Egypt: Law No. 30 of 2023 issued by the Egyptian Government amending some provisions of the Income Tax Law promulgated by Law No. 91 of 2005

July 2023

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What is introduced in the new tax law?

The Egyptian government introduced a package of tax reform amendments affecting both multinational corporations on the international tax front and local corporations on the domestic front through the newly amended tax law to eliminate tax loopholes.

The international tax amendments are designed to keep up with the constant flow of international tax developments worldwide, which are aligned with the international best practices and the OECD BEPS package.

Generally, the new law no. 30 is designed with the aim of boosting the economy and streamlining the taxation of various items of income.

These modifications will be effective starting 16 June 2023 and are expected to be followed by the executive regulations from the Ministry of Finance in the coming months.

In brief

Tax amendments in a nutshell

We present below the key law amendments that were recently introduced by virtue of the newly amended tax law, mainly tackling the following areas:

Changes affecting international transactions:

- Expanding the Permanent Establishment (PE) definition through the introduction of a threshold for the PE period, the concept of Service PE and Insurance PE, in addition to certain Agency PE updates.
- Abolishment of withholding tax exemption for loans lasting over three years.

Corporate Income Tax (CIT)/ Withholding tax (WHT):

- Electronic invoices and receipts are legally required for both juridical and natural persons.
- Thin-cap ratios are to be gradually reduced to 2:1 over a five-year phasing-out period (affecting both MNEs and residents).
- Reduction of tax leakage on multi-layered structures in Egypt for residents through a dividend incentive.
- Introducing a CIT flat rate on gains and returns received from funds by natural and juridical persons.

Tax on Capital Gains:

- Incentives are being granted to investors in the Egyptian Stock Exchange (EGX) and Initial Public Offerings (IPOs).
- No tax on capital gains shall be applied on shares swaps between the listed and unlisted shares.
- Waiving the tax on capital gains on listed shares from Jan 2022 till the newly amended tax law's effective date on the 16th of June 2023.

Personal Income Tax (PIT):

With the personal exemption and zero-rate bracket increase, an additional tax bracket of 27.5% is added for individuals earning over EGP 1.2M annually.

Changes affecting international transactions

Permanent Establishment (PE)

The PE definition is broadened to be aligned with the OECD (BEPS Action 7); thus, it may increase PE risks.

There are several amendments introduced to the PE definition and exclusions as follows:

Fixed place of business PE update

- A threshold period of 90 days has been newly added. As a result, a “Fixed place of business” PE in Egypt shall be triggered if a building or construction site, installation or assembly project is continued in Egypt for an aggregate period of 90 days during any 12-month period.
- Any activities carried out in Egypt in connection with the exploration, extraction, or exploitation of natural resources, including the use or installation of substantial equipment, for an aggregate period of 90 days during any 12-month period.

Service PE – Newly added definition

- The concept of “Service PE” is newly introduced to the Egyptian income tax law as one of the PE tests.
- A Service PE shall exist if a non-resident entity delivers services (including planning, supervisory or consultancy activities) to a project or related projects in Egypt for an aggregate period of 90 days during any 12-month period. According to the newly amended tax law, the Service PE shall be triggered if the non-resident delivers services through its employees or other individuals/entities engaged by the non-resident.

Agency PE

The definition is broadened to provide further clarifications on the PE triggers in Egypt to include:

- A person working in Egypt on behalf of a foreign enterprise as an independent agent who acts exclusively or almost exclusively shall not be considered independent and will trigger a PE for a non-resident.
- A person working for an affiliated project while having the authority to conclude contracts in the name of the project unless: their activities are limited to the purchase of goods/merchandise for the project, on condition such a person habitually concludes contracts or usually plays the main role in concluding contracts that are concluded repeatedly without substantial modification by the project.

Insurance PE – Newly added definition

In the case of a non-resident person collecting premiums or insures risks in Egypt through a person other than an independent agent.

Changes affecting international transactions (Cont'd)

PE exclusions:

The newly amended tax law provides limitations to the PE exclusions; such limitations may increase PE risk triggers for non-residents.

