallon of regular and premium fuel and diesel.

There are ISCs that vary based on the product, which range from:

- 10% on the transfer of alcoholic beverages, applied on the retail price. Imports and transfers made by local manufacturers are accountable for this tax.
- 50% on the transfer of 20 units of tobacco products and 25% on the transfer of 10 units of tobacco products, applied on the retail price. Imports and transfers by local manufacturers are accountable for this tax.
- 19.5% to 130% on the consumption of certain imported goods (listed in the law) that are considered to be non-essential.
- 10% on telecommunications services.
- 16% on insurance services.
- 0.0015% on the value of cheques or wire transfers made through financial entities (this tax does not apply to cash withdrawals or credit card use).

### **Real Property Transfer Tax**

The Real Property Transfer Tax is assessed at a basic rate of 3% on any transfer of ownership of real estate.

### **Stamp taxes**

Stamp taxes have been abolished in the Dominican Republic.

### **Payroll taxes**

In addition to the social security contributions (*see below*), a 1% contribution from the payroll amount shall be made to the Governmental Training Institution (INFOTEP) on a monthly basis. This is paid solely by the employer (not subject to withholding). In addition, a 0.5% contribution shall be paid to INFOTEP, and the employer shall withhold said 0.5% contribution from employees' bonus (not salary).

Employers must share 10% of their net profits with their employees. The Dominican Labor Code, however, allows employers to cap the amount distributed as follows: an employee with less than three years on the job will receive a maximum of 45 days' salary; an employee with three years or more will receive a maximum of 60 days' salary.

### **Social security contributions**

#### **Pensions**

Employers contribute 7.10% of salaries and withhold 2.87% from employees' salaries for pensions. The quotable salaries for contribution are 20 minimum wages.

#### **Family healthcare**

Employers contribute 7.09% of salaries and withhold 3.04% from employees' salaries for family healthcare. The quotable salaries for contribution are ten minimum wages.

#### **Labour risks insurance**

Employers contribute 1.2% of salaries for labour risks insurance. The quotable salaries for contribution are four minimum wages.

# Dominican Republic

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## Branch income

Branch profits are taxed at the same rate as corporate profits. Tax Reform Law No. 253-12 imposes a 10% WHT as definite payment on remittances abroad. FTZ entities should also withhold this 10% WHT upon profit distribution.

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## Income determination

### Inventory valuation

The last in first out (LIFO) method of inventory valuation is established for tax purposes. Other methods may be authorised upon request.

Conformity between book and tax reporting is not required.

### Capital gains

Capital gains are added to ordinary taxable income and subject to the CIT rate. Capital gains are defined as the difference between the sale price of an asset and the acquisition or production price, adjusted for inflation.

### Dividend income

Dividend distributions in cash are subject to a 10% WHT as a sole and definite payment.

### Stock dividends

Stock dividends are not subject to taxation.

### Interest income

Interest income is considered as part of taxable income; in the case of non-resident, non-domiciled taxpayers, the tax should be paid through WHT.

### Royalty income

Royalty income is considered as part of taxable income; in the case of non-resident, non-domiciled taxpayers, the tax should be paid through WHT.

### Foreign income

Dominican-resident companies, branches, and PEs are subject to taxation on income from Dominican sources and on income from foreign sources arising from investments and financial gains. Tax determined on income from foreign source is subject to a credit mechanism. Taxes paid in the country where the income is originated can be credited up to the amount of the tax payable in the Dominican Republic on the same income.

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## Deductions

### Depreciation and amortisation

Depreciation allowances on fixed assets are determined by the declining-balance method at the following rates:

Assets	Depreciation rate (%)
Buildings	5
Office furniture, fixtures, computers, light vehicles, etc.	25

Assets	Depreciation rate (%)
Other assets not specified	15

The fiscal book value is adjusted by the annual inflation rate.

Amortisation of intangible assets (e.g. patents, author's rights, drawings, franchises, contracts without set expiration dates) is not deductible.

## **Goodwill**

Goodwill is not deductible.

## **Start-up expenses**

The Dominican tax legislation does not establish specific provisions regarding the deduction of start-up expenses. The general deductions rule is the accrual method.

## **Interest expenses**

Interest expenses are deductible, provided they are associated with the acquisition, maintenance, and/or exploitation of taxable income generating assets.

The interest expense deduction is limited when the beneficiary is a non-resident located in a tax haven or in a low-taxation jurisdiction, or when the interest is not otherwise subject to tax by the recipient. Thin capitalisation rules may also limit the deduction (*see Thin capitalisation in the Group taxation section*).

## **Bad debt**

Bad debts are deductible only in the year the loss is suffered. Authorisation may be obtained to use an alternative method, which consists of creating a provision allowing the deduction only in the year the bad debts qualify as doubtful, up to 4% of the balance of the accounts receivable at year-end.

## **Charitable contributions**

Donations made are tax deductible in the Dominican Republic, up to 5% of the taxable income and if the beneficiaries are registered charitable contributions.

## **Fines and penalties**

Fines and penalties are considered non-deductible expenses.

## **Taxes**

Income taxes are not deductible. Other taxes can be deductible; however, interest and surcharges imposed on taxes are not deductible in general.

## **Other significant items**

For tax purposes, the following significant items should be considered:

- Changes in methods are not allowed without prior approval.
- Bonuses paid to employees within 120 days after the end of the taxable year are deductible for the year just ended.



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## **Net operating losses**

The carryforward of losses of legal entities can be used to offset profits up to the fifth year following the year in which the losses were generated, with a maximum amortisation of 20% in each year. For the fourth year, the deduction allowed should not exceed 80% of the net taxable income. In the fifth year, the percentage is 70%.

There is no carryback loss mechanism in the Dominican Republic.

## **Payments to foreign affiliates**

Payments to foreign affiliates for royalties, interest, or service fees are deductible, provided that the 27% WHT was paid (10% on interest).

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## **Group taxation**

Group taxation is not permitted in the Dominican Republic.

## **Transfer pricing**

Per the Dominican Tax Code (DTC), related-party transactions carried out between Dominican companies, regardless of whether the companies are foreign-owned or not, or with companies located in areas of low or no taxation, must be carried out in accordance with the prices agreed in the transfer of goods or services between independent parties.

These provisions shall also apply to transactions carried out by Dominican companies with related companies located in the country that is benefiting from a favourable tax regime.

The tax authorities, following the procedures in the current tax laws in the exercise of its powers of determination, verification, or investigation, may challenge the values declared by taxpayers if such values:

- do not correspond to the economic reality of the operation involved, or
- differ substantially from independent companies under similar conditions.

Persons are considered related parties or related persons or entities, resident or not in the Dominican Republic, when among them there is a financial dependency or capital of both is mostly owned by one of them, following (but not limited to) these criteria:

- One party participates, directly or indirectly, in the management, control, or capital of the other.
- The same natural persons, companies, or firms participate, directly or indirectly, in the management, control, or capital of such parties.
- An individual, company, or companies have the ability to influence the business decisions of the company.
- When participation is defined in terms of the share capital or control of voting rights, a direct or indirect participation of at least 25% will be necessary in either case.

Regarding the advance pricing agreement (APA) regime, an APA may be requested from the tax authorities that sets the values of the transactions carried out between related parties if made prior to completion. Please note the following:

- The APA may be approved, denied, or modified by the tax authorities with customer acceptance and is valid within 36 months after approval.
- Subsequent agreements may be valid for up to 36 months; in cases in which it has expired and no new agreement exists, the existing agreement shall continue in effect until it is approved before a new APA.
- The tax authorities may challenge the taxpayers' declared values included within the APA when they do not correspond with the criteria agreed in the APA and apply the penalties established in the DTC.
- For economic sectors, whose business has particular ties or high linkage between the parties, the tax authorities may determine a minimum price or profit margin. Once such price or margin is set, according to the sector, the companies covered by the scheme will act as independent companies. The price or minimum tax profit margin of the taxpayer may be calculated taking into account the total income, the assets used in the business operations during the fiscal year, the total amount of costs and expenses, and/or other sector variables.

Finally, taxpayers must file an annual Informative Tax Return of transactions between related parties, which shall contain detailed information of each transaction, the related party's identification, transfer pricing method, etc.

### ***Thin capitalisation***

According to the thin capitalisation rule, the maximum debt-to-equity ratio allowed to taxpayers is 3:1; over this threshold, the deduction of interest expense is limited.

### ***Controlled foreign companies (CFCs)***

The Dominican Republic does not have provisions for CFCs.

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## ***Tax credits and incentives***

In the Dominican Republic, tax incentive laws exist for the following.

### ***Tourism incentives***

Law 158-01 on the Promotion of Tourist Development for New or Low Development Locations in Provinces and Areas with Great Tourist Potential, and for the Creation of the Tourist Promotion Official Fund, enacted on 9 October 2001, establishes special incentives and benefits to individuals or companies, residing in the Dominican Republic, that promote or invest capital in any tourist activity described in said Law. In order to benefit from said Law, a special Resolution shall be obtained from the Council for the Promotion of Tourism. Law No. 195-13 added other areas that could benefit from the tax incentives established in Law 158-01.

### ***Alternative energy incentives***

Law 57-07 provides significant incentives for the use and development of renewable sources of energy. The renewable energy sources subject to this law include bio-fuel, bio-diesel, ethanol, and wind, solar, and other renewable energy.

Additionally, the credit on investment expense granted to self-power producers is 40%.

### ***Industrial renovation and modernisation incentives***

The main objective of Law 392-07 about competitive development and local industrial manufacture is to promote policies and support programs for industrial renovation

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and innovation in order to diversify local production, create industrial parks, and link the country to international markets. Main benefits include VAT exemption on import of machinery and materials, priority on imports granted at customs, and accelerated depreciation.

## ***Industrial FTZ operations***

Law 8-90 about Export FTZs was created to promote employment, production, and economic growth. Entities that would like to benefit from said Law shall be engaged in manufacture/service within a confined space (FTZ park). Special FTZ classification entities, which are entities located outside an FTZ park (e.g. call centres), were abolished with Law No. 253-12. In addition to this, Law 253-12 taxed dividends paid by FTZ entities.

## ***Border development incentives***

Law No. 28-01, dated 1 February 2001, creates a special development frontier zone for industrial, agro-industrial, agriculture/livestock, metalmechanic, FTZ, tourism, metallurgical, and energy companies that exist at the time of promulgation of said law, and those that may be installed in the future within the border of the Dominican Republic and Haiti. Main incentives include 100% exemption on CIT and VAT, as well as customs duties.

## ***Foreign tax credit***

Taxes paid abroad on foreign income taxed in the Dominican Republic may be credited up to the amount of the Dominican tax liability generated by such income. The credits should be determined on a case-by-case basis.

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## ***Withholding taxes***

### ***WHT on dividends***

Dividends paid in cash to resident and non-resident individuals or corporations are subject to a WHT of 10%.

### ***WHT on transfers of shares***

There is a 1% WHT on the value of the transfer of shares received by the seller. Foreign entities are not exempt from this obligation. In this case, WHT may be made by a person appointed as WHT agent by the tax authorities.

Such WHT is a payment on account against capital gain tax, payable by the seller through the Form IR-2 (legal entities) or Form IR-1 (individuals), as applicable. However, if they can substantiate that the transaction will not generate a capital gain or that the 1% WHT would generate a capital loss, they may request of the tax authorities, no later than 30 days prior to withholding filing/payment's due date, to be exempt from this obligation.

This 1% WHT should be filed and paid to the tax authorities through the monthly WHT return (IR-17 Form) within the first ten days of the month following the payment to the seller. In case the purchaser is an individual, the 1% WHT is not applicable.

## WHT on interest payments

Financial institutions are appointed as 1% WHT agents on the value paid or credited on account for interest payments of any nature to legal entities.

The interests paid by financial institutions will constitute a deductible expense for tax purposes, provided the WHT was made.

In addition, this rule obligates financial institutions to provide a monthly electronic file, directly to the tax authorities or through the Banks Superintendency, containing all the information related to the interest payment, including the date, value, and identity of the beneficiary.

## WHT on payments to foreign corporations

The WHT on payments to foreign corporations, which are not permanently established in the Dominican Republic, are as follows:

Recipient	WHT (%)			
	Dividends and interest	Royalties	Technical assistance	Other services
Non-treaty	10	27	27	27
Treaty:				
Canada	0/10 (1)	18	27	27
Spain	0/10 (2)	Up to 10	N/A	Up to 10

### Notes

- 0% or 10% depending on the type of ownership since the Canada-Dominican Republic Treaty contains the more beneficiary treaty clause.
- 0% or 10% depending on if the Spanish parent company has more than 75% participation in the Dominican subsidiary. Branches are not subject to profit remittance tax.

## Tax administration

### Taxable period

The DTC establishes as year-end one of the following: 31 December, 31 March, 30 June, or 30 September. Once the year-end is selected, any change should be authorised by the tax authorities.

### Tax returns

The Corporate Annual Tax Return (Form IR-2) must be filed within 120 days after year-end. Tax authorities may allow extensions of up to 60 days, upon request.

Tax returns are based on self-assessment and must be filed on electronic forms supplied by the internal tax department.

### Payment of tax

The balance of any tax due must be paid no later than the due date for filing the return. Corporations domiciled in the country and PEs of foreign enterprises shall be obligated to make advance payments on the 15th day of every month for tax related to the period in progress.

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## ***Tax audit process***

The audit cycle is not established by law or practice. During the statute of limitations, tax authorities select the taxpayers subject to audit based on internal criterion.

## ***Statute of limitations***

The statute of limitations is three years, and five years if the entity has been notified of a tax audit, counting from the filing due date.

## ***Topics of focus for tax authorities***

Among the topics of focus for the tax authorities are: non-deductible expenses, withholdings, VAT, and proportionality of VAT credits.

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## ***Other issues***

### ***United States (US) Foreign Account Tax Compliance Act (FATCA)***

In December 2016, the Dominican Republic and United States signed an intergovernmental agreement (IGA) to improve the international tax compliance regarding FATCA, which is supported by a previous signed agreement between the United States and Dominican Republic referred to as 'Tax Information Exchange Agreement'. Additionally, local financial entities signed a bank information exchange agreement with the US income tax authorities on 15 July 2014.

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# ***El Salvador***

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## ***Significant developments***

### ***Criteria regarding the consideration of a jurisdiction as a preferential tax regime***

In September 2017, the tax administration issued guideline DG-001/2017 by which it is updating previous criteria regarding the consideration of a jurisdiction as a preferential tax regime or a low or no-tax jurisdiction by indicating that any jurisdiction not specifically named in the guide that grants an exemption on income tax (or other taxes with a similar or identical nature) or has such a tax that is inferior by more than 80% of the income tax that would be due in El Salvador will be considered a preferential tax regime or a low or no-tax jurisdiction, as well as holding companies, principal companies, auxiliary or mixed companies, service companies, finance branches, family wealth management companies, headquarters of multinational companies (SEM for its acronym in Spanish), international trusts, companies with which international financial lease contracts are celebrated, and international business corporations, among others.

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## ***Taxes on corporate income***

The corporate income tax (CIT) rate is 30%, and this rate is applicable on the total amount of the company's revenues.

CIT is based on the principle of territoriality, and, by general rule, taxes are paid on goods located, activities realised, and capital invested in El Salvador as well as on services rendered or utilised in the country. Nevertheless, there is a special rule regarding securities and financial instruments, since such income is considered to be obtained in El Salvador if the issuing entity is domiciled in El Salvador.

Taxable income is equal to gross income net of costs and expenses considered necessary for generating and maintaining the related source of income and other deductions allowed by law. Gross income is comprised of income or profits collected or accrued, either in cash or in kind, from any sources in El Salvador.

Corporations are required to follow the accrual method of accounting.

### ***Minimum payment of income tax***

Minimum payment of income tax was declared unconstitutional in April 2015.

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## ***Income tax advance payment***

A 1.75% tax is applied to gross revenues accrued. This tax is paid monthly as an advance payment that is applied against the CIT at the end of the year.

## ***Special Contribution of Large Taxpayers for the Public Safety Plan***

The Special Contribution of Large Taxpayers for the Public Safety Plan taxes domestic and foreign legal entities with net earnings greater than 500,000 United States dollars (USD) within a fiscal year through a special contribution of 5% of the total amount thereof, which must be filed by a return within the first four months of the following year.

Entities that benefit from tax incentives under special regimes, such as the free zone program and the international services program, are also subject to the contribution tax.

The 5% contribution tax is in addition to the 30% CIT and the 5% withholding tax (WHT) applicable to dividend distributions (25% if the parent company resides in a tax haven). The special contribution tax is not deductible for CIT purposes.

The taxable base consists of 'net gains' obtained during the tax year (1 January to 31 December). Income partially or totally exempt from CIT is still subject to the special contribution. 'Net gains' means net income subject to CIT plus excluded or exempt income reduced by expenses related to that excluded or exempt income.

Taxpayers must inform the Salvadoran tax administration of the total amount of gains subject to this tax and the corresponding tax liability by means of a specific tax return that must be filed within the first four months of the following year (i.e. 1 January to 30 April of the following year).

## ***Local income taxes***

There is a municipal tax related to taxpayers' income. This tax depends on the location of the operations where the taxpayer performs its activity.

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## ***Corporate residence***

A company incorporated in El Salvador is a resident entity in the country for tax purposes and subject to CIT on Salvadorian-source income. Also, branches from foreign companies authorised in El Salvador and entities operating as a permanent establishment (PE) are considered resident entities for tax purposes and subject to CIT on Salvadorian-source income.

The general rule for the determination of the corporate domicile is that it will be the one established on the incorporation document.

## ***Permanent establishment (PE)***

A foreign resident creates a PE in El Salvador when corporate activities are performed through one of the following:

- A fixed place of business where partially or totally developed business activities or personal independent services are carried out (e.g. branches, offices, factories, workshops, locations of natural resource exploitation).

- A different person, who is not an independent agent, who has the following qualities: (i) acts on behalf of the subject, (ii) has authority to conclude or carry out contracts in the subject's name, and (iii) habitually exercises this authority to conclude or carry out contracts in the subject's name.
- A construction/installation project or a supervision activity that exceeds six months.

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### Other taxes

#### Value-added tax (VAT)

VAT (i.e. *Impuesto al Valor Agregado* or IVA) is levied at a rate of 13% over the taxable amount. As a general rule, the taxable amount is the price or remuneration agreed upon by the parties. For imports, the taxable amount is the customs value.

The following transactions are subject to VAT when performed within the Salvadoran territory:

- Transfer/sale of tangible movable goods.
- Withdrawal of tangible movable goods from the inventory made by the company for self-consumption by its partners, directors, or personnel.
- Import of goods and services.
- The supply of services of any type, whether permanent, regular, continuous, or periodic, including technical advice and project designs; lease and sublease agreements over tangible goods; lease and sublease agreements over real estate for commercial purposes; lease of services in general; construction of real estate properties or building contracts; auctions; freight, whether inland, air, or maritime; and lease, sublease, and any form of use regarding trademarks.

The following imports are exempt from VAT:

- Imports made by diplomats and consulate representatives of foreign nations with presence in the country according to international agreements adopted by El Salvador.
- Imports made by international organisations to which El Salvador is a party.
- Traveller's luggage according to customs regulations.
- Donations to non-profit organisations.
- Imports made by municipalities if the goods imported are for the public benefit of the community.
- Imports of machinery by taxpayers duly registered for this purpose, which will be part of the taxpayer's fixed assets.
- Vehicles for public transportation, which can only be transferred after five years.

The following services are exempt from VAT:

- Health services rendered by public institutions.
- Lease and sublease of real estate properties for housing.
- Services rendered under a labour relationship, as well as those rendered by public and municipal employees.
- Cultural public performances authorised by competent authorities.
- Educational services rendered by authorised entities, i.e. *Ministerio de Educación* (the Ministry of Education).
- Interest on deposits and loans provided by local financial institutions or entities registered at the Salvadoran Central Bank (BCR).



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- Interest on securities issued by the government and/or private entities traded through a stock exchange.
- Water supply by public institutions.
- Public transportation.
- Insurance premiums covering individuals, and reinsurance in general.

VAT is levied on exports at a rate of 0%. Foreign-source income is not subject to VAT.

VAT paid by a registered taxpayer company on its purchases (tax credits) is credited against VAT charged to its customers (tax debits) on a monthly basis.

VAT returns are filed on a monthly basis within the first ten working days of each month following the period under taxation.

### Customs duties

In El Salvador, the *Arancel Centroamericano de Importación* (Central America Import Duty) is applied, which is constituted in the *Sistema Arancelario Centroamericano* (SAC) (Duty Central American System) and its correspondent duties for import.

All duties for import are *ad valorem* and are applied at the cost, insurance, and freight (CIF) value of the merchandise. The duty is common for all the countries in Central America.

### Excise taxes

#### Tax on simple or sweetened soft drinks

An *ad valorem* tax on simple or sweetened soft drinks is levied at the rate of 10% over the selling price to the public as suggested by the manufacturer, importer, or distributor, excluding VAT and returnable bottle taxes.

#### Tax on the production and importation of alcohol and spirits

A tax is levied on domestically produced or imported alcohol and spirits at rates ranging from USD 0.09 to USD 0.16 for each 1% of alcohol volume per litre or in proportion thereof. Spirits and alcohol also have an *ad valorem* tax levied at the rate of 8% over the suggested selling price to the public, excluding VAT.

#### Tax on tobacco products

A tax is levied at USD 0.005 per cigarette, cigar, little cigarette, or other tobacco product. Also, an *ad valorem* tax is levied at the rate of 39% over the suggested consumer selling price to the public, excluding VAT.

### Special Contribution for Security and Coexistence

Effective from November 2015, a special tax is directed to providers of telecommunications services in all its forms; providers of subscription television services, by wire, wireless, or any other physical medium; service providers to transfer data between two or more points related to information provided by the user, by any means or technological means; and taxpayers that transfer technological devices, terminals, or equipment and accessories to enable the use of the services listed in Article 3 of the Law of Special Contribution for Citizen Security and Coexistence. The rate of the special tax is 5% and must apply to the taxable amount determined according to the law. This law will be applicable for the next five years.

### ***Tax on transfer of real estate property***

A 3% tax is applied to transfers of real estate property. This tax is applied to the amount by which the value of the real estate exceeds USD 28,571.43.

### ***Stamp taxes***

No stamp taxes are assessed as the pertinent law was abrogated in 1992.

### ***Capital gains tax***

Capital gains are taxed at a flat rate of 10% of net profits, except when gains are realised within 12 months following the purchase date, in which case they are taxed as ordinary income. Capital gains for securities are also subject to capitals gains tax; however, the 12-months rule described above does not apply for securities.

Capital losses can only be offset against capital gains. Whenever capital losses exceed capital gains, the remaining balance may be carried forward to future capital gains within a five-year period.

### ***Annual business tax***

Companies are required to register themselves with the Registry of Commerce and pay an annual business licence fee assessed on the company's assets, as follows:

<b>Assets (USD)</b>	<b>Fee (USD)</b>
2,000 to 57,150	91.43
57,151 to 114,286	137.14
114,287 to 228,572	228.57
An additional charge for each office, branch, or agency property of a company	34.29

If the assets exceed the amount of USD 228,572, there is an additional duty of USD 11.43 for each additional USD 100,000 in assets or fraction thereof. In any case, the relevant duties are limited to USD 11,428.57.

### ***Payroll taxes***

Entities with more than ten employees must pay a payroll tax that is destined to the National Institute of Professional Development (INSAFORP), which promotes professional development through courses and complementary studies. The percentages are summarised below:

<b>Monthly employee's salary (USD)</b>	<b>Employer's rate (%)</b>
0 to 1,000	1
Over 1,000	0

### ***Social security contributions***

Social security contributions (ISSS) are mandatory for both employee and employer and are destined to public health services. The employee's contributions are withheld from the employee's monthly salary and are transferred by the employer to the Salvadorian Institute of Social Security through monthly payrolls. The contribution amounts are summarised in the table below:

<b>Monthly employee's salary (USD)</b>	<b>Employee's rate (%)</b>	<b>Employer's rate (%)</b>
0 to 1,000	3	7.50

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Note: For individuals who have salaries above USD 1,000, the social security contribution applicable is USD 30.00 for the employee and USD 51.49 for the employer.

Contributions to the pension fund (AFP) are mandatory for both employee and employer. The employee's contributions are withheld from the employee's monthly salary and are transferred by the employer. The employer's contributions are paid to the AFP. Both contributions are reported to the Pension Fund Administrator through a monthly payroll. The percentages are summarised below:

Monthly employee's salary (USD)	Employee's rate (%)	Employer's rate (%)
0 to 6,500.00	7.25	7.75

### ***Tax on Financial Operations***

A tax on the amount paid for any type of check and electronic transfer in the country has been established. The taxable events are debits on deposit accounts and money orders or wire transfers corresponding to:

- Payments by electronic transfer when the transaction value exceeds USD 1,000.
- Transfers to third parties, in any form or by any technological means, when the value of the transaction exceeds USD 1,000.
- Disbursements of loans or financing of any kind.
- Transactions between the entities of the financial system, based on any instruction of their clients or for their own interest.

These transactions are taxable at a rate of 0.25% on the amount of the transactions.

Additionally, the Law of Tax on Financial Operations introduced a WHT to control liquidity, which consists of a deduction of 0.25% on the excess of USD 5,000, originated from operations deposits, payments, and cash withdrawals, individually or cumulatively, in each month.

### ***Municipal taxes***

Municipal taxes are assessed according to a progressive tariff list issued by each municipality. The taxes are applicable to the company's assets located in each municipality and are paid on a monthly basis. The tariff lists are applied separately to commercial, industrial, and financial sectors.

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### ***Branch income***

In El Salvador, tax rates on branch profits are the same as for domestic corporations. Dividends and profits paid or credited by headquarter (HQ) representatives, affiliates, branches, subsidiaries, agencies, and others not domiciled in El Salvador are subject to 5% WHT (25% if paid to a tax haven as considered by the Salvadoran tax administration).

The law does not provide separate treatment for administrative offices located in El Salvador.

The general regulations indicate that branches, agencies, and/or establishments permanently operating in the country, with owned or leased installed infrastructure, employing domestic staff, and performing their economic activities in a material and

perceptible manner in the country are subject to the same taxes as companies duly incorporated.

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### ***Income determination***

In El Salvador, income is considered taxable if it is obtained from goods located in the country, activities undertaken within the national territory, or services rendered or utilised in the country.

### ***Inventory valuation***

For tax purposes, taxpayers are authorised to use any one of the following inventory methods, provided they are technically appropriate for the particular business, consistently applied, and easily audited:

- Purchase or manufacturing costs.
- Last purchase costs.
- Direct average allocation costs.
- Average costs.
- Last in first out (LIFO).
- First in first out (FIFO).
- Specific methods for fruits and farm products.
- Specific method for cattle.

Other than the methods enumerated above, taxpayers are not permitted to use other methods for valuing their inventories except with prior authorisation of the tax office, provided that in the latter's judgement the method in question contains clear determination and *bona fide* elements available to the office. Once an inventory valuation method is adopted, the taxpayer may not change it without the tax office's prior authorisation.

### ***Capital gains***

Capital gains are subject to capital gains tax, except when gains are realised within 12 months following the purchase date, in which case they are taxed as ordinary income. Capital gains for securities are also subject to capitals gains tax; however, the 12-months rule described above does not apply for securities. *See Capital gains tax in the Other taxes section for more information.*

### ***Dividend income***

Cash profits or dividends remitted or credited to shareholders are subject to a 5% WHT (25% if paid to a tax haven as considered by the Salvadoran tax administration).

### ***Interest income***

Interest income is taxable in El Salvador when the entity paying the interest is resident in El Salvador, when the capital is invested in the country, and when the risk is assumed in El Salvador.

### ***Partnership income***

Partnership income is taxable if it is Salvadorian-source income; nevertheless, no specific provisions exist in El Salvador regarding partnership income.

# El Salvador

## Rent/royalties income

Rent and royalties income is taxable if it is Salvadorian-source income; nevertheless, no specific provisions exist in El Salvador regarding rent and royalties income.

## Condoned debts

Condoned debts are considered taxable income and must be included as part of the income generated in that fiscal period.

## Foreign income

Under the territoriality source of income principle, extraterritorial income is not taxable in El Salvador, with the exception of income and other benefits from securities and other financing operations. In this case, interest arising from loans granted to a resident of El Salvador is considered as taxable income, and the person or entity making the payment should withhold 10% of the interest. If financial services are rendered between related parties, the withholding must be at 20%.

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## Deductions

All business expenses considered necessary to produce taxable income and/or maintain income sources (e.g. freight, marketing, power, telecommunications, water, salaries, lease contracts, merchandise and transport insurance, fuel, and interest paid on loans used by income generating sources) are deductible for income tax purposes.

## Depreciation and amortisation

Depreciation is calculated using the straight-line method, which results in the following maximum annual rates for determining depreciation deductions.

Assets	Rate (%)
Buildings	5
Machinery	20
Vehicles	25
Other movable assets	50

Depreciation of new software is permitted at a rate of 25% of purchase or production costs.

Amortisation of goodwill, trademarks, and other similar intangible assets are not deductible for income tax purposes.

## Start-up expenses

In El Salvador, there is not a special regulation for expenses related to the starting up of a company.

## Interest expenses

Interest expenses are deductible if the amount of the loan is invested in a source that generates taxable income.

## Bad debt

In El Salvador, bad debt is deductible if the following requirements are presented:

- The debt is generated from the business activity.
- The debt had been registered as taxable income.
- The debt is registered in the accounting system.
- The debt has been expired for 12 months.

### ***Charitable contributions***

The deductibility of charitable donations is limited to 20% of the donor's net income after deducting the donation amount.

### ***Fines and penalties***

In general, penalties, late payment charges, and fines of that type are not deductible.

### ***Taxes***

Taxes paid are not deductible.

### ***Net operating losses***

Operating losses cannot be carried forward to future years or carried back. Capital losses, however, may be carried forward to offset capital gains for five years.

### ***Payments to foreign affiliates***

Remittance of royalties, interest income, and service fees to foreign affiliates are deductible, provided proper contracts are in place, the corresponding withholdings are applied (i.e. 20% WHT for non-domiciled entities, 25% for entities domiciled in tax havens), and there is sufficient evidence that these services have actually been received.

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## ***Group taxation***

There are no grouping rules in El Salvador between independent entities. Each entity, even if related, is treated separately and must report and pay their taxes independently.

### ***Transfer pricing***

In El Salvador, it is mandatory for entities that have operations with related parties or with entities resident in tax havens to undertake these operations in compliance with the arm's-length principle.

Local tax authorities can establish the value of the operations according to market prices rules if, according to their point of view, these operations have not been undertaken according to the arm's-length principle.

### ***Thin capitalisation***

Interest, commissions, and any other payments from financial, insurance, or reinsurance transactions entered into by the taxpayer (borrower) shall not be deductible when, among others, the lender or provider of insurance or reinsurance services is a related subject or is domiciled, incorporated, or located in a country, state, or territory with a preferential tax regime of low or zero tax or considered a tax haven and the debt for credit operations, insurance, or reinsurance exceeds the result of multiplying three times the value of assets or average taxpayer (borrower) equity.

# El Salvador

## ***Controlled foreign companies (CFCs)***

There are no CFC rules in El Salvador.

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## ***Tax credits and incentives***

El Salvador offers a wide range of incentives to attract foreign investment and drive new commercial and industrial developments. There are also no restrictions on foreign ownership or on mergers, acquisitions, or joint ventures.

There are four specific laws in El Salvador that seek to encourage foreign investment by improving the country's competitiveness in all areas involving the granting of tax incentives. These laws are the Industrial and Commercial Free Zone Law, the Law of International Services, the Renewable Energy Incentives Law, and the Tourism Law.

The Industrial and Commercial Free Zone Law No. 405, dated 3 September 1998, grants companies the following incentives:

- CIT exemption.
- VAT exemption.
- Municipal tax exemption.
- Exemption from real estate transfer taxes when land is intended to be used for productive activities.
- Exemption from duties for imports on machinery, raw materials, equipment, and intermediate goods used for production.
- An option to sell merchandise or services linked to international trade produced in the free zone in the Salvadoran market as long as the corresponding import taxes, CIT, VAT, and municipal taxes are paid on the final goods or services.

Any foreign company may establish and function in a free zone or bonded warehouse and benefit from these incentives if they are engaged in production, assembly, manufacturing, processing, transformation, or commercialisation of goods and services and/or rendering of services linked to international or regional trade, such as gathering, packaging and repackaging, cargo consolidation, distribution of merchandise, and other activities connected or complementary to them.

The Law of International Services No. 431, dated 11 October 2007, grants the same benefits as the Free Zone Law, but the beneficiaries are companies operating in Service Centres specially created according to this law and dedicated to international services as defined therein.

The Renewable Energy Incentives Law provides customs duties exemption on imports of machinery, equipment, and materials for up to ten years, income tax exemption for a period of five to ten years, and total tax exemption on revenues from the sale of Certified Emission Reductions, when certain requirements are met.

The Tourism Law indicates that, with a minimum investment of USD 25,000, a company can qualify as a tourist project of national interest and obtain benefits such as total exemption from real estate transfer tax for the acquisition of property destined for the development of the project, exemption from customs duties on the importation of assets, total exemption from income tax for up to ten years, and partial exemption of municipal taxes for a period of five years.

## Foreign tax credit

There is no foreign tax credit available in El Salvador.

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## Withholding taxes

Payments or amounts credited to non-residents arising from income obtained in El Salvador are subject to a 20% WHT. Income earned in El Salvador covers income from assets located in the country, from any activities performed or capital invested in the land, and from services rendered or used in the national territory, regardless of whether they are provided or paid outside the country. Income from services used in the country is income earned in El Salvador by the service provider, irrespective of whether the relevant income generating activities are performed abroad. Note that payments to foreign entities located in tax haven regimes are subject to a 25% WHT. Guidelines issued by the Salvadoran tax administration list the territories and countries considered as tax havens for El Salvador tax purposes.

In September 2017, the tax administration issued guideline DG-001/2017 by which it is updating previous criteria regarding the consideration of a jurisdiction as a preferential tax regime or a low or no-tax jurisdiction by indicating that any jurisdiction not specifically named in the guide that grants an exemption on income tax (or other taxes with a similar or identical nature) or has such a tax that is inferior by more than 80% of the income tax that would be due in El Salvador will be considered a preferential tax regime or a low or no-tax jurisdiction, as well as holding companies, principal companies, auxiliary or mixed companies, service companies, finance branches, family wealth management companies, headquarters of multinational companies (SEM for its acronym in Spanish), international trust, companies with which international financial lease contracts are celebrated, and international business corporations, among others.

Payments to resident individuals with respect to services rendered, other than under a labour relationship, are subject to a 10% WHT.

Income received from securities listed on the Salvadoran stock exchange by entities not resident in El Salvador is subject to a reduced WHT rate of 3%.

The acquisition of intangible goods among resident entities in the country is subject to a 10% WHT.

Certain transactions are subject to a reduced WHT rate of 5%, such as the following:

- Dividends (*see Dividend income in the Income determination section for a description of the WHT on dividends*).
- International transport services paid to non-residents.
- Insurance services, re-insurances, and bondings paid to non-residents.
- Payments for transfer of intangible assets or use of the rights to intangibles and tangible assets related to films, movies, music records, cable TV, satellite, etc.

*See Foreign income in the Income determination section for a description of the WHT on interest.*

Moreover, a treaty to avoid double taxation exists between El Salvador and Spain, this treaty established reduced WHT, such as the following:



## El Salvador

- 12% WHT (or 5% since the local rate is more favourable to the taxpayer) made to dividend payments. Note that the payment is exempt from WHT if the dividend is paid by a local entity to a Spanish company that owns 50% or more of the capital of the local entity.
- 10% WHT made to interest payments.
- 10% WHT made to rent and royalties payments.
- 10% WHT made to payments for services.

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### ***Tax administration***

National taxes, fees, and other contributions on all types of goods, services, and income in El Salvador are levied by the National Congress. Local governments (municipalities) may suggest contribution rates and propose their approval to the National Congress by way of a specific law.

The Ministry of Finance (*Ministerio de Hacienda*) controls the state's finances and defines and guides the government's financial policy. It also harmonises, directs, and implements its policies on taxation through its agencies.

### ***Taxable period***

In El Salvador, the fiscal year is from 1 January to 31 December.

### ***Tax returns***

CIT annual returns must be filed each year no later than 30 April, following the end of the year under taxation.

### ***Payment of tax***

Taxes are due on the date established for filing the tax returns. In El Salvador, tax payments are made together with the filing of tax returns, and payments must be made at the banks of the local financial system.

In addition, public and private legal entities resident in the country for tax purposes, other than farm and cattle concerns, are required to make advance income tax payments at 1.75% of gross revenues. These advance payments are due, together with the corresponding return, within ten working days following the corresponding calendar month and are ultimately applied against the CIT at the end of the year.

### ***Tax audit process***

In El Salvador, the audit cycle is constituted by the following steps:

- The tax administration issues a resolution of an auditor designation.
- The requirement of financial information of the company.
- The requirement of complimentary documentation to verify possible issues.
- The tax administration issues an audit report where the issues are expressed.
- A resolution hearing is issued by the tax administration, which gives the taxpayer the right to provide evidence to refute the issues made by the mentioned authority.
- Final resolution is determined regarding the complimentary tax or the penalties to be paid.

### ***Statute of limitations***

In El Salvador, the statute of limitations for the compliance of the payment of tax debts is ten years.

The tax administration's power to perform a tax audit is for three years in the case of tax returns presented on time by the taxpayer; five years in the case of tax returns presented in a delayed way, but this time is going to start from the day after the extemporary presentation; and five years in cases where the taxpayer has not presented the tax return.

### ***Topics of focus for tax authorities***

In El Salvador, when the tax administration performs a tax audit, it focuses on the following topics:

- Compliance of the transfer pricing rules, this can be considered as the main element for the tax authorities.
- Compliance of the obligations held with non-domiciled subjects, especially those domiciled in tax havens.
- Deductions.
- VAT issues.

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# Guatemala

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## ***Significant developments***

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

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## ***Taxes on corporate income***

The tax system of Guatemala is a unitary system, whereby income of all kinds, other than capital gains, is lumped together and subject to a single tax. The components of gross income subject to tax are usually business income, interest, dividends, rent, salaries, and services. Companies are subject to income tax only on their Guatemala-source income. Dividends and other income payable abroad are taxed separately by way of withholding taxes (WHTs).

For income tax purposes, there are two main systems that taxpayers may subscribe to: the system on earnings from lucrative activities and the simplified optional system on income from lucrative activities. The taxpayer chooses what system the company is registered for. Once a system is chosen, it cannot be modified until the next tax period. The request for the modification must be requested before the tax authorities at least one month prior to the new tax period.

These systems are explained below.

### ***System on earnings from lucrative activities***

Under the system on earnings from lucrative activities, the tax is determined and paid at the end of each quarter, without prejudicing the end-of-period final tax liquidation. The tax rate is 25% on net income.

This system allows taxpayers to deduct costs and expenses incurred during the period, according to requirements established by law.

### ***Simplified optional system on income from lucrative activities***

Under the simplified optional system on income from lucrative activities, the tax is payable under flat tax withholdings (the tax is to be retained by either the customer or the recipient of services) or by direct remittances to the tax office made monthly within the first ten working days of the month following the invoice date. The tax rate is 5% on gross income that ranges from 0.01 Guatemalan quetzales (GTQ) to GTQ 30,000 and 7% on the excess.

# Guatemala

## **Local income taxes**

There are no specific state or provincial government taxes on income other than the two systems previously described.

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## **Corporate residence**

The place of incorporation determines corporate residence. Entities incorporated under Guatemalan laws are required to have their fiscal and corporate residence in Guatemalan territory.

## **Permanent establishment (PE)**

PE includes activities conducted in the country in a continuous manner, either in a fixed business place or facilities conducting work of any kind, except for insurance and refinancing activities, brokers, independent agents, etc. acting in the normal turn of events.

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## **Other taxes**

### **Value-added tax (VAT)**

A 12% VAT is levied on the sale or transfer of merchandise and on non-personal services rendered or effected in Guatemala. The tax is payable to the government by way of the invoice method, whereby the tax charged to the customers is offset by the VAT paid over purchases, and the government collects the net resulting amount. The issuance and circulation of credit titles is VAT-exempt.

### **Sale of goods**

The taxable amount on the sale of goods includes the sales price, less any discounts provided under sound commercial practices, plus other charges shown on the invoice.

### **Services**

The taxable amount of services includes the price of the service, less any discounts provided under sound commercial practices, plus financial charges and products used to render the services.

### **Imports and leases**

The tax base for imports is the value declared for import duties computation purposes.

The tax base for leases of movable or immovable property is the value of the lease.

### **Exempted sales and services**

The following items are exempt from VAT:

- Importations made by:
  - cooperatives legally constituted as registered on imported machinery, equipment, and other goods relating to the activity or service of the cooperative
  - individuals and juridical entities under temporary importation regulations, and
  - diplomatic and consular missions accredited before the Guatemalan government.
- Banking institution services and their agents.

- The issuance, circulation, and transfer of credit bonds, value bonds, and stocks of any kind.
- Interest accrued by credit bonds and other obligations issued by mercantile partnerships, negotiated through an authorised stock exchange.
- Exports of goods and services.
- Contributions and donations to educational, cultural, assistance, or security service partnerships, constituted as not-for-profit entities.

## VAT return

The amount payable to the *Superintendencia de Administración Tributaria* (SAT), Guatemala's tax authority, is the difference between the debits and credits accrued during the tax period (one month) and is paid monthly by filing a tax return in the calendar month following the end of each tax period.

## Refunds of VAT

The VAT credit can be claimed on monthly, quarterly, or semiannual tax periods. The refund of VAT credit corresponds to exporter taxpayers who cannot offset the VAT credit with VAT debits.

In addition, the VAT credit can be claimed by those taxpayers who have a high percentage of sales to entities exempt from VAT.

## Import duties

The Customs Duties on Imports (DAI) are contained in the Central American Tariff System (SAC), which contains the tax rates applicable to goods imported into the Guatemalan Territory, ranging from 0% to 20%.

The import duties apply to the customs value declared by the importer.

## Excise taxes

Excise taxes are applicable to specific activities, such as fuel distribution tax, alcohol and beverages distribution tax, and tobacco distribution tax.

