Global tax guide to doing business in…

2019

Contents

The Dentons global tax guide has been prepared with contribution for Uganda from Kampala Associated Advocates.

Notes from the Editor

Dear Reader,

Increasing globalization has led to a decline in barriers when businesses are looking to expand into new markets around the world. Tax remains one of the central considerations when evaluating a business opportunity. The complexities and intricacies of navigating different tax systems has proven to be a challenge for multinationals that operate in more than one country.

This edition of our annual insight piece is aimed at providing a high-level overview of the tax consequences that face businesses planning to expand international operations. Understanding the uniqueness of different tax systems presents an opportunity for businesses to plan and structure their affairs in the most tax efficient manner.

In this regard, our current edition responds to the following questions in connection with a multitude of jurisdictions around the globe:

1. What is the general overview of the tax system?
2. Under what type of legal system (i.e. civil law or common law) does the jurisdiction operate?
3. Who are the local taxation authorities?
4. What are the different business vehicles that are used by non-residents to carry on business, and what are the tax attributes associated with the different business vehicles?
5. What are the different methods of financing a corporate subsidiary? Are there specific tax implications associated with financing through equity or debt?
6. What are the different types of corporate income tax to which a corporation may be subject? How is the taxable income of a corporation computed and are there any limitations with respect to allowable deductions?
7. Are there any transfer pricing rules and withholding tax implications that might apply to cross-border payments? If so, what are the rules and the tax rates that may apply to different types of cross-border payments?
8. What payroll taxes, if any, are payable by an employer and employee?
9. Are there any indirect taxes such as sales tax, value-added tax or land transfer tax? If so, what is the rate imposed and when are these indirect taxes payable?

As you will see, the tax considerations that arise when doing business in different jurisdictions are numerous and often complex. The Dentons Global Tax Group can assist you in steering through the changing global tax landscape by providing comprehensive tax advice that is catered to businesses with a global focus.

This issue does not constitute tax advice or a legal opinion. Readers should note that the laws of each jurisdiction are regularly revised or changed, so the statements made in this report are not definitive. However, it does provide a summary overview of the current state of law, and hopefully serves as a useful guide for taxpayers and multinationals to ensure they understand the different provisions and distinctions in various jurisdictions.

We would like to express our gratitude to all the authors and contributors from the various Dentons offices around the world and from Kampala Associated Advocates.

Please do not hesitate to contact us should you require further clarification or assistance.

We hope you will enjoy this Global tax guide to doing business in... and look forward to working with you in the near future.

Yours sincerely,

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1.0 OVERVIEW

The Australian tax year for most businesses ends on June 30. However, it is possible to apply for a substituted accounting period (SAP) that varies the year-end to coincide with the financial year of a foreign parent company.

Australian tax laws are amended frequently in response to changes both at the domestic level, such as changes in government, and at the international level, such as the Organisation for Economic Co-operation and Development's (OECD) recent Base Erosion and Profit Shifting (BEPS) initiative. Careful consideration should be given to the nature of the business to be conducted in Australia and any resulting tax implications.

The federal government levies income tax, goods and services tax (GST), fringe benefits tax and capital gains tax, among others. State and territorial governments levy payroll tax, land tax and stamp duty, among others.

2.0 LEGAL SYSTEM

Australia, its six states and its two territories operate under common law. Both the federal government and state governments have lawmaking power. However, the federal government's legislative power is limited to the exclusive heads of power set out in section 51 of the Australian Constitution. State governments are able to legislate on all other matters.

New country-by-country reporting rules affect significant global entities, which includes Australian-headquartered groups and Australian subsidiaries of foreign groups with global turnover exceeding A$1 billion. Unless exempted, affected groups may have additional "risk identification" reporting obligations with the Australian Taxation Office (ATO), including obligations to file a country-by-country report, a master file and a local file.

Australian tax laws contain various anti-avoidance rules that purport to cancel certain tax benefits or alter the way the tax law is applied to a particular taxpayer in certain circumstances. Australian tax legislation also contains a number of specific anti-avoidance rules as well as general anti-avoidance law.

There have been recent specific avoidance measures for global groups. There is the Multinational Anti-Avoidance Law (MAAL), which aims to prevent multinationals using contrived arrangements to avoid the consequence of a permanent establishment in Australia. There is the diverted profits tax (DPT), which affects significant global entities by targeting arrangements that artificially divert profits overseas through related entities if the arrangements result in foreign tax of less than 80% of that which would otherwise have been paid in Australia. Where the DPT is invoked, the special levy is imposed on the diverted profits at a rate of 40%.

The Australian government has also signed a multilateral convention to implement tax treaty related measures to prevent BEPS.

3.0 TAXATION AUTHORITIES

The ATO is the federal body responsible for overseeing and enforcing federally imposed taxes. The federal Commissioner of Taxation makes decisions and gives opinions on federal tax laws.

Each state and territory also has its own taxation oversight body:

State	Taxation Body
New South Wales	Revenue NSW
Queensland	Office of State Revenue Queensland
Victoria	State Revenue Office Victoria
Western Australia	Office of State Revenue Western Australia
South Australia	Revenue SA
Tasmania	State Revenue Office of Tasmania
Northern Territory	Territory Revenue Office
Australian Capital Territory	ACT Revenue Office

The principal direct tax is income tax, which is levied by the federal government and administered by the Federal Commissioner of Taxation, who is responsible for the operation of the ATO. The main laws governing income tax are the Income Tax Assessment Act 1936 (Cth), the Income Tax Assessment Act 1997 (Cth) and the Taxation Administration Act 1953 (Cth).

4.0 BUSINESS VEHICLES

Determining the residency status of a business vehicle is essential in understanding how Australian taxation law will apply to that individual or entity. A non-resident can carry out business in Australia through an Australian resident entity or a foreign entity, though different processes for registration and reporting will apply depending on the choice.

4.1 Companies

A company is an Australian resident for tax purposes if it is incorporated in Australia, or carries on business in Australia, where its central management and control is in Australia or its voting power is controlled by shareholders resident in Australia.

As a general rule, if the company's directors usually carry on business and make decisions in Australia, the residence test will be satisfied. Again, residency is a question of fact decided in each case by reviewing the company's business or trading activities.

Companies can either be proprietary or public companies. The types of companies that can be established include those limited by guarantee, limited by shares, unlimited with share capital or having no liability (this last only applies to certain mining companies).

Alternatively, a foreign entity can also register an Australian branch, rather than incorporating an Australian subsidiary company.

4.2 Partnerships

A partnership is an association of people who carry on business together, and can be with up to 20 people. Partnerships can be either general or limited, and are governed by state or territory legislation. Members of the partnership are personally liable for the debts of the partnership.

The residence of a general partnership is determined by the individual partners' residency status. A limited partnership will be a resident of Australia if the partnership was formed in Australia, if it carries on business in Australia or if it has central management located in Australia.

4.3 Trusts

Trust structures are also commonly used as business and investment vehicles. Trusts may be characterized as residents for tax purposes if, during a financial year, the trustee of the trust is a resident or the trust's central management and control is in Australia.

5.0 FINANCING A CORPORATE SUBSIDIARY

5.1 Debt finance

In Australia, companies can be financed using debt, where the company borrows from external lenders. If a company uses debt financing, they are able to retain full control of their business, and typically, the interest paid on repayments is tax deductible.

Care should be taken to identify the specific entity from which the funding is sourced, as tax consequences for finance provided by an individual acting in their own right is very different to one acting as trustee or as director of a company.

5.2 Equity finance

Companies can also be financed through equity. Common ways that equity financing can be achieved include private equity investors, venture capitalists and an initial public offering on the Australian Stock Exchange.

The tax treatment of raising capital through equity financing will depend on the nature of the transaction.

5.3 Tests for debt and equity

Australia has tests for debt and equity interests, which determine whether a particular arrangement gives rise to a debt interest or an equity interest. These tests are set out in Division 974 of the Income Tax Assessment Act 1997 (Cth). Whether an interest is debt or equity is relevant in determining if returns are subject to interest or dividend withholding tax.

5.4 Investment income and royalties paid to foreign residents

Companies, whether Australian residents or foreign residents with a permanent establishment in Australia, may be required to withhold tax from investment income and royalties paid to non-residents.

5.5 Taxation of financial arrangements (TOFA)

The TOFA rules determine the tax treatment of gains and losses on financial arrangements, which usually only apply to large taxpayers. The TOFA arrangements are aimed at reducing the influence of tax consideration on how financial arrangements are structured.

6.0 DIRECT TAXES

Income tax is assessed on individuals, companies and trusts. Federal income tax returns must be filed annually. The income tax system is based on self-assessment, with the ATO conducting random or systematic audits as a way of monitoring and verifying the self-assessments. Some large businesses choose to participate in voluntary compliance programs with the ATO.

Partnerships are subject to pass through tax treatment. Participants in joint ventures who take a share in the product of the venture are generally taxed as separate taxpayers.

Australian residents are subject to tax on worldwide income, but tax credits may be available where

foreign tax is paid by an resident taxpayer for income derived from a foreign source. Non-residents are normally taxed on income derived from Australian sources only.

6.1 Corporate income tax

The general income tax rate for companies is currently 30%, although a reduced rate is available for small businesses. Most businesses are required to pay quarterly "pay as you go" (PAYG) installments throughout the year based on their estimated tax liability, although it is necessary to file an annual tax return to determine their actual income tax liability for the year.

Income tax is payable on "taxable income," which is calculated by deducting allowable deductions from assessable income. Allowable deductions include certain deductions for expenses incurred in carrying on business and capital allowances for depreciating assets. Deductions may also be allowed for losses carried forward from previous years.

Where allowable deductions exceed the amount of assessable income for a particular financial year, the taxpayer incurs a tax loss. Generally, tax losses can be carried forward indefinitely (subject to certain continuity rules). When determining the future taxable income of a company, a tax loss may only be deducted against future taxable income if the company satisfies the "continuity of ownership" test, or in some instances, the "same business" test. Capital losses can be set off against capital gains arising in the same for future tax years, but cannot be applied to past financial years.

6.2 Capital gains tax (CGT)

Tax is also payable on capital gains derived from the disposal of most capital assets, although foreign residents are generally only taxed on transactions involving Australian real property. The net capital gains of the taxpayer (reduced by capital losses) are included in the taxpayer's total assessable income in the same way as other items of assessable income. A net capital loss may be carried forward and offset against future capital gains.

CGT applies to a wide range of events, such as an asset disposal, which affects most forms of property or enforceable rights. In broad terms, the CGT liability is determined by subtracting the cost base of the asset from the capital proceeds for the event. Gains are assessed on realization or another specified event (such as ceasing to be an Australian resident), and are not generally assessed on an accruals basis.

The ordinary income tax rates apply to capital gains. However, individuals (and certain trust structures) may be eligible for a 50% discount on

CGT if they have held the asset for at least 12 months. There are a range of concessions and deferral mechanisms for businesses and individuals. Non-residents are generally taxed only on capital gains derived from "taxable Australian property," such as land, indirect interests in land and mining or prospecting rights.

6.3 Imputation system

Dividends paid by Australian resident companies may be franked (wholly or partly) with imputation credits that reflect the tax paid by the company on the profits distributed to members. Special rules ensure uniformity of franking on distributions during a franking period. Non-resident shareholders are not eligible for credits or rebates on franked distributions. Dividends paid to non-resident shareholders may be subject to withholding tax if the distributions are not franked.

7.0 TRANSFER PRICING

7.1 Transfer pricing rules

Transfer pricing rules seek to counter international profit-shifting techniques by ensuring that related parties to international transactions determine their pricing based on arm's length methodologies.

These rules allow the Tax Commissioner to reallocate income or adjust deductions to reflect an arm's length arrangement. The rules extend to branches or divisions of the same enterprise, where non-arm's length transactions are made between an Australian permanent establishment and an overseas permanent establishment of the same enterprise.

7.2 Thin capitalization

Australia's thin capitalization rules are designed to prevent entities with cross-border operations from funding their operations with excessive levels of debt to procure a more favorable Australian tax result.

Deductions for interest incurred by inbound investment vehicles (which can include an Australian company where 40% or more of its total share capital is owned by a non-resident) and outbound investment vehicles (Australian entities investing overseas) may be limited under the thin capitalization rules.

Tax deductions on interest payments are limited by reference to a statutory debt/equity ratio assessed on the total debt of the Australian operations.

Generally, the thin capitalization rules apply to:

- Australian entities that are foreign controlled and foreign entities that either invest directly into Australia or operate a business through and Australian permanent establishment
- Australian entities that control foreign entities or operate a business through overseas permanent establishments and associate entities.

There are two exceptions from the thin capitalization rules:

- Taxpayers and their associates claiming annual debt deductions of A$2 million or less
  Outward investing Australian entities, if at least 90% of their assets (excluding those of private or domestic nature) are Australian

7.3 Principles of consolidation

The consolidation regime allows qualifying groups of entities (companies, trusts and partnerships, but excluding branches) to be treated as a single entity for income tax purposes. This is a "one-in-all-in" election, meaning that each wholly owned subsidiary will automatically and irrevocably become a member of the group for Australian tax purposes.
An important benefit of choosing to consolidate is are that the consolidated group will generally be required to file only one income tax return and one franking account for the consolidated group.

Once part of a consolidated group, intra-group transactions will be ignored for tax purposes. Examples of such intra-group transactions include asset transfers, loans, payments of dividends and returns of capital. Losses attributable to the operations of a group member are able to effectively offset against income generated by other group members.

7.4 Multiple-entry consolidated groups

The consolidations regime includes rules for foreign-owned groups with entry points into Australia via multiple Australian holding companies. These rules allow flexibility in defining the consolidated group. Such groups are known as multiple-entry consolidated groups.

7.5 Administration of consolidated groups

The entity responsible for filing the group's tax return (referred to as the head company) is the entity that is also responsible for ensuring the group's income tax liability is paid.

However, it is important to note that the other members of the group may be jointly and severally liable for the total income tax liability of the group if the head company defaults on its payment obligations to the ATO.

One way the group members may mitigate the risk of joint and several liabilities arising (which is particularly relevant if a member has or may eventually exit the group) is for each group member to enter into a valid tax-sharing agreement that allocates the tax liabilities of the group to each of its members. Where tax-sharing arrangements are in place, in the event of a default by the head company, an individual member's liability may be limited to its allocation of income tax provided under the agreement.

7.6 Withholding tax

The general rule that non-residents are liable for Australian tax on all Australian-source income is modified in relation to dividends, interest and royalties.

Payers are required to withhold tax from interest, dividends and royalties paid to non-residents. Trustees, agents or others who receive interest, dividends or royalties on behalf of a non-resident, where withholding tax has not been withheld by the payer, are also required to withhold tax.

The tax rates of withholding tax vary, depending on whether a double taxation treaty applies, among other things. The dividend, interest or royalty does not need to be actually paid to the non-resident to be subject to withholding tax. The liability can also arise where the income is reinvested, accumulated, capitalized or otherwise dealt with on behalf of the non-resident.

Certain other payments to non-residents by a resident business are subject to foreign-resident withholding tax rules. However, the recipient of a payment subject to withholding under the foreign-resident withholding tax rules is generally entitled to a credit for that amount, once it is determined that no income tax is payable.

A purchaser of "taxable Australian real property" (and interests in such) from foreign vendors may be required to withhold an amount as a non-final withholding tax obligation to be offset against the vendor's CGT liability on the transaction.

7.7 Managed investment trusts

Certain distributions made by a managed investment trust (MIT) to its foreign investors are subject to a concessional tax rate of withholding tax.

The rate of withholding depends on whether the investor's address is in a jurisdiction with which Australia has an effective exchange of information (EIO) agreement: the UK, the US and New Zealand.

Jurisdiction	Tax rate
EIO jurisdiction	15%
Non-EIO jurisdiction	30%

The concessional tax rate only applies to distributions from a MIT of Australian-source net income other than dividends, interest and royalties.

A new regime for attribution managed investments trusts (AMIT regime) applies from July 1, 2016. Generally, under the AMIT regime, qualifying MITs will (among other things) be treated as a fixed trust for the purposes of income tax and will be able to "flow through" taxable income to their unitholders on an "attribution" basis, and for that taxable income to retain its character for tax purposes as it flows through the trusts. This regime increases certainty and provides greater flexibility while reducing compliance costs for MITs.

7.8 Stamp duty

Each state and territory imposes its own stamp duties. Stamp duty is a tax on transactions and certain instruments (including conveyances of real property and business assets). The rates and duties payable vary among the states and territories and depend on the nature of the transaction. The duty is generally payable by the purchaser or transferee.

8.0 PAYROLL TAXES

Each state and territory has payroll tax legislation under which an employer is liable to pay tax on the employer's payroll. The tax is only payable where the employer's payroll exceeds a minimum threshold. The payroll tax rates and thresholds vary by state/territory.

The threshold level is determined in respect of the total wages an employer pays to all employees in Australia, and it varies between states and territories. In some instances, payments to contractors may be considered wages and subject to payroll tax.

8.1 Fringe benefits tax (FBT)

FBT is payable by employers on the value of certain benefits that have been provided to their employees or to associates of their employees. It typically applies to in-kind benefits and is payable at the top personal tax rate based on the taxable value of the benefit.

The FBT year is from April 1 to March 31. The FBT rate for the year commencing April 1, 2018, is 47%. FBT is calculated on the grossed-up value of fringe benefits (the calculation of which differs depending on the type of benefit and availability of input tax credits for GST).

Employers may claim a deduction for the payment of FBT. This results in the similar tax treatment of salary and wage income and fringe benefit remuneration provided to employees on the top marginal tax rate, except for certain concessionally taxed benefits.

There are a number of FBT exemptions and concessions, meaning benefits that are exempt from FBT. A concession is a reduction in the taxable value of a fringe benefit, which results in a reduced amount of fringe benefits tax payable (or in some cases, no FBT being payable at all). For example, concessions will be allowed for Remote Area Reductions, Transport Reductions and Relocation Reductions paid to employees. Some specific concessions also apply to some nonprofits, such as public benevolent institutions, charitable institutions, health promotion charities and religious institutions.

8.2 Superannuation guarantee levy

All employers must make superannuation contributions for the benefit of all their employees. The minimum contribution is currently 9.5% and will remain at this rate until July 1, 2021, when the levy will increase to 10%, with incremental increases of 0.5% over the following four years to 12% from July 1, 2025.

Superannuation contributions are tax-deductible to the employer making the contributions if they are made to a fund that complies with federal legislation and if they do not exceed a maximum threshold. Income derived by a complying fund, including the contributions it receives, is taxable at the rate of 15%.

Under the Superannuation Guarantee Charge scheme, a charge is imposed on all employers who fail to provide a prescribed minimum of superannuation for their employees, including certain foreign events, which can have significant tax implications.

9.0 INDIRECT TAXES

9.1 State and local taxes

State taxes mainly include payroll tax, levied on the gross payroll of a business; land tax, levied on the unimproved value of land; and stamp duties, levied on certain transactions and documents.

Local taxes are usually comprised of rates, which are generally levied by reference to the value of land.

9.2 Goods and services tax (GST)

The principal indirect tax assessed and imposed by the federal government is the 10% GST, which is levied on most supplies of goods and services by businesses at the rate of 10%. There are also excise duties imposed on certain commodities and customs duties on imported goods.

The GST is a multi-stage tax payable by suppliers (similar to a value-added tax), where each stage in a supply chain is potentially taxable, but with registered entities being entitled to refunds of GST incurred on their business inputs, referred to as input tax credits. GST is not applied to most exports of goods and services.

Businesses must register for GST if they make taxable supplies of more than A$75,000 per year, regardless of whether the business in Australia is conducted through an Australian company or an Australian branch. The liability to pay GST is generally imposed on the supplier. Most registered entities are required to account for GST either monthly or quarterly.

Some supplies are classified as GST-free. These include certain supplies relating to health, aged care, education and food, as well as sales of farm land and supplies of businesses as going concerns.

Other supplies may be exempt so that no GST liability arises, but the supplier may be denied input tax credits on business inputs relating to that supply. Exempt supplies may include certain financial supplies (such as loans, currency and derivative transactions and share transfers), residential rents and sales of established residential premises.

Groups of related entities may be eligible to form a GST group and nominate a "representative member" to be responsible for recognizing the GST liabilities and input tax credits in respect of supplies and acquisitions to and from entities outside the GST group. The representative member is the entity primarily responsible for the group's GST liability.

It is important to note, however, that the other members of the group can he held jointly and severally liable for the GST liability of the group should the representative member default in its payment obligations to the ATO. One way group companies may mitigate the risk of joint and several liabilities arising (which is particularly relevant for members exiting from the group) is for each group member to enter into a valid indirect tax-sharing agreement that allocates the GST liabilities of the group to each of its members. Where indirect tax-sharing arrangements are in place, in the event of a default by the group representative, an individual member's liability may be limited to its allocation of GST provided under the agreement.

The Australian government introduced GST on all low value imported goods with a value under A$1,000 on July 1, 2018. These GST changes also affected Australian GST-registered suppliers, including Australian retailers who 'drop ship' (i.e., sell goods that are located overseas at the time of sale, and sent directly to consumers in Australia from an overseas source). Imported goods valued above A$1,000, as well as tobacco products and alcoholic beverages continue to have GST applied. Overseas retailers that meet the registration threshold of A$75,000 will need to register for GST, charge GST on sales of low value imported goods (unless they are GST free), and lodge returns with the ATO.

9.3 Land tax

Land tax is an annual tax levied on the owner of land in Australia, based on the unimproved capital value of the land, which excludes the value of the building or capital improvements.

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1.0 OVERVIEW

The Brazilian constitutional system attributes different and independent taxing powers to the federal, state, and municipal governments, as well as to the Federal District to impose, regulate and collect taxes. Brazil imposes corporate and personal income tax on its residents, including Brazilian subsidiaries of foreign entities, in respect of income and capital gains earned anywhere in the world. Federal income tax is imposed under the Brazilian Income Tax Regulation (BITR) and other federal laws and regulations. Non-residents who carry on business in Brazil or are employed in Brazil or sell certain types of assets in Brazil are also subject to Brazilian income tax.

Brazilian income tax is only levied at the federal level and Brazil does not have state or municipal income tax. The BITR also imposes a withholding tax on remittances abroad such as interest payments, rents, royalties and services fees, at rates varying from 6% to 25%. The Brazilian payer of any such amount is liable for withholding and collecting this tax on behalf of the non-resident recipient. The Brazilian double-taxation treaty (DTT) network is composed of 36 signed DTTs[1] , which will reduce or eliminate the applicable withholding tax rate on such types of income. Brazil is not currently an Organisation for Economic Co-operation and Development (OECD) member; however, its treaty policies follow the main system of OECD model with some provisions considerably adjusted to the Brazilian policy and to its internal law. Some of the relevant changes are in consonance with the United Nations model convention.

Brazil decided not to sign the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, but opted to update and amend its tax treaties through bilateral negotiations, in order to submit each of them individually to the National Congress. Most DTTs recently signed or renegotiated by Brazil demonstrate a clear alignment with base erosion and profit-shifting projects, with the insertion of some recommended provisions in its treaties, such as the access to the mutual agreement procedure clause, adoption of the Principal Purpose Test rule and a simplified style limitation on benefits clause, as a means to prevent treaty shopping.

In addition to income tax, several other direct and indirect taxes are imposed at federal, state and municipal levels on different business activities, financial transactions and on the transfer or holding of property, which result in several different and specific compliance rules to be followed. The efficient administration of tax payment is one of the greatest challenges of Brazilian companies.

2.0 LEGAL SYSTEM

Brazil is organized as a federative republic formed by the union of its states and the Federal District. The federal constitution ensures the fundamental rights and guarantees of the citizens; regulates the tax system; provides for socioeconomic and financial policy; and establishes the legislative authority of the federal union, states and municipalities. While the ability to make certain laws is in the exclusive domain of the federal government, other laws are within the scope of state and municipal authorities. In some cases, the federal, state and municipal governments exercise concurrent jurisdiction.

Court decisions are issued based on the interpretation of the laws prevailing in Brazil. Judicial precedents are not binding in Brazil, although they are relevant in influencing the court's future decisions. Some particular decisions ruled by the Supreme Court of Justice must be followed by the administrative and lower judicial courts.

3.0 TAXATION AUTHORITIES

In Brazil, the main directives for taxation are provided by the federal constitution, which establishes the general principles of taxation, the limitations on the power to tax, tax competence across levels of government, as well as tax revenue sharing provisions.

Although the federal constitution and laws set forth general rules for all taxes, the federal government and each state or municipality has their own discretionary powers to enact their laws and regulations for the collection of their taxes. The Brazilian Internal Revenue Service (IRS) manages the federal tax system, including social security contributions and customs taxes. States and municipalities have similar collection agencies to administrate and collect outstanding taxes.

1 The treaties signed with Switzerland and Singapore are still pending completion of the ratification process.

Almost all Brazilian taxes are self-assessed and tax returns must be filed in the taxpayer's place of domicile. There are currently multiple tax returns, created by federal, state and municipal governments. Brazil presents a heavy tax burden, complex and dynamic legislation and an agile and efficient collection system. The non-compliance of tax ancillary obligations may result in extraordinarily heavy penalties.

Brazilian tax authorities may assess taxes within five years if no tax return is filed, or if the taxpayer files a tax return with incorrect information. In situations where proper accounting records have not been kept by the taxpayer, tax authorities may disregard the accounting records and conduct an arbitrary assessment.

If a tax assessment is issued by the Brazilian federal tax authorities, a regular 75% fine is imposed on the principal amount of unpaid tax debt. For the cases involving charges of deliberate misconduct, fraud or simulation, an aggravated fine of 150% can be imposed. For state and municipal tax debts, the fines may vary according to the local legislation and the time period.

4.0 BUSINESS VEHICLES

A non-resident may either establish a Brazilian business vehicle to carry on business in Brazil or operate directly through a foreign entity, with or without a Brazilian permanent establishment. In general, Brazil does not restrict foreign ownership of domestic enterprises, except in very specific and strategic sectors. An entity can be incorporated in Brazil as a branch or as a subsidiary.

Although a Branch may be seen as an extension of its parent company for legal purposes, it is treated as a separate entity for tax purposes, meaning that the register of a Brazilian branch does not offer tax advantages when compared to the incorporation of an independent Brazilian subsidiary.

Foreign companies may not operate branches in Brazil unless they receive prior authorization after submitting a special request to the Brazilian Ministry of Industry and Commerce. In practice, considering the bureaucratic slowness in obtaining such authorization, few branches of foreign companies operate in Brazil. In fact, the establishment of a branch in Brazil is not recommended, except in very special circumstances, such as foreign banks and international airlines that generally prefer to register branches to conduct their business in Brazil.

In view of this, entities are not commonly set up under the form of branches in Brazil, but rather, the majority of the foreign businesses are set up under the form of subsidiaries. As a general rule, all types of foreign direct investments in Brazil must be registered with the Brazilian Central Bank (BACEN) and the foreign shareholders or quota holders must have legal representatives in Brazil.

The incorporation of a legal entity in Brazil normally takes about 30-45 business days. The incorporation process includes the issuance of the tax registries, which are required to fulfill other companies' needs, such as opening bank accounts and leasing of office space. Depending on the activity to be performed and the location in which it will be performed, some specific licenses and authorizations may be required.

4.1 Limited liability company

Limited liability companies (LTDA) are regulated by the Brazilian Civil Code. The responsibility of each quota holder is limited to the amount of his quota, but all quota holders are jointly and severally liable for unpaid-in capital. The incorporation of a Brazilian LTDA requires at least two shareholders to sign the Articles of Incorporation. These shareholders can be Brazilian, foreign individuals, or entities, and there is no imposition of a minimum or a maximum amount of capital. There is no mandatory independent statutory audit in an LTDA, unless the legal entity or its group has assets, in its previous year's financial statements, greater than R$240 million, or gross revenue in excess of R$300 million/year.

The quota holder control depends on the ownership of 75% (or more) of the quotas of an LTDA. There is no obligation to distribute dividends to the quota holders.

4.2 Corporation

Corporations (S/A) are regulated by the Federal Corporation Law. Each shareholder's liability is limited to their contribution. The incorporation of an S/A requires at least two shareholders to sign the company's bylaws. The shareholders may be either Brazilian, foreign individuals, or entities, and at least 10% of the subscribed capital must be transferred to the company's bank account in order to incorporate this type of entity. A board of directors and an administrative council are mandatory for listed companies.

It is mandatory for all S/As listed on the stock market to have their financial statements audited by independent auditors. For a non-listed S/A, the audit is only required when its assets are greater than R$240 million or when its gross revenues exceed R$300 million. Corporations are required to file their financial statements with the local commercial registry and publish them in the Official Gazette, as well as in a major private newspaper. The control is exercised by the majority of shareholders that attend the general meetings.

The law requires annual payment of dividends with reference to the minimum portion established in the bylaws. Generally, this minimum limit is set at 25% of the net profit of the fiscal year. S/As are usually more costly to maintain and are subject to stricter requirements. On the other hand, this business vehicle is more flexible when it comes to the relationship between shareholder interests and voting rights.

4.3 Consortium

Consortiums are regulated by the Brazilian Corporate Law, which states that companies and other entities, whether or not under common control, may constitute a consortium in order to undertake a specific project. A consortium is an association of companies, either Brazilian resident or foreign, with the objective of developing a joint business or participating in a project that is larger than the individual capacity of the participants. This method is widely used in large-scale projects.

In a consortium, the activity is carried out directly by the parties, which assume rights and responsibilities in their own name under the terms of the consortium agreement. Hence, having the proper wording in the consortium agreement is of the utmost importance.

Although the consortium does not have a corporate veil (i.e., legal personality), it may be allowed to sign contracts in its own name, according to the provisions of the consortium agreement entered into by its members. Generally, a consortium member is elected as the leader to represent the consortium. In cases of a consortium composed of Brazilian and foreign companies, it is mandatory that the consortium leader be a Brazilian resident company, which should maintain separate accounting records of the consortium operations, through distinct accounts or separate bookkeeping.

The consortium agreement and its amendments must be filed with the Board of Commerce in the location where it is headquartered. Each consortium member should compute its own revenue, costs, expenses, rights and obligations proportionally to its participation in the consortium; however, there is no legal restriction to attribute them in a disproportional manner.

The use of a consortium by foreign entities for doing business in Brazil should be carefully examined. There are specificities related to the use of a consortium and from a practical perspective, a lack of clear guidance on the applicable taxation.

4.4 Single owned limited liability entity

Single owned limited liability entities (EIRELI) are also regulated by the Brazilian Civil Code. It can be incorporated by a single individual quota holder that holds 100% of the paid-in capital. The responsibility of the quota holder is limited to the amount of his quota, but all quota holders are jointly and severally liable for unpaid-in capital. The EIRELI follows the same rules as the limited liability company in terms of responsibility of the shareholder. The quota holder can be a Brazilian or foreign individual, and a minimum amount of capital equivalent to 100 times the current Brazilian minimum wage (currently equivalent to R$99,800) is imposed.

4.5 Branch of a foreign entity

Branches are very uncommon in Brazil, as they may only carry out activities in Brazil upon approval through ministerial authorization, which historically has been granted only in exceptional circumstances. Furthermore, there are no tax benefits to using a branch as opposed to a legal entity because both are subject to the same tax treatment; however, it is more complicated, costly and time consuming to establish a branch. It is generally impractical for a foreign corporation to operate a Brazilian services business through a Brazilian branch. Non-residents planning to operate a services business in Brazil will generally incorporate a Brazilian subsidiary.

4.6 Foreign corporation (without a Brazilian branch)

A foreign corporation that carries on business in Brazil through a Brazilian permanent establishment (PE) will be subject to corporate income tax in Brazil. However, the characterization of a PE in Brazil is rare to the extent that the Brazilian internal tax legislation does not contain a clear definition of PE. For this reason, to analyze whether an entity could be considered to have a taxable presence in Brazil, the concept of "doing business" is more frequently invoked by local tax authorities when a foreign company undertakes business activities within Brazilian territory on a permanent basis. In other words, a company may be considered to be doing business in Brazil and be taxed as if it was a local company, even if it does not have an incorporated branch, agency or subsidiary in Brazil.

Additionally, some other isolated rules from the BITR describe situations in which tax authorities may characterize a foreign company as having a taxable presence in Brazil, such as: (i) branches of foreign corporations; (ii) sales made in Brazil by a Brazilian agent with powers to bind the foreign entity; and (iii) companies that failed to file their corporate and tax documents with the competent bodies (de facto corporations) but have a separate unit of business or a center of activity for the performance of trading and service activities.

In practice, this risk is very low, considering Brazil has a very restrictive and protective interpretation of domestic tax legislation and generally prefers to impose withholding and indirect taxation on the importation of services. As such, the low risk generally does not justify the presence of a PE as a foreign entity in Brazil .

5.0 FINANCING A CORPORATE SUBSIDIARY

5.1 Equity financing

5.1.1 Contributions for shares

The contribution of capital into a Brazilian entity in exchange for shares or quotas must be registered with the electronic system of the Brazilian Central Bank and the total amount injected as capital is subject to the tax on financial transactions (IOF) at a rate of 0.38% levied on the conversion of foreign currency into Brazilian reals.

The registration of the foreign direct investment with BACEN enables the future repatriation of capital to the foreign shareholders/quota holders in the form of capital redemption, dividends distribution or payment of interest on net equity.

5.1.2 Contributions without taking additional shares

Where an equity contribution is made by a shareholder to a Brazilian entity without the issuance of additional shares, the amount is added to the company's "capital reserve account." However, such amount may be capitalized in the future without triggering negative tax consequences.

5.1.3 Distributions of paid-up capital

A Brazilian entity is permitted to make distributions of its paid-up capital to a non-resident shareholder or quota holder in the form of capital redemption only if the existing capital is considered excessive vis-à-vis its corporate purpose and activities. In order to perform a capital redemption, a Brazilian LTDA is required to observe a minimum period of 90 days for prior notice of creditors, or 60 days in the case of corporations. The capital redemption resolution will only

become valid and effective when there is no opposition of creditors within the notice period.

5.2 Debt financing

The financing of a company through an intercompany loan would also have to be registered with the Brazilian Central Bank to allow the future repatriation of the loan's principal and interest abroad.

5.2.1 Withholding tax implications

Interest payments made by a Brazilian resident company to a non-resident company are subject to withholding tax (WHT) at a rate of 15%, irrespective of whether or not the transaction is at arm's length or not. The WHT rate is increased to 25% if the beneficiary of interest is resident in a low tax jurisdiction. The WHT rate can be reduced or a tax-sparing credit may be available under an applicable double-tax treaty. For example, the Brazil-Japan tax treaty limits withholding taxation on cross-border interest payments and also provides a tax-sparing credit of 20% provided that the interest is not exempt in Brazil.

Interest payments trigger a tax deduction in Brazil of up to 34% (combined tax rates of the Corporate Income Tax (CIT) and the Social Contribution Tax on Profits (SCT) over the amount of the interest payment deducted locally, as long as the thin capitalization and transfer pricing rules are complied with. Insofar as the interest is subject to 15% withholding tax, its payment may trigger a total tax savings of 19%.

5.3 Debt funding (interest)

5.3.1 Thin capitalization

If the Brazilian subsidiary is financed with debt, it may be subject to the Brazilian thin capitalization rules. These rules restrict the deductibility of interest paid or payable by a company resident in Brazil to certain non-resident shareholders, where the ratio of interest-bearing debt to equity exceeds 2 to 1. The debt-equity ratio is reduced to 0.3 to 1, in case the beneficiary of the interest is resident in a low tax jurisdiction or entitled to a privileged tax regime. Brazil presents an exhaustive list of those jurisdictions. To the extent that debt exceeds these ratios, there will be a proportionate denial of the interest deduction for corporate income tax purposes.

5.3.2 Transfer pricing rules – applicable to interest

Interest paid to related parties or to residents in low tax jurisdictions are subject to the Brazilian transfer pricing rules. The calculation of the maximum amount of deductible interest varies depending on the loan currency and the type of the interest rate, if floating or fixed. For example, in the case of loans granted in USD or EUR at floating rates, the deductible interest is limited to the six-month London Interbank Offered Rate plus a fixed spread of 3.5%. In the case of loans granted in USD at a fixed rate, the parameter rate is the market rate of the sovereign bonds issued by the government on the external market, indexed in USD, plus a fixed spread of 3.5%. The same rules must be observed when the Brazilian entity is the lender. A minimum interest rate should be recognized by the Brazilian company for tax purposes. In this case the applicable spread is 2.5%.

5.4 Stamp tax

The inflow of funds in the form of long-term loans is subject to IOF at 0% rate, as long as the term for repayment of the loan is longer than 180 days. Short-term loans (i.e., less than 180 days) are subject to IOF at a rate of 6% levied on the conversion of foreign currency into Brazilian real. In the case of a zero-rated long-term loan that is partially repaid or liquidated in advance (before the 180-day term), the loan principal amount would be subject to IOF at 6% rate plus a 20% fine and SELIC interest, accrued monthly between the date of the funds entry and the liquidation date. The payment of interest abroad will not trigger IOF.

6.0 CORPORATE INCOME TAX

6.1 Income tax rate

For 2018, the combined corporate tax rate is generally 34%. Other tax rates apply for specific businesses, such as insurance and financial institutions; they are subject to a 45% CIT rate. The effective corporate income tax rate may substantially change depending on the corporate income tax regime adopted in Brazil.

6.2 Capital gains

A Brazilian resident corporation, including a Brazilian subsidiary of a foreign corporation, must include all capital gains in its taxable income. Taxable capital gains are taxed in the same manner as ordinary income; current year accounting losses may be used to offset taxable capital gains accrued in the same fiscal year. Non-operational tax losses from previous years may be carried forward indefinitely and may be used to offset future capital gains, but they are limited to 30%. The segregation and control of ordinary tax losses from non-operational tax losses is required. Tax losses are lost if there is a change of control or change in the type of activity carried out by the

Brazilian company between the time the losses are generated and used.

According to the Brazilian domestic legislation, non-residents in Brazil are subject to withholding income taxation on capital gains arising from the disposition of Brazilian assets, of any kind, levied at rates varying from 15% to 22.5%. The vast majority of DTTs signed by Brazil authorize the concurrent taxation by both contracting countries and do not avoid capital gains taxation on the disposal of other Brazilian assets, such as shares, bonds, securities, instead of recognizing the exclusive right of taxation by the country of residence. Exceptions include the DTTs signed with Japan and Israel, among others.

6.3 Branch tax

Brazil does not impose a branch tax.

6.4 Computation of taxable income

6.4.1 Taxable base

Brazil has four systems of corporate income taxation:

i. Actual Profit Method

ii. Presumed Profit Method

iii. Arbitrated Profit Method; and

iv. SIMPLES – Simplified tax regime.

The Actual Profit Method is the general rule for corporate income taxation where the taxable base is determined by applying certain law-defined adjustments (add-backs and deductions) to the taxpayer's booked income. The taxation basis may consider the Regime de Competência (accrual basis) for deductibility purposes and also transfer pricing rules and thin capitalization rules. In this regime, tax losses may be carried forward indefinitely. Taxpayers are allowed to offset tax losses up to 30% of the taxable income per fiscal year.

The Presumed Profit Method is optional for a Brazilian company, as long as it is not required by law to adopt the Actual Profit Method and its annual gross revenue does not exceed R$78 million in the previous year. The corporate income taxable basis is determined upon the application of legally determined statutory percentages on a company's gross revenues. Expenses are not relevant for the determination of the company's taxable income, and tax losses cannot be offset under this system. Under this regime, the company is not affected by Brazilian thin capitalization rules and transfer pricing on import transactions. However, export transactions shall be in compliance with Brazilian transfer pricing rules.

SIMPLES – Simplified Tax Regime is a favorable taxation regime, applicable to micro- and small companies (as defined by law), which allows the payment of one tax that replaces six different federal taxes (IRPJ, CSLL, PIS, COFINS, IPI, INSS), one state tax (ICMS) and one municipal tax (ISS). Tax rates may vary from 4% to 33%, depending on the company's size and activity. SIMPLES is not applicable to companies with more than R$4.8 million of gross revenues and some specific businesses (banks, some transport companies, among others), including companies owned by foreign shareholders.

The Arbitrated Profit Method is similar to the Presumed Profit Method but with higher presumed profit margins (basically with 20% increase). This method is more commonly adopted by tax authorities if there is a lack of reliable accounting information. Although not common, taxpayers can also voluntarily adopt this method in some situations defined in tax regulations.

6.4.2 Deductions

A taxpayer is generally permitted to deduct its current expenses in computing business income. Brazilian tax rules, and decisions issued by federal administrative tax courts, establish four requirements to allow the tax deduction of expenses: (i) they should be actually incurred by the company; (ii) they should be usual to the activity developed by the taxpayer; (iii) they should be ordinary and necessary for the company's activity (i.e., benefit the Brazilian entity and be strictly connected with the source of revenues); and (iv) they should be properly documented. In contrast, non-deductible expenses are specifically listed by tax law and related, for instance, to donations in general, gifts, provisions, and other non-compulsory payments.

This general rule should always be observed for deductibility purposes of any type of expense. However, some figures have special deductibility rules; e.g., payments related to royalties.

Brazilian legal entities may only deduct expenses with royalties, for corporate income tax purposes, if such expenses are really necessary for those entities to use, possess, or benefit from certain goods or rights that are useful in their main activities. Additionally, for deductibility of royalties related to agreements that imply a transfer of technology signed between a Brazilian company and a non-resident, it is mandatory that (i) the agreements be registered with the Brazilian Patent and Trademark Office (INPI); and (ii) the amount of royalties paid does not exceed the limitations imposed by the Minister of Finance.

6.4.3 Income tax reporting

Brazilian resident companies are required to file an annual corporate income tax return, called ECF, where Brazilian taxpayers need to report all transactions that impact the corporate income tax basis, such as accounting information, transfer pricing adjustments, country-by-country report information, among other tax and economic information. Corporate income tax returns must be filed in an electronic format and transmitted to tax authorities by the end of July following the tax year ending on December 31.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

Brazil is not a member of the Organisation for Economic Cooperation and Development (OECD) and its transfer pricing rules do not follow international standards or the OECD Transfer Pricing Guidelines. The Brazilian transfer pricing rules are based on fixed statutory profit margins and there are no profit-based methods or the concept of a functional and risk analysis. The basket approach is not authorized and transactions subject to Brazilian transfer pricing rules must be documented on an annual basis, through the filing of corporate income tax return specific forms that require taxpayers to disclose detailed information regarding their intercompany import and export transactions.

Brazilian transfer pricing rules provide a broad concept of related parties, encompassing not only transactions carried out between the parent company and its branches or subsidiaries or between controlled and associated companies, but also, among others, the case in which the foreign and the Brazilian companies are under the same corporate or administrative control or when at least 10% of the capital of each of those companies belongs directly or indirectly to the same company.

Brazil's transfer pricing regulations also apply to transactions between Brazilian legal entities, individuals or legal entities that are domiciled or reside in a low

tax jurisdiction or in a jurisdiction classified as a privileged tax regime.

7.2 Low tax jurisdictions and privileged tax regimes

Brazilian tax legislation establishes some adverse tax consequences for Brazilian companies dealing with foreign companies located in a low tax jurisdiction, included in the Brazilian "black list," such as (i) application of transfer pricing rules to transactions involving Brazilian entities, whether related or not; (ii) application of thin capitalization rules to credit transactions involving entities domiciled in Brazil; and (iii) an increase of the WHT rate to 25% on remittances of interest to their residents, in contrast to the ordinary rate of 15%. The special tax regime applicable to investments in the Brazilian financial and capital markets under Central Bank Resolution No. 4,373 does not apply.

Brazilian law also has the concept of "privileged tax regimes" (PTR), which are not jurisdictions per se, but specific types of legal entities that may benefit from a special tax regime in some countries. Dealings with legal entities considered as a listed PTR are also subject to certain detrimental tax consequences. As a rule, transactions carried out between Brazilian entities and entities located in a PTR are subject to the following tax consequences: (i) the application of transfer pricing rules to transactions involving Brazilian entities, whether related or not; and (ii) the application of thin capitalization rules to credit transactions involving entities domiciled in Brazil.

Moreover, transactions carried out between Brazilian companies and foreign companies located in a low tax jurisdiction or in a privileged tax regime are subject to deductibility restrictions in relation to the remittances of any type made from Brazil to abroad. Such restrictions are not applicable if the Brazilian company is able to identify the real beneficiary of the foreign entity, to present additional documentation and prove the operational capacity of the foreign entity.

Payments made by a Brazilian resident in favor of a non-resident in respect of certain types of interest payments, rents, royalties, management or administration fees, are subject to withholding income tax at rates varying from 15% to 25% depending of nature of the revenue and the location of the beneficiary. However, the WHT rate applicable on certain types of passive income, such as interest and royalties, may be reduced under an applicable DTT.

Dividends are exempt from WHT according to the Brazilian domestic legislation. In this respect, it is important to mention that Brazilian legislation also allows Brazilian entities subject to the Actual Profit Method to distribute, in addition to or as an alternative to dividends, a deductible interest amount to shareholders calculated based on the net equity of the entity—Interest on Net Equity (INE)—by applying an interest rate provided by the Brazilian government (TJLP) over the net equity of the Brazilian entity (currently around 6%). INE payments are subject to withholding tax at 15% (25% on payments to low tax jurisdictions) while deductible at 34%.

7.3 Withholding tax on services fees

As a general rule, remittances abroad for the payment of services are subject to WHT at the rates of 15% or 25% irrespective of whether or not the service was rendered in Brazil and the foreign service provider does not maintain a permanent establishment in Brazil. Services considered as having non-technical nature are subject to a 25% WHT rate, while services that have a technical nature are subject to a 15% WHT rate. Moreover, the remittance of royalties abroad are also subject to a WHT rate of 15%.

Although debatable, according to the Brazilian tax authorities' understanding, the WHT will only be due on the remittances of service fees to a treaty country if the respective treaty's protocol qualifies the payments under Article 12 (Royalty Provision) or if the payments fall within the scope of Article 14 of the treaty (Independent Service Professionals Provision). If neither Article 12 nor Article 14 applies, the payments would be qualified as business profits under Article 7 of the treaty and would not be subject to WHT.

In this respect, it is important to mention that most Brazilian tax treaties have expanded the concept of "royalties" to include income received as a consideration for the rendering of "technical assistance "and "technical services." Generally, the treaties' protocols do not provide guidelines on what should be understood under the concept of "technical assistance" and "technical services."

The remittance of technical service fees abroad is also subject to other Brazilian taxes due at the level of the Brazilian paying company, such as: Municipal Service Tax (2% to 5%), Contribution for Intervention in the Economic Domain—CIDE (10%); PIS/COFINS on Imports (9,25%) IOF/Foreign Exchange—IOF (0.38%). While WHT is a burden of foreign companies, the aforementioned indirect taxes are due by the Brazilian company in its own name, meaning it is not being deducted from the consideration payable to a foreign beneficiary.

8.0 PAYROLL TAXES

Brazilian employers paying remuneration to employees are liable to collect a number of taxes in Brazil.

8.1 Withholding income tax

Employees in Brazil are subject to WHT at progressive rates varying from 7.5% to 27.5%, depending on their monthly compensation, which shall be withheld by the employer on a monthly basis.

8.2 Social security contribution (INSS)

Employers are subject to (i) pay the INSS contribution at the rate of 20% over the employees' monthly compensation and (ii) withhold the employees' contribution to the INSS at the rate of 8%, 9% or 11% of the employees' compensation, limited to a certain amount subject to periodic update.

8.3 Other social contributions (Sistema S)

Employers are subject to pay the Sistema S contribution to finance social services at the rate that varies according to each industry.

8.4 Insurance against labor accidents (RAT)

Employers shall pay the RAT at a rate varying from 1% to 3%, on a monthly basis, over the employee's monthly salary. The RAT is indexed by a factor named *Fator Acidentário de Prevenção* (FAP), which varies from 0.5 to 2 and is based on the actual risks and accidents within the workplace.

8.5 Unemployment Guarantee Fund Deposits (FGTS)

Employers are required to deposit in the FGTS account of each employee the amount equivalent to 8% of the individual's monthly remuneration. This money is kept in this account and can only be withdrawn by the employee in special circumstances such as to buy a house, in case of serious illness and termination of the employment agreement without a cause.

9.0 INDIRECT TAXES

9.1 Taxes on goods

9.1.1 Excise tax (IPI)

IPI is a federal value-added tax imposed on each phase of the manufacturing process. Its rates vary depending on the essentiality of the manufactured goods. The IPI basis is the price of the manufactured goods. For IPI purposes, an industrial activity means any operation that modifies the nature, operation, finishing, presentation or purpose of a product, or that improves a product for consumption, such as its conversion, processing, packaging, repackaging or restoration.

The importation of goods is also subject to IPI. The first sale of an imported product is considered a taxable event for IPI purposes as well. However, the resale of locally manufactured products is not subject to IPI and exports are exempt from IPI. IPI is a non-cumulative value-added tax (VAT), where the amount charged in each successive taxable transaction is deducted from current transactions.

The IPI rates vary according to the tax classification of the goods in the IPI Tariff Table (that includes the same classification system as the Mercosul Harmonized Code System - TEC). Tax rates vary from 0% (essential foods) to more than 330% (cigarettes). Most of them range from 0% to 30%.

9.1.2 State VAT (ICMS)

ICMS is the main state tax and is imposed on transactions that imply the legal transfer of goods, and on interstate and inter-municipal transport services, as well as on telecom services. ICMS is also levied on imports. ICMS is a VAT that allows the taxpayer to recognize tax credits from the ICMS paid on the purchase of raw materials, intermediate products, packaging materials, and goods to be resold.

ICMS rates vary depending on the state and the nature of the goods or services. In the state of São Paulo, the general ICMS rate is 18%. The ICMS basis includes not only the sales price, but also the ICMS itself. Interstate transactions are subject to ICMS at rates varying from 7% to 12%, depending on the state. The ICMS applicable rate on interstate transactions with imported goods containing more than 40% of foreign content is 4%.

Export transactions are exempt from ICMS and taxpayers are allowed to maintain the credits derived from the acquisition of raw materials used in the manufacturing of the products exported. Such credits can be transferred to third parties upon the authorization from tax authorities, which may take a considerable time to be granted.

ICMS is also levied under the so-called substitution regime, where taxation of the whole supply chain is concentrated at the first phase of the commercial chain—generally, industries. The manufacturer not only pays the ICMS at this stage, but also the ICMS due at the wholesale and retail stages, based on an assumed retail price that will probably be adopted on the sales to final consumers.

Under certain conditions, the ICMS legislation provides tax incentives for companies established in determined areas (i.e., north and northeast of Brazil) in the form of an exemption or a reduction of the ICMS rate, financing ICMS tax payments, and application of deferral system payment, among others. Those incentives vary from state to state and depend on special rules determined by the state's legislation.

9.2 Taxes on services

9.2.1 Contribution for intervening in the economic domain (CIDE)

CIDE royalties are a federal contribution levied at a 10% rate on amounts paid, credited, delivered, invested or remitted to individuals resident or domiciled abroad by Brazilian entities that hold license of use or acquirer of technology knowledge abroad (including agreements related to exploitation of patents, brand use and technology-supplying and technical assistance services).

For example, CIDE is levied on payments to non-residents in connection with: (i) royalties (assignment and licensing of brands/patents, etc.);
(ii) technology transfers; (iii) technical assistance services and specialized technical services; and (iv) software licenses, when there is a transference of technology. CIDE is a tax imposed on the Brazilian entity in its own name, and therefore may not be reduced or limited by tax treaties and does not generate a tax credit abroad.

9.2.2 Municipal service tax – ISS

ISS is a municipal tax levied on services' gross revenues at rates varying from 2% to 5% depending on city and type of service provided. ISS is a cumulative tax and there is no credit system available.

The ISS calculation is very simple; however, controversies may arise from different interpretations of service classifications. Taxation in favor of the wrong municipality and conflicts between different municipalities where both are claiming the ISS are quite common. Tension also historically arises from the conflict between ICMS and ISS, and has intensified with the increase of transactions in the digital economy because the Brazilian legislation is not clear in categorizing the nature of digital transactions (i.e., goods vs. services). Brazilian legislation has been criticized for its inability to capture technological innovation and be flexible enough to keep pace with new technology trends.

ISS is also imposed on services provided by a foreign service supplier for the benefit of a Brazilian resident company.
The Brazilian payer of any such amounts is liable for withholding and collecting the ISS to the municipal tax authorities on behalf of the non-resident recipient. Services exports are generally exempt of ISS, as long as the service is effectively rendered abroad and the result of the services is also verified abroad.

9.3 Taxes on gross revenues

9.3.1 Social contribution on gross revenues – PIS and COFINS

The PIS and COFINS are federal social contributions levied on the company's monthly gross receipts. As a general rule, PIS and COFINS are calculated based on the non-cumulative regime. Legal entities subject to calculating CIT and SCT under the actual profit method are obliged to calculate PIS and COFINS under the non-cumulative regime. However, there are specific legal entities that calculate CIT and SCT under the actual profit method, but earn specific revenues or carry out specific operations that may subject them to the PIS and COFINS cumulative regime and non-cumulative regime at same time.

The applicable rates under the non-cumulative regime are 1.65% and 7.6%, respectively. In this regime, the company is allowed to offset PIS and COFINS credits calculated on certain costs and expenses expressly authorized by the legislation in order to deduct from the PIS and COFINS liabilities. Legal entities that opted for the presumed profit method to calculate CIT and SCT are subject to PIS and COFINS cumulative regime. The applicable rates in this regime are 0.65% and 3%, respectively, without the possibility of calculating and offsetting credits.

In addition, PIS and COFINS are also levied on the import of goods and services while exports of goods and services are exempted from PIS and COFINS. There are other PIS and COFINS taxation methods applicable to some industry sectors, such as pharmaceutical products, auto parts, oil and gas, which are subject to a monophasic regime of PIS and COFINS.

9.4 Property and transfer tax

9.4.1 State inheritance and gifts/donations tax (ITCMD)

ITCMD is a state tax imposed on inheritance, gift/donation or succession, applicable on the transfer of real estate and other assets that do not involve payment or other consideration as compensation. The ITCMD rate varies depending on the state (2% to 8%). In the state of São Paulo, the current rate is 4%.

9.4.2 State tax on ownership of vehicles (IPVA)

IPVA is a state tax imposed on ownership of vehicles, applicable on the transfer of real estate and other assets that do not involve payment or other consideration as compensation. The calculation formula of this tax varies in each state. In the state of São Paulo, the IPVA corresponds to 1.5% to 4% of the vehicle value assessed by the state.

9.4.3 Municipal tax on ownership of urban land (IPTU)

IPTU is a municipal tax applicable on the ownership, control or possession of urban land or buildings. The calculation formula of this tax varies in each municipality. In the city of São Paulo, the IPTU ranges from 1.0% to 1.8% of the real estate's market value assessed by the municipality.

9.4.4 Municipal tax on transfer of real estate (ITBI)

ITBI is a municipal tax imposed on the sale, purchase or assignment of real estate or related rights, provided that such transaction is not a gift. The rate may vary according to the city. In the city of São Paulo, the rate is 3%.

Canada

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1.0 OVERVIEW

Canada imposes corporate and personal income tax on its residents (including Canadian subsidiaries of foreign entities) in respect of income and capital gains earned anywhere in the world. Federal income tax is imposed under the Income Tax Act (ITA). Non-residents who carry on business in Canada, are employed in Canada or sell certain types of properties are also subject to Canadian income tax.