Among the most important limitations introduced, the "Closely related person" provisions as follows:

- A PE is deemed not to exist when a place of business is engaged solely in certain preparatory or auxiliary activities (i.e., maintenance of stocks of goods for storage, display etc.).
- Additional anti-fragmentation rules have also been introduced to prevent the breakup of an operating business into several small business units through closely related persons to benefit from the preparatory or auxiliary exemption.
- As a result of the new provisions, the activities performed by different closely related persons are to be combined (analysed on an aggregated basis) when assessing whether they can be regarded as of a preparatory or auxiliary nature.

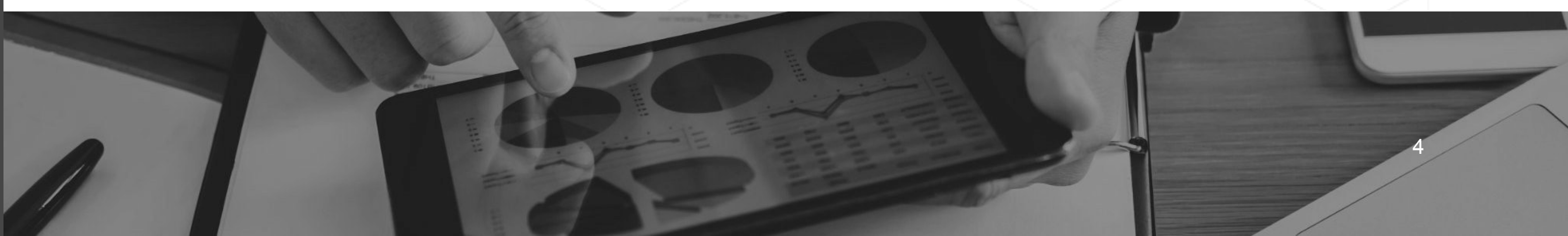
Withholding Tax (WHT) on offshore loans

- The WHT exemption of interest on loans of more than three years term has been abolished for private, public and general public sectors, and this exemption still applies for Government, local government units or other public juridical persons.
- The loan existing before the newly amended tax law may continue enjoying the exemption of WHT as long as one interest payment was paid prior to the issuance date of the newly amended tax law on the 16th of June 2023.

Further clarity on the application is expected to be published through the executive regulations.

Transfer pricing

The definition of the related party has been incorporated in the newly amended tax law in alignment with the unified procedure law. Thus, providing more consistency.



Corporate income tax /Withholding tax

Electronic invoices and receipts

Taxpayers should support their expenses and costs with electronic invoices and electronic receipts to be considered deductible costs from a corporate tax perspective.

Electronic invoices are to be applicable starting July 2023, and electronic receipts starting January 2025.

Mutual funds

A. CIT exemptions

Currently, the profits of certain mutual funds are exempt from income tax (as listed below) upon fulfilment of certain conditions related to each.

The mutual funds to be exempt are:

1. Debt instruments fund and holding fund,
2. Funds investing in listed shares,
3. Venture capital (VC) funds,
4. Charitable funds, and,
5. Real estate investment funds (REITs).

Additional conditions should be applied to the aforementioned funds to enjoy CIT exemption, including funds that should be established in accordance with the provisions of the Egyptian Capital Market Law No. 95 of 1992.

This is to be applicable for FY ending after the 15th of June 2023.

B. Returns/Gains received by a natural person and a juridical person

- The newly amended tax law treatment of the gains/returns received from the aforementioned funds by juridical and or natural persons will be subject to a flat tax rate as follows:
  - Natural persons: 5%
  - Juridical persons:15%
- The relevant investment cost related to the aforementioned gains and returns will be considered non-deductible expenses.
- The executive regulations of this law shall determine the calculation methodology of the relevant costs.
- This is to be applicable for FY ending after the 15th of June 2023.

Corporate income tax /Withholding tax (Cont'd.)

Thin capitalisation ratio

According to the new amendments, the thin-cap ratio will be reduced gradually over a five-year phasing-out period, from 4:1 to 2:1, as follows:

- 4:1 for FY 2023,
- 3:1 for FY 2024 to 2027, and,
- 2:1 for FY 2028 onwards.

This provision shall not apply to banks and insurance companies, as well as companies exercising the financing activities to be determined by a ministerial decree.

Tax on dividends

Reduction of tax leakage affecting resident multilayer structures

For the purpose of reducing the tax leakage related to dividends distributed through a multi-layered structure in Egypt, the new amendments eliminate/reduce double taxation on dividends.