## Fuel distribution tax

Product	GTQ per gallon
Premium fuel	4.7
Regular fuel	4.6
Aviation fuel	4.7
Diesel/gal oil	1.3
Kerosene (DPK)	0.5
Avjet turbo fuel	0.5
Naphtha	0.5
Petroleum liquid gas	0.5

## Alcohol and beverages distribution tax

Product	Rate (%)
Beers	6.0
Other fermented cereal drinks	6.0
Wines	7.5
Sparkling wines	7.5

# Guatemala

Product	Rate (%)
Vermouth wines	7.5
Ciders	7.5
Distilled alcoholic beverages	8.5
Alcoholic mixed beverages	7.5
Fermented drinks	7.5

## Tobacco distribution tax

Tobacco distribution tax is 100% of the factory selling price of a 10-pack package.

## Real estate taxes

Real estate taxes are assessed annually at GTQ 2 per thousand on declared property values from GTQ 2,000 to GTQ 20,000, at GTQ 6 per thousand on values from GTQ 20,000 to GTQ 70,000, and at GTQ 9 per thousand on values in excess of GTQ 70,000 (e.g. property valued at GTQ 1 million will pay real estate taxes of GTQ 9,000).

## Transfer of property

VAT is payable on the first sale of real estate, and subsequent sales are taxed under the stamp tax regime.

## Stamp taxes

Other than sales invoices, contracts, and documents subject to VAT, and other minor exemptions, a stamp tax must be paid on all documents covering commercial and legal transactions (e.g. collection of dividends), either by preparing the document on *papel sellado*, which is special stamped paper, or by affixing stamps on the documents. This tax is also assessed on documents issued abroad, other than drafts or promissory notes and commercial invoices from foreign suppliers. Letters of credit and acceptances involving international transfers of funds are generally exempt from stamp taxes.

The normal tax rate is 3% and is calculated on the face value of the documents or on the gross value of the related transaction.

The stamp tax on dividend payments or credits has been repealed, and a 5% income tax should be paid on dividend payments or credits in account equity.

## Solidarity tax (*Impuesto de Solidaridad* or *ISO*)

The ISO tax rate of 1% is assessed on the net assets of a corporation, or on the gross income of a corporation, whichever is higher, and there is no limit on the amount to be paid. Tax paid may be credited against the corporation's income tax. If the ISO exceeds the income tax, no reimbursement is possible.

The tax is to be paid quarterly on the basis of the corporation's opening balance sheet for each fiscal period.

## Payroll taxes

There are no payroll taxes other than social security contributions (*see below*).

## Social security contributions

Corporations contribute 12.67% of their monthly payroll and employees contribute 4.83% of their monthly salary to social security.

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## ***Branch income***

In Guatemala, branches are taxed as any other legal entity. There are no specific taxes for branches.

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## ***Income determination***

### ***Inventory valuation***

For tax purposes, taxpayers are authorised to use any of the following methods for valuing stocks (i.e. inventory), provided they technically fit the taxpayers' business and are consistently applied:

- Cost of production.
- First in first out (FIFO).
- Weighted average.
- Historical price of assets.
- Estimated cost at a fixed price (additional for livestock activities).

### ***Capital gains***

The regime of capital income, capital gains, and capital losses is established with the following tax rates:

- Real estate equity income: 10%.
- Income from trading movables: 10%.
- Capital gains and losses: 10%.
- Incomes from lotteries and raffles: 10%.

Capital losses can be netted only against capital gains, up to a maximum of two years.

### ***Dividend income***

Dividends earnings and profits are subject to a 5% income tax.

### ***Interest income***

All interest income is subject to a 10% income tax.

### ***Royalty income***

Royalties are taxed at a 15% WHT rate.

### ***Foreign income***

Foreign-source income received by a domestic corporation is non-taxable under Guatemalan income tax law, provided that it does not relate to a service or activity rendered in Guatemalan territory.

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## ***Deductions***

Taxpayers under the system on earnings from lucrative activities may deduct costs and expenses from gross income, including the following.

# Guatemala

## Depreciation

Depreciation is calculated annually using the straight-line method. The tax authority may authorise a different method on request of the taxpayer. The annual maximum rates allowed as deductible expenses are the following:

Asset	Rate (%)
Building and improvements	5
Machinery and equipment	20
Furniture and fixtures	20
Vehicles	20
Tools	25
Tree and vegetable species	15
Computer equipment	33.33
Any other depreciable asset	10

## Intangible assets

Intangible assets (e.g. goodwill, trademarks, manufacturing processes, patents, software, know-how) may be deductible under the straight-line method of amortisation over a period that depends on the conditions of the acquisition or creation of the intangible asset concerned, and cannot be less than five years. Goodwill actually paid can be amortised over a period of a minimum of ten years.

## Start-up expenses

Start-up expenses are deductible.

## Interest expense

The deduction of interest expense may not exceed the result of multiplying the interest rate by three times the average net total assets reported by the taxpayer in the corresponding annual tax return.

## Uncollectible accounts

Uncollectible accounts arising in normal business operations can be deducted individually or, alternatively, via an allowance for doubtful accounts, which shall not exceed 3% of the debit balances of accounts and notes receivable.

## Charitable contributions

Duly proven donations made to the government, the municipalities, and their agencies, as well as to duly authorised not-for-profit welfare, social service, and scientific associations and foundations, universities, political parties, and guild entities, are deductible. The maximum deductible amount for income tax purposes of each period shall not exceed 5% of the donor's net income, up to a maximum of GTQ 500,000 per year.

## Employee pension/retirement funds

The deduction of provisions to establish or increase employee pension and retirement funds or reserves is allowed, provided the government approves the related plans.

## Severance compensation payments

Severance compensation payments are allowed as deductible expenses as well as limited allocations (not to exceed 8.33% of total annual salaries and wages) to a



reserve for severance compensation. Provisions pertaining to actual liability for severance compensation per year are also allowed, provided the related plans, based on collective bargaining agreements, are approved by the employer and employees.

### ***Fines and penalties***

Charges, penalties, and interest charged by any government institutions are not deductible.

### ***Taxes***

All taxes are deductible, except income tax and VAT when these are not considered as a cost.

### ***Net operating losses***

Operating losses may not be carried forward for deduction from otherwise taxable profits. Guatemalan laws also do not permit carryback of losses.

### ***Payments to foreign affiliates***

Deduction for royalties will be allowed, up to 5% of gross income. The deductible expenses for technical services rendered from abroad shall not exceed 5% of gross income.

Expenses incurred abroad by non-residents in connection with income earned from Guatemalan sources cannot be deducted for income tax purposes by merely having the supporting receipts, as the regulations to the law do not permit such a deduction for these purposes, unless these expenses are related with the Guatemalan company operations and these expenses are needed for generating taxable income.

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## ***Group taxation***

There is no consolidation for tax purposes, as each group entity is treated as an independent taxpayer that shall file its own tax returns.

### ***Transfer pricing***

All companies that have any transaction with a related party abroad should have a transfer pricing study.

From a Guatemalan transfer pricing perspective, the scope of application of the rules of valuation of transactions between related parties reaches any operation that has been carried out between a person living in Guatemala with a resident abroad.

Local legislation allows the selection of traditional methods and profit-based methods consistent with the Organisation for Economic Co-operation and Development (OECD) guidelines as well as a sixth method applicable to imports and exports.

Advance pricing agreements (APAs) are permitted, and it is also stated that the tax authority can reclassify activities according to its true nature in accordance with Tax Code statements.

### ***Thin capitalisation***

Thin capitalisation applies regarding deductible expenses for interest paid. The deductible amount for such costs may not exceed the value of multiplying the annual

# Guatemala

maximum simple interest rate determined by the Guatemalan Monetary Board for tax purposes by three times the amount of average total net assets submitted by the taxpayer in the annual income tax return.

Average total net assets is defined as the sum of total net assets of the previous year and total net assets at the end of the year in force (both values must correspond to the amounts filed in the annual income tax return of each period of final settlement) divided by two. Total net assets are defined by law to correspond to the book value of all goods that are actually the property of the taxpayer.

## Controlled foreign companies (CFCs)

Guatemala does not have any provisions regulating CFCs.

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## Tax credits and incentives

### Foreign tax credit

Guatemala has no provisions or agreements signed to avoid international double taxation, and no foreign tax credit is allowed.

### Drawback industries (*maquila*)

The Law of Promotion and Development of Exports Activities and Drawback Industries is known in Guatemala as *maquila*. This law seeks to promote, encourage, and develop the manufacture of products within areas controlled by the Customs Authority for export to countries outside the Central American region, as well as to regulate exporting and drawback activities.

The exporter may apply for authorisation to operate under any of the following three systems provided by the law:

- Export under a temporary admission system.
- Export under the reimbursement of duties system.
- Export under the total added national component system.

Tax incentives and benefits of the law include the following:

- Exemption of taxes, import duties, and other charges on imports of machinery and equipment, including VAT.
- Discontinuance of VAT payments on temporary raw material imports.
- Exemption of income tax for ten years on profits obtained under this law.

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## Withholding taxes

The following WHT rates apply on payments to non-resident corporations or individuals:

Payment	WHT (%)
Dividends, international freight, telecommunications (1)	5
Interest (2)	10
Royalties; salaries; commissions; professional fees; professional, technical, economic, or financial assessment	15

Payment	WHT (%)
Other	25

## Notes

- For international news transmission supplied from abroad to local entities, the rate is 3%.
- Interests will not be taxed (i.e. no withholding applies) when:
  - These interests are paid to a multilateral entity.
  - These interests are paid from a Guatemalan banking or financial entity to a similar entity abroad.

Non-residents can operate in Guatemala with or without PE; accordingly, income tax treatment depends of the circumstance as follows:

- Non-residents with PE will be subject to income tax, choosing one of the two methods of payment established for residents.
- Non-residents without PE will be subject to WHT, applying specific rates according to the nature of the services rendered.

### ***Tax treaties***

Guatemala has no tax treaties in force.

## ***Tax administration***

### ***Taxable period***

#### **System on earnings from lucrative activities**

Under the system on earnings from lucrative activities, the annual final tax liquidation period begins on 1 January and ends on 31 December of each year.

#### **Simplified optional system on income from lucrative activities**

Under the simplified optional system on income from lucrative activities, taxes are paid on a monthly basis.

### ***Tax returns***

#### **System on earnings from lucrative activities**

Under the system on earnings from lucrative activities, returns are due after the end of the fiscal period (31 December) but no later than 31 March of each year.

The income tax return shall be accompanied by the documents required by the regulations, which might include a:

- balance sheet
- statement of results of operations
- statement of cash flows, and
- statement of cost of production.

Documents must be duly certified by a professional or an independent accounting firm. The financial statements that accompany the return shall agree with both those recorded in the financial statements ledger and those destined for publication.

# Guatemala

Both the income tax return and exhibits thereto shall be signed by the taxpayers, their agent, or their legal representative or by any other responsible persons so determined by this law and the Tax Code.

## **Simplified optional system on income from lucrative activities**

Under the simplified optional system on income from lucrative activities, there is an obligation to file an annual informative tax return, which is due on 31 March of each year.

## **Payment of tax**

### **System on earnings from lucrative activities**

Under the system on earnings from lucrative activities, taxpayers are required to prepay their estimated annual income tax liability in quarterly instalments. The balance is due upon filing the return.

Taxpayers may choose one of the following procedures for computing estimated quarterly tax liability:

- Tax on income shown by partial closure of accounts or computation of presumed liquidation of operations at the end of each quarter.
- Tax on 5% of overall gross income earned during the corresponding quarter of the preceding year (5% of the 30% income tax rate equals 1.5%).
- Tax equivalent to one-fourth of the tax paid for the immediately preceding tax year.

## **Simplified optional system on income from lucrative activities**

Under the simplified optional system on income from lucrative activities, tax is payable via flat tax withholdings (the tax is to be retained by either the customer or the recipient of services) or by direct remittances to the tax office made monthly within the first ten working days of the month following the invoice date.

Taxes on income are governed by the income tax law, *Ley de Actualización Tributaria*, and its related regulations. Administration of the law is vested with the SAT.

Taxpayers registered before the tax administration under this system will settle and pay the tax through the withholding system. Persons or entities obligated to withhold are those taxpayers who pay or credit into account for the acquisition of goods and services to the taxpayers registered under this system.

## **Tax audit process**

The tax authorities can request specific information at any moment. If necessary, a tax audit can be carried out. The tax authorities must formally notify the taxpayer of any specific adjustments, and the taxpayer has 30 working days to file a response. After filing the response, the taxpayer will again be notified by the tax authorities if the adjustments are confirmed or overturned.

## **Statute of limitations**

The right of the tax administration to checks, adjustments, corrections, or determinations of tax liabilities; settle and enforce interest and penalties; and enforce payment of taxpayers must be brought within four years. In the same period, taxpayers must exercise their right of recourse for overpaid or unduly charged taxes, interest, penalties, and fines.

## ***Topics of focus for tax authorities***

The tax authorities normally focus on the following:

- Deductible expenses.
- VAT credits.
- WHT.
- Capital gains.

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## ***Other issues***

Accurate and current information regarding taxation in Guatemala is often difficult to obtain as the country lacks reporting services such as those available in other countries. It is also difficult to determine how the tax laws will be applied in practice in complex situations. The laws and regulations are limited and ordinarily cover only the most common situations. The system of legal precedent resulting from court decisions is narrowly used, and each issue is resolved by reference to the respective codes. Guatemala has shown little interest in tax planning, but it is possible to have informal consultations with the tax authorities and to obtain authoritative rulings in many cases. Discrepancies between government and management criteria are commonly brought to judgment by the Constitutional Court, whose binding sentences generally abrogate the laws in dispute.

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# Honduras

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## **Significant developments**

Since 1 January 2017, Decree No. 170-2016 reforms the tax code, establishing new tax dispositions, including the taxpayers' obligations and rights.

Effective 2 March 2017, the tax authority agreement No. 005-2017 establishes the tax levied on the production and importation of cigarettes, sodas, beer, and alcoholic beverages.

Effective 31 December 2017, all taxpayers are obligated to comply with the new Invoice, Other Fiscal Documentation, and Printers Registry Regime (*Regimen de Facturación, Otros Documentos Fiscales y Registro Fiscal de Imprenta*).

Effective 20 April 2018, the Law on the regulation of public finances, control of exonerations, and anti-evasion measures was reformed, derogating the payment of the 1.5% minimum tax, establishing that in 2018 the payments will be 0.75% of the revenues ranging from 300 million Honduran lempiras (HNL) to HNL 600 million and 1% for those that exceed HNL 600 million.

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## **Taxes on corporate income**

Honduran resident companies are taxed on territorial income. Non-resident companies are subject to corporate income tax (CIT) only on income derived from Honduran sources.

The CIT rate for a resident company is 25% of its net taxable income.

Non-resident companies providing sea, land, and aerial transport services are subject to 3% income tax on the annual gross income from Honduran sources in cases where the tax calculation resulting from the application of the CIT rate is less, based on the taxable base established by the corresponding regulation.

## **Minimum tax**

Domiciled companies that have obtained gross income equal to or greater than HNL 300 million for the 2018 fiscal year will not be subject to the payment of 1.5% minimum tax. The domiciled companies with revenues ranging from HNL 300 million to HNL 600 million will instead be subject to payment of 0.75% minimum tax, and those that exceed HNL 600 million will be subject to payment of 1% minimum tax.

# Honduras

## ***Solidarity Contribution***

The Solidarity Contribution is a non-deductible surcharge levied on all companies on taxable income over HNL 1 million. The Solidarity Contribution tax rate is 5%.

## ***Income tax anti-evasion measures***

A law created in response to tax evasion and fraud establishes payment of an income tax of 1% on gross income equal to or greater than HNL 100 million for all taxpayers who report losses for two years in a row or two out of five. The 1% tax paid will be considered as a credit in the resulting income tax, surtax, or net asset payable in the annual returns. There are some exemptions to the rule.

## ***Municipal income taxes***

### **Industry, commerce, and services tax**

Companies doing business in Honduras are levied the following municipal tax on annual gross income:

From (HNL)	To (HNL)	Range (HNL)	Tax per '000
0	500,000	500,000	0.3
500,001	10,000,000	9,500,000	0.4
10,000,001	20,000,000	10,000,000	0.3
20,000,001	30,000,000	10,000,000	0.2
30,000,001	And over		0.15

## ***Corporate residence***

The place of incorporation is regarded by Honduran authorities as the corporate residence. Non-resident companies are companies incorporated/registered outside of Honduras.

## ***Permanent establishment (PE)***

There is a provision in the transfer pricing rules that provides the following definition of PE:

“Permanent establishment is a fixed place of business where a natural or juridical person resident or domiciled in another state performs part or all of its activities in Honduras. Likewise, a foreign resident will be considered to have a permanent establishment in Honduras when it acts in the national territory through an independent agent that is not acting under the regular framework of its activity.”

There are some exceptions to the rule.

There is no treaty definition of PE since, at the present time, Honduras is not a signatory of any double taxation treaty (DTT) with another jurisdiction in the world.

## ***Other taxes***

### ***Sales tax***

Sales tax is charged on all sale and purchase transactions of goods and services made in Honduran territory.

The general sales tax rate is 15%. It applies to most goods and services, with the exception of machinery and equipment, basic grains, pharmaceutical products, raw materials for the production of non-taxable goods, petroleum products, school supplies, and insecticides, among others.

The import and sale of beer, other alcoholic beverages, cigarettes, and other tobacco products are subject to 18% sales tax.

There is a 15% sales tax applicable to some PCS, cellular, internet broadband, cable TV, and energy services, depending on the amount of consumption billed by the supplier.

There is an 18% sales tax levied on first class and business class air tickets.

## Customs duties

The duty assessed by the Honduran government at the time of customs clearance ranges between 0% and 15% for most items.

Honduras is a member of the Central American Common Market (CACM), which also includes Costa Rica, El Salvador, Guatemala, and Nicaragua. Honduras' rates on most goods from outside CACM are currently within the 0% to 15% range. Under the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR) with the United States (US), about 80% of US industrial and commercial goods can enter the region duty-free, with the remaining tariffs to be phased out over ten years. Nearly all textile and apparel goods that meet the Agreement's rules of origin are duty-free and quota-free, promoting opportunities for US and regional fibre, yarn, fabric, and apparel manufacturing (the Agreement's tariff treatment for textile and apparel goods was made retroactive to 1 January 2004).

It is necessary to first obtain the appropriate Harmonized System (HS) classification number for determining when a particular product can enter the CAFTA-DR region duty-free. With this number, it is then possible to check the country and product-specific tariff elimination schedule.

*Ad valorem* import taxes can be as high as 20%. In addition, imports are subject to the sales tax of 15% or 18% that applies to the sum of the cost, insurance, and freight (CIF) value, the *ad valorem* duty, and the customs fees.

## Excise taxes

There is an excise tax levied on the production and importation of cigarettes, sodas, beer, and alcoholic beverages.

Cigarettes are levied at HNL 433.12 per thousand units.

Excise tax on sodas, beer, and alcoholic beverages are levied according to the following table:

Description	Tax rate per litre (HNL)
Soda/other prepared drink	0.72
Beer	5.10
Wine	6.40
Brandy, cognac, vermouth	34.55
Whisky	34.55



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Description	Tax rate per litre (HNL)
Rum 40°	21.04
Rum 38°	19.99
Rum 36°	18.93
Gin, vodka, tequila, liquor, creams, prepared beverages	34.55
Aguardiente 45°	15.04
Aguardiente 40°	12.37
Aguardiente 38°	10.35
Aguardiente 30°	7.42

## **Net assets tax**

The net assets tax is an annual 1% tax on the net asset value of the company. It applies to the gross value of assets less reserve for accounts payable and any accumulated depreciation allowed under the income tax law and other deductions allowed by law. The law also allows a special deduction of HNL 3 million.

The net assets tax is in lieu of CIT when CIT is less than the amount due for net asset tax. Resident companies during their preoperative period (i.e. the period in which the company started operations but has not issued its first invoice) and companies operating in free trade zones (FTZs), among others, are exempt from the net assets tax.

Non-resident companies are not liable for the net assets tax.

## **Transfer taxes**

Transfer taxes are levied on real estate transactions at HNL 1.5 per every HNL 1,000.

## **Stamp taxes**

There are no provisions for stamp taxes in Honduras.

## **Capital gains tax**

In general, a 10% tax is applied on capital gains, regardless of the person's residence status. Under the Zolitur law territory, a special regime, the tax rate is a 4% flat tax on capital gains.

The payment of capital gains tax must be made within ten business days after the agreed amount of the transaction has been determined.

In instances where a transaction is subject to the capital gains tax and a non-resident is involved, the buyer has an obligation to withhold 4% of the transaction amount as an advance payment to this tax and must pay it to the government within ten business days of the date of the transaction.

The government offices make a corresponding 10% withholding tax (WHT) on capital gains on payments made due to purchase and sale transactions of goods, indemnifications, purchase of rights, and securities.

## **Payroll taxes and contributions**

Payroll taxes and contributions are paid by employers at the following rates:

- Social security tax contributions are assessed as follows:

- Sickness and maternity: 2.5% for employees on income, up to a maximum monthly ceiling of HNL 7,717.50 on income.
- Invalidity, old age, and death: 2.5% for employees on income, up to a maximum monthly ceiling of HNL 8,882.30 on income.
- Professional risk: 0.2% for employees on income, up to a maximum monthly ceiling of HNL 7,717.50 on income.
- Institute of Professional Education (*Instituto Nacional de Formación Profesional* or INFOP): 1% over the accrued amount.
- Housing fund (*Régimen de Aportaciones Privadas* or RAP/*Fondo Social para la Vivienda* or FOSOV): 1.5% on the excess of the employee's income of HNL 8,882.30. Note that this contribution is optional.

### Special temporary contributions

For the term of five years starting 1 January 2014:

- Under the Special Temporary Security Contribution on Financial Transactions (*Contribución Especial por Transacciones Financieras Proseguridad Poblacional*), financial transactions are subject to a contribution of HNL 2.00 per thousand or fraction of a thousand, with some exceptions.
- Companies providing mobile communication services will pay a special temporary contribution of 1% on gross monthly income.
- Under the special temporary contribution for the protection of the environment from the mining sector, there is a 2% contribution on the freight on board (FOB) value of the exports.
- The special temporary contribution from the food and beverages business under special tax regimes is 0.5% on gross monthly income.
- The cooperatives special contribution is 3.6% on annual net surplus.

### Municipal taxes

Companies doing business in Honduras are also subject to the rules and regulations of the respective municipalities. Taxes and obligations are ruled by the '*Plan de Arbitrios*'. Some of these tax obligations include the following:

- Industry, commerce, and service tax, which is based on gross income per year (see *the Taxes on corporate income section*).
- Public services fee, which is paid for services such as waste management.
- Real estate tax, which is a tax on urban and rural real estate.
- Sign tax, which is a tax on public advertising.

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## Branch income

Branch income is subject to income tax on income generated from a Honduran source at the rates applicable for corporate income.

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## Income determination

Income is computed in accordance with generally accepted accounting and commercial principles, subject to certain adjustments required by the tax law.

# Honduras

## ***Inventory valuation***

Inventories are generally valued using the first in first out (FIFO), last in first out (LIFO), and weighted-average cost methods.

## ***Capital gains***

Capital gains are not generally subject to CIT, but may be subject to capital gains tax. *See Capital gains tax in the Other taxes section for more information.*

## ***Dividend income***

The income from dividends is considered 'other income', thus non-taxable under the general income tax rates. There is a 10% WHT rate applicable on the dividends paid to non-residents.

In the first quarter of 2015, the government abolished the double taxation on dividends. Any dividends or distribution of profits that were subject to the corresponding 10% dividend WHT will not be taxed again in case of redistribution.

## ***Stock dividends***

Stock dividends are also not taxable.

## ***Interest income***

Honduran Bank interests are subject to a 10% WHT at the moment the interest is given, when the sum is over HNL 50,000. Interests from abroad are considered as other income. For income tax reconciliation, interest income is considered non-taxable when subject to the 10% WHT.

## ***Royalty income***

Royalties are taxed in the same manner as general income if the recipient is a local company or branch. If the recipient is a non-resident, then the application of a WHT will apply.

## ***Foreign income***

Deferral and anti-deferral of foreign income are not regulated in Honduras.

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## ***Deductions***

The net taxable income of an enterprise is determined by deducting all the ordinary and necessary expenses incurred in the generation of income, including amortisation and depreciation; municipal taxes; donations made in favour of the state, the central district, the municipalities, and legally recognised educational institutions, charities, and sporting facilities; mandatory employer-employee contributions to the social security system; and 'reasonable' charges for royalties and management services.

In general, all expenses incurred in the generation of taxable income are considered as deductible for income tax purposes. However, there are some 'non-deductible' expenses, even if incurred in the generation of income (e.g. interest paid to owners or shareholders, capital losses).

## Depreciation

Depreciation may be computed using the straight-line method. Companies may also obtain authorisation from the tax authorities to use other depreciation methods. However, after a company selects a depreciation method, it must apply the method consistently thereafter. The following are the applicable straight-line method rates for some common assets.

Asset	Rate (%)
Buildings	2.5 to 10
Plant and machinery	10
Vehicles	10 to 33
Furniture and office equipment	10
Tools	25

## Goodwill

Goodwill can be amortised over a period of five years.

## Start-up expenses

Organisation or reorganisation expenses are deductible for the total amount as long as they do not exceed 10% of the initial capital stock. These expenses can be amortised over five years.

## Interest expenses

Interest expenses are deductible as long as they are incurred in order to generate income. Interest paid to stockholders, owners, or their spouses is not deductible.

## Bad debt

Taxpayers can record a bad debt provision of 1% of the total credit sales, which will not exceed 10% of the accounts receivable balance.

## Charitable contributions

Contributions to organisations legally recognised by the government are deductible.

## Capital losses

Capital losses are not deductible to determine the net taxable income. Capital losses can only be netted against capital gains, which are subject to a tax rate of 10% (*see Capital gains tax in the Other taxes section*).

## Contingent liabilities

Provisions for contingent liabilities, such as severance pay, are not deductible for tax purposes; actual payments during the fiscal period, for those liabilities, are considered to be deductible expenses.

## Fines and penalties

Fines and penalties are not deductible.

## Taxes

With the exception of the Solidarity Contribution, net asset taxes, CIT, and sales tax (i.e. if sales tax paid is used as a credit to net the sales tax payable to the government),

# Honduras

taxes and contributions paid to district or municipalities are deductible expenses when determining taxable income.

## ***Net operating losses***

Companies engaged in agriculture, manufacturing, mining, and tourism may carry forward losses for three years. However, certain restrictions apply. Losses may not be carried back.

## ***Payments to foreign affiliates***

Payments to foreign affiliates are deductible as long as the service is effectively received.

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## ***Group taxation***

No provisions exist for group taxation in Honduras.

## ***Transfer pricing***

Transfer Pricing Law was issued by the Honduras National Congress through Decree 232-2011 on 10 December 2011 to regulate every commercial and financial transaction performed between related parties. Transfer Pricing Regulations were later issued by Agreement 027-2015 on 18 September 2015 establishing and expanding the procedures for the application of transfer pricing legislation in Honduras.

The scope of application of this law reaches any operation that is performed between natural or legal persons domiciled or resident in Honduras with related natural or legal persons non-resident or non-domiciled and those under a special regime who enjoy fiscal benefits.

The Honduras tax authority allows taxpayers the request of an Advance Price Agreement (APA) to establish the values for the commercial or financial transactions performed with related parties prior the implementation of such transactions and for a specific time.

## ***Related parties***

For tax effects, it is considered that two or more natural or legal persons, domiciled or not, are related parties when:

- An individual, entity, or corporation participates, directly or indirectly, in the direction, control, or capital of the other.
- Same individuals, entities, or corporations participate, directly or indirectly, in the direction, control, or capital of one of them.
- They constitute a decision unit.
- They conduct direct or indirect commercial or financial transactions, indirect being those transactions that aim to reduce the income tax base, amongst Honduras resident or domiciled individuals or entities located within another jurisdiction qualified as a tax haven.
- They have the same counsellors or administrators.

When participation is defined in terms of capital or control over voting rights, a direct or indirect participation of more than 50% will be required in either case.

## Comparability analysis

Comparability, for transfer pricing matters, is known as the analysis of two or more assets (tangible or intangible), services, or similar companies with the purpose of revealing their correlation and likeness and, in this manner, to be able to determine if it is possible to calculate or adjust the material differences that affect their price.

Among the comparability items we should take into account are included the following:

- Features of the good or service.
- Operations or activities carried out, assets used, and risks undertaken.
- Contractual terms.
- Economic or market circumstances economics.
- Business strategies.

## Selection and hierarchy of the methods to apply the arm's-length principle

According to Decree 232-2011 and the Organisation for Economic Co-operation and Development (OECD) Guidelines, to determine if the operations are in accordance with the arm's-length principle, any of the following methods should be applied:

### *Transactional methods*

- Comparable Uncontrolled Price Method (CUP).
- Resale Price Method (RPM).
- Cost Plus Method ('Cost Plus').

### *Based on income*

- Profit Split Method (PSM).
- Transactional Net Margin Method (TNMM).

Honduras Transfer Pricing Legislation considers the application of a sixth method for goods traded on transparent international markets. Taxpayers may apply methods other than the above-mentioned methods, provided it can be demonstrated that it cannot apply any of the above methods in a reasonable and reliable way to determine the conditions of the free and full arm's-length principle.

## Range of prices on arm's length

From the application of any transfer pricing method, one may obtain a range of prices whenever there exists two or more comparable transactions. These methods will be adjusted through the application of statistic methods, among them can be included the use of the interquartile range. Other statistic methods may be used in the frame of an amicable proceeding.

## Taxpayer's obligations

Income taxpayers that are related parties and perform commercial and financial transactions among them have the obligation to:

- Determine for tax purposes their income, costs, and deductions with the application of prices and profit margins that would be implemented in comparable commercial and financial transactions with third parties.
- Notify to the tax authority the selected method to determine the commercial and financial transactions value in arm's-length conditions.

# Honduras

- File a transfer pricing return before the tax authority with sufficient analysis to assess the transactions performed with related parties.

## **Thin capitalisation**

At the present time, there are no provisions for thin capitalisation in Honduras.

## **Controlled foreign companies (CFCs)**

At the present time, there are no provisions in the Honduras legislation for CFCs.

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## **Tax credits and incentives**

Companies operating under a special tax regime are exempted from CIT, sales tax, customs duties, and some municipal taxes. These special tax regimes are the following:

- FTZs.
- Industrial processing zone (*Zona Industrial de Procesamiento* or ZIP).
- Temporary import regime (*Régimen de Importación Temporal* or RIT).
- Tourism incentive law.
- Law promoting the generation of electric energy with renewable resources (*Ley de Promoción a la Generación de Energía Eléctrica con Recursos Renovables*), which provides tax exemptions for ten years for projects generating 50MW and over.
- In the regulations for the FTZs there is a consideration for international service companies (e.g. business processing operations [BPOs], call centres and contact centres, shared service centres) that will have the same tax exoneration provided by this regime.
- The Call Centre and BPO Promotion Law, which provides a tax holiday on import of tools, parts, accessories, furniture and office equipment, and all goods involved with the company's active business as well as an income tax holiday on revenue from all the business activities carried out within the FTZs.

Companies must comply with some governmental requirements to operate under one of the above-mentioned special regimes.

Companies under special tax regimes are allowed to sell their partial or total production in the local market; income from local sales will be subject to the regular corporate tax regulations.

The Organic Work Regions and Economic Development Law (*Ley Orgánica de las Zonas de Empleo y Desarrollo Económico*) allows the beneficiaries of this law to use reduced rates for income tax, sales tax, property tax, real estate tax, and flat tax.

There is a reform to the tariff and customs legislation that grants tax exonerations in general; the government established in the Decree No. 278-2013 a list of the valid tariff and customs tax exonerations decrees that continue to have the corresponding benefits (*contact your local PwC practice for more information*).

There is also a reform to the income tax legislation that grants tax exonerations in general; the government established in the Decree No. 278-2013 a list of the valid income tax exonerations decrees that continue to have the corresponding benefits (*contact your local PwC practice for more information*).

Effective 1 January 2014, the term of tax exoneration is limited to 12 years to those companies under special tax regimes with no specific term for their tax benefits specified in their corresponding resolution issued by the government.

Effective 5 June 2014, the Law for the Promotion and Protection of Investment (*Ley para la Promoción y Protección de las Inversiones*) was amended, establishing a 15-year term for tax stability agreements, except for Public and Private Alliances projects. At the same time, it repeals the special income tax discounts granted by this law.

### **Drawback industries**

Special benefits exist for industries that import semi-manufactured materials for assembly in Honduras and export finished products. Benefits consist of duty-free imports of raw materials for subsequent export as manufactured products. Machinery for these industries may also be imported duty-free.

### **Foreign tax credit**

There are no provisions for foreign tax credits in Honduras.

## **Withholding taxes**

### **WHT for residents**

Distribution or payment of dividends or any other form of distribution of retained earnings or reserves to resident or domiciled individuals and/or legal entities is taxed via WHT at 10%.

The tax authority is empowered to withhold 3% on CIF from import operations for commercial purposes as an advance payment to income tax to those companies or individuals not duly registered with the tax authority, not complying with CIT filing, or in liquid arrears for any tax administered by the *Servicio de Administracion de Rentas* (SAR). There are some exceptions to the rule.

### **WHT for non-residents**

For non-residents in Honduras, any income derived from Honduran sources is taxable under the following table of the Income Tax Law:

Income source	WHT (%)
Real estate and movable property rent, except dividends and interest	25
Royalties from mining operations and other natural resources	25
Salaries paid for services and other remuneration for rendering of services within national territory or abroad	25
Profit transfers from branch office to head office	10
Dividends	10
Royalties	25
Interest paid on commercial operations, bonds, securities or negotiable instruments, and other types of obligations	10
Income from operation of airplanes, ships, and vehicles	10
Income from operation of telecommunication companies	10
Insurance premiums	10
Income obtained from public shows	25
Films and video tapes for cinemas, TV, video clubs, and cable TV	25
Any other income not mentioned previously	10



# Honduras

## ***Tax treaties***

Honduras has not signed any tax treaties with foreign jurisdictions.

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## ***Tax administration***

The SAR is the tax authority in Honduras and is responsible for the administration of the tax system. Taxpayers may request approval from the SAR regarding direct or indirect taxes (e.g. accelerated depreciation methods on new assets acquired by corporations with monetary activities requiring constant technological update, higher installed production capacity and productive re-conversion processes in order to maintain and strengthen their competitive advantage).

## ***Taxable period***

The statutory tax year runs from 1 January through to 31 December. However, taxpayers may apply to use a special tax year by requesting an authorisation from the SAR.

## ***Tax returns***

Companies must file a CIT return on 30 April every year.

## ***Payment of tax***

Mandatory advance tax payments are payable each quarter, based on the income tax paid for the preceding tax year. Final tax is due with the CIT return on 30 April every year.

## ***Tax audit process***

The audit cycle can begin after (i) the date the tax return should have been filed or (ii) sometime after the taxpayer made a request before the tax authority (e.g. tax credit, loss carryforward).

## ***Statute of limitations***

The statute of limitation for legal actions is applicable for taxpayers, in order to challenge and request payment, and for the fiscal authority, to review, notify, and request payment. Such limitation is established according to the following terms:

- Four years for those conducting operations in the customs regime and five years for registered taxpayers.
- Ten years for those who have the obligation to be registered and currently are not.
- Seven year in other cases.

Limitation of actions and powers of the fiscal authority will be interrupted according to the following:

- Determination of the tax by the fiscal authority counted from the day following notification of resolution.
- Notification of the judicial action for collection, counted from the day following the notification.
- Notification of the resolution in which the fiscal authority confirms assessment, interests, penalties, or fines in liquid payable amounts, counted from the day following the resolution's notification.

- Legal appeal filed by the taxpayer, counted from the day following the filing of the appeal.
- Express acknowledgement from the debtor, counted from the day following the acknowledgement.
- Payment plan agreement granted to taxpayers according to law, counted from the day following the formal agreement.
- Exercise of the appropriate legal actions, counted from the day following their initiation.

Relapse in the lack of complete or partial payment from the taxpayer, as established in the Tax Code, will be considered as criminal tax fraud.

Limitation of the taxpayer to request credit will be interrupted according to the following:

- Legal appeal filed by the taxpayer.
- The lawsuit presentation before the judicial authorities.

### ***Topics of focus for tax authorities***

The tax authority is currently focused on the adoption of the fiscal and customs tax regularisation and amnesty (*Amnistía y Regularización Tributaria y Aduanera*) by the taxpayers. Under this amnesty benefit, taxpayers pay the tax and customs debt without interest, fines, or surcharges, whether or not they have payment plans with the tax authorities.

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### ***Other issues***

#### ***US Foreign Account Tax Compliance Act (FATCA)***

The government of Honduras signed the intergovernmental agreement (IGA) regarding FATCA with the government of the United States, formalising the exchange of information for tax purposes on American and Honduran citizens and/or companies.

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# **Jamaica**

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## **Significant developments**

### **New income tax treaties**

In January 2018, Jamaica signed an income tax treaty in Kingston with Italy. This is the first tax treaty between the two countries. This follows the ratification by Mexico of its income tax treaty with Jamaica in December 2017. Both treaties are now in force.

These two treaties brings to 14 the number of bilateral double taxation treaties (DTTs) that have been entered into by Jamaica to date in addition to the multilateral Caribbean Community (CARICOM) tax treaty, which covers a further ten Caribbean jurisdictions within the CARICOM Community.

### **Organisation for Economic Co-operation and Development (OECD) Multilateral Tax Convention**

In January 2018, Jamaica signed the OECD Base Erosion and Profit Shifting (BEPS) Multilateral Convention. Upon signature, Tax Administration Jamaica (TAJ) also filed Jamaica's list of notifications and reservations in relation to the Multilateral Instrument (MLI). The next step will be for Jamaica to ratify this multilateral treaty and lodge instruments of ratification with the OECD. This is expected to take place later this year.

The OECD has been spearheading the implementation of an inclusive framework by over 100 OECD and non-OECD jurisdictions to tackle BEPS tax avoidance strategies.

### **Tax provisions for share buy-backs**

The Companies Act provides various mechanisms whereby a company may either redeem or purchase its own shares subject to meeting the various conditions and requirements stipulated. Notwithstanding this, there were no complementary provisions in Jamaican tax law, and this adversely impacted the capacity of companies to implement such transactions without triggering onerous tax liabilities.

Recognising the merits of facilitating companies in undertaking share redemptions and buy-backs, the government recently amended the relevant tax laws to accommodate the redemption or purchase by a company of its own shares that are listed on a recognised stock exchange without triggering adverse tax consequences.

### **Introduction of Special Economic Zone (SEZ) regulations**

The Special Economic Zones Act, 2016 provides for the development, regulation, construction, supervision, management, and control of SEZs in Jamaica. The Regulations to support the SEZ regime were passed in 2017.

# Jamaica

## ***Taxes on corporate income***

A resident corporation is taxable on its worldwide income. Non-resident companies are subject to tax on Jamaican-sourced income. Tax is imposed on certain sources of income, such as interest, dividends, royalties, and fees, by way of withholding at a rate of 33 $\frac{1}{3}$ % for non-resident corporations. Lower rates of withholding are possible, provided that the recipient is resident in a country that has concluded a DTT with Jamaica.

The current rates of corporate income tax (CIT) are as follows:

Classification	Definition	CIT rate (%)
Regulated company	A company that is regulated by the Bank of Jamaica (other than building societies), the Financial Services Commission (other than life assurance companies), the Office of Utilities Regulation, or the ministry with responsibility for finance.	33 $\frac{1}{3}$
Building society	An entity similar to a savings and loan association.	30
Life assurance companies		25
Unregulated company	A company (that is not a regulated company) registered and operating within Jamaica.	25

The income of certain organisations is specifically exempt from income tax. These include pension and superannuation funds and charitable organisations that are approved by the Commissioner General, TAJ.

### ***Local income taxes***

Income tax is imposed at the national level. Income tax is not separately imposed at the local level.

## ***Corporate residence***

A corporation, wherever incorporated, is resident in Jamaica if the central management and control of its business is exercised in Jamaica. Normally, this is the case if meetings of directors and shareholders are held in Jamaica and major policy decisions of the corporation are made in Jamaica.

### ***Permanent establishment (PE)***

The definition of a PE in domestic law is similar in a number of respects to those contained in DTTs and is defined as a fixed place of business through which the business of a business organisation is carried on. Where a DTT applies, then the treaty definition of a PE will prevail.

## ***Other taxes***

### ***General consumption tax (GCT)***

GCT is a value-added tax (VAT) imposed on the supply of goods or services within Jamaica (above a minimum turnover threshold) and on the import of goods or services to Jamaica. The standard rate is currently 16.5%. Higher or lower rates of GCT are applicable to certain goods and services; for example, the provision of telephone services (including phone cards) and handsets is subject to GCT at the rate of 25%,

while the tax is imposed on hotels and other businesses in the tourism sector at an effective rate of approximately 10%. Operators within the tourism industry who were granted approval under legacy tourism incentives and who have not elected to move to the current regime cannot benefit from the 10% tourism GCT rate.

Subject to certain exceptions, an additional 5% advance GCT is levied on the commercial importation of goods by a GCT-registered taxpayer.

Where services are imported from a supplier who is not resident in Jamaica, the recipient of those services is deemed to be liable to account for GCT on the services. The recipient may be able to claim a credit for GCT incurred on imported services in certain circumstances; in particular, there are specific conditions where such services are received from overseas connected parties.

The list of items exempt from GCT includes a range of basic food items, prescription drugs, certain medical supplies, as well as certain construction, transportation, and financial and insurance services. Zero-rated goods and services include certain agricultural and fisheries inputs, exported goods and services, and purchases by diplomatic and international organisations and foreign governments.

A GCT group accounting mechanism is available, whereby two or more affiliated entities may be approved by the Commissioner General, TAJ to be treated as a single taxpayer for GCT purposes.

### ***Customs duties and related imposts***

Customs duty is levied on the customs value of goods imported, which is determined in accordance with the World Trade Organization (WTO) rules on customs valuation.

The rates are specified by a prescribed Customs Tariff, having regard (where appropriate) to the Common External Tariff agreed between CARICOM member states.

In addition to normal customs duties, an environmental protection levy (EPL) and a standards compliance fee (SCF) are imposed at the rate of 0.5% and 0.3%, respectively, of the customs value of goods imported. The EPL is also imposed on 75% of the sales value of locally manufactured goods with an input tax credit available for any EPL paid in respect of imported productive inputs. Customs administration fees (CAF) are charged based on the service(s) provided by Jamaica Customs. Other import levies apply in certain instances, such as additional stamp duty (ASD) on certain goods.

### ***Special consumption tax (SCT)***

SCT is imposed at various rates on the importation or local manufacture of 'prescribed goods' (i.e. certain petroleum products, ethanol, alcoholic drinks, tobacco, and motor vehicles).