All of the provinces of Canada impose provincial income taxes on corporations and individuals residing or carrying on business within the province. Generally, taxable income for provincial income tax purposes is computed in the same manner as under the ITA. However, each of the provinces provides for certain modifications in the calculation of tax liability, including the provision of specified tax incentives.

The ITA also imposes a 25% withholding tax on non-residents who receive dividends, certain interest payments, rents, royalties or management fees from Canada. The Canadian payer of any such amounts is liable for withholding and remitting this tax on behalf of the non-resident recipient. Canada has an extensive double-tax treaty network which will reduce or eliminate the 25% withholding tax rate on such types of income. For example, the Canada-United States Tax Convention of 1980 eliminates withholding tax on most cross-border interest payments and reduces the rate on dividends to 15% or 5% depending on the circumstances.

Canada is a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) and has agreed to adopt the minimum standards (principal purpose test and dispute resolution) as well as certain optional provisions. The ratification process has not yet been completed.

In addition to income tax, a consumption tax is levied at each of the federal and provincial levels, except in Alberta where no consumption tax is imposed by the province. Moreover, the governments of the Canadian territories (Northwest Territories, Nunavut and Yukon) do not levy a consumption tax. Some provinces have combined their respective provincial sales taxes with the federal tax to create a harmonized sales tax that is administered centrally by the government of Canada. In addition, most provinces levy a tax when land is transferred.

2.0 LEGAL SYSTEM

Canada and its provinces and territories (other than the province of Quebec) operate under a common law legal system. Quebec utilizes a civil law system for private law that is based on the Civil Code of Quebec. While the ability to make certain laws are in the exclusive domain of the federal government, others are within the scope of provincial authority. In some cases, the federal and provincial governments exercise concurrent jurisdiction. For example, while the federal government has the authority to regulate trade and commerce, the provinces have the right to regulate (i) the incorporation of companies with provincial objects and (ii) property and civil rights in the province.

3.0 TAXATION AUTHORITIES

The federal tax system in Canada is administered by the Canada Revenue Agency (CRA). The CRA also administers provincial income tax and/or sales tax for a number of provinces. For example, in Ontario, the CRA collects both provincial income tax and sales tax, while in British Columbia only income tax is administered by the CRA on behalf of the provincial government. In Quebec, Revenu Québec is responsible for collecting provincial income tax as well as both the federal and Quebec sales tax.

4.0 BUSINESS VEHICLES

A non-resident may either establish a Canadian business vehicle to carry on business in Canada or operate directly through a foreign entity (with or without a Canadian permanent establishment). Canadian business vehicles are corporations (limited liability or unlimited liability) and partnerships (general or limited). While it is also possible to use a trust to carry on business in Canada, due to a number of complexities a trust is rarely utilized for these purposes. However, it is common for trusts (including family trusts and mutual fund trusts) to hold investments, such as shares of corporations.

4.1 Partnerships

A partnership (whether general or limited) is generally treated as fiscally transparent for Canadian income tax purposes. While certain partnerships are required to file annual information returns, it is the partners of the partnership, rather than the partnership itself, that are subject to income tax under the ITA. However, the ability of a limited partner to deduct losses incurred by a limited partnership may be restricted to the extent the losses exceed the limited partner's "at-risk amount." A partnership will be considered to be a non-resident of Canada for withholding purposes unless it qualifies as a "Canadian partnership" under the ITA. To be a Canadian partnership, all of the partners of the Canadian partnership must be Canadian residents. There is no requirement for the partnership to be formed under Canadian law in order for it to qualify as a Canadian partnership. Conversely, a partnership formed under Canadian law that has one or more non-resident partners (directly or indirectly through other partnerships) will not qualify as a Canadian partnership.

4.2 Corporations

Corporations where shareholders are not liable for the corporation's debts can be incorporated quickly (often same day) either federally or in any of the provinces or territories. The jurisdiction of incorporation does not impact on the corporation's income tax liability. Often the choice of jurisdiction is based on the residence requirements for corporate directors. For example, corporations incorporated under federal, Ontario or Alberta law require that at least 25% of the directors of the corporation be Canadian residents, while no such requirement exists for British Columbia, Quebec, New Brunswick or Nova Scotia corporations.

The establishment of a corporation does not require any capital to have been received by the corporation. However, in order to issue shares, a nominal amount of capital must be received by the corporation. Most provinces do not allow a person to issue a promissory note as payment for shares of a company.

4.3 Unlimited Liability Corporations

The provinces of Nova Scotia, Alberta and British Columbia permit the incorporation of an unlimited liability company (ULC). As with other corporations, a ULC can be incorporatedquickly. However, unlike a regular corporation, a ULC does not provide shareholder protection from the liabilities of the company in the event that the company is insolvent or wound up. Therefore the direct shareholder of a ULC is generally a liability-blocking entity (such as a holding company with no assets other than the shares of the ULC).

While a ULC does not provide any Canadian tax advantages, it does qualify to be treated as fiscally transparent for United States tax purposes, thereby providing certain tax advantages to US shareholders. Use of a ULC does create certain complexities under the Canada-United States Tax Convention.

4.4 Foreign corporation (with or without a Canadian branch)

A foreign corporation that carries on business in Canada is subject to tax under the ITA in respect of such income. The determination of whether a corporation is carrying on business is Canada is generally made in accordance with common law principles. In addition, the ITA deems certain activities conducted by a non-resident to constitute carrying on business in Canada.

Where the foreign corporation is resident in a country with which Canada has a double-tax treaty pursuant to which the corporation may claim treaty benefits, the corporation will generally be exempt from Canadian taxation on its business profits except to the extent that the profits were earned through a permanent establishment situated in Canada.

A corporation that operates through a Canadian permanent establishment (such as a branch) will be subject to Canadian income tax as well as branch tax (see details below).

The ITA imposes a withholding tax of 15% on all payments made to non-residents in respect of services rendered in Canada. For services rendered in Quebec, an additional 9% provincial withholding tax applies. These withholding taxes also apply to payments made to a Canadian branch of a foreign corporation. While the amounts withheld may be refunded in whole, or in part, upon the filing of a non-resident income tax return, the withholding obligation imposes a cash flow burden on the non-resident and an administrative burden on its customers. Accordingly, it is generally impractical for a foreign corporation to operate a Canadian services business either directly or through a Canadian branch. Non-residents planning to operate a services business in Canada will generally incorporate a Canadian subsidiary.

5.0 FINANCING A CORPORATE SUBSIDIARY

5.1 Equity financing

5.1.1 Contributions for shares

Where an equity investment is made into a Canadian corporation in exchange for shares, the amount of the investment is added to the corporation's "stated capital" account. Subject to certain adjustments, a corporation's stated capital is generally the same as its paid-up capital for tax purposes..

5.1.2 Contributions without taking additional shares

Where an equity contribution is made by a shareholder to a federally incorporated company and to most provincially incorporated companies without the issuance the issuance of additional shares, the amount is added to the "contributed surplus" account of the corporation and not stated capital. However, in certain circumstances, the contributed surplus can be transferred to stated capital without incurring negative tax consequences.

5.1.3 Distributions of paid-up capital

A corporation (other than a public corporation) is permitted to make distributions of its paid-up capital to a non-resident shareholder without incurring Canadian withholding tax. In contrast, the ITA does not permit the tax-free distribution of contributed surplus that has not been converted into stated capital. While ordinary course reductions of capital made by a public corporation are deemed to be dividends, a public corporation may return capital on a redemption, acquisition or cancellation of any of its shares or in the course of a winding-up, discontinuance or reorganization of its business.

5.2 Debt financing

5.2.1 Withholding tax implications

Canadian corporations are permitted to borrow funds from related or third parties without tax implications. Furthermore, there are no Canadian tax implications on the repayment of the principal amount of such debt. Interest payments (other than participating interest) made by a Canadian resident corporation to a non¬resident with which it deals at arm's length are generally exempt from withholding tax. However, the ITA imposes a withholding tax of 25% on interest payments made to non– arm's length parties. As previously mentioned, the withholding tax rate can be reduced or eliminated under an applicable double-tax treaty. For example, the Canada-United States Tax Convention eliminates withholding tax on cross-border, non–arm's length interest payments (other than participating interest).

5.2.2 Thin capitalization

If the Canadian subsidiary is to be financed with debt, it may be subject to the thin capitalization rules contained in the ITA. These rules restrict the deductibility of interest paid or payable by a corporation resident in Canada to certain non-resident shareholders where the ratio of interest-bearing debt to equity exceeds 1.5 to 1. To the extent that debt exceeds this ratio, there will be a proportionate denial of the interest deduction and any payment of interest that is subject to restriction under these rules is deemed to be a payment of a dividend for the purpose of withholding tax obligations.

5.3 Stamp tax

Canada does not impose a stamp tax in respect of debt or equity financing.

6.0 CORPORATE INCOME TAX

6.1 Income tax rate

For 2018, the combined federal and provincial corporate tax rate on general active business income ranges between 26% and 31%, depending on the province or territory.

A corporation that qualifies as a "Canadian-controlled private corporation" is entitled to certain tax incentives and is also subject to additional refundable taxes on investment income.

6.2 Capital gains

A Canadian resident corporation, including a Canadian subsidiary of a foreign corporation must include 50% of all capital gains (referred to as "taxable capital gains") in its taxable income. Taxable capital gains are taxed in the same manner as ordinary income; 50% of capital losses (referred to as "allowable capital losses") can be used to offset taxable capital gains in the year. To the extent that allowable capital losses exceed taxable capital gains in a year, the excess may generally be carried back three years or forward indefinitely to be applied against taxable capital gains in those other years. The ITA contains restrictions on the use of losses by a corporation following an acquisition of control of the corporation.

A non-resident is only taxable on gains arising from the disposition of "taxable Canadian property," other than gains exempted under an applicable double-tax treaty. Taxable Canadian property includes all of the following:

i. Real or immovable property situated in Canada

ii. Property (including goodwill) used or held by a taxpayer in a business carried in Canada

iii. Inventory forming part of a business carried in Canada

iv. Shares of a corporation (other than shares listed on a designated stock exchange), partnership units or interests in a trust (other than a mutual fund trust) if, at any time during the 60-month period preceding the disposition, they derived more than 50% of their fair market value from Canadian real property, Canadian resource property or timber resource property (including options, interests or rights therein).

For shares listed on a designated stock exchange and mutual fund trusts, in addition to the foregoing test, the non-resident (together with certain non–arm's length parties) must own 25% or more of the issued shares of any class of the corporation or units of the mutual fund trust, as the case may be. Other rules apply to non-resident insurance companies.

6.3 Branch tax

The ITA imposes a tax equal to 25% of Canadian after-tax profits earned by a branch of a non-resident corporation that are not reinvested in Canada. The branch tax is roughly equivalent to the withholding tax that would apply on dividends paid by a Canadian subsidiary to a foreign parent. The branch tax may be reduced or eliminated under an applicable double-tax treaty. For example, under the Canada-United States Tax Convention, the first CA$500,000 of after-tax profits not reinvested in Canada is exempt from branch tax and the tax rate is reduced to 5%.

6.4 Computation of taxable income

6.4.1 Taxable base

A taxpayer is subject to tax on its profits from carrying on its business. Profit is generally considered to be its revenues less its deductible expenditures.

6.4.2 Deductions

A taxpayer is generally permitted to deduct its current expenses in computing business income. As a general rule, capital expenses are not deductible. However, the ITA provides for specific exceptions to that rule. This includes interest incurred for the purpose of earning income from a business or property (subject to the thin capitalization rules discussed above) and depreciation expense (referred to as capital cost allowance).

6.5 Income tax reporting

Canadian resident corporations and non-resident corporations that carry on business in Canada or that dispose of taxable Canadian property are required to file an annual corporate income tax return. Corporate tax returns must be filed within six months of the fiscal year-end of the corporation in order to avoid late filing penalties. Installment payments are required in respect of current-year taxes, and interest on any unpaid tax balance will start accruing two months after the year-end of the corporation.

A provincial tax return must also be filed for each province in which the corporation has a permanent establishment. In all provinces other than Alberta and Quebec, the provincial tax return forms part of the federal return.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

Canada's transfer pricing regime generally conforms to the arm's length principle of the Organisation for Economic Co-operation and Development (OECD). The ITA permits the CRA to impose a transfer pricing adjustment in respect of a transaction that is not made on arm's length terms or conditions. A transfer pricing adjustment can also be made in respect of a transaction that would not have been entered into at all by arm's length parties if it can reasonably be considered that the transaction was not entered into primarily for non-tax purposes. Canadian taxpayers are also required to maintain contemporaneous documentation in respect of transactions subject to the transfer pricing rules.

7.2 Withholding tax on passive income

Payments made by a resident of Canada to a non-resident (including a partnership that does not qualify as a "Canadian partnership") in respect of certain types of interest payments, rents, royalties, dividends, management or administration fees and trust income distributions are subject to tax under Part XIII of the ITA at the rate of 25%. However, the rate may be reduced under an applicable double-tax treaty.

7.3 Withholding tax on services fees

Where any person make a payment to a non-resident of Canada in respect of services performed in Canada, the payer must deduct and withhold 15% of the gross payment on account of federal income tax. Where the services are performed in Quebec, the payer must deduct an additional 9% on account of provincial income tax. The payment is considered to be made on account of income taxes owing by the recipient of the payment and may be recovered in whole or in part upon the filing of an income tax return. In particular, a non-resident may be able to claim an exemption from Canadian income tax on such business profits if the non-resident is a resident of a country with which Canada has entered into a double-tax treaty and does not maintain a permanent establishment in Canada.

8.0 PAYROLL TAXES

8.1 Canada pension plan

Employers paying remuneration to employees are liable to make contributions under the Canada Pension Plan (CPP). The employer's contribution on account of CPP premiums is capped at a maximum of CA$2,593.80 per employee for 2018. Employees are also liable to make matching CPP contributions. The employer is responsible for withholding the employees' CPP contributions at source and remitting this amount to the CRA.

8.2 Employment insurance

Employers are also required to pay premiums under the federal Employment Insurance Act. The employer's contribution on account of employment insurance is capped at a maximum of CA$1,201.51 per employee for 2018. Employees are also liable to make employment insurance contributions to a maximum of CA$858.22 in 2018. The employer is responsible for withholding the employees' employment insurance contributions at source and remitting this amount to the CRA.

8.3 Provincial payroll taxes

Some provinces also impose various payroll taxes. For example, Quebec requires contributions be made for the Quebec Pension Plan and for Quebec employment insurance. Ontario imposes an employer health tax on total remuneration paid by an employer in a year exceeding CA$490,000.

9.0 INDIRECT TAXES

9.1 Goods and services tax

The federal goods and services tax (GST) is a value-added tax imposed on the final domestic consumption of most goods and services supplied in Canada. Specific rules with respect to the place of supply exist to determine whether a supply is deemed to be made in Canada.

The current GST rate is 5%, but GST is not imposed on all supplies. The rate for "zero-rated" supplies (e.g., exported goods and services, prescription drugs, medical devices and basic groceries) is zero percent and the "exempt" supplies (e.g., health care services, educational services and most financial services) are not subject to the GST at all.

Entities and individuals (including non-residents) that are involved in making taxable supplies in Canada in the course of a commercial activity are required to register for and charge, collect and remit GST on such supplies. As the GST is intended to be a consumption tax, which is ultimately borne by the final consumer, each registrant that makes taxable supplies (including zero-rated supplies), is generally entitled to recover any GST paid on its inputs by means of the input tax credit (ITC) mechanism.

9.2 Harmonized sales tax

The harmonized sales tax (HST) combines the 5% GST with a provincial sales tax component. The HST is federally administrated and has the same basic operating rules as the GST, with certain exceptions. However, each participating province to the HST regime (referred to as "participating provinces") has the ability to decrease or increase the provincial component of the tax. The current list of participating provinces includes Ontario, Nova Scotia, Newfoundland and Labrador, New Brunswick and Prince Edward Island.

9.3 Quebec sales tax

Quebec sales tax (QST), like the GST, is a value-added tax. Most of the concepts existing under the GST legislation have been adopted by the government of Quebec with respect to the QST. The QST rate is currently 9.975% on both goods and services supplied in Quebec.

9.4 Provincial sales tax

Provincial sales tax (PST), which is a single-incidence sales tax imposed on end-users or consumers of tangible personal property as well as certain services in the province, is imposed in Saskatchewan (6%), Manitoba (7% as of July 1, 2019) and British Columbia (7%). Relief from these taxes is available in certain circumstances.

9.5 Land transfer tax

A transfer tax is payable in most provinces on any acquisition of real property. In certain provinces, such as Ontario, the transfer tax is payable regardless of whether the acquisition is in respect of a legal or a beneficial interest in real property, subject to specified exceptions. The city of Toronto also imposes a land transfer tax. While there is no such tax in Alberta, Saskatchewan, Newfoundland and Labrador, or any of the territories, each of these jurisdictions does levy some form of registration fee on the transfer of real property.

Chile

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1.0 OVERVIEW

Chile has a presidential system of government with a strong republican tradition, and a written political constitution. It is divided into 16 administrative regions which share some functions with the central government. Chile is regarded a regional leader due to a solid, stable democratic system that guarantees a safe business environment. Chile was ranked 23 out of 168 countries and territories surveyed in Transparency International's 2015 Corruption Perceptions Index.

Taxes on goods and services within the borders are levied according to the general principle of territoriality of law contained in article 16 of the Civil Code. The Chilean tax system contemplates direct and indirect taxes, where income tax and value-added tax (VAT) are relevant to businesses as well as others that will be addressed below.

The law establishes income taxes on companies and individuals residing or carrying business within our country. However, bilateral taxation treaties are a useful tool for avoiding double taxation when it comes to doing business in Chile. According to the Chilean government, Chile has signed 34 Conventions for the Avoidance of Double Taxation, of which 32 are in force as of 2018. There are agreements in force with Argentina, Australia, Austria, Belgium, Brazil, Canada, Colombia, China, Croatia, the Czech Republic, Denmark, Ecuador, France, Ireland, Italy, Japan, Korea, Malaysia, Mexico, Norway, New Zealand, Paraguay, Peru, Poland, Portugal, the United Kingdom, Russia, Spain, South Africa, Sweden, Switzerland and Thailand. Signed treaties with Uruguay and with the United States are not yet in force.

2.0 LEGAL SYSTEM

Chile has a modern constitution that dates back to 1980, enacted during the 1973–1990 military regime. In the past few decades, it has been amended several times. The political constitution of the state is the supreme law. Below the constitution, Chile has a civil law system similar to that one used in continental Europe, particularly France, Italy and Spain. Chile's civil law provides for effective means for enforcing property and contractual rights. The basic principles of civil law and predominant features in all contracts are 1) contractual freedom, 2) the contract has the force of law for all parties, 3) all contracts must be executed in good faith and 4) damage must be compensated according to the civil liability statute written in the civil code.

3.0 TAXATION AUTHORITIES

The main tax authority in the Chilean tax system is the *Fisco* (Treasury), which represents the interests of the state and is in charge of all tax collection through the *Tesorería General de la República*. Regarding tax rulings, inspections and law enforcement, an administrative entity called Servicio de Impuestos Internos (SII) is in charge of reviewing all taxpayers' tax forms filings and fulfillment of tax laws. Other entities are also involved in tax matters, such as municipalities and customs agencies.

4.0 BUSINESS VEHICLES

The incorporation of an investment vehicle in Chile, in any of its forms, is straightforward and relatively inexpensive. Registering and obtaining a Tax Identification Number from the SII is needed. Once the new company has registered with the SII, it is obliged to make monthly tax statements as of the following month. The process of registration is known as *Inicio de Actividades*. The types of business entities recognized by Chilean law are discussed below.

4.1 Limited liability partnership (sociedad de responsabilidad limitada)

i. ***Nature of entity:*** Limited liability partnerships are the most commonly used business entities in Chile. The liability of its members is limited and the entity is legally distinct from its partners. Accordingly, partnership losses cannot be offset against partners' other incomes.

ii. ***Partners:*** A minimum of two and a maximum of 50 partners are required. A partnership is automatically dissolved if there is only one partner. Total control of a limited liability partnership is achieved through ownership by related entities or a nominee partner. Foreign legal entities can be partners of a limited liability partnership.

iii. ***Regulation:*** Limited partnerships are not subject to the control of a regulatory authority or public agency and they are under no obligation to publish their accounts. The main source of regulation of a limited liability company is to be found in law 3,918, the Chilean

Civil Code and the Chilean Code of Commerce. Further, the scope of activities that can be undertaken by this type of entity is very broad. Corporate governance regulations are usually incorporated in the company's bylaws.

iv. Incorporation, amendment and wind-up/dissolution: Limited partnerships are incorporated through a deed directly by its partners or through a power of attorney. Said deed will contain the partnership's by-law, an abstract of which must be published in the Official Gazette and registered in the Commerce Registry. Any amendment or modification to the bylaws, including change of partners, modification of the corporate purpose or change to the powers of management, must be agreed by unanimous consent of all partners. Its partners may enter into a separate agreement, one similar to a shareholders' agreement, binding them to consent to bylaws amendments, sales of partnership interests or dissolution in the circumstances set out in the agreement.

v. Management: The partnership bylaws will establish how the partnership is to be managed. Management powers may be exercised by one or more of the partners, a board of directors or a third party.

vi. Capital: A partnership's capital is set out in the partnership bylaws and there is no requirement for a minimum amount. Capital contributions may consist of cash, property (including technology) or services to be provided to the partnership. Capital may be increased or reduced by agreement of all partners and amendment of the partnership deed. Approval by the SII is required in the event of a reduction in the partnership's capital.

vii. Limitation of liability: The liability of partners is limited to the amount of their capital contributions to the partnership unless another amount is specified in the partnership deed.

viii. Distribution of profits and loans to partners: Annual profits may be distributed without recouping previous years' losses. Loans to partners are treated as distributions of profits.

4.2 Corporation or public limited company (Sociedad Anónima / S.A.)

i. Public or private: Under Chilean law, a corporation can be public/open, private/closed or a special corporation. A corporation is public if:

- It publicly offers its shares in accordance to Securities Market Act (law 18.045) or
- It has at least 500 shareholders and at least 10% of its issued capital is held by at least 100 of its shareholders.

ii. Source of regulation: Corporations are regulated under the Corporations Act (law 18,046). Furthermore, public corporations are subject to the control of the Financial Market Commission (CMF in its Spanish acronym). They are listed on the stock exchange and must publish and send to all shareholders an annual report and audited annual financial statements. Public companies must also distribute at least 30% of net profits, unless all shareholders agree otherwise. These requirements do not apply to private corporations.

iii. Shareholders: A minimum of two shareholders is required. A corporation is automatically dissolved if all its shares are held by one shareholder. As with partnerships, total control can be achieved through ownership by related or nominee entities.

iv. Directors and management: Management of a corporation is in the hands of a board of directors, composed of a minimum of three directors in the case of private corporations and by a minimum of five in the case of public corporations. Directors can be of any nationality and are appointed by the shareholders in an ordinary shareholders meeting. Elections of the entire board must be held at least every three years and directors may be re-elected indefinitely. The board of directors may exercise all powers of the corporation not reserved to the shareholders under the corporation's bylaws and the Corporation Act. The board could delegate part of its powers to managers, assistant managers, lawyers or members of the board, although delegation to other persons is possible for specific purposes.

v. Incorporation: Corporations are incorporated by means of a deed, which contains the corporation's bylaws. An abstract of the bylaws must be published in the Official Gazette and Registered in the Commerce Registry. A

corporation names must include the words Sociedad Anónima or the initials S.A.

vi. ***Capital:*** A corporation's capital is set out in its bylaws and may consist of contributions of cash or property. Shares may not be issued as payment for personal services or for the incorporation of the corporation. Capital must be subscribed and paid within three years. Capital may be increased or reduced by agreement during an extraordinary shareholders' meeting and requires the approval of the tax authority in the case of a reduction.

vii. ***Dividends:*** A corporation cannot pay dividends (i.e., distribute profits) until previous years' losses have been set off. Interim or provisional dividends may be declared by the directors, but they are personally liable if such dividends exceed annual profits available for distribution.

viii. ***Transfers of shares:*** The board of directors cannot restrict share transfers, and the bylaws of public corporations cannot limit the free transfer of shares. However, shareholder agreements can allow shareholders to create rights and obligations in addition to those already arising from the shares they own, such as a mechanism for the transfer of shares.

ix. ***Merger or division:*** A corporation can either be merged or divided at an extraordinary shareholders' meeting with the approval of at least two thirds of shareholders with voting rights.

x. ***Minority rights:*** In the case of a merger, the liquidation of the corporation's assets or the issuance of preferred shares, for example, dissenting shareholders have the right to require the corporation to buy their shares.

xi. ***Dissolution:*** A corporation may be dissolved, during an extraordinary shareholder's meeting, by agreement of at least two thirds of shares with voting rights. Dissolution may also be required pursuant the applicable law or by the corporation's bylaws.

4.3 Joint-stock company (Sociedad por Acciones/SpA)

This type of company is a recent addition to the different corporate structures in Chile. The joint-stock company has been positively received among investors for its statutory flexibility, and for allowing a sole shareholder to own 100% of the company's shares. Corporate governance regulations of closed corporations apply to joint-stock companies.

4.4 Individual limited liability company (EIRL)

In Chile, an individual can acquire the status of a legal entity as an EIRL (in its Spanish acronym). This is a legal entity of a commercial nature with assets distinct from those of its owner that does not require the participation of a third party.

These companies are subject to the rules of the Chilean Code of Commerce and can undertake any type of civil and commercial activity, except those reserved by law for corporations (i.e., insurance companies). Their assets are limited to the amount specified in their deeds and the owner is personally liable up to the capital contributed to the company, while the company is liable to the extent of all its assets.

The company's name must include the name of its founder or an invented name that refers to its purpose, and must also include the words *Empresa* Individual de *Responsabilidad Limitada* or EIRL. The company's purpose must indicate the nature of its activities and the specific sector in which it will operate.

4.5 Association/joint venture

An association or joint venture *(asociación o cuentas en participación)* is a contractual relationship pursuant to which two or more parties participate in one or more business ventures that are carried out in the name and under the responsibility of one party only. This party, known as the manager or administrator, is responsible for rendering accounts to the other participants and distributing profits and losses between them in the agreed proportions. The manager is responsible for all dealings with third parties in relation to the association and relevant business ventures.

An agreement between the parties sets out the purpose, form and terms of the association and the parties' respective interests. The arrangement is essentially private and does not create a separate legal entity. Joint venture partners often operate in Chile through a jointly formed Chilean corporation, partnership or branch office.

4.6 Representative office (agency)

A foreign company may establish a representative office (also known as agency) in Chile, which is a legal structure to carry out its purpose in a direct way in Chile. An agency is not a legal entity separated from the foreign company. In this sense, the foreign company is liable to the creditors of the agency. In establishing an agency, the foreign company should maintain sufficient assets in Chile to comply with the obligations of its agency in Chile. Further, it must be agreed that the agency's assets will be subject to Chilean law, especially with regard to its obligations in Chile.

The first step in establishing an agency in Chile is the appointment of an agent, through a general power of attorney to act in Chile. The agent should be responsible for creating the representative office through the registration with a notary public of certain documents relating to the foreign corporation, duly translated into Spanish and by means of a deed. An abstract of these documents must be registered at the Registry of Commerce and published in the Official Gazette.

For representative offices, branches or other permanent establishments that operate in Chile, the income originated in Chile is determined on the basis of where the company is based, and in accordance to their accounting balance sheets.

5.0 FINANCING A COMPANY SUBSIDIARY

5.1 Equity financing

5.1.1 Contributions for rights or shares

Where an equity investment is made into a Chilean company in exchange for right or shares, the amount of the investment is added to the company's "stated capital" account that shall be equal to the capital mentioned in the bylaws.

5.1.2 Distributions of paid-up capital

A Chilean company is permitted to make distributions of its paid-up capital to a non-resident owner without incurring any withholding tax, as far as the distribution respects the imputation order established in the Income Tax Law, starting with the tax profits, then the financial profits and finally the capital. The distribution of profits will be subject to withholding tax.

5.2 Debt financing

5.2.1 Withholding tax implications on interest paid on foreign loans

Chilean companies are permitted to borrow funds from related or third parties without tax implications.

Furthermore, there are no Chilean tax implications on the repayment of the principal amount of such debt. As a general rule, interest arising from foreign loans granted to taxpayers domiciled or resident in Chile is subject to a 35% withholding tax. No deductions are allowed. The withholding tax rate can be reduced or eliminated under an applicable double-taxation treaty for avoiding double taxation.

However, a 4% reduced withholding tax rate applies when interest arises from loans granted by foreign banks or financial institutions, or from credits granted by foreign suppliers for the acquisition of goods imported into Chile. Provided that the loan or suppliers' credit is not considered to be related in the terms defined by the Income Tax Law, or if related, thin capitalization thresholds are not surpassed.

Whether subject to the normal or reduced tax rate, the Chilean borrower must withhold the applicable value when interest is paid, remitted abroad, credited into the lender's account or made available to the lender by any means, whichever occurs first. The tax withheld must be paid into the Chilean Treasury within the first 12 days of the following month.

5.2.2 Thin capitalization

Excessive debt exists when a loan or credit is granted in a year in which the borrower's foreign debt exceeds three times its tax equity.

The 35% tax applies to interest deriving from an excessive debt with related parties (as the Tax Law defines), and it is paid in two parts: (i) the 4% withholding tax, which must be withheld and then paid within the first 12 days of the month following that in which the interest was paid, remitted abroad, credited into the lender's account or made available to the lender by any other means; and (ii) the 31% additional tax surcharge (which shall be paid by the Chilean entity, i.e., the debtor of the loan), which is an annual tax payable in the next April following the payment of the 4% withholding tax. The 31% additional tax surcharge is borne by the borrower and is a deductible expense for the Chilean borrower.

Thin capitalization rules do not apply to Chilean debtors whose activities are qualified as financial by the Ministry of Finance, nor to loans granted by multilateral international financial organizations.

Interest derived from foreign loans is tax deductible, provided that the loan or credit from which it derives is related to the borrower's business activity and is necessary to produce its income.

5.3 Stamp tax

Stamp tax is currently applied on the documents issued in connection with money-lending operations (e.g., credit loans, promissory notes, etc.). The stamp tax rate is determined at a fixed percentage over these documents' amount for every month between their issuance and their maturity (from 0.066% to 0.8%), capped at 12 months. Credit documents without a maturity date shall be taxed at a fixed stamp tax rate of 0.332% of the credit amount.

This tax shall apply either on local loans, provided such loans are granted by means of a written contract and to loans abroad. In the case of loans abroad, the tax will apply when such loans are registered in the Chilean company's accounting records, even if there is no written agreement.

6.0 CORPORATE INCOME TAX

Companies in Chile are taxed through the First Category Income Tax (the "Corporate Tax"). Corporate Tax applies to income obtained from activities where the use of capital prevails over personal work. Among others, income derived from the following activities, assets or companies are subject to the First Category Income Tax:

i. Exploitation of real estate (land, property)

ii. Securities, bonds and deposits

iii. Commercial, industrial and mining activities; exploitation of natural resources; insurance companies; airline companies; holding or capitalization companies; banks, financial companies and other companies that undertake similar activities; and companies engaged in construction, journalism, advertising, radio, television, telecommunications and data processing activities

iv. Traders; commission agents with permanent offices; auctioneers, customs agents, shippers and other individuals who participate in nautical, port and customs duty commerce; insurance agents that are not individual operators; schools; academies and institutes engaged in private teaching; clinics, hospitals, laboratories and other analogous private establishments; and companies engaged in entertainment activities

v. Any other income not taxable under other taxes, and that is not exempted from any taxes.

6.1 Tax regimes

Laws No 20,780 and 20,899, among others, introduced important modifications to the Income Tax Law, which as of 2018 are in full force. The Income Tax Law establishes two alternative systems of taxation for companies that are subject to First Category Income Tax and that are obliged to declare their actual incomes on a full accounting basis:

i. ***Attributed System:*** A full imputation tax credit based on the presumed income system of the owners. Final shareholders (individuals or foreign companies) shall be entitled to a tax credit against final taxes, equal to the 100% of the First Category Income Tax previously paid by the company. By choosing the Attributed System, partners and shareholders of companies are taxed on all the income generated annually by the entity in which they participate, on an accrued basis, proportionally based on the percentage of ownership. Therefore, taxation will be triggered every year for the partners, even if no dividend distribution has taken place. (The final tax burden shall be 35%, when combining First Category Income Tax and final taxes for owners.)

ii. ***Partially Integrated System:*** A partial-credit regime based on the effective income system of the owners. The Partially Integrated System maintains the current mechanism in which the shareholders or partners are taxed when an actual dividend distribution occurs. Final shareholders (individuals or foreign companies) shall pay final taxes only when dividend distributions occur, but with a 65% of the tax credit of the First Category Income Tax duly paid by the company (final tax burden shall be 44.45%). Such tax credit shall be used against final taxes paid by the final owners of the company. Notwithstanding the foregoing, such tax credit shall be equal to 100% of the First Category Income Tax previously paid by the company, if the beneficiary shareholder is domiciled in one country with which Chile has a double-taxation treaty in force.

It is important to note that Law 20,899, enacted February 1, 2016, with the purpose of simplifying the application of the new tax regimes, established that the Attributed System will be only an option for companies integrated by local individuals, foreign individuals or foreign companies; the Partially Integrated System is maintained as the principal tax system. Corporations must use the Partially Integrated System.

6.2 Income tax rate

For 2018, the corporate tax rate on general active business income is 25% under the Attributed System or 27% under the Partially Integrated System.

6.3 Capital gains

As a general rule, capital gains are considered normal income and thus are taxed at the same rate as the Corporate Tax and final taxes.

6.4 Branch tax

Foreign companies that have branches, agencies or permanent establishments in Chile will be subject to Corporate Tax and final taxes related to making distributions. Therefore, taxpayers domiciled or resident abroad that have a permanent establishment in Chile are taxed in Chile with the First Category Income Tax on their Chilean source income determined through full accounting records. The 35% tax is only applied when profits are attributed or distributed abroad.

6.5 Computation of taxable income

6.5.1 Taxable base

A taxpayer is subject to tax on its profits from carrying on its business. Profit is generally considered to be its revenues less its deductible expenditures. Companies subject to corporate tax are obliged to declare their actual incomes on a full accounting basis. First Category Income Tax is applied on the effective taxable incomes determined through full accounting records. Chilean source income is taxed on an accrual basis, and foreign source income is taxed on a paid basis, unless the income is obtained through a permanent establishment that exists abroad, in which case, the permanent establishment's income is taxed on an accrual basis.

Apart from initial and closing periods, the tax or fiscal year coincides with the calendar year. Each tax year starts on January 1 and ends on December 31. Annual tax filings must be done by April of the following year (i.e., April 2019 for the 2018 tax year). Calendar years are also known as "commercial years."

6.5.2 Deductions

The two main deductions in the Chilean Income Tax Law are tax-deductible expenses and direct costs.

An expense is tax-deductible when it is necessary to produce the taxpayer's taxable income. It is deemed to be necessary when it meets the following requirements: (i) it is mandatory and inevitable to produce taxable income; (ii) it is related to the taxpayer's line of business; (iii) the expense is paid or owed; and (iv) it must be fully evidenced before the SII. Rejected expenses are subject to a 40% rate of tax as a penalty for being incorrectly claimed and deducted.

Taxpayers are allowed to deduct from their gross income the direct costs necessary to obtain their taxable income. Direct costs for products purchased in Chile include purchase price, and optionally transport and insurance payments to the purchaser's warehouses. Products imported into Chile include their cost, insurance and freight (CIF) value, customs duties paid, expenses incurred to nationalize the products and, optionally, transport costs and insurance paid while the product is on the way to the importer's warehouse. Products manufactured by the taxpayer include raw material and direct labor costs.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

Chilean tax law has enforced transfer pricing rules since 2012. Transfer pricing is the value placed on cross-border transactions by the related parties. Transfer pricing is based on the arm's length principle, which sets forth that prices or values imposed between related parties should correspond to those established between non-related independent parties in similar transactions.

Chilean transfer pricing rules shall apply to any type of cross-border transactions involving related parties. If the transaction is between a Chilean and a foreign entity, for instance, transfer pricing rules apply to the purchase and sale of products, furnishing of services, financial transactions, technology transfers or transfer of rights to use patents, trademarks and copyrights.

Under Chilean Law, two parties shall be considered to be related for transfer pricing purposes in the following circumstances:

i. When a company participates directly or indirectly in the management, control, capital or profits of a company incorporated in Chile, or vice versa

ii. When the same person participates directly or indirectly in the management, control, capital or profits of an enterprise incorporated in Chile and in a company incorporated abroad

iii. A permanent establishment and its head office are deemed to be related; likewise, there will be relationship between a permanent establishment and the related parties of its head office

iv. Where operations are carried out by Chilean residents with a company resident in tax havens, parties are deemed to be related, unless such country has an agreement with Chile providing for the exchange of information

v. Individuals up to and including the fourth degree of consanguinity or affinity kinship are related (i.e., parents, siblings, grandparents, uncles and cousins)

vi. Where a cross-border operation carried out between a Chilean company and an unrelated foreign party is replicated abroad by the unrelated foreign party and a related party of the Chilean company, the parties are deemed to be related.

Upon request from the SII, taxpayers must prove that their transactions with related parties have been made at arm's length value, which shall be demonstrated by applying any of the following methods: (i) Comparable Uncontrolled Price Method; (ii) Resale Price Method; (iii) Cost Plus Method; (iv) Profit Split Method; and (iv) Transactional Net Margin Method. If none of these methods can be applied due to special circumstances, the SII may allow other reasonable methods.

The taxpayer must apply the most appropriate method to reflect an arm's length value considering the circumstances of the case. For the purpose of selecting the most appropriate method, the taxpayer should consider the respective strengths and weaknesses of each method, the appropriateness of the method in relation to the relevant operation, the availability of relevant information on a comparable basis, and the reliability of comparability adjustments.

If the SII finds that the taxpayer has not proved their operations have been made at arm's length value, the SII will establish such value, using the information delivered by the taxpayer and any other information it may have, applying any of the referred methods. Upon determination of an arm's length value, the adjustment made by the SII will be subject to a 40% penalty. Regular interests and fines will apply accordingly. An additional transfer pricing fine of 5% of the transfer pricing adjustment will be applied unless the taxpayer has timely submitted the documentation required by the SII during the audit.

Taxpayers carrying out operations with related parties abroad shall submit to the SII every year a sworn statement regarding such operations, including the information and following the template established by the SII. Likewise, the SII may request taxpayers provide information regarding their related parties abroad. In the case of noncompliance, delay or an incomplete or erroneous submission of the annual transfer pricing statement, a penalty may be levied.

Taxpayers carrying out operations with related parties will be entitled to request an advanced pricing arrangement (APA) with the SII. To request an APA, taxpayers must submit all the documentation requested by the SII pursuant to a specific regulation issued for such purposes. A taxpayer may request a bilateral or multilateral APA with other tax administrations. Where the operations related to the APA involve the import of goods, the Customs Agency should consent to the agreement. An APA will apply from the date of its signing and will last for the following three commercial years. A renewal may be requested.

Once the APA is signed, the SII will not be able to determine price differences on the operation at issue. However, if at any time the main circumstances taken into consideration for agreeing the APA change substantially, both the taxpayer and the SII are entitled to terminate the APA on that basis. The SII may also terminate an APA if the documents delivered by the relevant taxpayer at the time of the request of an APA were false or erroneous.

8.0 PAYROLL TAXES

In Chile, the employer must deduct from the employee's salary the taxes that the employees are subject to and the social security contributions.

8.1 Taxes

The employer must deduct from the employee's taxable remuneration the Second Category Tax, which corresponds to a progressive tax, payable monthly by all those who receive an income from the development of a dependent activity and whose monthly gross salary exceeds CLP $648,216 (as of October 2018). This is a progressive tax rate that ranges from 0% to 35%, which is the same as global complementary income tax.

8.2 Social security contributions

Social security contributions are payments that may be payable by the employer and/or the employee, to finance the social security protection system related to the risks or social contingencies that employees and their families may suffer. The different types of social security contributions are discussed below.

8.2.1 Pension system

The pension system is intended to cover the contingency of old age. Contributions are equivalent to 10% of the employee's gross salary, with a taxable income cap of CLP 2,147,933 (for the remunerations of October 2018). The percentage of the contribution must be added the respective commission charged by each pension fund administrator, which are institutions in charge of receiving the payment of these contributions and managing the funds of each employee. This commission varies between 0.77% and 1.44%. The employer must deduct this amount from the employee's gross salary and pay it directly to the corresponding institution.

8.2.2 Health system

The health system is intended to cover the contingency of common illness of each employee. Contributions are equivalent to at least 7% of the employee's gross salary. The final percentage to be deducted will depend on the cost of the health plan that each employee agrees with the health insurance institution. The employer must deduct this amount from the employee's gross salary and pay it directly to the corresponding institution.

8.2.3 Invalidity insurance

Invalidity insurance is intended to cover an employee's medical contingency in case of disability. Contributions are equivalent to 1.15% of the employee's gross salary. This amount must be paid by the employer directly to the pension funds administrator.

8.2.4 Occupational accident and/or disease insurance

Occupational accident and/or disease insurance is intended to cover the contingency of an occupational accident and/or disease. It is equivalent to a basic contribution of 0.95% of the employee's gross salary, plus an additional differentiated contribution according to the activity risk of the employing company that may not exceed the 3.4% of the employee's gross salary.

However, this fee may change based on the results of an evaluation conducted every two years. During the second half of every odd-numbered year (e.g., 2019, 2021, etc.), employing entities are subject to an evaluation that accounts for occupational accidents and diseases incurred by employees. As a result, the differentiated additional rate may fall within a range of 0% to 6.8%. This amount must be paid by the employer directly to the Mutual de Seguridad (Chile's social security agency).

8.2.5 Unemployment insurance

Unemployment insurance is intended to cover the contingency of unemployment. Contributions are equivalent to 3% of the employee's gross salary. In the case of an indefinite contract, this insurance will be financed by an employer contribution of 2.4% of the employee's gross salary, while the remaining 0.6% is borne by the employee. On the contrary, if it is a fixed-term contract, the employer must contribute the entire 3%. This amount must be paid directly by the employer to the unemployment fund administrator.

9.0 INDIRECT TAXES

9.1 Value-added tax

Value-added tax (VAT) is the most important of the indirect taxes in Chile, making up nearly 50% of fiscal revenue. It is levied on sales, imports and services. VAT applies on sales of any physical asset by a person who is a customary seller. Sales of movable assets or real estate (provided that the seller is considered a vendor) are also subject to VAT.

Construction contracts are also subject to VAT. The tax basis is the sale price, including monetary correction, interests, finance charges and penalty interest. The tax itself is excluded from the taxable base. In case of imports, the taxable basis is the customs value or CIF value (combined cost of goods, insurance and freight), including customs duties. VAT also applies to services rendered in Chile, excluding professional services. The tax basis is the value of the services rendered plus monetary correction, interest, finance charges and other factors.

The VAT rate is 19%, applied on the value of the sale or service rendered. In the case of constructed real estate sales, the land value shall be deducted. VAT is declared and paid monthly, on the 12th day of the month following the taxed transaction.

9.2 Municipal tax (commercial license)

An annual tax is payable to the municipality in which professional, commercial or industrial activities are carried out. In the case of professional activities, a fixed amount is levied, while for commercial or industrial activities, the duty is determined by applying a tax rate to the equity of the business. This tax rate is set by each municipality, ranging from 0.025% to 0.05% of the company's equity.

10.0 PERSONAL TAXES

10.1 Global complementary income tax

Global complementary income tax is an annual tax that affects individuals domiciled in Chile and is charged on total taxable incomes. Profits attributed or distributed by Chilean companies to individuals resident or domicile in Chile are subject to a global complementary income tax at a progressive tax rate that ranges from 0% to 35%. The First Category Income Tax paid by companies on the profits attributed or distributed is available as a credit. Depending on which tax regime the company is subject to, the credit is equal to 65% (Partially Integrated System) or 100% (Attributed System or when treaty to avoid double taxation is in force) of the First Category Income Tax previously paid by the company.

10.2 Withholding tax

Withholding tax is an annual tax that affects companies or individuals not resident in Chile and is charged on total taxable income. Generally speaking, non-resident taxpayers are only taxed on their Chilean source income. Income is deemed to be sourced in Chile when the income is derived from assets located in Chile or from activities undertaken in Chilean territory.

Chilean source income includes capital gains obtained from the sale of shares or rights in a foreign non-resident entity owning shares or rights in a Chilean entity. Profits distributed from Chilean companies or Chilean branches to shareholders, partners or parent companies not resident in Chile are subject to a 35% withholding tax. However, as noted, the corporate tax paid by a company is a tax credit against the withholding tax that non-residents must pay. Depending on which tax regime the company has chosen, the credit is equal to 65% (Partially Integrated System) or 100% (Attributed System or when treaty to avoid double taxation is in force) of the corporate tax paid by the company.

Final tax burden for owners of companies who choose the Attributed System will be 35%, because they shall have full imputation of First Category Income Tax as a credit. On the other hand, for owners of companies who choose the Partially Integrated System, the final tax burden will be 44.45%, because the tax credit of the First Category Income Tax paid by the company will be only 65% of the total amount paid. This rule shall apply either for global complementary income tax and withholding tax.

Investors resident in a country with which Chile has a double-taxation treaty in force will not be subject to the above-mentioned limitation on the use of credit, and the current 35% tax burden will remain applicable in any scenario.

11.0 PROPOSED REFORMS TO THE TAX SYSTEM

Currently there is a new project of law under discussion, which intends to simplify the actual tax system. The main objective is to reach and maintain economic growth over time, stimulating investment. The new bill would create a unique system, with a corporate tax rate of 27%, which is an integrated with final taxes, and would be levied based on effective cash withdrawals. In addition, small and medium-sized companies would have a special tax regime, with a first category rate of 25%. This is also a completely integrated rate with final taxes.

The new bill expands on the concept of expenses that can be deducted from the tax base of the corporate tax to include financial expenses, and not only taxable ones. The new bill would also introduce a tax on "digital services." This would be a special indirect and substitutive tax, with a rate of 10%, to be levied on digital services rendered by foreign companies every time those services are used in Chile by natural persons. The rate will apply to the total amount of the transaction, and is a withholding tax that must be withheld by the payer before making the payment abroad.

China

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1.0 OVERVIEW

Chinese tax burden has been one of the key issues taken into account by foreign taxpayers when doing business in China[1] directly or through their Chinese subsidiaries. Among the 19 different Chinese taxes, those most commonly arising from foreign taxpayers' business operations in the nation are enterprise income tax (EIT), individual income tax (IIT), value-added tax (VAT), urban maintenance and construction tax and stamp duty.

As a general principle, residents of China are taxed on worldwide income and non-residents are taxed on Chinese-sourced income. Enterprises and individuals are regulated by the EIT law and IIT law, respectively, in respect of income taxation.

An enterprise is resident in China for EIT purposes if it is incorporated in China, or if it is incorporated outside China but the effective management is in China. A foreign enterprise is considered to have effective management in China if its production and business operations, personnel, accounting and property are all substantially managed and controlled in China. The normal EIT rate is 25% for resident enterprises. The normal withholding EIT rate for non-resident enterprises is 10% for income from a Chinese source, including dividends, interest, royalties and capital gains.

As of January 1, 2019, an individual is resident in China for IIT purposes if he or she is domiciled in China or if he or she is not domiciled in China but stays in the country for 183 days or more in a calendar year. Otherwise the individual is non-resident. IIT rates for wages and salaries range from 3% to 45% on a progressive basis.

2.0 LEGAL SYSTEM

The national legal system in China consists of laws enacted by the National People's Congress (NPC) and its Standing Committee, administrative regulations issued by the State Council (executive branch), administrative rulings and other formulated documents issued by national agencies. The national legal system applies nationwide. Local government bodies may issue local regulations, rulings and other formulated documents for implementation in their location, which may not conflict with the national legal system.

In general, Chinese tax laws enacted by the NPC and its Standing Committee contain general principles, whereas the State Council issues administrative regulations for the implementation of the law. In addition, the State Council's departments—the Ministry of Finance and the State Administration of Taxation (SAT)—are in charge of finance and taxation and issue tax rulings, circulars, public notices and other formulated documents. In practice, local government authorities may issue interpretative and administrative tax documents for implementation in their own scope of administration.

3.0 TAXATION AUTHORITIES

The SAT manages Chinese tax collection and administration. The SAT administers provincial-level tax bureaus, which in turn govern city-level tax bureaus, and district-level tax bureaus. District-level tax bureaus may maintain necessary tax offices in different locations within their districts.

4.0 BUSINESS VEHICLES

The most common forms of business vehicles for foreign investors to carry on business activities in China include wholly foreign-owned enterprises (WFOEs), Chinese-foreign equity joint ventures (EJVs) and Chinese-foreign cooperative joint ventures (CJVs). Collectively, WFOEs, EJVs and CJVs are known as foreign investment enterprises (FIEs).

4.1 Wholly foreign-owned enterprises

A WFOE is a Chinese legal entity incorporated by only foreign investors. In practice, a WFOE is generally a limited liability company, and each shareholder's liability is limited to the amount of the capital of the WFOE subscribed by the shareholder.

A WFOE is a separate legal entity liable to pay EIT and all other taxes in China in accordance with Chinese tax laws and regulations. It cannot be elected to be treated as a look-through entity for Chinese tax purposes. A WFOE's employees are liable to Chinese IIT in accordance with Chinese IIT law and regulations.

4.2 Chinese-foreign equity joint ventures

An EJV is a limited liability company incorporated under the laws of China by at least one Chinese shareholder and at least one foreign shareholder. Generally, the

1 The term "China" excludes Hong Kong, Macao and Taiwan for Chinese tax purposes.

amount of shares held by foreign shareholders in an EJV must be at least 25% of the total EJV shares. The profits and losses of an EJV are shared proportionately between or among the EJV's shareholders in accordance with their respective ownership interest in the EJV.

An EJV is liable to pay various taxes in China in accordance with Chinese tax laws and regulations, and its employees are liable for Chinese IIT in accordance with Chinese IIT law and regulations.

4.3 Chinese-foreign cooperative joint ventures

A CJV is a legal structure incorporated under the laws of China by both Chinese and foreign parties. This legal structure allows considerable flexibility for Chinese and foreign parties to determine the cooperative conditions, the distributions of profits or products, the sharing of risks or losses, the management structure and the distribution of CJV property at the end of the cooperation. This flexibility stems from the CJV's governing document, the CJV contract.

A CJV is a limited liability company unless it takes another form of liability as approved by government authorities. The income tax consequence may vary depending on the legal structure.

4.4 Foreign investment holding companies

Many multinational companies have established foreign investment holding companies (FIHCs) in China to hold and manage their Chinese subsidiaries. This holding structure helps manage Chinese taxation and cash flows of Chinese subsidiaries. An FIHC is either a WFOE or an EJV, depending on the ownership structure. To apply for incorporation of an FIHC, a foreign investor must have good credit and at least US$400 million in total assets during the last year prior to the application, and must have incorporated an FIE in China with the actual paid-in capital of more than US$10 million; or the foreigner investor must have good credit and must have incorporated at least 10 FIEs in China with the actual paid-in capital of more than US$30 million. If the foreign investor incorporates an FIHC with a Chinese investor in the form of joint venture, the Chinese investor must have good credit and at least CNY 100 million in total assets during the last year prior to the application.

4.5 Partnerships

Since March 1, 2010, foreign enterprises and individuals have been permitted to set up foreign investment partnerships (FIPs) in China. An FIP in China must have at least two or more foreign partners, or at least one foreign partner and one Chinese partner. A partnership set up in China, including an FIP, is a look-through entity for income tax purposes, meaning that the partnership does not pay income tax in China. Rather, the partners of the partnership are subject to income taxes on their distributive share of the business profits earned by the partnership. In practice, an FIP is generally treated as a permanent establishment of foreign corporate partners for income tax purposes. Although it is a pass-through entity and is not subject to income taxes, a partnership in China is liable to other taxes such as VAT, urban maintenance and construction tax and stamp duty.

4.6 Branches

Subject to approval from Chinese government authorities, a foreign enterprise may set up one or more branches in China. A branch may carry out business activities stated in its business license. A branch of a foreign enterprise is a legal entity but does not have legal personhood status in China, meaning the foreign enterprise is liable for any of the branch's debts.

In general, a branch of a foreign enterprise is a permanent establishment in the context of China's income tax treaties and arrangements, meaning the foreign enterprise is subject to EIT in China on business profits attributable to the permanent establishment.

4.7 Representative offices

A foreign enterprise may set up one or more representative offices in China to conduct permissible activities in China. The permissible activities are generally limited to market research, exhibition, promotional activities and liaising with the foreign enterprise's sale of products, provision of services, purchases from China or investments in China.

A representative office of a foreign enterprise does not have legal personhood status in China. It generally constitutes a permanent establishment of the foreign enterprise for Chinese income tax purposes. This means that the foreign enterprise is generally liable to EIT in China on business profits attributable to that permanent establishment.

5.0 FINANCING A CORPORATE SUBSIDIARY

5.1 Equity financing

A foreign investor may contribute capital to an FIE in exchange for shares in the FIE. Equity investments in excess of the subscribed capital may be treated as capital surplus in the hands of the FIE. The FIE does not pay income tax on the receipt of equity investments.

In the case of windup of an FIE, the FIE's statutory reserves and retained earnings will be treated as dividends subject to withholding tax in China. The distribution of paid-up capital to the foreign investors will not be subject to withholding tax in China to the extent that the amount of distribution does not exceed the original investment cost. In practice, if the equity investments were injected in any currency other than Chinese currency, distribution of paid-up capital to foreign investors at the time of windup may result in capital gain or loss because of the difference between the foreign exchange rates at the time of initial investment and distribution.

5.2 Debt financing

FIEs are subject to registration, restriction and other regulatory requirements on borrowing of foreign funds. FIEs are not subject to income tax liability when borrowing and repaying debts. Foreign lenders generally are subject to VAT and withholding tax on interest income from China.

FIEs paying interest to related parties are subject to thin capitalization rules in China.

Under the thin capitalization rules, an FIE is allowed to deduct interest expenses actually paid to related parties up to the amount calculated on the basis of a standard debt-to-equity ratio (5:1 for financial enterprises and 2:1 for other enterprises) and other limitations of the EIT law and its implementation regulations. There is an exception if the FIE satisfies conditions that exempt it from the debt-to-equity limitation. Interest expenses in excess of the limitation are not deductible, unless special transfer pricing documentation is prepared.

5.3 Stamp tax

An FIE is subject to stamp duty at 0.05% of equity investments (paid-up capital and capital surplus) received from shareholders and 0.005% of the amount of the borrowed funds stated in loan agreements if the loans were made from financial institutions.

6.0 ENTERPRISE INCOME TAX

A resident enterprise is subject to EIT in China on worldwide income. A non-resident enterprise with an establishment or business site in China is subject to EIT in China on Chinese-source income and on overseas income that is effectively connected with that establishment or business site.

A non-resident enterprise is subject to EIT in China on a withholding basis in respect of dividends, interest, royalties, capital gains and "other income" if it does not have an establishment or business site in China, or if income is not effectively connected with that establishment or business site in China.