For instance, if company B (i.e., Layer 2/recipient entity) received dividends subject to WHT from company C (i.e., Layer 3/distributing entity). The WHT paid by company C may be deducted from the WHT tax due on dividends distribution by company B to company A (i.e., Layer 1/holding entity) under certain conditions.

Certain eligibility conditions are provided for WHT deduction, including:

- The shareholding percentage of the recipient resident entity exceeds 25% of the capital or voting rights of the distributing entity.
- The period of ownership should not be less than two years from the date of acquisition of the shares and quotas.

Moreover, certain other constraints related to the amount qualified for WHT tax deduction.

Tax on capital gain

Capital gains Incentives

The newly amended tax law grants several capital gains incentives and sets certain rules listed below:

Shares offering (IPO)/additional share tranches incentives:

- If the shares were offered on the EGX for the first time (IPO):
  - **Within two years of the newly amended tax law issuance date** (i.e., before the 15th of June 2025), 50% of the realised capital gains shall not be subject to tax.
  - **After two years of the newly amended tax law issuance date:** (i.e., after the 15th of June 2025): Only 25% of the capital gains would not be subject to tax.
- In case additional tranches were offered after the issuance date of the newly amended tax law (i.e., the 15th of June 2023), 25% of the realised capital gains shall not be subject to tax on capital gain upon fulfilment of certain conditions.

EGX trading incentives:

- Additional cost (capped by 0.5% of both selling and buying transactions) would be allowed as a deductible cost, thus decreasing gains subject to tax on capital gains.
- Under certain constraints and limitations, a natural person will be allowed to reduce capital gains by cost equivalent to interest cost calculated based on shares acquisition cost and Central Bank of Egypt's interest rate.

Shares swap

No tax on capital gains for shares swap shall be applicable between listed and unlisted companies provided these companies hold their shares in central securities depository and registry companies.

Upon disposal of these shares, capital gains shall be calculated based on the shares' historical actual acquisition cost before the exchange occurs.

Compliance

Amnesty on tax capital gains realized before 15 June 2023:
The unpaid tax on capital gains due on the disposal of listed shares on EGX for both natural and juridical persons from January 2022 until the issuance date of the new law amendments (on 15 June 2023) shall be waived.

Non-resident compliance requirements related to transactions on non-listed securities:
Non-residents are required to declare and remit tax on capital gains within 60 days of executing the transaction in relation to unlisted financial instruments.

The executive regulations shall provide further clarifications regarding the mechanism of capital gains incentives calculations.

Personal Income Tax

General PIT updates

PIT includes payroll tax (PT), natural person income tax on commercial activities, income tax on professional activities and natural person income tax on real estate income.

- The first income tax bracket (subject to 0% tax) is broadened from EGP 15K to 21K.
- A new income tax bracket is introduced to capture the taxable income of more than EGP 1.2M at 27.5%

This is to be applicable from the 1st of July 2023 for PT and the FY year ending after the 15th of June 2023 for other PIT.

Changes related to Payroll Tax (PT)

- The annual personal exemption is increased from EGP 9K to EGP 15K.
- PT will be due if the income is borne/accrued (regardless of payment) by an employer residing in Egypt, even if the work is performed abroad.

This is to be applicable from the 1st of July 2023.

Moreover, the newly amended tax law requires the following:

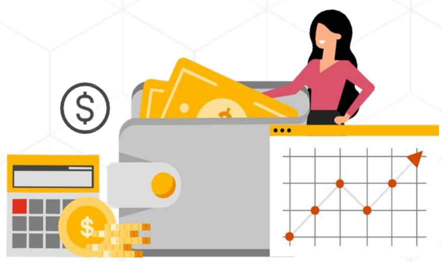
- The non-principal employer is required to withhold 10% (as an initial payroll tax that should be settled by the principal employer from the payments done to resident individuals) and remit it to the relevant tax authority within the first 15 days of each month.
- The non-principal employer should inform both the principal employer and the Tax Authority about the amount received by the individual and the tax deducted.

This is to be applicable from the 1st of January 2024.