### ***Property tax***

All land in Jamaica is valued for property tax purposes on the 'site value' or 'unimproved value' (as reflected on the 2013 Property Valuation Roll). Property tax is levied by reference to various value bands at a scale of rates ranging from 0.50% to 0.90%.

# Jamaica

## Transfer tax

A transfer tax of 5% is applicable on the consideration payable (or market value in certain instances) on the transfer of land, buildings, securities, and shares (provided that a refund is available where the transfer tax charged exceeds 37.5% of the capital gain made). Transactions on the Jamaica Stock Exchange (JSE) are exempt from transfer tax, as are the transfer of registered corporate bonds, whether or not the company is listed on the JSE.

## Stamp duty

Stamp duty is imposed on a wide variety of legal instruments. The rate of stamp duty depends on the legal instrument involved. Stamp duty is imposed, for example, on the conveyance on sale of real estate and certain other assets at 4%, while transfers of shares in Jamaican companies attract a rate of 1%. Transfers of shares on the JSE are exempt from stamp duty, as are the transfer of registered corporate bonds, whether or not the company is listed on the JSE. Stamp duty is also imposed at an ad valorem rate on the creation or increase of a mortgage.

## Payroll taxes

Payroll taxes are imposed at the national level on emoluments paid by employers to their employees, including (subject to certain conditions) expatriates who undertake work in Jamaica. The taxes comprise Pay-As-You-Earn (PAYE) Income Tax, Education Tax, and contributions to the National Housing Trust (NHT), the National Insurance Scheme (NIS), and the Human Employment and Resource Training (HEART) Trust.

Employers are obligated to deduct and remit payroll taxes within 14 days after the end of the month in which the emoluments are paid. Employers and employees contribute at the following rates:

Payroll tax	Basis	Employee rate (%)	Employer rate (%)
PAYE Income Tax	Taxable emoluments up to 6 million Jamaican dollars (JMD) <i>per annum</i> less the annual tax-free threshold	25.00	N/A
	Taxable emoluments in excess of JMD 6 million <i>per annum</i>	30.00	N/A
Education Tax	Taxable emoluments	2.25	3.50
NHT contributions	Gross emoluments	2.00	3.00
NIS contributions	Gross emoluments up to a maximum of JMD 1.5 million <i>per annum</i>	2.50	2.50
HEART contributions	Gross emoluments	N/A	3.00

## Minimum business tax (MBT)

An MBT of JMD 60,000 *per annum* is levied on all corporate bodies incorporated or registered under the Companies Act, the Building Societies Act, the Friendly Societies Act, or the Industrial & Provident Societies Act, as well as on individuals carrying on a trade, profession, or business whose chargeable income (less emoluments and an amount equivalent to the annual tax-free threshold) exceeds JMD 3 million *per annum*.

The MBT is payable in two tranches and is creditable against the taxpayer's income tax liability for the year of assessment.

In the case of an individual taxpayer, any MBT paid in excess of income tax liability for the year of assessment may be refunded or carried forward. Companies, however, are not entitled to a refund or carryforward of excess MBT.

### **Asset tax**

An *ad valorem* asset tax at the rate of 0.25% is imposed on the 'taxable value' of the assets of deposit-taking institutions regulated by the Bank of Jamaica, as well as securities dealers, life assurance companies, and property and casualty insurance companies regulated by the Financial Services Commission. The taxable value of assets is broadly determined as the value of assets on the balance sheet with adjustments for certain items specific to each type of institution.

For other entities, asset tax is imposed at a fixed rate ranging from JMD 5,000 to JMD 200,000, depending on the aggregate value of the entity's assets, and is payable on or before 15 March annually.

### **Contractors levy**

Payments to contractors (including sub-contractors) in respect of construction, haulage, and tillage operations are liable to a withholding of a contractors levy of 2% of the gross amount paid. This must be remitted to TAJ within 14 days of the end of the month in which the payment is made. The levy paid is allowable as a credit against the income tax liability of the contractor in the year of assessment in which the levy is deducted. To the extent that there is any excess, it is not refundable.

### **Guest accommodation room tax (GART)**

GART is levied at a specific rate on hotels and other tourist accommodation facilities based on room occupancy. GART is tiered depending on the number of rooms at the hotel or other tourism accommodation facility.

### **Telephone call tax**

Tax is imposed on telephone calls, including inbound calls terminating on fixed or mobile networks.

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## **Branch income**

Branch income is taxed at the same rate as that of local corporations and on a similar basis. The transfer of profits to its overseas head office is subject to a withholding tax (WHT) of 33⅓% or at a lower treaty rate, where applicable.

A branch operation, irrespective of the nature of its business activities, is subject to Jamaican income tax on income derived by the branch from the island and elsewhere. In computing the income for tax purposes, expenses incurred wholly and exclusively for the purpose of the branch's trade are deductible, including a reasonable proportion of head office expenses.

Transactions between the branch, its head office, and affiliates should be at arm's-length values.

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## **Income determination**

### **Inventory valuation**

Inventories are valued at the lower of cost or market value. The Commissioner General, TAJ has made no pronouncement, but last in first out (LIFO) is not generally permitted.

Any method of valuation that accords with standard accounting practice is acceptable for tax purposes, provided it is consistently applied at the beginning and end of the accounting period and it is not in contravention of the Income Tax Act.

### **Capital gains**

There is no tax on capital gains. There is, however, a transfer tax on the market value of certain assets transferred and stamp duty payable on the transfer/disposal of shares or real property. *See the Other taxes section for more information.*

### **Dividend income**

Ordinary dividends paid by Jamaican tax resident companies to Jamaican tax resident shareholders are liable to tax at the rate of 15%. The tax is to be deducted on payment by the distributing company and represents the final tax on such dividends. The Income Tax Act provides relief from taxation for dividends received by Jamaican tax resident corporate shareholders where they hold at least 25% of the voting rights of the distributing company (referred to as 'group relief').

Additionally, the dividend income on which tax is payable may not be offset by tax losses, and expenses incurred to earn the dividend are not deductible in arriving at chargeable income, with the exception of expenses incurred in respect of specified dividend income. Specified dividend income refers to the dividend income of companies that are subject to tax and are regulated by the Bank of Jamaica or the Financial Services Commission and whose dominant trade or business is comprised of making investments in loans, securities, and other financial assets. However, this exception does not apply to dividends enjoying group relief.

Preference dividends that qualify as tax deductible expenses of the paying company (*see below*) continue to be liable to tax at a rate of 25%/30% where the recipient is an individual and at the applicable CIT rate where paid to a company. Dividends paid to non-resident shareholders are subject to income tax thereon at the default rate of 33⅓% in the case of a company and 25% in the case of an individual (subject to any treaty protection or incentive relief available).

Subject to certain conditions being met, a company may claim an income tax deduction in respect of preference dividends paid during the year of assessment. However, to the extent that these preference dividends do not qualify for this income tax deduction, they will be treated on a similar basis as ordinary dividends.

### **Stock dividends**

Stocks issued by way of the capitalisation of retained earnings (referred to as 'bonus issues') do not create a taxable distribution in the hands of the shareholders.

### **Interest income**

Interest income is included in chargeable income and is subject to tax when received. Where interest is paid by a prescribed person, tax is deducted at source at the rate of 25% (*see the Withholding taxes section for more information*). The interest payable on



certain securities issued by the government of Jamaica (primarily to non-residents) has been designated as being exempt from tax.

## ***Royalty income***

Royalty income is included in chargeable income.

## ***Foreign income***

Resident corporations are taxable in Jamaica on their worldwide gains or profits. This includes the income of a foreign branch of a Jamaican company, as well as dividends arising abroad. Non-resident corporations are generally taxable on Jamaican-sourced income.

Tax deferral is not permitted in Jamaica.

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## ***Deductions***

Expenses are deductible to the extent that they were incurred wholly and exclusively to earn the income and are claimed in the year in which they were incurred.

## ***Depreciation***

Tax depreciation (referred to in Jamaica as ‘capital allowances’) is generally computed at prescribed rates annually on a straight-line basis. In the year of expenditure, initial allowances are also available at rates ranging from 20% to 25% on certain buildings and plant/machinery. Capital allowances are also available for capital expenditure on a wide list of intellectual property (IP) rights as well as pure or applied science and research and development (R&D) costs.

Generally, capital gains on depreciable property are not taxed. However, a recharge limited to the extent of the capital allowances allowed (or balancing charge) is taxable. Tax depreciation may not conform to book depreciation.

## ***Goodwill***

The amortisation or write-off of goodwill is not an allowable deduction.

## ***Start-up expenses***

The costs of incorporation and other expenses incurred in connection with establishing a business are not deductible against income.

## ***Interest expenses***

A deduction is available for interest that is paid on capital employed in acquiring income. Additionally, where interest is paid to a non-resident, tax must be withheld where required and remitted to the tax authorities in order to secure a deduction.

## ***Bad debts***

A deduction is available in respect of specific debts that become bad during the year of assessment.

## ***Charitable contributions***

Approved donations (not exceeding 5% of taxable income) to registered charitable organisations and certain educational institutions are deductible.

# Jamaica

## ***Foreign exchange gains/losses***

Foreign exchange gains and losses arising from trading are included in or deducted from chargeable income when realised. Foreign exchange gains and losses arising on capital assets are not taxable or allowable for tax purposes; however, where they pertain to fixed assets, on realisation, they may become part of the underlying acquisition cost and tax depreciation computed thereon.

## ***Fines and penalties***

Fines, penalties, and interest arising from tax arrears are not deductible.

## ***Taxes***

Taxes on income are not deductible. Additionally, GCT, contractors' levy, transfer tax and stamp duty incurred on capital assets, input tax credits for GCT purposes, MBT, as well as the asset tax, are generally disregarded for income tax purposes. Other taxes, such as property tax, payroll taxes, and other business taxes, are deductible, to the extent that they were incurred to earn the income.

## ***Net operating losses***

Subject to certain exceptions for newly established and micro businesses, any claim for deduction of tax losses incurred in a prior year will be capped at 50% of the taxpayer's chargeable income (before deduction of tax losses carried forward) of the year in which the claim is being made. Tax losses are not available for carryback. Certain anti-avoidance provisions restrict the 'purchase' of accumulated tax losses.

## ***Payments to foreign affiliates***

Royalties, management and other service fees, rentals, and interest charges paid to foreign affiliates are deductible to the extent that these payments are made at arm's-length rates. WHT should be paid in respect of such services, normally at 33⅓% where payment is to a company and 25% in the case of individuals, unless a lower rate is provided for under a DTT. Furthermore, interest paid to non-residents is not deductible until the WHT is remitted.

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## ***Group taxation***

Group taxation is generally not permitted in Jamaica, with the exception of a mechanism to permit group filing of returns for GCT purposes.

## ***Transfer pricing***

Jamaica has implemented a transfer pricing regime consistent with the OECD's guidelines on transfer pricing for multinationals in an effort to protect its tax base and address issues of tax avoidance, particularly in relation to cross-border transactions. Detailed transfer pricing rules seek to ensure that taxpayers compute their taxable income using a deemed arms-length consideration (determined in accordance with prescribed methodologies) for all transactions between connected parties (where different to the actual consideration involved).

All taxpayers who engage in such transactions are required to disclose information pertaining to the identity of connected persons, particulars, and pricing arrangements of such transactions primarily through the annual income tax return and to retain this documentation in support of the income tax return. Business entities with gross annual

revenues of JMD 500 million or more are required to comply with extensive OECD standard transfer pricing documentation requirements.

The rules also empower the tax authorities to deem an unconnected person located in a low-tax jurisdiction to be a connected person under certain circumstances.

### ***Thin capitalisation***

There are no provisions for thin capitalisation in the tax laws of Jamaica. It has been proposed, however, that such provisions should be introduced in the future.

### ***Controlled foreign companies (CFCs)***

There is no CFC regime in Jamaica.

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## ***Tax credits and incentives***

Jamaica grants relief from taxation to persons who have been approved under the following incentive legislation:

- The Special Economic Zones (SEZ) Act.
- The Urban Renewal (Tax Relief) Act.
- The Income Tax Act (Junior Stock Market Companies).
- The Income Tax Relief (Large-Scale Projects & Pioneer Industries) Act.
- The Bauxite and Alumina Industries (Encouragement) Act.
- The Charitable Organizations (Tax Harmonization) (Miscellaneous Provisions) Act.

### ***Special Economic Zones (SEZ)***

The Special Economic Zones (SEZ) Act was passed in January 2016 and repealed the Jamaica Export Free Zones Act. It has established a regime to support the designation, promotion, development, operation, and management of SEZs.

A person may be declared to be a ‘developer’ or ‘occupant’ under the SEZ Act. Tax incentives that are available to a developer or occupant under the SEZ Act include relief from asset tax and a reduced rate of income tax, property tax, transfer tax, GCT, and customs duty. However, these incentives are not available to developers or occupants who are eligible for relief under a number of other enactments.

A number of industries/business activities are specifically prohibited in the SEZ, including (but not limited to) mining or quarrying for natural resources, services pertaining to tourism, telecommunications, public utilities, financial services, construction, real estate, and property management.

### ***The Urban Renewal (Tax Relief) Act***

The Urban Renewal (Tax Relief) Act provides tax incentives to persons approved under the Act in connection with undertaking programmes of development in areas designated as special development areas, with a view to improving or restoring them. The tax incentive provides certain tax benefits, including relief from income tax on rental income and interest earned by an investor in an Urban Renewal Bond. There is also exemption from stamp duty and transfer tax on the transfers of property.

A tax credit based on expenditure incurred on capital improvement works in a designated special development area is also available. In addition, lessees of the

## Jamaica

improved properties, who satisfy certain criteria, are able to claim a tax deduction of double the rental paid.

### ***The Income Tax Act (Junior Stock Market Companies)***

Subject to certain conditions being met, a company listed on the Junior Market of the JSE is eligible for full exemption from income tax on their profits in the first five years from the date of admission to the Junior Market, with a 50% exemption from income tax on their profits in next following five years.

### ***Employment tax credit (ETC)***

The ETC is comprised of a non-refundable tax credit that is available to employers in computing their income tax liability. A number of taxpayers are ineligible to claim this tax credit.

The ETC is computed by reference to payroll taxes (excluding PAYE income tax) filed and remitted by their due date by the employer, subject to an overall cap. With a headline income tax rate of 25%, the ETC therefore provides tax-compliant employers with an opportunity to reduce the effective income tax rate on their trading profits to as low as 17.5%.

Where a company makes a distribution (dividends and certain other benefits to shareholders), the credit is clawed back by TAJ to the extent of 10% of the distribution, less the tax payable by the recipient of the distribution (i.e. the ETC clawback only applies where tax imposed on the recipient of the distribution is less than 10%). The credit clawed back must be repaid to TAJ within 14 days of the end of the month in which the distribution is made.

### ***Incentives for large-scale projects/pioneer industries***

The Income Tax Relief (Large-Scale Projects & Pioneer Industries) Act is designed to encourage innovation and high-value investments. It provides a mechanism through which additional income tax incentives can be offered in circumstances where the Minister of Finance designates (subject to affirmative resolution in Parliament) a project as an approved large-scale project or an economic activity as an approved pioneer industry.

Participants in either a designated large-scale project or a pioneer industry may subsequently be approved by Ministerial Order, which will stipulate the extent of relief granted. The income tax relieved under all orders issued pursuant to this mechanism in any year will be capped at 0.25% of the country's gross domestic product (GDP) for the previous financial year.

### ***Productive inputs relief (PIR)***

There is relief from customs duty and additional stamp duty on the importation of certain 'productive inputs' that are directly used in the 'production of primary products' or the 'manufacture of goods'. In addition to the manufacturing and agricultural sectors, relief is also granted on certain products imported for use in the tourism, creative arts, and healthcare industries.

The relief is subject to the proviso that imported items are not available in adequate supplies from a local manufacturer or from a manufacturer within the CARICOM Common Market area or are not otherwise prohibited from benefitting from this relief.

### ***Bauxite and Alumina Industries (Encouragement) Act***

A person engaged in winning bauxite and producing alumina in Jamaica may be approved as a recognised bauxite producer or a recognised alumina producer (or both) and obtain the following tax reliefs:

- Relief from customs duty, additional stamp duty, and GCT in respect of the importation of plant, machinery, trucks and other vehicles, and other specified material and equipment that are necessary for the winning, treatment, and transportation in Jamaica and shipping of bauxite and alumina.
- Relief from customs duty or other similar impost on the importation of certain petroleum fuels and oils (excluding petrol) during the concession period.

### ***Tax incentives for charitable organisations***

The Charities Act provides a mechanism for registered charitable organisations to obtain exemption from income tax, customs duty, GCT, property tax, stamp duty, and transfer tax.

### ***Non-resident deposits***

Non-residents who place deposits with Jamaican banks can earn interest free of Jamaican tax in certain circumstances. The deposits may be designated in foreign currency or Jamaican dollars.

### ***Employee Share Ownership Plan (ESOP)***

Certain tax benefits accrue to employees and employers in respect of contributions to an approved ESOP as well as the allocation of shares from such plans.

### ***Foreign tax credit***

The avoidance of double taxation is achieved by means of foreign tax credits available under most tax treaties or by means of exemption in the case of the CARICOM treaty. Under the provisions of the Income Tax Act, a foreign tax credit is also available to companies in Jamaica that have paid or are liable to Commonwealth Income Tax. Where recourse cannot be had through either of these methods, by convention, in practice, partial relief by way of expense deduction is granted against income for the foreign tax.

## ***Withholding taxes***

WHT is required to be deducted from chargeable payments made to non-residents and remitted to TAJ (along with the applicable return) within 14 days of the end of the month in which the payment is made in order to avoid the imposition of interest and penalties.

Subject to securing approval from TAJ (where appropriate), the following rates of WHT apply to the categories of payments highlighted (this is not an exhaustive list):

Recipient	WHT (%) (4)				
	Dividends		Interest	Royalties	Management fees
	Portfolio	Substantial holdings (5)			
Resident corporations	15 (1)	0 (1)	25 (3)	0	0

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WHT (%) (4)					
Recipient	Dividends		Interest	Royalties	Management fees
	Portfolio	Substantial holdings (5)			
Resident individuals	15 (2)	15 (2)	25 (3)	0	0
Non-treaty:					
Non-resident corporations	33½	33½	33½	33½	33½
Non-resident individuals	25	25	25	25	25
Treaty:					
Canada	15	22.5	15	10	12.5
CARICOM countries (6)	0	0	15	15	15
China, People's Republic of	5	5	7.5	10	0 (4)/33½
Denmark	15	10	12.5	10	10
France	15	10	10	10	10
Germany	15	22.5	12.5 (7)	10	10
Israel	22.5	15	15	10	33½
Mexico (8)	10	5	10	10	10
Norway	15	15	12.5	10	10
Spain	10	5	10	10	0 (9)/10
Sweden	22.5	10	12.5	10	10
Switzerland	15	10	10 (7)	10	0 (9)/10
United Kingdom	15	22.5	12.5	10	12.5
United States	15	10	12.5	10	0 (4)/33½

## Notes

- Substantial holdings refer to resident companies that hold 25% or more of the voting rights of the paying Jamaican resident company.
- Tax is withheld at the rate of 15% where a dividend is paid by a company resident in Jamaica to a resident individual shareholder, regardless of shareholding.
- Tax is deducted from interest paid to Jamaican residents if payment is made by a prescribed person.
- Provided the income is not effectively connected with a PE in Jamaica.
- Applies only to companies owning a substantial holding (percentage ownership as prescribed by the treaty).
- Rates apply only to residents of member states that have ratified the tax treaty.
- Rate reduced further if received by a bank recognised as a banking institution under the laws of that state.
- Comes into effect for WHT from 1 January 2019.
- Provided the services are rendered outside of Jamaica or if in Jamaica (within a prescribed period).

WHT is also imposed at the rate of 15% on insurance premiums paid by Jamaican residents to non-residents (subject to certain exceptions and protection under a tax treaty). WHT of 3% is imposed on payments in respect of 'specified services' purchased locally (above a *de minimis* amount of JMD 50,000 per invoice).

WHT withheld should be available for offset against the payee's income tax liability on the filing of returns.

## Tax administration

Jamaica has established the following departments to handle tax administration:

- Tax Administration Jamaica (TAJ) operates as a revenue authority (reporting to the Ministry of Finance) whose functions include compliance and tax collection, administrative and legal support, audit and assessment of income tax, general consumption tax, stamp duty, and transfer tax. The Commissioner General, TAJ has responsibility for the direction, supervision, and administration of TAJ and is supported in undertaking this role by several Deputy Commissioner Generals.
- The Revenue Appeals Division of the Ministry of Finance processes appeals to decisions made by TAJ.
- The Jamaica Customs Agency has the powers of an executive agency and has responsibility for administering taxes at the ports of entry as well as trade facilitation.

There is also a Financial Investigations Division in the Ministry of Finance, which investigates customs breaches and fraudulent acts in respect of tax legislation.

### ***Taxable period***

A corporation is subject to tax on its income for a calendar year. However, where the Commissioner General, TAJ is satisfied that a corporation normally prepares financial statements to a date other than 31 December, the company may be permitted to use the profits of its own financial year rather than the calendar year as the basis of assessment. The basis period should not exceed 12 months; however, a company wishing to file its income tax return for a period exceeding this period must obtain the approval of TAJ.

### ***Tax returns***

Income tax returns are due for filing by 15 March in the year following the year of assessment and are based on a system of self-assessment of the tax payable.

### ***Payment of tax***

Tax is payable in quarterly instalments on the 15th day of March, June, September, and December of each tax year. Quarterly instalments are based on an estimate of the year's liability or the actual tax payable for the previous year. The balance of income tax payable for a taxation year, after deduction of the instalments of estimated tax, is due on 15 March of the following year. Interest is charged on unpaid tax at a rate of 16.62% *per annum* while the amount remains unpaid. A penalty of up to 50% may also be imposed if TAJ issues an assessment.

TAJ has implemented an electronic tax system that taxpayers are required to use to file various tax returns and remit taxes online.

### ***Tax assessments and audits***

The Commissioner General, TAJ is empowered to conduct audits on selected tax returns or to assess a taxpayer for additional tax at any time prior to the expiration of the statute of limitation, which is six years, except in certain cases. Tax audits can be carried out whether or not notices of assessment have been issued. Tax assessments may be raised where the Commissioner General, TAJ is of the opinion that a taxpayer has been assessed for less tax than the taxpayer ought to have been charged, or where the taxpayer failed to file a tax return.

# Jamaica

## ***Topics of focus for tax authorities***

The Jamaican revenue authorities have indicated that their focus is centred around improving tax collections, enhancing voluntary compliance, increasing audit coverage, and improving the ease with which taxpayers conduct business.

In recent times, TAJ has conducted comprehensive audits that cover multiple tax types. However, it continues to focus its compliance strategies on large taxpayers and has strengthened the resources of the Large Taxpayer Office to facilitate this.

TAJ has also turned its attention to administering the transfer pricing regime implemented in 2015.

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## ***Other issues***

### ***Intergovernmental agreements (IGAs)***

The government of Jamaica has entered into an agreement (Model 1) with the government of the United States (US) to improve international tax compliance and to implement the US Foreign Account Tax Compliance Act (FATCA). The agreement seeks to provide an effective mechanism for the automatic exchange of information for tax purposes and addresses the burden of domestic reporting and the legal impediments that Jamaican financial institutions may face in complying with FATCA.

The Income Tax Act has been amended to incorporate the measures that are required by FATCA.

### ***OECD Multilateral Tax Convention***

In January 2018, Jamaica signed the OECD BEPS Multilateral Convention. Upon signature, TAJ also filed Jamaica's list of notifications and reservations in relation to the Multilateral Instrument (MLI). The next step will be for Jamaica to ratify this multilateral treaty and lodge instruments of ratification with the OECD. This is expected to take place by the third quarter of 2018.

The OECD has been spearheading the implementation of an inclusive framework by over 100 OECD and non-OECD jurisdictions to tackle BEPS tax avoidance strategies.



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# Mexico

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## **Significant developments**

On 1 July 2018, general elections will be celebrated through which a new President and Federal Congress representatives will be elected. The new administration will take over on 1 December 2018.

The above also implies that the Tax Certainty Agreement, executed by the current President, would end on 30 November 2018. The agreement, in broad terms, represents a commitment of the executive branch to maintain the Mexican tax framework without significant changes affecting taxpayers after the 2014 Tax Reform. At this point of time, no significant changes are expected to the Mexican Tax Laws; however, such assumption may change once the new administration takes over.

On 22 March 2018, the Organisation for Economic Co-operation and Development (OECD) announced the fifth jurisdiction has deposited its instrument of ratification, acceptance, or approval of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS) (the MLI). That means that the MLI will enter into force on the first day of the month following the expiration of a period of three calendar months beginning on the date of deposit of the fifth instrument of ratification, acceptance, or approval (i.e. on 1 July 2018). In this regard, it is important to note that the majority of the Double Tax Treaties (DTTs) entered into by Mexico are covered by the MLI (except for several exceptions, among others, Indonesia and Switzerland, which chose not to correspond with Mexico in marking the tax conventions as covered under the MLI, and the United States of America, which decided not to join the MLI). Regardless of the above, the modifications on the precise date the conventions covered by the MLI will be effective for Mexican tax purposes is yet unknown, as the Mexican Congress must conclude the approval process of the MLI.

On 24 April 2018, Mexico became the first country to ratify the Trans-Pacific Partnership (TPP) trade deal. The TTP includes Australia, Canada, Chile, Japan, New Zealand, Singapore, and Vietnam, among others, creating new opportunities that are expected to boost Mexico's trade and investment with such jurisdictions.

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## **Taxes on corporate income**

### **Federal corporate income tax (CIT)**

CIT applies to Mexican resident taxpayers' income from worldwide sources, as well as to foreign residents on the income attributed to their permanent establishments (PEs) located in Mexico.

# Mexico

The federal CIT rate is 30%.

All corporate entities, including associations of a civil nature, branches, etc., are subject to the tax rules applicable to Mexican corporations (unless specifically ruled out, such as not-for-profit organisations).

Taxpayers engaged exclusively in agriculture, livestock, fishing, and forestry activities are subject to a reduction of 30% of their tax liability.

Provisions to recognise the effects of inflation for tax purposes in the areas of monetary assets and liabilities (annual monetary adjustment) and depreciable assets are provided in the Mexican Income Tax Law, even though recent inflation rates have been stable at low levels.

Once a corporation has paid its CIT, after-tax earnings (i.e. earnings arising from the after-tax earnings account, *Cuenta de Utilidad Fiscal Neta* or CUFIN) may be distributed to the shareholders with no tax charge at the corporate level. A withholding tax (WHT) on dividend payments to individuals or foreign residents (including foreign corporations) applies at the rate of 10%; this WHT does not apply to distributions of profits subject to corporate-level tax prior to 2014. If a corporation makes a distribution out of earnings that for any reason have not been subject to CIT, such as distributions of book earnings (i.e. not yet recognised for tax purposes in Mexico), the corporation will also be subject to CIT on the grossed-up distributed earnings (gross-up factor is 1.4286).

Tax paid on dividends distributed in excess of CUFIN can be credited against the CIT of the year or in the two fiscal years following the year in which the tax on the non-CUFIN distributions was paid. The CUFIN of the tax years in which the credit is applied must be reduced by an amount equal to the grossed-up dividend distribution.

## Local income tax

There are no state taxes on corporate net income.

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## Corporate residence

The Mexican Federal Tax Code provides that corporations are deemed residents in Mexico if the principal centre of administration or the effective place of management is located in Mexico. A specific definition of 'tax resident' in any tax treaty overrides domestic law definitions, provided the taxpayer is eligible to apply the treaty.

When a company ceases to be a Mexican resident in terms of the Mexican Federal Tax Code or any tax treaty, it is deemed to be liquidated for tax purposes. In such cases, a notification is required at least 15 days before the change, and the CIT return must be filed with the Mexican tax authorities within 15 working days following the date on which the change of tax residency takes place.

## Permanent establishment (PE)

The Mexican Income Tax Law considers a PE to be any place in Mexico where business activities or services are carried out or rendered by non-residents, such as agencies, offices, mining exploration sites, or any other place of exploration, extraction, or exploitation of natural resources, regardless of the length of time involved.

A foreign insurance company could also be considered as having a PE when it engages in activities consisting of insuring risk or collecting premiums (with the exception of reinsurance activities) in Mexico through a party other than an independent agent.

Sites used for display, storage, or purchasing facilities; inventories imported in-bond to be processed by a third party; short-term construction services; and offices to carry out auxiliary or preliminary activities and information gathering or scientific research are not considered to create a PE in Mexico. Non-residents may also keep merchandise in bonded warehouses (including merchandise delivered for importation into Mexico) without being considered as having a PE.

Based on the Hydrocarbons Law, foreign residents are deemed to have a PE when conducting certain oil and gas activities in Mexico for more than 30 days. This implies that the foreigner would need to satisfy all enrolment, compliance, documentation, withholding, and tax filing and payment obligations applicable to Mexican branches of foreign residents.

A non-resident is not considered to have a PE in Mexico as a result of the legal or economic relationships maintained with companies carrying out certain inventory processing activities (i.e. *Maquiladoras*) that process goods or merchandise maintained in Mexico by the non-resident by using assets provided by the non-resident or any related party, as long as certain requirements are met. The requirements include the conditions that the non-resident be resident in a tax treaty country and that the *Maquiladora* complies with the transfer pricing provisions ('safe harbour') to determine its tax profit, as provided in the Mexican Income Tax Law, or secure an advance pricing agreement (APA) negotiated with the Mexican tax authorities.

*Maquila* operations are generally defined as those with the following characteristics:

- Raw materials are supplied by a foreign resident (with which a *Maquila* contract is in place) and are temporarily imported to be processed, transformed, or repaired and are subsequently exported, including, for these purposes, virtual import-export operations.
- The *Maquila* is also permitted to import goods in accordance with the permanent importation regime. Additionally, local purchases are allowed, as long as such goods are consumed in production and/or exported with the temporarily-imported inventory.
- The processing, transformation, or repair of goods must be performed with temporarily-imported machinery and equipment (M&E) that is the property of the foreign principal. In this regard, the foreign principal must own at least 30% of such M&E. It is important to mention that this M&E may not have been previously owned by the *Maquila* or by any other Mexican-related party.

Parties resident abroad and engaged in *Maquila* operations through shelter *Maquila* companies may not be considered as creating a PE in Mexico when certain requirements are met and certain information is provided to the Mexican Tax Administration in relation to the gross revenues earned and income taxes paid by its non-Mexican-related party. This PE protection is limited to four years, but non-Mexican residents may opt to comply with their tax obligations through the shelter *Maquiladora* for an additional four-year period without triggering a PE, subject to the compliance of certain requirements. However, the eligible non-Mexican residents would be taxed under safe harbour provisions at a 30% CIT rate to determine their tax liability, which, under this scenario, would be determined by the Mexican shelter *Maquila*.

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A definition of PE in any tax treaty overrides domestic law definitions where the taxpayer is eligible to apply the corresponding tax treaty.

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## Other taxes

### Value-added tax (VAT)

VAT is payable at the general rate of 16% on sales of goods and services, as well as on lease payments and imports of goods and services. The sale of medicines, as well as the sale of most food products, is zero-rated. The principal VAT-exempt transactions are the sale of land, credit instruments (including equity shares), residential construction, interest paid by banks, medical services, education, salaries and wages, rentals of residential property, and the sale of non-amortisable participation certificates on real estate investment trusts (REITs), provided specific requirements are satisfied.

Temporary imports under IMMEX and similar programs are subject to the general 16% VAT rate. Such imports may qualify for VAT relief when obtaining special certification from the tax authorities related to the adequate control of such imports. The relief is applied in the form of an immediate VAT credit when clearing customs, which means that the temporary import is done on a cashless basis for VAT. Companies not covered by the certification may apply the same cashless treatment if they post a bond as payment guarantee.

The VAT law also taxes sales in Mexico of temporarily imported goods by non-residents to (i) other non-residents, (ii) *Maquiladoras*, or (iii) companies in the automotive industry.

The 0% VAT rate, which generally means that no VAT is payable, is applicable to a substantial number of transactions, including the sale of books, magazines, and newspapers published by the taxpayer, the exportation of goods and certain services (including some *Maquiladora* activities intended for exportation), the sale of certain basic foodstuffs, agricultural goods and services, sales and rentals of farm M&E, and other specified transactions.

VAT paid by business enterprises on their purchases and expenses related to VATable activities (including activities subject to the 0% VAT rate) may usually be credited against their liability for VAT they collect from customers on their own sales, services rendered, etc. The input VAT credit on goods or services of a general nature, or those not specially identified with either taxable or exempt activities for VAT purposes, is computed based on a VAT ratio proportional to the VATable versus VAT activities (taxable and exempt) carried out by the taxpayer. Creditable VAT paid on purchases and expenses in excess of VAT collected from customers is recoverable via either a refund, offset against other Federal taxes, or a credit against subsequent VAT liabilities.

VAT is a 'cash basis' tax, with few exceptions (e.g. VAT on some types of interest must be paid on an accrued basis); consequently, only the receipt of payment for goods or services triggers the output VAT liability, and an input VAT credit may be claimed only when the taxpayer pays VAT to its providers of goods and services. VAT is calculated for each calendar month as a final tax. In addition, VAT overpayments may be used to offset the tax liabilities arising from other federal taxes.

VAT must generally be withheld by Mexican residents acquiring or leasing tangible goods from non-residents if such foreign residents do not have a PE in the country to

which income is attributed. Mexican business entities are required to withhold VAT on payments to individuals or entities for services consisting of ground transportation of goods. Mexican corporations must also withhold VAT on commissions paid to individuals, as well as on independent services rendered by Mexican individuals, and on tangible goods leased from individuals.

An information return related to the VATable activities carried out by the taxpayer must be filed on a monthly basis. Definitive monthly VAT payments are required by the 17th day of the immediately following month.

### Subcontracting

VAT paid for subcontracted labour will be creditable to the extent that the contractor obtains from the subcontractor (i) a copy of the VAT return showing VAT was remitted to the Mexican tax authorities, (ii) a copy of the acknowledgement of receipt issued by the tax authorities, and (iii) copies of any other information submitted to the tax authorities related to the VAT payment.

### Pre-operating expenses

Under current VAT law, a VAT credit is granted in the pre-operating period (i.e. the period prior to the start of the taxable activities) based on an estimate of expected future activities subject to VAT. However, there is no adjustment mechanism if the actual activities subject to VAT differ from the estimated activities.

The provision provides that VAT credits from expenses and certain investments in the pre-operating period can be used on the first VAT return for the month in which the company actually carries out activities subject to VAT, or in the month in which the company incurs the expense or makes the disbursement (in which case it can request a refund), provided that, in the latter case, the taxpayer provides information related to the VATable activities to be performed. In both cases, there will be a mandatory adjustment to the VAT credited once a 12-month period has elapsed from the date on which the credit was applied.

In addition, if the taxpayer does not perform taxable activities once the pre-operating period has ended, a reimbursement of any refund should be remitted to the tax authorities. This rule will not apply to taxpayers engaged in extraction activities, such as mining and oil.

### Customs duties/import tariffs

Mexico's commercial conditions provide an excellent business and investment opportunity. Mexico is a member of the World Trade Organization (WTO), the Asia-Pacific Economic Cooperation Mechanism (APEC), and the OECD.

Mexico lies in a strategic geographical location for international trade, sharing borders with the United States (US) and representing an easy entry to the rest of Latin America, while also facing Europe and Asia.

Mexico has signed multiple Free Trade Agreements (FTAs), which provide for preferential duty rates on foreign trade operations with many more countries. FTAs signed by Mexico include the North American Free Trade Agreement (NAFTA) and agreements with the European Union (EU), the European Free Trade Association (EFTA), and Japan, among many other countries. Most FTAs provide 0% duty rates for almost 90% of the goods to be imported into Mexico.

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General Import Duty rates range from 0% to 35%, but most imports fall within the range of 3% to 20% (exceptionally, certain food products, shoes, and textiles pay higher duties).

In general, temporary imports are exempt from customs duties (except for fixed assets in certain transactions). *For VAT payments on temporary imports, see above.*

## **Excise tax**

The excise tax law (*Impuesto Especial Sobre Producción y Servicios* or IEPS) levies substantial federal excise rates on the importation and/or sale of certain taxable items, such as gasoline (% variable), beer (26.5%), wine (26.5% to 53%), spirits (53%), and cigarettes and other tobacco products (160% plus an additional quota), and on certain services related to these activities, such as commission, mediation, and distribution of excise taxable items, as well as services for raffles and gambling (30%). Excise tax is also applicable to certain telecommunications services (3%).

The excise tax law applies to soft drinks at 1 Mexican peso (MXN) per litre and to 'junk' food at an 8% rate. In both cases, the excise tax is payable by the producer or importer.

In general terms, goods are exempt from IEPS when exported. The input IEPS paid by exporters on their purchases is not creditable, and that tax becomes an additional cost.

IEPS is payable (output tax) and creditable (input tax) on a cash basis. It is payable on the date that the charge invoiced is collected from the client and can be credited when the respective payment is made to the supplier. On imports, IEPS is creditable when paid at the customs offices.

In certain cases, the IEPS legislation allows taxpayers that are not subject to this tax to credit IEPS paid on the acquisition and/or the importation of certain goods.

There is a specific procedure to calculate the tax for beer producers, bottlers, and importers; however, the tax can never be lower than 26.5%.

Among other obligations, IEPS taxpayers must file information returns before the Mexican Tax Administration periodically.

## **Property taxes**

Annual taxes on real property are levied by Mexico City and all the states at widely varying rates applied to values shown in the property tax records. Assessed values have increased substantially recently in Mexico City and some other areas.

## **Title transfer taxes**

The transfer of real estate is, almost without exception, subject to a variable transfer tax at rates averaging 2% to 5% on the highest of the value of the transaction, fair market value, or registered municipality value. The tax is levied by most states and Mexico City.

## **Stamp taxes**

There are no stamp taxes in Mexico.

### **Payroll taxes**

Most Mexican states levy a relatively low tax on salaries and other income earned by employees, which is payable by the employer (e.g. Mexico City imposes a 3% payroll tax payable by the employer).

### **Social security contributions**

Employers and employees are required to make contributions to the social security system. These contributions are based on the daily salary plus any other compensation paid to the employee. There are various different rates that the employers are compelled to pay to the Mexican Social Security Ministry and or Housing Ministry that may vary in proportion of the so-called base salary of their Mexican employees and the type of concepts for which the compensation is given to the employee. For example, 2% on the base salary of the employee is paid by the employer for the concept of retirement, 5% on the employee base housing contribution salary for the concept of housing must be paid by the employer, among others.

### **Compulsory profit sharing**

Although not a tax, every business unit with employees (irrespective of the type of organisation) is required to distribute a portion of its annual profits among all employees, except general directors and managers. The amount distributable to the employees is 10% of an adjusted taxable income. The main difference between the taxable income and the profit sharing base is that the tax losses cannot be applied against the profit sharing base.

No profit sharing is paid during the first year of operations. Also, special rules apply for personal service entities and for entities deriving their income from rental activities, both of which can limit their profit sharing payment to the equivalent of one month of regular salary.

The profit sharing amount paid out is a deductible item for CIT purposes, provided certain requirements are met.

### **Vehicle taxes**

There is no federal tax on the ownership of vehicles; however, the states may impose a similar tax.

Tax is still levied on the acquisition of new vehicles. This tax is payable in addition to the VAT on the purchase. Note that some vehicles considered as 'hybrid' (e.g. battery assisted vehicles) are not subject to the new vehicle acquisition tax.

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## **Branch income**

Mexican branches of foreign corporations (i.e. PEs) are generally subject to the same tax rules as Mexican corporations, with some exceptions. Such exceptions include that branches may deduct *pro rata* allocations of head office expenses, provided certain requirements are satisfied (such as the existence of an applicable tax treaty and a comprehensive agreement for the exchange of tax information between the relevant territory and Mexico), but may not deduct remittances to their head offices, even when such remittances are classified as royalties, fees, commissions, services, or interest.

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In general terms, profit distributions to the head office (other than those regarded as a return to the head office of the capital invested into the branch, which are reflected in their 'remittances accounts') either in cash or in kind from branches or other PEs are subject to the statutory CIT rate on the grossed-up distribution, unless the remittance is made from the CUFIN account balance (i.e. the after-tax earnings account).

Branches are also subject to the 10% WHT on profit distributions, which can be reduced or eliminated based on any applicable tax treaty provision.

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## ***Income determination***

### ***Recognition of income***

Income is generally recognised on an accrual basis. However, the service revenues of civil entities that render professional services (e.g. law and accounting firms) and low-income entities (as defined in the Mexican Income Tax Law) are reported on a cash basis.

### ***Inventory valuation***

The costing system to be used will be the incurred cost system, based on historic costs or pre-determined costs. If the requirements provided in the regulations of the Mexican Income Tax Law are met, the direct cost system (based on historical costs) may be used.

Inventory may be determined by any of the following methods:

- First in first out (FIFO).
- Identifiable costs.
- Average cost.
- Retail.

The FIFO method must be applied to each type of merchandise and each movement. The monetary FIFO method may not be used. Taxpayers selling goods that are identifiable by serial numbers, at a cost exceeding MXN 50,000, must determine their inventory by the identifiable cost method.

Once elected, a method is compulsory for five years and can be changed only if the requirements established in the regulations of the Mexican Income Tax Law are fulfilled. The monetary results of the change in method are amortised over the following five years.

For accounting purposes, different methods and certain variations can be adopted. However, a record of the differences must be maintained, and such difference will not be taxable or deductible.

The cost of imported goods may be deducted (and included in the cost of goods sold) only if it can be supported that the goods were legally imported into the country.

### ***Capital gains***

Capital gains are taxed as follows.

### ***Securities***

Gains on securities are included in regular taxable income.



The tax basis of shares of Mexican corporations sold may be increased by the inflation adjustment applicable for the holding period.

When computing the tax basis of the shares, there are certain items to be considered, such as: (i) the movement in the after-tax earnings account (CUFIN) of the issuing company (including the possible negative CUFIN effects), as adjusted for inflation, (ii) the unamortised prior years' tax losses at the date of the sale, (iii) tax losses arising prior to the date on which the shares were acquired and amortised during the holding period, and (iv) any capital reductions of the issuing company.

When the sum of: (i) the CUFIN balance at the date of acquisition of the shares, (ii) the capital reductions paid, (iii) the unamortised prior years' tax losses at the date of the sale, and (iv) the negative CUFIN balance of the issuing corporation is higher than the sum of: (i) the CUFIN balance at the date of the sale and (ii) the tax losses arising prior to the date on which the shares were acquired, and amortised during the shares' holding period, the difference must be subtracted from the tax basis of the shares to be disposed of (potentially resulting in the shares' tax basis being equal to zero).