6.1 Income tax rate

The EIT rate is normally 25%. It is reduced to 20% for qualifying small-sized enterprises and to 15% for qualifying new high-technology enterprises. The withholding tax rate is statutorily 20% and reduced to 10% in all cases under domestic law. A lower withholding tax rate offered by an applicable income tax treaty or arrangement will prevail over the domestic 10% rate if the conditions for the lower rate are satisfied.

6.2 Capital gains

Capital gains derived by a resident enterprise or a non-resident enterprise with an establishment or business site in China will be included in the enterprise's taxable income and taxed in the same manner as ordinary income.

Chinese-source capital gains derived by a non-resident enterprise without an establishment or business site in China will be taxed separately at 10% on a withholding basis. Gains from the sale of immovable property is sourced to the place the immovable property is located. Gains from the sale of movable property other than inventory is sourced to the place of the enterprise, establishment or business site selling the movable property. Gains from the transfer of an equity interest in an enterprise is sourced to the place of the enterprise.

6.3 Branch profit tax

There is no branch profit tax in China, so a non-resident enterprise does not trigger EIT on after-tax profits earned by its permanent establishment in China, such as a branch or a representative office.

6.4 Computation of taxable income

6.4.1 Taxable base

The taxable base for a resident enterprise or a non-resident enterprise with an establishment or business site in China is taxable income. Taxable income equals gross income less non-taxable income, tax-exempt income, various deductions and net operating loss (NOL) carried over from previous years. Gross income comes from various sources, in cash or non-cash form, including income from sale of goods, income from provision of services, dividends, interest, royalties, rent, capital gains, donations and other income.

6.4.2 Deductions

In general, all costs, expenses, taxes, losses and other payments incurred by an enterprise are deductible to the extent of reasonableness and direct relevance to that enterprise's income. In general, a payment is reasonable if it is necessary and normal in the regular course of business operations. Generally, NOL incurred by an enterprise in a taxation year can be carried forward for a maximum of five years. As of January 1, 2018, the five-year limit has been extended to 10 years for new high-technology enterprises and for small and medium-sized scientific enterprises. Losses cannot be carried back.

6.5 Income tax reporting

In general, EIT returns are filed on a quarterly or monthly basis within 15 days after the end of the current quarter or month. Annual EIT returns are filed within five months following the end of the current tax year. In general, a tax year is a calendar year.

A resident enterprise with one or more branches will calculate EIT and file EIT returns by combining the taxable income of its branches' taxable income. Two or more resident enterprises cannot file consolidated EIT returns, unless otherwise provided.

If a non-resident enterprise derives income subject to withholding tax, the payer of the income will be the withholding agent and liable to withhold EIT from payment at the time the payment is made or due, and to pay the EIT to the tax authorities within seven days following the date of withholding.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

China's transfer pricing regime requires that an enterprise comply with the arm's length principle in making transactions with related parties. Failure to do so can enable tax authorities to make reasonable tax adjustments to the transactions. The statute of limitation for transfer pricing adjustments is 10 years commencing from the tax year in which the transaction occurs. Tax authorities, when making transfer pricing investigation into an enterprise, may look back 10 years at the enterprise's past transactions.

7.2 Withholding tax on passive income

Dividends, interest, royalties and capital gains derived from a Chinese source by a non-resident enterprise without an establishment or business site in China is subject to EIT on a withholding basis at the normal 10% rate (or a lower rate offered by an applicable income tax treaty or arrangement). Dividends are sourced to the place of the enterprise paying the dividends. Interest or royalties are sourced to the place of the enterprise, establishment or business site bearing or paying the interest or royalties. If the person paying the interest or royalties is an individual, it is sourced to their place of residence.

7.3 Withholding tax on services fees

EIT on service fees derived by a non-resident enterprise is 25% of business profits attributable to an establishment or business site (or a permanent establishment in the context of an applicable income tax treaty or arrangement) in China. If the service activities do not constitute a permanent establishment in China, there should be no EIT liability.

In practice, a deemed profit rate is usually applied to determine the taxable profits. In general, the deemed profit rate is 15% to 30% for construction projects and design and consulting services, 30% to 50% for management services and at least 15% for all other services.

8.0 PAYROLL TAXES

8.1 Individual income tax

Employees working in China are subject to IIT on wages and salaries paid and borne by their Chinese employers. The IIT rates for wages and salaries range from 3% to 45% on a progressive basis, depending on the amount of taxable income earned by an employee. As of January 1, 2019, the IIT on wages and salaries for resident individuals depends ultimately on their annual income under the new IIT law, whereas IIT on wages and salaries for non-resident individuals depends on their monthly income. Chinese employers are liable to deduct IIT from total wages and salaries and to pay the IIT to tax authorities within 15 days following the end of the current month.

8.2 Social Insurance and housing funds

Chinese employers and employees are liable to pay social insurance and housing funds. The social insurance contributed by employers consists of basic retirement insurance, basic medical insurance, injury insurance, unemployment insurance and maternity insurance. Generally, the social insurance and housing funds are calculated by a fee base multiplied by fee rates. The fee base is generally the employee's monthly salary, but it cannot be outside the range of 60% to 300% of the average salaries of workers in the same city in the last year. The fee rates vary from location to location. The total amount of all the social insurance and housing funds contributed by employers in some cities are more than 40% of employee wages and salaries.

9.0 INDIRECT TAXES

9.1 Value-added tax

A domestic entity or individual is subject to VAT on the sale or import of goods (tangible, movable property), the processing and repair of goods, the sale of intangible property and immovable property and the provision of services in China, unless otherwise exempted.

China's VAT regime taxes both Chinese and foreign entities, as well as individuals, on stipulated sales or services. VAT represents a substantial part of tax revenue in China. Taxpayers subject to VAT, consumption tax or both also pay urban maintenance and construction tax, as well as education surcharge and local education surcharge, which are discussed in greater detail below.

As of May 1, 2018, the applicable VAT rates are 16% (previously 17%), 10% (previously 11%), 6% and 0%, depending on the type of transaction. The 16% rate covers the sale, import, processing or repair of goods (other than those subject to the 10% rate or 0% VAT) and the lease of tangible, movable property. The 10% rate covers the sale or import of special goods (generally those related to life necessity, such as agricultural products), transportation service, postal service, fundamental telecommunications service, construction service, the lease of immovable property and the transfer of land-use rights. Unless otherwise stipulated, exported goods and services qualify for a 0% VAT. In general, qualifying Chinese taxpayers are exempt from VAT on exported goods or services and may receive a VAT refund or credit under some circumstances.

Taxpayers paying VAT are separated into general VAT payers and small-scale VAT payers. In general, VAT paid by general VAT payers for their purchases of taxable goods or services (input VAT) is creditable against the VAT arising from their sales of taxable goods or their provision of taxable services (output VAT). Thus, a general VAT payer calculates its VAT liability by subtracting input VAT from output VAT. Small-scale VAT payers may not claim any input VAT as a credit, and their VAT liability is generally determined by the gross amount from taxable transactions (excluding VAT) multiplied by a simplified VAT collection rate of 3% (or another applicable simplified collection rate).

The taxable period for VAT is one day, three days, five days, 10 days, 15 days, one month or one quarter, as determined by the competent tax authorities based on the amount of the VAT payable. Taxpayers that cannot pay VAT within a fixed taxable period may pay the VAT by each event. Taxpayers subject to a taxable period of one month or one quarter will file a VAT return within 15 days after the end of the month or quarter. Taxpayers subject to a taxable period of less than one month will prepay VAT within five days following the end of each taxable period, and will file VAT returns and settle the VAT for a given month within 15 days following the end of that month. Taxpayers importing taxable goods will pay VAT within 15 days following the date of the VAT payment notice issued by customs authorities.

9.2 Consumption tax

An entity or individual is subject to consumption tax in China on the import, manufacture, consignment processing or sale of taxable consumer goods, unless otherwise provided.

Taxable consumer goods include cigarettes, wine and other alcohol, cosmetics, precious jewelry, firecrackers and fireworks, refined oil, automobile tires, motorcycles, cars, golf equipment, luxury watches, yachts, wooden disposable chopsticks and wooden flooring. Consumption tax is calculated based on a percentage of taxable sale income, or a rate of volume of sale, or a combination of the two, depending on the type of taxable consumer goods.

Consistent with VAT, the taxable period for consumption tax is one day, three days, five days, 10 days, 15 days, one month or one quarter, as determined by the competent tax authorities based on the amount of the consumption tax payable. Taxpayers that cannot pay consumption tax by a fixed taxable period may pay the consumption tax by each event. Taxpayers subject to a taxable period of one month or one quarter will file a consumption tax return within 15 days after the end of the month or quarter. Taxpayers subject to a taxable period of less than one month will prepay consumption tax within five days following the end of each taxable period, and will file a consumption tax return and settle the consumption tax for a given month within 15 days following the end of that month. Taxpayers importing taxable consumer goods will pay consumption tax within 15 days following the date of the consumption tax payment notice issued by customs authorities.

9.3 Customs tax

Customs tax is imposed on imports and exports of permissible goods and personal-use items. The recipients of imported goods, the senders of exported goods and the owners of personal-use items are the taxpayers of customs tax. Customs tax is governed by China's Customs Law, Regulations of Customs Tax and other rules.

The rates for import duties include most favored nation tariff rates, treaty tariff rates, preferential tariff rates, general tariff rates and tariff-quota rates, among others. Customs tax on exports is limited to some particular items such as some natural resources. Imports of goods into specific zones, by specific companies or for specific purposes may qualify for customs tax reduction or exemption.

10.0 OTHER TAXES

10.1 Urban maintenance and construction tax

Taxpayers paying VAT, consumption tax or both, are subject to urban maintenance and construction tax at 7%, 5% or 1% of the total payment of VAT and consumption tax, depending on their location. In addition, taxpayers pay an education surcharge of 3% of the total payment of VAT and consumption tax, and a local education surcharge of 2% of that total payment. The urban maintenance and construction tax, education surcharge and local education surcharge are paid at the time the VAT and consumption tax are paid.

10.2 Stamp duty

Stamp duty is imposed on taxable documents, certificates and licenses, but stamp duty rates are minimal. Generally, all entities and individuals are subject to stamp duty on the signing or receipt of taxable documents, certificates and licenses in China. The general stamp duty rates are 0.005% to 0.1% of the contractual amount, depending on the type of taxable contract.

The following is a list of stamp duty rates for different types of documents:

- 0.005% for loan contracts with financial institutions
- 0.03% for sale and purchase contracts and technology contracts
- 0.1% for property lease contracts
- 0.05% of the amount stated in taxable documents for the transfer of property ownership, copyrights, trademark, patents and technical know-how
- 0.05% of paid-in capital and capital surplus for accounting books
- CNY 5 for each business account book, real estate property ownership certificate, business license, trademark registration certificate, patent certificate and land-use rights certificate.

In general, the stamp duty is due and paid when the taxable contracts are signed or when the certificates and licenses are received.

10.3 Land appreciation tax

Land appreciation tax is imposed on entities and individuals who derive income from the transfer of state-owned land-use rights, buildings and other things immovably attached to the land in China. The land appreciation tax is determined on a progressive basis at rates of 30%, 40%, 50% and 60%.

10.4 Deed tax

Deed tax is imposed on the transferee of land and buildings in China by any means such as transfer, purchase, donation and exchange. The deemed tax equals to a tax rate multiplied by the transactional price in the case of transfer or purchase, the market price in the case of donation, or the price difference of the exchanged land or buildings in the case of exchange. The deed tax rate is generally 3% to 5%, depending on location.

10.5 Real property tax

Real property tax is imposed on the owner of real property in China. Generally, the real property tax equals 1.2% of 70% to 90% of the original value of the real property. It is 12% of rental income if the real property is leased. Residential property is exempt from real property tax, unless it is leased or used for any other business purpose.

10.6 Urban and town land-use tax

Urban and town land-use tax is imposed on entities and individuals who use land in cities, counties, towns and industrial and mining zones in China. The tax is computed by multiplying the number of square meters of the used land by a tax rate. The tax rate varies depending on location.

10.7 Resource tax

Entities and individuals are subject to resource tax on exploitation of taxable mineral products (crude oil, natural gas, coal and ore) or on the production of salt (solid and liquid salt) in China. The resource tax is computed by the amount of exploited or produced taxable products multiplied by a tax rate as follows:

- 5% to 10% of sale amount for crude oil and natural gas
- CNY 0.3 to CNY 20 per ton for coal
- CNY 0.4 to CNY 20 per ton for ore
- CNY 10 to CNY 60 per ton for solid salt; CNY 2 to CNY 10 per ton for liquid salt.

10.8 Environmental protection tax

Enterprises and other business operators are subject to environmental protection tax on the discharge of taxable pollutants (air pollutants, water pollutants, solid waste and noise) in the territory of China and other sea areas under the jurisdiction of China.

10.9 Other

Other taxes in China include tobacco tax, vehicle purchase tax, vehicle and vessel tax, vessel tonnage tax, farmland occupation tax and fixed-asset investment direction adjustment tax. The fixed-asset investment direction adjustment tax has been suspended since 2000.

As of May 1, 2016, the Chinese business tax has been replaced by VAT, and those items previously triggering business tax have been entirely incorporated in the VAT regime. China does not currently impose estate and gift taxes.

Colombia

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1.0 OVERVIEW

The Colombian tax system comprises taxes at the national, departmental and municipal levels. Resident individuals and companies are taxed on worldwide income and assets. Non-resident individuals, non-resident companies and permanent establishments of foreign companies are subject only to their Colombian-source income. The corporate income tax (CIT) rate is 33% for Colombian companies and foreign entities. This rate will be gradually reduced as follows:

Year	CIT rate
2020	32%
2021	31%
After	30%

Most payments made abroad are subject to withholding tax at 20%, whereby the Colombian taxpayer must collect the withholding tax.

The main territorial taxes (departmental and municipal taxes) are industry and commerce tax, real estate tax and registration tax. In regards to avoiding double taxation and preventing tax avoidance, Colombia has increased the number of signed double taxation treaties and has implemented certain Base Erosion and Profit Shifting (BEPS) measures.

2.0 LEGAL SYSTEM

The Colombian legal system is based on codes and laws rather than jurisprudence as a result of civil legal traditions. However, some decisions made by high courts in Colombia are considered a source of law for the interpretation of controversial matters. The legislative authority is the Congress, which makes law for the entire nation. Additionally, Colombia is divided in territorial entities called departments, municipalities and districts that have to right to regulate some tax matters.

3.0 TAXATION AUTHORITIES

The Colombian tax system is administrated by National Tax and Customs Directorship (DIAN, in its Spanish acronym), a national entity ascribed to the Ministry of Finance. National taxes such as corporate tax and value-added tax (VAT) are administered by the DIAN. Local tax departments or municipalities are responsible for collecting local taxes such as real estate tax, industry and commerce tax, among others.

4.0 BUSINESS VEHICLES

A foreign investor may use Colombian business entities or operate directly through a foreign entity (with or without a permanent establishment). For permanent activities in Colombia, a foreign investor may incorporate a company (limited liability or unlimited liability), or establish a branch or partnership agreement.

4.1 Partnership agreements

Partnership agreements have neutral tax effects. The partners are subject to income tax and must report the assets, liabilities, incomes, costs and deductions in accordance with their participation. Non-resident partners pay specific rates of income tax: 35% for non-resident individuals and 33% for foreign companies (to be reduced as described in section 1.0).

4.2. Corporations

Corporations are required to have at least five shareholders, none of whom may have 95% or more of the outstanding shares of the company. A board of directors must have a minimum of three members, with their respective alternates. There is no minimum capital to incorporate a corporation, but the shareholders are required to subscribe for at least 50% of the authorized capital and to pay at least one-third of the subscribed shares at incorporation. The remaining balance has to be paid during the year following the incorporation.

4.3 Simplified stock companies

The most used business vehicle in Colombia is the simplified stock company, which does not require a minimum number of shareholders to be incorporated. The subscribed shares can be paid during the two years after the incorporation. A board of directors is not required, nor is any minimum amount of subscribed shares. The incorporation and amendment of bylaws may be made by a private document. The shareholders are liable only up to the amount of their capital.

4.4 Limited liability companies

Limited liability companies must have at least two partners and no more than 25. Any change in the capital composition has to be approved by the partners representing at least 70% of the capital. The total amount of the contributions shall be paid when the company is incorporated. Unless otherwise agreed at the time of incorporation, all partners carry out the representation of the company. Partners are liable up the amount of their contribution; however, they are jointly and severally liable for labor and tax obligations.

4.5 Branch of foreign entity

The branch of a foreign entity is considered a commercial establishment that must be registered in Colombia by means of a public deed, which includes (i) the activities that the branch will perform in the country; (ii) the capital assigned to the branch; (iii) the domicile of the branch; (iv) the term during which the branch will conduct business in the country and the grounds to terminate them; (v) the appointment of a general proxy, with one or more alternates; and (vi) the external auditor, who shall be an individual residing in Colombia. The assigned capital has to be paid entirely before the branch starts its operation. Additional capital may be assigned as supplementary investment.

4.6 Private equity funds investments

Foreign entities may participate as investors in private equity funds investments. Securities brokerage and trading companies, trust management companies or investment managing companies supervised by the Superintendence of Finance are the only types of entities allowed to manage these funds, but may appoint an independent manager to undertake investment decisions. The funds are required to invest at least two-thirds of their resources in non–publicly traded securities (startups and infrastructure, among others). The minimum investment is 600 minimum monthly wages (approximately US$150,000). Private equity funds are required to have at least two investors, an investment committee and an audit committee. Private equity funds may be comprised by more than one separate investment compartment.

4.7 Foreign corporations

A permanent establishment of a foreign company or individual is defined as a fixed place in Colombia where the foreign entity has a level of permanence and performs all or part of its activities. The permanent establishment will be taxed on its income, assets and capital gains attributable to a Colombian source.

Foreign corporations are taxed on their Colombian-source income and capital gains only. As a general rule, the withholding tax rate on payments made to non-residents in respect of services rendered in Colombia is 20%.

5.0 FINANCING A CORPORATE SUBSIDIARY

5.1 Equity financing

5.1.1 Contributions for shares

The capital of a company can be increased in cash or in kind. In both cases the investor receives shares.

5.1.2 Contributions without taking additional shares

It is necessary to issue shares when the investor makes contributions. Contributions may be made for a higher value than the face value of the shares if the shares are issued at a premium.

Capital contributions are subject to a 0.7% registration tax on the amount contributed, and surplus is subject to a 0.3% registration tax.

5.1.3 Distributions of paid-up capital

The distribution of paid-up capital to non-resident shareholders must be made in accordance to commercial laws and is not taxable. Nevertheless, the distribution of any amount in excess of the paid-up capital is subject to a capital gains tax at 10% when the liquated company had existed for two years or more.

5.2 Debt financing

5.2.1 Withholding tax implications

The payment or accrual of interests should be subject to withholding tax and comply with Colombia exchange rules. Withholding tax rate will be 15% for loans with a term longer than one year and 20% if less. The rate of withholding tax can be reduced or eliminated under an applicable double taxation treaty signed by Colombia[1] .

There is a 5% withholding tax rate for the interest paid on loans with a term of eight years or more for financing public private partnerships (PPP). Furthermore, if the loans are granted by a non-resident related party or an entity located in tax havens, the loans would be subject to the Colombia transfer pricing regime. Loans granted by an entity located in a tax haven will be subject to a withholding tax rate equal to the corporate income tax rate. Tax havens are currently the countries listed by the Colombian government in article 1.2.2.5.1. of Decree 1625 of 2016.

5.2.2 Thin capitalization

According to regulation, there is a limit on the deduction of interest on debt in favor of related companies that exceeds two times

1 Colombia has signed double taxation treaties with Canada, Chile, the Czech Republic, France, India, Mexico, Portugal, South Korea, Spain, Switzerland, the United Arab Emirates and the United Kingdom.

the tax equity of the taxpayer (as of December 31 of the previous year). The interest that exceeds the cap referred to above is not deductible.

5.3 Stamp tax

Colombian tax law provides for a stamp tax. As of 2010, the stamp tax rate is 0%.

6.0 CORPORATE INCOME TAX

6.1 Corporate income tax rate

The corporate income tax rate is 33% for Colombian companies and foreign entities. This rate will be gradually reduced as follows:

Year	CIT rate
2020	32%
2021	31%
After	30%

For companies located in free trade zones that are industrial users of goods and services, the CIT rate is 20%.

Financial entities with a tax base of 120,000 UVT, or Tax Unit Value, (approximately US$1,370,000) or more are subject to the following CIT rates:

Year	Tax rate
2013	37%
2020	35%
2021	34%

6.2 Capital gains

Income sources that constitute capital gains are specifically defined in tax law, including:

- Sale of fixed assets held for more than two years
- Gift, inheritances and legacies
- Income from lotteries, prizes or similar events
- Gains from gratuitous agreements between living parties
- Gains from liquidation of companies.

The current capital gains tax rate is 10%. In the case of income from lotteries, prizes and similar events, the rate is 20%.

6.3 Branch tax

The profits paid by a Colombian branch to a foreign parent are subject to a 7.5% withholding tax rate when the profits have been taxed at the branch level. If the dividends were not taxed at the branch level, they are subject to the following rates:

Year	Tax rate
2019	38.025%
2020	37.100%
2021	36.175%
After	35.250%

6.4 Computation of taxable income

6.4.1 Taxable base

Resident entities are taxed on worldwide income, while permanent establishments as branches of foreign companies are taxed only on their Colombian-source income. The attribution of income to permanent establishment depends on several criteria, including functions, assets, risks and personnel involved in obtaining the income.

Companies resident in Colombia or permanent establishments have two ways of determining their taxable base of income tax: the regular system and the presumptive income system. The taxpayer must compare both systems and the higher taxable income payable applies.

In the regular system, taxpayers are subject to corporate income tax on their ordinary and extraordinary revenues. Returns, rebates and discounts are subtracted from revenues. The costs are expenditures directly attributable to such income. These costs are deductible from income tax as long as they are necessary, proportionate, related to the company’s activities and accrued or paid during the taxable year.

In applying the presumptive income system, the taxable income cannot be less than 3.5% of the net worth held in the year immediately preceding the taxable year. This rate will be 1.5% in 2019 and 2010 and 0% as of 2021.

The following amounts may be deducted from this base: (i) net equity value of contributions or shares held in Colombian entities; (ii) net equity value asset affected by events of force majeure; (iii) net equity value of assets associated with companies undergoing the initial unproductive stage.

6.4.2 Deductions

Some expenditures are permitted to be deducted if they meet the criteria of causality, proportionality and necessity. The tax system establishes following costs and expenses as deductible:

- Salaries paid to employees when the employer has paid all payroll taxes and social security contributions

- 100% of real estate tax as long as the payment of this tax is related to the taxpayer's income-producing activity
- Amortization of investments
- Depreciation of fixed assets used in producing income
- Expenses incurred abroad when they have been subject to withholding taxes
- Foreign exchange rate gains and losses.

The following expenditures may be used as a credit for corporate income tax:

- 50% of the industry and commerce tax paid in the fiscal year
- VAT paid acquisition of fixed productive assets

6.5 Income tax reporting

Colombian resident companies and non-resident corporations with permanent establishments in Colombia must file an annual income tax return within three months of the end of the tax year. If resident entity is liquidated during the taxation year, income tax is reported and payable for a portion of the year. The penalty for late filing is 5% per month of the tax payable, up to 100% of the tax payable or withholding tax due. The taxpayer is responsible for computing and paying any interest incurred for late filing.

6.6 Dividends

The distribution of dividends to foreign individuals or companies from profits not taxed at the corporate level is subject to these combined rates:

Year	Tax rate
2019	38.025%
2020	37.100%
2021	36.175%
After	35.250%

If the dividends are paid from profits that were taxed at the corporate level, the tax rate is 7.5%. Inter-corporate dividends distributed to a local company from profits taxed at the corporate level are taxed at a rate of 7.5%. This tax rate may be used by the final beneficiary (individual or foreign entity). If the inter-corporate dividends were paid from profits not taxed at the corporate level, the tax rate will be the combined rates described above. Dividends distributed to branches or permanent establishments of foreign companies from profits that were taxed at a corporate level are subject to a 7.5% tax rate. If the dividends were not taxed at the corporate level, the dividends will be taxed at combined rates described above.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

The transfer pricing regime is based on the arm's length principle of the Organisation for Economic Co-operation and Development (OECD). Colombian entities that, during a fiscal year, carried out transactions with related entities located abroad, related entities located in free trade zones, and/or related entities or third parties located in non-cooperating jurisdictions or in low- or no-tax jurisdictions, must determine their revenues, deductible costs and expenses.

Entities must use prices and profit margins that would have been used in comparable transactions with or between unrelated parties. The taxpayers have to file an annual transfer pricing return and prepare a transfer pricing analysis. Law 1819 of 2016 determines that some taxpayers have to file the master file and country-by-country report.

7.2 Withholding tax on passive income

Royalty and rent payments made by Colombian resident entities to foreign companies are subject to withholding tax at a rate of 20%
In the case of dividends paid to a foreign company, the withholding tax rate is 7.5%. The distribution of dividends to foreign individuals or companies from profits not taxed at the corporate level is subject to the following rates:

Year	Tax rate
2019	38.025%
2020	37.100%
2021	36.175%
After	35.250%

7.3 Withholding tax on service fees

Fee payments for consulting, technical assistance and technical services are subject to a 20% withholding tax rate. Under a double taxation treaty, a non-resident may be able to claim an exemption from Colombian income tax if the entity does not have a permanent establishment in Colombia.

8.0 PAYROLL TAXES

8.1 Colombian general pension system

Employers and employees are liable to make contributions to the general pension system. The employer's contribution is equal to 12% of the employee's monthly salary. The employee contributes up to 6% of their monthly salary. The employer is responsible for withholding the employee's contribution. The maximum contribution base is 25 minimum monthly wages, which is COP $19,531,050.

8.2 Health care contributions

Contributions to government health care entities are paid on a monthly basis and are equal to 12.5% of the employee's salary, of which 8.5"% is assumed by the employer and 4% by the employee.

8.3 Payroll taxes

Employers must contribute 9% of their total payroll every month into payroll taxes, which includes 3% to the Colombian Family Welfare Institute 2% to the National Apprenticeship System and 4% to the Family Funds. Under specific circumstances, payroll tax is not applicable for employees who earn less 10 minimum legal monthly wage, which is approximately US$ 2,760.

9.0 INDIRECT TAXES

9.1 Value-added tax (VAT)

Value-added tax is an indirect national tax on (i) services rendered in Colombia and from abroad; (ii) sales and imports of physical movable goods; (iii) sales or transfers of intangible assets related to industrial property; and (iv) gambling sales and operations, except for lotteries and online gambling. As a general rule, VAT does not apply to the sale of fixed assets and export of good and services.

The general VAT rate is 19%. However, some goods or services are subject to rates of 5% or 0%. VAT is not applicable when the goods/services have been expressly excluded (not taxed) or exempted (0% rate). In the case of exporters and producers of exempt goods/services, input VAT can be recovered via a tax refund.

9.2 Annual property tax

There is an annual property tax on the ownership of real estate; the rate will vary depending on the value and authorized use of the land.

The annual property tax varies by municipality, but it typically ranges between 0.3% and 1.6%. If the land is not urbanized, a maximum of 3.3% tax rate might apply.

9.3 Industry and commerce tax

Industry and commerce tax accrues on the performance of commercial or industrial activities or the rendering of services within a municipal jurisdiction. The rate varies depending on the activity or service involved. The highest rate is 1.4% on total revenues.

9.4 Financial transactions tax

Financial transactions tax is accrued by the performance of financial transactions any time there is a debit in an account held in a local bank. The financial transaction will be subject to a tax rate of 0.4%.

9.5 Registration tax which applies to documents

Legal acts registered with the Chamber of Commerce are subject to a tax of 0.3% to 0.7% on transaction amounts stated in the document. Documents registered with the Register of Public Deeds are subject to a tax of 0.5% to 1% on the transaction amounts stated in the document or the value of real estate.

Costa Rica

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1.0 OVERVIEW

The Costa Rican tax system is based on the principle of territoriality, according to which only income received from a source within Costa Rican territory, or income that involves the use of the country's infrastructure, is taxed.

The Simplified Tax Regime applies to very small taxpayers, with simple businesses or economic activities. Taxpayers eligible for this regime pay a lower tax rate. Conversely, taxpayers with high incomes or large, complex businesses are classified as "large taxpayers" or "large territorial companies." These taxpayers typically pay a higher rate.

Separate tax administrations handle ordinary taxpayers, Simplified Tax Regime taxpayers and large taxpayers. Each geographic region also has its own tax administrations for each category of taxpayer.

2.0 LEGAL SYSTEM

The Costa Rican Code of Tax Norms and Procedures contains general regulations concerning national taxes. Additionally, there are special laws and bylaws, such as the Income Tax Law and the General Sales Tax Law, as well as their associated regulations.

3.0 TAXATION AUTHORITIES

The main authority on tax-related matters is the Ministry of Finance, which is divided into the General Customs Administration and the General Tax Administration. The latter is responsible for the collection of taxes, and it is further subdivided into several divisions, among which are the regional tax administrations.

4.0 BUSINESS VEHICLES

Non-residents may choose to incorporate a Costa Rican business vehicle (legal entity) to conduct business in Costa Rica, or to operate directly through a foreign entity with or without setting up a permanent establishment locally. Costa Rican business vehicles are partnerships, either a limited liability company (SRL) or a limited (SA). Although it is legally possible to set up a trust to conduct business in Costa Rica, the structure is rarely used due to its complexity.

4.1 Partnerships

The fiscal treatment of SAs and SRLs is essentially the same. From a tax standpoint, there is only one difference between them: Loans granted to stakeholders of an SRL are not deductible to determine the taxable income, as they are deemed comparable to dividends. Therefore, these kinds of loans to stakeholders are subject to a 15% withholding, whereas loans granted to stakeholders of an SA can be deductible.

For income tax purposes, the relevant criterion is the location of the source of income.

4.2 Corporations

An SA can be owned by local or foreign persons or legal entities and can be managed by local or foreign persons. If none of the directors are Costa Rican citizens, a resident agent must be appointed. The resident agent will be a licensed attorney residing in Costa Rica who is authorized to receive all communications addressed to the directors.

It is necessary that the entity has a nominative capital stock represented by shares. The capital stock may be paid in cash, kind or letters of exchange, among other methods.

4.3 Limited liability corporations

In the case of an SRL, there is a condition protecting current stockholders in the event a stockholder wishes to sell its shares of stock, consisting of a right of first refusal for current stockholders to purchase the stock being sold. A general stockholders meeting must be held in order to authorize the sale of the shares.

As previously mentioned, there are no major differences in the fiscal treatment of an SA or an SRL, with the exception of the treatment of loans granted to stakeholders.

4.4 Foreign corporation (with or without a Costa Rican branch)

A foreign corporation that carries out business in Costa Rica is subject to taxes in respect of such income. Moreover, Costa Rican legislation provides that certain activities carried out by a non-resident constitute commercial activities subject to taxes in Costa Rica.

Should the foreign corporation be domiciled in a country that has entered into a double taxation treaty with Costa Rica, it may be exempted or granted differential rates, with the exception of foreign corporations operating through a permanent establishment, in which case income is generally subject to taxes in Costa Rica.

Costa Rican legislation taxes remittances abroad (to non-domiciled persons or entities) at rates that vary depending on the nature of the payment.

5.0 FUNDING A LOCAL SUBSIDIARY

5.1 Equity financing

5.1.1 Contributions for shares

If an investment is made in a Costa Rican entity in exchange for shares, the amount of the investment is added to the entity's "stated capital" account. Subject to certain adjustments, a corporation's stated capital is generally the same as its paid-up capital for tax purposes.

5.1.2 Contributions without taking additional shares

When an equity contribution is made by a shareholder in an entity incorporated in Costa Rica, a general shareholders meeting must be held in order to document the interest in increasing the capital stock by modifying the value or amount of existing shares. From a tax perspective, this is the best option.

The contribution can also be made as additional paid-up capital, which does not increase the capital stock but must be made for a short term.

5.1.3 Distribution of paid-up capital

A corporation is allowed to make refunds of its paid-up capital to a non-resident shareholder without incurring Costa Rican withholding tax. In contrast, withholding tax must be paid on the distribution of profits that have not been converted into declared capital stock.

5.2 Debt financing

5.2.1 Withholding tax implications

Costa Rican corporations are permitted to borrow funds from related third parties, which must be very well-documented with a contract and a real guarantee. Should the lender be based abroad, interest will be subject to a 15% withholding tax.

The remainder of the payment (amortization) is not subject to withholding.

The withholding tax rate can be reduced or eliminated based on an applicable double taxation treaty.

5.2.2 Thin capitalization

There are no thin capitalization rules in Costa Rica.

5.3 Stamp tax

A stamp tax of 0.5% must be paid on most documents used in courts or public offices and for many private transactions, including deeds and mortgages, among others.

6.0 CORPORATE INCOME TAX

Costa Rica's income tax system is based on the territoriality principle. Therefore, only Costa Rican–sourced income is subject to income tax in Costa Rica, regardless of the taxpayer's nationality, domicile or place of incorporation.

Income from Costa Rican sources consists of income derived from services rendered, capital used and properties located within Costa Rica. Income tax rates are applied as set forth below.

6.1 Income tax rates

Income tax rates for both companies and individuals are calculated on a progressive scale depending on gross income. In case of legal entities, income tax ranges from 10% to 30%. For individuals, it ranges from 10% to 25%.

Corporations generating Costa Rican–sourced income are generally subject to a 30% income tax. Small companies are entitled to lower tax rates.

Deductions include all necessary expenses for the production of taxable income.

Currently, the ordinary fiscal period begins on October 1 of a year and ends on September 30 of the next year (12 months). Starting January 2020, all entities will have a calendar-year fiscal period, from January 1 to December 31.

6.2 Capital gains

Capital gains are now taxed at a 15% rate. Capital gains are defined as income derived from the transfer of moveable goods or real-property assets. In the case of taxpayers whose normal activity is the sale of real property, those gains would be subject to income tax. Also, if the taxpayer sells an asset subject to depreciation and has effectively depreciated the asset, the capital gain would be subject to income tax.

6.3 Corporate/legal entity tax

All legal entities must pay annual corporate tax in January of each year. "Legal entities" include all of the following companies that are registered with the Registry of Legal Entities of the National Registry, or will be registered in the future:

i. Mercantile companies

ii. Branches or representatives of foreign companies

iii. Limited individual companies of responsibility.

A new legal entity must pay taxes proportionally as of the filing of its deed of incorporation with the National Registry.

Tax rates range from 15% to 50% of a "base salary" (an amount statutorily determined by the government to calculate certain fines and penalties), depending on certain conditions of the entity and its income.

6.4 Income tax exemptions

Government, municipal and decentralized government entities, religious institutions, cooperatives and nonprofit organizations are exempt from paying income tax.

Some sources of income are also exempted from the payment of income tax, including capital contributions, income from assets or capital located outside Costa Rica, inheritances, lottery winnings and donations received by authorized entities.

6.5 Dividend tax

Dividends paid to local and foreign companies and individuals are subject to a 15% withholding tax.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

Costa Rica's transfer pricing regulation sets forth the rules to be observed by economic groups (both national and international) in establishing the conditions under which their operations will be regulated. It creates an obligation for Costa Rican entities that are members of economic groups to file an informative declaration in which they report the structure of their group and the conditions or methods that were observed to determine the conditions of their operations.

This implies the need for the entities to have a transfer pricing study performed, which determines the methods used to set the conditions and the reasons for the prices agreed among the related entities for their transactions, which are different from those agreed upon with independent parties.

The regulation provides for the conditions that must be verified to confirm that an entity is part of an economic group and, therefore, its transactions with the other related entities must comply with the rules.

The framework principle of transfer pricing is also defined, which is the principle of free competition, according to which the terms and conditions of those transactions that take place between members of the same economic group must be meet the same terms and conditions as transactions between independent parties.

Covered entities are required to perform a transfer pricing study to prove compliance with the principles of free competition in their transactions.

7.2 Tax on remittances abroad

Costa Rican–sourced income paid to beneficiaries domiciled abroad is subject to withholding tax in Costa Rica. Applicable tax rates depend on the type of income:

i. Dividends: 15%

ii. Interest, commissions and other financial expenses: 15%

iii. Technical assistance: 25%

iv. Payments for the use of patents, supplies of formulas, trademarks, privileges, franchises and royalties: 15%.

Some types of Costa Rican–sourced income are considered "special cases." Examples include interest and commissions on loans invested or used in Costa Rica, and income generated by the export of goods.

8.0 PAYROLL TAXES

Employees' salaries and wages exceeding the amount set out by law are subject to income tax at rates ranging from 0% to 25%. Employers must act as withholding agents of this tax.

9.0 INDIRECT TAXES

9.1 Value-added tax (VAT)

The current general sales tax will become a value-added tax (VAT) starting July 1, 2019, charged on the sale, import or transfer of goods and provision of all services (except specific exemptions, such as private education and public transportation).

The taxpayer is any individual or company who, on a regular basis, sells merchandise or provides services subject to sales tax. These include imports.

The current sales tax in Costa Rica is 13%, with reduced rates for certain goods and services. The tax is levied on all merchandise and services. Certain products are exempt from the general sales tax, such as basic food items. The current sales tax will be replaced by a VAT of 13%.

9.2 Selective consumption tax

Selective consumption tax applies the stage of commercialization, at the industrial level or upon an import's entry into the country. It is intended to reduced demand for articles whose consumption is considered non-essential or dispensable.

The tax applies only to specific list of products, which includes, among others, beer, wine and liquors; paints and coatings; cigarettes; haircare products (e.g., shampoos and hair conditioners); deodorants and perfumes; detergents and soaps; pneumatic tires and engines; refrigerators and freezers; washers; automotive vehicles and motorcycles.

9.3 Property transfer tax

The transfer tax is equivalent to approximately 1.5% of the highest of the transfer price or the property's registered value. Eligible taxpayers must declare, at least every five years, the value of their property to the municipality where it is located.

The tax period runs from January 1 to December 31. Payments may be made on an annual, semiannual or quarterly basis.

9.4 Tax on luxury residences

Luxury residential properties valued at more than CRC 121 million are subject to the Solidarity Tax for the Strengthening of Housing Programs, a progressive tax that ranges from 0.25% to a maximum tax rate of 0.55%. This tax is paid annually.

10.0 OTHER TAXES

10.1 Property tax

Property taxes will be equivalent to 0.25% of the property's registered value. This tax is paid annually to the municipality in which the property is located.

10.2 Operation permit tax

Any lucrative activity that is exercised in a municipal territory must have an operation permit, which is obtained by paying a tax. The tax regularly applies to a combination of gross and net income. Rates vary by municipality. This tax must be paid for as long as the lucrative activity is carried out or the license is held.

11.0 TAX INCENTIVES

11.1 Free Trade Zones

The Free Trade Zone Regime (RZF) is the pillar of Costa Rica's export strategy and investment promotion. It consists of a series of incentives and benefits granted by the Costa Rican government to companies seeking to make new investments in the country. Incentives may include exemptions from certain taxes as high as 100%.

Companies that can apply to the Free Trade Zone Regime include the following:

i. Service export companies

ii. Scientific research companies

iii. Strategic sectors or companies

iv. Significant suppliers

v. Services or manufacturing projects.

11.2 Tourism Incentives Law

This law grants incentives and benefits that promote the development of important tourism programs and projects, for services such as the following:

i. Hotel services

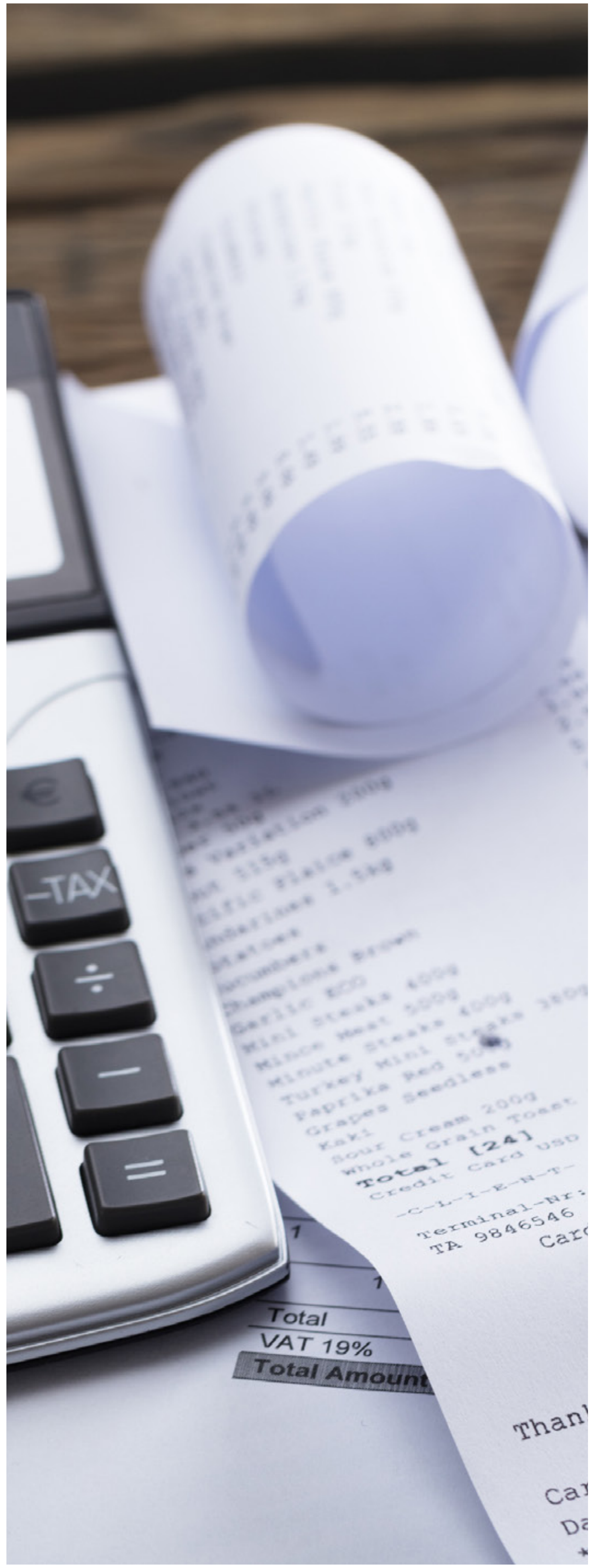
ii. Air transport for domestic and international tourists

iii. Water transport for domestic and international tourists

iv. Receptive tourism of travel agencies that are exclusively dedicated to this activity

v. Renting of vehicles to domestic and international tourists.

One benefit granted by this law is the exemption from all taxes and surcharges applied to the import or local purchase of articles necessary for installing or operating new companies, the offer of new services and the construction, expansion or renovation of real property. Motor vehicles and fuel are not eligible for this exemption.



France

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1.0 OVERVIEW

France imposes personal income tax on individuals resident in France in respect of their worldwide income and on non-residents in respect of French-source income. France has a territorial tax system with regard to corporate tax, which applies on profits allocable to a French business and on French-source income.

The French Tax Code also imposes a withholding tax on dividends distributed to non-residents and on certain interest payments, rents, royalties or management fees sourced in France. France has an extensive double tax treaty network that may reduce or eliminate French withholding tax on certain types of income.

As a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI), France has agreed to adopt the minimum standards (principal purpose test and dispute resolution) as well as certain optional provisions. The ratification process has been completed and the convention became effective on January 1, 2019.

In addition to income tax, a turnover tax (VAT) is levied at the national level on goods and services supplied in France. Transfers of real estate properties and businesses may also incur transfer taxes.

2.0 LEGAL SYSTEM

France operates under a civil law legal system. French law is characterized by its division into two branches: public law and private law. Private law regulates disputes between private individuals, such as in civil, social and commercial cases. Private law litigation is settled in judicial courts, while litigation between private individuals and the state administrations is settled before administrative courts.

3.0 TAXATION AUTHORITIES

The tax system in France is administered by the Public Finance Department, which administers local taxes and/or sales tax for a number of local communities. The Public Finance Department is also in charge of auditing individual and corporate taxpayers.

4.0 BUSINESS VEHICLES

A non-resident may either establish a French business vehicle to carry on business in France or operate directly through a foreign entity (with or without a French permanent establishment). French business vehicles include corporations (limited liability) and partnerships (unlimited liability).

4.1 Partnerships

A partnership is generally treated as transparent for French tax purposes. The tax basis is determined by the partnership's net profits, but the tax is levied at the partner level based on their proportional share in the partnership profits. Subject to certain conditions, a partnership may opt for being subject to corporate tax. The liability of partners in a partnership is unlimited. There are no minimum share capital requirements for a partnership. Depending on its nature, a partnership may carry out a civil or commercial activity.

4.2 Corporations

4.2.1 Limited liability companies (SARL)

Limited liability companies *(société à responsabilité limitée)* are generally used for small and medium businesses. This corporate form is one of the most widely used in France due to the absence of minimum share capital requirements. SARLs can be created by one or more shareholders, and the shareholders are not liable for the SARL's debts.

Generally, SARLs are subject to corporate tax. However, if the SARL is formed by members of the same family, shareholders may opt to be personally subject to income tax on their share of the net profits of the SARL.

4.2.2 Joint stock companies (SA)

Joint stock companies *(société anonyme)* are generally used for larger businesses. SAs are the only French companies that can be listed. The minimum share capital to create an SA is €37,000. Non-listed SAs must have at least two shareholders and listed SAs must have at least seven shareholders. Shareholders of an SA are not liable for the corporation's debts. SAs are also subject to corporate tax.

4.2.3 Simplified joint-stock companies (SAS)

This company form *(société par actions simplifiée)* is widely used in France due to its flexibility. The rules around organization and operation are determined by the shareholders at the time of creation. SASes cannot be listed, but they can be created by only one shareholder, and they have no minimum share capital requirement. SASes are subject to the corporate tax. Subject to conditions, they may opt to be tax transparent.

4.3 Foreign corporations

A foreign corporation may be subject to French corporation tax on profits derived from a business carried on in France. A foreign corporation is said to be carrying on a business in France if it has a permanent establishment, a dependent agent or a 'complete commercial cycle' in France.

Where the foreign corporation is resident in a country with which France has a double-tax treaty, the foreign corporation will generally be exempt from French taxation on its business profits, unless it carries out its activity in France through a permanent establishment.

5.0 FINANCING A CORPORATE SUBSIDIARY

5.1 Contributions for shares

Where an equity investment is made into a French corporation in exchange for shares, the amount of the investment is added to the corporation's stated capital account. Contributions in cash upon incorporation of a company are in principal exempt from stamp duty.

5.2 Debt financing

5.2.1 Withholding tax implications

French corporations are permitted to borrow funds from related or unrelated third parties without tax implications (subject to the limitations below). Furthermore, there are no French tax implications on the repayment of the principal amount of such debt. Interest payments made by a French resident corporation to a non-resident lender are exempt from withholding tax, unless such payments are made in a non-cooperative jurisdiction[1], in which case a 75% withholding tax applies.

5.2.2 Limitations to interest tax deductibility

French tax law provides for two sets of rules that restrict the tax deductibility of financial expenses. The first restriction relates to financial expenses incurred under related-party loans, and the second provides for a general deduction limitation.

In the case of related-party loans, there is a maximum interest rate limitation. The tax deduction of interest expenses paid to direct and indirect shareholders is in principle limited by reference to a maximum fiscal interest rate provided for by the French Tax Code, which is currently approximately 1.55%, unless the relevant lending shareholder(s) qualifies as a related party to the borrowing entity, in which case a higher rate may be applied if it can be justified that it is a market rate.

There is also an anti-hybrid limitation, where interest due to a related-party lender that is not subject to a minimum taxation (currently, at least 7.75%) at the level of the lender is not tax deductible for the borrower.

The second restriction is a general deduction limitation. As of 2019, there is a general capping mechanism, where the deduction of net financial expenses (NFE) is limited as per the provisions of the European Union Anti-tax Avoidance Directive, as implemented in the French legislation. NFEs are deductible to the extent they do not exceed 30% of the borrower's EBITDA, and are fully deductible if they do not exceed €3 million per financial year.

NFE is defined as the excess of the financial expenses incurred by the taxpayer over its financial revenues. The financial expenses and financial income include any interest paid/received in respect of any type of indebtedness and claims.

In addition to being able to deduct 30% of the borrower's EBITDA, the taxpayer, to the extent it belongs to a consolidated group, may deduct 75% of the non-deducted NFE, if its ratio of own funds to total assets is equal to or higher than the own funds to total assets ratio of the group to which it belongs.

5.2.3 Thin capitalization rules

As an exception to the above rules, a portion of NFEs related to the interest paid to affiliates is deductible only to the extent it does not exceed 10% of the EBITDA, if the taxpayer is thinly capitalized, and is fully deductible if it does not exceed €1 million per financial year.

The taxpayer is deemed to be thinly capitalized if its affiliated debts to own funds ratio exceeds 1.5 to 1. The affiliated debts corresponding to a group centralized cash management tool are not taken into account.

The taxpayer would be still entitled to the 30% EBITDA deduction if one of the below conditions is met:

1 The list of non-cooperative jurisdictions is established by the French tax authorities and in general, updated each year. Currently, this list includes the following jurisdictions: Botswana, Bruneï, Guatemala, Marshall Islands, Nauru, Niue, Panama.

i. The affiliated debts to own funds ratio of the consolidated group to which it belongs is higher than its own ratio

ii. The taxpayer is a credit institution or is eligible as a specialized financing entity.

6.0 CORPORATE INCOME TAX

The current corporate tax rate is 31%. A reduced rate of 15% applies to small and medium corporations with net taxable profits below €38,120. The corporate tax rate is due to be reduced until 2022 as follows:

- 28% in 2020
- 26.5% in 2021
- 25% from 2022 onwards

In addition to corporation tax, a social surtax of 3.3% applies to taxpayers, where their corporate tax liability of the relevant fiscal year exceeds €763,000. The surtax is assessed on the principal amount of the corporation tax due.

6.1 Capital gains

Resident French entities are in principle subject to French corporate tax at the standard rate with respect to capital gains derived from the sale of shares in other companies. However, the disposal of shares that qualify as investment shares and which have been held for at least two years at the time of the sale may be exempt up to 88% of their amount, so that only a 12% fraction of the gain remains subject to corporate tax at the standard rate.

The above does not apply in respect of shares in real estate companies where the company's assets comprise mainly of real estate (other than real estate allocated to a commercial or industrial activity). Capital gains on the disposal of such shares remain subject to corporate tax at the standard rate.

Non-resident entities are also generally taxable on the disposal of "taxable French property," which includes *inter alia:*

i. Real or immovable property located in France

ii. Property (including goodwill) used or held by a taxpayer in a business carried out in France

iii. Inventory forming part of a business in France

iv. Shares in French real estate companies

v. Shares in French companies that are subject to corporation tax, where the non-resident entity holds directly or indirectly 25% of the share capital of the relevant entity.

6.2 Branch remittance tax

After-tax profits of a French branch of a foreign company are deemed to be distributed to non-residents and are subject to a 30% branch tax. This tax may be reduced or eliminated under applicable tax treaties and is not due if the foreign company is located in another European Union (EU) member state or a member state of the European Economic Area.

6.3 Computation of taxable income

6.3.1 Taxable base

A taxpayer is subject to tax on its profits from carrying on its business. Profit is generally considered to be its revenues less its deductible expenditures. Subject to certain conditions (i.e., direct or indirect shareholding of at least 95% of the share capital of the relevant entities), the parent company of a group of companies may consolidate for corporate tax purposes, the net profits and/or losses of all or part of the French companies that are members of the same group. In this case, corporate tax is assessed in the hands of the parent company on the net consolidated result of the group.

6.3.2 Deductions

A taxpayer is generally permitted to deduct its current expenses in computing business income. As a general rule, capital expenses are not deductible. Moreover, the tax deductibility of certain expenses such as financial expenses may be specifically limited by the French tax law.

Ordinary tax losses may be carried forward indefinitely, but may be offset against the taxable profits of a given fiscal year only up to an amount of €1 million, plus 50% of the taxable result in excess of that threshold. Tax losses may be carried back for one year in certain cases, up to €1 million.

6.4 Income tax reporting

French resident corporations and non-resident corporations that carry on business in France are required to file an annual corporate tax return. The annual corporate tax return must in principle be filed within three months following the end of the relevant fiscal year (the applicable deadline is four months if the fiscal year corresponds to the calendar year). Installment payments are required in respect of current-year taxes, and interest on any unpaid tax balance up to 0.2% per month of delay.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

France's transfer pricing regime generally conforms to the arm's length principle of the Organisation for Economic Co-operation and Development (OECD). The price set between related parties should be the same as the price that two unrelated arm's length parties would agree to. The French legislation allows the administration to ensure compliance with this principle and to adjust pricing when benefits have been indirectly transferred abroad, either through the increase or decrease of sale prices, or by any other means. Companies exceeding certain thresholds must maintain contemporaneous transfer pricing documentation.

7.2 Withholding tax on services fees

Amounts paid by a debtor established in France to a foreign company, in remuneration for certain services rendered or used in France or intellectual property products, are subject to withholding tax in France where the foreign company does not have a permanent professional facility in France. The applicable rate is the standard corporate tax rate and tax is levied on the gross amount paid, excluding VAT. The applicable rate may be increased to 75% for some of the amounts paid to persons established in a non-cooperative jurisdiction (see above).

8.0 PAYROLL TAXES

Employers are required to pay, in addition to salary, social security contributions that cover: sickness insurance, maternity insurance, invalidity insurance, death and basic retirement insurance, and employment insurance contributions. Employees also contribute to social security and amounts are collected and remitted by the employer to various organizations. The contributions of both the employer and the employee are calculated on the employee's gross earnings. Contributions amount in average to approximately 40% for employers and to approximately 25% for employees.

9.0 INDIRECT TAXES

9.1 Value-added tax (VAT)

France follows the EU legislation on value-added tax. The current VAT rate in France is 20% and is imposed on the final domestic consumption

of most goods and services supplied in France. For EU-based companies, VAT is chargeable on most sales and purchases within the EU. VAT is not charged on exports to jurisdictions outside the EU. A reduced rate of 10% is applied to some food products, pharmaceutical products, and domestic passenger transport. A second reduced rate of 5.5% is applied to goods or services considered in the good interests of society, including some food products, school canteens, medical equipment for disabled persons, and some domestic care services. The rate of 0% is applied to intra-community and international transport.

Entities and individuals (including non-residents) that are involved in taxable supplies in France in the course of a commercial activity are required to register for and charge, collect and remit VAT on such supplies. Each registrant that makes taxable supplies is generally entitled to recover any VAT paid on its inputs. Subject to certain exceptions, input VAT incurred by a taxpayer in the course of its commercial activity is generally deductible from its output VAT.

10.0 OTHER TAXES

10.1 Local economic contribution (CET)

The CET includes two specific taxes. The first is the company property tax (*cotisation foncière des entreprises*) (CFE), which is based on the rental value of the properties owned by the taxpayer. The second is the contribution on added value *(cotisation sur la valeur ajoutée des entreprises)* (CVAE), which is levied at a progressive rate ranging between 0% (turnover not exceeding €500,000) and 1.5% (turnover exceeding €50 million).

10.2 Land tax

The land tax on built properties applies to taxpayers that own buildings fixed to the ground. New constructions, reconstructions and additional constructions can be exempt from this tax for two years. The rate of the land tax may vary depending on the location of the taxable property, and the tax is assessed on the rental value of the taxable property, as determined by the tax authorities.