Natural person income tax on commercial activities

- Taxpayers should support their expenses and costs with electronic invoices, and electronic receipts are to be considered deductible costs from a tax perspective; electronic invoices are to be applicable starting July 2023, while electronic receipts are to be applicable starting January 2025.
- Taxpayers are to be granted an incentive of up to 5% of income tax if expenses and costs are supported by electronic invoices.
- Extending the annual tax-deductible expenses on syndicate as a contribution to the pension system and life and health insurance premiums from EGP 3K to EGP 10K.

This is to be applicable in FY ending after the 15th of June 2023.



Stamp tax

Minor changes took place with regards to the stamp tax law no.111 for 1981 in Article (50), namely, the following:

- 1% on each life insurance premium and 2% on each premium on illnesses, bodily injuries or related civil liability, and on compulsory insurance premiums of any kind.
- 11% (previously 10%) of the insurance consideration for land, river, sea, and air transport, with a minimum of one pound.
- 11% (previously 10%) on each premium of other insurances and the consideration of these insurances, including insurance against war risks, with a minimum of one pound.

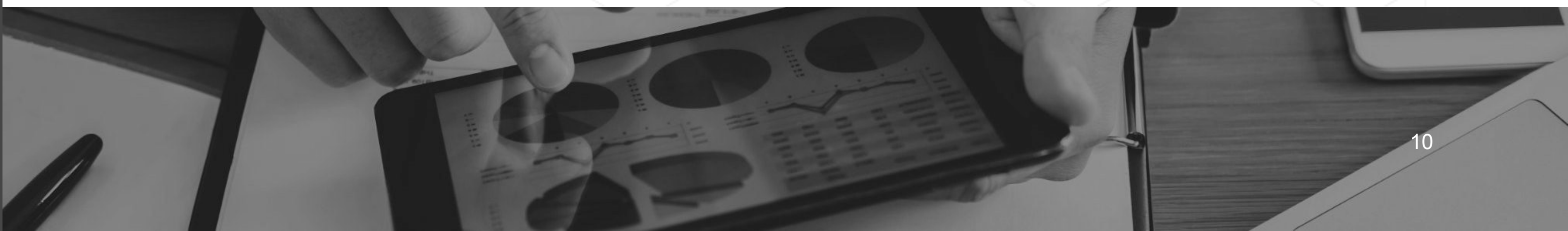
Key takeaways

The recent international tax amendments have brought about greater alignment with OECD BEPS actions, aiming to curtail profit-shifting opportunities for (MNEs). As a result, the Egyptian tax authority is likely to intensify scrutiny of international transactions.

Furthermore, the new income tax law has been designed to introduce incentives that promote investments in the Egyptian stock exchange.

Additionally, the thin capitalisation rule has been tightened to restrict the level of tax deductions available on interest expenses, leading to an increased cost of debt finance relative to equity finance.

The executive regulation is anticipated to address specific critical areas in detail. Including the treatment of tax leakage for multi-layered corporations in Egypt and withholding tax (WHT) on loan interest exceeding three years.



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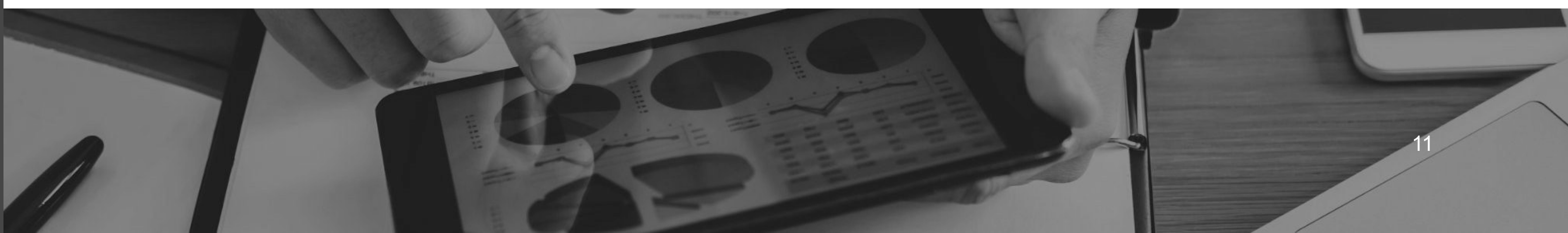

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