When the aforementioned difference exceeds the tax basis of the shares disposed of, this excess (restated by inflation) must be subtracted from the tax basis of the shares in any subsequent share sale by the same taxpayer, even if the shares are issued by a different company.

The aforementioned procedure allows the average cost (tax basis) of the shares to be determined, which is then updated and considered as the acquisition cost for future sales.

A different but simpler procedure is available (optionally) for computing the tax basis of shares held during a period of 12 months or less.

Deduction of losses arising from the sale of shares is limited to the value of gains from similar transactions in the same or the following ten fiscal years. Losses may not be deducted by non-residents selling shares.

A gain from the sale of shares is considered Mexican-source income when the transferred shares are issued by a Mexican resident or when more than 50% of their book value arises directly or indirectly from immovable property located in Mexico, including cases where the shareholding is structured in different levels.

In general terms, the sale by non-residents of shares issued by a Mexican company is subject to a 25% WHT applicable to the gross amount of the transaction (i.e. without deductions). However, there may be the option for gains realised by non-residents on the sale of shares issued by a Mexican company to be taxed by applying the 35% rate to the net gain. The tax rate for these purposes is generally the same as the top bracket rate for individuals (currently 35%), unless a lower tax treaty rate is applicable.

This net income election is available only if the foreign shareholder income is not deemed to be subject to a regime considered as a 'preferred tax regime jurisdiction' (i.e. tax haven, which is deemed to exist when the non-Mexican resident income is not subject to taxation or taxed at a rate lower than 75% of the tax that would be paid in Mexico) or resides in a country with a territorial tax system. The non-resident seller must have previously appointed a representative in Mexico and have a public accountant assigned to issue a statutory tax audit report on the transfer of shares. The

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public accountant issuing the respective report must specify the accounting value of the shares sold and explain the factors used in determining the sales price and the market value of the shares if shares are sold between related parties.

The representative is jointly liable for the tax on the sale of shares, even when the statutory report is issued by a public accountant.

The tax authorities may authorise the deferral of taxes that would otherwise be triggered by the transfer of shares in a group reorganisation to the extent it is a share-for-share type of deal (the authorisation must be obtained prior to the share transfer). The price used on the transaction must be at arm's length. The tax deferred, adjusted for inflation, is due upon the sale of the originally transferred shares outside the same interest group. An interest group consists of shareholders that have over 50% common voting stock of the companies.

In principle, authorisations for tax deferral are not granted if the party acquiring or selling the shares is resident in a tax haven or is a resident of a country that has not signed a comprehensive exchange of information agreement with Mexico. However, in the latter case, an authorisation may still be granted if the taxpayer provides documentation to the Mexican tax authorities stating that the taxpayer has authorised the foreign tax authorities to provide information to the Mexican authorities regarding the operation in question.

If the share sale qualifies as an exempt reorganisation under tax treaty rules, the non-resident must appoint a legal representative in Mexico prior to the sale and file a notice with the Mexican Tax Administration informing them of such appointment and the details of the reorganisation process intended to be carried out. Additionally, certain formal requirements are established in the regulations of the Mexican Income Tax Law that must be satisfied when carrying out this type of transaction.

Tax treaty rules (optionally) override domestic law rules when the seller resides in a tax treaty country.

### Shares sold through the stock market

Capital gains realised on (i) the sale of shares issued by Mexican companies, (ii) securities exclusively representing such shares, (iii) shares issued by foreign companies quoted in the Mexican stock market, and (iv) derivative financial operations referenced to stock indexes and/or to the aforementioned shares, when the sale is conducted in stock markets or in derivative markets recognised under the Securities Market Law, are subject to a 10% income tax rate.

The applicable income tax on the gain obtained must be withheld by the broker/intermediary; however, there is no obligation to make this withholding if the investor is a resident in a country with which Mexico has signed a tax treaty to avoid double taxation and provides the broker with a sworn statement explaining said situation and providing their registration number or tax ID issued by the proper authorities in their country. If this is not provided, the income tax must be withheld.

When a non-Mexican resident sells shares that do not satisfy the above requirements to be taxed at a 10% income tax rate, they must pay their tax by applying either 25% of the sale price or 35% of the net gain, complying with the requirements established for these purposes in the domestic law.

## Real estate

In determining the taxable gain of real estate, the cost basis of land and buildings may be adjusted (i.e. increased) for tax purposes on the basis of the period of time for which the assets have been held. This adjustment is performed by applying inflation adjustment factors to the net undepreciated balance. Similar rules apply to non-residents electing to pay tax on net income by appointing a legal representative in Mexico. The rate of tax on the net gain is 35% (or lower treaty rate). Otherwise, the 25% final WHT on gross income applies to non-residents.

## Machinery and equipment (M&E)

Gains or losses from the disposal of machinery, equipment, and other fixed assets are also calculated after adjusting the basis in these assets, by applying inflation factors to the net undepreciated balance.

## Inflationary gain or loss

Taxpayers are required to calculate an adjustment for inflation (resulting in additional taxable income or deductible expense) on an annual basis by applying the percentage increases in the National Consumer Price Index (NCPI) to the value of essentially all liabilities, reduced by monetary assets, including bank balances, investments (except in shares), and some debt and receivables.

## Dividend income

Dividends received by Mexican corporations from other Mexican corporations need not be included in gross income. Dividend income must be included within the recipient corporation's CUFIN.

No further corporate-level taxes apply on dividends distributed out of the CUFIN. However, non-CUFIN distributions (i.e. distributions that for any reason have not been subject to CIT) are subject to tax at the level of the distributing company at the general income tax rate on the grossed-up distribution at the effective rate of 42.86%. This tax is creditable in the year of payment or two subsequent years.

## Interest income

Interest received by Mexican corporations is generally subject to tax on an accrual basis and included in gross income (*see also Inflationary gain or loss above*).

## Royalty income

Royalties received by Mexican taxpayers are taxable income at the general corporate rate (i.e. 30%). Such revenue shall be accrued for tax purposes at the earliest of the due date for the royalty payment collection or the issuance of the corresponding invoice.

## Governmental assistance

When the government grants economic or financial assistance to taxpayers through governmental budgetary programs, the cash received will not be treated as taxable revenue to the extent that (i) there is a public list of beneficiaries, (ii) the funds are wire-transferred to the beneficiaries' accounts, (iii) if applicable, the tax authorities issue a certificate of good tax standing to the beneficiary, and (iv) the assets or services the taxpayer acquires with the grant are not deducted.

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## **Foreign income**

A Mexican corporation is taxed on foreign-source income when earned. Double taxation is reduced, or possibly eliminated, by means of foreign tax credits. However, the undistributed profits of a foreign subsidiary are not subject to Mexican tax until dividends are paid, with the exception of companies with investments in entities with income subject to a preferred tax regime (tax haven or PTR) (*discussed below*), in which case income is generally taxable even if no distributions are received from those entities.

## **Investments in tax havens (income subject to PTRs)**

Investments in tax havens include those made directly or indirectly in entities, branches, real property, shares, bank accounts, or investment accounts, and any kind of participation in entities, trusts, joint ventures, or investment funds, as well as in any other similar legal entities created or incorporated in accordance with foreign law and located in a tax haven, and including those that are carried out through an intermediary.

A business, entity, trust, or joint venture is considered to be located in a tax haven when it has a physical presence, an address, a post office box, or effective management in a tax haven, or when its bank account is held in or through financing entities located in a tax haven.

Unless it can be demonstrated that the taxpayer does not have management control of the foreign investments, the taxpayer must include the income generated through such entities or foreign vehicles in the proportion that corresponds to their direct or indirect participation in the capital of the entity or vehicle.

Income and profits subject to PTRs are taxed separately. This income cannot be combined with other taxable income or losses and it is not considered for purposes of making advance income tax payments. Tax applicable to this type of income is payable together with the annual CIT return.

The classification of a PTR is not based on the location of the investment but on the tax effectively paid on the income generated abroad. An investment is considered subject to a PTR if the income is not subject to tax or tax paid abroad is less than 75% of the income tax that would have been incurred and paid in Mexico if the income had been taxed under Mexican rules.

In general, interest income and the annual inflationary adjustment made to liabilities of the investment in the tax haven are included in taxable income without subtracting the annual inflationary adjustment on receivables. However, the annual inflationary adjustment on receivables may be subtracted from interest income earned, provided an information return is filed.

Tax on investments in a PTR is determined by applying the general CIT rate to taxable income (currently 30%). Additionally, net operating loss carryforwards associated with an investment in a PTR may be amortised against the tax profit of the following tax years arising from investments in a PTR, and tax deductions related to the investment may also be applied, as long as accounting records pertaining to those investments are available and the annual information return on the investments is filed on time.

Undistributed income from investments in entities located in a PTR need not be immediately included in taxable income (under the provisions discussed above) in certain particular cases (e.g. income arising from qualified active business activities in accordance with the applicable legislation and in the case of passive income from indirect investments in a tax haven when certain strict conditions are met).

Income earned in a PTR will be taxed until its distribution where the PTR income arises from a business activity. This treatment will not be applicable, however, if income such as interest, dividends, royalties, certain capital gains, and rents (i.e. passive income) represent more than 20% of the total income generated.

Other specific cases of income on which the tax may apply until distribution include the case of share transfers within the same group and for income derived from royalties and interest that do not represent a tax deduction for Mexican tax residents, to the extent that certain specific requirements are satisfied.

### **Maquiladoras**

As discussed in the *Corporate residence* section, companies operating under an IMMEX program (*Maquiladoras*/in-bond processing companies) are considered to not have a PE in Mexico. This is the case for the non-resident principal that owns the M&E and inventory, to the extent it is a resident of a country that has a tax treaty in force with Mexico, complies with all the terms and requirements of the treaty, satisfies any mutual agreements between Mexico and its treaty partner, and complies with the transfer pricing provisions provided in the law.

Revenues associated with productive activities must be derived solely from *Maquila* activities. Additionally, the rules on M&E ownership are consistent with the IMMEX Decree definition (i.e. 30% or more of the M&E used in the *Maquila* operation must be owned by the foreign principal).

The effective income tax rate on *Maquila* profits is 30%.

In terms of transfer pricing, only the safe harbour and advance pricing agreement (APA) alternatives are applicable to *Maquilas*.

Under a Presidential Decree published in Mexico's Official Gazette, the following benefits are also granted to the *Maquiladora* industry:

- An additional deduction for 47% of tax-exempt benefits paid to employees involved in the relevant *Maquila* operation (since 2014, the Mexican tax law limits this deduction to 53% of tax-exempt benefits). *Maquiladoras* applying this benefit should inform the Mexican tax authorities of the amount of the benefit granted, and how it was determined, in a report due March of each taxable year.
- For sales of goods that are located in Mexico between a foreign resident and a *Maquiladora* that are taxed at the 16% VAT rate, the *Maquiladora* may credit the VAT in the same month of the sale if certain certification requirements are met. This benefit applies if a certification is secured.

Additionally, among other rules, the Miscellaneous Tax Regulations (MTRs) include further guidance in connection with the *Maquiladora* industry, as follows:

- Revenues associated with productive activities must derive solely from *Maquila* activities. In this regard, this rule provides that such revenues may also include those

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obtained for other *Maquila* services rendered to related parties resident abroad and other miscellaneous income, provided that the *Maquila*'s books clearly identify every type of income and related expenses.

- Income relating to the manufacture and distribution of finished goods for resale cannot be considered as 'solely derived from *Maquila* manufacturing activities'.
- The MTRs also provided that a foreign principal may still apply safe harbour protection relating to PE immunity contemplated in the 2013 Income Tax Law, provided that the foreign principal is resident in a country with which Mexico has a DTT and the principal is fully compliant with any treaty requirements applicable to its Mexican activities.

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### Deductions

The applicable deduction requirements must be complied with no later than the last day of the tax year to which the deduction applies, although the invoice supporting the expense may be provided up to the date on which the tax return for the period in question is filed (or comes due). An expense invoice must contain a date within the year for which the deduction is claimed.

Deductions for certain business expenses are limited (e.g. business meals, use of company-owned cars).

### Depreciation and amortisation

Straight-line depreciation is permitted at the rates specified in the law (i.e. estimated lives for assets are 20 years for buildings, 3.3 years for computers, 4 years for cars [the deductibility threshold for cars has been raised from MXN 130,000 to MXN 175,000, for electric cars the limit is MXN 250,000 starting from 2017], 10 years for certain M&E, etc.), and the deduction may be increased by applying the percentage increases in the NCPI from the month in which the asset was originally acquired. When an asset is disposed of or becomes useless, the remaining undepreciated historical cost may also be deducted, after application of the appropriate inflation adjustment factor to the undepreciated historical cost.

Starting from 2016, companies, including those dedicated to transportation infrastructure and those that invest in hydrocarbon-related activities and the generation of electricity, who have obtained revenues in the prior tax year up to MXN 100 million, can apply an accelerated depreciation (i.e. lump-sum deduction) for investments in new fixed assets that were acquired in the last quarter of the 2015 tax year, or in 2016 or 2017. The accelerated depreciation rate varies from around 60% to 90% depending on the type of assets and the year of acquisition (i.e. 2016 or 2017).

Intangible assets for the exploitation of goods that are in the public domain, or for rendering public services under concession, are considered deferred assets (i.e. not deducted as incurred). Therefore, these assets are subject to amortisation for income tax purposes.

Specific annual depreciation rates are established for goods used in certain industries.

### Goodwill

Goodwill is a non-deductible item for Mexican tax purposes, and the corresponding input VAT (if any) will not be creditable.

## **Start-up expenses**

Start-up expenses incurred prior to the commencement of operations may be amortised at the rate of 10% per year, after applying the adjustment factors.

## **Interest expenses**

In general terms, interest expenses are deductible items if, among others, the principal is invested in the main activity of the Mexican taxpayer, withholding obligations are complied with, informative returns disclosing information related to the loan and transactions carried out with related parties are filed, thin capitalisation rules (3:1 debt-to-equity ratio) are satisfied, the transaction is at arm's length, and the interest does not fall into the deemed dividend criteria (*see the rules for the deductibility of interest payments at the end of this section*).

## **Bad debts**

Bad debts may be deducted on the earlier of the date on which the debt prescribes or the date on which the taxpayer substantiates the practical impossibility of collection, as defined by the law, among other detailed rules.

## **Charitable contributions**

The maximum amount for deductible donations is limited to 7% of the taxable income of the previous year.

## **Fines and penalties**

In general terms, fines and penalties are non-deductible items for income tax purposes, except interest for underpayment of taxes.

## **Taxes**

In general, all federal, state, and local taxes levied on a company (not including those required to be withheld from other parties) represent deductible expenses for CIT purposes, with the following exceptions:

- CIT.
- Federal VAT and excise tax when the company is entitled to credit the tax.
- Taxes on acquisitions of fixed assets and real estate, which must be capitalised and deducted as part of the total cost of such assets to be depreciated.

## **Subcontracting**

Payments derived from labour subcontracting will be deductible when, among other requirements, the contractor obtains from the subcontractor (i) copies of the tax receipts for salary payments made to the employees performing the outsourced services, (ii) a copy of the acknowledgement of receipt, and (iii) a copy of the tax return showing that the income tax withholding and contributions to the Mexican Social Security Institute were paid.

## **Net operating losses**

Subject to certain limitations, losses incurred in prior years by a business may be carried forward and deducted from income earned over a subsequent ten-year period. Net operating loss carrybacks are not allowed.

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Losses carried forward may be increased by the percentage increase in the NCPI between the seventh and 12th months of the fiscal year in which they are incurred and thereafter up to the sixth month of the fiscal year in which they are applied.

In the case of entities engaged in activities related to the exploration and production of hydrocarbons in maritime waters at depths of 500 metres or more, net operating losses (following the same adjustment rules mentioned above) may be used to reduce their taxable income within the following 15 years.

Tax loss carryforwards are non-transferable, not even by virtue of a merger. However, the tax losses the surviving entity had prior to the merger may continue to be used to offset the income derived from the same business activities that originated them and, with certain restrictions, may also be used to offset income that derives from new business activities. In the case of a spin-off, tax loss carryforwards should be divided between the surviving entity and the spun-off entities in accordance with their main business activity, prior to the spin-off, as follows:

- Commercial main business activity: In proportion to inventory and accounts receivable.
- Other non-commercial entrepreneurial activities: In proportion to fixed assets.

Current tax legislation may limit the offsetting of tax loss carryforwards upon direct or indirect changes in ownership that imply a change in control of the Mexican entity in certain situations (i.e. whenever the revenue of the last three years is less than the tax loss carryforwards updated for inflation balance of the year prior to the change in control, among other situations). The limitation, if applicable, would limit the netting of tax loss carryforwards available prior to the change in control against the income derived from the same business activities that originated them.

### ***Payments to foreign affiliates***

Taxable income and authorised deductions must be determined on the basis of prices that would be agreed with independent parties in comparable transactions (arm's-length values).

For this purpose, taxpayers must secure and maintain contemporaneous documentation supporting transactions with related parties residing abroad, supporting that income and deductions are based on fair market values in accordance with Mexican transfer pricing principles. The documentation must be prepared per type of transaction and must include all operations carried out with related parties.

Domestic transactions with affiliates must also be supported by the application of a recognised transfer pricing method selected in accordance with the Mexican tax legislation in connection with the particularities of the transactions.

Payments made to entities whose income is deemed to be subject to a PTR are considered non-deductible unless it is possible to support that the price of the transaction is substantially the same to the one that would have been used among non-related parties in comparable transactions. Unless otherwise supported, it is assumed that operations with companies, entities, or trusts whose income is subject to a PTR are carried out between or among related parties and that the transactions are not at arm's length.



The sale price of shares (other than publicly traded shares) sold to a related party must be set at market value in accordance with Mexican transfer pricing provisions, and the transaction must be supported by the corresponding contemporaneous transfer pricing documentation.

Payments to non-residents of a prorated portion of expenses (i.e. allocations of expenses) are, in principle, not deductible for Mexican corporations. However, per current administrative tax rules, they may be deductible if a comprehensive set of requirements is complied with.

Payments made by Mexican residents to domestic or foreign related parties, which are in the hands of such related parties also deductible, are not deductible for the Mexican resident unless the corresponding income is included in the related party taxable income in the same or in a subsequent tax year.

### **Technical assistance, royalties, and interest payments**

In order to be deductible, payments related to technical assistance, the transfer of technology, or royalties must be made directly to companies with the required technical capabilities to provide the corresponding service and should correspond to services actually received. In some situations, the payments may be made to a third party to the extent the relevant agreement expressly includes it.

A deduction for technical assistance, interest, or royalty payments (including those treated as royalties related to industrial M&E leases) is disallowed when paid to a foreign related party entity that controls or is controlled by the Mexican taxpayer and at least one of the following scenarios is applicable:

- The recipient of the income item is a fiscally transparent entity in its residency jurisdiction, unless its shareholders or members are subject to tax for income received by such transparent entity and the payment made by the Mexican resident to the foreign entity is at arm's length.
- The recipient entity considers the payment to be disregarded for tax purposes in its residency jurisdiction.
- The recipient does not include the payment as part of its taxable income in its residency jurisdiction.

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### **Group taxation**

The Mexican Income Tax Law previously included a chapter that allowed certain holding companies to file a consolidated income tax return with their majority-owned subsidiaries. Tax consolidation was applicable for CIT purposes but not for other taxes (e.g. VAT) or compulsory employee profit sharing.

Companies that, until 2013, consolidated with their subsidiaries for tax purposes were entitled to reduce their deferred tax by crediting against the consolidated tax the tax on dividends paid between members of the group, and to reduce by up to 50% the consolidated tax by applying losses (valued at 15%) incurred by the controlled entities.

The tax consolidation regime was repealed starting in 2014, and a simplified tax consolidation (deferral) regime was introduced.

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Due to the repeal of the former tax consolidation regime, the Mexican Income Tax Law provides three options for computing the deferred consolidated income tax benefit, which will be payable over a five-year period.

The main requirements for applying the current tax consolidation (deferral) regime are as follows:

- That the Mexican tax resident holding entity holds, directly or indirectly (through other Mexican entities), 80% or more of the shares of the entities that would form part of the consolidation regime.
- That the Mexican holding entity is not held in more than 80% of other entities, unless such other entities are resident of a jurisdiction having an in-force broad exchange information agreement with Mexico.

Shares that qualify as placed among the general investing public and non-voting shares are not considered for the purposes of determining the proportions described above.

As of May 2018, Albania, Andorra, Anguilla, Argentina, Aruba, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda, Brazil, British Virgin Islands, Bulgaria, Caicos Islands, Cameroon, Canada, Cayman Islands, Chile, China, Colombia, Cook Islands, Costa Rica, Croatia, Curaçao, Cyprus, the Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Georgia, Germany, Ghana, Gibraltar, Greece, Greenland, Guatemala, Guernsey, Hong Kong, Hungary, Iceland, India, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Kazakhstan, the Republic of Korea, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, the Netherlands, the Netherlands Antilles, New Zealand, Nigeria, Niue, Northern Ireland, Norway, Pakistan, Panama, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa, San Marino, San Martin, Saudi Arabia, Senegal, Seychelles, Singapore, Slovak Republic, Slovenia, South Africa, Spain, St. Lucia, Sweden, Switzerland, Tunisia, Turkey, Turks Islands, Uganda, Ukraine, United Arab Emirates, the United Kingdom, the United States, and Uruguay are considered to have broad exchange information agreements on tax matters with Mexico; other agreements or tax treaties that might include an information exchange agreement on tax matters are awaiting ratification or being negotiated.

The Mexican Tax Administration must authorise the application of the consolidation regime, and written consent of the legal representative of each of the companies that would be participating must be filed before 15 August of the year prior to the first year of consolidation to request the proper authorisation. Special tax accounts should be kept by each of the companies of the group.

There are some types of entities that would not qualify for the consolidation regime, among others, non-profit entities, credit institutions, insurance corporations, trusts, auxiliary credit institutions, stock exchange entities, foreign exchange houses and capital investment companies, non-resident companies, companies in liquidation, civil or social associations, cooperatives, and *maquiladoras*.

In general terms, the current consolidation regime allows an individual company to offset losses against profits of other companies in the same group during a three-year deferral period.

The deferred income tax must be paid by each of the entities of the group on the same date on which they are required to file their annual income tax return for the year following that in which the three-year deferral period concludes. The deferred income tax will be paid updated with the accumulated inflation adjustment from the month in which the tax was deferred to the month in which the tax is paid.

The deferral benefit must be paid before the three-year deferral period if:

- a member leaves the consolidated group
- the ownership percentage is reduced, or
- the group is deconsolidated.

### ***Transfer pricing***

Mexican transfer pricing legislation is based on the OECD principles. This has resulted in the implementation of transfer pricing guidelines that are in line with the global economy and trade.

In general terms, from a Mexican transfer pricing perspective, all related-party transactions (including certain joint-venture relationships) must be performed at arm's length.

Those taxpayers who are required to present an informative return with respect to their tax status (a DISIF for its acronym in Spanish) are required to present information relating to transactions carried out with related parties and foreign related parties for each tax year. The DISIF must be filed, when applicable, as part of the annual corporate tax return of Mexican legal entities.

Local legislation allows the selection of both traditional methods and profit-based methods consistent with the OECD guidelines. However, the legislation provides a strict ordering criteria for the application of a method, starting with the comparable uncontrolled price (CUP) method. Other methods different from the CUP may only be applied if the CUP method is justifiably not applicable based on the specific facts and circumstances of each transaction.

Mexican legislation is generally 'form over substance' oriented; consequently, contractual terms remain relevant when defining the economic substance of the transactions subject to the transfer pricing analysis.

Reliable financial information is not always publicly available for Mexican entities. Hence, reliance is often placed on foreign information, which is then adjusted to properly reflect local market conditions and render the transactions in question more comparable.

### ***Country-by-country (CbC) reporting***

In 2016, the Mexican government enacted the requirement to file a master information return (Master file), local information return (Local file), and CbC report on a calendar-year basis, starting in FY 2016 and due by 31 December 2017. The provisions of the Mexican Income Tax Law on this obligation are consistent with the OECD's Base Erosion and Profit Shifting (BEPS) with respect to Action Plan 13: Guidance on the Implementation of Transfer Pricing Documentation and Country by Country Reporting. Note that the filing of Master and Local files is required by Mexican taxpayers exceeding the established threshold, while the CbC report is required only for Mexican

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multinational groups meeting certain group revenue thresholds. However, Mexican tax authorities may also request a CbC report concerning foreign multinational groups. In both cases, specific thresholds for presenting documentation is established.

Failure to file the reports is subject to fines and disqualification of the taxpayer from entering into contracts with the Mexican public sector.

### **Thin capitalisation**

Interest generated by excess debt lent by a foreign related party to a Mexican resident is non-deductible for CIT purposes. Excess debt is defined as that exceeding three times the value of shareholders' equity (i.e. a 3:1 debt-to-equity ratio) as per the taxpayer's Mexican Generally Accepted Accounting Principles (GAAP) or International Financial Reporting Standards (IFRS) balance sheet.

In principle, all interest-bearing debts are considered in determining the annual average debt for purposes of calculating the ratio and thereby the disallowed interest expense amount. However, certain debts incurred for construction, operation, or maintenance of productive infrastructure associated with Mexico's strategic areas or to generate electricity may be excluded from the computation.

Taxpayers may also be able to obtain a ruling from the Mexican Tax Administration in order to apply a higher financial leverage (i.e. not the 3:1 debt-to-equity ratio) if they support with the Mexican tax authorities that the particularities of their business activities required a higher leverage. Also, the thin capitalisation rules do not apply to entities that are part of the Mexican financial sector for the realisation of their business activities.

In addition, taxpayers may be entitled to use the sum of the average balances of their capital contributions account (CUCA) and their (CUFIN) to determine the 3:1 debt-to-equity ratio instead of shareholders' equity. Taxpayers that opt to apply this alternative for the thin capitalisation computation must continue to use it for at least five years. Note that the alternative computation is mandatory for those taxpayers that do not apply Mexican GAAP.

Specific provisions dealing with the disallowance of interest expenses for debt financing structured through back-to-back loans should also be closely observed.

### **Controlled foreign companies (CFCs)**

*See Foreign income in the Income determination section for a description of the taxation of undistributed profits of foreign subsidiaries.*

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## **Tax credits and incentives**

### **Foreign tax credit**

The Mexican Income Tax law allows Mexican corporations and individuals to credit for Mexican income tax purposes the income tax paid abroad in connection with non-Mexican source income. The tax credit would only be applicable if the relevant income item from non-Mexican source is deemed as taxable for Mexican tax purposes in respect to the full amount (i.e. including the income tax paid abroad).

In general, creditability is available in respect of foreign income taxes withheld from foreign-source income or paid with a tax return filed in the foreign country in the name of the Mexican resident or by a foreign branch of a Mexican corporation. However, in the case of profit or dividend distributions by non-Mexican resident legal entities to Mexican resident legal entities, the proportional income tax paid by the non-Mexican resident distributors would be creditable in Mexico. Note that the Mexican Income Tax Law provides a specific computation to determine the proportional income tax paid abroad.

Furthermore, the creditability of the proportional income tax paid abroad in respect of dividend or profit distributions mentioned in the preceding paragraph would only be applicable if the Mexican resident entity receiving the dividend or profits holds at least 10% of the equity of the foreign distributing entity during a six-month period prior to the distribution.

In the case of dividend or profit distributions from a foreign legal entity that are in turn distributed to another foreign legal entity that then distributes the dividend to the Mexican legal entity, Mexican income tax credit for the proportional income taxes paid by both foreign legal entities may be allowed, in accordance with a specific computation provided by the Mexican Income Tax Law. Note that the creditability is strictly limited to two foreign corporate levels. In addition, the creditability in such cases would only be applicable if the entity distributing the dividends on the second corporate level resides in a jurisdiction having an in-force broad exchange of information agreement with Mexico and the Mexican entity holds an indirect 5% participation in such non-Mexican resident entity equity during the six-month period prior to the dividend distribution.

The foreign tax credit will be allowed up to the effective Mexican rate of tax on the taxable income (tax result) shown by the annual return on a country-by-country basis and per income type limitation. Taxpayers who are not in a position to take full credit for the taxes paid to a foreign country on foreign-source income are allowed a ten-year carryforward of such excess foreign taxes, provided certain compliance requirements are met and the credit would be limited to the corporate tax rate in Mexico of 30%.

The Mexican tax authorities have published internal criterion to determine whether or not a foreign tax should be considered as an income tax for purposes of applying the aforementioned creditability provisions. Such criteria provides, among other situations, that the main qualifying feature to be met is that the relevant tax is levied on income (i.e. revenue subtracted by authorised deductions in similar moments to those established by the Mexican Income Tax Law). Note that such criterion is not binding to taxpayers and refers to a law that was amended in 2014; however, it is still consulted in practice as it provides insight on the Mexican tax authorities view on such topic.

### ***Duty-deferral programs***

A deferral program is an authorisation provided by the Mexican Ministry of Economy to those companies importing raw materials or fixed assets to manufacture finished products within Mexico for export.

In addition to the benefits described for CIT purposes in the *Income determination section*, *Maquiladoras under the IMMEX program* are entitled to the following customs benefits:

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- No payment of import duties for temporarily imported raw materials, as long as they are exported.
- Temporarily imported raw materials and fixed assets will not be subject to VAT when the Mexican entity importing the goods obtains a VAT certification (*see VAT in the Other taxes section*) from the tax authorities related to the adequate control of such imports or posts a bond guaranteeing the VAT payment until the goods are exported.

Another program allowing preferential duty rates is the Sectorial Relief Program (known as PROSEC), which allows manufacturers to apply lower duty rates on the import of raw materials and machinery required for their productive processes, regardless of their country of origin and regardless of if they are for the Mexican market or for export. These programs were created by the federal government in order to establish competitive tariff conditions for Mexican manufacturers needing to import raw materials and fixed assets from non-NAFTA or trade partner countries.

Companies in Mexico that carry out import operations with values of MXN 300 million per semester, or IMMEX companies, can take advantage of significant customs and administrative benefits if registered into the 'Certified Company Registry' (authorised by the Ministry of Finance). In addition, companies that comply with certain requirements regarding controls and security within their supply chain, regardless of the MXN 300 million obligation, can also obtain the 'Certified Company Registry'; this specific type of registry is known as New Scheme of Certified Companies (NEEC for its acronym in Spanish), which is different from the newer VAT certification for IMMEX companies mentioned before.

In general terms, the main benefits provided by the Certified Company Registry allows simplified procedures to process imports and exports, including the reduction in time and number of reviews when clearing goods at customs facilities.

### **Research and development (R&D) incentives**

The Mexican Income Tax Law provides a 30% tax credit for R&D expenses, including investments in R&D. The tax credit will be equal to current-year R&D expenses in excess of the average R&D expenses incurred in the previous three years. This incentive cannot be combined with other tax incentives. The government will set up a committee to analyse and approve R&D credits. Further, taxpayers will have to file an information return each February with details of the R&D expenses to be validated by the authorities. Additional rules for the R&D tax credit were published in the Mexican Official Gazette in February 2017 and are in force since 17 March 2017. The given rules provide clarity on the procedural requirements to apply for such tax incentive, some limitations, and a list of expenses that are deemed as qualifying for purposes of obtaining the tax incentive benefits (e.g. fees paid to third party investigators, expenses incurred in testing, tools for testing, specialised equipment necessary for the development of the project, laboratory equipment, among others).

### **Employment incentives**

An incentive offers a credit equivalent to 100% of the income tax corresponding to the salary paid to workers/employees with certain types of disabilities.

An additional deduction, equivalent to 25% of the salary paid to such workers/employees, is also available.

Both benefits cannot be applied in the same fiscal year.

## ***Incentives for investments in movie production***

A limited credit is applicable for investments in movie production activities through an immediate tax credit, which is capped at 10% of the total income tax of the prior year, provided certain requirements are met.

## ***Incentives for investments in theatre production***

A limited credit is applicable for investments in theatre production activities through an immediate tax credit, which is capped at 10% of the total income tax of the prior year, provided certain requirements are met.

## ***Real estate investment incentives***

Some tax benefits exist for qualifying real estate investment trusts (i.e. REITs or the so-called FIBRAS for its acronym in Spanish) in Mexico.

## ***Capital investment***

There are certain incentives to encourage risk capital investments in Mexico.

## ***Special Economic Zones (ZEE)***

The ZEE were introduced by the Mexican government with the aim of promoting economic growth and investment in certain estates of the country that have fallen behind with respect to others parts of Mexico in industrial and economic development (e.g. Chiapas, Guerrero, Michoacán, among others).

In this regard, from a tax perspective, the Mexican government provided tax incentives to investors in the ZEE which projects should be aimed at encouraging the creation of jobs and infrastructure to promote the economic development of the region.

The specific tax incentives for the ZEE were introduced via decrees in the later part of 2017 and are effective from 30 September 2017. The main tax incentives from an income tax perspective and VAT perspectives are the following:

- From an income tax perspective, taxpayers obtaining income generated within the ZEE will be granted an income tax reduction of 100% during the first ten fiscal years and a 50% income tax reduction for the following five fiscal years, subject to the compliance of certain requirements.
- From a VAT perspective, 0% VAT rate will be applicable to goods acquired by investors in the ZEE to the extent certain documentation requirements are satisfied. Furthermore, investors in the ZEE may be able to obtain accelerated VAT refunds for goods acquired by Mexican residents located outside the ZEE. Further, Mexican residents outside the ZEE may apply a 0% VAT rate to services or the leasing of goods provided to investors in the ZEE, subject to the compliance of certain requirements. In addition, no VAT is applicable to transaction among taxpayers within the ZEE.

Note that additional tax incentives may be available at a state level; however, those are typically negotiated with the local tax authorities on a case-by-case basis and depend on the nature of each specific investment project.

## ***Other incentives***

Certain other specific and limited tax incentives are available for taxpayers engaged in certain activities (e.g. those engaged in air or sea transportation of goods or passengers

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with respect to aircraft and ships with a federal government commercial concession or permit; in the agricultural and forestry sectors; and in-bond warehouses with respect to real property used for the storage, safeguarding, or conservation of goods or merchandise).

Taxpayers dedicated exclusively to the generation of energy from renewable sources or efficient energy through co-generation systems and that have fully deducted their investments shall establish an account designated as a 'Tax Profit Account for Investments in Renewable Energy', which will allow for the distribution of dividends without payment of CIT.

Individual shareholders of companies that reinvest profits generated from 2014 to 2016 are entitled to a reduction in tax on dividends of up to 5% to the extent such profits are distributed beginning in 2019.

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### **Withholding taxes**

#### ***Payments to Mexican residents***

Payments to resident corporations and PEs in Mexico are generally not subject to WHT.

Payments by resident corporations to resident individuals are subject to WHT as follows:

<b>Payment</b>	<b>WHT (%)</b>
Wages, salaries, and other remuneration	0 to 35
Fees:	
Members of boards of directors and advisory boards	35.0
Other professional fees	10.0
Lease payments on real property	10.0
Interest on securities (1)	0.6
Interest on non-qualified securities	20.0
Dividends	10.0
Miscellaneous types of income of individuals, usually sporadic payments	20.0

#### **Note**

1. WHT on interest paid by financial institutions to Mexican resident investors is generally set at 0.6% of the invested capital.

#### ***Payments to non-residents***

Income tax must usually be withheld from payments to non-resident corporations and individuals. In the case of non-tax treaty countries, the statutory withholding rates are as noted below.

Income tax of 40%, with no deductions, must be withheld on most payments made to foreign-related parties whose income is deemed to be subject to a PTR, in lieu of the tax provided in the domestic law for non-PTR foreign resident entities. This is not applicable in certain cases, such as on income not subject to Mexican taxation in accordance with the regular provisions for income earned by non-residents from a source of wealth located in Mexico, income from dividends, and certain types of interest, including interest payments made to foreign banks. In these cases, the



regular provisions of the domestic law should be applied to determine the income tax withholding.

Additionally, revenues for intermediation services, including commissions for brokerage, agents, distribution, and assignment, and generally all income from the negotiation of third-party interests, are also subject to 40% WHT when paid to residents whose income is subject to a PTR. The 40% may be reduced if the foreign related party beneficiary resides in a country with which Mexico has signed a comprehensive exchange of information agreement.

Non-residents' wages and salaries are taxed on the basis of a 12-month earnings period at the following income tax withholding rates:

Taxable income (MXN)		WHT (%)
From	To	
0	125,900	0
125,901	1,000,000	15
1,000,001	and above	30

The above mentioned rates are also applicable to retirement fund payouts.

However, no tax arises on compensation (wages, salaries, or fees other than board fees) paid by a non-resident with no establishment in Mexico (even if not subject to tax) to which the services relate, provided the individual remains in Mexico for fewer than 183 days (consecutive or not) in any 12-month period.

The tax, when applicable, is withheld if the income is paid by a resident (or a non-resident PE located in Mexico). Otherwise, the tax is generally payable within 15 working days of the associated payment, by the foreign party earning the Mexican-sourced income.

Statutory withholding rates (not mentioned above) under local legislation are as follows:

Payment	WHT (%)
Professional fees for services rendered in Mexico	25
Lease payments:	
Lease of real property	25
Lease of containers imported on a temporary basis, airplanes, and ships authorised by the Mexican Government to be commercially exploited in the transportation of goods or persons	5
Lease of personal property	25
Time-sharing services (1)	25
Charter agreements	10
Sales:	
Real property located in Mexico (1)	25
Shares of Mexican companies (1, 2)	25
Transfers of ownership of Mexican public debt by other than the original creditors (intended to cover debt-for-equity swaps) (1)	25
Derivative transactions:	
On capital (1)	25

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Payment	WHT (%)
On debt (3)	Same rates applicable to interest
Interest (4):	
Paid to foreign government financing entities, to duly registered foreign banks and other entities that provide financing with funds obtained by issuing publicly traded debt instruments abroad, registered with the Ministry of Finance (5)	10
Interest on debt instruments placed abroad (6)	4.9
Interest payments to specific foreign financial institutions (7)	4.9
Other interest payments (not otherwise included above) paid by Mexican financial institutions to residents abroad	21
Paid to foreign suppliers of M&E, to others to finance purchases of such assets or inventory or working capital loans if the lender is duly registered	21
Paid to reinsurance entities	15
Other interest payments	35
Financial leases (on the portion deemed to qualify as interest or finance charge)	15
Dividends (12)	10
Royalties (8):	
For the use of railroad cars	5
For the use of copyrights on scientific, literary, or art works, including motion pictures and radio and television recordings, as well as software and payments for the transmission of video and audio signals via satellite, cable, optic fibre, and similar media	25
On patents, invention or improvement certificates, trademarks, brand names, and advertising	35
For the use of drawings or models, plans, formulas, or procedures, and of scientific, commercial, and industrial equipment; on amounts paid for information regarding scientific, commercial, and industrial experience; and for technical assistance	25
Short-term construction and the respective installation, maintenance, technical direction, or supervision (9)	25
Reinsurance premiums	2
Income obtained by athletes and artists (1)	25
Income derived from prizes (e.g. lottery tickets or raffles) (10)	1/21
Other income (forgiven debts, indemnifications, rights to participate in business, investments, etc.)	35

## Notes

- The non-resident may elect to pay tax at a rate of 35% (*see Note 11 below for the rate applicable thereafter*) on the net taxable profit in the case of (i) time-sharing services, (ii) share sales, (iii) sales of real property, (iv) activities of sportsmen/artists, and (v) derivative stock and debt transactions, provided that the non-resident recipient of the income has a legal representative resident in Mexico and to the extent that the following specific requirements are met:
  - For time-sharing services, the resident legal representative must keep the audited financial statements of the foreign resident, or the financial statements included in the foreign resident taxpayer's informative return on their tax status, available for inspection by the Mexican tax authorities.
  - For share sales, a tax opinion issued by a registered public accountant is required (not applicable to foreign residents whose income is subject to a PTR or resides in a territorial tax regime).
  - For shares and debt-for-equity swap transactions, this election is available only where the foreign taxpayer whose income is not subject to a PTR or resides in a country with a territorial tax system. It should be noted that there is an option to defer Mexican income tax arising from the sale of shares on a share-for-share basis within the same group due to a corporate reorganisation, provided certain conditions are met.
- The sale of shares through the Mexican Stock Exchange is subject to a 10% WHT. When the investor is a resident in a country with which Mexico has signed a tax treaty, such withholding will not apply if certain requirements are satisfied.

3. The applicable WHT rate (based on the WHT rates for interest) for debt-derivative transactions is applied on a net basis. However, if the transaction is liquidated in kind, the applicable WHT rate (on the same net basis) is 10%.
4. Interest payments to non-residents are exempt from Mexican income tax when they are paid on the following:
  - Loans to the federal government or to the Bank of Mexico (Central Bank) or bonds issued by the latter organisation to be acquired and paid abroad.
  - Loans for three or more years granted or guaranteed by duly registered financial entities that promote exports through special financing.
  - Preferential loans granted or guaranteed by foreign financial entities to institutions authorised to receive tax-deductible donations in Mexico, provided these institutions are properly registered and use the funds for purposes consistent with their status.
  - Loans derived from bonds issued by the federal government or the Bank of Mexico placed on a recognised national stock exchange, to the extent the beneficial owner is a foreign resident.
5. A 4.9% WHT rate is applicable when the interest is paid to banks resident in countries with which Mexico has signed a tax treaty.
6. The 4.9% WHT rate applies, provided the placement is handled through banks or brokerage firms resident in a country with which Mexico has signed a tax treaty if there is compliance with the information requirements established in the general rules issued by the Ministry of Finance. If there is failure to comply with these requirements, the 10% WHT rate applies. The 4.9% and 10% WHT rates mentioned in the preceding paragraphs do not apply, and instead a 35% WHT rate is applicable to interest, when the direct or indirect beneficiaries of the interest, either individually or jointly with related parties, receive more than 5% of the interest arising from the instrument in question, and are either (i) holders of more than 10% of the voting shares of the issuing company, either directly or indirectly, either individually or jointly with related parties, or (ii) business entities holding more than 20% of their shares, either directly or indirectly, either individually or jointly with parties related to the issuer.
7. The 4.9% WHT rate is applicable to interest payments made to foreign financial institutions in which the Mexican federal government or the Mexican Central Bank has equity participation.
8. The WHT rate is applied to the gross amount of the payment.
9. The non-resident taxpayer may elect to pay 35% tax on the net profit if the taxpayer has a resident legal representative and so informs the customer, who then makes no withholding. When business activities last for more than 183 days, the foreign taxpayer is deemed to have a PE in Mexico for tax purposes and is taxed in the same manner and subject to the same rules as a local resident corporation or branch.
10. The 21% federal rate is applied only in the case of non-qualifying prizes (i.e. income derived from prizes that is subject to a state tax that exceeds a rate of 6%).
11. The statutory WHT rates mentioned above may be reduced by applying tax treaty provisions. During the last two decades, Mexico has embarked on a policy of negotiating a network of tax treaties with its main trading and investment partners (see *table below*).
12. The 10% WHT on dividend payments to foreign residents does not apply to distributions of profits subject to corporate-level tax prior to 2014. If a corporation makes a distribution out of earnings that for any reason have not been subject to CIT, such as distributions of book earnings (i.e. not yet recognised for tax purposes in Mexico), the corporation will also be subject to CIT on the grossed-up distributed earnings (gross-up factor is 1.4286).