10.3 Transfer taxes

The sale of real estate property generally gives rise to real estate transfer tax at a maximum rate of 5.8% (plus a 0.1% real estate security contribution), assessed on the sale price. The transfer of a going concern, or operating business, is subject to a 5% transfer tax.

The sale of shares in an SARL or a partnership is subject to a 3% transfer tax, whereas the sale of shares in an SA or SAS is subject to a 0.1% transfer tax. The applicable rate is increased to 5% where the company whose shares are transferred qualifies as a real estate company. For transfer tax purposes, a real estate company is a company whose assets mainly comprise real estate.

A financial transaction tax of 0.3% applies to transactions related to shares of listed companies established in France and having a market capitalization exceeding €1 billion.

Germany

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1.0 OVERVIEW

Germany is one of the largest countries in Europe with a population of more than 80 million. The constitutional form is the Federal Republic of Germany, comprising 16 federal states and a large number of municipalities.

The German tax system is generally considered to be quite complex. Taxes are levied by the federal government, states and municipalities. Corporations having their registered seat or actual place of management in Germany are subject to corporate income tax (CIT), and individuals having their domicile or habitual abode in Germany are subject to income tax, in both cases on their worldwide income (unlimited tax liability). Non-residents are only taxed on German-source income (limited tax liability).

The statutory CIT rate is 15%, plus a solidarity surcharge of 5.5% thereon, resulting in an overall CIT rate of 15.825%. In addition, corporations are subject to trade tax (TT) levied by the municipalities at a rate depending on a local multiplier. It typically ranges between 7% and 17%. The combined CIT and TT rate therefore ranges from about 23% to about 33%, depending on where in Germany the corporation maintains its permanent establishment(s).

The income tax rate for individuals is progressive based on annual income. A taxpayer's first €9,168 of income is tax-free; thereafter, the income tax rate starts at 14%, plus a solidarity surcharge of 5.5% thereon, resulting in an overall IT rate of 14.77%. It progressively increases to 42% plus a solidarity surcharge of 5.5% thereon, resulting in a maximum overall rate of 44.31% for annual income above €55,961. For annual income above €265,327, the income tax rate is 45% plus a solidarity surcharge of 5.5% thereon, resulting in an overall rate of 47.475%. All of the effective rates are for the 2019 taxation year. Trade income earned directly or through trading partnerships by individuals are also subject to TT as described for corporations. However, individuals can credit the TT against their income tax liability up to a TT rate of 13.3%.

Dividends distributed by a German-resident corporation are generally subject to 25% withholding tax (WHT), plus a solidarity surcharge of 5.5% thereon, resulting in an overall rate of 26.375%. Depending on the circumstances, German-residents receiving dividends either pay WHT as a lump sum tax so that the dividend income does not form part of their income tax base, or as a prepayment on their individual or corporate income tax liability, meaning they can credit the WHT against their individual or corporate income tax liability. For non-residents who receive dividends, the WHT is in general a lump sum tax, which can only be reduced or refunded under applicable double taxation treaties or EU directives, in each case subject to the German anti-treaty shopping provisions.

Value-added tax (VAT) is payable on most services rendered and supplies effected within Germany at a general rate of 19% and at a reduced rate of 7% for certain goods and services. Real estate transfer tax (RETT) is imposed on a number of transactions involving real estate located in Germany. The RETT rate ranges from 3.5% to 6.5% depending on the state in which the real estate is located.

2.0 LEGAL SYSTEM

Germany has a civil law system. The highest source of all law is the Grundgesetz (GG), Germany's constitution, which also lays out the principles governing the German tax system. German taxation is mostly based on federal law contained in the various tax codes. The General Tax Act (GTA) contains a number of general definitions, establishes the basic rights and duties of taxpayers and regulates the basic administrative procedures for all types of taxes. The Income Tax Act (ITA) and the Corporate Income Tax Act (CITA) contain specific provisions for their respective taxes. These codes are supplemented by a multitude of guidelines and circulars issued by the Federal Ministry of Finance and state tax authorities. These guidelines and circulars are binding for the respective tax authorities, but not binding for taxpayers or courts.

The German court system is independent and fully available for German and foreign companies and individuals. The judiciary consists of three types of courts:

i. Constitutional courts
ii. Ordinary courts responsible for all civil and criminal matters
iii. Specialized courts such as labor courts, administrative courts, tax courts and social courts.

There are two levels of tax courts, which only hear tax-related cases: the lower tax courts and the Federal Tax Court (FTC). The FTC is Germany's highest tax court and serves as a court of appeal. Germany's legal system does not have a doctrine of binding precedent that is present in common law systems.

Taxpayers can only submit a case to tax courts once they have (wholly or partially) unsuccessfully filed an administrative appeal with the competent tax authority. The administrative appeal procedure is meant to give tax authorities the possibility to rethink and, where necessary, correct their own decisions.

3.0 TAXATION AUTHORITIES

Germany's tax administration is divided into federal tax authorities, state tax authorities and municipal tax authorities.

The federal tax administration encompasses the Federal Ministry of Finance (Bundesfinanzministerium, BMF) as the highest federal tax authority, as well as subordinate federal tax authorities such as the Federal Central Tax Office (Bundeszentralamt für Steuern, BZSt). Its responsibilities include WHT refunds and reductions as well as VAT refunds for non-residents.

Local tax offices form part of the state tax administration. They administer most federal and state taxes and process most tax returns and tax assessments. Municipal tax authorities are mainly responsible for collecting municipal taxes such as the TT.

4.0 BUSINESS VEHICLES

A non-resident may either establish a German business vehicle to carry on business in Germany or operate directly through a foreign entity (with or without a German permanent establishment). Germany has a variety of business vehicles. In general, German business vehicles can be divided in partnerships, corporations and others (such as hybrids).

There are significant legal and tax differences between corporations and partnerships. Corporations generally provide for limited liability of their shareholder(s), while partnerships generally require unlimited liability of at least one of their partners. Further, corporations are required to have a certain minimum share capital due to their limited liability. This does not apply for partnerships since at least one partner is subject to unlimited personal liability and is required to use its personal property to satisfy creditors. A corporation can have one or more shareholders. A partnership requires a minimum of two partners and ceases to exist if only one partner remains.

The main difference between corporations and partnerships for tax purposes is that corporations are non-transparent, and taxed at the corporate level. Partnerships are transparent for individual and corporate income tax purposes, meaning any taxable profits or losses are directly attributed to the partners personally, with those taxes levied at the partner level. For TT purposes, so called non-trading partnerships are transparent with TT (if applicable in such case) levied at the partner level, whereas for trading partnerships (and deemed trading partnerships), TT is levied at the partnership level. For VAT purposes, most partnerships are not transparent, meaning VAT is levied at the partnership level and not at the level of the partners personally.

4.1 Partnerships

German law offers several types of partnerships. The most common ones are the simple partnership (GbR, in its German acronym), the general partnership (OHG) the limited partnership (KG) and the so-called GmbH & Co. KG.

A GbR is the simplest form of a partnership. It is based on a written or oral partnership agreement between the partners in order to support a purpose jointly pursued by the partners. All partners are fully personally liable for the partnership's liabilities. No minimum capital or registration in the commercial register is required. Nevertheless, it is recognized that the GbR can establish legal relations and is able to acquire rights and incur obligations of its own.

An OHG is a commercial partnership established by the partners for the purpose of operating a commercial business. The OHG has to be registered in the commercial register and all partners are fully personally liable for the partnership's liabilities. The partnership may, under its firm name, acquire rights, incur obligations and sue or be sued in court.

The KG is a special form of commercial partnership insofar as it has two different kinds of partners. One or more general partner(s) manage and represent the KG and are fully personally liable for the partnership's liabilities. In addition, there are one or more limited partners, whose personal liability is essentially limited to the amount of their fixed capital contribution to the partnership. The legal nature of the KG is identical to that of an OHG.

The GmbH & Co. KG is used often for foreign investments in Germany because it combines the advantages of a corporation with those of a partnership. It is not a distinct legal form, but a combination of a KG and

a GmbH (a corporation, see below). The only general partner of the KG is a GmbH, which very often (but not necessarily) has a 0% interest in the KG. The GmbH itself does often not have any assets besides the minimum capital in cash and does not conduct any business besides being fully personally liable for the KG's debt and managing and representing the KG. The actual investor(s) often hold 100% of the interest in the KG as limited partner(s) as well as 100% in the GmbH. This method allows investor(s) to invest through a fully or partially transparent entity, while at the same time enjoying limited personal liability. The GmbH & Co. KG can be better understood as an alternative to limited liability partnerships (LLPs) or limited liability corporations (LLCs) found in other jurisdictions.

4.2 Corporations

The majority of German corporations are incorporated as a private limited company (GmbH), whereas a stock corporation (AG) is a corporation traditionally (but not necessarily) used for large publicly held enterprises.

A GmbH may be established by one or more shareholders who may be individuals, partnerships or other corporations. The minimum share capital of a GmbH is €25,000. The liability of its shareholders is limited to the amount of their subscription to the share capital. It comes into legal existence in general upon registration with the commercial register. GmbHs must have one or more managing directors who manage and represent the company. Only individuals can be managing directors. The establishment and the subsequent transfer of the shares in a GmbH require the involvement of a German notary, giving rise to notarial fees.

An AG may be established by one or more shareholders and requires a minimum share capital of €50,000. The major distinction between a GmbH and an AG is that the shares of an AG may be publicly traded on a stock exchange. The establishment of an AG requires the involvement of a German notary, whereby the shares can later be transferred by a simple written or oral contract. Unlike the GmbH, the AG has a mandatory two-tier system, consisting of a management board and a supervisory board, which makes this legal form more cumbersome than a GmbH from a day-to-day operations standpoint.

In addition, there is the European Stock Corporation, or Societas Europaea (SE). The SE is an EU-based form of stock corporation that may be used in Germany as well as in all other European countries.

4.3 Foreign business vehicles

To determine whether a foreign business vehicle is treated as a partnership or corporation for German tax purposes, it is necessary to compare the legal features of the foreign business vehicles with German corporations on the one hand, and German partnerships on the other hand. Some foreign business vehicles are always treated as corporations for German tax purposes, because their legal framework makes them very similar to a GmbH or AG. Others are always treated as partnerships for German tax purposes, because their legal framework makes them very similar to an OHG or KG. However, for some foreign business vehicles, notably LLCs from various jurisdictions, it is necessary to conduct an in-depth analysis of the respective corporate and shareholder agreements to determine whether the entity should be treated as a partnership or corporation for German tax purposes. Factors to consider include the transferability of the shares and the capital contribution obligations.

5.0 FINANCING A CORPORATE SUBSIDIARY

5.1 Equity financing

5.1.1 Contributions for shares

Where an equity investment is made into a German corporation in exchange for shares, either when establishing the corporation or by way of a so-called "capital increase," the amount of the investment is either added to the corporation's share capital or partially to the share capital and partially to the capital reserves.

5.1.2 Contributions without taking additional shares

Where an equity contribution is made by a shareholder to a German corporation without the issuance of additional shares, the amount is added to the capital reserves.

5.1.3 Distributions of paid-up capital

Share capital can be returned to shareholders without incurring WHT. A return of share capital will require a corresponding "capital reduction" that involves a Germany notary.

For any other payment to the shareholders, the shareholders cannot choose whether a payment is a return of paid-in capital or a dividend. German tax law provides for a complex mechanism to calculate whether a payment to the shareholders is treated as return of capital or dividend distribution. This mechanism effectively ensures that retained earnings, which are treated as dividend distributions, are always distributed before capital reserves. This mechanism may even lead to a situation where an effective return of paid-in capital, without having incurred any profits, is treated as a dividend distribution. Only payments that are treated a return of capital under these rules do not trigger WHT, whereas dividend distributions are in general subject to a 26.375% WHT.

5.2 Debt financing

5.2.1 Withholding tax implications

Germany does generally not levy WHT on intra-group loans with a fixed interest rate. However, a WHT of 26.375% applies to profit participating loans of any kind. If the loan is secured by German real estate, the lender is subject to German limited tax liability with respect to the interest income, even if the interest rate is fixed and there is no WHT, which requires the lender to file German tax returns. In both cases, Germany's right to tax may be reduced or excluded under applicable double taxation treaties.

If the German borrowing corporation pays interest above the arm's length interest rate to its parent or related companies, the non–arm's length portion of such payment is typically requalified as hidden profit distribution, which is subject to WHT of 26.375%.

5.2.2 Thin capitalization

Although Germany does not have "thin capitalization rules" in the strict sense, Germany has been applying the so-called interest ceiling rules (ICR) since 2008. The ICR applies to all interest expenses of a business, irrespective of the debt-to-equity ratio, whether or not the recipient of the interest payment is a related party.

Under the ICR, the deduction of net interest expenses (i.e., interest expenses less interest income) is generally limited to 30% of the taxable earnings before interest, taxes, regular depreciation and amortization (EBITDA for tax purposes) of a given business. A tax group is treated as one combined business.

However, there are three exemptions from this general rule:

1. **De *minimis* exemption**

The ICR does not apply if the net interest expenses of a given business are below €3 million in a given fiscal year. The €3 million threshold follows an all-or-nothing approach. If a given business has, in a given fiscal year, net interest expenses of €2,999,999.99, these interest expenses are fully deductible. If the same business incurred one more cent in interest expenses, the whole amount of the interest expenses would be subject to ICR, which may lead to the non-deductibility of the whole interest expense, depending on the available EBITDA for tax purposes.

2. **Non-group exemption**

The ICR does not apply if the respective business does not form part of a consolidated group for German generally accepted accounting principles (GAAP), international financial reporting standards (IFRS) or US GAAP purposes.

3. **Escape clause**

The ICR does also not apply if the net indebtedness of the business in question is either lower or not more than two percentage points higher than the net indebtedness of the whole consolidated group.

For the latter two exemptions, counter-exemptions may apply. In particular, based on the amount of interest paid by the respective business or potentially any other debtor in the consolidated group to (direct or indirect) material shareholders (more than 25% shareholding), related parties to those material shareholders or third parties having recourse to either material shareholders or related parties to material shareholders. If a counter-exemption applies, the ICR is applicable although the requirements of the respective exemption are met.

EBITDA for tax purposes from fiscal years in which no exemption applies, and which is unused under the ICR, may be carried forward for up to five years. Interest expenses, which cannot be deducted for tax purposes under the ICR, may be carried forward indefinitely. The interest carry-forward may be forfeited in the case of a direct or indirect change of ownership (more than 50% of the given business) within five years.

5.3 Stamp tax

Germany does not impose a stamp tax in respect of debt or equity financing.

6.0 CORPORATE INCOME TAXATION

Corporations that have their registered seat or their place of management in Germany are subject to CIT with their worldwide income, regardless of the jurisdiction they were incorporated in, as well as to TT with respect of the income generated from German permanent establishments (PEs). CIT and TT may be potentially modified or reduced by applicable double taxation treaties. Neither CIT nor TT are deductible from each other's (or their own) tax base.

6.1 Tax rates

The statutory CIT rate is 15%, plus a solidarity surcharge of 5.5%, resulting in an overall CIT rate of 15.825%. The TT rate depends on the municipality (or municipalities) in which the corporation maintains its PE(s). It typically ranges between 7% and 17%. The combined CIT and TT rate therefore ranges from about 23% to about 33% depending on where in Germany the corporation maintains its PE(s). However, it is important to note that the tax base for TT typically deviates from the tax base for CIT, which is discussed below.

6.2 Capital gains and losses

Capital gains of corporations are generally treated as ordinary income subject to the same taxation. Capital losses, on the other hand, are generally tax-deductible. However, there are certain exemptions from this general rule, most notably for capital gains resulting from the sale of shares in a corporation held by a corporation. These capital gains are, subject to some very specific counter-exemptions, 95% exempt from CIT and TT. Capital losses from such sales are not deductible for tax purposes.

6.3 Branch tax

Germany does not levy a specific branch tax. However, corporations having neither their registered seat nor their place of management in Germany are subject to CIT and TT with the income attributable to their German PE(s). In general, the same CIT and TT rules apply to such income as to the worldwide income of corporations resident in Germany.

6.4 Computation of taxable income

6.4.1 Taxable base

Taxable income is generally determined on the basis of a so-called tax balance sheet, which in turn is based on the statutory accounts according to German GAAP. IFRS and other reporting standards are not accepted as a basis for computing taxable income.

The taxable base for CIT purposes is in general calculated as equity from the tax balance sheet at the end of a given fiscal year, minus equity from the tax balance sheet at the end of the preceding fiscal year, minus contributions (whether hidden or open) in the relevant fiscal year plus distributions (whether hidden or open) in such fiscal year.

6.4.2 Deductions

The calculation method described above automatically takes into account business expenses as tax-deductible. Capital expenses are deductible as regular depreciation or amortization, if the respective asset has a limited useful life, or in the case of extraordinary write-downs, if the fair market value of a given asset has presumably permanently dropped below the asset's book value. Goodwill acquired by way of an asset deal can be depreciated for tax purposes over 15 years.

Besides the ICR described above, there are numerous deduction limitations under German tax law, such as limitations to customer gift expenses, business meals and certain fines.

In general, net operating losses can be carried forward indefinitely or, upon application, carried back for one year. In case of a carry-back, the deduction is limited to €1 million. In the case of a carry-forward, €1 million can be deducted without restriction and any taxable income above €1 million can only be reduced by 60% from loss carry-forwards.

Loss carry-forwards are generally forfeited if, within five years, more than 50% of the shares in the respective corporation are transferred directly or indirectly to one transferee or a group of transferees with aligned interests. There are certain exemptions from this general rule, such as an intra-group exemption, a restructuring exemption and, on application, an exemption if the corporation continues its exact business without any modifications and fulfills certain further criteria. Furthermore, loss carry-forwards do not forfeit to the extent that the corporation has hidden reserves that are fully subject to German taxation in case they are realized.

6.4.3 Taxable base for trade tax purposes

The taxable base for TT purposes is the taxable base for CIT purposes as described above, modified by various add-backs and deductions. The add-backs most notably comprise 25% of the otherwise deductible interest expenses, 5% of the leasing expenses for movable property, 12.5% of the leasing expenses for immovable property and certain other expenses, to the extent such amounts collectively exceed €100,000 in a given year.

Among these deductions are profits from partnerships that were already subject to TT at the partnership level or from partnerships not maintaining a German permanent establishment. Corporations exclusively holding and letting real estate may, under certain further requirements. benefit from the extended TT deduction, where all profits from letting real estate may be deducted from the TT base.

6.5 Income tax reporting

In general, the fiscal year is the calendar year. If a company adopts an accounting period that deviates from the calendar year and obtains the consent of the competent tax office (which can only be denied under very limited circumstances), tax is assessed for the taxable income in the accounting period ending within the respective calendar year.

CIT and TT are payable in quarterly installments during the year, with a final settlement when the respective assessment is issued. The amount of the installments is typically calculated based on the respective taxable income in the preceding fiscal year. Annual tax returns must be filed by July 31 of the year following the end of the tax year. For tax returns prepared by a professional tax advisor, the deadline is extended to the end of February of the subsequent year.

6.6 Tax groups

A parent company and its direct or indirect corporate subsidiaries may form a tax group (Organschaft) for CIT and TT purposes. Under the Organschaft regime, taxable profits and tax losses of the group members are determined on a per-entity basis, but can be set off against each other at the parent entity level.

The requirements for a tax group are complex. The parent company must directly or indirectly hold the majority of the voting rights in the respective subsidiary; the subsidiary must be a corporation with its place of management in Germany and its registered seat within the EU; and the subsidiary must enter into a profit and loss pooling agreement (PLPA) for a period of at least five years. Furthermore, such PLPA must be executed, meaning the subsidiary must annually transfer all profits to the parent company, whereas the parent company must compensate the subsidiary for all losses incurred.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

German transfer pricing rules are not included in one integrated section of a German tax code but are included in several provisions in different legislative acts. The rules are substantially in accordance with Organisation for Economic Co-operation and Development (OECD) reports and recommendations. Generally speaking, German transfer pricing rules state that cross-border transactions between related parties must be carried out on terms and conditions that would have been agreed upon by unrelated parties.

Moreover, for transfer pricing purposes, specific documentation obligations apply. On request of a tax auditor, the taxpayer is required to submit the transfer-pricing documentation in most cases within 60 days. Noncompliance with these obligations may result in a fine of up to 10% of the additional taxes resulting from the required adjustments under the arm's length principle.

7.2 Withholding taxes

Germany levies withholding taxes for certain cross-border payments, which are subject to limited tax liability. Among these payments are royalties, remunerations for artistic, athletic and certain other performances carried out in Germany and remunerations for supervisory board members of German companies or similar functions.

The withholding tax rate for royalties and remunerations for artistic, athletic and certain other performances carried out in Germany is generally 15%, plus a solidarity surcharge of 5.5% thereon, resulting in an overall rate of 15.825%. The withholding tax rate for remunerations for supervisory board members of German companies or similar functions is generally 30%, plus a solidarity surcharge of 5.5% thereon, resulting in an overall rate of 31.65%. In all cases, the withholding tax may be reduced by applicable double taxation treaties or EU directives.

8.0 PAYROLL TAXES

Payroll tax or wage tax is generally levied by way of withholding. A German employer has to withhold the wage tax from the employee's gross income. The wage tax is treated as a prepayment to the employee's income tax liability. Depending on the circumstances, either the employee files an annual income tax return if they have received employment income that was not subject to withholding tax, or they file an annual income tax return if they incurred high employment-related and tax-deductible expenses that were not taken into account in the withholding procedure. In such cases, the employee's income tax is assessed in an income tax assessment, taking into account all types of taxable income and all tax deductible expenses. The wage tax withheld on behalf of the employee is then deducted from the assessed income tax, resulting in either an additional tax payment or a refund. The employer generally has to file wage tax returns and pay the respective wage tax on a monthly basis.

While wage tax is withheld entirely on behalf of the employee, social security contributions are divided between the employer and the employee. The employer is generally required to bear half of the wage-related social security contributions. As a result, the employer withholds half of the social security contributions from the employee's gross income and is required to contribute the other half of the social security contributions on top of the employee's gross income.

9.0 INDIRECT TAXES

Germany, as an EU member state is part of the European VAT system laid down in the European VAT directive. The European VAT directive is meant to harmonize the VAT systems across Europe. However, in some areas, the VAT directive allows certain choices for member states when transforming the directive into national law. Additionally, the interpretation of certain provisions in the directive is not yet harmonized across Europe. As a result, the VAT system is similar in all EU member states, but national VAT provisions may vary between member states.

VAT is levied on, among other activities, the supply of goods or services by a business and the import of goods. The supplier or service provider typically has to pay VAT to the tax authorities and charges the VAT to the recipient of the goods or services. If the recipient is also a business that uses the received goods or services for goods and services subject to VAT, the recipient can deduct the VAT paid to the supplier or service provider from its own VAT liability, known as input VAT deduction. A negative balance is refunded from the tax authorities. As a result, VAT is generally neutral within the supply or service chain and the end consumer bears the VAT on the end-consumer price.

This neutrality principle does not apply if VAT-exempt services are involved. Numerous VAT exemptions are in place, such as for financial services, insurance-related services and the sale or long-term letting of real estate. For some of these exemptions, the supplier or service provider may, under certain requirements, opt for VAT, which enables the supplier or service provider to deduct the related input VAT.

For some supplies or services and under certain further conditions, VAT is not levied from the supplier or service provider, but from the recipient of the goods or services. This is known as Reverse Charge Procedure and it applies to, among other things, services rendered from a non-German service provider to a German business or intra-community supplies (i.e., when a non-German supplier delivers goods from another EU member state to a German business). The input VAT deduction for the recipient of the goods or services applies generally under the same requirements as without the Reverse Charge Procedure.

The standard VAT rate in Germany currently amounts to 19%. A reduced rate of 7% exists for certain basic goods and services like food, books or hotel accommodations. Business owners generally have to file VAT returns and pay the respective VAT on a monthly basis.

10.0 TAXES IN RELATION TO REAL ESTATE

10.1 Real estate transfer tax

Real estate transfer tax (RETT) is imposed on the transfer of real estate located in Germany, among other activities. The seller and buyer are jointly and severally liable for RETT. However, it is typically agreed in the purchase agreement that the purchaser will bear the full burden of RETT.

RETT also falls due if, within a period of five years, 95% or more of the real estate interest in a partnership holding German real estate is directly or indirectly transferred. The real estate does not have to be the sole or main asset of the partnership for RETT to accrue, it is sufficient for the partnership to hold any German real estate.

Furthermore, RETT falls due on any act or transaction in which either (i) 95% or more of the shares in a corporation holding German real estate are directly or indirectly transferred; or (ii) 95% of the shares in such corporation are directly or indirectly unified in "one hand," where one hand is either an individual, an entity or a group of entities related in a certain way. Real estate does not have to be the sole or main asset of the corporation for RETT to accrue.

Transactions with no nexus to Germany at all may trigger German RETT if one of the involved companies holds, directly or indirectly, shares in a company owning German real estate. Additionally, there are several other ways for a RETT charge to be triggered in dealing with German real estate, such as the economic unification of 95% or more of the direct or indirect economic interest.

The RETT rate ranges between 3.5% and 6.5% and depends on the federal state in which the relevant real estate is located. The RETT provisions on share deals are currently under heavy political discussion. No official draft bill has been published as of the date of this brochure, but one proposal is to reduce the above-mentioned 95% thresholds to 90% and to extend the five-year period to 10 years. The proposal would also introduce a new RETT-triggering event for corporations holding German real estate, similar to the one already in force for partnerships as described above.

10.2 Municipal real estate tax

Municipal tax authorities levy an annual real estate tax on all immovable property. The tax applies to both property that is held as a business asset and property for private use. The real estate tax rate depends on the type of the real estate and the municipality in which the real estate is located. It is applied to the historic value of the real estate from 1964 in western Germany, or from 1931 in eastern Germany, which is generally much lower than the actual fair market value.

Since the historic value of the real estate does not in most cases reflect the current fair market value of the real estate, it infringes on the constitutional principle of equality, and the German Constitutional Court declared the current real estate tax regime unconstitutional in 2018. The legislature is required to introduce a new real estate tax regime in line with the constitution at the end of 2019, which must enter into force until the end of 2024 at the latest. The old regime is still applied in the interim period.

11.0 OTHER TAXES AND SPECIAL TAX REGIMES

A special tax regime applies in particular to the taxation of investment funds and investors in investment funds. Under this tax regime, the income of the investment fund is either partially taxed at the investment fund level and partially taxed at the investor level, or, under certain circumstances, the investment fund is treated as tax-transparent and the investment fund's income is fully taxed on the level of the investors.

Germany also levies inheritance and gift tax on transfers of property at death or by gift. Tax rates range from 7% to 50%, depending on the relationship between the deceased or donor and the beneficiary as well as the value of the transferred property. It can also apply if neither the deceased, nor the donor nor the beneficiary have any connection to Germany, but the transferred property is located in or otherwise connected with Germany.

Apart from the above-mentioned taxes, Germany levies more than 30 other types of taxes, which may or may not apply to investments in Germany depending on circumstances. These include insurance tax, energy tax, electricity tax, air traffic tax, church tax, automobile tax, several taxes on different types of alcohol, tobacco tax and even coffee tax.

Guatemala

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1.0 OVERVIEW

Guatemala imposes corporate and personal income tax, operating under a territorial system in which the income tax is levied only on Guatemalan-source income. Therefore, resident individuals and corporations are subject to income tax on Guatemalan-source income only. On the other hand, non-residents are taxed via withholding on their Guatemalan-source income.

Corporations are considered residents of Guatemala if they are incorporated under Guatemalan law and have their fiscal domicile or corporate headquarters in Guatemala, or if they are a branch of a foreign company operating in Guatemala.

The statutory tax year runs from January 1 to December 31. Under the territorial tax system, residents can opt to be taxed under one of two regimes: (1) the simplified optional tax regime, under which tax is charged on gross revenue at a rate of 5% or 7%; or (2) the general tax regime, under which tax is charged on net taxable income at a rate of 25%. If the residents opt for the last regime, a solidarity tax is also imposed with a rate of 1% on total assets or gross revenue, depending on which one is greater. Passive income is taxed separately, with dividends taxed at a rate of 5% and capital gains taxed at a rate of 10%.

Non-residents to be taxed via withholding are subject to different tax rates that depend on the type of Guatemalan-source income earned. In addition to income tax, a value-added tax (VAT) of 12% is charged on the sale of most goods, the provision of services, the lease, imports and the transfer of real estate. Regarding intentional regulation of taxes, it is important to emphasize that Guatemala has not concluded any bilateral or multilateral tax treaties.

2.0 LEGAL SYSTEM

Guatemala operates under a civil law legal system. It utilizes a civil law system for private law that is based on the Civil Code and Mercantile Code of Guatemala. Guatemala is a unitary state with a central government consisting of three main branches: executive, judicial and legislative. The Congress of Guatemala has exclusive ability to legislate and is therefore the only entity empowered by the constitution to impose taxes. The main applicable tax laws are the Tax Code, the Income Tax Law, the VAT Law and the Solidarity Tax Law.

3.0 TAXATION AUTHORITIES

The tax system in Guatemala is administered by the Superintendence of Tax Administration (SAT) of Guatemala. This decentralized government entity is in charge of collecting taxes throughout the entire Guatemalan territory. Additionally, Guatemala has special tax courts that hear tax litigation cases.

4.0 BUSINESS VEHICLES

A non-resident may either establish a Guatemalan business vehicle to carry on business in Guatemala, or operate directly through a foreign entity, with or without a Guatemalan permanent establishment. Guatemalan business vehicles include corporations (limited liability or unlimited liability) and partnerships. It is also possible to use a trust to carry on business in Guatemala.

4.1 Partnerships

Guatemalan legislation differentiates between partnerships and non-profit partnerships. While non-profit partnerships are exempt from income tax, partnerships are not. Partnerships and corporations are taxed equally.

4.2 Corporations

Corporations can be incorporated in Guatemala within eight days. The use of a limited liability or unlimited liability corporation does not impact the corporation's income tax liability. Although Guatemalan law does not require the directors of the corporation to be Guatemalan residents, the Mercantile Registry regulation does require that at least one of the directors is properly registered with the SAT as a resident. The establishment of a corporation requires a minimum capital of US$25 to have been received by the corporation. The receipt of capital is also a requirement before the corporation can issue shares.

4.3 Foreign corporations

A foreign corporation with a permanent establishment that carries on business in Guatemala is subject to income tax as if it was a Guatemalan resident corporation. Under Guatemalan law, it is understood that a foreign corporation operates with a permanent establishment when:

i. It has a continuous place of business or places of work of any kind, in which all or part of its activities take place in the country; or

ii. A person or entity (not an agent) acts in Guatemala on behalf of a non-resident, especially if that person holds and exercises habitually in Guatemala powers that enable it to conclude contracts on behalf of the company; or if the person does not have such powers, but usually, stocks of goods for delivery on behalf of the non-resident person or entity in Guatemala.

On the other hand, non-residents—foreign corporations without a permanent establishment—are taxed via withholding on their Guatemalan-source income.

The tax rate for a foreign corporation without a permanent establishment varies depending on the type of Guatemalan-source income. Dividends and branch remittance are taxed at 5% on the gross amount, whereas interest is taxed at 10% of the gross amount (with exemptions given for banking and finance sectors). Technical service fees and royalties are taxed at 15% on the gross amount, and all the other types of Guatemalan-source income not specifically covered are taxed at 25% on the gross amount.

5.0 FINANCING A COORPORATE SUBSIDIARY

5.1 Equity financing

5.1.1 Contributions for shares

Where an equity investment is made into a Guatemalan corporation in exchange for shares, the amount of the investment is added to the corporation's stated capital account. This transaction is not subject to income tax.

5.1.2 Distributions of dividends and profits

A corporation is permitted to make distributions of dividends and profits to a non-resident shareholder, but these distributions are subject to a withholding tax of 5%.

5.2 Debt financing

5.2.1 Withholding tax implications

Guatemalan corporations are permitted to borrow funds from related or non-related third parties. There are no Guatemalan tax implications on the repayment of the principal amount of such debt. Nonetheless, interest payments made by a Guatemalan resident corporation to a non-resident are subject to a withholding tax of 10%.

5.3 Stamp duty

Guatemala imposes a stamp duty levied on certain official and legal documents related to different transactions. Stamp duty is an ad valorem tax or flat tax levied on certain legal transactions such as the transfer of a property. Documents evidencing such transactions are recorded and become legally enforceable only if they are stamped to show that the proper amount of tax has been paid.

6.0 CORPORATE INCOME TAX

6.1 Income tax rate

The corporate tax rate depends on the regime the corporation opted to be taxed under. The different regimes available include:

i. The simplified optional tax regime, under which tax is charged on gross revenue at a rate of 5% or 7%

ii. The general tax regime under which tax is charged on the net taxable income at a rate of 25%. If the residents opt for this last regime, a solidarity tax is also imposed at a rate of 1% on total assets or gross revenue, depending which one is greater.

6.2 Capital gains

In Guatemala, income from capital and capital gains is considered taxable when the income originates from goods or rights whose ownership corresponds to the taxpayer. The different taxable income from capital gains are classified as one of the following:

i. Income from real or immovable property located in Guatemala, arising from leases, sub-leases or constitution and transfer of rights for the use and enjoyment of the property

ii. Income from movable property located in Guatemala including interests from loans, leases, subleases or constitution and transfer of rights for the use and enjoyment of the property, and distribution of dividends and profits

iii. Capital gains from:

- The transfer of movable or immovable assets, lottery tickets, raffle tickets or similar items
- The transfer of shares issued by resident entities
- The incorporation of assets located in Guatemala into the taxpayer´s property
- The transfer of shares issued by foreign entities that own movable or immovable property located in Guatemala.

6.3 Royalties

The income from capital gains from a Guatemalan resident corporation are subject to a 10% tax rate, whereas the distribution of dividends and profits are subject to a tax rate of 5%.

6.4 Computation of taxable income

6.4.1 Taxable base

The taxable base depends on the regime the tax payer chooses. In the simplified optional tax regime, the income tax is charged on gross revenue at a rate of 5% or 7%. In the general tax regime, the income tax is charged on net taxable income at a rate of 25%.

6.4.2 Deductions

Deductions depend on the regime that the taxpayer chooses. Under the general tax regime, corporations may deduct expenses incurred to generate taxable income or to preserve the source of such income. On the other hand, under the simplified optional tax regime, no deductions are permitted, since corporations under this regime are subject to a lower tax rate.

6.5 Income tax reporting

Guatemalan resident corporations operating under the general tax regime must file an annual income tax return and make any payment due within three months after the end of the taxation year. Additionally, corporations must make quarterly advance income tax payments, which are credited against the final income tax liability. In addition, taxpayers that qualify as special taxpayers must file the annual income tax return together with financial statements audited by a certified public accountant or an independent audit firm.

Corporations operating under the simplified optional tax regime must file an annual information tax return within three months after the end of the tax year. Interest and penalty charges are imposed for late payments of taxes. Corporations settle their tax through final withholding payments made by the payer. They must file a monthly tax return in which they separately determine the total amounts of gross income, exempt income, income subject to withholding tax and income subject to direct payment. Companies may be required to make direct payments of tax if they are transacting with persons not required by law to make withholdings or if they have been previously authorized by the tax authorities. The tax return must be filed within the first 10 business days of the month following the month in which the tax was incurred.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

Guatemalan transfer pricing rules apply to any transactions between a Guatemalan resident taxpayer and a non-resident related party where the transaction affects the calculation of the taxable income of the fiscal year and subsequent fiscal year. The transfer pricing rules are aligned with the Organization for Economic Co-operation and Development guidelines, and there is a sixth transfer pricing method for commodities.

7.2 Withholding tax on passive income

Payments made by a resident of Guatemala to a non-resident from Guatemalan-source income are subject to withholding tax at different tax rates. As previously mentioned, dividends are subject to a 5% rate on the gross amount; interest to a 10% rate of the gross amount (exemptions are given for banking and finance sectors); royalties a 15% rate on the gross amount; and all the other types of passive income of Guatemalan-source not specifically covered are subject to a 25% rate on the gross amount.

7.3 Withholding tax on services fees

Payments made by a resident of Guatemala to a non-resident in respect of services performed in Guatemala are subject to a withholding tax rate of 15%.

8.0 PAYROLL TAXES

8.1 Social security tax

Guatemalan employers are obliged to withhold a social security tax that contributes towards the Guatemalan pension plan and employment insurance. The social security tax is withheld from the employee's wages. The employer contributes 12.67% and the employee contributes 4.83% of the employee's wages.

9.0 INDIRECT TAXES

9.1 Value-added tax (VAT)

Guatemala imposes a VAT of 12% which applies to all transactions and contracts regarding:

i. The sale or exchange of personal property (movable or immovable) or *rights in rem*

ii. The provision of services in Guatemalan territory

iii. Imports

iv. Movable or immovable property leasing

v. Assets (movable or immovable property) received in lieu of payment, except those that are carried out on the occasion of the partition of the inheritance or the termination of joint ownership

vi. Withdrawals of personal property made by a taxpayer or by the owner, partners, directors or employees of the respective company for their personal or their family use or consumption, whether from their own production or purchased for the resale, or the self-supply of services, whatever the legal nature of the company

vii. The destruction, loss or any event that implies a lack of inventory, except in the case of perishable goods, fortuitous events, force majeure or crimes against property

viii.The inter vivos donation of movable and immovable property

ix. The capital contribution of real estate made by companies that are dedicated to real estate development to another company (dedicated or not to real estate).

9.2 Levies on petroleum distribution

For levies on petroleum distribution, the rate varies by type of fuel between US$0.18 – 0.64 per gallon.

9.3 Land tax

Guatemala imposes a land tax annually on value of land. The maximum rate of 0.9% is applicable to the value of land in excess of GTQ 70,000 (approximately US$9,545).

9.4 Revaluation tax

Guatemala imposes a revaluation tax of 10% on the appreciation in value resulting from a revaluation of immovable property or any other fixed assets by an authorized third-party adjuster.

9.5 Import duties

Guatemala is a State Party of the Convention on the Central American Tariff and Customs Regime. In said convention, a Central American Import Tariff is regulated, which is the instrument containing the nomenclature for the official classification of goods that are likely to be imported into the territory of the Member States Party, as well as customs duties on imports and the rules that regulate the execution of its provisions. According to said rules, Guatemala imposes import duties (*Derechos Arancelarios de Importación known as DAI*) that range from 0% to 20% depending on the type of goods that are being imported.

9.6 Solidarity tax (ISO)

Guatemala imposes a 1% ISO on legal entities subject to the Simplified Optional tax regime. The ISO tax rate applied is the higher of 1/4 of net assets value or 1/4 of gross income. Newly organized entities are not subject to ISO during their first four quarters of operations and entities that have a gross margin of lower than 4% of its gross income, or incur losses for two consecutive years, are also not subject to ISO.

Italy

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1.0 OVERVIEW

Italy imposes corporate and personal income tax on its residents on their worldwide income. Corporate income tax (IRES, in its Italian acronym) is imposed under Presidential Decree 917 of December 22, 1986 (also known as the income tax code, or ITC). Non-residents who carry on business in Italy and generate business income therein are subject to corporate income tax in Italy only on Italian income. In addition to the corporate income tax, the regional tax on productive activities (IRAP) is levied at a general 3.9% tax rate. Regional authorities may increase or decrease these rates to 0.92% on companies, partnerships and individuals that carry on activity aimed at the manufacturing or trading of goods and the supplying of services. Non-resident companies are also subject to IRAP provided that they maintain a permanent establishment in Italy for at least three months.

Dividends, interest and royalties paid by resident companies to non-resident companies without a permanent establishment in Italy are normally subject to a final outbound withholding tax. The amount of withholding tax can be reduced, or in some cases, eliminated under relevant treaty provisions or under the relevant EU directive(s), in the case the non-resident recipient is resident in another EU country.

Italy is a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI).

2.0 LEGAL SYSTEM

The Italian legal system takes the form of continental civil law. The basic rules governing commercial relationship are embodied in the Italian Civil Code, which was enacted in 1942, and superseded in other special laws or statutes. As a result of Italy's membership in the EU and of a number of EU directives, many parts of the Civil Code have been substantially modified over time. While as a general rule the ability to make laws are in the exclusive domain of the central state, there are some specific fields where the state and regions have overlapping jurisdiction.

3.0 TAXATION AUTHORITIES

The Italian tax system in Italy is administered by the Italian Revenue Agency *(Agenzia delle Entrate)*. The agency is mainly responsible for collecting tax revenues, providing services and assistance to taxpayers and carrying out assessments and inspections aimed at countering tax evasion.

4.0 BUSINESS VEHICLES

Investments made in Italy by nationals of other EU member states are treated in the same manner as investments made by Italian nationals. Investments made by non-EU nationals may be subject to certain restrictions. Non-EU nationals may participate in Italian entities on the basis of reciprocity. A non-resident may either establish an Italian business vehicle to carry on business in Italy or operate directly through a foreign entity (with or without an Italian permanent establishment).

Italian law makes a clear distinction between partnerships, which include general partnerships and limited partnerships, and companies, which include joint-stock companies, limited liability companies and partnerships limited by shares.

4.1 Partnerships

Partnerships do not have a separate legal personality and as a result, partners are subject to unlimited liability, with the exception of the limited partners of a limited partnership. As a general rule, however, creditors' claims must be first enforced against the assets of the partnership before invoking the liability of the partners.

A partnership (whether general or limited) is generally treated as fiscally transparent for Italian income tax purposes and is not subject to IRES tax but only to IRAP tax. Taxable income is computed in the hands of the partnership, which must keep its own books and accounts and submit its own tax return. However, income is taxed in the hands of the partners in proportion to their entitlement of the partnership's profits, even if it is not distributed out as dividends.

Much like the income of companies subject to IRES, the income of a partnership is always treated as business income, even if it includes other categories of income, such as capital income or miscellaneous income. Such income is allocated and taxed to the partners as business income in proportion to their contribution. The income of an Italian partnership that is allocated to non-resident partners is taxed at a rate of 24% and is always taxed in Italy as business income, even if the non-resident partner has no permanent establishment in Italy.

4.2 Corporations

Joint-stock companies and limited liability companies are considered legal persons; consequently, their shareholders are not personally liable for company debts. The establishment of a corporation requires a minimum capital requirement equal to €50,000 for a joint-stock company (of which at least 25% must be paid upon the incorporation) and to €10,000 for a limited liability company (of which at least 25% must be paid upon the incorporation).

A partnership limited by shares, however, has two categories of shareholders. General partners are vested with the management of the company and are jointly and severally liable without limitation for the company's obligations. Limited partners are liable only for an amount equal to the capital to which they subscribed.

4.3 Foreign corporation (with or without an Italian branch)

A foreign corporation that carries on business in Italy is subject to tax under the ITC in respect to the income derived from Italy. Where the foreign corporation is resident in a country with which Italy has a double taxation treaty, the corporation may claim treaty benefits and will generally be exempt from Italian tax on its business profits except to the extent that the profits were earned through a permanent establishment in Italy.

A foreign company may establish a branch to perform business activity in Italy. The branch is not considered a legally separate entity from its parent company. Its establishment must be registered with the Register of Companies. A branch is subject to fewer statutory obligations regarding a company's requirements.

From a tax point of view, a branch is in principle deemed a permanent establishment of the foreign company and it is treated as an independent entity. In general, a branch is subject to the same tax treatment as an Italian company and is subject to corporate taxes for profits produced in Italy. The branch must draw up yearly financial registers. It is subject to the same tax commitments as Italian companies, including keeping official registers, and it is obligated to pay corporate taxes as well as file VAT returns.

5.0 FINANCING A CORPORATE SUBSIDIARY

Italian companies are free to finance investments through debt financing, equity financing or a mixture of both.

5.1 Equity financing

5.1.1 Contributions of equity

Contributions of equity can occur by way of new capital injections or through conversion of existing equity reserves, including those composed of retained earnings. Capital can be also be increased by contributing assets in kind. Apart from capital increases, the grant from shareholders or quota holders is one of the most commonly used means through which a company may increase its financial capability. For tax purposes, cash contribution as a means of equity financing increases the shareholder's cost base.

5.1.2 Reduction of equity

As a general rule, capital reserves that are distributed are not taxable as dividends. Rather, they reduce the cost base of the shares; once the cost base is zero, any excess becomes taxable as a dividend outside business income, or as a capital gain within a business income framework. However, there is a presumption that any profit reserves available for distribution are deemed to be distributed before capital reserves, irrespective of the shareholders' meeting resolution and the reserves deemed to be distributed based on the relevant resolution wording.

Capital distributions work similarly. Ordinarily they are not taxable as dividends, but reduce the cost base of the shares. However, to the extent that profit reserves were previously imputed to capital, they take precedent in any distribution, which is correspondingly taxable as a dividend.

5.1.3 Stamp tax

A €200 fixed registration tax applies on a capital increase and a reduction of the statutory equity paid in cash.

5.2 Debt financing

5.2.1 Withholding tax implications

Italian companies are subject to IRES at a rate of 24% on interest income. Non-financial companies are not subject to IRAP on interest income, while banks, financial institutions and insurance companies are.

Italian-source interest paid to a non-resident is generally subject to a 26% withholding tax (WHT), and interest is considered as sourced in Italy whenever paid by an Italian resident. The 26% WHT is usually operated and paid by the borrower, in its capacity as the person paying the interest and being qualified as withholding agent. No WHT applies to interest due on medium- and long-term financing granted by EU banks, insurance companies and white-listed institutional investors, provided that no regulatory constraints are breached.

If all the requirements requested by the EU Interest and Royalties Directive are met, interest paid to an EU corporate entity is free from WHT. Provided the relevant conditions set forth therein are met, some double taxation treaties may foresee a reduction of the outbound withholding taxation. Interest expenses incurred by Italian resident companies on loans borrowed from non-resident related parties must be set at arm's length, meaning a comparable loan would have been entered into between unrelated parties.

5.2.2 Thin capitalization

If an Italian subsidiary is to be financed with debt, it may be subject to the thin capitalization rules contained in the ITC. Italy has adopted an EBITDA earnings stripping rule under which interest expenses (net of interest income) are deductible up to 30% of the EBITDA produced by the company in the same fiscal year. The amount of financing cost exceeding 30% of the EBITDA is not deductible from the taxable income of the relevant fiscal year, but may be carried forward to a subsequent fiscal year, without any time limitation. As from 2019, the EBITDA is calculated taking into account the adjustments provided by Italian tax law.

5.2.3 Stamp tax or similar tax

Financing transactions such as loans may fall within the scope of value-added tax (VAT), although exempted. If not subject to VAT (e.g., because the lender is not a VAT subject), they are subject to registration tax at 3%, unless they are executed by exchange of correspondence, which is one of the means to conclude a legal contract, requiring fewer formalities. In these cases, guarantees are provided, which may trigger additional registration taxes, as well as mortgage and cadastral taxes if real estate is involved.

However, medium- to long-term loans (defined as exceeding 18 months) granted from banks and other qualified financial institutions may benefit from the application of an optional substitute tax generally levied at a rate of 0.25% of the total amount of the loan requested, instead of the levying of stamp duty, government license tax and registration, and mortgage and cadastral taxes.

6.0 CORPORATE INCOME TAX

6.1 Income tax rate

In 2018, the IRES is 24%. The taxable base is the worldwide income shown in the profit and loss account prepared for the relevant financial year according to company law rules and adjusted according to tax law provisions. The tax basis can be reduced through multiple deductions provided by tax law provisions.

In addition to IRES, the IRAP is levied at a general rate of 3.9% (whereby regional authorities may decrease or increase these rates up to a maximum of 0.92% in either direction) on companies, partnerships and individuals that carry on an activities related to the manufacturing and trading of goods, or the supplying of services.

6.2 Capital gains

As a general rule, gains from the disposal of capital assets is computed as the difference between (i) the sale price or the indemnity received, reduced by the costs directly attributable to the sale or the indemnity, and (ii) the asset's adjusted tax basis. The difference is included in taxable income for the fiscal year during which these gains are realized. If the property being sold has been held for at least three years, capital gains may be included, at the company's option, in its entirety for the year in which they are realized, or in equal installments for the current and following tax years, but not carried beyond the fourth year.

Special rules apply to capital gains from the alienation of shares, financial instruments assimilated to shares and interests in resident companies or partnerships that are exempt from tax for 95%. This "participation exemption" regime—duly coordinated with the EU fiscal framework on the matter—grants a 95% exemption to the capital gain arising from the sale of the financial instruments in question. The exemption applies, provided that (i) the participation has been held at least from the first day of the twelfth month preceding the alienation, (ii) the participation is classified as a financial asset in the first balance sheet closed after the acquisition and (iii) the participating company has been engaged in an active trade or business since at least the beginning of the third financial year preceding the alienation. An active trade or business would mean that a company has an operational structure suitable for manufacturing or sales activity in connection with goods or services that potentially generate revenue.

Non-resident companies that have a permanent establishment in Italy are taxed on the gains realized on assets pertaining to their business activity in Italy. For non-resident companies without a permanent establishment in Italy, the taxation of capital gains depends on the kind of property that is disposed of:

i. Real estate property situated in Italy is taxable as miscellaneous income in Italy if the asset is situated in Italy. These gains are not subject to tax if the transferor has held the property for more than five years

ii. Movable assets are taxed in Italy if the assets are in Italy, unless a tax treaty prevents the taxation of the gain

iii. Shares of a corporation that give rise to capital gains from the sale of participating interests are subject to taxation in Italy only if the participation is in an Italian company.

   In the case of participations in publicly listed companies, if the amount of participation sold during a 12-month period does not exceed 2% of the voting rights, or 5% of the capital, the capital gain is not regarded as Italian-source income and not subject to taxation in Italy.

   In the case of participation in non-listed companies, if the amount of participation sold during a 12-month period does not exceed 20% of the voting rights, or 25% of the capital, the capital gains are subject to a 26% substitute tax. This is referred to as "non-qualified participations." However, such capital gains are not subject to taxation if the seller is a resident of a country that Italy has an adequate exchange-of-information system with. A white-list of the states and territories that have an adequate exchange-of-information system has been issued by a ministerial decree.

   If the size of the participation sold during a 12-month period exceeds 2% of voting rights (or 5% of capital, in the case of participations in listed companies) or 20% of voting rights (or 25% of capital, in the case of other participations), the capital gain realized as from January 1, 2019, will be as well subject to 26% substitute tax.

Generally, consideration must be given to a double taxation treaty between Italy and the transferor's country of residence, containing a provision similar to Article 13 of the Organisation for Economic Co-operation and Development (OECD) Model Convention, which prevents capital gains on the sale of movable property from being taxed in Italy. Some specific treaties entered into by Italy (such as that with France) do foresee specific exceptions to the exemption rule under certain conditions.

6.3 Branch tax

No branch profits tax or similar tax is levied in Italy on branches of non-resident companies.

6.4 Computation of taxable income

6.4.1 Taxable base

A taxpayer is subject to tax on its profits from carrying on business. The taxable base is the worldwide income shown on the profit and loss account prepared for the relevant fiscal year according to company law rules and adjusted according to the tax law provisions concerning business income.

6.4.2 Deductions

A taxpayer is generally permitted to deduct its current expenses in computing business income. As a general rule, costs and expenses may be deducted only if they are incurred for the production of income. This rule does not apply to certain deductible items, such as interest, which is subject to a special rule.

6.5 Income tax reporting and payment of tax obligations

Italian resident corporations and non-resident corporations that carry on business in Italy or that dispose of taxable Italian real estate property are required to file an annual corporate income tax return in Italy. Corporate tax returns must be filed electronically through an authorized intermediary by (i) October 31 of the following year, if the company adopts the calendar year as fiscal year, or (ii) within nine months of the end of the fiscal year.

Corporate income tax is normally paid as follows:

i. A first advance payment of the IRES due for the current fiscal year must be paid at the same time as the balance due for the previous fiscal year (i.e., the last day of the sixth month following the end of the previous year) and is equal to 40% of the tax due for the previous fiscal year
ii. A second advance payment of the IRES due for the current fiscal year must be paid by the last day of the eleventh month following the end of the previous fiscal year and is equal to 60% of the tax due for the previous fiscal year
iii. The balance must be paid by the last day of the sixth month following the end of the fiscal year.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

Italian's transfer pricing regime generally conforms to the arm's length principle of the OECD.

The ITC permits the Agenzia delle Entrate to impose a transfer pricing adjustment in respect of a transaction that was not made on arm's length terms or conditions.

Italian taxpayers are also required to keep and be prepared to provide transfer pricing documentation evidencing how the transfer prices were set. The documentation must comply with certain formal and content requirements set forth by the tax authorities (Commissioner's Regulation 137654/2010). If during the transfer pricing audit, the taxpayer provides duly kept and prepared transfer pricing documentation, no penalty will be charged even in the case of transfer pricing adjustments.

On the other hand, if the taxpayer fails to keep adequate documentation, it is liable for a penalty that can range from 100% to 200% of the tax due on the adjustment, in addition to the tax due.

7.2 Withoulding tax on passive income

Payments made by Italian resident entities to a non-resident in respect of interest payments, royalties and dividends are subject to tax in Italy. The following items of income are subject to a final WHT at the rates specified below.

i. **Dividends** are generally subject to a 26% WHT. If the recipient can provide evidence through documentation issued by the tax authorities of its country of residence that it has paid a final tax on the same dividends, the recipient may be refunded up for a percentage equal to 11/26 of the initial amount of the withholding tax. A reduced WHT rate of 1.2% is levied on dividends if the beneficial owner is a company resident and subject to corporate income tax in another EU or European Economic Area country that allows an adequate exchange of information with Italy. In addition, WHT may be reduced or exempted pursuant to the application of the tax treaty in force between the Italy and the country of residence of the recipient. If all the requirements provided for by EU Parent-Subsidiary Directive are met, no withholding tax is levied on the outbound flow of dividends

ii. **Interest income** paid to non-resident persons is subject to a WHT rate of 26%, or 12.5% on interest from government bonds and bonds issued by certain project finance companies (project bonds). If all the requirements provided for by EU Interest-Royalties Directive are met, no withholding tax is levied on the outbound flow of interests. No withholding tax applies with reference to interest due on medium- and long-term financing granted by EU banks, insurance companies and white-listed institutional investors

iii. **Royalties** paid to non-resident companies are subject to a 30% WHT, which is generally applied to 75% of the gross amount of the payment, resulting in an effective rate of 22.5%. If all the requirement provided for by EU Interest-Royalties are met, no WHT is levied on the outbound flow of royalties.

8.0 PAYROLL TAXES

8.1 Payroll tax

No payroll taxes are imposed on corporate taxpayers.

8.2 Social security contributions

A complicated system of social insurance covering life insurance, health, maternity, disability, unemployment and family allowances is in operation for all employees.

The amount of social security contributions depends on the type and size of the business and the rank of the employee. The aggregate contributions range from approximately 40% to approximately 45% of the aggregate remuneration accrued in the relevant year. The aggregate contributions are normally borne by the employer for 80% to 85% of their amount. The remainder is borne by the employee and must be withheld directly by the employer. Social security contributions payable by employers are deductible for corporate income tax purposes.

9.0 INDIRECT TAXES

9.1 Value-added tax (VAT)

VAT is levied at all levels of the supply of goods and services that takes place in Italy and on acquisitions from other EU member states. VAT is also levied on the importation of goods from outside the EU. The general VAT rate is 22%. Reduced rates of 10%, 5% and 4% apply in certain specific circumstances. VAT is not imposed on all the financial services, insurance and reinsurance, activities related to shares, bonds and other securities and medical services.

VAT is due by all persons, irrespective of their residence, that make taxable supplies in Italy. Non-residents that have no permanent establishment in Italy may appoint a representative to exercise their rights and fulfil their obligation under the VAT law. Residents of other EU member states may directly exercise their rights and fulfil their obligations in Italy. Non-residents must provide a declaration to the competent authority containing certain information to receive a VAT number before executing any taxable transactions in Italy. This regime extends to residents of non-EU states with which Italy has concluded an agreement on mutual assistance in respect of indirect taxes.

9.2 Financial transactions tax

A financial transactions tax (FTT) is levied on transfers of ownership of shares and certain participating financial instruments issued by companies that have their registered office in Italy, regardless of the place of residence of the parties involved and of the place where the contract has been executed.

The FTT is due by the person to whom the ownership of the shares is transferred (the transferee). The standard FTT rate is 0.20% for over-the-counter transactions, which is reduced to 0.1% for transactions executed on regulated markets, a multilateral trading facility established in an EU member state or, subject to certain conditions, in a country included in the white list. Several exemptions and exclusions apply to some specific transfers and financial operations.

9.3 Transfer tax on immovable property

A registration tax is levied on the transfer of immovable property located in Italy. The rates vary according to the property transferred. The standard rate is 9%; a 15% rate applies on transfers of agricultural land, except for transfers to agricultural entrepreneurs. In all cases, the minimum registration tax levied is €1,000. The transfer of land suitable for building (terreno edificabile) is subject to VAT at 22% and registration tax at the lump sum of €200 (plus mortgage and cadastral taxes). Indirect taxes (VAT, registration tax, mortgage and cadastral taxes) application on immovable properties (other than lands) depends on the nature of the immovable property (commercial or residential properties) and the nature of the seller as the below table sums up.

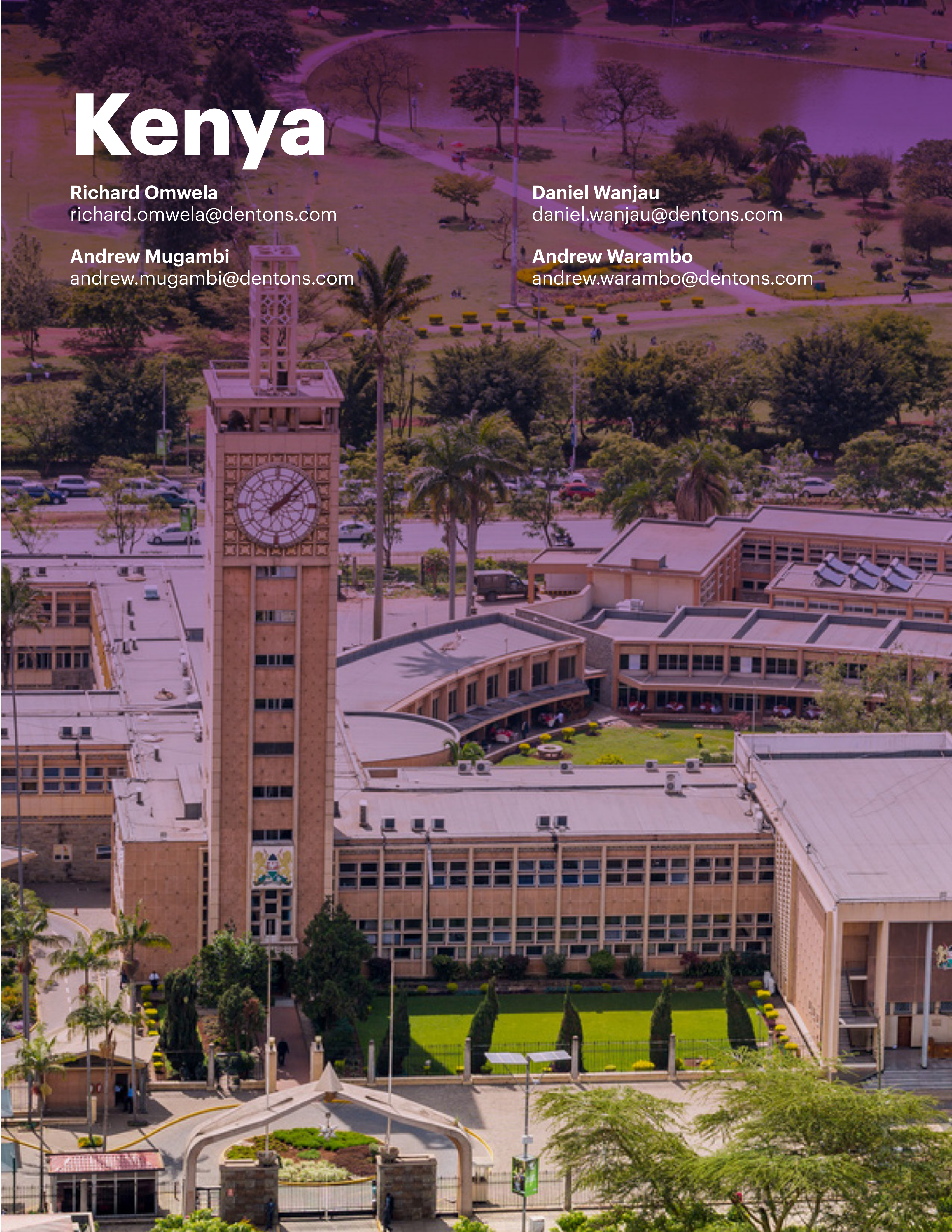
Properties	Seller	VAT	Registration tax	Mortgage and cadastral taxes
Commercial properties	Construction companies that built or restored the properties within 5 years before the sale	22% (or 10% in certain cases)	€ 200	3% + 1%
	Construction companies that built or restored the properties after 5 years from the sale and other VAT-taxable persons	Exempt or option for VAT application through reverse-charge mechanism (22% or 10% in certain cases)	€200	3% + 1%
	Non VAT-taxable persons	Out of scope	9% (minimum €1,000)	€50 + €50
Residential properties	Construction companies that built or restored the properties within 5 years before the sale	10% (4% for first house; 22% for luxury house)	€200	€200 + €200
	Construction companies that built or restored the properties after 5 years from the sale that opted for VAT application	VAT application through reverse-charge mechanism (10% or 4% for first house or 22% for luxury house)	€200	€200 + €200
	Construction companies that built or restored the properties after 5 years the sale that did not opt for VAT application and other VAT-taxable persons Non VAT-taxable persons	VAT exemption Out of scope	9% (2% for first house) (minimum €1,000) 9% (2% for first house) (minimum €1,000)	€50 + €50 €50 + €50

9.4 Registration tax

In general, a registration tax is due on contributions of cash and assets in exchange of shares. In the case of cash contributions and contributions of assets other than immovable property, the tax is levied as a lump sum of €200. The registration tax on contributions of immovable property varies depending on the type of property and the nature of the contributor. Please refer to the above table for information on the indirect tax regime of immovable properties (other than lands) including mortgage and cadastral taxes.

9.5 Stamp duty

Stamp duties are levied on certain documents, contracts and registers. The tax is usually a nominal lump sum, but in some specific cases, such as bills of exchange, it is levied as a percentage of the value mentioned in the document.



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1.0 OVERVIEW

The Constitution of Kenya 2010, which was promulgated in August 2010, created a devolved two-tier system of government comprising of a national government and 47 political and administrative counties.

Only the national government may impose income tax, value added tax, customs duties and other duties on the import or export of goods, and excise duty. County governments, on the other hand, may only impose entertainment taxes, property rates and any other taxes they are authorized to charge pursuant to an Act of Parliament.

Functions such as the registration of business entities are only undertaken by the national government. County governments, however, have power to issue and charge for certain licenses such as business permits and fire safety clearance certificates. The government fees payable for business permits and fire certificates are dependent on the nature of the business the person is engaged in, the size of the office premises the person occupies and the number of employees. The said permit and certificate are renewable annually.

2.0 LEGAL SYSTEM

Kenya's legal system is based on English common law with the primary sources of law being the Constitution of Kenya 2010, Acts of Parliament, the common law, doctrines of equity as well as statutes of general application in force in England in 1897. In making their determinations, Kenyan courts may make inference to African customary law in civil cases to the extent that it is not repugnant to justice and morality, or inconsistent with any other written law to do so.

3.0 TAXATION AUTHORITIES

The Kenya Revenue Authority (KRA) is the agency in charge of the collection and receipt of all revenue on behalf of the Kenyan government. In performing this function, it has the responsibility of administration and enforcement of all laws relating to revenue.

4.0 BUSINESS VEHICLES

Foreign entities wishing to conduct business in Kenya may choose to operate in various forms. The most common types of business vehicles in Kenya are companies, branches of foreign companies and partnerships.

4.1 Limited liability companies

The Companies Act, 2015 (Companies Act) provides for various types of companies, including private and public companies. The liability of shareholders in companies that undertake commercial activities is typically limited to their shares. Companies limited by guarantee do not have shares or shareholders but are owned by guarantors who agree to pay a set amount of money to the company's debts should the company be wound up. Such entities are often involved in charitable or social activities (not-for-profit organizations).

Limited liability companies may have a single shareholder and a single director. There are a few restrictions on foreign ownership of certain business in Kenya. These include:

i. Aviation: 51% of the voting rights, in the case of a body corporate or a partnership, must be held by the state or a citizen of Kenya or both

ii. Insurance: A minimum of one-third of the controlling interest in an insurer, whether in terms of shares, paid-up share capital or voting rights must be held by citizens of a partner state of the East Africa Community; or a partnership whose partners are all citizens of a partner state of the East African Community; or a body corporate whose shares are wholly owned by citizens of a partner state of the East African Community; or is wholly owned by the government of Kenya

iii. Telecommunications: A firm licensed to provide communication services as an operator or service provider is required to ensure that by the end of the third year from the date of the issuance of a license, or earlier as the case may be, and thereafter for the duration of the license term, that it has no less than 20% ownership and control by Kenyan persons, howsoever achieved.

4.2 Branches of a foreign company

Registering a branch of a foreign company in Kenya does not create a separate legal entity from the foreign company. The registration is a requirement for companies incorporated outside Kenya that intend to operate in Kenya as foreign companies.

Branches must have a local representative resident in Kenya, who may be a citizen or a non-

citizen. The local representative is answerable for the doing of all acts, matters and things that the company is required to do by or under the Companies Act and is personally liable for a penalty imposed on the company for a contravention of, or failure to comply with, the Companies Act.

4.3 Limited liability partnerships (LLPs)

LLPs combine some of the features of a traditional partnership with the advantage of limited liability. LLPs have a separate legal identity from their members, but are transparent for tax purposes, meaning partnership income is flowed out and taxed in the hands of the individual partners.

5.0 FINANCING A CORPORATE SUBSIDIARY

5.1 Equity financing

Companies can raise capital by issuing shares. There are no prescribed minimum or maximum share capital requirements for a private company limited by shares except for certain regulated sectors, such as banks and insurance companies.

5.2 Debt financing

5.2.1 Thin capitalization

A company is deemed to be thinly capitalized where it is under the control of a non-resident person alone or together with four or fewer other persons, and the highest amount of loans at any time during the year exceeds three times the sum of the company's revenue reserves and the issued and paid-up capital of all classes of shares.

For a thinly capitalized company, interest expenses on that part of the loan that exceeds the 3:1 debt to equity ratio will not be deductible for tax purposes. In addition, realized foreign exchange losses on loans will be deferred (not treated as tax deductible) until the company's state of thin capitalization ceases to exist. Thin capitalization provisions do not apply to financial institutions as licensed under the Banking Act.

5.2.2 Deemed interest

A Kenyan-resident entity that is foreign-controlled and has an interest-free loan from a non-resident entity will be subject to deemed interest provisions. Such a company will be required to compute an amount of deemed interest and disallow it in its tax computation. The amount of deemed interest will also be subject to withholding tax at the rate of 15%.

5.3 Stamp duty

Currently, there is no stamp duty on authorized share capital at the point of incorporation. Stamp duty is chargeable at the rate of 1% on any increase of a company's authorized share capital and on the transfer of shares. The specific stamp duty implications arising from debt financing will depend on the nature of the debt instrument.

6.0 CORPORATE INCOME TAX (CIT)

All income accrued or derived in Kenya by any person (individual or body corporate), whether resident or non-resident, is subject to tax. The whole profit of a business carried on partly within and partly outside Kenya by a resident company is deemed to accrue in or be derived from Kenya and is therefore taxable in Kenya at the resident CIT rate of 30%.

Where a non-resident person carries on business in Kenya through a permanent establishment (PE), the income attributable to the PE will be considered to be income accrued in or derived from Kenya. The tax adjusted business profits of the PE will be subject to tax at the non-resident CIT rate of 37.5%.

Other rates of CIT are as tabulated below:

Entity	CIT rate
Newly listed companies	
≥20% share capital listed	27% (rate applies for 3 years after listing)
≥30% share capital listed	25% (rate applies for 5 years after listing)
≥40% share capital listed	20% (rate applies for 5 years after listing)
Export Processing Zone enterprise	
First 10 years	10%
Next 10 years	25%
Special Economic Zone (SEZ) Enterprises, Developers and Operators	
First 10 years of operation	10%
Next 10 years	15%

Entity	CIT rate
Companies whose business is local assembly of motor vehicles	15% for the first 5 years of operations (This reduced rate may be extended for another 5 years if local content targets are achieved.)
Companies that construct at least 100,000 residential units	15% for that year of income
Companies engaged in business with the government of Kenya under a Special Operating Framework Agreement	To the extent provided for under the Agreement

6.1 Computation of taxable income

6.1.1 Taxable base

A taxpayer is subject to tax on its profits from carrying on its business. Taxable profit is generally considered to be its revenues less its deductible expenses.

6.1.2 Deductions

Taxpayers are permitted to deduct expenditures incurred in a year of income that are wholly and exclusively incurred for the purposes of producing income.

6.1.3 CIT reporting

Both subsidiary companies and branches are required to file a Self-Assessment Return (SAR) no later than the last day of the sixth month following the end of a year of income. The SAR is to be completed in prescribed form. Where there is no tax due for a year of income, a nil return must still be filed. SARs are filed on KRA's online portal.

6.1.4 Tax losses

Tax losses are an allowable deduction in the year in which they arise and can be carried forward for nine years. Generally, there is no carry back of tax losses except in the case of the extractive industries; that is, for entities involved in mining or petroleum operations.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

Transactions between Kenyan resident persons and their non-resident related parties must be carried out on an arm's length basis. Kenyan transfer pricing legislation also applies to transactions between a Kenyan branch and its head office or any other non-resident related parties.

A Kenyan resident company that operates in a preferential tax regime that transacts with a related resident company that is not operating in a preferential tax regime must also adhere to the arm's length principle. In this context, a "preferential tax regime," with respect to an item of income or profit, means any legislation, regulation or administrative practice that provides a preferential rate of taxation to such income or profit, including reductions in the tax rate or the tax base. An SEZ entity is one such example.

7.2 Withholding taxes on payments to residents and non-residents

The general withholding tax rates are summarized below.

Nature of payment	Resident rate (%)	Non-resident rate (%)
Dividends	5%	10%
Interest (including deemed interest)	15%	15%
Bearer instruments	25%	25%
Government bearer bonds with a maturity over 2 years	15%	15%
Royalties	5%	20%
Management or professional fees, including training fees	5%	20%
Contractual fees – Building, civil and engineering works	3%	20%
Rent – Immovable property	N/A	30%
Property other than immovable property	N/A	15%
Commissions paid to brokers by insurance companies	5%	20%
Commissions paid to agents and other persons by insurance companies	10%	20%
Insurance premiums paid to non-resident insurance companies	N/A	5%
Demurrage paid to non-resident shipping lines	N/A	20%

Dividends paid to a resident company that controls 12.5% or more of the share capital of the company paying the dividend are exempt from withholding tax. A reduced rate of 5% applies to dividends paid to citizens of the East African Community and a reduced rate of 15% applies to consultancy fees paid to citizens of the East African Community.

Kenya has more than 10 double taxation treaties (DTTs) in place and has also expressed its intention to sign the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. The countries with which Kenya currently has DTTs in force include: the United Kingdom, Germany, Canada, Denmark, Norway, Sweden, Zambia, India, France, South Africa, Iran, South Korea, Qatar, and the United Arab Emirates.

The DTTs provide for lower withholding tax rates in some instances. Any reduced rates of tax provided for under a DTT will not apply automatically, but rather will be subject to the limitation of benefits provisions in the Kenyan Income Tax Act.

8.0 PAYROLL TAXES

8.1 Pay As You Earn (PAYE)

Business entities are required to deduct and account for PAYE from all emoluments (cash and non-cash) paid or provided to employees. Kenyan residents are taxable on their worldwide employment income. PAYE applies based on a graduated scale with tax rates ranging from 10% to 30%.

Employers are required to deduct and submit to the KRA the tax due on the amounts they pay to their employees as wages. The employer is required to submit the tax deducted and file, on or before the ninth day of each month following the month of wage payment, a return indicating the amount of tax deducted from each employee's income. Employers must also account for a number of statutory deductions on a monthly basis, as discussed below.

8.2 National Social Security Fund (NSSF)

Any person who employs one or more employees must register with NSSF as a contributing employer. Employees are required to register as members of the NSSF as well. There are no registration costs. Upon registration, the employer is required to make monthly contributions of 6% of the pensionable income of the employee up to a maximum of KSh$2,160 in respect of all registered employees. Employees also contribute an equal amount to that contributed by the employer.

8.3 National Hospital Insurance Fund (NHIF)

Employers are also required to register with the NHIF and to deduct and account for monthly contributions to the NHIF for each employee based on their monthly income. There are no registration costs.

The contributions are based on a graduated scale and range from KSh$150 up to a maximum contribution of KSh$1,700 per month.

8.4 National Industrial Training Authority (NITA) levy

All employers are required to pay the NITA levy at a monthly rate of KSh$50 per employee.

8.5 National Housing Development Fund (NHDF) levy

The Finance Act, 2018 introduced an NHDF levy, which is aimed at financing the government's affordable housing agenda. The introduction of the NHDF levy has been challenged in court and the levy is still yet to take effect as of January 1, 2019.

9.0 INDIRECT TAXES

9.1 Value-added tax (VAT)

VAT in Kenya is charged on the supply of taxable goods and services and on the importation of goods or services into Kenya. A registered person who makes taxable supplies, including standard rated and zero rated supplies, is eligible to recover input tax, while a person who makes exempt supplies is not able to recover the input tax incurred in the production of those supplies.

Persons whose turnover of taxable supplies is or is expected to be KSh$5 million or more in a 12-month period must register for VAT.

Supplies fall within the following categories:

i. Zero rated supplies which are taxable at the rate of 0%

ii. Standard rated supplies are taxable at a rate of 16%

iii. Exempt supplies on which there is no VAT

iv. A reduced rate of 8% applies to petroleum products.

A registered person in Kenya is required to file and make VAT payments no later than the 20th day following the month of the supply.

The time of supply for VAT purposes is the earlier of:

i. The date on which the goods are delivered or services performed

ii. The date a certificate is issued by an architect, surveyor or any other person acting as a consultant in a supervisory capacity

iii. The date on which the invoice for the supply is issued

iv. The date on which payment for the supply is received, in whole or in part.

9.2 Excise duty

Excise duty is imposed under the Excise Duty Act, 2015 on the local manufacturing or the importation of certain commodities and the provision of excisable services. Excisable goods include items such as bottled water, soft drinks, cigarettes, alcohol, fuels, and motor vehicles. Excisable services on the other hand include mobile cellular phone services, fees charged for money transfer services, and other fees charged by financial institutions.

10.0 TAXATION OF CAPITAL GAINS (CGT)

Effective January 1, 2015, CGT is applicable on the transfer of property situated in Kenya including land and shares. CGT is applicable on the whole gain accruing to a person on transfer of property situated in Kenya, whether or not the property was acquired before or after January 1, 2015.

The chargeable gain is taxed at the rate of 5% and is not subject to further taxation. The obligation to account for CGT is on the transferor. The chargeable gain is computed as the difference between the transfer value of the property (i.e., selling price) and the adjusted cost base of the property to the transferor.

Effective January 1, 2016, gains on transfers of securities traded on any securities exchange licensed by the Capital Markets Authority is not subject to CGT.

Kazakhstan

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1.0 OVERVIEW

The tax system in Kazakhstan is regulated by the provisions of the Tax Code. The current Tax Code has been effective since January 1, 2018, replacing the previous Tax Code that had been in effect since 2009.

Under the current Tax Code, corporate and personal income tax are imposed on residents and non-residents conducting business in Kazakhstan through a permanent establishment (PE).

Non-residents that do not operate through a PE in Kazakhstan are subject to income tax withholding at the source of payment (WHT) that applies in respect of income from Kazakhstani sources. Kazakhstan currently has a network of double taxation treaties (DTT) with 53 countries; several new treaties are expected to be signed or ratified soon.

Provisions of a DTT may reduce the applicable rates of WHT in respect of passive income, including dividends, interest and royalty, whereas active business income received by a non-resident without the creation of a PE (e.g., provision of services) may be exempt from WHT in Kazakhstan.

In addition to income tax, the list of major taxes under the Tax Code includes indirect taxes (Value Added Tax, Excise Tax), payroll taxes and contributions to funds (Personal Income Tax, Social Tax, Obligatory Contributions to Pension Fund, Obligatory Contributions to Social Fund, Social Medical Insurance Contributions), taxes and other obligatory payments of subsoil users (Minerals Extraction Tax, Excess Profits Tax, Alternative Tax on Subsoil Use, etc.) and other taxes associated with ownership of land, property and vehicles.

In the international context, Kazakhstan has been a member of the World Trade Organization (WTO) since 2015 and is a member of the Eurasian Economic Union (EAEU) together with Russia, Belarus, Kyrgyzstan and Armenia.

Kazakhstan is not a member of the Organization for Economic Co-operation and Development (OECD). OECD regulations are not legally binding in Kazakhstan, although the nation is voluntarily participating in the OECD's recent tax initiatives.

2.0 LEGAL SYSTEM

Kazakhstan operates under a continental legal system, which is characterized by the codification of the rules of law, unified hierarchical system of sources of law and division into branches of law (criminal, civil, labor, family, administrative, etc.). According to the Constitution, the acting law of the Republic of Kazakhstan (RK) comprises of the norms of the Constitution, laws corresponding to it, other regulatory legal acts, international agreements and other obligations of the RK, as well as regulatory resolutions of the Constitutional Council and the Supreme Court of the RK.

3.0 TAXATION AUTHORITIES

The tax system in Kazakhstan is administered by the State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan (the SRC). The SRC

was established in 2014 from the combination of several state authorities: the Tax Committee, the Customs Committee and the Financial Police.

The main functions of the SRC in relation to taxation include, among others, the implementation of the state policy in the sphere of taxation; securing full and timely payment of taxes, customs duties, payments and other obligatory payments to the state budget; and the prevention, detection, suppression, disclosure and investigation of criminal and administrative offenses within its competence.

Being a central tax authority, the SRC has its territorial bodies, including departments of state revenues in regions, and state revenue divisions in each of the regions, cities and districts (i.e., local tax authorities).

4.0 BUSINESS VEHICLES

To do business in Kazakhstan, a foreign entity may establish a wholly owned subsidiary or a joint venture in the form of a Kazakhstani legal entity, or a representative office or branch registered in Kazakhstan of an existing entity registered outside of Kazakhstan.

The key difference between a legal entity and a branch or a representative office is that the former is a separate legal entity that is a resident of Kazakhstan for all legal purposes. A branch or representative office is a structural subdivision of an entity (foreign or local) located in a different place from the entity's main office.

A branch or representative office does not act in its own name, but on behalf of its parent company. It does not own property but is provided with property by its parent company, and it has no independent legal liability from that of its parent company.

A Kazakhstani branch of a foreign entity is considered a PE through which the non-resident conducts its business in Kazakhstan. Although the branch constitutes a Kazakhstani taxpayer, it is not considered a Kazakhstani resident for taxation purposes. However, it should be noted that in certain cases Kazakhstani branches of foreign legal entities may be considered as residents, such as for currency control purposes after July 1, 2019.

4.1 New business vehicle

The most common forms of legal entities selected for a business are limited liability partnerships (LLPs) and joint stock companies (JSCs).

In both LLPs and JSCs, the partners' or shareholders' liability is limited to their equity interest in the respective legal entity. Both LLPs and JSCs are separate legal entities for civil-law and tax purposes. LLPs and JSCs obtain their respective legal status from the moment of state registration with the RK Ministry of Justice. The procedure of state registration for LLPs and JSCs are highly similar. Once state registration is complete, LLPs and JSCs become registered with the Kazakhstani tax authorities.

The principal difference between LLPs and JSCs is that the latter are subject to regulation by the competent authority. JSCs are also subject to stricter requirements for protecting minority shareholders rights and must have more transparent business, management and reporting practices. In certain cases, Kazakhstani legislation requires that business be conducted through JSCs in certain sectors of the economy, such as banks, insurance companies and stock exchanges.

Establishing a legal entity in the form of an LLP can be an attractive option for investors. The key reasons for opting for LLPs are: (i) the management structure of an LLP is simplified, compared to the more rigid and complex corporate structure of a JSC; (ii) the charter capital of a JSC is much larger than that of an LLP; and (iii) unlike an LLP, a JSC is subject to various regulatory requirements, including public reporting.

4.2 Branch and representative office

A branch is a structural subdivision of a foreign legal entity that performs all or part of the foreign company's functions and does not have a separate legal entity status.

The difference between a branch and a representative office lies in the range of functions that each is permitted to perform. A branch may perform any or all functions of its head company, including commercial activities as well as representative functions. The purpose of a representative office is predominantly to represent its head company and protect its legal interests in a foreign jurisdiction.

Similar to a branch, a representative office may contract and perform legal acts in the name of its parent company, but not on behalf of its parent company. However, a representative office may not engage in income-generating commercial activity. The functions of a representative office are limited and it merely acts in support of a company that actually enters into contracts and is engaged in commercial activity.

4.3 Registration with tax authorities

Registering a business vehicle requires obtaining a Business Identification Number (BIN) that is automatically included in the registry of taxpayers.

The obligation to register as a VAT payer arises if the amount of taxable turnover for VAT purposes exceeds the 30,000 monthly calculation indexes[1] (MCI) minimum threshold during the calendar year. The minimum threshold is indexed and is approximately US$200,000 for the year 2018.

5.0 FINANCING A SUBSIDIARY

5.1 Equity financing

The charter capital of a Kazakhstani LLP might be increased in several ways, including additional contributions of the participants or the adoption of a new participant. However, it is expressly provided in the law that the charter capital of an LLP may not be increased by offsetting the participants' claims to the partnership.

Charter capital of an LLP may be increased through additional contributions of the participants. The procedure for increasing the charter capital includes several important steps, such as adoption of a resolution of participants for increase of the charter capital, amendment of the LLP foundation documents (charter and foundation agreement), registration of the contribution with the National Bank of Kazakhstan (if the amount of the contribution exceeds the equivalent of US$500,000) and sending notification of the capital contribution to the territory's justice department.

In respect of JSCs, the share capital is formed by the payment for the shares by the founders. Subsequent increase of share capital may be performed by the placement (sale) of the authorized shares of the JSC.

Under provisions of the Tax Code additional contributions to a charter capital or share capital does not represent a taxable event, and is not subject to corporate income tax (CIT) or VAT.

5.2 Debt financing

As an alternative to equity financing, Kazakhstani legal entities may obtain loans from local and foreign entities.

5.2.1 Withholding tax implications

Both dividends and interest payable to a foreign entity are subject to 15% withholding tax in Kazakhstan. The applicable tax rate might be reduced under the respective DTT, if applicable, subject to certain administrative requirements.

Any kind of income (including interest and dividends) payable to a resident of a state with preferential taxation is subject to withholding tax at the maximum rate of 20%. The list of the countries with preferential taxation is approved by Kazakhstan's Ministry of Finance and includes 58 countries and territories, where the income tax rate is lower than 10% and where legislation protects the confidentiality of financial information, beneficial owners and shareholders.

Unlike interest, dividends may be exempt from taxation in Kazakhstan subject to several conditions. Dividends payable by Kazakhstani entities to foreign legal entities may be exempt from WHT in Kazakhstan under the following conditions: (i) a recipient of dividends should not be a resident in a country with preferential taxation; (ii) a company that pays the dividends does not constitute a subsoil user, and no more than 50% of its value constitutes the property of a subsoil user; (iii) at the date of distribution of dividends, the respective shares or participating interest are owned for not less than three (3) years.

Since 2016, a specific set of requirements have been introduced in the tax legislation for exemption of dividends payable by Kazakhstani subsoil users to their foreign participants. In addition to conditions (i) and (iii) as described above, in order to exempt dividends, a subsoil user should conduct subsequent processing of the certain portion of minerals extracted during the year. It is expected that the percentage of minerals subject to subsequent processing will be gradually increased from 35% effective in 2018 to 70% through 2022.

1 In 2018 the size of 1 MCI is set at 2,405 Kazakhstani tenge under Law of the Republic of Kazakhstan "On the Republican Budget for 2018–2020," dated November 30, 2017, No. 113-VI. Due to the fluctuations of the exchange rate, this indicator may be within US$7 and US$6.30 during 2018; or average 1 MCI equals approximately US$6.70.

5.2.2 Thin capitalization

A Kazakhstani taxpayer that is financed with debt may be subject to the thin capitalization rules contained in the Tax Code. The thin capitalization rule exists in the form of limiting the deductibility of interest on loans extended by related parties, loans secured by related parties and loans extended by residents of jurisdictions with preferential taxation. Interest on the loans not included in any of these categories may be deducted in full.

This limitation does not apply unless the average annual amount of debt of the company exceeds four times the average annual equity (or seven times for financial organizations). If this ratio of debt to equity is above the threshold, the deductible amount of interest paid by the company in respect of such loans will be calculated under the special formula.

5.3 Stamp tax

There is no stamp tax imposed in relation to equity or debt financing in Kazakhstan.

6.0 CORPORATE INCOME TAX

CIT applies to Kazakhstani legal entities and non-residents acting through a PE in Kazakhstan at the standard rate of 20%. The tax year for CIT purposes is the calendar year. CIT is paid annually before April 10 of the year following the reporting tax period. However, taxpayers with aggregate annual income greater than MCI 325,000 (or approximately US$2.2 million in 2018) are obliged to pay CIT in advance on the monthly basis.

For CIT purposes, taxable income is calculated as aggregate annual income less deductible expenses and certain adjustments (if applicable). Aggregate annual income generally includes all kinds of income received from Kazakhstan and foreign sources. Expenses may be deducted provided that they are incurred for business purposes (i.e., relevant to generation of taxable income) and supported with primary documents confirming the business purpose of such expenses. Moreover, certain types of expenses are subject to the specific rules and limitations (e.g., depreciation of fixed assets, representation expenses, deductible taxes, etc.).

Dividends receivable by Kazakhstan companies are generally considered as taxable and should be included in aggregate taxable revenues. However, for CIT purposes, dividends may be excluded from taxable income (except for dividends paid by companies that enjoy exemption from CIT and other specific categories).

Tax losses on entrepreneurial activity may be carried forward for CIT purposes for the next 10 years inclusive, and may be offset against taxable revenues during these tax periods.

6.1 Tax on net income of a non-resident (Branch Profits Tax)

Non-residents who conduct business through a branch or PE in Kazakhstan are obliged to pay 15% tax on any net income after the deduction of CIT. Unlike the tax on dividends that is paid only when the dividends are distributed, the tax on net income should be paid annually in the same manner as CIT.

The applicable rate of tax on net income may be reduced under provisions of the relevant DTT.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

Kazakhstan's Law on Transfer Pricing[2] applies to cross-border transactions, local transactions directly related to international transactions involving mineral resources, transactions with Kazakhstani entities enjoying tax exemptions or having tax losses for the last two years. In general, the Law on Transfer Pricing applies to any cross-border transaction concluded by a Kazakhstani resident company, including transactions concluded with independent parties.

Kazakhstani law requires that the price in any cross-border transaction should be based on the market level. If a transaction price deviates from the market price range, the tax authorities have the right to adjust the transaction price and assess additional tax obligations, fines and penalties to Kazakhstani taxpayers by increasing taxable revenues or decreasing deductible expenses.

The tax authorities may require that a taxpayer provide documents substantiating the economic rationale of a transaction price, information on the applicable pricing method or other documents supporting the price for review.

2 Law of the Republic of Kazakhstan dated July 5, 2008, No. 67-IV "On Transfer Pricing" ("Law on Transfer Pricing")

7.2 Withholding tax

Non-residents that do not operate through a PE in Kazakhstan are subject to WHT that applies in respect of income from Kazakhstani sources.

The types of income considered to be income from Kazakhstani sources is quite extensive and includes, among others: (i) sale of goods and provision of services in the territory of Kazakhstan; (ii) provision of managerial, financial, consulting, auditing and legal services, regardless of the actual place of their provision; (iii) all kinds of income payable to entities registered in jurisdictions with preferential taxation; (iv) capital gains, dividends, interest and royalties; and (v) other kinds of income received from activities in the territory of Kazakhstan. The full list of non-resident income sources in Kazakhstan is provided for in Article 644 of the Tax Code. It is an extensive list that includes 34 categories of income, and also includes "other income received from activities in the territory of Kazakhstan."

Kazakhstani WHT rates are provided in the Tax Code depending on the type of income as follows: (i) income from provision of services and all kinds of income payable to residence of preferential tax jurisdictions are subject to 20% WHT; (ii) capital gains, dividends, interest, royalties and insurance premiums under risk insurance contracts are subject to 15% WHT; (iii) insurance premiums under risk re-insurance contracts are subject to 5% WHT.

Kazakhstan has a network of DTTs with various nations. Pursuant to a relevant DTT, applicable rates of WHT dividends, interest and royalty, as well as active business income received by a non-resident without creation of a PE (e.g., provision of services) may be reduced, or may be completely exempt from WHT in Kazakhstan.

Under provisions of the Tax Code, in order to apply provisions of the relevant DTT, certain conditions should be met. The recipient of income should not use provisions of the DTT for the benefit of a third party and should provide the Kazakhstani tax agent with the official document confirming its residency (e.g., tax residence certificate) in the country that contracted the DTT with Kazakhstan. The Kazakhstani tax authorities are very demanding as to the content and legalization of such documents.

7.3 Taxation of capital gains

The list of income derived by non-residents from Kazakhstani sources includes, inter alia, gains received on the sale of shares/participating interest of a foreign legal entity if more than 50% of the value of such shares or participating interest derived from a property situated in Kazakhstan. Therefore, the sale of shares in a foreign holding company that owns Kazakhstani assets may trigger tax obligations in Kazakhstan.

It is important to note that gains realized by non-residents from the sale of shares or participating interest in Kazakhstan entities may be exempt from WHT under the same conditions as provided in respect of exemption of dividends (as described above). In addition, capital gains are not subject to taxation in cases of sale of shares listed in the Kazakhstani or foreign stock exchange under an open bidding method.

7.4 CFC rules

Controlled foreign companies (CFC) rules apply in Kazakhstan to individuals and legal entities holding both directly and indirectly or controlling more than 25% of the shares or participating interest in a company registered in jurisdictions with preferential taxation.

The Tax Code requires that the total amount of profit earned by a CFC should be included in the taxable income of a Kazakhstani taxpayer, whereas a corresponding amount of income tax paid in a foreign state on the same profits may be excluded to avoid double taxation. In addition, Kazakhstani residents are subject to certain reporting requirements in connection with foreign-controlled companies.

7.5 Currency control

In Kazakhstan, different currency control regimes are imposed under the Law on Currency Regulation and Currency Control and the relevant subordinate legislation. Depending on its nature, amount and other characteristics, a transaction in a foreign currency may be subject to a regime of notification or registration. The main supervisor of currency control is the National Bank of Kazakhstan (NBK). The regulations on currency control are rather detailed and will be considered in relation to a specific currency operation on case-by-case basis.

The new Law on Currency Control will become effective on July 1, 2019. It applies to residents and non-residents who conduct operations in a foreign currency in the territory of Kazakhstan, as well as transactions of residents outside of Kazakhstan. The term "resident" under the new law includes, inter alia, branches of foreign legal entities operating in Kazakhstan "that constitute a permanent establishment under the Tax Code."

8.0 PAYROLL TAXES

Payroll taxes in Kazakhstan are paid by employers on behalf of employees. Generally, employment income includes any conceivable benefit in exchange for labor, such us employment benefits in excess of salary. The group of payroll-related taxes and payments includes:

- Personal income tax (10%) withholding from employees' gross income
- Contributions to pension fund (10%) withholding from employees' gross income
- Social tax and social contributions (9.5%) to be paid on employer's cost
- Obligatory medical insurance contributions (1.5%)

Personal income tax (PIT) and contributions to the pension fund are withheld by the employer from gross salary at the source of payment, whereas social tax, social security and obligatory social medical insurance contributions are paid as expenses by the employer.

Payroll taxes are paid by an employer on a monthly basis, whereas tax declarations are submitted on a quarterly basis.

9.0 INDIRECT TAXES

9.1 VAT

Value-added tax (VAT) applies to the sale of goods and services in Kazakhstan, including the import of goods and services by local VAT payers from non-residents. The amount of VAT payable to the state budget is calculated as a difference between output VAT charged on taxable turnovers and input VAT payable to the local suppliers of goods and services.

The standard rate of VAT is 12%. Taxpayers are obliged to register as VAT payers if the amount of taxable turnover for VAT purposes exceeds during the calendar year the minimum threshold, which is currently set at MCI 30,000 in 2018 (or approximately US$200,000). The tax period for VAT is a calendar quarter, and VAT is paid on a quarterly basis. The amount of VAT payable to the state is calculated as a positive difference between Output VAT charged by the taxpayer on its taxable turnovers, less Input VAT paid to the local suppliers of goods and services and confirmed with primary documents (VAT-invoices).

VAT at a 0% rate applies on export, international transportation and certain services relevant to international transportation by railroads.

Excessive amounts of input VAT accumulated in connection with turnovers subject to 0% VAT may be refunded from the state budget subject to several requirements. The VAT refund procedure includes submitting a refund request within the statute of limitations and successfully passing a thematic (special, focused on one certain issue) tax audit of the requested amounts.

9.2 Property tax

Property tax is payable by Kazakhstani legal entities in respect of immovable property, which includes buildings, constructions, premises and other structures, which are considered to be fixed assets or investments in immovable property. Property tax is calculated at 1.5% of average annual book value of immovable property owned, leased (in certain cases) and possessed (on the basis of concession agreements).

9.3 Land tax

Land tax is specifically calculated for each separate land plot and depends on the type of land plot (land plots intended for rural usage, land plots of inhabited areas, land plots used for industrial purposes, land plots used for dwellings, etc.), the quality of soil for rural usage land plots, the type of inhabited area and other parameters.

9.4 Vehicle tax

Vehicle tax is specifically calculated for each separate vehicle and depends on the type of transport (cars, lorries, trucks, buses, motorcycles, ships, vessels, airplanes, etc.), engine capacity, tonnage and number of seats for buses.

10.0 PREFERENTIAL TAX REGIMES

10.1 Special Economic Zones

In Kazakhstan, Special Economic Zones (SEZs) are created to facilitate modern, highly productive and competitive manufacturing; to attract investments and new technologies in certain economic sectors and regions; and to boost employment. Each SEZ has been established to promote a particular priority activity, such as tourism, petrochemicals, construction, trade, logistics, textiles or metallurgy. Priority activities are approved by the Kazakhstani government for each SEZ.

In order to enjoy the benefits available under the special regime applied to SEZ, a legal entity should be registered as a participant of the SEZ and included in the unified register of participants of the SEZ. As a participant of the SEZ, a legal entity operates based on an agreement related to performing the activities agreed with a managing company of the SEZ.

A special legal regime is applied to SEZs that concerns tax, customs, land and employment issues. The tax regime of each SEZ is established in the Tax Code. Tax benefits may vary depending on the SEZ. In general, SEZ participants may enjoy tax benefits in respect of CIT, VAT, social tax (in the case of the Park of Information Technologies SEZ only), property tax, land tax and land rental payments.

10.2 Tax and customs preferences under investment contracts

Preferential tax treatment is offered by the Entrepreneurial Code for investors implementing an "investment project" or a "prioritized investment project." These tax preferences are not granted automatically but on the basis of an investment contract executed between a Kazakhstani legal entity implementing the project and the authorized body.

10.3 Astana International Financial Center

On July 5, 2018, Kazakhstan launched the Astana International Financial Centre (AIFC) with a special legal regime based on English Law.

The AIFC is designed as a high-technology stock exchange that will list the shares of the largest Kazakhstani enterprises. The Independent Court and International Arbitration Centre were established in the AIFC to ensure the protection of the rights of investors and participants.

The companies established under the AIFC rules or recognized by the AIFC ("AIFC Participants") may enjoy simplified currency, visa and labor regimes, as well as certain tax exemptions until January 1, 2066. The tax regime in the AIFC is based on the Tax Code with certain exceptions provided by the Constitutional Law of the Republic of Kazakhstan dated December 7, 2015, On International Financial Center "Astana," which provides the following tax exemptions for AIFC Participants:

- Exemption from CIT of income received by AIFC Participants from provision of certain financial services until January 1, 2066
- Exemption from CIT of legal, audit, accounting and consulting services provide to AIFC Participants and AIFC bodies until January 1, 2066
- Exemption from land tax and property tax of the two aforesaid categories

Legal entities and individuals that are not considered AIFC Participants may be exempt from tax on certain categories of income such as dividends and capital gains received in connection with the ownership of shares or participating interest of AIFC Participants, as well as dividends and capital gains received from securities listed at the AIFC.

Luxembourg

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1.0 OVERVIEW

In the heart of Europe, Luxembourg benefits from a longstanding and high level of political, social and fiscal stability. Rated AAA, Luxembourg is very active in cross-border trade and investment all around the world and is an important financial center. Luxembourg is the largest investment fund center in Europe and the second largest in the world after the US, in terms of net assets under management. Luxembourg's legal and tax law system is generally flexible and favorable to investments.

Luxembourg levies corporate and personal income tax on its residents in respect of income and capital gains earned on a worldwide basis. Under Luxembourg domestic tax rules, non-resident taxpayers are taxed only on their Luxembourg source income as listed in Article 156 of the Luxembourg income tax law(LIR).

A non-resident company is taxable in Luxembourg on business profits derived by a permanent establishment located in Luxembourg, income from agricultural and forestry exploitations in Luxembourg, profits generated from a professional activity (including, among others, legal services or consulting services) exercised in Luxembourg and income and gains generated by real estate located in Luxembourg, as well as capital gains realized under certain conditions on shares held in Luxembourg companies. In addition, a withholding tax applies to dividends, certain types of interest, salaries and wages, director fees and income from certain literary, artistic and sports activities.

Transactions between related parties (including but not limited to intragroup financing activities) need to comply with the arm's length principle and the transfer pricing rules as developed by the Organisation for Economic Co-operation and Development OECD) standards.

Luxembourg has 82 double-taxation treaties in force, and 13 tax treaties in the pipeline. Luxembourg is also a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to prevent Base Erosion and Profit Shifting and has agreed to adopt the minimum standards (preamble, principal purpose test and dispute resolution), as well as certain optional provisions. The ratification process has not yet been completed.

2.0 LEGAL SYSTEM

The Grand Duchy of Luxembourg has a civil law system. Due to its history and size, Luxembourg's legal environment has been developed on its neighbors' legal systems. Thus, direct tax law is based upon German sources; company law and criminal law were influenced by Belgian sources; and civil and commercial law are based on the Napoleonic Code (which in turn is based on Roman law).

Commercial companies are governed by the law of August 10, 1915, as amended (the "Company Law"), which was reformed in 2016 to modernize Luxembourg corporate law.

Luxembourg is a member of the EU and bound by its legislation and case law.

3.0 TAXATION AUTHORITIES

Luxembourg taxes are collected by different tax administrations depending on the nature of the tax. The *Administration des Contributions Directes* is responsible for direct taxes (i.e., personal income tax, corporate income tax, municipal business tax, net wealth tax and withholding tax WHT). The *Administration de l'Enregistrement et des Domaines*" is responsible for indirect taxes (value-added tax and registration duties). The Administration des Douanes et des accises is responsible for customs and excise duties.

4.0 BUSINESS VEHICLES

A non-resident may either establish a Luxembourg vehicle to carry on an activity in Luxembourg or operate directly through a foreign entity (with or without a Luxembourg branch). The main vehicles are partnerships, corporations and investment funds.

4.1 Partnerships

The main forms of partnership are:

i. *Société en commandite simple (SCS)*

ii. *Société en commandite spéciale (SCSp)*

iii. *Société en nom collectif (SNC).*

The SCS and SCSp are limited partnerships and the SNC is a general partnership.

A Luxembourg partnership is treated as fiscally transparent for corporate income tax (CIT) and net wealth tax (NWT) purposes. It will not be subject to municipal business tax (MBT), provided that it is not engaged in a business per se nor deemed to be engaged in a business.

The mere holding of shares in a company does not normally constitute a business per se. When an SCS or SCSp is an alternative investment fund (AIF), as defined by the EU alternative investment fund manager directive (2011/61/EU) and the Luxembourg Law of 12 July 2013 implementing such directive, there is an argument that it is not a business based on a circular letter issued by the Luxembourg tax authorities (LTA).

A partnership is deemed engaged in a business when its general partner is a corporation holding 5% or more of the interest in the partnership of a SCS or SCSp, and a majority of its interest or more for a SNC. Foreign partners in a Luxembourg partnership subject to MBT per the above criteria may be considered to have a taxable presence in Luxembourg (permanent establishment or permanent representative) under domestic tax law. Foreign entities are classified as transparent or non-transparent for tax purposes by comparison of their legal features with those of Luxembourg entities.

4.2 Corporations

The main corporate forms are:

i. *Société anonyme (S.A.)*

ii. *Société à responsabilité limitée (S.à r.l.)*

iii. *Société en commandite par action (S.C.A.)*

iv. *Société par action simplifiée (S.A.S)*

Luxembourg resident companies are in principle subject to CIT, MBT and NWT and can benefit from the country's double-taxation treaties.

4.3 Investment funds

There are multiple ways to structure an investment fund in Luxembourg. A fund can be regulated, meaning it is subject to the direct supervision of the Luxembourg financial supervisory authority (CSSF, in its French acronym), or unregulated. Investment funds can be further classified based on the target investors to whom they are being marketed.

Among regulated funds, undertakings for collective investments in transferable securities (UCITS) are suited for retail investors. Three other fund types are generally dedicated to professional/institutional investors:

i. Funds falling under part II of the Law of 17 December 2010 (Part II Funds)

ii. Investments companies in risk capital, subject to the Law of 15 June 2004 (SICARs)

iii. Specialized investment funds, subject to the Law of 13 February 2017 (SIFs).

Reserved alternative investment funds (RAIFs), subject to the Law of 23 July 2016, present another option to the alternative offering. They are not subject to direct supervision of the CSSF but have to appoint an alternative investment fund manager, who in turn is under the oversight of the CSSF or of the competent authority in another EU member state.

UCITS, SICARs, SIFs and RAIFs all have their specific legal regimes and are subject to so-called product laws. On the other hand, an investment fund can also be established as an unregulated structure that is not subject to any of the product laws. However, they cannot form compartments (sub-funds) and they do not benefit from any tax advantages, unless they qualify as alternative investment funds under the alternative investment fund manager directive.

The above-mentioned investment funds can be established under a contractual (FCP), corporate or partnership form. There are certain exceptions to this rule; most notably, SICARs and unregulated funds cannot figure in contractual form and UCITS cannot elect the form of an S.à r.l., SCS or SCSp.

Investments funds are exempt from CIT, MBT and NWT (except the corporate SICAR and RAIF SICAR which are subject to CIT, MBT and minimum NWT) but subject to an annual subscription tax of their aggregate net asset value.

Non-resident investors are in principle not subject to tax on capital gains or income derived from the fund, except if the fund is owned through a permanent establishment or a permanent representative in Luxembourg.

SICAR tax regime is more favorable and depends on its form (i.e., corporate form will be subject to CIT, MBT but exempt from NWT and SICAR under the form of a partnership will be in principle not subject to CIT, MBT and NWT).

RAIFs are exempt from CIT, MBT and NWT but subject to a reduced subscription tax of 0.01% (only for RAIF-SIF). RAIF-SICAR follows the SICAR tax regime as described.

5.0 FINANCING A CORPORATE SUBSIDIARY

5.1 Equity increase

A share capital increase can be realized in cash or in kind, either in exchange of new shares or via an increase of the nominal value of the existing shares. A contribution to an equity account without issuing shares, known as account 115, is also possible. The contribution to account 115 does not require a notarial deed where a share capital increase does.

5.2 Share capital reduction and share premium repayment

The repayment of share capital and share premium (or account 115) are treated the same way for tax purposes. Such redemption is in principle not subject to WHT to the extent that (i) the Luxembourg company has no distributable profits/retained earnings (whether capitalized or not), and (ii) the repayment of share premium is motivated by genuine economic reasons.

If share premium is repaid by the Luxembourg company despite the existence of distributable reserves, the latter will be deemed to be distributed first as a dividend, triggering WHT subject to (i) an exemption under domestic rules, or (ii) an exemption or WHT reduction under a double-taxation treaty. The same rule will apply if the company has no distributable reserves but the repayment is not motivated by genuine economic reasons.

5.3 Debt financing

5.3.1 Withholding tax implications

Arm's length interest payments made by a Luxembourg resident corporation to a lender are generally not subject to WHT, except for certain types of profit-sharing debts and payments made under silent partnership arrangements. However, non–arm's length interest payments between related parties, or payments that are not compliant with the debt-to-equity ratio, will be requalified into dividend distributions and thus subject to 15% WHT (17.65% on the gross amount). The WHT rate can be reduced or eliminated under a double-taxation treaty, or eliminated under domestic rules.

5.3.2 Thin capitalization

There is no specific law or other legislative reference on thin capitalization, nor an excess of debt over equity, other than transfer pricing rules. Consequently, Luxembourg tax authorities address thin capitalization by establishing a default debt-to-equity ratio of 85/15, unless the taxpayer can makes a reasonable case for another ratio. The thin capitalization rules aim to restrict the deductibility of interest paid or payable by a corporation resident in Luxembourg where the ratio of debt to equity exceeds 85/15.

To the extent that the prescribed debt-to-equity ratio is exceeded, there will be a proportionate denial of the interest deduction. Any payment of interest that is subject to restriction under these rules may be deemed to be a dividend for WHT purposes (WHT exemptions remain available).

5.3.3 Anti-tax avoidance directive

Further to the OECD recommendations on base erosion and profit-shifting initiative, an EU anti-tax avoidance directive has been adopted on July 12, 2016 (ATAD1), which provided several tax measures to be implemented by member states. Some of these tax measures include: controlled foreign company (CFC) rules, exit taxation rules, interest limitation rules, anti-hybrids and general anti-avoidance rules (GAAR). These rules are to be implemented starting on January 1, 2019. Luxembourg has not yet passed a domestic law implementing these rules.

On May 29, 2017, the EU adopted another anti-tax avoidance directive, ATAD2, amending ATAD1 by extending the scope of the anti-hybrid provisions. Measures of ATAD2 should be implemented and applicable from January 1, 2020.

5.3.4 Interest limitation rule

Luxembourg will implement a new limitation rule on interest into its domestic tax legislation. The deduction of so-called "exceeding borrowing costs" will be limited to the higher of: (i) 30% of EBITDA (generally referred to as earnings before interest, tax, depreciation and amortization but subject to a more specific definition in the law/directive), or (ii) €3,000,000.

This rule should not negatively impact companies having a back-to-back financing activity, receiving only interest payments or reporting a positive arm's length margin, because the limitation will apply to exceeding costs—i.e., the difference between interest income (or its economic equivalents) less borrowing costs. The notion of income economically equivalent needs to be further clarified to determine if it will include capital gains on receivables.

5.3.5 Anti-hybrid rules

ATAD1 and ATAD2 target hybrid mismatches (due to different qualifications) in financial instruments or entities. The mismatch may arise between Luxembourg taxpayers and taxpayers in other EU member states, or when commercial or financial relationships between a Luxembourg taxpayer and an associated enterprise established in another EU member state result in a double deduction or a deduction without (taxable) inclusion. Interest expenses incurred by a Luxembourg taxpayer would not be deductible if, in view of a hybrid mismatch, (i) they are deductible in another EU member state where the expenses have their source; or (ii) such expenses have their origin in Luxembourg but are not taxable in the hands of the recipient (EU member state under ATAD1, extended to other jurisdictions under ATAD2).

5.3.6 Controlled foreign company rules

Luxembourg has opted to limit the income that has arisen from non-genuine arrangements having been put in place in essence to obtain a tax advantage. As a result, only the income that has actually been generated through the assets and risks linked to significant people functions carried out by the Luxembourg controlling entity will be subject to taxation in Luxembourg. The CFC income would be subject to CIT but not to MBT.

6.0 CORPORATE INCOME TAX

6.1 Corporate income tax and municipal business tax

Luxembourg companies are subject to CIT on their worldwide profits. For taxable income of more than €30,000, the CIT rate is 18% plus a solidarity surcharge for the employment fund of 7%. As a result, the effective CIT burden is 19.26% in 2018 for taxable profits exceeding €30,000. The CIT is governed by the LIR dated December 4, 1967, as amended.

In addition, Luxembourg levies a MBT on the net profits realized by Luxembourg companies. The MBT is governed by the municipal business tax law as amended dated December 1, 1936. Rates vary by municipality. For 2018, the combined CIT and MBT rate is 26.01% for a company established in Luxembourg City. This rate may be progressively reduced in the future.

6.2 Net wealth tax

Luxembourg levies an annual NWT based on the unitary value determined in accordance with the net wealth tax law and valuation law dated October 16, 1934. The unitary value corresponds to the difference between the assets generally estimated at their fair market value and the liabilities with third parties as per a certain key date (in principle, on January 1 of each year).

The NWT rate is 0.5% of the unitary value, reduced at 0.05% for the NWT basis exceeding €500 million. From January 1, 2016, onwards, Luxembourg introduced a minimum NWT charged from €535 to €32,100. The minimum has been determined at €4,815 for companies whose financial assets, transferable securities and cash deposits exceed, cumulatively, 90% of their total balance sheet plus €350,000.

An NWT reduction can be claimed for the portion of NWT exceeding the minimum NWT, subject to certain conditions. Among these conditions, an amount corresponding to five times the NWT reduction must be allocated to a special NWT reserve in the balance sheet and maintained for the following five years.

6.3 Corporate residency

A company is considered as a tax resident in Luxembourg if its statutory seat or its effective place of central administration is located in Luxembourg. Non-resident companies are subject to Luxembourg taxation only on its Luxembourg source income as listed in Article 156 LIR. Consequently, where a foreign company is resident in a country with which Luxembourg has a double-taxation treaty pursuant to which the corporation may claim treaty benefits, the corporation will generally be exempt from Luxembourg taxation on its business profits, except to the extent that the profits were earned through a permanent establishment situated in Luxembourg. A corporation that operates through a Luxembourg permanent establishment (such as a branch) will be subject to CIT and MBT.