As of March 2018, the treaties with the following countries are pending ratification while waiting for the completion of specific formalities by the respective governments in order to become effective, have not been published yet in the Official Gazette, or are under negotiation: Costa Rica, Egypt, Guatemala, Iran, Lebanon, Malaysia, Morocco, Nicaragua, Oman, Pakistan, Philippines, Slovenia, Thailand, and Venezuela.

Tax treaties with the countries listed in the following table have been published in the Official Gazette and are in force.

The WHT rates negotiated under the tax treaties are as follows:

WHT (%)				
Dividends				
Recipient	Portfolio	Substantial holdings	Interest	Royalties
Argentina	15	10 (2)	12	10/15 (42)
Australia	15	0 (1)	10/15 (25)	10
Austria	10	5 (4)	10	10
Bahrain	0	0	4.9/10 (20)	10

# Mexico

Recipient	WHT (%)			
	Dividends			
	Portfolio	Substantial holdings	Interest	Royalties
Barbados	10	5 (1)	10	10
Belgium (37)	10	0/10 (2)	10/15 (16)	10
Brazil	15	10 (6)	15	10/15 (27, 29)
Canada	15	5 (4)	10	10
Chile	10	5 (6)	5/15 (26)	5/10 (29, 30)
China	5 (7)	5 (7)	10	10
Colombia	0	0	5/10 (17)	10
Czech Republic	10 (7)	10 (7)	10	10
Denmark	15	0 (3)	5/15 (17)	10
Ecuador	5 (7)	5 (7)	10/15 (16)	10
Estonia	0	0	4.9/10 (38)	10
Finland	0	0	10/15 (24)	10
France	0/5 (9)	0/5 (9)	5/10 (17, 29)	10 (29)
Germany	15	5 (1)	5/10 (18)	10
Greece	10 (7)	10 (7)	10	10
Hong Kong	0	0	4.9/10 (20)	10
Hungary	15	5 (1)	10	10
Iceland	15	5 (1)	10	10
India	10 (7)	10 (7)	10	10 (31)
Indonesia	10 (7)	10 (7)	10	10
Ireland, Republic of (36)	10	5 (4)	5/10 (17, 29)	10
Israel	10	5 (10)	10	10
Italy (37)	15 (7)	15 (7)	10 (29)	15
Jamaica (43)	10	5 (3)	10	10
Japan	15	5 (8)	10/15 (25)	10
Korea, Republic of	15	0 (1)	5/15 (17)	10
Kuwait	0	0	4.9/10 (20)	10
Latvia	10	5	5/10 (39)	10
Lithuania	15	0	10	10
Luxembourg	15	8 (11)	10	10
Malta	0	0	5/10 (17)	10
Netherlands	15	0 (12)	5/10 (21)	10 (28)
New Zealand	15 (7, 13)	15 (7, 13)	10	10
Norway	15	0 (3)	10/15 (16)	10
Panama	7.5	5 (32)	5/10 (17)	10 (33)
Peru	15	10 (2)	15	15
Poland	15	5 (3)	10/15 (19)	10
Portugal	10 (7)	10 (7)	10	10
Qatar	0	0	5/10 (40)	10
Romania	10 (7)	10 (7)	15	15
Russia	10 (7)	10 (7)	10	10
Saudi Arabia (43)	5 (7)	5 (7)	5/10 (18)	10
Singapore	0	0	5/15 (17)	10
Slovak Republic	0 (14)	0 (14)	10	10
South Africa	10	5 (1)	10	10
Spain (22)	10	0/10 (36)	4.9/10 (21)	10
Sweden	15	0 (3)/5 (5)	10/15 (16)	10

WHT (%)				
Recipient	Dividends			
	Portfolio	Substantial holdings	Interest	Royalties
Switzerland	15	0 (34)	5/10 (35)	10
Turkey	15	5	10/15 (41)	10
Ukraine	15	5	10	10
United Arab Emirates	0	0	4.9/10 (20)	10
United Kingdom	0	0	5/10/15 (21, 23)	10
United States	10	5 (4, 15)	4.9/10/15 (20, 23)	10
Uruguay	5 (7)	5 (7)	10	10

#### Notes

The applicable tax rates on dividends paid abroad in accordance with the tax treaties executed by Mexico are detailed below; however, under domestic law, no withholding is applied on distributions of profits subject to corporate-level tax generated prior to 2014, when the 10% dividend WHT started applying.

There are certain specific cases of interest paid to parties resident abroad that might be exempted by certain tax treaties (e.g. interest paid to a pension fund or paid by a bank, interest paid on certain loans granted or guaranteed by certain entities for exports under preferable conditions), which are not detailed in the information below.

The Tax Reform gives the Mexican tax authorities the ability to require that the foreign-related party provide a sworn statement through its legal representative confirming that the item of income for which a treaty benefit is claimed would otherwise be subject to double taxation.

1. This rate applies when the recipient corporation that is the beneficial owner of the dividend (except for civil partnerships) directly owns at least 10% of the capital of the distributing corporation. In the case of Barbados, Hungary, and South Africa, the specific exclusion of civil partnerships is not included.
2. This rate applies where the company that is the beneficial owner of the dividends directly or indirectly owns at least 25% of the capital of the distributing company. In the case of Argentina specifically, there must be a direct ownership of 25% of the capital of the distributing company. In the case of Belgium, no WHT would apply if the beneficial owner holds for an uninterrupted period of at least 12 months shares representing directly at least 10% of the capital of the company paying the dividends or to pension funds if certain requirements are met.
3. This rate applies where the company that is the beneficial owner of the dividends (except for civil partnerships) directly owns at least 25% of the capital of the company distributing the dividends.
4. This rate applies where the recipient corporation that is the beneficial owner of the dividend owns at least 10% of the voting shares of the paying corporation. The Mexico-US tax treaty contains a most-favoured nation clause.
5. This rate applies where a company that is the beneficial owner of the dividends (except for civil partnerships, although limited liability partnerships are included) directly owns at least 10% of the voting shares of the company distributing the dividends.
6. This rate applies where a company that is the beneficial owner of the dividends owns at least 20% of the voting shares of the company paying the dividends.
7. This is the maximum WHT rate for dividends, with no distinction for substantial holdings. In the case of Ecuador and India, the tax payable on dividends paid to residents in Mexico must not exceed a limit established in the treaty.
8. The 5% rate applies when a company that is the beneficial owner of the dividends owns at least 25% of the voting shares of the company paying dividends during the six months prior to the end of the tax period in which dividends are paid. Under certain particular rules and provided this ownership requirement is satisfied, dividend payments are only subject to tax in the country of residence of the recipient of the dividends.
9. No withholding applies when more than 50% of the shares of the recipient corporation are owned by residents of France or Mexico or when the beneficial owner of the dividend is a resident individual. Accordingly, the WHT applies to dividends when more than 50% of the recipient corporation's shares are owned by residents of other countries. However, the WHT must not exceed 5% when the party receiving the dividend is the effective beneficiary of said dividend. Dividends paid by a company resident in France to a resident of Mexico, other than a company that directly or indirectly holds at least 10% of the capital stock of the first-mentioned company, may also be taxed in France, in accordance with the law of France, but if the recipient of the dividends is the beneficial owner, the tax thus charged must not exceed 15% of the gross amount of the dividends.
10. The 5% rate applies where the company that is the beneficial owner of dividends directly or indirectly owns at least 10% of the capital of the company distributing the dividends. There is a 10% tax rate that applies when these same ownership requirements are satisfied, but the company paying dividends

is a resident of Israel (provided dividends are paid from earnings taxed in Israel at a tax rate lower than the regular corporate tax rate in Israel).

11. The applicable tax rate on the gross amount of the dividends when the recipient company (beneficial owner) (except for civil partnerships) directly holds at least 10% of the capital of the corporation paying the dividend must not exceed 5% in the case of Luxembourg and 8% in the case of Mexico. The protocol of the Mexico-Luxembourg tax treaty states that this rate might be reviewed in the future by the contracting states if the WHT is not fully creditable, and can be adjusted under the principle of avoiding double taxation, provided the adjusted WHT rate is not lower than 5%.
12. Dividends paid by a company resident in Mexico to a company resident in the Netherlands (which is the beneficiary of said dividends) are subject to a maximum tax of 5% on the gross amount of the dividends if the beneficial owner is a company that directly or indirectly owns at least 10% of the capital of the company paying said dividends. However, as long as a company resident in the Netherlands is not subject to Dutch income tax on dividends received from a company resident in Mexico under the terms of the Dutch income tax law and any future amendments thereto, the dividends mentioned in the preceding paragraph may only be taxed in the Netherlands (not in Mexico).
13. The Mexico-New Zealand tax treaty contains a most-favoured nation clause that may be applicable in the future.
14. The exemption on dividend WHT is not applicable in the case of deemed dividends.
15. To the extent certain requirements provided in the Protocol are met, the WHT may be reduced to 0%.
16. The 10% rate applies to loans from banks. In the case of Belgium, the 5% rate is available for loans from banks and on interest paid from bonds that are regularly and substantially traded on a recognised securities market, and the 10% rate applies in all other cases.
17. The 5% WHT rate is applicable to interest paid to banks.
18. The 5% rate applies to interest on loans from banks, insurance companies, and retirement and pension plans. However, in the case of Saudi Arabia, interest income on loans from insurance companies is excluded for the reduced 5% WHT rate.
19. The 10% rate applies to interest on loans from banks, insurance companies, and securities regularly and substantially traded on a recognised national stock exchange.
20. The 4.9% rate applies to interest on loans from banks and insurance companies and to interest on securities regularly and substantially traded on a recognised national stock exchange.
21. In the case of the Netherlands, the 5% rate applies to interest on loans from banks and to interest on securities regularly and substantially traded on a recognised national stock exchange. In the case of the United Kingdom, the 5% rate extends to interest paid to insurance companies. In the case of Spain, the 4.9% rate applies to interest on loans from banks, interest on securities regularly and substantially traded on a recognised national stock exchange, and interest paid to insurance companies.
22. The updated WHT rates of the Tax Convention are effective as of 27 September 2017.
23. The 10% rate on interest applies in the case of interest paid to the original seller of M&E and interest paid by banks.
24. The 10% rate applies to interest on loans from banks and to interest derived from bonds or securities that are regularly and substantially traded on a recognised securities market, as well as to interest paid by the purchaser of M&E to a beneficial owner that is the seller of the M&E.
25. The 10% rate applies to interest on loans from banks and insurance companies, to interest on securities regularly and substantially traded on a recognised national stock exchange, to interest paid to the original seller of M&E in a sale on credit, and to interest paid by banks.
26. The 5% rate is applicable to interest on loans granted by banks and insurance companies, securities traded on a recognised securities market, and the sale on credit of M&E.
27. It is understood that the definition of royalties applies to any type of payment received for the provision of technical assistance services. The 15% rate applies to royalties arising from the use of, or the right to use, trademarks.
28. The original rate is 15% but has been reduced to 10% as long as the Netherlands does not impose a WHT.
29. The reduced WHT rate results from the application of the most-favoured nation clause.
30. The 5% rate applies to industrial, commercial, and scientific equipment.
31. The 10% rate also applies to fees for technical assistance, which are payments of any kind, other than those mentioned in Articles 14 and 15 of the treaty as consideration for managerial or technical or consultancy services, including the provision of services of technical or other personnel.
32. This rate applies where the company that is the beneficial owner of the dividends directly owns at least 25% of the capital of the distributing company.
33. The treaty broadly defines royalties and includes payments related to certain software.
34. This rate applies where the company that is the beneficial owner of the dividends directly or indirectly owns at least 10% of the capital of the distributing company.
35. The 5% rate applies on the gross amount of the interest paid to, among others, banks and insurance institutions.
36. No withholding applies where the company that is the beneficial owner of the dividends (except for civil partnerships) directly owns at least 10% of the capital of the company distributing the dividends or when the dividends are distributed to a pension fund.
37. The updated protocol of the Italy Tax Convention is applicable since 16 April 2015. In the case of Belgium, the new protocol entered into force in general as of 1 January 2018.
38. The 4.9% rate applies on the gross amount of the interest paid to banks and pension funds or pension schemes; the 10% rate applies on the gross amount of the interest paid in any other case.

39. The 5% rate applies on the gross amount of the interest paid to and by banks; the 10% rate applies on the gross amount of the interest in all other cases.
40. The 5% rate applies on the gross amount of the interest if the beneficial owner of the interest is a bank; the 10% rate applies on the gross amount of the interest in all other cases.
41. The 10% rate applies on the gross amount of the interest if it is paid to a bank; the 15% rate applies on the gross amount of the interest in all other cases.
42. The 10% rate applies on the gross amount of royalties derived from the use of intellectual property over literary, theatre, musical, artistic, or scientific works; the use of patents, designs, models, plans, formulas or secret procedures, computer programs, commercial equipment, industrial equipment, scientific equipment, or for information related to industrial, commercial, or scientific experiences or the rendering of technical assistance services; the 15% rate applies on the gross amount of the royalty in all other cases.
43. Even though the tax conventions are currently in force, the withholding reduced rates and provisions related to other taxes would be applicable until 1 January 2019, per articles 30 and 29 of the Jamaica and Saudi Arabia Tax Conventions, accordingly.

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## ***Tax administration***

### ***Taxable period***

In general terms, the taxable period in Mexico is the calendar year.

### ***Tax returns***

Corporate taxpayers are required to file annual CIT returns for the preceding calendar year by 31 March of the following year.

Thereafter, taxpayers meeting certain size criteria or belonging to a group that, as a whole, meets these criteria must submit a tax-compliance informative return along with the preceding calendar year annual CIT return (i.e. 31 March of the following year).

In lieu of submitting the tax-compliance informative return, business taxpayers meeting certain size criteria may elect to file a tax-compliance audit report on an annual basis with the Mexican Audit Administration. This audit report covers all federal taxes other than customs duties and consists of audited financial statements and detailed schedules, together with a report by the auditor stating that no irregularities were observed in respect of the taxpayer's compliance with its federal tax liabilities. This report must be filled electronically, and the auditor must be an independent certified public accountant (CPA) registered with the Mexican Audit Administration. The amount of detailed information required to be filed, and the auditor's responsibility in connection therewith, is significant.

Employees' profit sharing payments are generally due by 31 May of the year following that in which the corresponding profit was obtained.

Information returns must also be filed not later than 15 February each year, reporting on, amongst others, the following activities performed in the immediately preceding year:

- Payments made to parties resident abroad.
- Loans received from or guaranteed by non-residents.
- Transactions conducted through a business trust.
- Parties to which the taxpayer makes payments and withholds income tax.
- Parties to which the taxpayer has made donations.
- Parties to which the taxpayer has paid dividends, and the value of such payments.
- Transactions carried out with suppliers and clients, either local or overseas.



## Mexico

Taxpayers making salary payments are also required to file information returns reporting salaries paid and salary credit paid in the immediately preceding calendar year.

An annual information return must be filed on investments made or held in a tax haven. This must be filed in February of the immediately following year.

An information return on transactions carried out with non-resident-related parties must be filed together with the annual CIT return (no later than March of the following year).

The informative tax status return corresponding to fiscal year 2018 must be filed in 2019 on the same date the annual corporate tax return is filed. However, an exception is provided for Mexican residents, which are only required to file the informative tax status return for transactions with non-Mexican residents if the amount of such transactions is less than a MXN 100 million.

Taxpayers allowed to elect to file the tax report will not be obligated to file the information return stating their tax status.

### ***Payment of tax***

Corporate taxpayers are required to make estimated payments of CIT by the 17th day of each month based on their estimated taxable income at the end of the previous month and calculated principally by applying the profit factor to the cumulative monthly gross income. The profit factor is determined by dividing the taxable profit by gross income shown in the annual return for the preceding year, or, if no profit factor is to be found in that annual return, the factor appearing in the year preceding that and so on, up to five years, with certain adjustments. For this purpose, gross income includes nominal income, excluding inflationary adjustments. The balance of CIT for the year is due at the same time as the annual return.

Special procedures are provided for computing advance CIT payments and for obtaining authorisation to reduce the amounts of monthly advances after the sixth month of the year. No advance payments or adjustments thereto are required in the first year of operations.

### ***Tax audit process***

In general terms, for taxpayers that elected to file a tax-compliance audit report, the tax audit (tax inspection) may start with a review of the audit report prepared by the independent CPA. At this point, the tax authorities may finish the audit if they are satisfied with the information provided by the CPA; otherwise, tax authorities may initiate a direct review on the taxpayer either at the tax authority's offices or at the taxpayer's facilities. Tax authorities may request several documents from the taxpayer and third parties that carried out transactions with the audited taxpayer.

Tax audits should be concluded within the following 12 months after the audit was initiated. The period to conclude tax audits for taxpayers that are either part of the financial system or consolidated for tax purposes is 18 months. In cases where the Mexican tax authorities request information to tax authorities from foreign jurisdictions, the period to conclude the audit is two years. The above periods might be suspended under certain circumstances (e.g. a judicial recourse or appeal initiated by the taxpayer against the tax authorities). Upon conclusion of the audit, the tax



authorities should issue either a notification explaining tax underpayments observed during the audit process or a notification of conclusion if no issues remain open at the end of the inspection.

Finally, tax authorities should issue a notification of assessment within the six months after the conclusion of the tax audit. At this point, all underpayments claimed by the tax authorities become due.

### ***Concluding Agreements***

The Prodecon is a decentralised Mexican government organisation that acts as the Ombudsman of Mexican taxpayers, providing advice and issuing recommendations to the tax authorities. In recent years, Prodecon's Concluding Agreements have become more common and have had a positive impact for taxpayers when it comes to reconciling differences with the tax authority in regards to an audit and controversial assessments.

The agreement applies when a taxpayer is dissatisfied with the authority's tax assessment as a result of an audit. The taxpayer then should file a petition to the Prodecon, noting the facts, omissions, and support elements to expose its defending arguments. The Prodecon then notifies the authority and proposes an agreement to settle the difference and conclude the audit without further procedures. The authority has 20 days to indicate whether or not it accepts the terms that arise in the Conclusive Agreement.

### ***Statute of limitations***

In general, the right of the tax authorities to collect taxes, review tax returns, or claim additional tax expires five years after the date the respective return is filed. However, in cases where the taxpayer has not secured a federal tax registration number, has no accounting records, has failed to keep accounting records for the required five-year period, or has not filed a tax return, the statute of limitations expires in ten years. Similarly, the period for claiming a refund of overpaid tax expires after five years.

### ***Topics of focus for tax authorities***

Although there are no formal written communications from the tax authorities dealing with their topics of focus, in recent years the tax authorities have focused audits on transactions with non-residents, inter-company transactions, transfer pricing, social security contributions, and customs duties, among other areas.

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## ***Other issues***

### ***Relevant transactions disclosure***

The Mexican Supreme Court, for years prior to 2018, ruled against the tax provision that established that taxpayers are subject to report relevant transactions on a quarterly basis, concluding such reporting obligation did not comply with the legal certainty principle, as the reporting scenarios were not included in the text of the law. As a consequence of the aforementioned ruling, the Mexican tax authorities incorporated the tax provision into the text of the 2018 Federal Revenue Law.

In line with the above, the relevant transactions reporting includes share acquisitions or dispositions, extraordinary transactions with related parties, and corporate reorganisations, among others.

# Mexico

## ***Cash deposits reporting***

Financial institutions are required to report, by 15 February of each year, to the Revenue Administration Service (*Servicio de Administracion Tributaria* or SAT) the information on customers making monthly cash deposits in excess of MXN 15,000.

## ***International Financial Reporting Standards (IFRS) adoption***

All companies listed on the Mexican Stock Exchange are required to submit annual consolidated financial statements accompanied by the opinion of a Mexican independent CPA. These financial statements must be prepared in conformity with IFRS and cover three years. Financial institutions and insurance companies must also file audited financial statements with the appropriate regulatory agency.

The elective adoption of IFRS in Mexico for other companies presents great challenges and opportunities. Changing from Mexican Financial Reporting Standards (MFRS) to IFRS requires companies to review their financial reporting procedures and criteria. Major changes in the requirements often have a ripple effect, impacting many aspects of a company's information reporting organisation.

Nevertheless, the benefits to Mexican companies in reporting under IFRS are numerous. Among the greatest of these is the opening up of the Mexican Stock Market to overseas investors. By adopting IFRS, investors are able to compare two companies on different sides of the world with greater ease, and thus it is hoped that the change will encourage investment in Mexican companies.

Adoption of IFRS is not a straightforward process, and it will require time and effort on the part of the adopting entities to be able to ensure a smooth transition from MFRS to IFRS and ensure that the changes and benefits from this transition are duly implemented.

## ***Foreign Account Tax Compliance Act (FATCA) intergovernmental agreement (IGA)***

FATCA was enacted in 2010 by the US Congress to target non-compliance by US taxpayers using foreign accounts. FATCA requires foreign financial institutions (FFIs) to report to the US Internal Revenue Service (IRS) information about financial accounts held by US taxpayers or by foreign entities in which US taxpayers hold a substantial ownership interest.

Mexico signed an IGA with the US Treasury on 19 November 2012 under which Mexican financial institutions are required to report US-owned account information directly to the Mexican tax authority, rather than to the US IRS. The Mexican tax authority will then share that information with the US IRS.

The IGA provides that the United States will reciprocate with the sharing of information.

Mexican tax authorities have issued a set of administrative rules for banks and other financial and related entities to comply with the FATCA IGA.

## ***Common Reporting Standard (CRS)***

Mexican legal entities and legal figures that are financial institutions resident in Mexico or abroad with Mexican branches are required to report financial information of their

clients since 2016 in line with the CRS, which was introduced at the OECD level on 15 July 2014.

The CRS obligation to financial institutions in Mexico was included in the 2016 Tax Reform to the Mexican Federal Tax Code, which broadly implies identifying the residency of their clients and the reportable accounts and filing such information to the Mexican tax authorities. In this regard, the Mexican tax authorities will exchange that information automatically with the respective jurisdictions participating in the multilateral exchange of information agreement signed on October 2014 by more than 50 countries. Depending on the particular jurisdiction, the exchange of information was set to start with 2016 data; however, with some jurisdictions, the exchange of information was agreed to start with 2017 and 2018 data.

In line with the above, Mexico started exchanging information in 2017 with respect to fiscal year 2016 and effectively received in the latter part of 2017 information of Spain, Germany, Malta, and the Netherlands, among others jurisdictions, as expressly mentioned by the Mexican tax authorities press releases.

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# Nicaragua

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## **Significant developments**

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

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## **Taxes on corporate income**

Nicaragua has a territorial income tax system under which only income generated in, or that causes effects in, Nicaragua is generally subject to income tax. The corporate income tax (CIT) is imposed on a corporation's profits, which consist of business/trading income, and passive income. Capital incomes and capital gains are subject to definitive withholding tax (WHT). General business expenses are allowed as a deduction in computing taxable income.

### **Corporate income tax (CIT) rate**

CIT is levied only on domestic-sourced income at a flat rate of the higher of:

- 30% of net taxable income (i.e. gross taxable income less allowed deductions), or
- a definitive minimum tax of 1% on gross income obtained during the fiscal year.

If the company does not have net income, 30% of net income will not be greater than 1% of gross income.

The law establishes the following exceptions to the 1% definitive minimum tax:

- First three fiscal periods of recently incorporated entities. For tax purposes, the beginning of business operations is when a company generates taxable income.
- Taxpayers whose sales prices are controlled by the government.
- Taxpayers that ceased operations on account of *force majeure*.
- Investments subject to a period of development. The Treasury Ministry must approve such period.

### **Local income taxes**

See *Municipal sales and services tax* in the *Other taxes* section.

# Nicaragua

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## Corporate residence

Legal entities considered as a tax resident must comply with one of the following criteria:

- Registered according to the Laws of Nicaragua.
- Have their fiscal domicile in the territory of Nicaragua.
- Have their place of management located in the territory of Nicaragua.

The legal forms permitted in Nicaragua to constitute a corporation are stock corporations or limited liability companies, either as subsidiaries or branches.

## Permanent establishment (PE)

Law 822 has incorporated a definition of 'permanent establishment' into the Nicaraguan income tax regime. This term means a place through which a non-resident taxpayer wholly or partially carries on business, including, *inter alia*, the following: a place of management; a branch; an office or agent; a factory; a workshop; and a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources.

Such definition also includes a building site or construction or installation project or connected supervision activities, but only if its duration exceeds six months; and the performance of consultancy services, provided that they exceed six months within an annual period.

A PE may also be created where a person other than an agent of independent status acts on behalf of a non-resident taxpayer if:

- this person has in Nicaragua authority to habitually conclude contracts or undertake acts in the name of the non-resident taxpayer, or
- even though this person does not have such authority, this person habitually maintains in Nicaragua a warehouse of goods or merchandise from which this person regularly delivers goods or merchandise in the name of the non-resident taxpayer.

These PE rules will not apply to a branch or PE of non-resident taxpayers operating business activities of marine and air transportation of cargo and passengers, as well as land cargo transportation.

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## Other taxes

### Value-added tax (VAT)

The following transactions are subject to VAT when performed within Nicaragua:

- Supplies of goods.
- Supplies of services.
- Importations of goods.
- Exports of goods and services.

VAT is imposed at a 15% rate on the sale of goods, rendering of services, grant of use of assets, and import of goods. Export of goods and services are subject to a 0% rate.

VAT exemptions are available for certain items, including medicine, real estate transfer, sale of used goods, basic food products, credit instruments, tuition, and textbooks and educational supplies.

Taxpayers may recover VAT paid for the purchase of goods and services used to generate other goods and services subject to VAT. This is known as VAT liquidation, which is determined by subtracting VAT credits paid on transactions needed to generate taxable income for VAT purposes from VAT collected on the sales of goods or the rendering of services. Note that VAT paid on transactions to generate non-taxable income for VAT purposes are not allowed as VAT credits.

The exemption with right to deduct input VAT applies when:

- the input VAT is necessary in the business activity process for selling of goods or provision of services, and
- the tax is properly detailed in the invoice of a legal document.

VAT returns must be filed on a monthly basis, with payment due in full on the same day. Taxpayers registered as high taxpayers (with annual income greater than 60 million Nicaraguan córdobas [NIO]) must present an advanced bi-weekly VAT return in the first five business days after the 15th day of each month and a definite return in the first 15 days of the following month.

## **Selective consumption tax**

A selective consumption tax is applied to goods that are considered to be non-essential. The tax base is the cost, insurance, and freight (CIF) price for imported items, and the tax is levied and paid only at that stage (based on the list of products published as an appendix to Law 822).

## **Customs duties**

Customs duties relate to the importation of any good within the Nicaragua territory for commercial purposes. The following taxes apply to imports, depending on the product:

- Import Custom Duties (DAI), which are the local tariff liens in the importation of goods agreed to in the Central American Import Tariff.
- Excise Tax (ISC), which is an indirect tax levied on selective consumption of goods (e.g. tobacco cigarettes).
- VAT.

## **Temporary Admission for Active Processing (TAP) regime**

Exporters can apply for the TAP regime, which is designed to allow the importation of goods without payment of duties, import taxes, or other taxes, on condition of being transformed (i.e. subject to any subsequent operation) to be re-exported or exonerated.

## **Transfer taxes**

Nicaragua's tax system does not impose transfer taxes.

## **Stamp taxes**

Stamp duty is levied on certain types of documents issued in Nicaragua.

# Nicaragua

## ***Payroll taxes***

The employer is responsible to withhold and pay employee income tax on a monthly basis through withholding income tax return Form IR-122, according to progressive tax rates.

## ***Social security contributions***

In principle, social charges apply to nationals and legal residents from the first day of employment on a monthly basis. Social security contributions are calculated upon the gross salary of the employee, as follows:

<b>Social security rates (%)</b>					
	<b>Pension</b>	<b>Family health</b>	<b>Labour healthcare</b>	<b>War victims</b>	<b>Total</b>
Employer	10.00	6.00	1.50	1.50	19.00
Employee	4.00	2.25	0	0	6.25

The employer must also pay 2% of its payroll, on a monthly basis, for Training Tax (INATEC).

## ***Municipal sales and services tax***

A monthly 1% tax is levied on all sales of goods and rendering of services in each of the municipalities of the country.

## ***Municipal registration tax***

An annual 2% tax is levied by each municipality on the average of income received in the months of October, November, and December of the previous year. In the case of the incorporation of a new establishment or enterprise, the municipal registration tax is 1% of the capital invested.

## ***Real estate municipal tax***

The real estate municipal tax is an annual tax that is levied at a rate of 1% on 80% of cadastral value, as recorded by the government. If the cadastral value is not available, the cost or fiscal appraisal value may be used.

## ***Branch income***

Branch income received is subject to the general CIT. The repatriation of income from the branch to the head office in the form of dividends, profits, capital gains, or any other form that suggests the income repatriated is an economic benefit is considered taxable.

## ***Income determination***

Taxable income is determined by the sum of all income derived from Nicaraguan sources, less allowable deductions, which generally include all expenses necessary to generate taxable income. Taxable income is computed according to International Financial Reporting Standards (IFRS) and modified, as required, by Nicaraguan income tax law.

## Inventory valuation

Last in first out (LIFO), first in first out (FIFO), and the average cost methods are accepted for inventory valuation purposes. The tax authorities must authorise the change of a valuation method.

## Capital gains and losses

Capital income and capital gains and losses are subject to definitive WHT and are not treated as ordinary taxable corporate income. The general rule is that capital income and capital gains for tax residents are subject to 10% WHT; however, the following exceptions apply:

- Capital gains derived from the sale or transfer of Nicaraguan shares that took place out of the territory of Nicaragua are subject to 5% WHT over the transaction value.
- Capital income derived from the lease of fixed assets and non-fixed assets for tax residents are subject to 7% and 5% WHT, respectively; in the case of tax non-residents, they are subject to 10.5% and 7.5% WHT, respectively.
- Capital gains derived from the transfer of assets subject to annotation in the public registry (e.g. real estate, vehicles) will be subject to a WHT based on the amount of the transaction, as follows:

Good value (USD*)		WHT rate (%)
From	Through	
0.01	50,000.00	1
50,000.01	100,000.00	2
100,000.01	200,000.00	3
200,000.01	or more	4

\* United States dollars

## Dividend income

Stock dividends paid by Nicaraguan entities to resident shareholders are subject to a 10% definitive WHT (15% in the case of non-resident shareholders).

## Interest income

Interest received from a Nicaraguan source by residents of Nicaragua, as well as the interest gained by residents from deposits placed in the national financial system, is subject to a 10% WHT (15% in the case of non-residents).

Interest earned on government bonds and securities is considered taxable income subject to a 10% WHT.

The WHT will not apply if the beneficiary of the interest payment is included in the list of exempt International Credit Institutions and Agencies or Foreign Governments Development Institutions, provided in the Ministerial Agreement 24-2014, which requires that the beneficiary should request the Finance and Public Credit Ministry for the corresponding exemption recognition.

## Royalty income

Royalties are treated as capital income subject to a 10% WHT (15% in the case of non-residents).



# Nicaragua

## Foreign income

Business enterprises are subject to CIT only on Nicaraguan-source income.

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## Deductions

### Depreciation

Depreciation must be computed using the straight-line method. Depending on the type of construction and the estimated life of fixed assets, annual rates for depreciation are as follows:

Asset	Rate (%)
Buildings	3/5/10
Vehicles	12/20/33
Plant and equipment	10/14/20
Other assets	10/20/50

### Alternative method of depreciation

Taxpayers under the TAP regime (*see Customs duties in the Other taxes section*) may, at their convenience, request a different depreciation rate (i.e. accelerated depreciation) from the tax authorities. Used fixed assets acquired abroad may also be subject to a different depreciation rate.

### Goodwill

Goodwill, meaning the excess paid over book value in a transaction, can be deductible for CIT purposes if the capital gain is considered in the seller's CIT return. However, the tax authorities must authorise the tax periods in which the goodwill will be amortised.

### Start-up expenses

Start-up expenses are amortised over a three-year period of time after the beginning of business operations.

### Interest expenses

As a general rule, deduction of interest is allowed when derived from loans of financial institutions; however, the interest paid derived from loans of non-financial institutions will be deductible up to the amount resulting from applying the average lending rate of the national bank at the date of obtaining the loan, if fixed, or at the date of each payment, if variable.

In order for interest paid to a non-resident to be deductible, the corresponding 15% WHT must be withheld and paid.

### Bad debt

Corporations are allowed a deduction for receivables as an allowance for doubtful accounts as long as there is supporting documentation of the credit, identification documents of the debtor and creditor, and administrative and judicial collection proof.

## ***Charitable contributions***

A deduction is allowed, at up to 10% of the corporation's income, for charitable contributions made to the government and its institutions, the Red Cross, and other organisations.

## ***Compensation***

A deduction of up to 10% of the accumulated profits before this expense is allowed for payments made to employees as bonuses or in addition to their salaries or wages.

## ***Life insurance***

A deduction is allowed for employee insurance payments made.

## ***Fines and penalties***

Penalties or charges made by tax, customs, social security, or municipal authorities are not deductible for CIT purposes.

## ***Taxes***

In principle, income tax expense is not deductible for CIT purposes. Municipal or local taxes (i.e. real estate tax, monthly sales and services tax, annual registration tax) are deductible from CIT.

## ***Net operating losses***

Losses may be carried forward and deducted from future profits, for up to three years. The carryback of losses is not allowed.

## ***Payments to foreign affiliates***

Payments made from affiliates to foreign related parties are deductible for CIT purposes, provided the following requirements are met:

- The expenses (i.e. royalties, interest, and services) are needed to generate taxable income.
- The expenses are duly supported (e.g. agreements, invoices, payment receipts).
- The expenses are incurred within the fiscal period.
- The WHT is applied and paid to the tax authorities.

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## ***Group taxation***

Group taxation is permitted only when previously approved by the tax authorities. The economic group must submit a business case to the tax administration justifying the economic reason of their request.

## ***Transfer pricing***

The Nicaragua tax system recognises transfer pricing as a method of trading. Law 822 regulates transfer pricing rules based on the Organisation for Economic Co-operation and Development (OECD) regulations (including contemporaneous documentation requirements), and it has been in effect since 30 June 2017.

## ***Thin capitalisation***

The Nicaragua tax system does not impose any form of thin capitalisation rules.

# Nicaragua

## ***Controlled foreign companies (CFCs)***

Nicaragua does not have any CFC rules.

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## ***Tax credits and incentives***

### ***Foreign tax credit***

The Nicaragua tax system does not recognise any form of foreign tax credit.

### ***Tourism incentives***

Under present law, and on a case-by-case basis, new companies with tourist activities may request and the government may grant, during the facilities' construction phase, total exemption of customs duties and partial or total CIT exemption for a maximum period of ten years.

### ***Renewable energy incentives***

The renewable energy sector is covered by a special law with tax benefits or exemptions in CIT, VAT, customs duties, and municipal tax.

### ***Free trade zones (FTZs)***

The Nicaraguan government amended Decree No. 46-91, and enacted Law 915/2015 - Export Free Trade Zone Law, which provides for several types of export free zones (e.g. for processing, industrial production, logistics and outsourcing services).

Although the law does not bring major changes with respect to Decree No. 46-91, it has modified the tax exemption period to FTZ users, and, as of the publication of this law (i.e. 16 October 2015), they will qualify for a ten-year income tax holiday, which can be extended for an additional ten years. Once the full tax exemption expires, qualifying companies will be entitled to a 60% exemption. These incentives are subject to the approval of the National Free Zone Commission.

Qualifying companies are entitled to exemptions from capital tax and stamp duties, indirect and excise taxes, export taxes on locally made products, municipal taxes, and the immovable property transfer tax and capital gains tax on the alienation of immovable property if they are closing their operations in the FTZ and the immovable property will remain there.

Raw materials, machinery, equipment, spare parts, samples, molds, and accessories required for the operation of companies in the FTZs are exempt from import duties.

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## ***Withholding taxes***

### ***Payments to residents***

Dividend payments to resident shareholders (corporations or individuals) are subject to 10% WHT.

Payments of royalties to resident individuals or corporations are subject to 10% WHT.

Interest paid to a resident individual or legal entity is subject to 10% WHT.

Professional services provided by an individual are subject to 10% WHT.

Payments on the local acquisition of goods and services are subject to 2% WHT.

## **Payments to non-residents**

Payments of dividends, interest, royalties, and service fees to non-resident corporations are subject to WHT, as follows:

<b>Payment</b>	<b>WHT rate (%)</b>
Dividends	15
Interest:	
Non-financial companies	15
Financial companies	15
Royalties	15
Services provided in general	15
TV and radio programming or subscription	15

Payments of any kind of income to non-resident individuals are subject to WHT of 15%.

In principle, Nicaragua has not signed any agreement or treaty with any country to avoid double taxation.

## **Transactions with tax havens**

Expenses that are paid by Nicaraguan residents to an individual or entity that is a resident of a tax haven are subject to a 17% WHT. For this purpose, a tax haven may be:

- a foreign territory where the income tax is ‘substantially’ lower than the Nicaraguan income tax
- a foreign country or territory that has been listed, for the corresponding taxable year, as an un-cooperative jurisdiction by the Global Forum on Transparency and Exchange of Information for Tax Purposes, or
- a foreign territory that is listed by the Nicaraguan Public Credit and Finance Ministry.

## **Tax administration**

### **Taxable period**

The standard tax year in Nicaragua is the calendar year (from 1 January to 31 December); however, companies can obtain authorisation from the tax authorities in order to change or have a different year-end: 31 March, 30 June, or 30 September.

### **Tax returns**

Without exception, all corporations are required to file CIT returns for a fiscal year within the following three months after the fiscal year-end.

### **Payment of tax**

Corporations shall pay fiscal-year income tax in monthly advance payments. The monthly payable amount is calculated as 1% of gross income.

Final CIT payment is due with the final CIT return (i.e. within the following three months after the fiscal year-end).

# Nicaragua

## ***Tax audit process***

The tax authorities are entitled to conduct a tax audit of the taxpayer when considered necessary. The taxpayer has the obligation to submit before the tax auditor the corporate information and documents related to the generation of income.

## ***Statute of limitations***

The statute of limitation in Nicaragua is up to the last four fiscal-ended periods.

## ***Topics of focus for tax authorities***

In Nicaragua, tax audits are determined randomly; however, high taxpayers or taxpayers who request reimbursement of tax credit are more likely to be audited. For corporate tax compliance, the tax authorities normally seeks information in regards to taxpayer operations through the advance income tax returns.

# Panama

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## Significant developments

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

## Taxes on corporate income

Panamanian income tax is levied based on the territoriality principle. Panamanian-source income is subject to taxation whether it is received by a resident or non-resident entity. Residency is only relevant to determine if the entity is subject to withholding tax (WHT) or not.

Corporations are subject to income tax at a fixed rate of 25%.

The tax base (i.e. amount to which the tax rate will apply) for companies whose taxable income is greater than 1.5 million United States dollars (USD) is the greater of:

- net taxable income calculated on the normal basis or
- 4.67% of the gross taxable income (excluding exempted and non-taxable income and foreign-source income); this is called the alternate calculation of income tax (*Calculo Alternativo del Impuesto sobre la Renta* or CAIR).

If the entity's tax year results in a loss due to the alternative calculation, the taxpayer may request to the tax administration (the General Directorate of Income, i.e. *Dirección General de Ingresos* or DGI) not to be subject to the CAIR.

The taxpayer may also request not to apply the CAIR if its effective income tax rate is higher than the applicable income tax rate (i.e. 25%). Here is an example of such an instance:

Net taxable income		USD
a	Total revenues	2,000.00
b	Deductible costs and expenses	1,950.00
c	Net taxable income	50.00
CAIR		USD
d	Presumptive net taxable income (4.67% x a)	93.40
e	Income tax (25% x d)	23.35

# Panama

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## CAIR effective tax rate

f	Presumptive income tax (e)	USD 23.35
g	Net taxable income (c)	USD 50.00
h	Effective tax rate (f/g)	46.70%

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The DGI has a six-month period to reach a decision on such requests; otherwise, the petition will be considered as granted.

## Local municipal tax

Local municipal tax is charged based on the gross income generated by the business through the corresponding accounting period; it also depends on the type of activity being conducted by the corporation. In most cases, it cannot exceed USD 2,000 per month for each activity performed.

An Annual Municipal Tax Return for the District of Panama or District of San Miguelito must be filed before the Municipal Authorities in the first 90 calendar days after the ending of the fiscal year. In case the taxpayer does not file the return before the deadline, a USD 500 penalty will be applicable.

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## Corporate residence

A company is considered as a tax resident when it has been incorporated in Panama and if Panama is regarded as the place where the central management is located. Entities incorporated abroad may also be registered with the tax administration in order to avoid WHT.

## Permanent establishment (PE)

Panama follows the Organisation for Economic Co-operation and Development (OECD) PE rules.

The income referable to a PE or fixed place of business is the income obtained by the PE, as if it was an independent or different entity, taking into consideration the activities developed, assets used, and risks assumed.

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## Other taxes

### Movable goods and services transfer tax (ITBMS)

The movable goods and services transfer tax (*Impuesto de Transferencia de Bienes Muebles y Prestación de Servicios* or ITBMS) is the Panamanian value-added tax (VAT).

The general tax rate is currently 7%.

Alcoholic beverages and hotel accommodation are taxed at 10%, and tobacco and tobacco-derived products are taxed at 15%.

ITBMS is calculated on the value-added through a method of tax credits (i.e. ITBMS paid on transactions to produce taxable transactions) and tax debits (i.e. ITBMS collected on transactions).

Exports are not taxed, and the ITBMS paid to generate the exports may be refunded. The sale of goods such as medicines, foods, and certain products for babies are not taxed and may allow the supplier to recover the ITBMS as an exporter if certain criteria is met.

Medical services and transportation, among other services, are not taxed but do not produce ITBMS credit for the supplier.