6.3.1 Taxable base

A taxpayer is subject to tax on its profits from carrying on its business. Business income as defined by the Article 14 LIR is part of the taxable base. Due to their corporate form, corporations generate per se business incomes. As a general rule, the accounts for tax purposes follow the commercial accounts (except otherwise provided). To obtain the taxable profit for the current year, the tax exemptions (e.g., due to any applicable participation exemption or treaty benefits) and possible differences in deductions or depreciations are taken into account.

6.3.2 Deductions

A taxpayer is generally permitted to deduct genuine business expenses provided that they are at arm's length and not related to tax exempt income. This includes interest incurred for the purpose of earning income from a business or property (subject to the thin capitalization rules and other limitation rules discussed below).

6.4 Participation exemption regime

6.4.1 Dividends

In principle, dividends are taxable at a combined rate of 26.01% CIT and MBT (in 2018 for companies in Luxembourg City), unless the participation exemption applies. Companies subject to dividend tax are:

i. Resident corporations
ii. Permanent establishments of a company covered by the Parent Subsidiary Directive
iii. Permanent establishments of a company resident in a country with which Luxembourg has a double-taxation treaty
iv. Permanent establishments of a company resident in an EU or European Economic Area (EEA) member state.

The LIR sets the following conditions under which the participation exemption applies:

i. i. The distributing company is either a fully taxable Luxembourg company or a company listed in the EU Parent Subsidiary Directive, or a capital company subject to a comparable tax (i.e., a tax levied at rate equal to at least 50% of the CIT rate on a tax basis that is comparable to the basis determined under Luxembourg tax rules);
ii. The recipient company holds or commits to continue to hold a direct participation in the share capital of the distributing company of at least 10% or with an acquisition price of at least €1,200,000 for an uninterrupted period of 12 months; and

iii. The GAAR and the anti-hybrid rule do not apply.

In principle, dividends paid by a fully taxable Luxembourg resident company are in principle subject to a WHT of 15% (or 17.65% of the gross amount). The rate may be reduced under an applicable double-taxation treaty. Article 147 of the LIR allows a dividend WHT exemption under certain conditions:

i. The recipient company is either a Luxembourg resident fully taxable company, or a company covered by the Parent Subsidiary Directive or a Luxembourg Permanent Establishment thereof, or a company resident in a country having a double-taxation treaty with Luxembourg and liable to a tax equivalent to the Luxembourg CIT (i.e., 50% of the Luxembourg CIT rate on a tax basis that is comparable to the basis determined under Luxembourg tax rules); and

ii. The recipient company holds or commits to continue to hold a direct participation in the share capital of the distributing company of at least 10% (or a participation with an acquisition price of at least €1,200,000) for an uninterrupted period of 12 months; and

iii. The GAAR does not apply.

6.4.2 Capital gains

In principle, realized capital gains are subject to CIT and MBT at a combined rate of 26.01% (in 2018 for companies in Luxembourg City). The same companies as defined under 6.4.1 above are subject to this tax. An exemption applies if the following conditions are met:

i. The company is a fully taxable Luxembourg company, a company covered by the Parent Subsidiary Directive or a non-resident company subject to a tax equivalent to the Luxembourg CIT (i.e. 50% of the Luxembourg CIT rate on a tax basis that is comparable to the basis determined under Luxembourg tax rules); and

ii. At the moment of the disposal, the parent company has continuously held a direct participation in the share capital of the company alienated of at least 10%, or a participation with an acquisition price of at least €6,000,000 for an uninterrupted period of 12 months.

Expenses, such as operating charges and interest on debt, incurred by a parent company in connection with the holding of its participation are tax deductible, for a given tax year, in the absence of exempt income or to the extent that they exceed exempt incomes. When an exempt capital gain is realized, the latter will remain taxable up to the amount of the related expenses deducted for the participation transferred for the past years. This mechanism is called "recapture" and is generally tax-neutral for a company holding only shares benefiting from the participation exemption regime, since the taxable gains (corresponding to related expenses deducted) should be offset by tax losses carried forward (constituted by the expenses deducted).

6.5 Tax losses

Tax losses can be carried forward for 17 years. No carry-back is allowed.

6.6 Tax consolidation

A vertical and horizontal tax consolidation regime is available under certain conditions for companies for CIT and MBT purposes (but not for NWT purposes) under Article 164bis LIR.

Affiliated Luxembourg resident companies can benefit from the tax consolidation to the extent that:

i. The consolidating company is either a resident company fully taxable or a Luxembourg permanent establishment of a non-resident company which is fully subject to tax comparable to Luxembourg CIT;

ii. The consolidated companies are fully taxable residents;

iii. The consolidating company holds directly or indirectly at least 95% (or 75% under certain conditions) of the consolidated companies for an uninterrupted period of at least five years as from the beginning of the first accounting period for which the regime is requested; and

iv. A written request must be filed to the Luxembourg tax authorities before the end of the first accounting period for which the tax consolidation regime is requested.

6.7 Intellectual property regime

Certain income from intellectual property assets benefit from a specific tax regime. This regime has been recently amended as of March 2018 through article 50ter LIR to be in line with OECD requirements. It allows an 80% exemption, from a CIT and MBT perspective, on adjusted and compensated net income. Qualified intellectual property assets benefit from a 100% exemption from a NWT perspective.

6.8 Royalties

Arm's length royalties paid by a Luxembourg company are in principle not subject to WHT.

6.9 Income tax reporting & tax returns

Luxembourg resident corporations and non-resident corporations that carry on business in Luxembourg or that dispose of taxable Luxembourg income are required to file annual income tax returns for CIT, MBT and NWT purposes. Tax returns must be filed by May 31 of the following year in order to avoid late filing penalties (e.g., 2018 returns are due by May 31, 2019). However, an extension may be granted upon demand on a case-by-case basis.

Dividend WHT returns need to be filed within eight days following the distribution of the dividends. Quarterly tax advances are required in respect of current-year taxes, the estimation of the tax due being made on the previous year. For new taxpayers, the tax advances correspond at least to the minimum net wealth tax.

However, the LTA can also require the taxpayer to provide an estimation of the expected taxable income. Penalties for late filing may result in a fine up to €25,000. Late payment may result in interest of 0.6% per month starting from the month following the due date.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

Luxembourg's transfer pricing regime generally conforms to the OECD's arm's length principle. It has been reflected in article 56, 56bis and 164 of the LIR. In addition, a circular letter has been issued from the LTA n°56/1 - 56bis/1 dated December 27, 2016. This circular provides practical guidance on:

- The methods to be used to determine the arm's length remuneration
- The minimum equity-at-risk required by the Luxembourg company
- The substance and functions required by the Luxembourg company, especially on the management of the company where
    - *i.* A majority of the board should be residents of Luxembourg;
    - ii. The management should be employing or have access to adequate employees with skills to perform the functions to run intragroup financing transactions and to take the opportune decisions about its risks;
    - iii. The key decision shall be taken in/from Luxembourg with at least one annual meeting in Luxembourg; and

iv. The company shall not be considered as a tax resident in another state.

Luxembourg taxpayers are required to maintain transfer pricing documentation in respect of transactions subject to the transfer pricing rules.

8.0 PAYROLL TAXES

8.1 Payroll taxes

In Luxembourg, employers are required to withhold wage tax on salaries of their employees.

8.2 Social security contributions

Employers must make social security contributions on behalf of their employees by withholding part of the employee's salary. Employers and employees both contribute a part of the social security contributions. The taxable base includes gross wages and salaries, including benefits in kind.

The social security contributions cover pension and disability, health insurance, accident insurance, health at work, mutual health insurance (for a rate of approx. 11.05% for the employee and 12.52% to 15.01% for the employer) and dependency insurance (1.40% not capped, solely contributed by the employer).

9.0 INDIRECT TAXES

9.1 Value-added tax (VAT)

VAT is imposed on the final domestic consumption of most goods and services supplied in Luxembourg. VAT is neutral for companies having commercial activities. Those companies collect the tax on their own sales and deduct the tax they have paid on purchase of goods and services. The net VAT payable is the difference between collected VAT and deductible VAT. VAT credits can be reimbursed under certain conditions. Exports outside of the EU are VAT-exempt.

The VAT rules as applied in Luxembourg are derived from the provisions of EU directives on VAT and are governed by the Luxembourg VAT law dated February 12, 1979, as amended. Luxembourg applies the lowest standard rate available in the EU at 17%, along with an intermediary rate of 14%, a reduced rate of 8% for items such as, electricity and heating and a super-reduced rate of 3% that applies to household essentials such as, food, children's clothing, books, broadcasting, etc.

The activities carried out by UCITS, UCIs, SIFs, securitization vehicles and AIF/RAIFs, along with the management of such entities, are generally exempt from VAT. The notion of management services includes day-to-day management of the investment portfolio and investment advice, but excludes control and supervision services provided by a depositary.

9.2 Registration duties

Registration duties are either fixed (€12 or €75) or variable. A company must pay a €75 registration duty to increase its share capital, amend its articles of association or migrate out of Luxembourg.

A deed that is voluntarily registered that must be legally registered, or that is appended to a deed that must itself be deposited in the minutes of a notary or must be legally registered, is subject to a registration duty. The amount of the registration duty will depend on the nature of the document to be registered.

A transfer of real estate assets located in Luxembourg is subject to registration duties of 7% (10% for real estate assets located in Luxembourg City, except residential assets, which remain subject to the 7% rate). Contributions in kind of real estate assets located in Luxembourg in exchange for shares are subject to a 1.1% registration duty rate (1.4% for assets located in Luxembourg City, except residential assets, which remain subject to a 1.1% rate in case of contribution in exchange for shares). Transfers and contributions of assets located outside Luxembourg are not subject to registration duties.

Mexico

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1.0 OVERVIEW

Mexican tax law distinguishes between residents and non-residents, whether it be individuals, companies or other entities treated as corporate bodies. As a general rule, residents are subject to taxation in Mexico on their worldwide income, whereas non-residents are taxed only on their Mexican-sourced income. Corporations (legal entities) are assessed as Mexican residents if they are headquartered in Mexico (i.e., they have established in Mexico their main business administration or their place of effective management). There are certain tie-breaker rules under domestic law (as well as under double taxation treaties executed by Mexico) to determine tax residency for individuals.

Under domestic law, individuals and legal entities are subject to income tax in the following cases:

i. Residents, in respect to their entire income, and irrespective of the source location from where they are derived

ii. Non-residents who have a permanent establishment in Mexico, and in respect to the income attributable to such permanent establishment

iii. Non-residents, in respect to the income derived from Mexican sources, and when they do not have a permanent establishment in Mexico; or, when they have it, the relevant income is not attributable to such permanent establishment

Generally speaking, under domestic tax law, non-residents (including legal entities and individuals) without a permanent establishment in Mexico, or with a permanent establishment in Mexico to which Mexican-sourced income is not attributable, and deriving certain types of income in cash, in goods, in services or in credit from Mexican sources, will be subject to tax. However, certain exemptions would apply to investments performed by foreign pension funds.

A non-resident shall be considered to have a permanent establishment (PE) in Mexico if certain conditions are met. Domestic tax law provides for certain exceptions for a place of business to be excluded from the status as a PE (e.g., if the facility is merely of a preparatory or auxiliary character). Special regard should be given to cases where non-residents perform entrepreneurial activities through trusts within Mexican territory. Activities of insurance companies are assessed on a case-by-case basis.

Although a PE is treated as a taxpayer, it is not assessed as a Mexican resident. Sources of income attributable to a Mexican PE include entrepreneurial activities performed through the PE, fees, independent personal services and sales of merchandise or real estate located in Mexico. Income attributable to a PE includes that obtained by the head office or any of its foreign offices/establishments, and proportionally to the costs and expenses incurred by the PE in the generation of the relevant income.

Non-residents involved in operations corresponding to the so-called Maquiladora regime (e.g., those carrying out certain processing-related activities on raw materials and inventories) should assess their positions on a case-by-case basis in order to determine whether to create a PE in Mexico.

For the most part, corporate income tax is payable by taxpayers in Mexico and is levied at the federal level, with only certain matters being subject to taxation at the state or municipal level (such as real estate acquisitions, property taxes and payroll taxes). Corporations are subject to federal corporate income tax at a rate of 30%. The tax year generally aligns with the calendar year.

Nonprofits are assessed as non-taxpayers. Taxpayers exclusively engaged in activities related to agriculture, livestock, fishing or forestry are subject to a specific tax treatment that may reduce their tax liabilities. Income tax rates are progressive; for 2019, the maximum income tax rate (annual tax rates) for a resident individual is 35%.

2.0 LEGAL SYSTEM

Mexican law is based on civil law tradition. The federal constitution is the fundamental statute of the Mexican legal system, establishing basic individual rights, the organization of the federal government and the scope of authority of the federal, state and municipal governments. Certain areas of law are in the exclusive domain of the federal government, while others are within the scope of the state governments, which are in turn organized pursuant to their own state constitutions. The federal government has the authority to regulate trade and commerce, including the incorporation of business companies, while states usually have the right to regulate property located within their territory.

The Mexican tax legal framework includes:

i. The Federal Income Law, which is approved on a yearly basis and provides the federal taxes, levies, duties, assessments, fees and other charges imposed by the federal government during the relevant year

ii. The Federal Tax Code and its regulations

iii. The Income Tax Law and its regulations

iv. The Value Added Tax Law and its regulations

v. International treaties, such as double taxation conventions, comprehensive agreements for the exchange of tax information

vi. Miscellaneous Tax Resolutions/Omnibus Tax Bill

vii. Non-binding principles

viii.Normative guidelines

ix. Frequently asked questions

x. Rulings

xi. Local tax laws and regulations

The normal limitation period is five years (from the date the relevant return is submitted) for taxation authorities to assess and collect taxes, review returns or impose additional tax liabilities. In certain cases, this period is 10 years. Tax authorities retain the right to investigate fiscal criminal offenses even beyond these time periods.

Taxpayers must request tax refunds within five years.

3.0 TAXATION AUTHORITIES

The Tax Administration Service (SAT, in its Spanish acronym), a federal regulatory agency of the Ministry of Finance and Public Credit, is the authority in charge of administering the Mexican tax and customs system at the federal level. However, there are also coordination agreements in place between federal and state competent authorities that allow states to collect certain federal taxes under specific conditions. Local tax administration agencies and offices also exist at the state level.

The Prodecon is a Mexican (decentralized) government organization acting as an ombudsman for taxpayers. It provides advice, helps reconcile conflicting rule interpretations and issues recommendations to the local tax authorities, among other services.

Tax authorities have recently focused their attention on tax inspections related to transactions with non-residents (usually payments abroad), deductibility of expenses, transfer of fiscal losses, issuances of electronic invoices related to nonexistent transactions, transfer pricing issues and customs duties.

4.0 BUSINESS VEHICLES

Non-residents are allowed to do business in Mexico both on a permanent and a non-permanent basis. For these purposes, it is not mandatory to form a Mexican business entity or company or to establish a Mexican branch or representative office. However, any presence in Mexico should be carefully assessed taking into account the relevant business model to be implemented.

The ISR law includes specific provisions regulating the taxation of certain items of income derived from Mexican sources by non-residents (such as those without a PE within Mexican territory, or those with a PE to which the income is not attributable). Special attention shall be paid to the status of investments made by non-resident pension funds. If a non-resident intends to undertake business activities in Mexico on a regular basis, they may register a Mexican branch or representative office, or establish a Mexican subsidiary/legal entity.

Business trusts may also be used to carry on business in Mexico. Mexican tax law contains certain tax incentives, including specific rules for the treatment of domestic real estate investment trusts (REITs) dedicated to the acquisition or construction of real estate. Additionally, Mexican tax authorities issued regulations on local trusts issuing publicly traded securities in the form of bonds (FIBRAs E, in the Spanish acronym) listed on the domestic stock exchange. One of the main purposes of FIBRAs E is to invest in equity of resident companies that own assets, and to perform activities exclusively related to infrastructure and energy projects. Certain tax incentives apply to the promotion of investments in domestic venture capital through trusts (e.g., business angels).

4.1 Mexican branch

As a general rule, registering a Mexican branch requires the authorization of the General Bureau of Foreign Investment. Determined on a case-by-case basis, a Mexican branch may constitute a PE in Mexico for tax purposes. However, entities incorporated pursuant to the laws of countries that are members of the World Trade Organization are exempt from the requirement of obtaining such authorization. They are only required to file a notice with the General Bureau of Foreign Investment.

In either case, the relevant non-resident shall:

i. Formalize before a Mexican notary public the articles of incorporation and by-laws of the foreign company

ii. Appoint an agent with sufficient powers and authority to represent the non-resident head office

iii. List an address for service of process and tax purposes in Mexico

iv. Register its articles of incorporation and by-laws with the Public Registry of Commerce

The newly registered Mexican branch, to the extent that it will perform business activities in Mexico, shall obtain a tax ID, and will generally be subject to the same fiscal obligations as Mexican taxpayers (including reporting and compliance), with certain exceptions as well as deviations.

Branches may be allowed to deduct for tax purposes pro rata allocations of expenses corresponding to the head office or its establishments if certain conditions are met. Generally speaking, profit distributions to the head office (different from those of remittances accounts) in cash or in kind would be subject to corporate income tax (grossed-up), unless the distribution is made from the balance of a net after-tax earnings account, or CUFIN (in its Spanish acronym).

Profit distributions by PEs to the head office or any of its foreign establishments are subject to an additional tax at the rate of 10% on the profits or reimbursements/returns. In this case, the applicability of tax treaty benefits should be confirmed on a case-by-case basis, as different requirements may apply.

The Mexican branch must also register with and periodically report activities to the National Registry of Foreign Investment.

4.2 Mexican subsidiaries

The most common types of Mexican business companies are the limited liability company (SRL), stock company (SA) and stock company for investment promotion (SAPI).

These types of companies are granted legal existence by means of their incorporation before a notary public, and subsequent registration at the Public Registry of Commerce. Piercing the corporate veil is not permitted in Mexico for these companies, except in some limited circumstances. However, Mexican courts have supported the possibility of piercing the corporate veil to avoid the evasion of laws and abusive practices.

For closely held companies, SRLs are easier to manage than SAs or SAPIs. Due to the fact that SRLs are less regulated, the corporate regulatory burden on an SRL may be easier to overcome than with a SA or SAPI. Unlike SAs or SAPIs, the shareholders of SRLs are known as "members," and their equity participation is represented by membership interests, which are not considered negotiable instruments under Mexican law.

SAPIs, were introduced in Mexican law in 2006 as a modality of the SA, mainly to promote and facilitate the creation of publicly traded companies. In addition to the provisions applicable under the LGSM to SAs, SAPIs are further regulated by the Securities Exchange Law (LMV). However, SAPIs are not required to become publicly traded companies and may remain closely held as long as desired. In fact, because of the ample flexibility that Mexican law provides to freely regulate the corporate governance matters of SAPI companies, this type of company is often used to implement joint ventures requiring special corporate governance arrangements, even if there is no intent of becoming publicly traded.

5.0 FINANCING A CORPORATE SUBSIDIARY

5.1 Equity increase

5.1.1 Contributions for share/membership interests

Where an equity investment is made into a Mexican company in exchange for shares or a membership interest, the amount of the investment is added to the corporation's capital contributions account, or CUCA. Generally speaking, a CUCA is integrated by capital contributions, net subscription premiums and certain balances stemming from distributed profits adjusted according to the law. The balance of the CUCA should not include reinvested or capitalized profits or any other item that may form part of the entity's net equity.

5.1.2 Contributions without taking additional shares/membership interests

Funds may also be contributed by a shareholder or member to a Mexican company without the issuance of additional shares through the so-called "contributions for future capital increases." These contributions are only reflected in the company's stated capital once a corporate resolution is passed approving their "capitalization." Contributions for future capital increases are assessed as debt in the context of annual inflationary adjustments rules.

Taxpayers are required to compute on an annual basis a relevant adjustment for inflation, which may result in additional taxable income or in a deductible expense. Such adjustment shall take into account annual average balances of liabilities (debts) and credits, and increases in the National Consumer Price Index. Therefore, taxpayers shall recognize for tax purposes the inflationary gains or losses attributable to monetary liabilities and assets.

5.2 Debt financing

5.2.1 Withholding tax implications

Mexican companies are permitted to borrow funds from residents, non-residents, related parties or non-related parties. Interest payments (essentially including any payments made in connection with the relevant loan and assessed as interest) made by a Mexican resident company to a non-resident are generally subject to withholding tax (WHT). Certain types of interest are exempt from WHT.

Capital gains, as well as income from the temporary usage/enjoyment of land or buildings adhered to land in Mexico, is not subject to WHT to the extent that the income is derived from investments by foreign pension funds, and as long as such pension funds are the ultimate beneficial owners of the income, and the income is exempt from income tax in the relevant jurisdiction of the pension fund.

Statutory WHT rates on interest payments to non-residents may vary from 4.9% to 35%. Under certain circumstances, interest payments to non-residents may be subject to a WHT rate of 40% (e.g., when income attributable to non-residents is subject to a preferential tax regime). WHT on interest may be reduced or eliminated under certain tax treaties.

5.2.2 Interest expenses

Interest expenses are generally deductible for income tax purposes to the extent that the acquired debt (principal amount) is invested in the taxpayer's main business activity, WHT obligations are met, relevant information returns on the loan and related party transactions are submitted and thin capitalization rules as well as transfer pricing principles are followed.

Additionally, general anti-avoidance rules (GAAR) related to interest reclassification (deemed dividends) should also be followed. Deductions are denied for items of income such as interest, royalties or technical assistance under certain conditions (e.g., income not subject to tax by the foreign recipient, payments made to a foreign entity that controls or is controlled by the Mexican taxpayer).

5.2.3 Thin capitalization

If the lender is a non-resident related party, certain thin capitalization rules apply. Under these rules, whenever the borrower's (Mexican taxpayer) debt-to-equity ratio exceeds 3:1, the interest paid to the non-resident related party (lender) in connection with the portion of borrower's indebtedness exceeding the permitted debt-to-equity ratio shall not be deductible. For instance, interest stemming from excess debt contracted with a non-resident related party by a Mexican taxpayer entity is non-deductible for income tax purposes.

Debt incurred by entities forming part of the financial system, and used for the execution of transactions related to their corporate purpose as well as debt incurred for the construction, operation or maintenance of productive infrastructure related to strategic areas for the country (Mexico) or for the generation of electricity, will not be included within the debt accruing interest for the taxpayer, and for purposes of computing the excess of debt. Tax authorities may permit a higher debt-to-equity ratio if a taxpayer demonstrates that the activity they perform requires greater leverage.

5.2.4 GAAR reclassification of interests into dividends (deemed dividends)

Regarding interests stemming from credits granted to legal entities or PEs in Mexico of non-residents by residents or non-residents who are related parties of the person liable for the credit, taxpayers should be cognizant that interest deriving from those credits would be treated as dividends for tax purposes in the following cases:

i. When the borrower has made an unconditional promise to pay the loan, totally or partially, on a date determinable at any time by the lender
ii. When the interest payable under such loans is not deductible because it exceeds the interest payable at market conditions; in this case, only the portion of the interest payment so excessive is treated as a dividend
iii. When, upon default by the borrower, the lender has the right to intervene at the direction or management of the borrower
iv. When the interest payable by the borrower is conditional to the obtainment of profits, or the amount of such interest is to be based on profits
v. When the interest is payable under "back-to-back loans".

For these purposes, the term "back-to-back loans" covers:

i. Transactions in which one person provides cash, services or other goods to another person who, in turn, provides directly or indirectly cash, goods or services to the first person or a party related to the first person
ii. Loans secured by cash, cash deposits, shares or debt instruments of the borrower or a party related to the borrower,
iii. Loans conditioned to the execution of one or more option agreements in favor of the lender or a related party of the lender, when the exercise of the option would depend on the total or partial payment default of the credit or its accessories owed by the borrower

Loans secured by shares or debt instruments of any kind owned by the borrower or resident related parties of the borrower are not considered back-to-back loans as long as the lender is not allowed to dispose of those assets.

When interest expenses are reclassified as deemed dividends for income tax purposes, then the relevant tax deductibility of interest payments would be disallowed. These circumstances would warrant further assessment of the implications corresponding to the tax treatment of deemed/constructive dividends.

5.3 Stamp tax

Mexico does not impose a stamp duty, and currently Mexico does not have in place foreign-exchange controls.

6.0 CORPORATE INCOME TAX

Income tax (ISR) is levied on the income received by a taxpayer in cash, kind, credit or services. For 2019, the ISR applicable to individuals is based on a progressive rate that varies depending on the nature of the taxable income and may go up to a maximum rate of 35%. The ISR rate for companies is 30%.

As a general rule, in order to determine the taxable income of an individual, one shall consider all profits and income received by the taxpayer less expenses and permitted deductions (which should be properly documented). For companies, the taxable income is determined based on the total taxable revenue, minus authorized deductions and mandatory employee profit-sharing, which is discussed below.

ISR may be payable by foreign tax residents for the income obtained from the sale of shares or membership interests of Mexican companies, services provided in Mexico and products sold in Mexico, as well as royalties and similar payments received from Mexican tax residents. ISR is normally paid through withholdings applied by the Mexican tax resident paying amounts out to the foreign tax resident. The applicable regular rate varies from 0% to 30% and is always subject to the specific rules and exemptions that may apply under a double taxation treaty.

7.0 TRANSFER PRICING

The Income Tax Law also provides the rules applicable to transactions among related parties, and applicable methods to comply with transfer pricing principles, including the arm's length principle.

Mexican taxpayers engaging in transactions with domestic and foreign related parties are required to conduct such transactions using prices and consideration that would have been used by unrelated parties in comparable transactions. Transfer pricing documentation and reporting requirements are applicable to all transactions among related parties. The reporting shall be supported by transfer pricing studies conducted pursuant to the methodologies permitted under the applicable laws.

Mexico recognizes transfer pricing methods (i.e., comparable uncontrolled price, resale price, cost-plus, profit split) that are consistent and aligned with the Organisation of Economic Co-operation and Development (OECD) transfer pricing guidelines.

8.0 PAYROLL TAXES

Employment income (salaries and other income obtained by employees for activities performed in Mexican territory) is usually subject to payroll taxes. Such taxes are generally levied by states and are payable by Mexican employers. Payroll tax rates vary from state to state, typically ranging between 1% and 3%.

8.1 Social security contributions

Social security contributions include contributions to the Mexican Social Security Institute (Instituto Mexicano del Seguro Social, IMSS), the National Workers Housing Fund Institute (*Instituto del Fondo Nacional de la Vivienda para los Trabajadores*, INFONAVIT) and the Workers Retirement Fund (*Sistema de Ahorro para el Retiro*, SAR).

Social security contributions depend on a number of factors, such as the number of employees, the employer's risk premium and the services rendered by the employees. Social security contributions may total between 25% and 35% of payroll costs.

8.2 Profit sharing

Mexican employers are required to share a portion of their profits with employees. No profit sharing is paid during the first year of an entity's operations. In the second year, the entity is required to share 10% of its annual taxable income with its employees on an annual basis (i.e., 10% of an adjusted taxable income). Under certain circumstances, and if relevant requisites are met, the amount paid is deductible for corporate income tax purposes.

9.0 INDIRECT TAXES

9.1 Value-added tax (VAT)

VAT is levied upon the supply of goods and independent services provided in Mexico, the importation of goods and services and the grant of temporary use or the enjoyment of goods within Mexican territory. The standard VAT rate is 16%, with certain activities subject to a zero VAT rate. The VAT law also exempts certain activities/transactions from VAT.

A recent federal executive order effectively implemented certain tax incentives for the northern border region. This may make it possible to levy an effective VAT rate of 8% for certain business activities performed in the northern border region. Strict requirements shall be met in order to access such VAT reduced rate of 8%.

VAT follows a pass-through model so that it is effectively borne by the final customer in any given chain of production. VAT paid by companies on purchases and expenses (including those subject to a zero rate) may be credited against the VAT collected from customers on sales or services rendered. VAT paid on purchases and expenses in excess of VAT collected from customers on sales may be recovered via a refund process as positive VAT balances (if requested, and if relevant requisites are met).

For FY 2019, the previously established "universal" offset mechanism was substantially amended; therefore, VAT positive balances may not be offset against other taxes thus creating potential cash-flow concerns for domestic enterprises (as VAT refunds usually are time-consuming and burdensome).

9.2 Import taxes

In addition to the applicable VAT and any customs fees that may apply, individuals or companies importing goods into Mexican territory are required to pay import taxes. The tax rate applicable to the imported goods is determined in accordance with the tariff classification number provided in the Law of General Import and Export Taxes.

Import taxes do not always apply. The Customs Law provides that taxes and custom duties shall be determined based on the purpose of the transaction. In principle, import taxes are only applicable to goods imported under the definitive import regime. Several products are exempt from import taxes.

9.3 Excise taxes

Mexico has a set of excise taxes, mainly under the Special Production and Services Tax Law. Mexico's excise taxes are similar to VAT in nature, insofar as the taxes are ultimately borne by the end user and apply only to certain products. Products subject to excise taxes include gasoline, diesel, alcoholic beverages, cigarettes, tobacco products, energetic drinks and high-calorie foods and drinks. Services subject to excise taxes include gambling and raffles, among others. The rates vary in each case.

Oman

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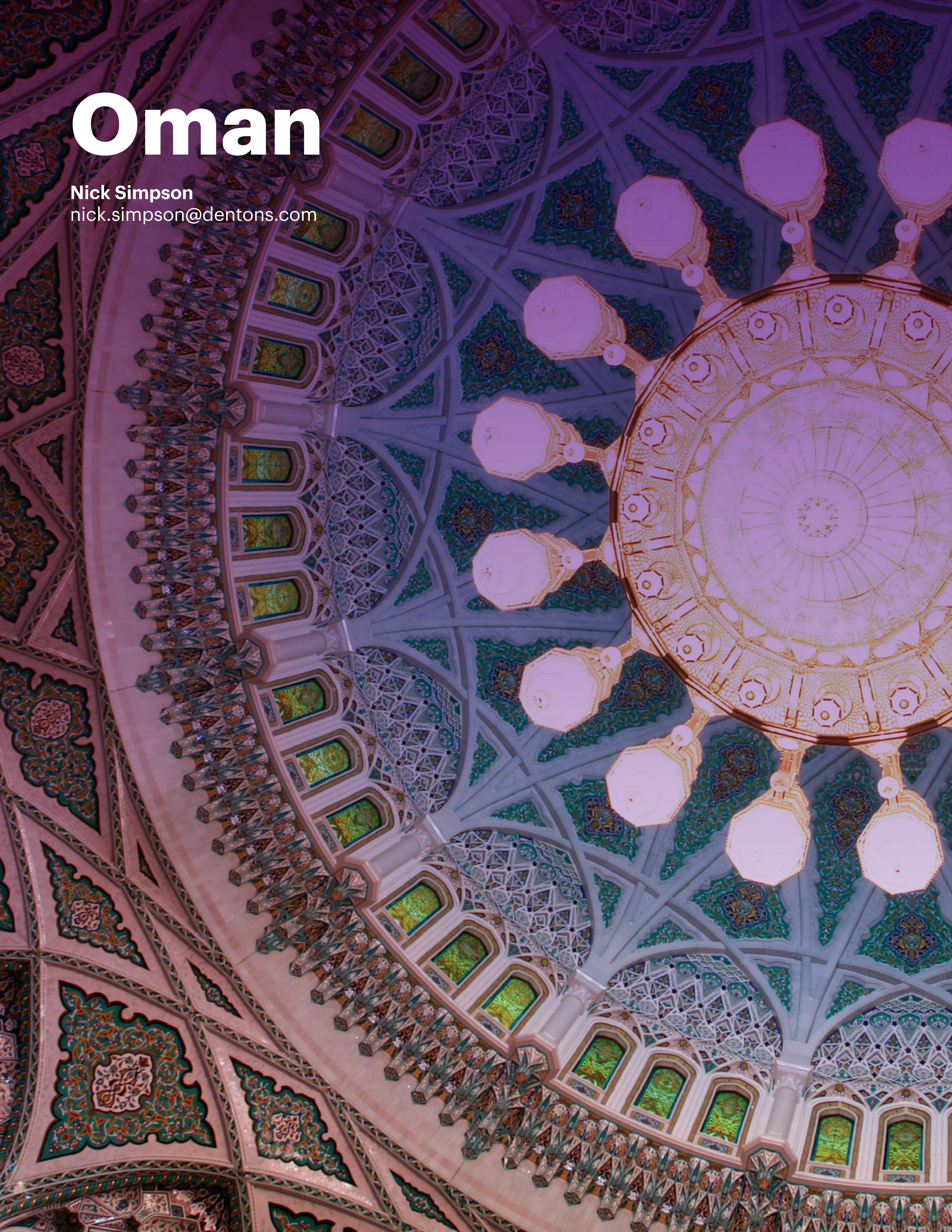

1.0 OVERVIEW

The general rule under Article 1 of the Foreign Capital Investment Law promulgated by Sultani Decree 102/1994 (FIL) is that a foreign investor may not conduct business in Oman without a registered legal presence. Foreign investors must obtain a foreign capital investment license from the Ministry of Commerce and Industry, and can typically do so by acquiring an interest in the capital of an Omani company. Subject to certain exceptions, foreign investors can own a maximum of 70% of the share capital of an Omani company. The remaining 30% must be held by an Omani corporation or individual.

2.0 LEGAL SYSTEM

The relevant laws governing taxation and customs in Oman are the Income Tax Law (promulgated by Sultani Decree 28/2009, as amended by Sultani Decree 9/2017) (the Income Tax Law), and certain provisions of the Commercial Companies Law, the Social Securities Law (Sultani Decree 72/1991), the Unified Customs Law of the Gulf Cooperation Council Countries (Sultani Decree 67/2003) (UCL).

Oman has entered into double-taxation treaties (DTTs) with more than 30 countries, providing Omani taxpayers relief from certain tax obligations. Despite the fact that most DTTs are based on the Organisation for Economic Co-operation and Development (OECD) standards, each DTT has its own characteristics. A careful analysis of each DTT is required to identify its applicability to each individual tax owner and the relevant transaction in question. It is also worth noting that there are no DTTs in place with members of the Gulf Cooperation Council (GCC). However, companies or persons domiciled in GCC countries may avail themselves of certain benefits enshrined in the Economic Agreement of 2001 (EA), which provides for equivalent treatment to citizens of GCC member states to Omanis. By way of an example, given that dividends paid to Omani nationals or companies are not subject to withholding tax (WHT), dividends to GCC nationals or companies are also not subject to WHT.

3.0 TAXATION AUTHORITIES

The Secretariat General for Taxation (SGT) is responsible for applying the relevant taxation laws in Oman. Tax assessments are made by the Directorate General for Investigation and Assessment within the SGT. Both departments are considered branches of the Ministry of Finance.

4.0 BUSINESS VEHICLES

Limited liability companies (LLC) are the most common business vehicles utilized to carry on business in Oman. An LLC requires at least two shareholders and a minimum share capitalization of OMR 20,000 if Omani- or GCC-owned or (subject to certain exceptions) and a minimum share capitalization of OMR 150,000 if subject to foreign ownership. Pursuant to the US-Oman Free Trade Agreement, wholly US-owned LLCs may have a minimum share capitalization of OMR 20,000.

A foreign company may also conduct business in Oman through a branch if it is the counterparty to a contract with the government of Oman, or an entity in which the government holds a significant interest.

5.0 FINANCING A CORPORATE SUBSIDIARY

Companies may be funded by equity or debt. Income tax is not chargeable on dividends received by sole proprietary commercial establishments, nor on dividends received by companies on shares held in the capital of another company registered in Oman. Dividends distributed by Omani joint stock companies as well as mutual funds to foreign investors are subject to WHT (subject to any double-taxation treaty relief – see below). Profit distributions to foreign shareholders from an LLC are not considered dividends and are not subject to WHT.

Interest paid on the bank borrowing used for business purposes is deductible. Interest paid on loans from partners/ members is allowed on a restricted basis. Any interest paid to foreign shareholders is subject to WHT (subject to any double-taxation treaty relief – see below). Income accrued from bonds and Islamic sukuk will also be subject to WHT unless issued by the Government or banks located in Oman.

5.1 Thin capitalization

A company's debt to equity ratio must not exceed 2:1 in the case of related-party debt, otherwise the interest on the excess debt will not be deductible for tax purposes.

6.0 CORPORATE INCOME TAX

The principal tax in Oman is a corporate tax on business income.

The following entities are subject to corporate tax:

i. Companies and enterprises established in Oman

ii. Branches

iii. Individual corporations undertaking business in Oman.

Corporate tax is payable by Omani companies and foreign entities that have a permanent establishment in Oman at the rate of 15% of profits. There is also no tax-free threshold. The applicable rate of corporate tax will be 3% if the taxpayer satisfies all of the following conditions:

i. Is an Omani corporate entity

ii. Has a share capital of OMR 50,000 or less

iii. Employs 15 employees or less

iv. Has an annual revenue of OMR 100,000 or less

v. Does not partake in activities relating to the business of banking, insurance, financial institutions, public utilities concessions, air and sea transport, or extraction of natural resources, or as otherwise decided by the Council of Ministers.

Entities whose main activity is in the industrial sector may be granted a tax exemption. Income derived from the sale of oil and gas originating in Oman is taxed at a rate of 55%. However, the petroleum company that realizes such profits, although still considered a taxpayer in Oman, would typically have its tax obligations discharged by the government of Oman under the terms of its Exploration and Production Sharing Agreement.

6.1 Foreign tax credit

An Omani taxpayer that incurs foreign tax on income that is also taxed in Oman may file an application to the SGT requesting a tax credit for any foreign taxes paid, irrespective of whether Oman has a DTT in place with that foreign country. The credit amount is limited to the amount of tax incurred in Oman.

6.2 Income tax reporting

Consolidated tax returns are not permitted. Each company must file its own provisional tax return within three months of the end of the financial year and make a payment of the estimated tax. An annual tax return must then be filed within six months of the end of the financial year, accompanied by audited financial statements, with any tax due also paid at the same time. Failure to

submit tax returns by the prescribed due date may result in a maximum penalty of OMR 2,000.

It is also mandatory that accounting records are maintained for a period of 10 years. Small taxpayers that are subject to the 3% corporate income tax rate are only expected to provide a simplified manual tax declaration within three months of the end of the financial year.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

There are no rules concerning transfer pricing in Oman, but Article 125 of the Income Tax Law relates to the avoidance of tax between related parties. The tax authorities are empowered to use relevant anti-avoidance provisions. Article 18(5) of the Implementing Regulations of the Income Tax Law (Ministerial Decision 30/2012 as amended) requires that the cost of services provided must be reasonable in relation to the value of the services rendered.

7.2 Withholding tax (WHT)

WHT applies to the payment of royalties, consideration for conducting research and development, consideration for the use of or right to use computer software, fees for management, dividend payments, interest and fees for services. Foreign persons with no permanent establishment in Oman are subject to WHT at a rate of 10% on gross amounts paid to them. WHT is generally withheld at the source by the Omani company making payment to the foreign person.

Only dividends distributed to foreign shareholders by Omani joint stock companies are currently subject to WHT; profit distributions from Omani limited liability companies to foreign partners are not. Service fees are subject to WHT, irrespective of the place of performance of the services. It is also irrelevant whether the recipient is a GCC resident or not.

7.3 Disclosure obligations

The SGT is empowered to use relevant anti-avoidance provisions. Pricing between related entities must be on an arm's length basis and must be disclosed in tax returns. There is, however, no specific guidance on acceptable methods for determining an arm’s length price. If the SGT determines that an adjustment to tax payable by a taxpayer is applicable, the due date for payment of any additional tax will be specified on the SGT's Assessment Order. Where an adjustment is made as a result of an assessment, the SGT will specify a time within which any additional tax must be paid.

8.0 PAYROLL TAXES

8.1 Social Security Fund payments

Employers contribute 11.5% and Omani-national employees contribute 7% of their monthly salaries to the Social Security Fund for social security purposes (i.e., old age, disability and death). Expatriate employees are exempt.

9.0 INDIRECT TAXES

9.1 Value-added tax (VAT)

The government of Oman does not currently levy VAT. However, VAT is expected to be implemented in September 2019 in line with the principles set out in the Unified VAT Agreement for the GCC States. The VAT rate is expected to be 5%. Businesses will be required to register as VAT vendors if the value of their annual supplies exceeds the mandatory registration threshold of OMR 38,500.

9.2 Excise tax

There are currently no excise taxes in Oman. However, excise tax is expected to be levied in the near future.

9.3 Custom duties

Import into and export out of Oman is governed by the UCL, and implemented by the Royal Oman Police through the Directorate General of Customs. The UCL and the unified customs system provides for a single point of entry and exit to the GCC, allowing the free movement of GCC-manufactured goods without a levy of customs tariff and subjecting most foreign imports to a one-time External Common Custom Tariff at the rate of 5%.

9.4 Transfer duty

Oman does not levy income tax on individuals. However, transfer duty is applicable on the transfer of real property at the rate of 5% of the value of the property.

Panama

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1.0 OVERVIEW

Panama operates under a territorial tax system where residents and non-residents are taxed only on Panama-sourced income. Income that does not arise in Panama, such as foreign-source income, is not subject to tax in Panama.

Companies with commercial activities or services provided in or from the Republic of Panama, irrespective of the company's nationality or the location of its operational office, are subject to tax from income derived from its activities within Panamanian territory.

Income received by non-residents is considered to be from a Panamanian source if the income arises from services or actions that benefit persons or companies located in Panama, including fees, interest and royalties.

2.0 LEGAL SYSTEM

In Panama, the legal and regulatory framework that defines the tax system is the Political Constitution of the Republic of Panama, the tax code and its reforms, and complementary laws, decrees and resolutions. Panama and its provinces operate under a civil law legal system and a unitary, republican, democratic, representative government. The president is elected for a non-renewable term of five years.

Judicial authority rests with the Supreme Court, composed of nine magistrates, all appointed by the president (subject to approval by the National Assembly) for 10-year terms. The National Assembly *(Asamblea Nacional)* is a unicameral body that consists of 71 members, who are elected by popular vote for five-year terms and are eligible for re-election. The National Assembly initiates legislation, rules on international treaties, approves the budget and establishes political divisions.

Since the legal tender and most common unit of exchange in Panama is the US dollar, funds can move to and from the country freely. There are no currency or exchange controls, nor is there a central bank.

3.0 TAXATION AUTHORITIES

The General Revenue Department (*Dirección General de Ingresos*, or DGI) is the local authority with the power to administer tax collection and public revenues under the control of the Ministry of Economy and Finance.

4.0 BUSINESS VEHICLES

Panama strongly encourages and promotes foreign investment, and has made the process relatively easy and straightforward. There are no prior approvals or registration requirements for direct foreign investments in Panama.

A non-resident may either establish a Panamanian business vehicle to carry on business in the country or operate directly through a foreign entity. However, all entities doing business in or from Panama (as opposed to simple foreign investment) must obtain some type of recognition as a legal entity in order to operate, requiring the foreign entity to be registered as a foreign company or a branch.

An Operations License is legally required to carry out any commercial, industrial and services-related activities in or from Panama. For certain regulated activities, the entity must request and be granted special licenses by the relevant regulatory agency before the Operations License filing can be completed.

Panamanian law recognizes different forms of legal entities, with the corporations or stock company (*Sociedad Anónima*, or SA) and the limited liability company (Sociedad de Responsabilidad Limitada, or SRL) being the most common business vehicles. The choice of entity is driven by the internal policies and/or tax planning in the country of origin, since the entities receive equal tax, contracting and regulatory treatment in Panama.

Generally speaking, the SA and the SRL both allow for great flexibility in the management and operation of the entity. Both types of entities allow for the operation of any legal civil or commercial activities, and the equity owners need not be Panamanian citizens or residents.

4.1 Corporations/stock company (SA)

SAs are corporations of which ownership is represented by shares. There is a minimum requirement of one shareholder and no maximum limit on the number of shareholders.

The articles of incorporation of the SA, which set forth the purpose of the company, its directors and officers and other key information related to its management and operation, must be publicly registered as part of the incorporation process. Any amendments to the articles of incorporation, as well as the removal or addition of any directors or officers, must be registered.

The shareholders of an SA are not listed with the Public Registry of Panama, unless the articles of incorporation provide otherwise. Shareholders may freely dispose of their shares to third parties. Classes of shares with different rights, responsibilities and/or obligations, such as varying economic, voting or other rights, may be authorized and issued, provided that all shares of the same class possess the same rights, responsibilities and obligations.

An SA is taxed as a corporation and is taxed at the corporate level on income earned on its operations in Panama. The applicable tax rate is 25%. Shareholders would be taxed at a personal level for any dividends received at a rate of 10%.

4.2 Limited liability company (SRL)

A SRL is a business corporation in which the social capital is divided into participation quotas, and owners of a participation quota are members. There must be at least two members in an SRL, however the minority ownership interest may be fractional. The members of an SRL must be recorded in the Public Registry, and any changes to the ownership structure (i.e., the addition or subtraction of members) must be duly registered with the Public Registry.

One important difference between an SA and an SRL: The law requires that, in order to become a new member of an SRL, all existing members must accept the new member. This requirement can be pre-accepted or waived in the SRL's publicly registered articles of incorporation, but in the absence of the same, admission of a new member lies at the unfettered discretion of the existing members.

An SRL is also subject to the corporate tax rate of 25% and the partners will be taxed with dividend tax at a rate of 10%.

5.0 FINANCING A CORPORATE SUBSIDIARY

5.1 Equity financing

The subscription of shares does not subject the issuer nor the subscriber to taxation. If the issuer offers the subscribe a financing option (i.e. payment in installments), the corresponding interest will be subject to the standard income tax rate of 25%.

5.2 Thin capitalization

There are no thin capitalization rules on taking additional shares.

5.3 Debt financing

Head offices are allowed to finance a subsidiary, in which case the transaction needs to be formally documented. If the head office is located outside Panama, a 12.5% withholding tax will apply to the interest paid to the foreign parent, and transfer pricing rules will also apply. If the head office is located in Panama and is Panamanian taxpayer, the withholding tax will not apply, and the head office will have the obligation to declare the interest received and pay income tax on the net taxable income at the standard rate of 25%.

6.0 CORPORATE INCOME TAX

Panamanian income tax law affects the whole territory equally. Taxable income includes all income derived from business activities in Panama, minus income-generating expenses, incurred wholly and exclusively in the production of assessable income or the conservation of its source. Income earned by companies is taxed at a flat corporate tax rate of 25% over net income. The tax base for companies whose taxable income is greater than US$1.5 million is the greater of (i) the net taxable income calculated on the normal basis, or (ii) 4.67% of the gross taxable income, known as the alternate calculation of income tax (CAIR).

A taxpayer can request the CAIR not to be applied when it has net operating losses or where the effective tax rate is higher than the standard 25% rate. The DGI has the discretion to grant an exemption from the CAIR for the period requested and for three subsequent years.

A taxpayer is subject to tax on its profits from carrying on its business. Profit is generally considered to be revenues minus deductible expenditures. Losses may be carried forward for five years, with a maximum of 20% of losses deducted per year, as long as the deduction of losses does not exceed 50% of taxable income in any given year. The carryback of losses is not permitted.

The calendar year generally is used as a taxation year, although the taxpayer can request a special 12-month fiscal year in certain cases. Consolidated corporate returns are not permitted. Each company must file a separate corporate tax return. Companies must file a tax return within 90 days after the end of the fiscal year, although a one-month extension may be obtained upon request.

Three advance payments of tax are required in June, September and December, with a final payment of tax due at the time the annual

return is filed. Except for companies operating in Free Trade Zones, corporations with no Panamanian-source income are not required to file an income tax return. Interest and surcharges are levied on late payments. Penalties may be imposed for late filing of the annual income tax return.

Resident legal entities that do not carry out operations within Panama, or offshore entities, must maintain accounting records and supporting documentation for at least five years from: (i) the last day of the calendar year during which the transactions covered in the accounting records took place, or (ii) the last day of the calendar year in which the legal entity ceases operations.

Accounting records and documentation must be retained in the office of the resident agent of the offshore entity, or in any other place determined by the entity's management, subject to certain notification requirements. If the accounting records and supporting documentation are held outside Panama, the legal entity will be required to provide the necessary documentation to its resident agent within 15 business days of a request from the Panamanian tax authorities. Penalties apply for failure to comply and may include the forced resignation or removal of the resident agent.

6.1 Capital gains

Capital gains derived from the sale of shares, securities and negotiable instruments are subject to a 10% capital gains tax. The purchaser must withhold 5% of the sales price as an advance payment of income tax and remit that amount to the tax authorities. The seller will calculate a 10% tax on the profit. If the 10% of the profit is higher than the 5% withheld by the buyer, the seller can opt to consider the 5% as the definite tax. If the 10% of the profit is lower than the 5% withheld by the buyer, the seller can request a reimbursement for the difference. Income from the sale of government securities and those issued by companies registered with the National Securities Commission is not taxable.

Gains from the sale or transfer of real property are considered capital gains, and involve two types of taxes: transfer tax and income tax on the net profit of the sale. If the transaction giving rise to the gain is part of the taxpayer's ordinary business activities, the gain is subject to the corporate tax rate. If the transaction is not part of the taxpayer's ordinary business activities, the gain is taxed at a reduced rate of 10%. However, in the latter case, the purchaser must withhold 3% of the higher of the purchase price or the ratable value of the property as an advance payment of tax. The seller will then calculate a 10% tax on the profit. If the 10% of the profit is higher than the 3% withheld by the buyer, the seller can opt to consider the 3% as the definite tax. If the 10% of the profit is lower than the 3% withheld by the buyer, the seller can request a reimbursement for the difference.

6.2 Annual license tax

All industrial or commercial business, except those exempted by specific laws, are required to register for an Operations License. The Operations License automatically grants applicants with a Unique Taxpayer Registration number (RUC) for the purposes presenting filings before the General Revenue Office of the Ministry of Economy and Finance. A new business will also become automatically listed as a municipal taxpayer, but will still need to complete the corresponding registration process related to use of the RUC, as well as complete registration with the municipality in which the entity operates.

The annual license tax is an annual tax on equity at a rate of 2% of the company's net worth, including amounts owed to the foreign home office or foreign affiliated companies. The tax is payable annually up to a maximum of US$60,000.[1]

6.3 Dividend tax

In Panama, dividend tax applies to corporations registered in Panama as well as branches of foreign entities. Companies holding an Operations License or otherwise carrying out business in Panama must withhold tax at a rate of 10% on dividends distributed out of domestic profits (20% in the case of bearer shares) and 5% on dividends distributed out of foreign-source profits or export profits.

Local corporations must pay a 4% complementary tax on each fiscal year's after tax profit on behalf of their shareholders if no dividends are declared. This 4% complementary tax will be applied as a credit to dividend tax when dividends are declared in the future.

6.4 Withholding tax on service fees

Royalties and commissions on services paid to foreign entities are taxed at a rate of 25% on half (50%) of the paid amount, making the effective tax rate 12.5%. Payment on capital in financial transactions are not subject to withholding tax. 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 payor must proceed with the withholding tax even if one does not deduct the interest expense.

If the beneficiary is registered as a taxpayer in Panama before the DGI, no withholding tax is required. If, according to a special law, the payment of interest, royalties, dividends or fees is exempt from withholding tax, 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 tax credit is not allowed in the taxpayer's 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.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

Panama's transfer pricing regime conforms to the arm's length principle of the Organisation for Economic Co-operation and Development (OECD). Transfer pricing obligation is extended to all transactions carried out with foreign-related parties, where operations affect the tax base of Panama. The operations with related parties in a free trade zone in Panama are also required to comply with transfer pricing rules. The tax authorities can make adjustments if the arm's length principle is not followed.

The law requires a taxpayer utilizing transfer pricing to prepare a Transfer Pricing Study. As part of the

1 For companies established in a Free Trade Zone, this tax is 1% of the company's net worth, including amounts owed to the foreign home office or foreign affiliated companies. The tax is payable annually up to a maximum of US$50,000.

Transfer Pricing Study, the taxpayer is obligated to file an annual Form 930 Transfer Pricing Informative Statement, a sworn affidavit that provides basic information to the tax authority and declares that the taxpayer has prepared the required Transfer Pricing Study. The Transfer Pricing Informative Statement includes information on all the operations carried out with foreign-related parties during the fiscal year under analysis. This report should be filed within six months after the fiscal year has ended. Failure to submit or late submission of the Transfer Pricing Informative Statement will result in a fine equivalent to 1% of the total sum of operations carried out with foreign-related parties with a maximum fine of US$1 million.

The Transfer Pricing Informative Statement must be based in the Transfer Pricing Study. However, the taxpayer does not need to present the Transfer Pricing Study unless the Panamanian tax authority requires it, in which case it should be presented within 45 working days from the day after the notification.

8.0 PAYROLL TAXES

8.1 Social security and educational tax

Social security and educational taxes apply to salaries and most other types of remuneration paid to employees. No cap applies to the amount of remuneration (in-kind benefits) subject to these payroll taxes. An employer must withhold the employee's portion of social security (9.75%) and education (1.25%) taxes. In addition, the employer must pay the entire workers' compensation insurance at rates based upon the type of business and risk of the employee, which range between 1% and 7% of the employee's salary.

The employer's obligations for social security is 13.5% of the employee's salary, and 1.5% for educational tax. Since employers must deduct contribution-quotas from their employees and pay them within the following month, employers are jointly and severally liable with the employee for any social security and educational tax owing

9.0 INDIRECT TAXES

9.1 Value-added tax (ITBMS)

Consumer services and goods are, for the most part, subject to a 7% ITBMS (in its Spanish acronym). Some products are subject to a higher ITBMS rate, such as alcoholic beverages and hotel room rentals at 10%, and cigarettes and tobacco products at 15%.

The following items are exempt from ITBMS:

- Food (except restaurants that serve alcoholic beverages)
- Medicine and medical services
- House rentals with a contract period of more than six months (house rentals with contract periods of less than six months are subject to ITBMS)

9.2 Property tax

Property tax rates are progressive. Primary residency properties with a registered value of US$120,000 or lower are exempt from property tax. This new exemption amount became effective on January 1, 2019, raising the exemption amount from US$30,000.

For primary residency properties, the tax base for property tax is the registered value of the property in excess of US$120,000. The property tax rate is 0.5% from US$120,001 to US$700,000, and 0.7% from US$700,001 on up. For secondary residencies, commercial properties and industrial properties, the tax base for property tax is the registered value of the property in excess of US$30,000. The property tax rate is 0.6% from US$30,001 to US$250,000; 0.8% from US$250,001 to US$500,000; and 1.0% from US$500,001 on up.

9.3 Import duties

All goods imported onto Panamanian territory from another country are subject to import duties. The Panamanian Customs and Tariffs Office provides the import duty rates, which range from 0% to 15% depending on the product.

9.4 Stamp tax

All documented monetary transactions that are not subject to ITBMS are subject to a stamp tax. For every US$100 in transactional value, there is a US$0.10 stamp tax. A fractional rate applies for any part of the transactional value under US$100.

9.5 Municipal tax

Lucrative activities in any municipality shall pay local tax upon gross income, calculated according to the companies' category and activity. The rate varies from one municipality to the other. Lucrative activities are considered those activities which produce private income (as opposed to nonprofits/charities).