The statute of limitations is five years.

## **Customs duties**

All goods introduced into the Panamanian territory from another country are subject to customs duties. The duty rates are provided by the Panamanian Customs and Tariffs Office.

Customs duties may only be assessed by authorised customs brokers.

## **Excise tax (selective consumption tax)**

The selective consumption tax is applied to goods (e.g. jewellery, expensive automobiles, guns, tobacco, alcoholic beverages) and services (e.g. mobile, cable TV, satellite TV) that are considered as non-essential. The tax base is the cost, insurance, and freight (CIF) price plus import duties for imported items and sales price for all other activities. The tax is levied at only one stage: on the importation of the taxed products; on the sale of taxed goods produced in Panama; and, for services, when the service is invoiced, the service is completely rendered, or upon receipt of advance payments, whichever occurs first.

Different tax rates apply depending on the type of service or good, with a minimum of 5% on soft drinks and 100% on tobacco products.

## **Immovable Property Tax**

In Panama, all owners of real estate should pay Immovable Property Tax annually at a rate between 0% and 2.10%, depending on the value of the property.

Starting 1 January 2019, new immovable property tax rates will apply between 0% and 1.0%, according to the value and type of property.

## **Stamp duty**

Stamp duty is charged at a rate of USD 0.10 per USD 100 (or fraction thereof) only on certain commercial contracts.

## **Capital gains tax**

In case of transfer of real estate property, a 2% real estate transfer tax plus a 3% income tax advance payment must be remitted (calculated over the gross transaction amount or the cadastral value, whichever is greater). The 3% may be deemed definitive; contrariwise, the tax will be assessed at 10% of the gain and the 3% of the advance payment will be credited. Any amount in excess may be subject to rebate.

The rates as described in the table below will be applicable to the transfer of real estate if:

- the transferor's core business is the sale of real estate with new constructions



## Panama

- it is the first transfer of the real estate after the new construction is built, and
- the construction permit was issued after 1 January 2010.

<b>New housing construction</b>	<b>Rate (%)</b>
Up to USD 35,000	0.5
From USD 35,000 up to USD 80,000	1.5
Greater than USD 80,000	2.5
New commercial construction	4.5

When transferring new housing real estate, the real estate transfer tax (2%) does not apply if the transfer occurs within the next two years after an Occupancy Permit is issued.

The transfer of securities is subject to a 5% WHT, and the tax rate on capital gain is 10%. The law establishes the application of a 5% WHT that will be applied by the buyer. The seller may accept the WHT as definitive or perform the calculation of the gain, apply the rate of 10%, and deduct the applied WHT. In case the WHT is superior, the taxpayer can choose to claim the return of payments made in excess.

Example:

Sales price (a)	1,000
Cost (b)	900
Benefit (c)	100
WHT at 5% of (a)	50
Tax at 10% of (c)	10
Payment in excess	40

The sale of fixed assets is subject to 10% on the capital gain, and there is no WHT.

### **Franchise tax**

Franchise tax must be paid by all corporations on an annual basis (USD 300 per year). The deadline for payment depends on the date of incorporation of the company. If the company was incorporated on any date during the first six months of the year, the due date for payment will be on 15 July of each year. If it was incorporated in the last six months, the due date will be 15 January of each year.

Non-profit organisations, cooperatives, and civil partnerships are not subject to franchise tax.

### **Operations Notice tax**

The Operations Notice tax is an annual tax on equity at a rate of 2%, with a minimum tax amount of USD 100 and a maximum tax amount of USD 60,000. In case of free zones or special trade areas, the tax will be calculated at a rate of 1% with a minimum tax amount of USD 100 up to a maximum tax amount of USD 50,000.

The tax base is the outcome from total assets less total liabilities (excluding liabilities with related parties abroad). Special considerations apply under certain double tax treaties (DTTs).

## **Payroll taxes**

In addition to social security tax (*see below*), the following payroll taxes are applicable.

## **Educational insurance tax**

Educational insurance tax is assessed at the rate of 1.25% for employees and 1.50% for employers on salaries and wages paid. There is no maximum limit on the taxable amount.

## **Professional risk tax**

Professional risk tax is an additional tax applicable to employers at 0.33% to 6.25% according to the type of industry.

## **Social security tax**

Social security tax is assessed at a rate of 9.75% on wages and other compensation paid, including compensation in kind, for employees and 12.25% for employers. There is no maximum limit on the taxable amount.

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## **Branch income**

For tax purposes, branches are considered separate entities from the head office and must therefore keep accounts separately and will have separate tax liability.

Branches located within the Panamanian territory must pay dividend tax through definitive WHT of 10% of net taxable income generated by the Panamanian branch, less all income taxes paid by the same corporation in Panama. This amount will be paid jointly on filing the corresponding income tax return.

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## **Income determination**

Under the territoriality principle, the following will not be considered as taxable income:

- All income produced outside Panama.
- All income generated from operations or services performed outside the Panamanian territory.

## **Inventory valuation**

Inventory should be valued at the start of any business and, subsequently, at least once every accounting period. All assets must be grouped, depending on their nature, with certain characteristics indicated (e.g. the unit of measurement, the name of the asset, the price of the unit, the total value of units). Reference to the accounting records should also be included.

Inventories are generally stated at cost and can be valued using the compound average cost method, first in first out (FIFO) method, retail method, or specific identification method. Since all entities must keep legal records, any adjustment resulting from using different methods of inventory valuation for tax purposes and financial purposes should be recorded and must be reported to the proper authorities. Once a taxpayer adopts a method, they must maintain it for at least five years.

# Panama

## **Capital gains**

*See Capital gains tax in the Other taxes section for a description of how capital gains are taxed in Panama.*

## **Dividend income**

Panamanian legislation establishes that distribution of dividends of a Panamanian source are subject to definitive WHT, applied at the moment of distribution. Generally, dividends are subject to income tax at a rate of 10% without taking into consideration the way of payment, types of stock, assets, or money.

For companies with mixed-source income, dividend tax applies at a 5% rate on dividends paid from foreign-source income and from income derived from exports, as well as exempt income from banking account interests and interests and earnings derived from securities issued by the government.

Free zone users are taxed at a 5% rate as well for local-source income.

Loans to shareholders are deemed as dividend distributions, subject to a 10% withholding even in the cases where the 5% tax rate applies.

Notwithstanding the aforementioned, if the entity's shares are issued to bearer, they will be subject to dividend tax at a rate of 20%.

Dividend tax is levied if the entity meets one of the following criteria: (i) requires an operation permit to operate in Panama, (ii) requires an operation key to operate at the Colon Free Zone, (iii) is established in a Fuel Free Zone, (iv) is established in a free zone or special zone, or (v) produces Panamanian-source taxable income. Dividend tax also does not apply to dividends paid on income received as a dividend if the entity is not required to withhold dividend tax or if the entity withheld the tax.

A complementary tax applies each tax year that the entity distributes less than 40% of the net profits after income tax. The complementary tax is an advance payment of the dividend tax, calculated on the difference of the distributed dividends and 40% of the net profits after income tax, and applies the corresponding tax rate. If complementary tax is paid, then the entity may offset the paid complementary tax with the dividend tax when the corresponding dividend is decreed.

## **Inter-company dividends**

The distribution of dividends derived from income received as dividends from other entities is not subject to income tax or dividend tax as long as the entity that paid the dividend in the first instance was exempt from withholding any dividend tax, or, if it was required to, made the corresponding withholding.

## **Interest income**

Interest income is subject to income tax to the extent that it reflects operations carried out in Panama. Foreign beneficiaries are subject to WHT. The tax base will be 50% of the remittance, and the income tax rate applicable is 25%.

## **Royalty income**

Royalty income is subject to income tax to the extent that it reflects operations carried out in Panama. Foreign beneficiaries are subject to WHT to the extent that the payer

has a deduction. The tax base will be 50% of the remittance, and the income tax rate applicable is 25%.

### Foreign income

Panamanian resident companies are taxed on their income generated within the Panamanian territory. Any other income generated abroad will be exempt from income tax payment but may be subject to dividend tax (*see above*).

## Deductions

Taxable income is determined by deducting from the Panamanian-source income all costs, expenses, and non-taxable income applicable and permitted by law. The deductibility of costs and expenses depend on the relation of such costs and expenses with the generation or preservation of income source. Special restrictions apply to the following:

- Depreciation.
- Bad debt.
- Charitable contributions.

Costs and expenses related to non-taxable income are not considered as deductible. Thus, the taxpayer must split the expenses and costs related to taxable transactions from those related to non-taxable transactions. The expenses and costs allocated to taxed transactions may not exceed the amount from multiplying the portion of taxable income from the total income by the total costs and expenses.

Example:	Taxable	Non-taxable	Total
Income	100	50	150
	66.7%	33.3%	100%
Costs and expenses	83.38	41.62	125

### Depreciation and depletion

The straight-line and sum-of-the-years-digits methods of depreciation are allowed, as well as any other method.

Assets	Straight-line (%)
Buildings	3% as maximum
Machinery and equipment	33 as maximum
Furniture and fixtures	33 as maximum
Vehicles	33 as maximum

In the case of mines, depletion will be deductible during the useful life or depending on the state contract methodology.

### Goodwill

Goodwill expenses are deductible only when the transferring agent declares them as income.

# Panama

## ***Start-up expenses***

Start-up expenses are deductible through the amortisation process, over a maximum term of five years.

## ***Interest expenses***

Interest expenses are deductible only in cases where the interest relates to the generation or conservation of taxable income from a Panamanian source. No thin capitalisation rules are in force.

## ***Bad debt***

A taxpayer may deduct bad debts by opting for one of the following options:

- Deducting gains and losses annually to the value of such accounts in the fiscal year.
- Charging an annual profit and loss figure for the establishment of a reserve to meet contingencies of this nature.

## ***Charitable contributions***

Donations made in cash or in kind to the government, charitable or educational institutions, activities to promote HIV disease awareness, or political parties are deductible, with certain restrictions and limited to 1% of taxable income.

## ***Fines and penalties***

Fines and penalties are not deductible.

## ***Taxes***

The national and municipal taxes that affect capital, sales, and other operations related to taxable income producing activity are deductible.

## ***Net operating losses***

Losses incurred by common taxpayers may be carried forward and deducted from taxable profits for the following five years, at a rate of 20% each year, but limited to 50% of taxable income. Loss carrybacks are not allowed, and losses are not allowed for estimated income tax purposes.

## ***Payments to foreign affiliates***

A payment to a foreign entity (including affiliates) in a foreign country will be subject to WHT anytime it represents a deductible cost or expense for the payer. The tax base will be 50% of the remittance, and the income tax rate applicable is 25%.

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## ***Group taxation***

In Panama, there are no group taxation rules.

## ***Transfer pricing***

Transfer pricing obligation is extended to all the transactions carried out with foreign-related parties, in case these operations have effect in determining the tax base. There is an obligation to file an annual Transfer Pricing Informative Statement ('Form 930'), which includes all the operations carried out with foreign-related parties during the fiscal year under analysis. This report should be filed six months after the fiscal year has ended. Failure to submit or late submission of this Form will be penalised with a fine

equivalent to 1% of the total sum of operations carried out with foreign-related parties and will never exceed USD 1 million.

Law established the formal requirement for the preparation of a Transfer Pricing Study. However, the taxpayer should only present the Study in case the Panamanian Tax Authority requires it, within 45 working days, starting a day after the notification. Tax Authorities are allowed to fine those taxpayers that fail to present the Transfer Pricing Informative Statement or any required documents before the deadline; fines ranging from 1,000 Panama balboas (PAB) to PAB 5,000 will be applied the first time, from PAB 5,000 to PAB 10,000 in case of recurrence, and the closure of the establishment for 2 to 15 days in case of non-compliance.

## **Thin capitalisation**

There are currently no thin capitalisation rules in Panama.

## **Controlled foreign companies (CFCs)**

There are no provisions regarding CFCs in Panama.

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## **Tax credits and incentives**

### **Foreign tax credit**

Foreign tax credits are applicable only with countries with which Panama has signed a DTT (*see the Withholding taxes section for a list of countries with which Panama has signed a DTT*).

### **Free zones**

Entities established in free zones may enjoy exemption from import duties on goods, income tax, sales tax, export tax, and selective consumption tax derived from royalties on exportation and re-exportation activities. Aside from trading activities, the following businesses may also apply for the regime: higher education centres, scientific research centres, specialised centres for health services, high technology businesses, assembling businesses, semi processed or finished products processing businesses, services businesses, environmental service businesses, general services, logistics services businesses, and manufacturing businesses.

### **Tourism, industry, and agriculture allowances**

The Incentive Law for Tourism Development grants several tax benefits (e.g. exemption from import duties on certain tourism services and related goods for companies dedicated to tourism), but only for those corporations with a signed tourism agreement with the government. Income tax exemptions may apply in special cases.

In general, income from individuals or corporations that engage in agricultural production activities will be exempted from income tax if annual gross income is lower than USD 250,000.

Forestry plantations were totally exempted from income tax payment until 2018 if the lot planted had been duly registered at the Forestry Registry of the Environmental National Authority and resolution with approval from this authority had been issued.

# Panama

## Special laws

The Panamanian government has enacted special laws regarding tax exemptions for certain activities performed in Panama, such as call centres (Law No. 54 of 2001), and tax exemptions for certain appointed areas, such as the Panama Pacific Economic Zone (Law No. 41 of 2004) and Law No. 41 of 2007, which creates a special regime for the establishment and operation of regional headquarters in Panama (SEM Regime).

By means of Law No. 8 of 2010, Real Estate Investment Societies may deduct the profits distributed to their shareholders, provided that these Real Estate Investment Societies:

- raise long-term funds in a securities market
- are registered in the National Securities Commission
- distribute no less than 90% of their free cash flow
- register in the General Direction of Revenues, and
- withhold 20% of the profits distributed as an income tax advance payment on behalf of the shareholder, which may be deemed the definitive tax to be paid by the shareholder.

## Withholding taxes

Royalties and commissions on services paid to foreign entities are taxed through the application of the corresponding tax rate (i.e. 25%) over 50% of remittance under the concept of WHT (effective tax rate is 12.5%). The taxpayer may decide not to withhold taxes and consequently not deduct the expense.

Payment of interest is also subject to income tax on 50% of the interest paid to a beneficiary abroad on loans invested in Panama, but the payer must proceed with the WHT even if one does not deduct the interest.

If the beneficiary is registered as a taxpayer in Panama before the tax administration, no WHT may be required.

If, according to a special law, the payment of interest, royalties, dividends, fees, etc. is exempt from WHT, said exemption will not apply if the beneficial owner of the payment can credit the taxes that would have been paid in Panama in its country of residence. In the event that the credit application is not allowed in the country of residence, the taxpayer must request a formal opinion from an independent expert stating the non-applicability of the tax credit in the country of residence.

Recipient	Dividends (%)	Interest (%)	Royalties (%)
Foreign corporations	5/10/20*	12.5	12.5

\* See the description of Dividend income in the Income determination section.

In case of treaties, special rules are applicable in order to avoid double taxation.

Recipient	WHT (%)			
	Dividends	Interest	Royalties	Fees
Barbados	5/7.5 (1)	0/5/7.5 (2)	7.5	0/7.5 (3)
Czech Republic	10	0/5/10 (18)	10	0
France	5/15 (6)	0/5 (4)	5	N/A

Recipient	WHT (%)			
	Dividends	Interest	Royalties	Fees
Ireland	5	0/5 (4)	5	N/A
Israel	5/15 (19)	0/15 (4)	15	N/A
Italy	5/10 (20)	5/10 (21)	10	10
Korea	5/15 (1)	0/5 (4)	3/10 (5)	0
Luxembourg	5/15 (6)	0/5 (4)	5	5
Mexico	5/7.5 (1)	0/5/10 (7)	10	0/12.5 (8)
The Netherlands	0/15 (9)	0/5 (4)	5	0
Portugal	10/15 (10)	0/10 (4)	10	0/10 (11)
Qatar	6	0/6 (4)	6	0
Singapore	4/5 (12)	0/5 (4)	5	0
Spain	0/5/10 (13)	0/5 (4)	5	7.5 (14)
United Arab Emirates	5	0/5 (4)	5	0/12.5 (17)
United Kingdom	0/15 (15)	0/5 (16)	5	N/A
Vietnam	5/7/12.5 (22)	10	10	7.5

## Notes

- Depending on the percentage of ownership held by the beneficial owner (at least 25% to apply the 5% rate).
- Depending on the person or entity receiving the payment. If the beneficial owner is a bank, the 5% rate will apply; if the beneficial owner is the Central Bank of either state, the 0% rate will apply; in all other cases, the 7.5% rate will apply.
- If the services are not rendered in any of the states, the income will only be taxed in the state where such income arose.
- If paid to government financial institutions, the 0% rate will apply.
- 3% for the use or right to use industrial, commercial, or scientific equipment.
- Depending on the percentage of ownership held by the beneficial owner (at least 10% to apply the 5% rate).
- Depending on the person or entity receiving the payment. If the beneficial owner is a bank, the 5% rate will apply; if the beneficial owner is the Central Bank of either state, the 0% rate will apply; in all other cases, the 10% rate will apply.
- The 12.5% rate applies if the person rendering the services is in the other state for more than 60 days.
- No WHT is levied if the foreign company (beneficial owner) receiving the dividends directly holds at least 15% of the shares of the company paying the dividends, 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.
- Depending on the percentage of ownership held by the beneficial owner (at least 10% to apply the 10% rate).
- If the services are rendered in Panama, then the 10% rate will apply.
- Depending on the percentage of ownership held by the beneficial owner (at least 10% to apply the 4% rate).
- 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.
- If the services are rendered in Panama, then the 7.5% rate will be applicable.
- No WHT is levied if the foreign company (beneficial owner) receiving the dividends directly holds at least 15% of the shares of the company paying the dividends, 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.
- 5% but only if: (I) the interest is beneficially owned by: (i) an individual, (ii) a company with shares regularly traded on a recognised stock exchange, (iii) a financial institution or (II) the interest is paid by:



# Panama

- (i) a state, political subdivision, or local authority, (ii) a bank, or (iii) on a quoted eurobond. The 0% rate will apply if it is paid to the Central Bank of either state.
17. If the person is more than 90 days in Panama, then the 12.5% rate will apply.
  18. 0% applies for sales on credit and payments to the Central Bank; 5% for payments to banks in general; and 10% for all other cases.
  19. 5% if the beneficial owner is resident of a contracting state or the beneficial owner is a pension scheme.
  20. 5% if the beneficial owner has contributed at least 25% of the stock capital; 10% for all other cases.
  21. If paid to financial institutions, the 5% rate will apply.
  22. 5% if the beneficial owner has contributed more than 50% of the capital stock; 7% if the beneficial owner has contributed between 25% and 50% of the capital stock; 12.5% for all other cases.

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## **Tax administration**

### ***Taxable period***

The accounting period is the period for which the company makes its accounts. Returns shall be made upon completion of the accounting period and may not exceed 12 months. For most companies, it is usually from 1 January to 31 December.

### ***Tax returns***

The due date for filing is three months after the end of the fiscal year, with the possibility for an extension of up to one additional month.

### ***Payment of tax***

Income tax payment shall be made depending on the income tax return and shall be made no longer than three months after closing of the corresponding accounting period.

Taxpayers must pay estimated taxes (usually the same amount as generated income) at the end of the sixth, ninth, and 12th month after the end of the corresponding accounting period.

### ***Tax audit process***

Tax authorities select the taxpayers subject to audit based on internal criterion.

### ***Statute of limitations***

The tax administration may audit the income tax returns filed within the last three years from the last day of the year on which the tax return was filed.

With regard to VAT, the tax administration has the authority to charge this tax within five years from the last day of the following month in which the tax was due to be paid.

### ***Topics of focus for tax authorities***

Among the topics of focus are non-deductible expenses, withholdings, and VAT.

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## **Other issues**

### ***US Foreign Account Tax Compliance Act (FATCA) and the Common Reporting Standard (CRS)***

Panama signed the Model 1 Intergovernmental Agreement (IGA) for FATCA purposes with the US Treasury in order for Panamanian Banks to subscribe to the terms of FATCA. For this purpose, Law 51 of 2016 and Executive Decree 124 of 2017 were

created to complement the IGA and establish the procedures and deadlines for the financial institutions required to perform the due diligence and send the reports to the Tax Authority.

In 2016, Panama committed to automatically exchange information starting in 2018, according to the CRS. Same as the IGA-FATCA, the CRS also includes the automatic information exchange of financial information for tax purposes, based on the agreements signed by the Tax Authority (DGI) and the CAAs.

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# Puerto Rico

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## **Significant developments**

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

### **Pending legislation**

Please note that this summary is current as of 1 June 2018. Significant tax reform is expected after June 2018. Please visit the Worldwide Tax Summaries website at [www.pwc.com/taxsummaries](http://www.pwc.com/taxsummaries) to see any significant corporate tax developments that occurred after 1 June 2018.

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## **Taxes on corporate income**

A domestic corporation is taxable in Puerto Rico on its worldwide income. A foreign corporation engaged in trade or business in Puerto Rico is taxed at the regular corporate tax rates on income from Puerto Rico sources that is effectively connected income and at a 29% withholding tax (WHT) rate on its Puerto Rico-source gross income not effectively connected with that business.

The current corporate income tax (CIT) rate is comprised of a 20% normal tax and a graduated surtax (computed on the 'surtax net income').

The 'surtax net income' is basically the net taxable income subject to regular tax less a surtax deduction in the amount of 25,000 United States dollars (USD). The graduated surtax rates are as follows:

- 5% for surtax net income up to USD 75,000.
- USD 3,750 plus 15% of surtax net income from USD 75,001 to USD 125,000.
- USD 11,250 plus 16% of surtax net income from USD 125,001 to USD 175,000.
- USD 19,250 plus 17% of surtax net income from USD 175,001 to USD 225,000.
- USD 27,750 plus 18% of surtax net income from USD 225,001 to USD 275,000.
- USD 36,750 plus 19% of surtax net income in excess of USD 275,000 for a maximum nominal tax rate of nearly 39%.

The determination of the applicable surtax rate is made on a consolidated basis for controlled groups and related companies, so the net taxable income of all the entities subject to tax in Puerto Rico within said groups has to be combined for the determination of the applicable surtax rate.

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## ***Alternative minimum tax (AMT)***

The AMT includes various AMT adjustments in order to calculate the tentative minimum tax. Such minimum tax is subject to a 30% flat rate.

For AMT purposes, expenses paid or incurred for services performed by a related party outside Puerto Rico are considered a permanent adjustment in the determination of the alternative minimum net income (i.e. non-deductible for AMT purposes).

In determining the alternative minimum net income, the net operating loss (NOL) is limited to 70% of the alternative minimum net income. Also, the amount of the tax credit available with respect to the AMT paid in prior years that may be claimed against the current year regular tax is limited to 25% of the current net regular tax over the AMT for such taxable year. The AMT credit can be carried forward indefinitely.

## ***Tax on deemed dividends***

A 10% tax is imposed on certain corporation on the deemed dividend amount attributable to a foreign owner. A foreign owner is defined as any non-resident person (or entity not engaged in a trade or business in Puerto Rico) who directly owns 50% or more of the corporation's stocks. The deemed dividend amount is computed using the lesser of the average value of the total foreign assets or the accumulated earnings and profits of the corporation.

## ***Tax on improper accumulation of income***

A surtax of 50% is imposed on corporations that improperly accumulate earnings to prevent the imposition of tax on shareholders or partners rather than paying the earnings out as dividends. The tax is not imposed on accumulated earnings and profits but is imposed on the net income for the year computed without taking capital loss carryover or NOL carryover deductions, and reduced by the following items: Puerto Rico income taxes paid or accrued, disallowed net capital losses, and charitable contributions in excess of the deductible amount. The net income does not include industrial income exempted from income taxes under Industrial Incentives Acts. However, an exempt business can be subject to the penalty tax on non-exempt income.

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## ***Corporate residence***

A corporation organised or created under the laws of Puerto Rico is a domestic corporation. A domestic corporation is a resident corporation even if it does not conduct business operations in Puerto Rico. A corporation created elsewhere is considered a foreign corporation.

## ***Permanent establishment (PE)***

The Puerto Rico Tax Code does not provide specific guidance on PE. Facts and circumstances need to be analysed in order to determine if a corporation has created a PE in Puerto Rico or not. However, having an office or fixed place of business in Puerto Rico may deem the corporation to be engaged in a trade or business in Puerto Rico (i.e. having a PE).

## ***Sourcing rules pursuant to Act No. 154***

Act No. 154's source rules are segregated into two parts. The first part treats a non-Puerto Rico resident manufacturing entity as having an office or fixed place of business in Puerto Rico merely as a result of engaging in transactions above a certain threshold

with a related Puerto Rico entity. The second part treats a portion of the income earned by a non-Puerto Rico resident entity as Puerto Rico-source income.

Act No. 154's source rule applies where a non-Puerto Rico resident purchases goods and services from a related company that manufactures personal property or performs services in Puerto Rico that account for 10% or more of the total gross receipts of the seller from sales of such property or services in Puerto Rico, or at least 10% of the purchase cost of personal property and services acquired by the purchaser, for the taxable year or any of the three prior taxable years.

Where Act No. 154's source rule applies, a portion of the income of the non-Puerto Rico resident purchaser from the sale outside of Puerto Rico of personal property manufactured or produced in whole or part in Puerto Rico by the related Puerto Rico seller will be treated as Puerto Rico-source income that is effectively connected with the conduct of a Puerto Rico trade or business. The portion of the non-Puerto Rico resident's income that is treated as Puerto Rico source is determined under an equally weighted, four-factor (i.e. purchases, sales, property, and payroll) formulary apportionment method. Where the purchaser fails to provide adequate documentation regarding the formulary apportionment factors, 50% of the income of the non-Puerto Rico resident purchaser from the sale outside of Puerto Rico of personal property manufactured or produced in whole or part in Puerto Rico by the related Puerto Rico seller will be treated as sourced where the property is manufactured or produced (i.e. Puerto Rico). The source rule also will apply to agency and commissionaire arrangements, in addition to buy-sell transactions involving related parties. In addition, the source rule contains an anti-abuse provision that disregards a transaction, for purposes of the source rule, where one of the principal purposes of the transaction is avoidance of the source rule.

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## Other taxes

### ***Sales and use tax (SUT)***

As a general rule, the SUT shall be applied, collected, and paid on all transactions of taxable items in Puerto Rico. Taxable items consist of tangible personal property, taxable services, admissions, and what is known as bundled transactions. Excluded from this definition are professional associations and certain membership fees; stamps issued by professional associations, the Commonwealth of Puerto Rico, or the federal government; human blood, tissue, and organs; maintenance fees paid to resident associations; air and maritime tickets; real property; and bingos, raffles, and lottery. Other transactions that are exempt from SUT include export transactions; duty-free stores located at airport or maritime ports; prescription medicines; insulin; taxable items acquired for certain manufacturing operations (e.g. raw materials); and food and ingredients for food (except for prepared food, diet supplements, sweets, and carbonated beverages).

The SUT rate is imposed at 10.5% at the state level and an additional 1% at the municipal level, for an aggregate 11.5%. Designated professional services and business-to-business (B2B) services are taxed at a 4% SUT rate.

Taxable services that are excluded from SUT include, among others, the following:

- Services rendered by merchants with annual volume of business of less than USD 50,000.

## Puerto Rico

- Services rendered by a non-resident to a related party that is engaged in a Puerto Rico trade or business and holds a tax grant pursuant to Act No. 73-2008, Act No. 83-2010, Act No. 20-2012, or any similar act.
- Intangible rights.
- Advertising and promotion services.
- Construction subcontracted services and subcontracted telecommunication services.
- Toll manufacturing services or contract manufacturing services.
- Repair, maintenance, and conditioning of aircraft provided by a merchant that holds a tax grant pursuant to Act No. 73-2008 or any other similar act.

SUT should be remitted to the Puerto Rico government as 10.5% or 4% to the Puerto Rico Treasury Department (PRTD) and the remaining 1% to the corresponding municipality.

Tangible personal property introduced into Puerto Rico is subject to use tax upon importation, holding the release on the ports until the use tax is satisfied, unless the taxpayer is a bonded merchant or an eligible reseller. The use tax paid upon importation of the merchandise can be claimed as a credit on the SUT return.

Every natural or juridical person who does or wishes to do business of any kind in Puerto Rico shall request registration in the Merchant's Registry of the PRTD at least 30 days before starting operations. Once the registration application is filled out and approved, the Secretary of the Treasury will grant a Merchant's Registration Certificate. This certificate constitutes the merchant's authorisation to do business in Puerto Rico and confirms the merchant's obligation as a withholding agent. The Merchant's Registration Certificate shall be displayed, at all times, in a visible place for the general public in the commercial establishment for which it was issued. Please note that if a merchant is doing business in one or more of the 78 municipalities in Puerto Rico, the merchant only needs to register with the PRTD.

Unless specifically exempted, all persons selling taxable items are required to file a monthly SUT return. This return shall be filed electronically with the PRTD no later than the 20th day of the calendar month following the month during which the sales occurred. Also, all persons that import tangible property to Puerto Rico must file a use tax on imports return no later than the tenth day of the calendar month following the import.

There is a credit for purchases of products manufactured in Puerto Rico for purposes of SUT. In general, the credit will be 10% of the excess of the purchases of eligible products over the average of the purchases of eligible products for three out of ten prior taxable years. This credit can be carried forward until exhausted. It is important to note that the credit used will be considered taxable income for income tax purposes of the year the credit is taken.

### ***Customs duties and import tariffs***

Puerto Rico does not have customs duty and import tariff provisions. Since Puerto Rico is a Commonwealth of the United States, it follows the United States' customs duties and import tariffs.

### ***Excise taxes***

There are certain articles subject to a special excise tax, such as cigarettes, fuels, crude oils, vehicles, alcoholic beverages, cement, sugar, and plastic products, among others.

### Act No. 154's excise tax

Companies with manufacturing operations in Puerto Rico may be subject to an excise tax on goods or services provided to offshore-related entities under Act No. 154 of 2010, as amended. This Act created an excise tax that works in tandem with Act No. 154's source rules. Where the excise tax applies, it is in lieu of the tax that otherwise would arise from the application of Act No. 154's source rules. Under this excise tax rule, offshore purchasers that acquire goods from Puerto Rico sellers with gross receipts in excess of USD 75 million for any of the three preceding taxable years and that otherwise meet the source-of-income rule thresholds (set forth above) are subject to this excise tax equal to the 'applicable percentage of the value' of such personal property or services, which is essentially a scaled-back percentage. The excise tax rate phases out as follows:

- 3.75% between 1 January 2012 and 31 December 2012.
- 4.00% between 1 January 2013 and 31 December 2027.

Various tax credits are provided to offset the excise tax mentioned above.

The excise tax is collected by the Puerto Rico seller on receipts from the sale of personal property or services rendered to a related offshore purchaser. The tax has to be deposited with the Secretary of the Treasury on or before the 13th day of the month following the sale. Each person required to collect the excise tax must file a quarterly excise tax return on 30 April, 31 July, 31 October, and 1 January and pay any remaining tax liability not deposited on a monthly basis, as outlined above.

Act No. 154 sets forth the process for which a credit may be claimed for (i) taxes paid to any of the states of the United States on the acquisition of personal property and services and (ii) taxes paid to Puerto Rico by another member of the taxpayer's controlled group on a series of purchases.

### Personal property taxes

Every corporation engaged in a trade or business in Puerto Rico that on 1 January of each year owns personal property used in its trade or business within Puerto Rico, whether it is leased to another entity or not, is subject to tax on such property. The tax is self-assessed by the corporation, and it is paid together with the filing of an annual return. The tax ranges between 5.80% and 9.83%, depending on the municipality.

The tax return must be filed electronically through the Municipal Revenue Collection Center (MRCC) website ([www.crimpr.net](http://www.crimpr.net)). In order to file the return, every taxpayer with over USD 3 million in volume of business and specialist who had prepared more than five returns for the prior taxable year need to register using this website. The signature and certification of the return will be satisfied by virtue of the electronic filing. Also, all returns filed electronically should be accompanied by the corresponding payment due on or before 15 May.

Every corporation must substantially satisfy its personal property tax liability, if any, through estimated tax payments. The amount of estimated taxes should be paid in equal instalments on the 15th day of August, November, February, and May of the taxable year of the corporation. The estimated payments should equal or exceed 90% of the actual personal property tax for the year or 100% of the personal property tax as reflected in the personal property tax return for the preceding taxable year, whichever is less. Any tax not covered by the estimated tax payments should be paid along with

## Puerto Rico

the personal property tax return. Failure to pay the tax by the due dates indicated above may result in a penalty of 5% of the instalment due.

A 5% statutory discount is available if 100% of the personal property tax, as reflected in the personal property tax return for the preceding taxable year, is made by the first instalment date (15 August).

In general, all personal property not specifically exempted, including cash, finished goods inventory, supplies, and depreciable property, is subject to the tax. The personal property tax is generally based on the book value of the asset as of 1 January. Finished goods inventory, however, is assessed on the average of the monthly balances for the 12-month period preceding 1 January of each year.

The valuation of the personal property subject to tax is determined by multiplying the book value of such property by the applicable tax rate determined by the municipality in which the property is located. If the book value of depreciable property is below its estimated residual value, the property should be assessed at its estimated residual value.

### ***Real property taxes***

The property tax system is administered by the MRCC. The tax on real property is directly assessed by the MRCC and may be paid in two instalments. The tax, (which varies from a minimum of 8.03% to a maximum of 11.83%, depending on the municipality) is applied to an amount based on the hypothetical fair market value (FMV) of the relevant property in the year 1957. In general terms, this hypothetical FMV normally ranges between 40% and 50% of the cost of the property.

### ***Transfer taxes***

Puerto Rico does not have transfer tax provisions.

### ***Stamp taxes***

Puerto Rico does not have stamp tax provisions. However, recordation fees are imposed at the time of officially recording a real estate transaction with the Puerto Rico Property Registry.

### ***Withholding taxes on salaries and wages***

All employers are required to withhold Puerto Rico income tax from all wages paid to its employees.

### ***Federal Social Security and Medicare (FICA)***

The Federal Social Security and Medicare Law applies in full in Puerto Rico. The tax rate is imposed on both the employer and the employee. For 2018, the tax rate is 7.65%, which consists of 6.2% of Social Security and 1.45% of Medicare Tax. The Social Security Tax is calculated on the first USD 128,400 (year 2017) of wages received, and the Medicare Tax is calculated on the total wages, without ceiling.

In addition, an employer must withhold a 0.9% Additional Medicare Tax from wages paid to an employee in excess of USD 200,000 (for a single taxpayer; married filing jointly is USD 250,000 and married filing separately is USD 125,000) in a calendar year. The employer is required to begin withholding Additional Medicare Tax in the pay period in which wages are paid in excess of USD 200,000 to an employee and continue to withhold it each pay period until the end of the calendar year. Additional Medicare



Tax is only imposed on the employee. There is no employer share of Additional Medicare Tax. All wages that are subject to Medicare tax are subject to Additional Medicare Tax withholding if paid in excess of the USD 200,000 withholding threshold.

### ***State (PR) Unemployment Tax (SUTA)***

The unemployment tax is paid only by the employer and is paid on the first USD 7,000 of total wages paid to each employee during the calendar year, based on an experience rating system. In addition, the employer must also pay a special tax equal to 1% of the wages subject to unemployment tax. However, the special tax together with the experience-based tax cannot exceed 5.4%.

### ***Federal Unemployment Tax (FUTA)***

Similar to the FICA, FUTA also applies in Puerto Rico. All persons who employ at least one individual during any 20-week period or pay USD 1,500 or more in salaries during any trimester of the calendar year are subject to the FUTA tax.

The employer is solely responsible for payment of the tax. The rate is 6.0% on the first USD 7,000 of total wages paid during the calendar year to each employee. However, a credit of 5.4% is granted for the PR unemployment tax paid. Therefore, the effective tax rate is 0.6% (6.0% less 5.4%).

### ***Disability insurance***

The Puerto Rico Department of Labor and Human Resources Bureau of Employment Security also administers the disability insurance program. This program is funded principally through the imposition of a tax, in equal amounts, on the employer and employee.

A contributory tax of 0.6% is imposed on the first USD 9,000 of the total wages paid in the year. From the total tax, half (0.3%) is paid by the employer and the other half by the employee.

Employers may establish private insurance plans if approved by the Puerto Rico Department of Labor and Human Resources.

### ***Workmen's Accident Compensation Insurance***

The Workmen's Accident Compensation Insurance Act (WACA) establishes a compulsory insurance program that covers employees who suffer injury, become disabled, or lose their lives due to a job related accident. The insurance premium is based on total wages paid during the government's fiscal year, which runs from 1 July to 30 June. The actual rates vary among industry types. The employer is solely responsible for payment of the assessed premium.

### ***Chauffeurs' Social Security***

Every employer having one or more drivers is subject to Chauffeurs' Social Security tax. It also applies to an employer whose employees are usually or regularly required or allowed to operate a motor vehicle as an inherent part of their work.

The tax is imposed on both the employer and the employee as follows:

- Every employer must pay USD 0.30 per week or fraction thereof for each covered employee.
- Every employee must pay USD 0.50 per week or fraction thereof.

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## ***Municipal license tax***

Every corporation is required to file an annual volume-of-business declaration with each of the municipalities in which it establishes or conducts business operations during the year. The declaration must indicate the actual volume of business (i.e. net sales, gross income from any service rendered, and other gross receipts) attributable to each municipality. When a business operates in more than one municipality but does not receive income in all of them, the license tax shall be computed based on a distribution of sales apportioned to each municipality by square feet of the building used in each municipality.

For a non-financial business, the license tax payment varies from a minimum of 0.20% to a maximum of 0.50%, depending on each municipality. The payment must be made in two equal instalments on or before 15 July and 15 January on the basis of the volume of business generated by the entity during its accounting year ended within the immediately preceding calendar year before the due date of the declaration. A 5% discount is available when the tax is fully paid on the declaration due date (on or before five working days after 15 April of each year).

For the first six months after a new business is established, the new company is generally exempt from the municipal license tax, provided that the business informs the municipality that it has established a new business in the municipality within the first 30 days of operations and requests the provisional license tax as established in each municipality. A copy of the municipal licence is generally requested as a prerequisite for obtaining other licences and permits in Puerto Rico.

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## ***Branch income***

Corporations operating in Puerto Rico as a branch may be subject to a 10% tax on the dividend equivalent amount (commonly known as the branch profit tax or BPT). The BPT should be determined and paid along with the CIT return. There will not be an income tax withholding at source at the time cash transfers are made by the Puerto Rico branch to its home office outside of Puerto Rico.

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## ***Income determination***

The gross income of a corporation generally includes business income, profits from the sale of property, interest, dividends, and income derived from any source, unless specifically exempted by law.

A corporation's net income is generally calculated in accordance with the method used for financial statement purposes, except for various items of income and expenses, which are treated differently. For example, the cash method of accounting may not be used by a corporation with inventory or with an average annual gross income in excess of USD 1 million. Long-term contract methods and the instalment method can be used for regular tax calculations.

## ***Inventory valuation***

In general, inventory is valued at the lower of cost or market. Retail merchants can use the retail method of accounting.

### ***Capital gains***

Tax-advantaged treatment is provided for net long-term gains (holding period of more than one year) from the sale of capital assets. For corporations, net long-term capital gains, reduced by any short-term capital losses, are subject to an alternative (preferential) tax of 20% in lieu of the regular CIT rates.

### ***Dividend income***

Dividends from a corporation that derives 20% or more of its profits from sources within Puerto Rico are taxable in Puerto Rico. However, a dividends-received deduction may apply.

### ***Dividends-received deduction***

All corporations engaged in trade or business in Puerto Rico are entitled to an 85% deduction on dividends received from a domestic corporation but not in excess of 85% of the net income of the corporation. A 100% dividends-received deduction applies for dividends received from taxable controlled domestic corporations (if ownership in a corporation is 80% or more).

### ***Interest income***

Interest income is generally taxable, except interest from obligations of the federal government or any state, or territory, or political subdivisions; the District of Columbia; and the Commonwealth of Puerto Rico or any of its instrumentalities or political subdivisions.

### ***Royalty income***

Royalties from property located in Puerto Rico or from any interest in such property are included in gross income.

### ***Partnership income***

The income (loss) of a partnership passes through to its partners so that the partnership itself is not subject to tax. Thus, each partner generally accounts for their distributive share of the partnership's taxable income (loss).

### ***Other income***

Service fees are generally taxable as ordinary income.

### ***Foreign income***

Generally, a Puerto Rico domestic corporation is taxed on its worldwide income, including foreign income earned and foreign dividends when received. Double taxation is avoided by means of foreign tax credit or deduction. In the case of resident foreign corporations, these are only taxed on their Puerto Rico-source income and on their effectively connected Puerto Rico income (i.e. foreign income won't be taxable for Puerto Rico purposes).

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## ***Deductions***

All ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business are deductible by corporations operating in Puerto Rico.

## Puerto Rico

### **Depreciation**

A reasonable depreciation allowance is deductible for the exhaustion, wear and tear, and obsolescence of property used in business. The most common depreciation method used by corporations is the straight-line method. Nevertheless, any other consistent method may be used in lieu of the straight-line method as long as it is in accordance with the recognised trade practice. In addition, a corporation (other than one that is exempt under an Industrial Incentives Act) can elect an accelerated depreciation method for new or used tangible property acquired by purchase in taxable years commencing after 30 June 1995.

For property acquired after 31 December 2009, when using the straight-line depreciation method, the useful life has to be determined based on the same rules of accelerated depreciation.

<b>Assets</b>	<b>Useful life (years)</b>
3 year property (e.g. computers, electronic equipment)	3
5 year property (e.g. automobiles, transportation equipment)	5
7 year property (e.g. certain furniture and fixtures, air transportation equipment)	7
10 year property (e.g. furniture and fixtures, printing equipment, other machinery and equipment)	10
15 year property (e.g. certain air transportation equipment, natural gas plants)	15
20 year property (e.g. vessels, land improvements)	20
Real property leased for residential purposes	30
Other real property	35

For intangibles (other than goodwill) acquired or created after 1 September 2010, the deduction is calculated using the straight-line method over the lower of a useful life of 15 years or the intangible's useful life.

### **Goodwill**

The cost of goodwill is generally capitalised and amortised ratably over 15 years.

### **Start-up expenses**

Generally, start-up expenditures may be deducted in the tax year in which the trade or business begins or they may be ratably amortised over five years.

### **Interest expenses**

In general, interest expense is deductible without limitation. However, interest expenses related to exempt income are not deductible. If interest is paid to a non-Puerto Rico resident related party, a 29% withholding at source applies. If the 29% withholding is not withheld, no deduction is available.

### **Bad debt**

Bad debt resulting from a trade or business may be deducted in the year the debt becomes worthless (i.e. uncollectible). The reserve method is not admissible for Puerto Rico purposes.

### **Charitable contributions**

Deductions for allowed charitable contributions are limited to 10% of net income, computed regardless of the contributions.

### ***Rent expense***

Corporations are entitled to a rent expense deduction if the rented property is used in the business.

### ***Employee remuneration***

Corporations may deduct payments of reasonable salaries or other compensation for services actually rendered.

### ***Insurance premiums***

Insurance premiums paid or accrued on risks related to a trade or business are deductible, as well as premiums on group life policies covering employees where the beneficiary is not the corporation. No deduction is allowed for premiums paid to an insurance company not authorised to provide insurance in Puerto Rico or through an agent or broker not authorised to operate in Puerto Rico.

### ***Meals and entertainment***

Meals and entertainment expenses are deductible, subject to a 50% limitation. Travelling expenses are fully deductible if the trip is for business purposes.

### ***Automobiles expenses***

A corporation is allowed to depreciate non-cargo automobiles used in a trade or business over a five year useful life (three years in the case of sales persons) up to a maximum base of USD 30,000 for a maximum annual depreciation of USD 6,000.

On the other hand, for non-cargo automobile maintenance expenses (e.g. gas, repairs, insurance), a deduction based on USD 0.60 per mile is allowed.

### ***Fines and penalties***

Penalty payments, such as with respect to Commonwealth taxes, whether on account of negligence, delinquency, or fraud, are not deductible from gross income.

### ***Taxes***

A corporation is allowed a deduction for taxes paid (except for Puerto Rico CIT), including income tax paid to the United States, its other possessions, and any foreign country. The deduction is in lieu of claiming a foreign tax credit.

### ***Other significant items***

The cost of incidental repairs (not adding value to the property) is deductible as a business expense.

Subject to certain limitations, savings and retirement plans for the benefit of employees are deductible if qualified by the Secretary of the Treasury.

### ***Net operating losses (NOLs)***

All corporations are generally entitled to the NOL deduction in computing their tax. NOLs created from taxable years beginning prior to 31 December 2012 (and after 31 December 2004) may be carried forward for 12 taxable years (there are no carryback provisions). For taxable years beginning after 31 December 2012, the NOL carryforward period is ten years. The use of the NOL deduction is limited to 80% of the taxable income for the year. The NOL to be carried forward should exclude the deductible portion of the expenses or payments to foreign affiliates.

## Puerto Rico

Also, losses from sales or exchanges of capital assets are allowed only to the extent of gains from such sales or exchanges. The carryforward period in this instance, however, is seven years. The use of capital losses is limited to 80% of the capital gains for the taxable year.

### ***Payments to foreign affiliates***

51% of expenses attributable to payments made to a related party that is not engaged in a trade or business in Puerto Rico or to the home office located outside of Puerto Rico (i.e. foreign affiliate) will not be deductible for purposes of computing the net taxable income, as long as these payments are not subject to income taxes in Puerto Rico.

The Secretary of the Treasury has the authority to grant a 100% deduction for the expenses paid or incurred with related parties not engaged in a trade or business in Puerto Rico via the waiver mechanism. However, the deduction is limited to 60% of the expenses that qualify for the waiver.

Expenses paid or incurred with related parties not engaged in a trade or business in Puerto Rico for which a waiver from the Secretary of the Treasury is not obtained do not generate NOL carryforward (i.e. the expenses are added back to the NOL). In other words, the non-disallowed portion of the payments to foreign affiliates/branches will not be allowed if this particular portion causes a NOL.

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### ***Group taxation***

Puerto Rico does not have group taxation rules. In other words, corporations cannot file a consolidated return for Puerto Rico CIT purposes.

### ***Transfer pricing***

There are no specific transfer pricing rules in Puerto Rico.

### ***Thin capitalisation***

There are no specific thin capitalisation rules in Puerto Rico.

### ***Controlled foreign companies (CFCs)***

There are no specific CFC rules in Puerto Rico.

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### ***Tax credits and incentives***

A corporation engaged in specific eligible activities may apply for a reduced CIT rate, among other incentives, through the request of a Tax Exemption Grant to the Puerto Rico Office of Industrial Tax Exemption (OITE) under Act No. 73 of 28 May 2008 (Act No. 73).

A corporation engaged in eligible activities related to the exportation of services may apply for a reduced CIT rate, among other incentives, through the request of a Tax Exemption Grant to OITE under Act No. 20 of 17 January 2012 (Act No. 20), instead of through Act No. 73.

The Governor of Puerto Rico issued various administrative orders during taxable years 2017 and 2018 imposing limitations with respect to the utilisation of credits.

### ***Tax rate incentives***

#### **Under Act No. 73**

Exempt entities may elect one of the following two scenarios:

- General scenario: 4% CIT rate with a WHT rate on royalty payments of 12%. Under this scenario, the amount of WHT on the royalty payments is creditable against the 4% CIT.
- Alternate scenario: 8% CIT rate with a WHT rate on royalty payments of 2%. Under this scenario, the WHT on royalty payments is creditable against the 8% CIT.

Companies may elect one of these scenarios at the time of applying for the benefits under the Act. However, there are other possibilities:

- 4% fixed income tax rate on Incentive Development Income (IDI), excluding income from certain investments provided by Section 2(j).
- Pioneer industries are eligible for a 1% CIT rate.
- Activities for the development in Puerto Rico of intangible property are eligible for a 0% CIT rate.
- Any exempt business having operations at a municipality located in a 'low or intermediate development zone' may reduce its CIT rate by an additional 5%.
- Any exempt business having operations in Vieques and Culebra may be totally exempt from income taxes during the first ten years of operations as established in the Act. The remaining years covered by its tax decree may qualify for a 2% CIT rate.

#### **Under Act No. 20**

- 4% CIT on export services income or
- 3% CIT when more than 90% of the eligible business's gross income is derived from export services and such services are considered strategic services, according to the criteria established in Act No. 20.

### ***Special deductions***

Special deductions under Act No. 73 are available for capital investment in buildings, structure, machinery and equipment, and the NOL carryforwards.

There are no special deductions allowed under Act No. 20.

### ***Credits***

The following credits are only available under Act No. 73. Please note that no credits are allowed under Act No. 20.

#### **Credit for purchases of Puerto Rico manufactured product**

Subject to certain limitations, the credit for purchases of products manufactured in Puerto Rico is 25% (35% in the case of recycled products).

#### **Job creation credit**

There is a credit for every incremental job applicable to exempt business starting operations after 1 July 2008. The amount of the credit (maximum of USD 5,000 per each employment) depends upon the location of the industrial development zone.

# Puerto Rico

## Research and development (R&D) investment credit

A 50% credit is granted for the eligible investment in R&D activities, including operational expenditures, clinical trials, infrastructure, renewable energy, or intellectual property (IP).

The 'Electricity, Water and Sewer Services Subsidies and Overdue Payments Reform Act' (Act No. 22) amends the 'Economic Incentives Act for the Development of Puerto Rico' (Act No. 73) in order to provide that existing businesses that hold a tax grant under Act No. 73 will not be allowed to claim R&D credits against an electric energy, water, and/or sewer services bill unless the PRTD certifies the availability of the credit.

## Energy investment credit

A 50% credit is granted for the eligible investment in the acquisition of machinery and equipment for the creation of energy.

## Energy cost credit

There is also a 3% credit (which could be increased up to 10% if certain employment requirements are met) for payments made to the Puerto Rico Power Authority during the corresponding taxable year. This credit is available for a ten-year period starting as of 1 July 2008. Additional credits (for the purpose of reducing the cost of energy) may be available to industrial units, subject to certain limitations. Act No. 22 of 2016 eliminates the energy credits to new applicants for tax grants under Act No. 73.

## Technology transfer credit

A 12% credit (2% in the case of exempt businesses that opted for the alternate tax) is available for payments made to resident entities for the use or privilege of using intangible property in Puerto Rico.

## Strategic projects investment credit

There is a 50% credit for eligible investment in strategic projects, including activities for the design, development, and construction of dams.

## Industrial investment credit

There is a 50% credit, up to a maximum of USD 8 million, for cash invested in the purchase of 50% or more of the stock or operating assets of an exempt business that is in the process of shutting down operations, amounts used to start-up a small or medium-exempt business, or amounts used for a substantial expansion of an exempt business.

## Property tax incentives

Similar to the previous incentives laws, Act No. 73 allows for a 90% property tax exemption on personal and real property. However, Act No. 73 introduced a methodology for the classification and assessment of real property owned by the exempt businesses. Under the provisions of Act No. 73, a taxpayer can self-assess one's real property tax responsibility (similar to the current personal property tax system) and remit the related tax liability due along with a real property tax return (to be issued by the MRCC) by 15 May of each year. The self-appraisal method is only applicable to real property that has not been appraised by the MRCC and is mainly limited to machinery and equipment classified as real property. Note that this method is not available for assets such as land, buildings, and building equipment.



For purposes of Act No. 20, there is a 100% exemption from property taxes during the first five years of operations in the case of eligible services as call centres, management services, and shared services. After said five-year period, a 90% exemption will apply during the term remaining under the Tax Exemption Grant.

### ***Municipal license tax and other municipal tax incentives***

Under Act No. 73, the municipal license tax exemption continues at 60% for exempted businesses. Exempt businesses operating in Vieques or Culebra are 90% exempt; small or medium-exempt businesses are 75% exempt; and central or regional corporate headquarters providing managerial services to affiliated companies are 100% exempt during the first five years after becoming eligible for the exemption.

There are no municipal tax exemptions under Act No. 20.

### ***Foreign tax credit***

Generally, in any year, a taxpayer can choose whether to take as a credit (subject to limitation) or as a deduction the foreign income and excess profit taxes paid or accrued during the taxable year to any foreign country. A foreign tax credit reduces the Puerto Rico income tax liability dollar for dollar, while a deduction reduces the Puerto Rico income tax liability at the marginal rate of the taxpayer. There are no carryforward provisions for foreign tax credit purposes.

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## ***Withholding taxes***

Corporations not engaged in a trade or business in Puerto Rico are subject to a 29% WHT at source on certain gross income items (considered fixed or determinable, annual or periodical [FDAP]) from Puerto Rico sources.

FDAP income may include interest received from a related person, rents, royalties, salaries, annuities, compensation, remuneration, and net capital gains. However, if the payment received is from dividends, a 10% WHT should apply.

The payer, as a withholding agent, is responsible for the withholding and remittance of the 29% (10% in the case of dividends) to the PRTD. Such tax is due on or before the 15th day of the month following the receipt of the income by the non-resident corporation. An annual informative return is also required to be filed no later than 15 April of the following year.

### ***Tax treaties***

There are no tax treaties between foreign countries and Puerto Rico.

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## ***Tax administration***

### ***Taxable period***

The annual accounting period may be on the basis of the calendar year, a fiscal year ending on the last day of a month, or a 52/53 week year.

### ***Tax returns***

The Puerto Rico tax system is based on the principle of self-assessment. A corporate taxpayer is required to file an annual income tax return by the 15th day of the fourth

## Puerto Rico

month following the close of its tax year. In general terms, a taxpayer can obtain an automatic extension of three months to file its income tax return. Failure to timely file can result in penalties.

A corporate taxpayer may also be subject to file a personal property tax return by 15 May and/or a volume of business declaration by the fifth business day after 15 April.

### **Payment of tax**

A corporation must substantially satisfy its annual income tax liability, if any, through estimated income tax payments. The amount of estimated income taxes should be paid on equal instalments on the 15th day of the fourth, sixth, ninth, and 12th month of the taxable year of the corporation. The estimated payments should equal or exceed 90% of the actual tax for the year (including AMT) or, in cases where a CIT return was filed by the corporation in the preceding year, 100% of such tax liability. Any tax not covered by the estimated tax payments should be paid along with the CIT return. Failure to pay the tax by the due dates indicated above may result in a penalty of 10% of the instalment due.

### **Annual report**

Every corporation is required to file an annual corporation report with the Puerto Rico Department of State. This annual report must be filed by the 15th day of April along with a USD 150 annual fee and a balance sheet as of the close of operations of the prior year. The report should be filed through the Puerto Rico Department of State's website. In the case of for-profit corporations, if the volume of business exceeds USD 3 million, the annual report must be accompanied by a balance sheet certified by a certified public accountant (CPA) licensed in Puerto Rico. In the event that the volume of business does not exceed USD 3 million, a balance sheet prepared under Generally Accepted Accounting Principles (GAAP) by a person with a general knowledge in accounting has to be submitted along with the corporate annual report. An extension of 60 days (an additional 30-day period may be requested) for filing the annual report can be obtained if timely requested. The Secretary of State is authorised to impose a penalty for failure to timely or accurately file the annual corporate report that would be between USD 75 and USD 2,000 if a non-profit corporation, and between USD 750 and USD 2,000 if a for-profit corporation.

### **Audited financial statements**

Accounting records must be prepared in accordance with the GAAP followed in the United States. Domestic (i.e. incorporated in Puerto Rico) or foreign corporations with volume of business of more than USD 3 million must include, with their CIT return, audited financial statements of the Puerto Rico operations for the accounting year ended on or before the preceding 31 December. The financial statements should be submitted with an audit report issued by a CPA licensed in Puerto Rico.

Also, qualified and disclaimer opinions are now allowed to the extent that the qualification or disclaimer does not result from a restriction in scope. However, no adverse opinions are allowed. All groups of related entities engaged in a trade or business in Puerto Rico are required to file consolidated or combined financial statements (CFS), which should contain a consolidating schedule and general information of the related parties. The determination of the gross income threshold for purposes of the audited financial statement requirement should be made taking into consideration the volume of business of all the entities within a controlled group. In the case of foreign entities, these will be able to submit audited financial statements with

their Puerto Rico operations on a stand-alone basis; in other words, the CFS will not be required. The requirement for audited financial statements will not apply to non-profit organisations.

With respect to the municipal license and personal property tax filings, the threshold amount for the audited financial statements requirement is gross revenues of more than USD 3 million, regardless of the corporate residency (i.e. foreign or domestic).

Supplemental information is also required to be included as part of the audited financial statements to be filed with the income tax return, volume of business declaration, and personal property tax return. The due date for the supplemental information is the last day of the month following the CIT due date, including extensions (i.e. 31 August 2018). The supplemental information must be submitted electronically and separately from the audited financial statements.

### ***Tax audit process***

Many taxpayers are under audit by the PRTD. The audits may include income, payroll, withholding, and sales and use taxes.

### ***Statute of limitations***

The PRTD generally has four years after an original return is filed to assess income, payroll, and sales and use taxes. A return will be deemed to have been filed on the later of (i) its due date or (ii) the date the return was actually filed.

### ***Topics of focus for tax authorities***

Currently, the PRTD is focused on SUT, intercompany loans, withholding at source, and payments to foreign affiliates, among others.

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# ***Saint Kitts and Nevis***

## ***PwC contact***

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## ***Significant developments***

The government of Saint Kitts and Nevis has signed on to the Common Reporting Standards (CRS) and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which would provide for exchange of tax information on a reciprocal basis.

On 14 November 2017, Saint Kitts and Nevis joined the Inclusive Framework (IF) on Base Erosion and Profit Shifting (BEPS). By joining the IF, Saint Kitts and Nevis will work on creating an equal footing with all other IF members on the implementation of the BEPS package and on developing further standards to address the remaining BEPS issues.

On 24 November 2017, Saint Kitts and Nevis signed a double taxation agreement (DTA) with the United Arab Emirates.

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## ***Taxes on corporate income***

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

Saint Kitts and Nevis imposes CIT at a flat rate of 33%.

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

Where a person resident in Saint Kitts and Nevis makes a payment to another person not resident in Saint Kitts and Nevis, *as noted in the Withholding taxes section*, then withholding tax (WHT) at a rate of 15% must be deducted and remitted to the Inland Revenue within 15 days.

A company that carries on business exclusively with persons who are not resident in Saint Kitts and Nevis is exempt from all income, capital gains, and WHTs.

# Saint Kitts and Nevis

Companies registered under the Condominium Act are governed by that Act and are not required to pay CIT.

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## ***Corporate residence***

A corporation is deemed to be resident if it is incorporated in Saint Kitts and Nevis or if it is registered as an external company doing business in Saint Kitts and Nevis under the Companies Act.

## ***Permanent establishment (PE)***

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

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## ***Other taxes***

### ***Value-added tax (VAT)***

The standard VAT rate is 17%, while hotel accommodation, tour operators, and restaurants carry a reduced rate of 10%.

Most foods (excluding prepared food or meals from a restaurant, snackette, cafeteria, etc.; live animals; and plants), medicines, and funeral expenses by a licenced funeral home are exempt from VAT.

Persons who have made or are likely to make taxable supplies in excess of 96,000 East Caribbean dollars (XCD) for certain professional services and XCD 150,000 for other business activities in a continuous period of 12 calendar months are required to register for VAT.

### ***Customs duties***

All imports are subject to import duties, VAT, and customs service tax (CST). In all instances, certain exemptions will apply.

Customs duty is levied on a wide range of imported goods at rates from 0% to 70% as specified in the Custom Duties Act. VAT is applied at a rate of 17%, and CST at a rate of 6%. Customs duty is levied on goods based on the cost, insurance, and freight (CIF) values and rates determined by the Caribbean Community (CARICOM) Common External Tariff.

### ***Excise tax***

The excise tax applies to a small range of goods, such as alcoholic beverages, tobacco products, petroleum products, motor cycles, aerated beverages, and firearms. The excise tax rate ranges between 5% and 25%.

### ***Property tax***

#### ***Saint Kitts***

Property tax in Saint Kitts is levied at varied rates on the basis of the market value of the real property (including land and building as assessed by the Chief Valuation Officer) and its class.

Property classes and rates of tax are as follows:

- Residential use property: 0.2%.
- Commercial use property: 0.3%.

Annual allowances and tax rebates are available as follows:

- Residential use property and condominium allowance of XCD 80,000 from the taxable value.
- No property tax is assessed on any buildings, condominiums, etc. that are under construction.
- New residential use properties and condominiums are exempt from tax for one year from the date certified by the valuation officer.

Note that residential use properties located in the South East Peninsula are assigned values based on fixed rates for land (XCD 20 per square foot) and buildings (XCD 300 per square foot). Property tax is then applied at a rate of 0.2%.

Where property situated in the South East Peninsula area is not developed within five years, a surcharge can be assessed at the rate of 1% of the assessed market value *per annum*, and increased annually at the rate of 1% thereafter until it reaches a maximum rate of 5% of the assessed market value while the property remains undeveloped. If property is less than one acre, undeveloped, and owned by a resident for the purpose of erecting a house, such property is exempt from the surcharge upon application in writing to the Comptroller of Inland Revenue.

Property tax is payable on or before 30 June of each year and is deemed to be in default if not paid within 30 days of becoming due. Interest is charged at a rate of 12% *per annum* on the unpaid taxes.

### Nevis

Property tax in Nevis is levied at varied rates on the basis of the market value of the real property (including land and buildings as assessed by the Chief Valuation Officer) and its class.

Property class and rates are as follows:

Property class	Building tax rate (%)	Land tax rate (%)
Residential	0.156	0.075
Commercial	0.3	0.2
Accommodation	0.3	0.2
Certified farming	0	0.01
Institutional	0.2	0.15

Commercial use property is defined as property that does not include accommodation use property or property used for certified farming operations.

Accommodation use property is defined as property for short-term accommodation and includes a guest house.

Annual allowances and tax rebates are available as follows:

- Residential use property and condominium allowance of XCD 80,000 from the taxable value.

## Saint Kitts and Nevis

- No property tax is assessed on any buildings, condominiums, etc. that are under construction.

Property tax is payable on or before 30 June of each year and is deemed to be in default if not paid within 30 days of becoming due. Interest is charged at a rate of 12% *per annum* on the unpaid taxes.

### ***Alien land holding licences***

To hold land as an owner, a non-citizen must first obtain an alien land holding licence and pay 10% of the market value of property or XCD 750, whichever is greater.

A non-citizen is required to obtain a licence to hold shares in a company that owns land, to vote at shareholders meetings of the company, and to be a director of the company. Each licence costs XCD 250.

If a non-citizen purchases land in the Frigate Bay area, then there is no requirement to obtain a licence and only a minimal fee of XCD 50 is payable.

If a non-citizen wishes to purchase land in the South East Peninsula, the non-citizen is required to obtain a licence prior to purchasing the property; however, the payment of the 10% licence fee will be waived.

### ***Stamp duty***

Stamp duty applies to a very wide range of transactions (e.g. bill of sale, lease, mortgage, contract, bill of lading). Stamp duty on transfer of real property, transfer of shares, mortgages, and bank loans to aliens is specifically covered below.

### ***Transfer of real property***

Stamp duty is levied on the consideration for the sale or the value of property as assessed by the Property Valuation Officer, whichever is higher.

The vendor is responsible for the payment of all stamp duty on property transfers on the following basis:

Type of property transfer	Rate
a. Transfer of property for consideration in money or value in kind of not less than the value of the property	12%
b. Transfer of property for consideration in money or value in kind of less than the value of the property	12%
c. Transfer of property without consideration in money or value in kind	6%
d. Transfer of property in any Special Development Area other than the South East Peninsula	14%
e. Transfer of property situated in the South East Peninsula	18.50%
f. Transfer of property other than stock or debenture stock or funded debt or land	2%
g. Transfer of property between husband and wife and between parents and children and vice versa	XCD 100
h. Transfer of land by will or by similar instrument	XCD 100
i. Transfer of registered condominium units	5%

Where a developer has obtained concessions in connection with a house or building constructed on the land being transferred, the developer is required to pay stamp duty on the same basis as noted in a, b, and c above.

Where a developer has obtained concessions in connection with a house or building to be constructed on the land being transferred, then the developer will be required to pay stamp duty initially on the land on the same basis as noted in a, b, and c above. However, when the house or building is subsequently constructed on the land with the aid of the concession, the owner of the building shall pay stamp duty on the house or building as provided in a, b, and c above as if the concessions or any part thereof had not been utilised.

Where a developer has not obtained concessions in connection with a house or building constructed on the land being transferred, the developer will be required to pay stamp duty on the same basis as noted in a, b, and c in respect of the land only.

### **Transfer of shares**

Stamp duty is levied on the value of the consideration for the sale of shares or debentures issued by or on behalf of a company or at the value assessed by the Property Valuation Officer, whichever is higher. The stamp duty is levied at a rate of 2%. If the company owns property and its value exceeds 50% of the value of the company's assets, then the stamp duty is calculated using the applicable rate on the transfer of real property (*see above*).

### **Mortgages**

Stamp duty is levied on the total amount secured and is applicable to both the registration and discharge of the mortgage. The standard rate is 1%. For amounts secured in relation to a Special Development Area, the rate is 2%.

### **Bank loans to aliens**

Stamp duty is levied on the total amount of a bank loan to aliens. The standard rate is 2.5%. For loans to finance development in a Special Development Area, the rate is 5%.

### **Life insurance premium tax**

A premium tax of 5% is levied on the premium income of all life insurance companies, whether resident or non-resident. In addition, a registration fee of XCD 2 per XCD 1,000 of income or XCD 30, whichever is less, must be paid to the Comptroller of Inland Revenue.

### **General insurance premium tax**

A premium tax of 5% is levied on the premium income (net of agent's commission) of all general insurance companies, whether resident or non-resident.

### **Social Security**

The employer's portion of Social Security is 5% of chargeable income (on income of up to XCD 6,500 per month).

### **Housing and Social Development Levy (Social Services Levy)**

The employer's portion of the Social Services Levy is 3% of chargeable income.

### **Employment Injury Benefit**

The employer's portion of Employment Injury Benefit is 1% of chargeable income (on income of up to XCD 6,500 per month).



# Saint Kitts and Nevis

## ***Severance Payment Fund***

The employer's portion of the contribution to the Severance Payment Fund is 1% of chargeable income.

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## ***Branch income***

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

Recharges of expenses from head office to the branch will be subject to WHT at a rate of 10%; however, the recharges have to be justified and cannot be based on a percentage allocation.

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## ***Income determination***

### ***Inventory valuation***

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

### ***Capital gains***

Capital gains tax will be imposed if an asset is sold within one year of the date of acquisition. The maximum rate of tax will be 16.5% (one half the 33% CIT rate). Assets sold after one year will not attract capital gains tax.

### ***Dividend income***

Dividends received by a company resident in Saint Kitts and Nevis from another company resident in Saint Kitts and Nevis are taxed at source at the CIT rate of 33%. Credit is given to the recipient for the tax on the dividend in computing the tax liability.

### ***Interest income***

Interest income received by a company registered in Saint Kitts and Nevis is taxed at the CIT rate of 33%. Interest earned on local and other CARICOM government securities are normally exempt from the payment of CIT.

### ***Royalty income***

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

### ***Foreign income***

A Saint Kitts and Nevis corporation is taxed on foreign branch income when earned and on foreign dividends when received. Double taxation is avoided by means of foreign tax credits where tax treaties exist and through deduction of foreign income taxes in

other cases (the United Kingdom [UK] and CARICOM). There is also relief from British Commonwealth taxes. *See Foreign tax credit in the Tax credits and incentives section for more information.*

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### **Deductions**

#### **Depreciation**

Depreciation allowed for tax purposes is computed by the diminishing-balance method at prescribed rates. An initial allowance of 20% is granted on industrial buildings or structures and in respect of capital expenditure incurred on plant and machinery by a person carrying on a trade or undertaking, as defined. In addition, an annual allowance of between 2% and 5% is allowed on all buildings constructed after 1 March 1994. Concrete buildings are depreciated at a rate of 2%, while the rate varies for other buildings depending on the type of material used in construction. Conformity between book and tax depreciation is not required.

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

Initial allowances and annual allowances cannot reduce the tax that would have been otherwise payable by more than 50%. Any initial allowance or annual allowance not utilised may be carried forward indefinitely.

#### **Goodwill**

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

#### **Start-up expenses**

There are no specific provisions in relation to deductions for start-up expenses. However, the policy is that certain start-up expenses, such as costs of incorporation and other initial start-up costs, may qualify for a three to five year straight-line write-off, depending on the total dollar value.

#### **Interest expenses**

No specific restrictions will apply to interest paid on loans owing to shareholders, directors, their spouses, children or relatives, or to any related parties. Interest is only deductible to the extent that it was incurred in producing chargeable income.

#### **Restriction on bad debts**

Specific bad or doubtful debts in excess of 5% of total trade receivables will not be allowed as a deduction.

#### **Charitable donations**

Charitable donations are not deductible for tax purposes.

#### **Contributions to a pension fund**

Contributions made by an employer to a pension fund (approved by the Comptroller) on behalf of its employees are deductible, up to a maximum of 5% of annual earnings of the employee or XCD 2,000 *per annum*. Application should be made to the Ministry of Finance or to the Pension Fund Committee.

# Saint Kitts and Nevis

## ***Restriction on compensation expenses***

Salaries, wages, leave pay, fees, commissions, bonuses, gratuities, or any other perquisites or such other payments that an employee of a company receives in the course of their employment or the value of any benefit to such employee or to any member of an employee's family in excess of XCD 90,000 *per annum* will not be allowed as a deduction from chargeable profit.

Where an employee or shareholder receives remuneration in a tax year from two or more associated companies, the amount deductible in relation to the employee or shareholder in the tax year by all of the associated companies shall not exceed XCD 90,000. If the remuneration received by the employee or shareholder exceeds XCD 90,000, the amount deductible by each associated company will be equal to the allowable deduction of XCD 90,000 times the remuneration received from the associated company divided by the total remuneration paid to the employee or shareholder by all of the associated companies.

## ***Fines and penalties***

Fines and penalties imposed under tax laws of Saint Kitts and Nevis are not deductible expenses.

## ***Taxes***

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

## ***Net operating losses***

Income tax losses may be carried forward for five years following the year in which the loss was incurred. However, the chargeable income of a company after deducting initial and annual capital allowances in any one income year may not be reduced by more than 50% by losses brought forward. No carryback of losses is permitted.

## ***Payments to foreign affiliates***

A company incorporated in Saint Kitts and Nevis may claim a deduction for royalties, management fees, and interest charges paid to foreign affiliates, provided the payments are equal to or less than what the corporation would pay to an unrelated entity. The deductibility of any payments to a foreign affiliate will be subject to an arm's-length test, and WHT will be payable at a rate of 10%.

## ***Restriction on related-party expenses***

Amounts paid or payable to related or associated persons for administration fees, management fees or expenses, head office charges and allocations, technical services, shared costs, and other similar charges are restricted to 5% of the taxpayer's gross sales or revenues.

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## ***Group taxation***

Group taxation is not permitted in Saint Kitts and Nevis.

## ***Transfer pricing***

There are no provisions for transfer pricing in the tax laws of Saint Kitts and Nevis.

## ***Thin capitalisation***

There are no provisions for thin capitalisation in the tax laws of Saint Kitts and Nevis.

## ***Controlled foreign companies (CFCs)***

There are no specific rules relating to a controlled foreign entity in the tax laws of Saint Kitts and Nevis.

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## ***Tax credits and incentives***

Tax incentives are currently available under the following legislation.

### ***Income Tax Act and Subsidiary Legislation, Cap 20.22***

The Income Tax Act provides that if a company is licensed under the Hotel Aids Ordinance and constructs a hotel with more than 30 rooms, the hotel will receive an exemption from CIT for a period of ten years beginning on the day it is first open for business. If the hotel has less than 30 rooms, then it will be entitled to a five-year tax holiday. During the tax holiday period, no initial deductions or annual capital allowance deductions shall be allowed. Thereafter, only the annual allowance will be allowed and will be computed on the total capital expenditure incurred during the holiday period less any assets sold. The net losses arising during the tax holiday period (i.e. the excess of accumulated tax losses over total profits) may be carried forward and set-off against profits following the expiration of the tax holiday in accordance with the normal rules for set-off of losses.

The Income Tax Act also provides that if a licence is granted to a pioneer manufacturer under the Pioneer Industries Act, the manufacturer is entitled to a five-year tax holiday (or up to ten years, at the discretion of the government) as provided in the licence.

### ***Hotel Aids Act***

The Hotel Aids Act provides that a licence may be granted to any person who desires to construct or extend an existing hotel to import building material and equipment free from import duties, as specified in the licence, for use in the construction of the hotel and to furnish and equip the hotel. The holder of a licence may not dispose of any hotel equipment within three years of being imported free of duties and taxes. Permission must be received from the Comptroller of Customs to dispose of any building material and hotel equipment within the three-year period.

### ***Fiscal Incentives Act***

The Fiscal Incentives Act provides that if a company is declared to be an approved enterprise to manufacture certain 'approved products', then the manufacturer is entitled to a tax holiday period of between ten and 15 years depending on the classification of the approved enterprise. The net losses arising during the tax holiday period (i.e. excess of all losses over all profits) may be carried forward and set-off against profits of the approved enterprise for the five-year period following the tax holiday period.

# Saint Kitts and Nevis

## ***Small Business Development Act, 2009***

The Small Business Development Act provides the framework for the promotion of investment opportunities in Saint Kitts and Nevis by introducing a system of registration of small businesses and a range of incentives that are available to locals. The incentives and concessions available to any small business that would be entitled for consideration are as follows:

- Concession on consumption tax applicable to professionals (e.g. engineers, doctors).
- Reduction in CIT for a minimum of three years to a maximum of five years.
- Relief from CIT by way of an allowable deduction on any monies borrowed from any financial institution, including any bank, non-bank, or credit union.
- Export incentives.
- Rebate of CIT.
- Exemption from or reduction in customs duty on inputs imported for use in the small business.
- Exemption from or reduction in customs duty on any plant, machinery, equipment, or motor vehicle imported for use in the small business.
- Reduction of property tax by up to 75%.

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

- No more than 25 employees.
- Net assets or paid up capital not exceeding XCD 1 million.
- Annual sales not exceeding XCD 2 million.
- Owned by citizens of Saint Kitts and Nevis.
- Not more than 25% owned or controlled by a company whose annual turnover or net assets exceed the limits noted above or by a subsidiary of a larger company.
- The composition of the board of directors is not controlled by a company whose annual turnover exceeds the criteria above.
- Has no agreement for managerial or other services to persons who are not citizens of Saint Kitts and Nevis or other CARICOM territories.

The registration fee for an approved small business is XCD 100. Each approved small business must, within six months after the end of its financial year, submit to the Registrar (person designated by the Minister to perform the functions of Registrar of Small Businesses) financial statements audited by an auditor in accordance with generally accepted international auditing standards.

## ***Other incentives***

Approved manufacturing, agricultural, and tourist ventures are permitted to import building material and equipment free of customs duties.

A Memorandum of Understanding (MOU) between the government and small hotel operators provides for certain conditions under which small hotel operators will be eligible for duty-free concessions on the refurbishment of their facilities every seven years, and on food and wine for their restaurant facilities where applicable. For purposes of this incentive package, a small hotel is defined as a hotel consisting of at least ten rooms and not exceeding 99 rooms.

## ***Foreign tax credit***

Double taxation is avoided by means of foreign tax credits where tax treaties exist and through deduction of foreign income taxes in other cases (the United Kingdom and

CARICOM). A foreign tax credit is also available to persons in Saint Kitts and Nevis who have paid or are liable to pay income tax in a country that is a member of the British Commonwealth (other than the United Kingdom).

## Commonwealth relief: Residents

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

## Commonwealth relief: Non-residents

The relief available in Saint Kitts and Nevis for a person not resident in Saint Kitts and Nevis from tax payable in Saint Kitts and Nevis is one half of the income tax rate in the British Commonwealth country if that rate does not exceed the tax rate in Saint Kitts and Nevis. In any other case, the relief will be limited to the amount by which the Saint Kitts and Nevis tax rate exceeded one half of the rate of income tax in the British Commonwealth country.

## Withholding taxes

WHT at the rate of 15% should be withheld from payments made to non-residents in respect of the following:

- Dividends.
- Interest, annuities, premiums, and discounts.
- Rent, leases, contracts, and royalty payments.
- Natural resources.
- Commissions, remuneration, fees, and licences.
- Charges for the provision of personal services, commercial advice, and managerial skills.
- Administration, management, or head office expenses.
- Profits.
- Technical, professional, vocational, and any other service fees.
- Accounting, actuarial, legal, and audit expenses.
- Non-life insurance premiums.
- Any other annual or periodic payments or distributions.

## Tax treaties

Recipient	WHT (%)				Entry into force
	Dividends	Interest	Royalties	Management fees	
Non-treaty	15	15	15	15	
Treaty:					
CARICOM	0	15	15	15	7 July 1995
Monaco	0/5 (1)	0 (2)	0 (2)	N/A	1 December 2011
San Marino	5/7.5/15 (3, 4)	0 (5)	0 (2)	N/A	12 February 2014
United Arab Emirates	0 (2)	0 (2)	0 (2)	N/A	Awaiting ratification
United Kingdom	0 (5)	0 (5)	0 (5)	N/A	28 January 1948

# Saint Kitts and Nevis

## Notes

1. The rate is 5% if the beneficial owner is a company; 0% if the beneficial owner is an individual and resident of either contracting state or a partnership held by individuals and beneficial owners who are resident of either contracting state.
2. Taxable only in the state in which the beneficial owner is resident.
3. The rate of tax is 5% if the beneficial owner is a company that has directly held at least 25% of the capital of the company paying the dividends for an uninterrupted period of at least 12 months prior to the decision to distribute the dividends.
4. The rate is 7.5% if the beneficial owner is a company that has directly held at least 10% but less than 25% of the capital of the company paying the dividends for an uninterrupted period of at least 12 months prior to the decision to distribute the dividends.
5. Taxable only in the source state.

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## **Tax administration**

### ***Taxable period***

Taxes are assessed on a fiscal-year basis.

### ***Tax returns***

The taxpayer must file an information return on Form CIT-01 by the 15th day of the fourth month after the fiscal year-end along with the financial statements. The authorities either accept the self-assessment or issue a revised assessment. If a return is not filed on a timely basis, the authorities have the power to issue estimated assessments. There is a 5% penalty for late filing.

The taxpayer can object to assessments raised within one month and ask the Comptroller of Inland Revenue to review and revise. In the event that the objection is unsuccessful, the taxpayer may appeal to the Commissioners of Income Tax. Assessments may be reviewed and revised by the Comptroller within the year of assessment or within six years of the expiration of the assessment year.

### ***Payment of tax***

Advance tax is payable in quarterly instalments on 15 March, 15 June, 15 September, and 15 December of each year and is ordinarily based on the tax chargeable and assessed in the previous fiscal year. The standard amount of each instalment is determined as one quarter of the tax chargeable in the previous fiscal year. If the assessment for the prior year has not been finalised, the Comptroller of Inland Revenue can raise an assessment based on best judgement.

The balance of tax due after the final assessment is issued, as notified in the assessment, is payable on or before the 15th day of the fourth month after the fiscal year-end. If the Comptroller of Inland Revenue revises the assessment, then payment of the balance of taxes due is due one month after the date of issue of the revised assessment.

Tax is deemed to be in default if not paid by the 15th day of the fourth month after the fiscal year-end or within one month of the date of the notice of assessment, whichever is later. Interest of 1% per month or 12% *per annum* is charged on unpaid taxes in default.

### ***Anti-avoidance provisions***

The Comptroller of Inland Revenue can, by notice in writing:

- distribute, apportion, or allocate amounts to be deducted in calculating income tax paid between related persons as is necessary to reflect the chargeable income or tax payable as if the arrangement had been done at arm's length
- re-characterise the source and type of income, loss, or payments made under an arrangement, the form of which does not reflect its substance or is classified as an avoidance arrangement, and
- disregard an arrangement, transaction, or part of an arrangement or transaction that does not have substantial economic effect or is classified as an avoidance arrangement.

### ***Tax audit process***

The Saint Kitts and Nevis tax system for companies is based on self-assessment; however, the Inland Revenue Department (IRD) undertakes ongoing compliance activities to ensure that corporations are meeting their tax obligations. There is no specific approach used by the IRD in relation to compliance and audit activities. Compliance activities generally take the form of reviews of specific issues and audits.

### ***Statute of limitations***

Assessments may be reviewed and revised by the Comptroller of Inland Revenue within the year of assessment or within six years of the expiration of the assessment year.

### ***Topics of focus for tax authorities***

The IRD does not have any specific compliance program; however, when an audit is done, the focus is mainly on the detection of basic non-compliance, such as omission of income, inclusion of non-deductible expenses, and classification of items between expenses and capital items. In recent years, the IRD has been paying special attention to the application of WHT on payments made to non-resident persons and VAT on services imported into Saint Kitts and Nevis, mainly between related parties.

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## ***Other issues***

### ***Tax Information Exchange Agreements (TIEAs)***

TIEAs provide for the exchange of information on tax matters. TIEAs with Aruba, Australia, Belgium, Denmark, Finland, France, Guernsey, India, Ireland, Liechtenstein, the Netherlands, the Netherlands Antilles, and Norway are in force. TIEAs have also been signed with the Faroes, Germany, Greenland, Iceland, New Zealand, Portugal, South Africa, and Sweden.

### ***United States (US) Foreign Account Tax Compliance Act (FATCA)***

On 31 August 2015, the Agreement between the Government of the United States of America and the Government of the Federation of Saint Kitts and Nevis to improve international tax compliance and to implement FATCA was made available.

### ***Multilateral Convention on Mutual Administrative Assistance in Tax Matters***

Saint Kitts and Nevis signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters in August 2016. Under the convention, Saint Kitts and Nevis will exchange tax information based on Organisation for Economic Co-operation and Development (OECD) standards, but is not required to collect taxes on behalf of another country or provide assistance in the service of related documents.



## Saint Kitts and Nevis

### ***Common Reporting Standard (CRS)***

In November 2014, the G20 countries endorsed a new CRS for automatic exchange of information developed by the OECD. Under the CRS, foreign tax authorities will provide information to the IRD relating to financial accounts in their jurisdiction held by Kittian residents. The IRD will, on a reciprocal basis, provide corresponding information to the foreign tax authorities on accounts held by residents of their jurisdiction in Saint Kitts and Nevis. Saint Kitts and Nevis has committed to implementing the CRS by September 2018.

### ***Inclusive Framework (IF) on Base Erosion and Profit Shifting (BEPS)***

On 14 November, Saint Kitts and Nevis joined the IF on BEPS. By joining the IF, Saint Kitts and Nevis will work on creating an equal footing with all other IF members on the implementation of the BEPS package and on developing further standards to address the remaining BEPS issues. As a signatory to the IF, Saint Kitts and Nevis has committed to implementing minimum standards related to:

- preferential regimes, including exchange of tax rulings (Action 5)
- treaty abuse (Action 6)
- country-by-country (CbC) reporting to tax authorities allied to wider transfer pricing documentation in Action 13, and
- improved mutual agreement procedures (MAP) for resolving disputes (Action 14).

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# **Saint Lucia**

## **PwC contact**

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## **Significant developments**

Effective 1 February 2017, the value-added tax (VAT) rate was reduced from 15% to 12.5%.

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## **Taxes on corporate income**

Resident companies are taxed on gains or profits accrued directly or indirectly from all sources, whether in or out of Saint Lucia, and are subject to tax at a flat rate of 30%. The 30% tax rate is only applicable to companies that, prior to income year 2003, have no tax arrears and have complied with the requirements of any enactment administered by the Inland Revenue Department (IRD). The tax rate of 33.33% will still apply to those companies that have tax arrears and have not complied with the requirement.

Non-resident companies are taxed on Saint Lucia-source income. The gross amount of such income is liable to 25% withholding tax (WHT), while WHT of 15% applies to interest.

Associations of underwriters are taxed at 30% on 10% of the gross premium arising in Saint Lucia, and life insurance companies are taxed at 30% on 10% of the gross investment income arising in Saint Lucia.

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## **Corporate residence**

Companies are regarded as resident if they are incorporated in Saint Lucia or managed and controlled through a permanent establishment (PE) in Saint Lucia.

### **Permanent establishment (PE)**

A PE is defined in Saint Lucia as a fixed place or premises through which the business is wholly or partly carried on.

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## Other taxes

### Value-added tax (VAT)

The standard VAT rate is 12.5%. There is also a 0% rate charged on certain goods and services. In respect of the hotel sector and related services, a reduced rate of 10% is applicable.

The threshold for registered taxpayers is currently set at 400,000 East Caribbean dollars (XCD) *per annum*. This means that it is not mandatory for businesses earning less than the threshold to register for VAT. The threshold is based on the annual sales turnover of the taxpayer.