Peru

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1.0 OVERVIEW

In the past few years, Peru has made several economic developments placing it at the top of the list of countries with rapid growth on a global level. The Peruvian economy is open to private investment, which is practiced in the context of a social market economy. It also promotes competition and ensures foreign investment in any type of company.

The principal taxes levied on entity activities include income tax, value-added tax (VAT), financial transaction tax, municipal taxes and the net assets temporary tax (ITAN, in its Spanish acronym).

2.0 LEGAL SYSTEM

All the provinces of Peru operate under a common legal system. While the ability to make laws is the exclusive domain of the government, the rules that determinate the application of these laws are within the scope of other authorities.

3.0 TAXATION AUTHORITIES

The tax system in Peru is administered by the Peruvian National Superintendence of Customs and Tax Administration (SUNAT).

4.0 BUSINESS VEHICLES

A non-resident may either establish a Peruvian vehicle to carry on business in Peru or operate directly through a foreign entity. Peru business vehicles are corporations (limited liability or unlimited liability), branches/subsidiaries and associative agreements.

4.1 Corporations

Peruvian corporations are governed by the General Law of Companies (LGS). Under the LGS, a corporation must have at least two shareholders at the time of incorporation, which may be individuals or legal entities. Peruvian corporations must have a board of directors, except for closely held corporations, which may choose to not have one. The LGS requires a minimum of three directors who must be individuals. There are no nationality or residency requirements for directors.

4.2 Branches

A branch is considered part of its parent entity, without separate legal personhood. It shall have permanent legal representation and management autonomy with respect to the scope of its activities that the main corporate entity appoints to it, according to the powers given to its representatives.

4.3 Associative agreements

Associative agreements create and regulate the participation and integration of specific businesses in the common interest of the intervening parties. This type of agreement does not create a legal entity. The agreement is done in writing and it is not subject to recording.

The two types of associative agreements are consortiums and joint ventures.

The resources allocated for these agreements are considered direct foreign investment when the foreign investor participates in the production capacity. However, it does not involve any contribution of capital. The operation will correspond to contractual trade operations through which the foreign investor provides the receiving company with goods or services in exchange for participation in physical production volume, in the global sales amount or in the net profits of the referred receiving company.

4.4 Foreign corporation

A foreign corporation that carries on business in Peru is subject to tax in respect of such income. Peruvian income tax law deems certain activities conducted by a non-resident as constituting the conduct of business in Peru, and therefore subject to income tax.

Where the foreign corporation is resident in a country with which Peru has a double-taxation treaty pursuant to which the corporation may claim treaty benefits, the corporation will generally be exempt from Peruvian taxation on its business profits, except to the extent that the profits were earned through a permanent establishment situated in Peru.

A corporation that operates through a Peruvian permanent establishment (such as a branch) will be subject to Peruvian income tax for such income.

5.0 FINANCING A CORPORATE SUBSIDIARY

5.1 Equity financing

Investments in subsidiaries incorporated in Peru are not afforded special treatment. Subsidiaries or branches of companies incorporated abroad will only be taxed on their Peruvian source income. The income derived by such entities will be taxed as a dividend at the end of the fiscal year, even when not distributed.

5.2 Stamp tax

Peru does not impose a stamp tax in respect of debt or equity financing.

6.0 INCOME TAX

6.1 Corporate income tax (CIT)

Companies incorporated in Peru are considered resident in Peru for tax purposes and thus, are subject to a CIT rate of 29.5% on their worldwide net income. Branches, agencies and permanent establishments (PE) of non-resident companies or entities incorporated in Peru are subject to income tax on their Peruvian-source income, while subsidiaries are subject to income tax on their global-source income.

To calculate the taxable basis, domiciled companies are entitled to deduct expenses, to the extent that they are necessary to produce income or to maintain its source. Additionally, there are certain limits and/or caps on the deduction of certain expenses, such as finance costs (thin capitalization rules apply), provisions for bad debts, salaries and travel expenses, among others.

Dividends and any other type of profit distribution are subject to a 5% withholding tax as of 2017. The prior year rates (4.1% or 6.8%) shall be applied on retained earnings, depending on the fiscal year in which the profits were generated.

6.2 Withholding income tax

Non-domiciled companies are subject to a withholding income tax (WIT) in Peru on Peruvian-source income, on a gross basis.

The tax rates for non-domiciled entities are as follows:

Income	Withholding tax rate
Other income	30%
Interest	4.99% (as long as certain requirements are fulfilled) 30% (all others)
Dividends	5% as of 2017
Royalties	30%
Services fees	30% (general and digital services) 15% (technical assistance, provided certain conditions are met)

6.3 Tax treaties

For the purpose of avoiding double taxation on income tax, Peru has entered into treaties with Brazil, Canada, Chile, Korea, Mexico, Portugal and Switzerland under the Organisation for Economic Co-operation and Development (OECD) model.

In addition, Peru, as a member of the Andean Community, is subject to a double-taxation standard. Other members are Bolivia, Colombia and Ecuador, therefore all operations between entities of both jurisdictions must follow Decision N° 578 regarding income tax.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

According to the CIT, in all operations, the value assigned to goods and services must be at market value for tax purposes; otherwise, the Tax Administration can adjust it.

Agreements entered into between related parties or agreements entered into in low-tax jurisdictions are subject to transfer pricing rules. Agreements not entered into at market value, which is what would have been agreed upon between independent parties in comparable transactions under the same or similar conditions, may be subject to adjustment Therefore, the value of the transaction must be determined by a transfer pricing study.

Please note that transfer pricing rules are applicable when the value agreed between related parties would have resulted in an income tax payment in the country lower than that which would have corresponded by applying the market value.

In the case of intercompany services, the value of such services must fulfill the benefit test. This test is considered fulfilled when the service in question provides economic or commercial value to the recipient (improving or maintaining its commercial position), which would occur if independent parties had satisfied the need for the service, executing it by themselves or through a third party.

8.0 MINING TAX

As of October 1, 2011, the mining royalty was modified and two new mining taxes came into effect: the Special Mining Tax (IEM) and the Special Mining Contribution (GEM). The mining royalty, the IEM and the GEM are economic considerations paid to the Peruvian government for the exploitation of mineral resources.

The mining royalty includes metallic and non-metallic mineral resources, while the IEM and the GEM only include metallic mineral resources. The GEM is only applicable to mining companies that have valid tax stability agreements. These companies will voluntarily sign contracts with the Peruvian government for the payment of said charge, which must be determined by each stability agreement that they maintain.

The payment obligation of the mining royalty, IEM and GEM falls due at the closing of each quarter (January–March, April–June, July–September and October–December). The basis of calculation is the operating profit or sales revenue for the quarter.

Operating profit is obtained by taking the revenue generated from the sales of mineral resources each quarter, then deducting the sales cost and the operating expenses (including selling expenses and administrative expenses) incurred in order to be able to generate said revenue. All of these expenses and costs must be at market value.

Within the last 12 business days of the second month following the generation of the obligation, mining companies must present a quarterly declaration (January–March, April–June, July–September and October–December) and make payment of the corresponding mining royalty, IEM and GEM. This declaration must determine the basis for calculating the mentioned contributions.

The amounts effectively paid for mining royalty, IEM and GEM will be considered as an expense for income tax purposes in the period in which they were paid.

They are calculated as follows:

Name	Base	Tax rate (range)
Mining royalty	Operating profit - (minimum, 1% of sales)	1%–12%
Special mining tax	Operating profit	2%–8.4%
Special mining contribution	Operating profit	4%–13.12%

9.0 TEMPORARY TAX ON NET ASSETS (ITAN)

Companies that are subject to corporate income tax are obligated to pay the temporary tax on net assets. This taxed is levied on the net asset value contained in the balance sheet as of December 31 of the previous period to which the payment corresponds, deducting the depreciations and amortizations permitted by law. A company is subject to the ITAN the year after it starts its activities.

Rate	Net Assets
0%	Up to S/ 1,000,000
0.4%	More than S/ 1,000,000

The amount paid for the ITAN is a credit that will be offset against the advanced income tax payment or the annual income tax regularization payment. Any remaining balance can be reimbursed by the Tax Administration.

10.0 FINANCIAL TRANSACTIONAL TAX (ITF)

Obligations paid through cash payments of amounts greater than S/ 3,500 must be made through bank accounts or deposits, bank transfers, payment orders, credit cards or non-negotiable checks, among other means of payment provided by the entities of the Peruvian financial system.

Any obligation that is not carried out using these methods prevents the deduction of the expense or the recognition of the cost for tax purposes, and prevents the recognition of tax credits (e.g., VAT). Additionally, the ITF is applied to all debits and/or credits in bank accounts maintained by the taxpayers. The applicable tax rate is 0.005%. Certain operations are exempt from ITF, such as the operations between accounts of the same accountholder; credits or debits in bank accounts opened at the request of the employer exclusively to be able to deposit the salaries of its employees; and credits or debits in bank accounts of severance payments.

The ITF is deductible as an expense for income tax purposes.

11.0 INDIRECT TAXES

11.1 Valued-added tax (VAT)

VAT is levied at a rate of 18% on the following operations:

i. Sale of real property within Peru

ii. Services provided within Peru

iii. Import of services (services economically used within Peru)

iv. Import of goods

v. Construction contracts

vi. The first sale of a real property made by the constructor.

The VAT law follows a debit/credit system by which the VAT paid on the purchase of goods and services can be used as a credit against the VAT originated by future taxed operations. Any VAT credit that is not used within a determined month can be carried forward (at historical values) to be used against the VAT of future operations. It must be taken into account that the return of VAT in cash is only available for exporters and some entities in the pre-operating stage, as long as certain conditions are met.

Early recovery of VAT: To promote investment in the mining industry, a VAT recovery regime has been established for the holders of mining concessions that have not begun operations and are in the exploration stage. In addition to this regime, exclusively applicable to the mining industry, there is a regime of early recovery of the VAT applicable to any industry (including the mining industry) for companies in the pre-operating stage (for example, in the construction stage). Finally, the VAT credit related to exports may be recovered by the exporter, since those sales are not levied with VAT to offset such credit.

12.0 OTHER MATTERS

12.1 Stability agreements

Investors can sign stability agreements with the Peruvian government, whether under the special regime or under sectorial regimes (e.g., mining and oil), in order to guarantee the following rights for a 10-year period:

i. Stability of the current income tax regime at the time of signing the agreement, with regard to dividends and profit-sharing

ii. Stability of the monetary policy of the Peruvian government, according to which there is an absence of exchange controls; foreign currency can be acquired or sold freely at any type of exchange rate offered by the market; and funds (remittances) can be sent abroad without requiring prior authorization

iii. The right of non-discrimination between foreign and local investors.

13.0 PAYROLL TAXES

Remuneration paid to employees is subject to statutory social contributions and payroll taxes. To determinate the payroll taxes, a first deduction of 7 tax units is made on the employee's income; subsequently, the following annual progressive rate is applied:

i. 8% for the first 5 tax units of net income

ii. 14% of net income for amounts from 5 tax units to 20 tax units

iii. 17% of net income for amounts from 20 tax units to 35 tax units

iv. 20% of net income for amounts from 35 tax units to 45 tax units

v. Any excess at 30% of net income.

14.0 MUNICIPAL TAXES

i. **Property tax:** This tax is levied on the ownership of property by a natural or legal person in a given district. The rate varies between 0.2% and 1% depending on the value of the property determined by municipal tax authorities. The tax must be paid annually

ii. **Alcabala tax:** This tax applies to the gratuitous or onerous transfer of land property. The rate is 3% and is applied to the value of the property agreed by the parties or the self-appraisal value determined by the district municipality where the property is located, whichever is greater. The tax must be paid by the buyer

iii. **Automotive tax:** This tax is generally applicable to automobiles owned by individuals and companies, and levies an annual 1% of the original purchase price of automobiles no older than 3 years

iv. **Other municipal taxes:** Includes public cleaning service fees, local public security services fees and local park maintenance services fees. Local governments or municipalities are authorized to create, amend or annul certain local taxes related to the services they provide to the public.

Poland

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1.0 OVERVIEW

Poland imposes corporate and personal income tax on its residents, including Polish subsidiaries of foreign entities in respect of income and capital gains earned anywhere in the world. Non-residents who carry on business in Poland, are employed in Poland, or sell certain types of properties are also subject to Polish income tax. There are no provincial or local income taxes in Poland.

The corporate income tax (CIT) law provides both for an unlimited and limited tax obligation. As a rule, companies that have their registered office or place of management in Poland are liable for Polish corporate income tax on their worldwide income and capital gains (unlimited tax obligation). If a company does not have its registered office or place of management in Poland, the tax in Poland is levied only on the income and capital gains actually earned in Poland (limited tax obligation). Foreign partnerships are also subject to corporate tax in Poland if they are treated as non-tax transparent legal persons in their home country.

A branch of a non-resident company is generally subject to corporate tax in Poland on its Polish sourced income only. The rules regarding taxable income, tax-deductible costs, depreciation and other factors applicable to a branch are the same as those applying to Polish companies. The branch is usually taxed on income determined on the basis of its accounting records.

Polish legal entities and natural persons are liable for CIT and personal income tax on the profits earned by their controlled foreign companies (CFC), even if the income is not distributed by the foreign company. A CFC is defined as one of the following:

i. A foreign entity resident in a tax haven

ii. A foreign entity resident in a state with which Poland or the EU has not concluded the treaty on the exchange of tax information

iii. A foreign entity directly or indirectly controlled by a Polish taxpayer; the definition of "control" is very broad and covers, among other criteria, holding more than 50% of shares or more than 50% of voting rights in controlling bodies or decision-making bodies, or holding more than 50% of shares with the right to participate in the company's profits, but also exercising a "factual control," defined as:
    - At least 33% of the entity's revenues generated in a given tax year are derived from passive sources of income; and
    - The tax paid is lower than the difference between the income tax that would be paid in Poland and the tax actually paid.

The CFC regime does not apply to entities subject to taxation in an EU or European Economic Area (EEA) member state on their worldwide income if such entities carry out actual (genuine) economic activity in this member state.

From 2019, the CFC rules will cover entities such as foreign foundations, trusts or other entities (titles) of a fiduciary nature. CFC will also include foreign capital groups (including member companies) and organizationally or legally separated parts of foreign companies or other entities. Entities or persons that control a CFC must maintain a register of their CFC, keep records of economic events involving the CFC, submit a CFC tax return and pay a tax on the CFC's income.

2.0 LEGAL SYSTEM

The Constitution is the supreme law in Poland and the Polish legal system is based on the principle of civil rights governed by the Civil Code. Poland is a member of the EU and its national law must abide by the conditions of its regulations. Poland is a parliamentary republic. The legislative authority is held by the lower house (Sejm) and the upper house (Senat). The government structure is based around the Council of Ministers led by the prime minister. The president is the formal head of state.

Poland ratified a Multilateral Instrument to Modify Bilateral Tax Treaties (MLI) and declared 78 double taxation treaties to be covered by the MLI, including with Austria, Belgium, Canada, Denmark, France, Ireland, Luxembourg, the Netherlands and the UK.

Starting in 2019, tax advisors, legal counsel, attorneys and other experts and professional advisors will be required to provide tax authorities with information on cross-border and domestic tax schemes made available to or implemented by their clients. These are known as the Mandatory Disclosure Rules. In certain cases, if the advisor pleads professional secrecy, the client will have to report the tax scheme to the tax authorities.

Interim provisions are in place before the Mandatory Disclosure Rules take effect. According to these, recent cross-border schemes (made available or implemented between June 25, 2018, and December 31, 2018) and domestic schemes (made available or implemented between November 1, 2018, and December 31, 2018) must be reported by the end of June 2019.

Any schemes made available or implemented after January 1, 2019, should be reported by the 30th day after they were made available or implemented, whichever activity occurs first.

3.0 TAXATION AUTHORITIES

The tax system in Poland is administered by the National Fiscal Administration (NFA). The NFA comprises the following offices/bodies:

i. The Head of the National Fiscal Administration

ii. Director of the National Fiscal Information Service

iii. Directors of chambers of fiscal administration

iv. Heads of customs and revenue offices

v. Heads of tax offices.

The heads of tax offices and the heads of customs and revenue offices have the primary role of collection, while the directors of chambers of fiscal administration supervise.

There are two types of tax rulings in Poland: a general tax ruling and an individual tax ruling. General tax rulings can be applied by all taxpayers (excluding administrative bodies) or issued ex officio by the Minister of Finance. Their aim is to ensure the uniform application of law by the tax authorities. Individual tax rulings are issued by the director of the National Fiscal Information Service upon every taxpayer's request (subject to cases where there is a risk of the general anti-avoidance rule applicability). As a rule, the taxpayer who received an individual tax ruling may benefit from legal protection. The taxpayer is not obliged to pay the tax or tax arrears (along with penalty interest) if the ruling was issued before the taxable event described in the application and covered by the tax ruling. No adverse tax penalties arise in such a case.

4.0 BUSINESS VEHICLES

Economic activity is generally free in Poland and foreign entities are allowed to do business in Poland on the terms provided for in the applicable laws. Since Poland is a member of the EU, a company set up in Poland may be used to do business in other EU member states.

A business may be conducted in one of the following forms:

i. A joint-stock company

ii. A limited liability company

iii. A limited partnership

iv. A limited joint-stock partnership

v. A branch office of foreign enterprise[1]

vi. A representative office of foreign enterprise

vii. Individual business activity (sole proprietorship).

A limited liability company (LLC) is roughly the equivalent of a private limited company in the UK or a GmbH in Germany. A Polish joint-stock company (JSC) is the equivalent of a public limited company in the UK or an Aktiengesellschaft in Germany. The JSC is the required form if the intention is to list a company on a stock exchange. The LLC's main advantages are lower costs, fewer formalities and flexibility.

5.0 FINANCING A CORPORATE SUBSIDIARY

5.1 Equity financing

The two main methods of equity financing are (i) contributions for shares and (ii) contributions without taking up additional shares (so-called additional capital contributions). In general, a capital contribution to a Polish company is subject to the tax on civil law transactions (TCLT) at the rate of 0.5%. The tax base is the value of share capital increase, whereas the share premium increase is not subject to tax.

In regards to partnerships, capital contributions are generally subject to 0.5% TCLT on the value of the contribution.

5.2 Debt financing

In general, the granting of a loan is subject to 0,5% TCLT, except for:

i. Loans granted by foreign entities, not having registered office or place of management in Poland,

1 As a rule, the representative office may not conduct business but only marketing and promotional activities of its parent company.

that carry on activities in the area of crediting and granting loans;

ii. Loans subject to VAT; and

iii. Shareholder loans (no minimum shareholding is required).

5.3 Tax deductibility of interest

Generally, interest on loans taken out for justified business purpose is tax-deductible on a cash basis, i.e., when paid or compounded, if the loan is connected to the taxable revenues of the taxpayer. Interest on loans taken to pay out dividends or redeem shares is not tax-deductible.

Starting from January 1, 2018, a new interest limitation rules restricting deductions in excess of financing costs over interest income (net financing costs) to 30% of an adjusted tax basis (basically, tax-adjusted EBITDA) were introduced. These new rules bring Poland in line with the EU directive. They apply to financing from all entities, including unrelated banks. From January 1, 2019, those rules apply to all loans, including loans granted before the new regulations were in place.

The financing costs are defined broadly as costs related to obtaining and using financial means from other entities (including unrelated entities), such as interest (including capitalized interest), charges, commissions, premiums, interest paid of leasing instalments, fines and charges for late payments of liabilities and hedging costs (including the costs of financial derivatives), regardless of the counterparty.

The new rules do not apply to surplus financing costs not exceeding PLN 3 million in a given year. The financing costs that cannot be deducted for tax purposes in a given tax year may be deducted in the five subsequent years, within the rules and limits.

6.0 CORPORATE INCOME TAX

Corporate income tax is levied on the total income of legal persons, organizational units without legal personality and joint-stock limited partnerships, with the exception of civil, registered, professional and limited partnerships. The provisions of the CIT law also apply to companies in the process of being established and so-called tax capital groups (i.e., a group made up of at least two commercial companies that meet strict conditions set out in the CIT law).

CIT is charged at a flat rate. In 2019, the rate of corporate income tax is 19%. However, a reduced 9% rate may apply to small taxpayers earning revenues (including VAT) equivalent to €1.2 million or less and for taxpayers starting a new business for their first tax year in operation (many limitations apply).

The tax year ordinarily corresponds to the calendar year, unless a company decides otherwise in its articles of association or statutes. Where alternative dates are used, the start of the company's year determines the tax rate applicable during the whole tax year.

Under the general rules, the company is obliged during the tax year to make monthly CIT advance payments by 20th day of the following month. Newly established companies and companies that reported for the previous tax year revenues from sales (including VAT) not exceeding €1.2 million may pay advance payments quarterly. After the end of the tax year, an annual tax return must be filed and any tax due paid within three months. Fines and penalty interest might be imposed for failure to comply with the above requirements.

6.1 Inter-company distributions

As a rule, dividends distributed between a resident parent and subsidiary companies are taxed in Poland. At the recipient level, income from participation in the profits of a legal person is subject to a 19% tax rate. It is not combined with income from other sources and is not subject to further taxation.

Dividends and certain other income from participation in a legal person are tax-exempt provided that the recipient is a company that is tax-resident in Poland or another EU/EEA member state, and that holds at least 10% of shares in that company for an uninterrupted period of two years. The two-year holding period requirement does not have to be met upfront. This exemption also applies to Swiss parent companies provided that they have at least a 25% shareholding in Polish subsidiaries.

There are also several technical requirements to be met in order to benefit from the tax exemption, including obtaining valid tax residency certificate of the dividend recipient or the relevant declaration on fulfilment of the tax exemption prerequisites. This tax exemption does not apply to artificial structures. This concerns the situations where application of the tax exemption (i) is to the contrary with the purpose of this exemption or (ii) is a main or one of the main reasons for the transaction or the other activity (or many transactions or the other activities) and the way it worked was artificial. The way it worked is deemed not artificial if in the case at hand it should be assumed that an entity acting reasonably and guided by lawful goals would apply this method of operation to a predominant extent for justified economic reasons.

If the abovementioned tax exemption cannot be applied, specific provisions of double taxation treaties should be taken into account.

6.2 Tax base and deductibility of expenses

The tax base for income from general business operations is determined on the basis of profits pursuant to commercial accounts. The company is obliged to keep accounting books in a manner that allows determination of the taxable base and the amount of tax due. Otherwise, income will be assessed by the tax authorities.

As a rule, the taxable income is recognized on an accrual basis (i.e., when the invoice is issued but not later than the month in which the goods or services were supplied). However, interest income is taxable in Poland on a cash basis, meaning that interest constitutes taxable revenue upon being received. Interest is also being deemed received when interest is compounded and added to the loan principal.

Generally, taxable income is calculated as all taxable revenue of the company less tax-deductible costs. In order to qualify expenditures as tax-deductible, they should be incurred with the aim of generating income, or saving or securing the source of income. Expenses are deductible only if they properly are supported by documents that are mandatory under the tax accounting rules. Expenditures such as most penalties and fines or representation expenses are not tax-deductible.

6.3 Capital gains

In the case of capital gains, taxable income is calculated as the difference between revenue obtained from the sale of securities (shares) and the cost of purchasing them. The cost of the purchase is defined as the price paid for securities (shares) plus all related costs (i.e., tax on civil law transactions or broker's fee). Expenditures incurred on the purchase of securities are not tax-deductible at the date when they were incurred. Those expenditures should be included in the tax calculation only upon a future disposal of the securities for consideration. There are separate rules for determining tax-deductible costs in case the shares were acquired as result of an in-kind contribution.

Income from capital gains is taxed with standard 19% CIT rate and it is not aggregated with other sources of income. The regular CIT rate is applied against capital gains earned in Poland by both resident and non-resident companies. Relief from Polish taxation may be available to a non-resident company as long as the applicable double taxation treaty does not provide otherwise. The majority of the double taxation treaties concluded by Poland provide that gains earned on the disposal of securities and other financial instruments may be taxed only in the country in which the company receiving the income has its registered office or place of management (unless a real estate clause is provided for in a relevant double taxation treaty).

6.4 General anti-avoidance rule

General anti-abuse regulations (GAAR) entered into force in Poland on July 15, 2016. The GAAR applies to legal structures where the main or one of the main purposes of an arrangement (or series of arrangements) is to obtain a tax advantage that is contrary to the subject matter or purpose of a provision of the tax act in given circumstances, provided that a given structure is artificial.

A legal structure, including a transaction or series of transactions, is deemed to be created mainly in order to receive a tax benefit if other business justifications of the structure, as indicated by a taxpayer, are considered immaterial. In order to not be subject to the GAAR, a legal structure must not be artificially created with no real business reason other than to receive a tax benefit that would not otherwise be received. From 2019, the GAAR may be applied in a situation where, even despite the existence of significant business reasons, the action will result in a significant tax benefit. The GAAR will apply on the basis that the structure was done mainly to achieve a tax benefit, irrespective of its economic or business justification.

Under the recently amended regulations, from 2019 onwards, an additional tax liability will arise in the case of the GAAR application. On top of the payment of outstanding tax with penalty interest, this additional tax liability will be applied in settlements to which anti-abuse or special tax anti-abuse clauses apply.

6.5 Exit tax

Starting from 2019, an exit tax will be introduced with respect to income on unrealized profits, concerning cross-border transfer of assets within the same taxpayer or change of the tax residency. The taxable basis will be the sum of income from unrealized gains established for individual assets. In turn, the income from unrealized gains will be the surplus of the market value of the transferred assets determined as at the date of transfer (e.g., as a result of a change of tax residency) over their tax value. Two tax rates will apply to personal income tax payers: 3% if the tax value of the asset will not be determined, and 19% in other situations. A 19% tax rate shall apply to corporate income tax payers.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

Transfer pricing regulations in Poland are based on the Organisation for Economic Co-operation and Development (OECD) standards. Where the prices agreed upon between related parties differ from prices which would be agreed upon between non-related parties in ordinary trade relations, and the difference is not justified in a satisfactory manner, the tax authorities have the right to assess the income and tax due.

The Polish tax law provides regulations regarding the negotiating and concluding of Advanced Pricing Arrangements (APAs). It is possible to conclude three types of APAs: unilateral (covering cross-border or domestic intra-group transactions), bilateral or multilateral. As a rule, all types of related party transactions may be covered by an APA if the prices are established according to one of the methods provided in the CIT law. By concluding an APA, the Ministry of Finance confirms that the prices set out in the related party transactions are comparable to the market prices and that the taxpayer correctly selected the transfer pricing method. The maximum period in which an APA might be concluded is five years. After this period expires, an APA can be renewed for a period of up to five years.

In 2018 transfer pricing documentation requirements in Poland depended on the taxpayer's revenues, expenses, and the value of the transactions. The documentation must be prepared each year for transactions over the statutory thresholds and the

representatives of the taxpayer must file a statement that the transfer pricing file for the year has been duly prepared within the deadline. Taxpayers whose revenues or expenses exceed the statutory threshold must include benchmarking analyses for each transaction in the local file. Additionally, taxpayers must file a special form each year to provide information about transactions with related entities in a simplified form.

Following a request from the tax authorities, a company has seven days to submit transfer pricing documentation to substantiate the transaction. The requirement to prepare documents also applies to transactions where payment is made directly or indirectly to an entity whose residence, registered office or place of management is situated in a territory or country pursuing harmful tax competition practices, or tax havens, even if the entity is not a related party.

The transfer pricing regulations were modified starting from 2019. Among other changes, there is the modified documentation obligation (duty changes depending on the value of the transaction, with new materiality thresholds, benchmarking analysis required for each transaction described in local file), introduction of safe harbors for loans and low-value-added transactions, more specific rules considering transfer pricing adjustments, extension of deadlines for the preparation of documentation and possibility of re-characterization or even non-recognition of transaction by tax authorities based on the arm's length principle. The statement about transfer pricing file being prepared will be extended by a confirmation that the transactions with related entities are concluded at arm's length.

From 2019, the rules of imposing penalty sanctions will also be amended. Based on the new regulations, the additional tax liability, in the event of a decision on incorrect pricing in a controlled transaction, will amount to 10% of the amount of overstated loss or understated income. In certain cases, the additional tax liability may amount to 20% or 30% of overstated loss or understated income. At the same time, the old rules providing for a 50% penalty rate will be repealed.

7.2 Withholding tax

Where a Polish company makes certain income payments to a non-resident, the Polish company is obliged to deduct Polish income tax from such payments. The WHT regime requires companies to deduct WHT from payments made in respect of:

i. Royalties

ii. Interest payments

iii. Dividends and other revenues from participating in the profits of legal persons

iv. Certain intangibles services.

Payments of dividends and other revenues from participation in the profits of legal persons having their registered office in Poland are subject to a 19% WHT. WHT may be reduced with respect to foreign taxpayers on the basis of double taxation treaties between Poland and the country the taxpayer is resident in. Generally, double taxation treaties with Poland provide no separate regulations in respect of tax treatment of individual types of income derived from participation in the profits of legal persons, as listed in the CIT law. Instead, they contain a general clause under which income from other rights in companies, which under the tax law of the payer's country of residence is treated for tax purposes as income from shares, should be treated as income from dividend. As a rule, the reduced rate provided in the double taxation treaty may be applied only if the taxpayer supplies the required certificate of tax residence, issued by the relevant tax authority in the country the taxpayer is resident in.

Under the implementation of the EU Parent Subsidiary Directive, dividends paid by Polish subsidiaries to their parents in the EU, the EEU or Switzerland are exempt from Polish withholding tax if all the following conditions are met:

i. Dividends are paid to a beneficiary which does not have its registered office or place of management in Poland

ii. The beneficiary is subject to income tax on its world-wide income in one of the EU/EEU member states or in Switzerland

iii. The beneficiary holds directly at least 10% (25% in case of Switzerland) of the shares in a Polish company for an uninterrupted period of not less than two years [2]

iv. The beneficiary does not enjoy exemption from income tax on its entire income, irrespective of the sources from which the income is earned.

The tax exemption cannot be applied to artificial structures, as defined in point 6.1 above.

Moreover, in order to benefit from the exemption set forth by Polish regulators implementing the directive, the payer should hold the recipient's certificate of tax residence and should obtain a written statement from the beneficiary confirming the fulfilment of condition (iv) above.

Payments of interest and royalties to foreign companies are subject to a 20% withholding tax unless a relevant double taxation treaty provides otherwise and a tax residence certificate is held. Poland also implemented EU Directive 2003/49/EC on a common system of taxation applicable to interest and royalty payments made between associated companies of different member states (the Interest and Royalties Directive). Therefore, interest payments between an EU parent and subsidiary, or between direct sister companies (in all cases, a minimum 25% interest and two-year holding period is required) are free from withholding tax.

In order to benefit from the exemption set forth by Polish regulations implementing the directive, the payer should hold the recipient's certificate of tax residence. Moreover, the payer should obtain from the beneficiary a written statement confirming (i) that the beneficiary does not enjoy exemption from income tax on its entire income, irrespective of the sources from which the income is earned, (ii) a minimum 25% interest (in the case of the sister companies) and (iii) that the recipient is the beneficial owner of interest or royalties paid.

There is also a limitation of tax deductibility of costs incurred for certain royalties and intangible services (e.g., advisory, management, data processing, marketing, market research, insurance, guarantees). Tax deductibility of such costs is limited to 5% of tax adjusted EBITDA, but the limit applies only to the excess of intangible costs greater than PLN 3 million. The restrictions, however, apply only to services acquired from related parties or entities residing in so-called tax havens.

Starting from 2019, the important changes with respect to the withholding tax (WHT) mechanism were introduced. At the top of the rules described above, for the dividends, interest, royalties or fees for intangible services exceeding PLN 2 million per paid to one recipient during the tax year, the tax remitter (i.e., the Polish company) is generally obliged to collect and remit WHT based on the standard Polish WHT rates (i.e., 19 or 20%, as the case may be). Then, upon the taxpayer's or tax remitter's request, the WHT can be refunded after the tax authorities examine the possibility of application of lower WHT rate or tax exemption.

Nonetheless, the tax remitter may apply a lower WHT rate or WHT exemption if it submits a declaration to the tax authority that it holds all documents required by tax law authorizing it to apply preferential WHT regime and confirm that it has no knowledge on any circumstances that might exclude preferential WHT treatment of the payment at hand.

Additionally, as regards WHT exemptions for dividends and interest based on EU directives (see above), the taxpayer may apply to the tax authorities for an opinion on the application of the relevant WHT exemption. This implies the tax authorities to examine whether the prerequisites for WHT exemption are met.

The application of these new provisions has been postponed until July 1, 2019.

8.0 PAYROLL TAXES

There are no specific payroll taxes in Poland, besides social security contributions. As a rule, the employer is obliged to withhold the employee's social security contributions from their salary and remit it to the Social Security Authorities. The effective rate for the employee is roughly 14% of gross salary. Additionally, the employer is obligated to pay its own share of the contributions, with the effective

2 This condition does not have to be met upfront, i.e., before dividend distribution; the exemption also applies where the continuous two-year shareholding period lapses after the income is obtained. However, if the beneficiary (shareholder) dispose of the shares before lapse of the two-year shareholding period, it should pay 19% WHT with penalty interest without prior notice.

rate at roughly 19% to 22% of gross salary. Both payments are made monthly and might constitute tax-deductible expenses for both the employer and the employees.

9.0 INDIRECT TAXES

9.1 Value-added tax

Supplies subject to VAT include goods and services for consideration, export of goods, import of goods, intra-Community acquisition of goods for consideration and intra-Community supply of goods. The supply of goods is construed to mean transfer of right to dispose of the goods as an owner, such as sale or exchange. It also means, among others, transfer of ownership in exchange for compensation, release of goods pursuant to a finance leasing agreement in the meaning of the CIT Act, commission sale and establishing or transferring the right of perpetual usufruct to land and other property rights connected with premises.

Supply of services is construed to mean any performance that does not constitute supply of goods. This definition encompasses anything that cannot be determined as supply of goods. Import of goods is understood as importation from outside the EU and is subject to import VAT. Export outside the EU is also subject to VAT, but may benefit from the 0% VAT rate provided certain conditions are met. The scope of intra-Community supplies and acquisitions covers purchase, sale as well as transfer of goods. In such intra-Community transactions, VAT is settled pursuant to the reverse-charge principle: the supplier applies 0% rate (some documentation conditions should be met), while the purchaser self-accounts by applying its own, domestic rate.

VAT payers that have neither a registered seat nor a fixed place of business in Poland or in another EU member state are obliged to appoint a fiscal representative. VAT payers having a registered seat or a fixed place of business in another EU member state may appoint a fiscal representative. The fiscal representative is jointly liable with the trader it represents for all Polish VAT liabilities settled by the fiscal representative on behalf of and on account of trader.

There are three VAT rates. The basic rate is 23%[3] and is applicable to the majority of goods and services. There are two reduced rates of 8% and 5% and one preferential rate of 0%. The 8% rate applies to some goods connected with health care, groceries, hotel services and transport of persons. The 5% rate primarily covers the sale of certain unprocessed or semi-processed products from agriculture, forestry, hunting and fishery, services related to such products and supply of certain books and specialist periodicals. The 0% rate refers mainly to intra-Community supply of goods and export of goods. Zero-rated sales are also treated as taxable sales.

Under general rules, a taxpayer may recover input VAT (the exceptions are listed in the VAT Act). VAT payers have the right to reduce the amount of output VAT by the amount of input VAT when purchasing goods and services in connection with taxable business purposes. Input tax directly related to making VAT-exempt supplies is generally not recoverable. It can be deducted as a cost for corporate income tax purposes, with some exceptions (e.g., in some cases input VAT related to financial services rendered to entities established outside of the EU may be recovered).

If a taxpayer makes both exempt and taxable supplies, then it will not be able to recover input VAT in full, and only a portion of the VAT can be reclaimed. To determine the amount of VAT that may be recovered in this situation, the taxpayer calculates the VAT ratio, which is the ratio of turnover made on taxable supplies to the total turnover. The ratio is subject to correction at the end of the tax year. The excess of input VAT over output VAT reported in a given VAT return may be refunded or carried forward against future VAT liabilities. Refunds are generally made within 60 days, but under certain conditions at the taxpayer's request the VAT is refunded within 25 days.

In principle, under Polish VAT regulations, the tax point is when the goods are released or the services completed. The tax point for an advance payment or prepayment received before the goods are released, or before the services are completed is the date payment is received. Notwithstanding the foregoing, for selected goods and services, such as electricity, telecommunications and leasing, the tax point is the time the VAT invoice is (or should be) issued.

3 As of January 1, 2011, the basic VAT rate was temporarily increased from 22% to 23% and the reduced VAT rate of 7% is increased to 8%; these increased rates are still applicable at the time of writing.

VAT is calculated by the taxpayer and should be paid on a monthly or quarterly basis by the 25th day of the month following the month/quarter for which it is payable. Settling VAT on a quarterly basis is possible only for: (i) taxpayers whose value of sales (including a tax amount) did not in the previous fiscal year exceed the amount of €1.2 million; or (ii) taxpayers conducting certain financial or intermediary activities, whose value of service fees (including a tax amount) did not in the previous fiscal year exceed the amount of €45,000.

9.2 Split payment

As of July 1, 2018, a voluntary business-to-business (B2B) split payment was introduced in Poland. Under that system, all businesses have VAT accounts established for them by the banks running their regular accounts. A purchaser of goods or services can choose, at its sole discretion, to pay the entire amount due to the seller or provider into their regular bank account, or to split the price payment between the net amount allocated to the seller's or provider's regular account and VAT amount allocated to their VAT account. Amounts deposited in the VAT accounts can only be used by taxpayers for specific purposes listed in the legislation, including payment of VAT to tax authorities or payment of VAT part of the price to their own supplier's or provider's VAT account.

Under certain conditions, taxpayers in regular VAT situations can also request a local tax authority to agree that the amounts available in their VAT accounts be released into these taxpayers' regular accounts. Tax authorities are required to decide on such requests within 60 days. Various tax benefits are available to taxpayers using the split payment mechanism in their transactions.

It should also be noted that Poland will soon introduce mandatory split payment for selected businesses, such as trading in electronics or construction services.

9.3 Tax on civil law transactions (TCLT)

TCLT is imposed on certain types of transactions, including sales agreements, loan agreements, establishment of mortgage or articles of association. Tax rates vary between 0.5% to 2%, where certain actions are taxed at a 20% penalty rate, including if in the course of the tax audit or tax proceedings the taxpayer plead to concluding a loan agreement, an irregular deposit or establishing an irregular usufruct, or their change, and the tax due on these activities has not been paid. The general rule provides that transactions (other than those defined as articles of association and its amendments) that are subject to VAT or exempt from VAT (with certain exceptions) are not covered by TCLT.

The sale of shares and partnership interest in Polish entities is subject to a 1% TCLT, which is payable by the buyer. Sale of shares in joint stock companies may be exempt from the 1% TCLT under certain conditions, such as if a brokerage house acts as an intermediary in the transaction. In general, granting loan is subject to 0.5% TCLT, though certain exemptions may apply.

9.4 Real estate tax

The real estate tax generally applies to the owners, perpetual usufructuaries and freeholders of properties. The real estate tax applies to land, buildings or parts thereof, and constructions or parts thereof connected with business activities. It is payable to local authorities, which set the real estate tax rates within the statutory maximum rates.

The maximum real estate tax rates in 2019 on:

- Land used for business activities – PLN 0.93 per square meter
- Buildings or parts thereof used for business activities – PLN 23.47 per square meter of usable surface
- Constructions or parts thereof used for business activities – 2% on the initial value of a construction, adopted for tax depreciation purposes.

Romania

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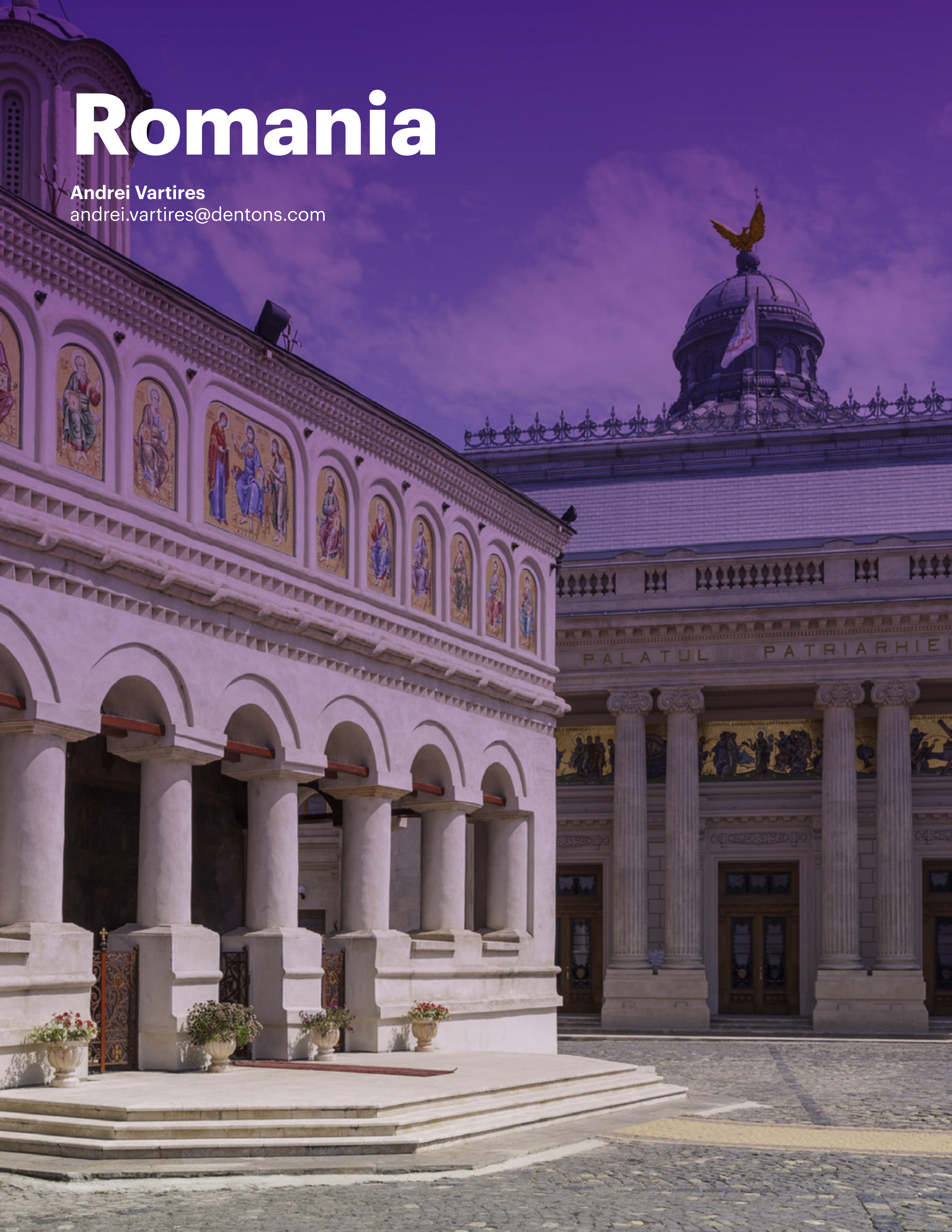


1.0 OVERVIEW

In January 2007, Romania joined the European Union (EU) and went through important reforms in order to comply with the EU membership requirements. As a member of the EU, Romania has adopted the EU fiscal legislation.

Romania imposes a flat tax system for both corporate and personal income tax on its residents (including Romanian subsidiaries of foreign entities) in respect of income and capital gains earned anywhere in the world. Non-residents who carry on business in Romania, are employed in Romania or sell certain types of properties are also subject to Romanian income tax.

Given the wide array of double taxation treaties (DTTs) available, investments are made by interposing a holding company located in a favorable tax jurisdiction, such as the Netherlands or Luxembourg. The use of a holding company allows for distributions of dividends or interest that can be may be made free of Romanian withholding tax, subject to certain conditions.

Romania concluded more than 80 DTTs with other EU member states or third states. Foreign tax credits may be granted if so provided in the treaty and if tax was paid abroad. Tax credits, however, may not exceed the Romanian tax on the income. In order to apply the provisions of the relevant DTT, the non-resident recipient of the income should provide to the Romanian payer a tax residence certificate attesting its tax residency for the purpose of the DTT.

2.0 LEGAL SYSTEM

The Romanian legal system is similar to other European civil law countries. Romania utilizes a civil law system and adopted a new Civil Code in 2011. In 2016, a new Fiscal Code along with a new Fiscal Procedure Code came into force. This Fiscal Code implemented important amendments to the majority of Romanian taxes. Its main purpose is to provide clarity and predictability to domestic taxation, stimulate investments and economic growth and reduce bureaucracy.

3.0 TAXATION AUTHORITIES

The tax system in Romania is administered by the National Agency for Fiscal Administration (ANAF), which is subordinate to the Ministry of Finance. There are also local tax authorities, subordinate to ANAF, which are responsible for collecting tax from taxpayers.

4.0 BUSINESS VEHICLES

Foreign investors may establish a business presence in Romania by creating a new company or purchasing a shelf company (among other methods). The main vehicles used by investors in this respect are limited liability companies (LLCs) and joint-stock companies (JSCs).

While LLCs are easier to create than JSCs, in the case of an envisaged transfer of shares for LLCs, the transfer may only be effected upon the expiry of a 30-day opposition term from the date of publication in the Official Journal of Romania of the decision approving the transfer of social parts. This opposition term for LLCs is provided in favor of the company's creditors and is designed to prevent tax evasion.

The most common entities used for investment purposes in Romania are LLCs and JSCs. Below are highlights of the advantages and disadvantages of each.

4.1 Joint-stock companies

JSCs are the most complex and evolved of Romanian companies. They require a minimum of two shareholders, which can be either a legal person or a natural person. The social obligations of JSCs are guaranteed by the share capital, and the shareholders are only held liable up to the limit of their contributions. The minimum share capital is RON 90,000 (approximately €25,000). The share capital paid into the JSC upon incorporation by each shareholder may not be less than 30% of the subscribed share capital. The shares in the JSCs may be freely transferred and they may be traded in organized markets.

4.2 Limited liability companies

Foreign investment is usually made by way of incorporating Romanian special purpose vehicles. The most frequently used entity is the LLC, primarily due to its corporate flexibility and low capital requirements.

The LLC is the most commonly used type of company and may be established by a minimum of one member and a maximum of 50 members. The minimum share capital is RON 200 (approximately €45). The equity capital must be fully paid in as of the subscription date. The quotas do not represent negotiable titles and therefore may not be traded on organized markets. Members are liable for the company's obligations only up to the value of their subscribed equity capital.

4.3 Representative office

Foreign companies may conduct marketing activities, such as advertisement and market research, through a representative office. It represents, and acts for and on behalf of, its parent entity with a specific mandate, limited to the promotion and technical support of the parent company's business activities.

4.4 Branch

A branch is an extension of the parent foreign entity, with no financial independence. It may only carry out the activities that the parent foreign entity has been authorized to carry out in its home jurisdiction.

5.0 FINANCING A CORPORATE SUBSIDIARY

Financing of commercial entities usually involves a combination of debt and equity, with consideration of the applicable thin capitalization rules.

5.1 Equity financing

Equity includes the share capital, legal reserves, other reserves, retained earnings, current profit as well as other equity elements established by law.

5.1.1 Withholding tax implications – dividends

The Parent-Subsidiary EU Directive is applicable in Romania. The general withholding tax rate on dividends paid to a non-resident is 5%. In addition, when dividends are paid by a Romanian entity to another Romanian entity, a 5% tax is applicable and must be withheld, declared and paid by the dividend payer.

Dividends received by a Romanian legal entity from another legal entity are not taxable at the level of the recipient; however, dividends received from a legal entity may be taxable to the recipient. However, under the Parent-Subsidiary EU Directive, tax on dividends is exempt subject to an ownership of at least 10% and for an uninterrupted period of at least one year.

5.1.2 Withholding tax implications – interest and royalties

The EU Interest & Royalties Directive is applicable in Romania. A 16% withholding tax is applied on interest and royalties paid to a non-resident company, unless there is a different reduced rate under a treaty of the EU Interest & Royalties Directive. However, under the directive, tax on interest and royalties is exempt subject to an ownership of at least 25% and for an uninterrupted period of at least two years.

5.2 Debt financing

5.2.1 Thin capitalization rules

New rules apply to the deductibility of interest expenses of January 1, 2018. The excess borrowing costs (i.e., the difference between borrowing costs and interest income) that exceeds the deductible limit of €200,000 will be deductible only up to 10% of the company's adjusted tax profits.

5.3 Stamp tax

Romania does not impose stamp tax in respect of debt or equity financing.

6.0 CORPORATE INCOME TAX

6.1 Income tax rate

For 2018, the standard corporate tax rate is 16%. Taxpayers of corporate income tax include:

- Romanian legal entities, except for taxpayers subject to the micro-enterprises tax or specific tax, tax-transparent entities and certain institutions specifically defined in the Fiscal Code
- Non-Romanian legal entities that carry out activities through one or more permanent establishments in Romania;
- Non-Romanian legal entities that have their place of effective management in Romania
- Non-Romanian legal entities that obtain income from the transfer of ownership or any other rights related to immovable property located in Romania
- Legal entities established in accordance with European legislation that have their registered office in Romania.

6.2 Fiscal year

As a rule, the fiscal year follows the calendar year. However, taxpayers can opt for a financial year-end that is different from the calendar year, and may also choose a taxation year that coincides with their financial year.

6.3 Deductibility of expenses

As a principle, expenses are deductible only if they are incurred for the purpose of carrying out economic activity. There are, however, certain types of expenses provided by the Fiscal Code as being non-deductible or have limited deductibility.

6.4 Tax losses

Tax losses may be carried forward for seven years, however, there is no carry-back of losses. Changes in ownership do not affect the carrying forward of tax losses.

6.5 Taxable base

A taxpayer is subject to tax on its profits from carrying on its business. Profit is generally considered to be revenues less deductible expenditures.

6.6 Income tax reporting

Romanian resident corporations and non-resident corporations that carry on business in Romania or that dispose of taxable Romanian property are required to file an annual corporate income tax return.

6.7 Micro-enterprise tax

The micro-enterprise tax is based on the turnover or net sales of a company. Instead of applying the 16% corporate tax, legal entities with a turnover of up to €1,000,000 are subject to a lower tax rate of 1% for companies with at least one employee, or 3% for companies with no employees.

Any company may opt for the 16% corporate tax if it has a minimum share capital of RON 45,000 (approximately €970) and at least two employees, even if its turnover is less than €1,000,000.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

Specific transfer pricing rules apply to transactions between related parties. The rules also apply to transactions between related resident companies. There are different requirements relating to transfer pricing documentation depending on the type of taxpayer, type of transaction and materiality thresholds.

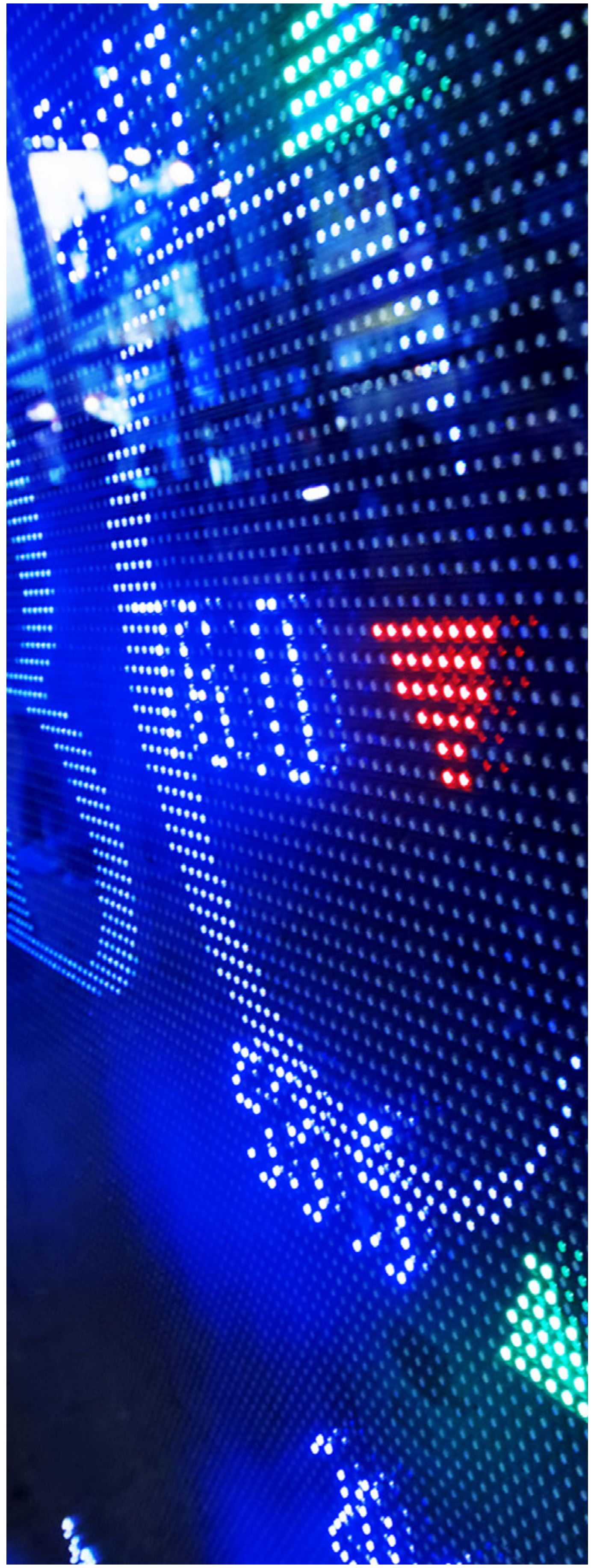
Romanian legislation is aligned with the Code of Conduct on Transfer Pricing Documentation for Associated Enterprises in the EU. Organisation for Economic Co-operation and Development (OECD) guidelines outline the details and content of transfer pricing.

Large taxpayers carrying out intragroup transactions exceeding certain limits must prepare a transfer pricing file on an annual basis in the Romanian language, along with all related supporting documentation.

8.0 PAYROLL TAXES

8.1 Payroll taxes and capital duty

Neither capital duty nor payroll tax is due from the employer. However, employers must establish and withhold tax on salaries on a monthly basis and remit it to the state budget.



9.0 INDIRECT TAXES

9.1 Value-added tax

Value-added tax (VAT) is established on the supply of good and provision of services performed in exchange on remuneration. The standard VAT rate is 19%, with reduced rates of 9% for orthopedic products and medicine products (among others), and 5% for school books, newspapers and magazines.

VAT registration is required for taxable persons carrying taxable transactions or intra-EU acquisitions. VAT returns must be submitted with the tax authorities on a monthly or quarterly basis, depending on the company's annual turnover.

9.2 Real property tax

Pursuant to the Fiscal Code, residential buildings and buildings owned by natural persons are subject to a tax rate between 0.08% and 0.2% of the taxable value of the building. Non-residential buildings owned by natural persons are subject to a tax rate between 0.2% and 1.3% on their value, which can be calculated as one of the following:

- The amount resulting from an evaluation report prepared up by an authorized evaluator, during the last five years preceding the reference year
- The final value of construction work, new buildings built in the last five years preceding the reference year
- The value of buildings resulting from the act of transfer ownership, acquired in the last five years preceding the reference year

If the value of the building cannot be calculated according to the above, the tax is calculated by applying the rate of 2% on the taxable value determined under applicable residential buildings owned by individuals.