The VAT rate of 0% has been legislated on certain supplies, which include, but are not limited to, the following:

- Goods to be exported.
- Goods for sale at duty-free shops.
- Fuel.
- Water.
- Electricity.

The following goods and services are exempted from payment of VAT, but this list is not exhaustive:

- Domestic residential rental.
- Educational services.
- Financial services.
- Insurance services.
- Medical services.
- Local transportation services.
- Certain food items (e.g. chicken, rice, milk, flour, bread).

The government secured the Caribbean Community and Common Market's (CARICOM's) approval to remove the import duty on medical supplies for a period of four years from 1 May 2012 to 30 April 2016. Although this was meant to be a temporary measure, the instrument instituting the exemption had no end date and there have been no official pronouncements terminating the exemption. Prescription drugs are currently exempt from VAT.

The government has also agreed to the establishment of a special VAT Refund Account in accordance with the provisions of the Financial Administration Act. This is to facilitate the timely processing and payment of refunds to taxpayers.

### Customs duties

Customs duties are charged on a wide range of imported goods. Exemptions are granted for raw materials and plant and machinery used in manufacturing and for certain items imported by hotels under construction, extension, or refurbishing projects.

### Excise taxes

Excise taxes are imposed on home-produced goods, mainly liquor, beer, and cigarettes. XCD 1.44 per litre of liquid applies to beer in glass bottles and XCD 3.50 per liquid gallon applies to beers in metal cans.

There is also an excise tax on fuel when fuel is imported by a wholesaler. Tax is included on the price of fuel paid at the gas pump. The tax rate formula is based on the current price provided by the supplier and regulated price at the gas pump.

### Commercial property tax

Commercial property tax is assessed annually at 0.4% of the open market value of the property. The owner is required to obtain a commercial valuation assessing the open market value of the property. All new commercial properties completed after 1 April 2001 can benefit from a three-year tax exemption from commercial property tax.

### Residential property tax

The property tax rate for residential property is 0.25% of the open market value.

### Stamp tax

Stamp tax is charged on any document that evidences a legal or contractual relationship between two or more parties. Additionally, many types of commercial and legal documents must be stamped as evidence of the payment of taxes. Stamp tax may be charged either at a fixed rate or at an *ad valorem* rate, depending, for example, on the value of the property being transferred.

Instrument	Stamp duty rate
Conveyance or sale of immovable property (resident or non-resident purchaser)	2%
Conveyance or sale of immovable property:	
Non-resident vendor	10%
Resident vendor:	
XCD 50,000 to XCD 75,000	2.5%
XCD 75,0001 to XCD 150,000	3.5%
XCD 150,001 and over	5%
Conveyance or sale of debenture, stock, debt, or shares where less than 75% of assets comprise immovable property	Greater of 0.5% of net assets of company or XCD 10
Conveyance or sale of debenture, stock, debt, or shares where more than 75% of assets comprise immovable property:	
Non-resident vendor	10%
Resident vendor:	
XCD 50,000 to XCD 75,000	2.5%
XCD 75,001 to XCD 150,000	3.5%
XCD 150,001 and over	5%

### Payroll taxes

Other than employers' portion of the statutory National Insurance Corporate (NIC) contributions (*see below*), there are no other payroll taxes, where the burden 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.

# Saint Lucia

## ***Social security contributions***

The employee's share of NIC contributions (for retirement, sickness, and disability benefits) is 5% of gross salary, up to a maximum contribution of XCD 250 per month (i.e. on a monthly salary of XCD 3,000). The employer matches the contribution and files monthly returns.

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## ***Branch income***

The tax rate on branch income is the same as that on income earned by resident companies. No additional tax is withheld on transfers of profits to the head office.

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## ***Income determination***

### ***Inventory valuation***

Inventory is generally valued at the lower of cost or market value. The Saint Lucia IRD will generally accept a valuation method that is in line with the common accounting practice of the particular trade or industry. First in first out (FIFO) or average costing are normally used for both book and tax purposes.

Obsolescence is permitted where it occurs, but there are no provisions to account for monetary inflation on inventory valuation.

### ***Capital gains***

There is no tax on capital gains except in instances where such gains comprise a portion of the income-earning activities of the business. In such instances, the corporate tax rate applies.

### ***Dividend income***

Dividends are tax exempt in Saint Lucia.

### ***Inter-company dividends***

Inter-company dividends are not subject to tax in Saint Lucia.

### ***Interest income***

The corporate tax rate applies to interest income. However, income earned on securities issued by member governments of the Eastern Caribbean Central Bank and income accruing from trading in securities under the Securities Act to any citizen or resident of any member state of the Organisation of Eastern Caribbean States or to any company incorporated in and registered in any member state of the Organisation of Eastern Caribbean States is tax exempt.

Any expenditure incurred for the purpose of producing exempt income is not deductible.

### ***Royalty and rental income***

The corporate tax rate applies to royalty and rental income. However, rental income from a residential accommodation shall be exempt from tax if certain requirements, as defined by regulations, are met.

## **Foreign exchange gains/losses**

Foreign exchange gains or losses arising from foreign exchange transactions on trading items are assessable or deductible as realised gains or losses if settled within normal credit terms. Gains or losses on other instruments, including inter-company loans, are recognised only when actually realised.

Unrealised exchange gains/losses are not taxable/deductible.

## **Bribes, kickbacks, illegal payments**

Bribes, kickbacks, and illegal payments received by a company are includible in taxable income.

## **Foreign income**

Resident companies are taxed in Saint Lucia on income earned outside Saint Lucia. Reciprocal understandings exist with some countries for the avoidance of double taxation, and foreign tax is allowed as a credit against tax charged in Saint Lucia. Saint Lucia has no tax treaties with other countries, except for the member states that make up CARICOM. There is an agreement among the governments of CARICOM for the avoidance of double taxation. Where no agreement exists, the foreign tax offset is the lesser of the foreign tax paid or the tax payable on that income in Saint Lucia.

Tax deferral is not permitted in Saint Lucia.

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## **Deductions**

Accrued expenses are deductible as long as they are business related. Contingent liabilities are deductible expenses once they are recognised in the book of accounts.

## **Depreciation**

The following capital allowances are available in Saint Lucia:

- An initial allowance of 20% is granted on the acquisition of industrial, agricultural, and commercial buildings (except for hotels and rental properties); on plant and machinery, including motor vehicles and furniture; and on fixtures and equipment.
- Thereafter, annual allowances for wear and tear, ranging from 10% to 33.33%, are granted on the reducing-balance method, except for industrial and agricultural buildings, which are allowed an annual rate of 5%, and commercial buildings (except for hotels and rental properties), which are allowed an annual rate of 2.5%.

The Comptroller of the IRD may also grant, on application, a higher rate for annual allowance for assets that have higher or abnormal wear and tear.

Gains on disposal are taxable as ordinary income to the extent of depreciation recovered, and any proceeds in excess of the cost of the asset are treated as a capital gain, which is not subject to tax. Where the proceeds on disposal are lower than the tax written-down value of the asset, a balancing allowance is granted for the shortfall.

## **Goodwill**

Neither the amortisation of impaired goodwill nor the related write-off of it is an allowable deduction.

# Saint Lucia

## ***Organisational and start-up expenses***

All expenditures incurred in connection with incorporation costs for the establishment of a new small business enterprise are allowable deductions. A small business enterprise is an enterprise incorporated during the year of income that:

- is wholly owned by citizens of Saint Lucia who have not been owners of previously incorporated businesses in Saint Lucia
- employs not more than 50 persons
- has gross income that does not exceed XCD 1 million
- engages in an activity on the listing of preferred business activities as approved by the Minister of Finance, and
- satisfies the provision of any law in force with respect to micro or small-scale business.

## ***Interest expenses***

Interest on any loan, including interest payable on debentures, is an allowable deduction to the extent that the amount of such loan was used for the purpose of producing assessable income.

## ***Bad debt***

Bad debt expense is deductible, provided it has been brought to account in generating the company's assessable income for any income year and that the company has taken all reasonable steps to establish that the collection of such debt is unlikely.

## ***Charitable contributions***

Charitable contributions are an allowable deduction when the contributions are made under a deed of covenant for a period of not less than three years to any religious, charitable, medical, or educational institution; sporting body; or fund of a public character, approved by Cabinet, if such contributions are made to the Saint Lucia National Trust. However, the deduction with respect to such contributions shall not exceed 25% of the assessable income of the company for that income year.

## ***Pension expenses***

Current annual contributions to an approved pension fund are deductible expenses. However, where a special payment is made to an approved pension fund, in relation to a period of service by an employee prior to the setting up of the approved pension fund, or to meet any actuarially ascertained insufficiency in the resources of the approved pension fund to meet its obligations to its employees, such amount shall be deductible as follows:

- i. Where the special payment does not exceed the current annual contribution, such amount is wholly deductible.
- ii. Where the special payment exceeds the current annual contribution, the special payment is an allowable deduction in such years of income, not exceeding five in number, as in the opinion of the Comptroller is reasonable under the circumstances.
- iii. Where under (ii) above, annual deductions are allowable over a number of years of income, the first such deduction is allowable for the income year for which the special payment is made.

## ***Taxes***

VAT paid on goods imported or purchased, and sold in the ordinary course of business, are deductible for tax purposes. Property taxes are deductible where the property is used in producing assessable income. Income taxes, penalties, and interest on tax in arrears are not deductible.

## ***Other significant items***

Meals and entertainment, officer's compensation/life insurance, and payment to directors are deductible expenses, provided they are wholly and exclusively incurred by a company during that year of income for the purpose of producing its assessable income.

## ***Net operating losses***

Net operating losses may be carried forward for up to six years if the losses have not been fully absorbed earlier. In carrying losses forward, the amount that can be claimed in any subsequent year is restricted to one-half of the assessable income of that year. Losses may not be carried back.

## ***Payments to foreign affiliates***

There are no restrictions on the deductibility of interest paid to foreign affiliates if the transaction is carried out at arm's length and at commercial rates. However, deductions for management charges, allocations of head office expenses, royalties, and other charges that are subject to 25% WHT are restricted to the lesser of the aggregate of those charges or 10% of all allowable business deductions, excluding cost of sales and capital allowances.

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## ***Group taxation***

Group tax filing is not allowed in Saint Lucia; however, group tax relief is available under certain circumstances to allow the trading losses, excluding the current loss, of a resident company within a group to offset the profits of another resident company within the same group. A claim for group relief requires the consent of the Comptroller of the IRD and is only available to resident companies.

## ***Transfer pricing***

Related-party transactions are accepted if they are made on an arm's-length basis. The IRD has the power under the Income Tax Act to make any adjustment deemed necessary to place such transactions at arm's length.

## ***Thin capitalisation***

No provision exists for thin capitalisation in Saint Lucia.

## ***Controlled foreign companies (CFCs)***

There are no provisions relevant to CFCs in Saint Lucia.



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## ***Tax credits and incentives***

### ***Foreign tax credit***

Where income has accrued to a resident and has been taxed in a foreign country with which there is no double tax agreement (DTA) or is income to which a DTA, if there is one, does not relate, credit for tax on such income is allowed for the lesser of the tax payable in the foreign country or the tax charged under Saint Lucia tax law.

### ***Tax holidays***

Tax holidays are available for manufacturing companies. The incentives are aimed at increasing the manufacturing base of Saint Lucia, the level of exports, and the use of local materials and labour in production. An approved manufacturing enterprise will be granted a tax holiday, up to a maximum of 15 years. In determining the length of the tax holiday, the extent of the local value added to approved products is taken into account.

### ***Investment incentives***

Income tax incentives and other fiscal concessions are provided under the Fiscal Incentives Act, the Tourism Incentives Act, the Special Development Areas Act, and other concessions granted by the Cabinet of Ministers. The extent of the incentives and concessions granted are specific to the legislation or Cabinet conclusions and depend on the impact that the investment would have on local employment, exports, and the generation of foreign exchange earnings. The incentives granted include the following:

- Duty-free importation of raw materials, machinery, components, and spare parts and other inputs used in manufacturing, and the duty-free importation of construction materials, equipment, and other inputs used in the construction and operation of hotels and other hospitality products.
- Income tax waivers of up to 100% of the taxable income of companies engaged in manufacturing, tourism, and agriculture and other employment-generating activities, for periods of up to 15 years.
- Whole or partial waivers of property tax, stamp duties, Alien Landholding Licence fees, WHT, and VAT with respect to investments in specific areas, or in specific industries and activities.
- Guaranteed repatriation of capital and dividends. Remittance of profits and dividends are tax-free, as they are not subject to WHT.
- Export allowances for goods manufactured in Saint Lucia and exported. Companies that engage in such activity are given tax exemption on the export of such goods, up to a maximum of ten to 15 years.

### ***Employment incentives***

Employment incentives are available in the Income Tax Act for the following:

- Hiring university graduates. An additional deduction of 25% of salaries is provided for a maximum period of three years.
- Hiring persons in the offshore financial services industry with skills not available in Saint Lucia. A special tax concession is given to such persons that allows a prescribed percentage of an employee's or contractor's salary or fees to be exempt from income tax.

## International Business Companies (IBCs) Act

IBCs are prohibited from conducting business in Saint Lucia and may elect to be exempted from income tax. Alternatively, IBCs may elect to be liable to income tax on their profits and gains at a rate of 1%. Freedom from exchange controls is granted to IBCs, as well as from stamp duty on the transfers of any property, assets, shares, debt obligation, or other securities. No WHT is levied on remittances of dividends and distributions, royalties, interest, management fees, or fees or other income paid by IBCs to persons outside Saint Lucia. Supplies to an IBC are also deemed to be an export, and VAT is applied at the rate of 0%.

## Other incentives

Complete or partial waivers of income tax are available on the taxable profits of companies engaged in providing services to the offshore financial services industry.

Special tax concessions are also available for capital construction in the hotel industry. Capital expenditures on the construction of a hotel may offset profits for up to 15 years.

## Withholding taxes

Resident corporations and persons that make certain payments of an income nature to residents or non-residents are required to withhold tax on these payments as follows:

Recipient	WHT (%)
Resident corporations:	
Payments to contractors	10
Equipment hire	10
Non-resident corporations:	
Interest	15/15 CARICOM
Royalties	25/15 CARICOM
Management fees	25/15 CARICOM
Commissions or fees (not by way of employment)	25
Income of a trust	25
Premiums, including insurance premiums	25
Any other payment of an income nature	25

Saint Lucia has only one DTA. This treaty, between the Caribbean territories, is referred to as the CARICOM Double Taxation Agreement. CARICOM is comprised of the following states:

- Antigua and Barbuda
- The Bahamas
- Barbados
- Belize
- Dominica
- Grenada
- Guyana
- Haiti
- Jamaica
- Montserrat
- St. Kitts and Nevis
- St. Vincent and the Grenadines
- Suriname
- Trinidad and Tobago

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## ***Tax administration***

### ***Taxable period***

Returns must cover a 12-month period, which may be changed only with the Comptroller's permission.

### ***Tax returns***

Tax returns must be filed within three months of the company's fiscal year-end. An extension of the filing date may be obtained.

Financial statements must be submitted with the returns, together with a schedule reconciling taxable income with book income and various other schedules of additional information.

The system is one of self-assessment. Upon receipt of the returns, the IRD examines the information provided and issues a notice of assessment at any time, subject to the statute of limitations. The Revenue Department may also issue assessments in the absence of returns.

### ***Payment of tax***

Tax is payable in instalments on 25 March, 25 June, and 25 September in each year of income, based on the preceding year's income. Any remainder is payable within three months of the end of the fiscal year.

### ***Penalties and interest***

The following civil penalties and interest, which are non-deductible, are imposed:

- For late filing or for failure to file: 5% of the tax charge at filing date.
- For late payment: 10% of the unpaid tax at the due date.
- On tax and penalties unpaid: Monthly interest at a rate of 1.04%.
- Tax knowingly evaded or sought to be evaded: 100% of the tax.

### ***Appeals***

Within 30 days after the date of service of a notice of assessment or reassessment, the taxpayer may submit a written objection to the Revenue Department on any matters in such assessment or reassessment. If the Revenue Department confirms its assessment, the taxpayer may file an appeal with the Appeal Commission, which comprises seven persons appointed by the Minister of Finance. A decision by that body may be further appealed to the Saint Lucia High Court within 30 days. An appeal against an order from this Court may be made to the Court of Appeal.

### ***Tax audit process***

The IRD carries out audits of a selection of tax returns, usually at the taxpayer's place of business. Audits may be carried out at any time prior to the expiration of the statute of limitations, whether or not notices of assessment have been issued. The Revenue Department has wide powers in determining the information it requires for these audits.

## ***Statute of limitations***

Assessments are not final until six years after the end of the income year, within which period assessments may be made at any time. In cases of misrepresentation or failure to disclose any material fact, a reassessment can be made at any time.

## ***Topics of focus for tax authorities***

The tax authorities in Saint Lucia often focus on the deductibility of related-party expenses during the completion of tax audits and WHTs on head office or management charges.

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## ***Other issues***

### ***Tax Information Exchange Agreements (TIEAs)***

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

### ***United States (US) Foreign Account Tax Compliance Act (FATCA)***

On 19 November 2015, the government of the United States and the government of Saint Lucia signed an intergovernmental agreement (IGA) entitled, 'Agreement between the Government of the United States of America and the Government of St. Lucia to Improve International Tax Compliance and to Implement FATCA'. The IGA requires, in particular, the exchange of certain information with respect to US and Saint Lucia reportable accounts on an automatic basis, pursuant to the provisions of Article 4 of the Agreement between both Governments for the Exchange of Information with Respect to Taxes, done at Washington on January 1987 (the 'TIEA').

### ***Multilateral Convention on Mutual Administrative Assistance in Tax Matters***

Saint Lucia signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters in November 2016. Under the convention, Saint Lucia will exchange tax information based on Organisation for Economic Co-operation and Development (OECD) standards, but is not required to collect taxes on behalf of another country or provide assistance in the service of related documents.

### ***Common Reporting Standard (CRS)***

In November 2014, the G20 countries endorsed a new CRS for automatic exchange of information developed by the OECD. Under the CRS, foreign tax authorities will provide information to the IRD relating to financial accounts in their jurisdiction held by Saint Lucian residents. The IRD will, on a reciprocal basis, provide corresponding information to the foreign tax authorities on accounts held by residents of their jurisdiction in Saint Lucia. Saint Lucia has committed to implementing the CRS by September 2018.

### ***Inclusive Framework (IF) on Base Erosion and Profit Shifting (BEPS)***

In May 2018, Saint Lucia joined the IF on BEPS, becoming the 114th jurisdiction to do so. By joining the IF, Saint Lucia will work on creating an equal footing with all other IF members on the implementation of the BEPS package and on developing further

## Saint Lucia

standards to address the remaining BEPS issues. As a signatory to the IF, Saint Lucia has committed to implementing minimum standards related to:

- preferential regimes, including exchange of tax rulings (Action 5)
- treaty abuse (Action 6)
- country-by-country (CbC) reporting to tax authorities allied to wider transfer pricing documentation in Action 13, and
- improved mutual agreement procedures (MAP) for resolving disputes (Action 14).

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# Trinidad and Tobago

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## **Significant developments**

Finance Act No. 15 of 2017 was assented to on 19 December 2017, and the following amendments were made:

- The Corporation Tax Act has been amended to increase the rate of corporation tax to a flat rate 30% for all companies (except banks). For commercial banks, the corporation tax rate increased to 35%.
- Removal of the following taxes on new and used (not older than four years) motor vehicles:
  - Motor vehicle tax and value-added tax (VAT) on motor vehicles manufactured to use compressed natural gas (CNG) and imported for private use or commercial use. The exemptions apply to motor vehicles with an engine size not exceeding 1599 cubic centimetres (cc). Commercial use vehicles with an engine size exceeding 1599cc will be allowed the exemptions up to 31 December 2020.
  - Motor vehicle tax, VAT, and customs duty on electric motor vehicles that are imported for private use or commercial use. The exemptions apply to motor vehicles with an engine size not exceeding 179 kilowatts (kw). Commercial use vehicles with an engine size exceeding 159kw but not exceeding 179kw will be allowed the exemptions up to 31 December 2020.
  - Motor vehicle tax, VAT, and customs duty on hybrid motor vehicles that are imported for private use or commercial use. The exemptions apply to motor vehicles with an engine size not exceeding 1599cc. Commercial use vehicles with an engine size exceeding 1599cc but not exceeding 1999cc will be allowed the exemptions up to 31 December 2020.
- The Income Tax Act has been amended to remove the restriction on the land acreage (over 100 acres) that may be approved as an agricultural holding and qualify for tax incentives.
- The Miscellaneous Taxes Act has been amended to introduce the following taxes:
  - Lottery winning tax of 10% on all prize money paid in excess of 1,000 Trinidad and Tobago dollars (TTD).
  - Environmental tyre tax of TTD 20 on every tyre imported into Trinidad and Tobago.

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## **Taxes on corporate income**

A Trinidad and Tobago resident corporation is taxed on worldwide income. A non-resident company engaged in business in Trinidad and Tobago is taxed only on income directly or indirectly accruing in or derived from Trinidad and Tobago.

The standard corporation tax rate is 30%, but this varies in the case of certain classes of companies. The current corporation tax rates are as follows:

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Type of company	Corporation tax rate (%)
Ordinary companies (excluding banks)	30
Petrochemical companies and commercial banks	35
Life insurance companies	15
Petroleum production companies (petroleum profits tax)	50
Petroleum production companies (deep sea)	35

## **Business levy**

Corporations are subject to a business levy at the rate of 0.6% of gross revenue or receipts where the levy exceeds the corporation tax liability. Exemption is available for certain companies, including petroleum companies and companies whose annual turnover is less than TTD 360,000. The levy is a non-deductible expense for corporation tax purposes.

## **Green fund levy**

A green fund levy of 0.3% on gross income is applicable to companies and partnerships doing business in Trinidad and Tobago. This levy is payable quarterly and is neither a deduction in computing chargeable income nor a credit against corporation tax due.

## **Unemployment levy**

Only petroleum companies remain liable to the unemployment levy, at the rate of 5% of taxable profits. No set-off for prior-year losses is permitted in computing the liability.

## **Supplementary petroleum tax (SPT)**

SPT is chargeable on the gross income (derived from the sale of crude oil) less royalties and overriding royalties paid on the crude oil sold. The tax is computed separately in respect of land and marine operations and is a quarterly tax based on the actual gross income for each quarter.

The SPT is deductible in arriving at profits subject to petroleum profits tax.

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## **Corporate residence**

Corporate residence is determined by reference to the location of the central management and control of the business of a company.

## **Permanent establishment (PE)**

A non-resident company is subject to corporation tax on its income derived from trading within Trinidad and Tobago. A company is deemed to be engaged in or carrying on trade or business in Trinidad and Tobago if it has an office or place of business or has a branch or agency within Trinidad and Tobago. The local legislation does not make any reference to the term 'permanent establishment'; however, this term is used generally in the treaty context. Subject to the terms of specific double taxation treaties (DTTs), a non-resident company will have a PE in Trinidad and Tobago where:

- it has a fixed place of business in Trinidad and Tobago through which the business of the company is wholly or partly carried on, or
- it has an agent acting on behalf of the company and that agent has the authority to bind the company.

The term 'fixed place of business' has been generally defined to include a place of management, a branch, office, factory, a workshop, an installation or structure for the exploration of natural resources, or a building, construction, or installation project.

Most treaties outline circumstances under which a company will not be deemed to have a PE, and these include where the activities of the company are merely of a preparatory or auxiliary nature.

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### **Other taxes**

#### **Value-added tax (VAT)**

VAT is applicable to a wide range of goods and services. The standard rate applicable to commercial supplies is 12.5%.

Basic food items and agricultural supplies are zero-rated, as are crude oil, natural gas, and exported goods and services. Hotel accommodation and yachting services to non-residents are zero-rated.

A number of services, including financial services, real estate brokerage, residential rentals, and educational services, are exempt. However, certain financial services are subject to a transaction tax at a rate of 15%. Imported inputs of highly capital-intensive manufacturers are exempt from VAT.

The VAT registration threshold for companies making commercial supplies is TTD 500,000 for a 12-month period.

#### **Customs duties**

Customs duties are imposed at varying rates on imports and manufactured goods according to classification in Schedules to the Customs Act. The basis is the cost, insurance, and freight (CIF) value of the goods at the time of import. However, there is a provision for exemptions in relation to specific goods.

#### **Excise taxes**

Excise taxes are imposed at varying rates on certain manufactured goods, including tobacco, alcohol, and petroleum products.

#### **Property taxes**

The moratorium on the payment of the property tax ended on 31 December 2015, and the tax became fully operational on 1 January 2016. However, incomplete land and property valuation assessment rolls and legal challenges have led to non-collection of the tax since its reinstatement.

All 'land' in Trinidad and Tobago is subject to property tax. Land under the Property Taxes Act (PTA) is broadly defined to include land covered with water and all buildings, structures, machinery, plant, pipelines, cables, and fixtures erected or placed upon, in, over, under, or affixed to land. The PTA stipulates the process for arriving at the quantum of tax payable as follows:

- The Commissioner of Valuations is to assess the annual rental value (ARV) of the property.



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For the purposes of computing the ARV where a rental value is not readily available, the capital cost of the property is used and converted by applying the following factors:

- Residential: 3.5%.
- Commercial: 5%.
- Industrial: 5%.
- Plant and machinery not housed in a building: 3%.
- The Board of Inland Revenue (BIR) will determine the annual taxable value (ATV) using the ARV less such deductions as it sees fit for voids or loss of rent of 10% of the ARV.
- The applicable tax rate is then applied to the ATV, as follows:
  - Agricultural property: 1%.
  - Residential property: 3%.
  - Commercial property: 5%.
  - Industrial plant and machinery housed in a building: 6%.
  - Plant and machinery not housed in a building: 3%.

### **Stamp duty**

Stamp duty is levied on instruments of all types (e.g. deeds of conveyance, mortgages, debentures, trust deeds, leases, insurance policies, annuity policies, agreements, share transfers). The rate of stamp duty varies from TTD 25 on a trust deed to up to 10% of market value on property conveyances.

### **Payroll taxes**

Under the pay-as-you-earn (PAYE) system, an employer is required to deduct income tax from emoluments paid to employees. 'Emoluments' is widely defined to include all salary, wages, overtime, bonus, remuneration, perquisites, lodging, stipend, commission or other amounts for services, directors' fees, retiring allowance, and pensions.

### **Social security contributions**

There is a social security tax, referred to as National Insurance, that is deducted at source at varying rates. The maximum rate is TTD 414.30 per week for monthly income over TTD 13,600, which is payable TTD 276.20 by the employer and TTD 138.10 by the employee.

There is also a health surcharge that is deducted at source. The maximum liability is TTD 8.25 for every week worked.

### **Hotel accommodation tax**

Hotels are subject to a hotel accommodation tax at a rate of 10% of the value of the accommodation.

### **Insurance premium tax**

A tax at the rate of 6% has been imposed on insurance premiums in respect of general insurance contracts. Life insurance and reinsurance premiums are exempt.

## Branch income

A branch is subject to Trinidad and Tobago taxation on all income directly or indirectly accruing in or derived from Trinidad and Tobago. The tax rates applicable on branch profits are the same as on corporate profits. In addition, branch profits, after deduction of corporation tax and reinvestments, are subject to withholding tax (WHT) at the rate of 5%. This may be varied by the provisions of any applicable DTTs.

## Income determination

### Inventory valuation

Inventories are generally stated at the lower of cost or market value. Cost may be determined by the first in first out (FIFO) or the average cost method. The last in first out (LIFO) and base stock methods are not generally accepted for tax purposes.

### Capital gains

Gains on the disposal of chargeable assets within 12 months of acquisition are subject to tax at standard corporation tax rates. Capital gains are not otherwise taxable, except for the application of the balancing allowance on depreciable assets. *See Depreciation in the Deductions section for capital gains information on the sale of tax-depreciable assets.*

### Dividend income

Dividends received by a Trinidad and Tobago company from both domestic subsidiaries and other domestic corporations are exempt from corporation tax and business levy but are subject to green fund levy.

### Stock dividends

A Trinidad and Tobago corporation can distribute a dividend of common stock (bonus issue) proportionately to all resident common stockholders on a tax-free basis.

### Interest income

Interest income received by a Trinidad and Tobago company is generally taxable.

### Royalty income

Royalty income received by a Trinidad and Tobago company is generally taxable.

### Foreign income

A company resident in Trinidad and Tobago is subject to tax on its worldwide income. There is no deferral regime in Trinidad and Tobago.

## Deductions

### Depreciation

Tax depreciation rates (wear-and-tear allowances) have been standardised by statute. Fixed assets are to be classified into one of four classes:

Asset class	Depreciation rate (%)
Class A: Buildings and improvements	10
Class B: Motor vehicles, furniture and fittings, plant and machinery	25

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Asset class	Depreciation rate (%)
Class C: Heavy equipment, motor lorries, trucks, and computer equipment	33.3
Class D: Extra heavy equipment, airplanes	40

The allowance is calculated at the rate applying to aggregate expenditure incurred on assets within the class on a declining-balance basis.

Accelerated tax depreciation is allowed to manufacturers in the form of an initial allowance at the rate of 90% on capital expenditure on plant and machinery. The allowance is to be claimed in the year that the asset is first brought into use. For those companies engaged in the production of sugar, petroleum, or petrochemicals, or enjoying concessions under the Fiscal Incentives Act, the rate is 20%.

Gains on the sale of tax-depreciable assets are taxable as ordinary income (i.e. a balancing charge) but only when the written-down value of the assets of a class goes into credit. Prior to this, the proceeds of sale are credited to the particular class, thereby reducing the written down value of the class. Tax depreciation is not required to conform to book depreciation.

## Petroleum operations

A company engaged in the petroleum production business is entitled to capital allowances on tangible costs and intangible drilling and development costs as follows:

- Tangible and intangible capital exploration expenditure incurred during 1 January 2014 to 31 December 2017 may be deducted in full (100%) in the year incurred.
- Tangible and intangible exploration and development expenditure is granted an initial allowance at 50%, a year-two allowance at 30%, and a year-three allowance at 20% computed on the expenditure incurred.
- A company engaged in exploration activities in a deepwater block is granted an uplift of 140% of capital expenditure incurred on drilling of exploration wells, on which capital allowances can be computed.

There is no timing in respect of claiming of allowances (e.g. on achievement of commercial production). A claim for capital allowances cannot be deferred.

## Goodwill

Goodwill expense is generally not allowable in arriving at chargeable income.

## Start-up expenses

No specific rules exist in respect of start-up expenses, but, generally, these expenses are not deductible.

## Interest expenses

Interest expenses incurred by a company in the production of its income are generally allowed as deductions. However, in the case of interest payable or paid by the company, there are certain restrictions that exist in the taxing Acts, as well as in practice by the tax authority, that could restrict a company's ability to deduct interest paid or payable in its computation of tax for a particular year of income. The criteria laid down by the legislation for the deductibility of interest are:

- The sums borrowed are wholly and exclusively incurred in the production of income.
- The interest is revenue in nature.
- The interest income earned is either chargeable to tax or exempt under the Trinidad and Tobago legislation.
- Where the interest payment is being made to a non-resident, the payer has accounted for and paid over WHT to the BIR.

### ***Bad debt***

A specific provision for bad debt will be deductible for tax purposes where:

- it is in respect of a revenue expenditure
- it is made in accordance with acceptable accounting principles
- it is specific, and
- it becomes bad in the year in which the claim is made.

### ***Charitable contributions***

Charitable contributions under deeds of covenant to approved charities are deductible, up to a maximum of 15% of total income.

### ***Fines and penalties***

Fines and penalties are not generally deductible.

### ***Taxes***

Other than SPT, taxes or levies are not generally deductible in arriving at taxable profit.

### ***Other significant items***

Contributions by local insurance companies to 'catastrophe reserve funds' are deductible for tax purposes, up to the value of 20% of net premium income from property insurance business.

### ***Net operating losses***

A trading loss may be carried forward indefinitely to be set-off against future profits. Loss carrybacks are not permitted.

A limited form of group loss relief exists, whereby current year losses may be surrendered to a claimant company within a group, except that the claimant's tax liability cannot be reduced by more than 25%. Such companies must be resident in Trinidad and Tobago.

### ***Payments to foreign affiliates***

A corporation engaged in business in Trinidad and Tobago may claim a deduction for royalties, interest, and service charges paid to foreign affiliates, provided the appropriate WHT is deducted and properly accounted for. For interest to be deductible for tax purposes, the funds borrowed must have been utilised in the production of income and the recipient must be subject to tax in Trinidad and Tobago or otherwise specifically exempt from local tax.

Deduction for management charges (as this term is defined) paid to a non-resident is restricted to the lower of the management charges or 2% of deductible outgoings and expenses, exclusive of the charges. Tax depreciation allowances may not be treated as

# Trinidad and Tobago

an expense for this purpose. WHT may also be applicable to management charges paid to non-resident persons.

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## **Group taxation**

There is no provision for group taxation in Trinidad and Tobago; however, a limited form of group loss relief is available (*see Net operating losses in the Deductions section*).

## **Transfer pricing**

There are no specific transfer pricing rules in Trinidad and Tobago. However, the legislation empowers the tax authority to disregard any transactions that it views as artificial or fictitious. This general power has been utilised by the tax authority in dealing with related parties and large multinational companies to evaluate whether transactions are at arm's length.

## **Thin capitalisation**

There are no thin capitalisation rules in Trinidad and Tobago.

## **Controlled foreign companies (CFCs)**

There are no CFC rules in Trinidad and Tobago.

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## **Tax credits and incentives**

### **Foreign tax credit**

Double taxation is avoided or mitigated by means of foreign tax credits.

### **Tax holidays**

#### **Fiscal Incentives Act, 1979**

An approved enterprise, which must be a locally incorporated resident corporation, may be granted an exemption from corporation tax for a period of up to ten years, depending on the category under which it is approved. Exemption may be total or partial. Subject to approval, profits may be distributed tax free to shareholders, except in the case of certain non-resident shareholders, where the relief is restricted to the amount of tax that exceeds their liability in their country of residence. Net losses during the tax holiday period (i.e. the excess of total losses over total profits) may be carried forward for set-off without limitation for five years from the end of the tax holiday period, after which the normal set-off provisions for losses apply. As of 1 January 2007, the tax holiday in respect of corporation tax is no longer granted.

#### **Approved tourism projects**

Under the Tourism Development Act 2000, approved tourism development projects, including hotels, are granted a tax holiday for periods of up to seven years. In addition, a carryover from a tax exemption period is permitted of any loss arising out of the operation or renting of an approved tourism project to be written off against profits in accordance with normal income tax loss provisions, subsequent to the tax holiday period. An approved tourism project means a project declared to be so by the government.

## Approved mortgage and other companies

The profits of an approved company are exempt from corporation tax. The exempt profits, when distributed to shareholders, are exempt from corporation tax and income tax. Expenses incurred in the course of the approved mortgage business remain fully deductible.

## Free Zone

The profits of an approved company operating in a designated Free Zone are free from corporation tax. In addition, payments to non-residents are free of WHT. Approved activities include manufacturing.

## Other allowances/incentives

### Promotional expenses

Promotional expenses incurred by local firms to promote the expansion of existing markets and/or the creation of new ones for the export of specified services or locally produced goods are tax deductible as an expense at 150% of the actual outlay. Tax-deductible promotional expenses are defined as those expenses incurred in respect of specified services or goods produced in Trinidad and Tobago. This includes such items as advertising in foreign markets and participation in trade fairs and missions.

### Scholarship allowance

Companies can deduct the actual expenses incurred in granting scholarships to nationals who are not employees, directors, or associates of directors of the company for tertiary education.

### Production company allowance

An allowance equal to 150% of actual expenses incurred in respect of the company's own audio, visual, or video productions for educational or local entertainment, or local culture, is available.

Allowances are granted in respect of each of the following activities, based on the actual expenditure incurred but not exceeding TTD 2 million in aggregate:

- Art and culture allowance.
- Sportsman/sporting activity allowance.
- Audio, visual, or video production allowance.
- Promoting the fashion industry.

### Child care/Home work facility

A deduction is allowed for the actual cost incurred in setting up a facility for dependents of employees who are minors, up to a maximum of TTD 500,000 for each facility, subject to an aggregate sum of TTD 3 million in any year.

### Wear and tear allowances

A 130% wear and tear allowance is available for expenditure incurred in compressed natural gas (CNG)-related initiatives.

A 150% wear and tear allowance is available on the expense incurred in relation to solar heaters, wind turbines, and photovoltaic systems.

# Trinidad and Tobago

## Training allowance

A company is allowed to claim as a deduction 150% of expenses incurred in the training and retraining of the employees of the company.

## Allowance for engagement of energy service companies

Where a company incurs expenditure in engaging another company certified as an energy service company for the purpose of carrying out an energy audit for the design of energy saving systems and the installation of the energy saving systems, the company shall be entitled to an allowance equal to 150% of the expenditure actually incurred.

Where the certified energy service company has acquired plant and machinery for the purpose of conducting energy audits, they shall be allowed an allowance of 75% of the cost incurred in the year of acquisition.

## Withholding taxes

WHT is imposed at varying rates up to 15%, depending on the nature of the payment, the status of the payee, and the applicability of DTTs. The tax treaty rate in some instances is now higher than the statutory rate. In such cases, the lower statutory rate applies. The rates below have been adjusted to reflect these reductions:

Recipient	Dividends (%)		
	Portfolio	Substantial holdings	Interest (%)
Resident corporations and individuals	0	0	0
Non-resident corporations and individuals:			
Non-treaty	(1) 10	10	15
	(2) 5/10	5/10	15
Treaty:			
Brazil	(1) 10	10	15
	(2) 5/10	5/10	15
Canada (3)	(1) 10	10	10
	(2) 10	5	15
Caribbean Community (CARICOM) countries	(1) 0	0	15
	(2) 0	0	15
China	(1) 10	10	10
	(2) 10	5	10
Denmark	(1) 10	10	15
	(2) 10	5	15
France	(1) 10	10	10
	(2) 10	5	0/10 (4)
Germany	(1) 10	10	0/10/15 (5)
	(2) 10	5	0/10/15 (5)
India	(1) 10	10	10
	(2) 10	5	10
Italy	(1) 10	10	10
	(2) 10	5	10

## Trinidad and Tobago

Recipient	Dividends (%)			
		Portfolio	Substantial holdings Interest (%)	
Luxembourg	(1)	10	10	10
	(2)	10	5	7.5/10
Norway	(1)	10	10	15
	(2)	10	5	15
Spain	(1)	10	10	8
	(2)	10	0/5/10	8
Sweden	(1)	10	10	15
	(2)	10	5	0/10/15 (6)
Switzerland	(1)	10	10	10
	(2)	10	10	10
United Kingdom	(1)	10	10	10
	(2)	10	5	10
United States	(1)	10	10	15
	(2)	10	5	0/15/20 (7)
Venezuela	(1)	10	10	15
	(2)	10	5	15

Recipient	Royalties (%)		
	(8)	(9)	(10)
Resident corporations, individuals	0	0	0
Non-resident corporations, individuals:			
Non-treaty	15	15	15
Treaty:			
Brazil	15	15	15
Canada	10	0	15
CARICOM countries	15	15	15
China	10	10	15
Denmark	15	0	15
France	10	0	15
Germany	10	0	15
India	10	10	15
Italy	5	0	15
Luxembourg	10	10	15
Norway	15	0	15
Spain	5	5	15
Sweden	15	0	15
Switzerland	10	0	15
United Kingdom	10	0	15
United States	15	0	15
Venezuela	10	10	15

### Notes

1. Individuals.
2. Corporations. The lesser rate applies to parent companies.
3. The lesser rate applies to companies, other than investment companies, that control at least 10% of the voting power.
4. The rate is 10% of the gross amount if interest is paid to a resident of France; it is 0% if the interest is paid to the French government or to any agency or instrumentality of the French government.



# Trinidad and Tobago

5. The rate is 10% of the gross amount if the interest is paid to a bank that is a resident of Germany, 0% where interest is paid to certain stated governmental institutions, and 15% of the gross amount in all other cases.
6. The rate is 10% of the gross amount if the interest is paid to a bank that is a resident of Sweden, 0% where interest is paid to certain specified governmental institutions, and 15% of the gross amount in all other cases.
7. The rate is 15% of the gross amount if the interest is paid to a bank or financial institution in the United States (US) that does not have a PE in Trinidad and Tobago, 0% where the interest is paid to the US government or to any agency or instrumentality wholly owned by the US government, and 20% of the gross amount in all other cases.
8. The rate applies to patent royalties.
9. The rate applies to copyright royalties and similar payments.
10. The rate applies to royalties paid in respect of the operations of mines or quarries or of the extraction or removal of natural resources.

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## ***Tax administration***

### ***Taxable period***

The tax year is the calendar year. Companies are assessed by reference to their accounting period, which for tax purposes cannot exceed 12 months other than in the year of cessation of the business.

### ***Tax returns***

The taxpayer is required to file a tax return with the BIR by 30 April following the end of the fiscal period. An automatic six-month grace period is allowed, following which a penalty is imposed of TTD 1,000 for every six months or part thereof that the return remains unfiled.

### ***Payment of tax***

Corporation tax, business levy, and green fund levy are payable quarterly in advance on 31 March, 30 June, 30 September, and 31 December. Any balance of tax due is payable on or before 30 April of the following year. Instalments of corporation tax are based on an estimate of the current year's liability or on the actual chargeable profits for the previous year, whichever is greater. If the current year's estimate is lower, the company may apply to the BIR to reduce its quarterly instalment. The levy liabilities are based on the actual receipts for the quarter.

### ***Tax audit process***

Tax audits are conducted by the BIR. There is no specific timeframe to conduct an audit, but, generally, companies are selected for varying reasons, including where large refunds are claimed. The BIR usually notifies the company of the intended audit and requests that the books and records be made available for inspection. An assessment is generally raised after the audit.

### ***Statute of limitations***

A company carrying on business in Trinidad and Tobago is required to keep proper accounts and records and is required to retain these accounts for a period of at least six years after the completion of the transactions, acts, or operations to which they relate or three years after the filing of its return (whichever is later).

### ***Topics of focus for tax authorities***

The following issues are currently the focus of the tax authorities:

- Transfer pricing.

- CARICOM tax planning structures.
- Management and other fees paid to non-resident persons.

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### ***Other issues***

#### ***US Foreign Account Tax Compliance Act (FATCA)***

The Tax Information Exchange Agreements (United States of America) Act makes the provision for the implementation of agreements between Trinidad and Tobago and the United States of America by providing for the exchange of information for the purposes of taxation, the validation of the sharing of personal information held by the BIR or financial institutions, and for related purposes.

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