In regards to legal persons, the Tax Code provides the following rates:

- For residential buildings, the tax rate is between 0.08% and 2% on the taxable value of the building
- For non-residential buildings, the tax rate is between 0.2% and 1.3% on the taxable value of the building.

Owners of land are subject to a land tax with a fixed amount per square meter, depending on the location of the land and the category of the area in use.

9.3 Land transfer tax and share transfer tax

No land transfer taxes apply to the sale of real estate. However, stamp duties apply to the registering of real estate with the relevant land books. As a general rule, the buyer will be required to pay the notary fees along with the Land Registration Office fees. Sale of Romanian properties may be subject to a 19% VAT depending on the VAT regime of the seller and whether or not the property is considered new.

Acquiring shares in Romanian companies is not subject to any transfer tax. In addition, the sale of shares is not subject to VAT. Capital gains resulting from the sale of properties is taxed at a flat rate of 16%.

Russia

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1.0 OVERVIEW

The Russian system of taxation is divided into three levels represented by federal, regional and local taxes. General taxation rules are established at the federal level by the Russian tax code and other regulations. Regional and local authorities are empowered to regulate certain elements of regional and local taxes, namely to vary tax rates within a certain range and provide tax incentives. Many regions have adopted tax incentives for investors, such as a lower rate of profit tax and exemption from property tax relating to investment projects or other special conditions (e.g., high average wages for employees). As of 2019 a region's authority to reduce the profit tax rate is limited to cases directly specified by the Russian tax code. All other regional profit tax incentives will be canceled starting in 2023.

In addition, different special regimes, such as, regional investments projects, special economic zones, territories of advanced socio-economic development, the free port of Vladivostok, and special administrative districts establish favorable tax conditions for investors that meet specific requirements, including the reduction of or exemption from property and land taxes, the decrease of profit tax rates and lower social security contributions.

Below is a brief overview of major taxes imposed on businesses and their key elements, such as the type of taxable income or property, tax base, tax rate and some specific regulations concerning intra-group financial operations and transfer of assets.

2.0 LEGAL SYSTEM

Russia and its regions operate under a civil law legal system. While the ability to implement certain laws are in the exclusive domain of the federal government, others are within the scope of the regions. The federal government has the right to regulate trade and commerce, and to establish the general principles of taxation and fees in Russia. However, the procedure for the construction of plants, establishment of tax rates and granting of tax incentives are the joint responsibility of the federal and regional authorities.

3.0 TAXATION AUTHORITIES

The main tax authority in Russia is the Federal Tax Service. Its territorial bodies and inspectorates oversee the accurate calculation and proper payment of all taxes and social insurance contributions.

The Federal Tax Service carries out tax supervision mainly in the form of in-house (desk) or field tax audits. An in-house tax audit is conducted on the basis of a tax return filed by a taxpayer. A desk tax audit may be performed within three months (two months for value-added tax) from the date of filing the tax return. A field tax audit may encompass up to three calendar years preceding the year when the audit is initiated. During a tax audit, a tax authority checks the computation accuracy and the proper payment of reported taxes within the audited period. For this purpose, a tax authority may exercise its power of compulsory seizure of documents and other material evidence. During field tax audits, tax authorities are also entitled to request additional documents and to check all taxes (not only those that are reported). They may also interview employees, conduct counter-inspections and audit taxpayer's counterparties.

Additionally, there is a separate form of tax audit that relates purely to the control of prices applied by interdependent companies in their transactions (based on transfer pricing regulations). A special body authorized to perform such audit checks the accuracy of tax calculations with respect to intercompany transactions, though in practice local tax authorities are actively engaged in the same checks.

4.0 BUSINESS VEHICLES

A non-resident may either establish a Russian entity to carry on business in Russia or operate directly through a foreign entity (with or without a Russian permanent establishment). The two types of legal entities most commonly used in Russia are the limited liability company (OOO) and the joint-stock company (AO). In addition to OOOs and AOs, Russian law also recognizes other forms of legal entities, including, but not limited to general partnerships, limited partnerships, and manufacturing cooperatives. It is also possible to use simple and investment partnerships as forms of joint-cooperation without creating a legal body. However, these partnerships are infrequently encountered in practice due to lack of limited liability and are rarely used for business purposes.

4.1 Limited liability companies

The OOO is the most popular type of company due to the relative simplicity of its formation and the flexible rules on corporate governance and raising capital. The legal form of OOOs has adapted over time, making it well suited for both wholly-owned subsidiaries of foreign investors and joint ventures.

4.2 Joint-stock company

An AO is only recommended as a legal form in cases where the shareholders are planning public placement of shares (which is not permitted for OOOs, and for the "non-public" form of an AO). If no public placement of shares is expected, an AO is generally not recommended because it is subject to cumbersome securities regulations and provides less discretion to shareholders in terms of corporate governance.

4.3 Branches and representative offices

Instead of setting up a local legal entity, foreign investors may choose to operate in Russia through a branch or representative office of a foreign company, which are not separate legal entities under Russian law and may act only on behalf of the company they are representing. This is not the preferred option for many companies, as the registration process may be cumbersome. Parent companies bear full liability for the activities of their branches and representative offices.

Branches and representative offices of foreign companies are not subject to company law requirements, but they are subject to special rules summarized as follows:

i. They can be financed by the head office by direct transfer from between bunk accounts on an "as needed" basis.

ii. A representative office of a foreign company is not intended to undertake any commercial activity; however, a branch may undertake such activity.

iii. The main purposes of a representative office are usually to represent the interests of the company in Russia, carry out market research, and promote commercial relations with Russian partners. If a representative office carries out commercial activities, this is not deemed to be a violation of law, but requires the payment of applicable taxes in Russia.

iv. Both a branch and a representative office are managed by their head acting on the basis of a power of attorney issued by the company. The powers of the head depend solely on the provisions of such power of attorney.

v. The main internal document of a branch or representative office is its regulation which is approved by the company.

vi. Taxation of a branch or representative office is defined based on "permanent establishment" rules, relevant provisions of any double taxation treaty, and often requires consideration of transfer pricing rules.

5.0 FINANCING A CORPORATE SUBSIDIARY

A Russian company may be financed by equity and/or debt. Financing can be provided by a parent company, third party investors or lenders. Equity contributions may be made either in cash or in kind. Debt may be provided in the form of loans or issuance of bonds.

5.1 Equity financing

The share capital of OOOs is contributed by each participant in an OOO, and is no less than the nominal value for its share (participatory interest) and can be increased by making additional contributions by the participants (existing or new one). The share capital of AO's can be increased by increasing the nominal value of shares or placing additional shares outside the company.

Certain types of property rights and intellectual property rights can be contributed to equity in a tax neutral way, but careful analysis and structuring is required to avoid negative tax implications for property rights. For example, a straightforward contribution of debt rights or debt forgiveness may be considered taxable income. A general participation exemption works for property contributions made by owners of more than 50% shares in the company (with some other additional criteria).

Equity contributions that do not change share capital are more often used in practice and do not require registration with the relevant authorities.

5.2 Debt financing

5.2.1 Corporate profit tax implications

Russian companies are permitted to borrow funds from related or unrelated third parties. "Thin capitalization" rules and "safe-harbor" tests should be applied to understand the tax implications.

5.2.2 Thin capitalization rules

Thin capitalization rules limit the interest deductibility on debt financing obtained from foreign direct or indirect owners of the Russian taxpayer, or affiliates of the foreign owner or if a debt is guaranteed by the foreign owner." If the debt to equity ratio of the Russian borrower exceeds 3:1 as of the last day of the taxable (reporting) period, then:

i. The excessive interest shall not be deductible for the Russian borrower, which leads to an increase in the tax base for profit tax; and

ii. The excessive interest is treated, for tax purposes, as dividends payable to a foreign lender.

In practice, financing structuring in Russia deals with a number of complex, multi-factor tax issues, including general anti-avoidance rules, potential risks of requalification of debt financing into capital and limitation of benefits provided under a double taxation treaty. Thus, taxpayers should pay extra attention to this point.

6.0 CORPORATE INCOME/ PROFIT TAX

6.1 Income/profit tax rate

The profit tax rate is 20%. Many regions have adopted tax incentives for investors, such as a lower profit tax rate.

6.2 Computation of taxable income

6.2.1 Taxable base

The profit tax base is equivalent to the taxable profit calculated as sales revenue and other income, less economically justifiable expenses supported by documents. In practice, the requirements for providing documentation in Russia are stricter than -those of other countries.

6.2.2 Loss carry-forward

As a general rule, a company may carry forward prior year tax losses in chronological order with the limitation that only 50% of each annual profit tax base may be reduced every year until 2020. Starting 2021 such limitation will expire and there will be no limit on the amount of taxable profit that can be reduced by a loss.

6.3 Income tax reporting

Taxpayers are required to file quarterly and annual profit tax returns. Quarterly profit tax returns must be filed within 28 calendar days of the quarter-end. Annual profits tax returns must be filed within three months of the calendar year-end.

6.4 Special incentives

Special incentives are envisaged for taxpayers that are residents of special economic zones, territories of advanced socio-economic development, the free port of Vladivostok, Innovation Center Skolkovo and for participants of regional investments projects or other special regimes. The profit tax rate may be reduced up to 0%.The amount of tax benefits, terms of its application and other conditions depend on the regime and region.

6.5 Dividends

As a general rule, dividends payable to companies recognized as Russian tax residents are subject to a corporate profit tax rate of 13%. Under certain conditions (i.e., minimum 50% shareholding within the period of not less than 365 days) incomes received from subsidiaries (including dividends) may be fully exempt from taxation through "participation exemption". For foreign subsidiaries, the "participation exemption" works if the country of incorporation is not black-listed by the Ministry of Finance.

6.6 Controlled foreign corporations (CFC)

As a general rule, a Russian tax resident is deemed to control a foreign company, if such person/ legal entity (a) owns more than a 25% interest in the company or (b) 10% interest in the company provided that more than 50% interest is owned by Russian tax residents and (c) by other means determines (exerts significant influence on) or may determine corporate decisions for this company concerning distribution of income among its equity holders. A controlling individual/entity should pay a tax at a rate of 13%/20% on income earned by a CFC in proportion to that person or legal entity's share in the company. The income is taxed if the CFC does not pay out the full amount of its net income as dividends to its equity holders by the end of a calendar year following the calendar year in which a reporting period comes to an end. CFC rules are also applied to trusts and other similar structures.

CFC rules exempt from taxation active business companies, as well as companies with an effective tax rate exceeding ¾ of the effective Russian tax rate.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

Certain types of transactions, known as "controlled transactions," should be conducted at arm's length under the threat of a pricing adjustment for taxation purposes. These include:

i. Transactions with foreign related companies exceeding an annual threshold of RUB 60 million

ii. Transactions between two Russian related companies with total revenues reported under these transactions by both parties exceeding RUB 1 billion, if the parties to the transactions apply different profit tax rates, or if one of the parties is a minerals extraction taxpayer and the subject of the transaction is mined minerals, or if some other specific condition is met.

iii. Other transactions above a RUB 60 million threshold, with formally unrelated parties, may also be considered controlled transactions:

- Transactions with conduit companies – intermediaries with related companies;
- Transactions with companies from the Ministry of Finance's black list of jurisdictions;
- Foreign trade transactions for goods traded at the stock exchange.

Certain exemptions and additions to the abovementioned rules are revised periodically, so we recommend to carefully check required compliance actions. The Russian transfer pricing model is mainly based on the Organisation for Economic Co-operation and Development (OECD) guidelines and contains country-by-country reporting requirements. At the same time, local practices and rules should be carefully considered. Generally, a master file prepared at the group level is not enough to cover Russian transfer pricing issues.

7.2 Withholding tax on passive income

Interest, royalties and dividends payable by Russian companies to foreign companies are subject to withholding tax, unless the respective double taxation treaty provides otherwise. The withholding tax rate is 20% for interest and royalties, and up to 15% for dividends. The 30% rate may be applied to income from securities (save for dividend income) in some cases with nominal holders of securities, where a beneficial owner is deemed to be unknown.

Freight and similar income is taxed at a 10% rate. Most other types of foreign company incomes taxable at the 20% rate include income from the sale or rental of real estate located in Russia, income from the use of intellectual property rights in Russia, and income from the sale of shares of entities, if more than 50% of their assets comprise real estate located in Russia.

As foreign companies are not registered with Russian tax authorities, the above tax should be calculated, withheld and paid by a tax agent (Russian source of income). Lower rates under a double taxation treaty are allowed. At the same time, anti-abuse rules require the taxpayer to obtain not only a certificate of residency of recipient, but also to get evidence of economic beneficiary of income.

7.3 Withholding tax on active income

There is no withholding tax on active income. It is generally taxable in Russia through a "permanent establishment" set-up. The concept of a permanent establishment is basically similar to the OECD standard.

8.0 PAYROLL TAXES

8.1 Personal income tax (PIT)

Russian companies are required to compute and withhold personal income tax from salaries and other income paid to employees and other individuals. A 13% rate applies to many types of income received by Russian tax residents (regardless of the source of such income). A 30% rate applies to income received by non-residents from Russian sources, with the exception for highly qualified foreign specialists, who under certain conditions are eligible for the 13% rate.

8.2 Social insurance contributions (SIC)

The SIC is 30% of the annual income of an employee within established thresholds, with subsequent reduction to 15.1% on remuneration above the thresholds. Lower preferential rates apply to some companies, such as IT companies complying with certain requirements.

9.0 INDIRECT TAXES

9.1 Value-added tax (VAT)

Taxable operations are supplies of goods (works, services), property rights and construction works for a taxpayer's own needs. Financial and similar operations (insurance, loans, circulation of securities, etc.) are generally exempt from VAT. There are some other notable exemptions, such as the transfer of intellectual property rights for patents, software and trade secrets.

9.1.1 VAT rate

As of January 1, 2019, the standard VAT tax rate is 20%. Reduced 10% and 0% VAT rates apply to certain goods, works and services. VAT for the export of goods is 0%.

Foreign providers of "electronic" services to Russian clients (both B2B and B2C) need to register for VAT purposes in Russia. .

The list of such electronic services includes (among others):

i. Granting access to use computer programs and databases via the Internet

ii. Advertising services via the Internet

iii. Assigning domain names

iv. Web-hosting services

v. Granting access to use e-books and other content via the Internet.

9.1.2 VAT agents

If a foreign company without presence in Russia (i.e., not registered with the Russian tax authorities) makes VAT-eligible sales, the tax agents will be required to calculate, withhold and pay VAT on behalf of this company. In general, VAT tax agents could be goods or services purchasers registered in Russia or payment intermediaries registered in Russia.

9.1.3 VAT recovering

A purchaser of taxable goods, works or services has the right to recover input VAT in the full amount provided that necessary supporting documents are in place and the acquired goods, works or services are intended for operations subject to VAT (irrespective of the actual output VAT accrued). If acquired goods, works or services are used for both taxable and non-taxable operations, input VAT is recoverable pro-rata. Internal controls for bona fide suppliers are a key element to support VAT deductibility. A three year eligibility limitation should be taken into account in claiming expenses of past periods.

9.2 Excise duties

Goods subject to excise duties are mainly alcohol, tobacco, cars, motorcycles and fuel. The base is either a quantity or a value of goods produced (reworked or refined) depending on the type of goods. The rate of excise tax varies depending on the kind of taxable goods being referenced.

10.0 OTHER NOTABLE TAXES

10.1 Property tax

Property tax is payable by (a) Russian companies and foreign companies that conduct activities through a permanent establishment in Russia for immovable property reflected in their accounts as fixed assets; and (b) foreign companies that do not have a permanent establishment in Russia for their immovable property. Land plots and some other properties are not subject to property taxation. Different and complicated approaches to define movables and immovable often create uncertain tax positions.

Generally, the tax base is determined as the net book value of taxable assets on the basis of the taxpayer's statutory accounting records. However, for some commercial buildings such as office buildings, hotels or shopping malls listed by the regional authorities, the tax base is defined as the cadastral value of the object of immovable property as approved by the respective regional authorities where the property is located.

The tax rate may not exceed 2.2%. The exact rates are set within this limit by regional authorities. Buildings taxed at the cadastral value are subject to a slightly lower property tax rate (up to 2%). The property tax rate may be reduced to 0% on new property, which is a part of an investment project, implemented under special regimes mentioned in Section 6.4 above, or by other decisions made by regional authorities.

10.2 Land tax

Land tax is a local (municipal) tax. A land plot that is owned by a taxpayer is recognized as an object of taxation. The tax base is the cadastral value of the land plot. The annual rates vary with a maximum of 1.5% depending on the type of permitted use of a particular land plot. The rates are set by local authorities.

10.3 Transport tax

Transport tax is levied on motor vehicles (cars) and other technical means of transport, such as boats, bikes and planes owned by a taxpayer. The rates are determined by regional authorities and depend on the technical features of each particular transport vehicle (i.e., engine capacity).

10.4 Customs duties

Customs duty is a mandatory payment levied by the customs authorities when a taxpayer is moving goods across the customs border of the state. Customs duty rates are determined by the Russian government and vary depending on the type of imported or exported taxable goods.

10.5 Minerals extraction tax

A minerals extraction tax is payable by companies involved in mining activities. The tax is established as the value of extracted minerals or as a multiple of the quantity of extracted minerals and a certain fixed tax rate subject to a coefficient. The value of extracted minerals may be defined based on costs or revenues, and the majority of practical issues in the tax deal with the correctness of specific methodology chosen.

Singapore

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1.0 OVERVIEW

Singapore has a territorial, and to a limited extent, remittance basis of taxation. Under the Income Tax Act (Cap 134) (ITA), income that is sourced in Singapore or received in Singapore from outside Singapore is subject to income tax in Singapore, unless specifically exempted by the ITA.

Singapore resident companies may enjoy tax exemptions on certain types of foreign-sourced income received in Singapore, including dividends, branch profits and service income, provided the qualifying conditions are met. Singaporean residents are not taxed on foreign sourced income that is not received in Singapore. There is also no tax on capital gains.

Singapore imposes withholding tax on certain categories of payments made to non-residents, including interest, royalties, rent for movable property, management fees and technical assistance fees. However, Singapore has an extensive network of avoidance of double-taxation treaties (DTT), which may provide for tax relief, such as reduced withholding tax rates or foreign tax credits. In order to avail treaty benefits, a Certificate of Residence (COR) must be obtained to prove that the taxpayer is Singapore resident.

Goods and services tax (GST) is chargeable on certain supplies of goods and services in Singapore, and stamp duty is levied on the transfer of stocks, shares and immovable property in Singapore. Employers are required to make mandatory contributions to the Central Provident Fund (CPF) in respect of employees who are Singaporean citizens or who have permanent resident status.

2.0 LEGAL SYSTEM

Singapore operates under a common law legal system, which can be traced back to the English legal system. Its sources of law are the Constitution, legislation, subsidiary legislation (e.g., Rules and Regulations) and judge-made law. The judiciary in Singapore is comprised of the Supreme Court, the state courts and the family justice courts. In this regard, Singapore is known for its commitment to the rule of law and vigilance against corruption. Singapore is also a leading center for arbitration and international commercial dispute resolution, where parties may submit their disputes to the Singapore International Arbitration Centre or the Singapore International Commercial Courts.

3.0 TAXATION AUTHORITIES

Singapore's tax system is administered by the Inland Revenue Authority of Singapore (IRAS). The functions of the IRAS include collecting taxes and representing the Singaporean government in tax treaty negotiations, drafting tax legislation and providing advice on property valuation to the government.

4.0 BUSINESS VEHICLES

The types of business vehicles in Singapore include a company, sole proprietorship, partnership, branch, representative office and business trust.

4.1 Partnerships

4.1.1 General partnership

A general partnership, other than a limited liability partnership, is not a separate legal entity and is not treated as a separate assessable entity for tax purposes. Individual partners are assessed separately on their respective shares of income from the partnership on the relevant personal income tax rate, and corporate partners are taxed based on the prevailing corporate tax rate. A non-resident partner of a partnership regardless of whether the partner is a corporation or an individual conducting business in Singapore is assessed on their share of income computed in accordance with the general provisions of the ITA. Resident individual partners are taxed at the applicable marginal individual income tax rates. However, the graduated rates of tax do not apply to a non-resident. A non-resident individual partner is taxed at a flat rate of 22% on every dollar of partnership income accrued to him.

4.1.2 Limited liability partnership (LLP)

An LLP registered in Singapore has the advantage of a being a separate legal entity and providing limited liability protection for its partners. At the same time, an LLP retains the flexibility and tax transparency of a general partnership as it is not treated as a separate assessable entity for Singaporean tax purposes. If the LLP does not make any profit, various deductions—such as capital allowances, trade losses and donations—can be set off against the partners' own income from other sources (if any), subject to certain restrictions. The amount which is set off for a particular Year of Assessment is subject to a restriction based generally on the contributed capital of the partner. However, as the LLP is not considered a taxable entity, it is not entitled to any benefit under Singapore's double-taxation treaties. Only Singaporean resident partners are able to claim treaty benefits.

4.1.3 Limited partnership (LP)

LPs are relatively new business vehicles, only having come into operation in 2009. An LP consists of both general partners and limited partners and is not considered a legal entity for corporate law purposes. However, only the general partner is personally liable for all debts, liabilities and obligations of the LP; the limited partner's liability is limited to the amount contributed. For tax purposes, the tax treatment of LPs is similar to that of general partnerships and LLPs, whereby the LP is not taxed separately. Instead, each partner of the LP is taxed on their share of the LP's income, although the tax treatment of a general partner is different from the tax treatment of a limited partner. The general partner is taxed in the same manner as the partners in a general partnership, whereas the limited partner is taxed in the same manner as the partners in an LLP.

4.2 Corporations

Incorporating a company in Singapore is relatively straightforward. The Accounting and Corporate Regulatory Authority of Singapore generally requires the submission of a company's constitution, identification of the corporate officers and establishment of the company's name before the incorporation will take effect. However several considerations ought to be taken into account before incorporating a company, some of which are elaborated below.

4.2.1 Company limited by shares

A company with a share capital, generally, could be a public or a private company. There are two material differences between a private and a public company:

i. The first difference is restrictions on the right to transfer shares. The Companies Act has made it a prerequisite that, before any private company can be incorporated, the company has to ensure that its constitution restricts the right to transfer its shares. Public companies do not require the same restrictions but might also have such restrictions. While the specific prohibition on the right to transfer shares is not legislated, the usual practice is to give other members the right to buy the shares first, before an existing shareholder can transfer the shares to non-members, known as preemptive rights

ii. The second material difference is a limitation on the number of members. A private company cannot have more than 50 members.

4.2.2 Company limited by guarantee (CLG)

A CLG is a public company by virtue of the fact that it does not have share capital. Only companies that have share capital may be formed as a private company. In a CLG, as the name suggests, the members' liability is limited to the amount stated in the constitution, which they undertake to contribute to the assets of the company in the event of its winding up. CLGs have limited fundraising abilities, given their lack of share capital. Therefore, such companies are usually employed by persons who wish to carry out nonprofit ventures, such as for charitable, educational or religious purposes.

CLGs that are registered as a charity under the Charities Act may be exempt from tax. Some conditions must be met to qualify for registration, including having a charitable purpose.

4.2.3 Unlimited liability company

Unlimited liability companies are a rarity in Singapore. This is because people usually incorporate companies to benefit from the separate legal entity doctrine, which in turn gives members limited liability. In unlimited liability companies, the members' liability is unlimited. The only difference between an unlimited liability company and a normal partnership is that, given the separate legal entity doctrine, creditors cannot pursue the members directly, even though they are, in principle, guarantors of the company's debts. Given the drastic nature of unlimited liability, such companies are usually incorporated when mandated by law or rules.

4.3 Foreign corporation (with or without a Singaporean branch)

Under the ITA, a taxpayer is either resident or non-resident in Singapore. While both residents and non-residents are subject to the same basis of taxation (i.e., on source and remittance), the concept of residence is important as it impacts the tax treatment of the taxpayer in question. For example, the applicable tax rates may differ, and certain exemptions of income and the applicability of foreign tax credits are only available to residents. Further, payments of income sourced in Singapore but made to non-residents are generally subject to withholding tax in Singapore.

The tax residency of a company is not dependent on the location where the company is incorporated or registered. A company will be deemed resident in Singapore for tax purposes if the control and management of its business is exercised in Singapore. It may also change depending on the location its control and management is exercised for the applicable Year of Assessment. The term "control and management" refers to the executive level of decision-making and policy-forming functions, which are normally carried out by the company's board of directors. It does not refer to the company's day-to-day business operations.

Since a branch is not a legal entity separate from the head office, a branch will be considered controlled and managed where the head-office management is located. As such, a Singaporean branch of a foreign corporation would, in most circumstances, be treated as a non-resident for tax purposes. Consequently, a payment of specified income made to a Singaporean branch derived from the business activities of the Singaporean branch will normally be subject to withholding tax. However, it was announced in 2014 that withholding would generally not be required on payments made to branches on or after February 21, 2014. Singaporean branches of non-resident companies are, however, still taxed on such payments directly and are required to declare them in their annual income tax returns.

4.4 Trusts

Business trusts registered under the Business Trust Act are treated like a company under the one-tier system. This is because the economic purposes, structure and operation of a registered business trust are similar to those of a company. The income of a registered business trust is assessed on the trustee-manager. Unit holders of the registered business trust are not taxed on their share of the statutory income of the trustee-manager to which they are entitled (whether distributed or not) and no credit is allowed to unit holders for the tax paid by the trustee-manager.

Apart from business trusts, most other trusts are tax transparent in most situations, except in certain circumstances. This means that the trust will not be taxed, but beneficiaries who are entitled to the relevant income may be taxed. A number of tax incentives are available in relation to trusts, such as foreign trusts, foreign charitable trusts and locally administered trusts. These incentives are designed to promote the trust industry in Singapore and encourage the use of Singaporean trusts.

5.0 FINANCING A CORPORATE SUBSIDIARY

5.1 Equity financing

5.1.1 Contributions for shares

The contributed capital of a company is defined under the ITA as the aggregate amounts received by the company, whether in cash or in another form of valuable consideration, for shares that the company has issued. There are generally no income tax implications on an issuance by a Singaporean company of shares, although depending on the nature of the rights of the shares issued, certain types of shares may be treated as debt for tax purposes. Dividends issued in respect of shares held in a Singapore-resident company are not taxable in the hands of the shareholders, under the one-tier corporate tax system in Singapore.

5.1.2 Distributions of paid-up capital

The Singapore Companies Act contains limitations as to the reduction of share capital by a company. Generally, court approval is required before the company's share capital may be reduced. This is to protect the interests of the creditors; given the separate legal personality, creditors may only turn to the company for the full satisfaction of their debts.

There are generally no income tax implications of a reduction of a company's share capital. Whether the share capital reduction is deemed as a payment of dividend by the company to the shareholders or a payment of capital, there are no income tax implications given that there is no tax on capital gains nor on dividends under the one-tier corporate tax system in Singapore.

5.2 Debt financing

5.2.1 Thin capitalization

There are no thin capitalization rules in Singapore. Loans entered into between related parties are, however, subject to transfer pricing rules, under which interest is to be determined for tax purposes at an arm's length rate. Interest payments are tax deductible against income if wholly and exclusively incurred in producing the income.

5.3 Stamp duty

Stamp duty is payable on a conveyance of Singaporean immovable property, stock or shares, pursuant to the Stamp Duties Act. There are also additional stamp duty issues in transferring shares of a company whose assets consist primarily of Singaporean residential property.

6.0 CORPORATE INCOME TAX

6.1 Income tax rate

All companies are taxed at a flat rate of 17% on both Singapore-sourced income and foreign-sourced income received in Singapore (unless otherwise exempted). This is unlike resident individuals, who are taxed at progressive rates up to 22%.

Various government bodies administer tax incentives that award eligible taxpayers who derive qualifying income a concessionary tax rate or a tax exemption on their qualifying income. Some of the examples are listed below:

- Financial Sector Incentive (FSI): Companies engaged in qualifying activities in the provision of financial services may apply for FSI status. Approval is conditional on certain items, including a minimum number of professional staff stationed in Singapore to perform the qualifying activities.
- Foreign trusts and foreign accounts of charitable purpose trusts (including any eligible holding company owned under the trust or account) are generally exempt from tax on their investment income. The trusts have to be administered by approved trustee companies.
- For foreign investors seeking to locate manufacturing operations or the performance of high value-added services in Singapore, the Pioneer or Pioneer Services Incentives, as well as the Development and Expansion Incentive (DEI), are available. Pioneer status entitles the Singaporean entity to full tax exemption, whereas the DEI entitles it to a concessionary tax rate as low as 5% on income exceeding the average corresponding annual income for the three years before the commencement of the incentive.

6.2 Capital gains

There is presently no capital gains tax in Singapore. However, gains from trading activities may not be treated as capital gains. Whether a gain is characterized as income or capital gain is a matter of fact and is to be determined on a case-by-case basis, based on various factors.

6.3 Computation of taxable income

Singapore adopts an annual, preceding-year basis of assessment. For example, the basis year in which income tax is calculated and charged for Year of Assessment 2012 is January 1, 2011, to December 31, 2011.

6.3 .1 Taxable base

Taxable income generally refers to gains or profits from any trade, business or profession or vocation less deductions, allowances and approved donations.

6.3 .2 Deductions

Generally, the deductibility of expenses is governed by subsection 14(1) of the ITA, which provides that, for the purpose of ascertaining the income of any person for any period from any source chargeable with tax, there shall be deducted all outgoings and expenses wholly and exclusively incurred in the production of income chargeable with Singaporean income tax.

6.3.3 Capital allowances

Capital gains are not subject to tax in Singapore. Conversely, capital expenses are generally not deductible against taxable income in Singapore. However, under the ITA, if a company incurs a capital expenditure in acquiring certain capital assets, it is allowed to claim capital allowances, which is similar to tax depreciation. Capital allowances may be claimed against the taxable income of the company. Capital assets which are eligible for capital allowances include certain buildings and structures, plant, machinery or equipment used by the company to carry on its trade.

6.4 Income tax reporting

The ITA provides for the Comptroller of Income Tax to issue a notice requiring the taxpayer to furnish a return of total income and all relevant information. The government announced in 2016 that the e-filing of corporate income tax returns will be made mandatory by Year of Assessment 2020. Currently, it applies only to companies with turnover of more than S$1 million in the Year of Assessment 2018.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

Transfer pricing refers to the pricing of goods, services and intangibles between related parties. The ITA contains provisions and regulations governing transfer pricing in Singapore, and the Comptroller is allowed to make adjustments to inter-company transactions if they are not made at arm's length. The adjustments may be made through the income, deductions or losses of the taxpayer.

From 2019 onwards, it will be mandatory for companies, firms (which include partnerships) and trusts with turnover exceeding S$10 million for the basis period concerned to keep contemporaneous transfer pricing documentation. The law requires the pricing documentation for each transaction to be kept in safe custody for a period of at least five years from the end of the basis period in which the transaction took place. Noncompliance without reasonable excuse will attract a financial penalty.

7.2 Withholding tax

Generally, certain categories of payments made to non-residents will be subject to withholding tax. Payments that are subject to withholding tax, as stipulated under the ITA, include interest, royalties, rent for movable property, management fees and technical assistance fees. In most cases, the applicable domestic rate for withholding tax is 17%. However, for interest, royalties or rent, if the income is not derived from any trade, business, profession or vocation carried on or exercised by the recipient in Singapore, and is not effectively connected with a permanent establishment of the recipient in Singapore, it will be subject to a 15% final withholding tax, except in the case of royalties, where the withholding tax rate is 10%. In the case of the 17% rate, the withholding tax is not final and partial refunds can be claimed by filing tax returns and claiming deductions for expenses incurred in earning the income in question.

Withholding tax rates may be reduced under any of the more than 80 DTTs to which Singapore is a party, if applicable.

8.0 PAYROLL TAXES

8.1 Central Provident Fund contributions

The CPF was established as a compulsory savings scheme in Singapore in 1955. Under the CPF Act, employers have to make mandatory contributions to the CPF accounts of each employee who is a Singaporean citizen or who is a Singaporean permanent resident, based on the level of wages earned by each employee. CPF contributions are prohibited for expatriate employees.

The use of CPF funds by the account holders are generally restricted to purchase of residential properties, and health care costs for either themselves or their immediate family members. The CPF Act governs the use of the CPF funds by the account holders.

9.0 INDIRECT TAXES

9.1 Goods and services tax

GST is a tax on the domestic supply of goods and services. It is a multi-stage tax where the tax burden is intended to fall on the final consumer. Effective from July 1, 2007, the GST rate is 7%. However the Singaporean government announced in 2018 that the GST rate may be increased from 7% to 9% sometime in the future from 2021 to 2025.

Generally, the GST charged on outputs is known as the output tax, and the GST paid on inputs is known as the input tax. The different between the output tax and the input tax is the amount payable to the IRAS. When the output tax is lower than the input tax however, IRAS will refund the difference to the person or entity.

GST is chargeable on taxable supplies only, which is defined under the GST Act as a supply of goods or services made in Singapore other than an exempt supply. Generally, the exempt categories are the sale and lease of residential properties, financial services and the supply and import of investment precious metals. Certain taxable supplies are zero-rated supplies (GST chargeable at 0%), namely, exports of goods and provision of international services.

GST is also chargeable on imports into Singapore. Import GST applies on most goods (subject to specific reliefs, exemptions or special schemes). To level the GST treatment for all services consumed in Singapore, the Minister for Finance announced in Budget 2018 that import GST will also be imposed on imported services from January 1, 2020, through (i) a reverse charge regime for business-to-business supplies of imported services and (ii) an overseas vendor registration regime for business-to-consumer supplies of imported digital services.

9.2 Customs and exercise duties

All “dutiable goods” imported into or manufactured in Singapore are subject to customs duty and/or excise duty. Customs duty is duty levied on goods imported into Singapore, excluding excise duty. Excise duty is duty levied on goods manufactured in, or imported into Singapore. The duties are based on ad valorem or specific rates. The law presently provides for four categories of dutiable goods: liquor, tobacco, petroleum products and motor vehicles.

10.0 REAL ESTATE

In Singapore, property taxes apply on property ownership with rates differing depending on whether the property is commercial or residential, and if residential, whether the property is owner-occupied, rented out or left vacant. For residential properties, owner-occupier tax rates range from 0% to 16% and non–owner occupied rates range from 10% to 20%. The applicable tax rates depend on the relevant “Annual Value” bands. Commercial (non-residential) properties are taxed at 10% of the Annual Value of the property. The Annual Value is the estimated annual rent of the property.

Purchasers of commercial properties are also liable to pay GST of 7% on the market value of the property purchased. The sale and lease of residential properties are however exempt from GST. As mentioned in section 5.3 above, stamp duty is applicable on instruments for the sale, purchase or lease of immovable property in Singapore.

For a sale of residential properties, the following duties apply:

- Buyer’s stamp duty (BSD)
- Additional buyer’s stamp duty (ABSD)
- Seller’s stamp duty (SSD) for residential property
- Effective March 11, 2017, additional conveyance duties also apply in a purchase or sale of shares or units ("equity interests") in property-holding entities that own primarily residential properties in Singapore.

For a sale of **non-residential** properties, the following duties apply:

- BSD
- SSD for industrial property

Spain

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1.0 OVERVIEW

Spanish taxes can be levied at a national (state), regional (autonomous region) or local (town hall or municipal authorities) level. Additionally, Spanish taxes can be broken down into three groups: taxes, duties and special levies. In any case, and as a general overview, duties and special levies trigger in return of a public service or benefit, such as the parking rate, garbage rate or court fee.

Spain imposes corporate and personal income tax on its residents, including permanent establishments in Spain of non-resident companies, on a worldwide basis for any type of income (e.g., interest, dividends, lease income, capital gains, etc.). Both corporate income tax (CIT) and personal income tax (PIT) are state-level taxes, although Spanish regions can regulate certain aspects of the PIT, such as rates and deductions.

Non-residents not acting through a permanent establishment can also be subject to taxation in Spain under the Non-Residents Income Tax (NRIT) Act. In general terms, a 19% / 24% withholding tax rate would apply to non-residents who obtain Spanish source dividends, interest payments, rents, royalties or management fees (among other kinds of income). The rate of withholding tax depends on the nature of the income (for instance, as a general rule, the 19% applies to interest and dividends regardless of the residence of the non-resident) and on the tax residence of the non-resident (for instance, the 19% applies to residents of the European Union (EU) or the European Economic Area (EEA), while the 24% withholding rate applies to other non-residents of the EU or the EEA). The Spanish payer of such amounts is liable for withholding this tax on behalf of the non-resident recipient before the Spanish tax authorities. However, Spain has one of the most extensive double-taxation treaty networks in the world, which reduces or eliminates the Spanish withholding tax rate on such types of income. Certain payments within the EU, such as interest, dividends and capital gains, are not subject to taxation if certain requirements are met.

From a direct taxation viewpoint there are other applicable taxes, such as local property tax and business activity tax, and others that only apply to individuals, such as the inheritance and gift tax and the wealth tax.

Regarding indirect taxation, value-added tax (VAT) and transfer tax are applicable in Spain. VAT is regulated according to the EU standards under the VAT Directive. VAT is not applicable in the Canary Islands, Ceuta or Melilla, which are not considered Spanish territories from a VAT perspective. Instead, these regions apply their specific sales taxes. Most aspects of transfer tax, including rates, deductions and formalities when filing tax returns, are determined by regional tax laws.

Stamp duties and custom duties on imports are among the other forms of indirect taxation.

Spain has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI), but the Spanish parliament has not yet completed the ratification process.

2.0 LEGAL SYSTEM

In Spain, the autonomous regions and local territories operate under a civil law legal system established by the Spanish Constitution. Taxes are also governed by international treaties (including double-taxation treaties signed by Spain or the EU), international regulations, the Spanish General Tax Act and other applicable legislation.

3.0 TAXATION AUTHORITIES

The tax system in Spain is administered by the Agencia Estatal de Administración Tributaria (AEAT), which depends on the Spanish Treasury Ministry.

Spanish regions have been entrusted with the administration of certain taxes, along with the regulation of certain aspects (principally, rates and deductions). Municipal bodies administer certain local taxes and have the power to regulate their own municipal taxes, with certain limitations and, normally, within a framework established by state law.

4.0 BUSINESS VEHICLES

A non-resident may either establish a Spanish business vehicle to carry on business in Spain or operate directly, with or without a Spanish permanent establishment. In general, the incorporation of Spanish entities is exempt from taxation.

Additionally, it should be noted that, according to the Corporate Income Tax Act, a company is considered resident in Spain if it has been incorporated under Spanish law, if the corporate address is in Spain or if the place of effective management is in Spain. Special rules apply if the company is established in a tax haven but has assets and/or rights in Spain. Below are the main aspects of Spanish business vehicles, alongside with some introductory tax inputs.

4.1 Public limited companies

In public limited companies (in Spanish, Sociedad Anónima or S.A.), shareholder liability is generally limited to the amount the shareholder contributed to the company's equity. This contribution is represented by the shares that qualify as negotiable securities, which may be listed on the stock exchanges. The minimum capital to set up a Spanish S.A. is €60,000, which must be fully subscribed and at least 25% paid up upon incorporation.

4.2 Private limited companies

Private limited companies (in Spanish, Sociedad Limitada or S.L.) are the most common type of investment vehicle in Spain. Shareholder liability is generally limited to the investment in the company's equity. The minimum capital required to set up an S.L. is €3,000, which must be subscribed and fully paid upon incorporation. The capital is represented by units, an instrument that closely resembles the shares of an S.A, and which can also have a non-voting nature. However, units may not be listed on stock exchanges.

4.3 Partnerships

There are three main types of partnerships in Spain, which are not very common due to the unlimited liability of the members:

- General partnerships are private entities (*sociedad colectiva*) with legal personhood and unlimited joint liability
- Simple limited partnerships (*sociedad comanditaria*) have legal personhood and comprise two types of partners: general partners with unlimited liability, and limited partners whose liability is limited by their contributed amount
- Limited shareholders partnerships (*sociedad comanditaria por acciones*) have legal personhood and comprise two types of partners: general partners with unlimited liability, and limited partners whose liability is limited by their contributed amount

4.4 Foreign entities (with or without a Spanish permanent establishment)

A foreign company that carries on business in Spain, whether it acts through a permanent establishment or not, is subject to tax under the Non-Resident Income Tax (NRIT) Act in respect of such income.

If the foreign entity is resident in an EU country or in a country that has a double-taxation treaty pursuant to which the company may claim treaty benefits, the entity would generally be subject to the rules of EU legislation (for instance, an EU directive or an EU regulation) or the relevant treaty. There are special rules when the profits are earned through a permanent establishment situated in Spain. One of the most important special rules is that a foreign company would not be allowed to claim double-taxation treaty benefits if the activity is performed in Spain through a permanent establishment.

In this regard, a company that operates through a Spanish permanent establishment (such as a branch) will be subject to taxation in a very similar way as a Spanish resident entity. In a nutshell, the rules applicable under the CIT Act would apply in order to determine the NRIT liability of the permanent establishment. However, some particularities should be considered, such as the limitation on certain expenses and valuation of certain transactions.

For non-resident entities not acting through a permanent establishment, the NRIT Act imposes a withholding tax of 19% / 24% (although this rate may vary on certain type of income) on all Spanish sourced incomes paid to non-resident entities. In general terms, these withholding taxes also apply to payments made from a Spanish branch or permanent establishment to its head office. EU legislation or double-taxation treaties will relieve (or even eliminate) this withholding tax obligation.

5.0 FINANCING A COORPORATE SUBSIDIARY

5.1 Equity financing

5.1.1 Contributions for shares

Where an equity investment is made into a Spanish company in exchange for shares, the amount of the investment is added to the entity's "stated capital" account. Incorporation of entities and share capital increases are generally exempt from taxation (exempt from Spanish 1% capital duty and not subject to VAT or stamp duty). However, when assets other than cash are contributed to a Spanish company, it should be considered on a case-by-case basis, because tax could be triggered when contributing mortgaged assets to an entity.

5.1.2 Contributions without taking additional shares

Shareholders can make an equity contribution to an incorporated company without the issuance of additional shares. This is known as "other shareholder contributions," and can for instance be used to offset accounting losses.

In general terms, these contributions are not subject to taxation and do not have CIT implications, as they are not considered accounting income (relevant exceptions could apply in case of debt contribution). Distribution or return from this account should be carefully reviewed as it may have adverse tax consequences.

5.1.3 Distributions of paid-up capital

A 1% capital duty applies on capital reductions or when liquidating the company, to the extent that there is a stake to be distributed to the shareholders.

5.2 Debt financing

5.2.1 Withholding tax implications

Spanish entities can borrow funds from related or third parties. Interest payments made by a Spanish resident company to a non-resident at arm's length are generally subject to a 19% withholding tax. As previously mentioned, the withholding tax rate can be reduced or eliminated under EU legislation or a double-taxation treaty. It is a general rule that interest payments to an EU resident are exempt from withholding taxation (whether or not the lender is a third party). Particular attention should be given to anti-abuse tax provisions.

5.2.2 Thin capitalization and limitation on deductibility of interest expenses

Thin capitalization rules no longer apply in Spain, although there are some restrictions on the deductibility of interest expenses for Spanish entities. Interest deductibility is subject to compliance with transfer pricing rules and earning stripping rules (i.e., the 30% EBITDA limit).

Under earning stripping rules, net interest expenses (i.e., excess financial expenses accrued over interest income) generally are capped at 30% of EBITDA (as defined in the CIT Act). However, net interest expense is tax-deductible if it does not exceed €1 million per year (known as the minimum allowance). Net financial expenses exceeding this 30% EBITDA limit can be carried forward and deducted in the following years, subject to the same 30% EBITDA limit. Additional restrictions apply for leveraged buyouts and intra-group indebtedness.

Interest accrued on profit-participating loans granted by companies of the same group are non-deductible for CIT purposes, as they are treated as "equity (dividend) contributions," regardless of their consideration as a debt for accounting purposes. However, if the relevant requirements are met, this type of interest can benefit from the participation-exemption regime (explained below in point 6.2).

5.3 Stamp duty

Spanish stamp duty is levied on notarial deeds, certain administrative and commercial documents. For instance, when purchasing a real estate asset or granting a mortgage loan, this tax could be triggered as the transaction would be performed in a notarial deed. If the transaction is subject to capital duty or transfer tax (as opposed to VAT), no stamp duty can be levied.

The applicable tax rate depends on the autonomous regions in which the taxable event occurs. Generally, the rate varies between 0.5% and 1.5%. However, some autonomous regions have included increased rates that vary between 1% and 3% to certain transactions (mainly real estate).

6.0 CORPORATE INCOME TAX

6.1 Income tax rate

The CIT standard rate applicable to resident companies, including Spanish permanent establishments, is 25%. Special tax rates apply to certain entities, most significantly:

- A 15% tax rate applies to newly created companies during their first two fiscal years in which the taxable base is positive
- 1% is the applicable rate for investment funds
- 0% is the applicable rate for Spanish REITs (known in Spain as SOCIMIS)
- 30% is the applicable rate for bank institutions and companies belonging to the hydrocarbons industry
- 0% applicable to charitable entities, nonprofits and pension funds.

As discussed above, non-resident entities not operating in Spain through a permanent establishment would be subject to NRIT (as opposed to CIT), with the applicable rate being 19% / 24% depending on the type of rent and on the tax residence.

6.2 Capital gains

Broadly, capital gains are part of the CIT and NRIT taxable income. Under CIT, the very common "participation-exemption regime" applies to capital gains obtained from the sale of shares. This also applies to the distribution of dividends when both of the following requirements are met:

i. Minimum 5% participation in the subsidiary's (either resident or non-resident) share capital or, alternatively, the stake must have a value higher than €20 million

ii. The participation must have been held for more than one year or, failing this requirement in the distribution of dividend, the stake must be maintained for the time necessary to complete a year.

Particular rules apply when more than 70% of the subsidiary's income comes from dividends or capital gains obtained through the sale of shares in other entities. There are other instances where this participation-exemption regime does not apply, such as when the non-resident subsidiary is not taxed at a minimum nominal tax rate of 10%, or when the payment of dividends generates a deductible expense.

Generally, non-residents without the presence of a permanent establishment in Spain are subject to NRIT at a rate of 19% on capital gains on assets located in Spain, unless otherwise specified in a double-taxation treaty. Additionally, capital gains realized by non-residents as a consequence of the sale of Spanish real estate are subject to a 3% withholding tax that must be withheld by the purchaser of the real estate on the purchase price. Such withholding tax must be paid to Spanish tax authorities by the purchaser as a payment in advance of the final tax due accrued from the sale of the real estate. This withholding tax would offset the final tax due from the seller.

Capital gains realized on a transfer of shares by non-residents that do not act through a permanent establishment are exempt from NRIT, provided that the taxpayer is tax resident in an EU member state, and that the requirements of the participation-exemption regime under CIT rules apply. However, this exemption may not apply if the asset figure of the Spanish company is formed, directly or indirectly, by real estate assets.

6.3 Computation of taxable income

6.3.1 Taxable base

Taxable income is calculated as worldwide income less deductible expenses. This is obtained from the organization's financial statements, calculated under Spanish GAAP (i.e., the Commercial Code and the Spanish General Accounting Plan). The taxable base is the result of applying certain tax adjustments to the abovementioned taxable income.

Although tax losses resulting from the performance of the company's business activity can be carried forward indefinitely with no time limitation, tax losses from previous years can only be offset against up to 70% of the taxable base. This limitation is more stringent to entities with an operating income exceeding €20 million. A minimum allowance of €1 million would apply in any case.

The CIT Act establishes certain exceptions where the mentioned limitation does not apply, such as when income is recognized on debt waivers or where there are deferrals under an agreement with creditors. Finally, Spanish tax authorities can audit, without limitations, tax losses and tax deductions generated in the past 10 years, regardless of the general statute of limitations, which is normally four years.

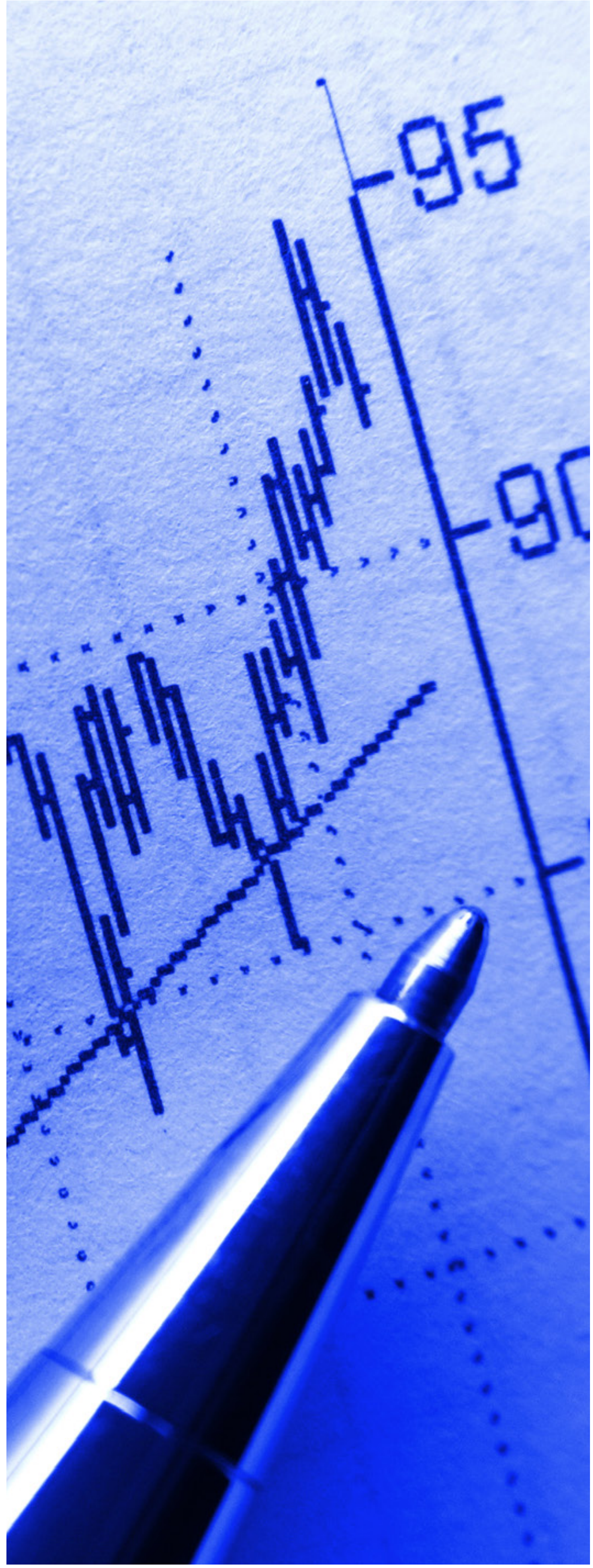
6.3.2 Deductibility of expenses

Special provisions are established for the following expenses:

- Depreciation of assets must be calculated within the limits provided in the CIT Act, unless a higher depreciation can be proven
- Impairment of assets: tangible assets, intangible assets including goodwill, real estate, participations in subsidiaries, debt instruments, etc.
- Exempt income (e.g., dividends distributed by a subsidiary in case the participation-exemption regime applies)
- Net financial expenses
- Accruals
- Non-deductible expenses (e.g., penalties, donations, etc.)
- Non-monetary transactions
- Transactions between related parties
- Change of tax residence
- Temporary allocation.

6.4 Income tax reporting

CIT due must be paid within 25 calendar days following six months after the company's tax period. During the tax year, resident companies and permanent establishments must make tax payments on account, also known as CIT prepayments of the final tax due of the ongoing tax period. Such prepayments are made in three installments with due dates of April 20, October 20 and December 20.



7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

Spain's transfer pricing regime generally follows the principles of the Organisation for Economic Co-operation and Development (OECD) transfer pricing guidelines. Spain provides the following possible methods to comply with the transfer pricing requirements: cost plus, resale price, profits split, transactional net margin and comparable uncontrolled price.

Spanish tax authorities can impose a transfer pricing adjustment in respect of a transaction that has not been made on arm's length terms or conditions, as required by OECD principles. If a difference arises, Spanish tax authorities will apply the tax treatment that corresponds to the real nature of such income. Spanish taxpayers are also required by law to prepare specific documentation such as local files, master files or country-by-country reports for related party transactions.

7.2 Withholding tax on passive income

Payments made by a resident of Spain to a non-resident in respect of certain types of interest payments, rents, royalties, dividends, management or administration fees are subject to tax at the rate of 19% / 24%.

However, this withholding rate may be eliminated or mitigated under applicable EU legislation and/or a double-taxation treaty signed by Spain. It would require that the recipient be the beneficial owner, the "substantial and economic business reasons" are met and that proof of tax residence from the non-resident entity is provided (through the issuance of a tax residence certificate by the relevant authorities).

7.3 Withholding tax on services fees

When a payment is made to a Spanish non-resident with reference to services performed in Spain, the payer must withhold a 24% tax rate of the payment. This rate will be 19% when the recipient of the services is resident in the EU or the EEA. However, rates may vary or services may be exempt of withholding taxation due to the application of a double-taxation treaty.

8.0 PAYROLL TAXES

8.1 Introduction to the Spanish social security system

Companies that develop activities in Spain must be registered with the General System of Social Security and must also register their employees. Social Security allowances mainly cover medical services, temporary illness, permanent and total disabilities, maternity situations, unemployment situations, retirement and death.

Employers and employees must pay a monthly contribution to Social Security, but the employer must do it on behalf of the employee. For an employee whose employment contract is for an indefinite term, the employer contributes 29.9% of the employee's wages and the employee contributes 6.35%. The employer also is required to make a contribution for professional contingencies at a rate between 0.9% and 7.15%, depending upon the nature of the employer's activities.

The maximum contribution base is capped at €3,803.70 per month. The minimum varies from €858.60 to €1,199.10, depending on the employee's job position, which would determine their contribution group.

8.2 Payroll taxes

Spanish companies and permanent establishments of foreign entities are obliged to withhold a portion of an employee's wages and pay it to Spanish tax authorities, as a payment in advance of the employee's personal income tax.

9.0 INDIRECT TAXES

9.1 Goods and service tax

Spain's VAT is a European-harmonized value-added tax imposed on the final domestic consumption of most goods, services supplied, self-supplies, intra-EU transactions and importation of goods in Spanish VAT territory (which does not include the Canary Islands, Ceuta or Melilla). Specific rules with respect to the place of supply exist to determine whether a supply is deemed to be made in Spain. For example, a special localization rule applies to real estate properties and services related to these assets.

The current standard VAT rate is 21%. A reduced rate of 10% applies to goods such as food or services as transport. Essential products or services have a special reduced rate of 4%. Some goods or services are exempt from VAT.

VAT tax reporting is generally made quarterly, although in some cases monthly tax files are required. In the latter case, the taxpayer must register in the real-time reporting VAT system (in Spanish, *Suministro Inmediato de Información* or SII System). Spanish entities that carry business in Spain are required to register, keep accounting records, issue invoices, and collect and remit VAT on such supplies.

Each taxpayer is generally entitled to a VAT refund for the expenses made with direct relation to the business operative. Conversely, no refund is allowed for VAT incurred on expenditure that is unnecessary for business purposes or related to the acquisition of goods or services used for a VAT-exempt activity. However, there are certain exemptions where VAT incurred relating to the export of goods is normally fully recoverable.

9.2 Sales tax in the Canary Islands, Ceuta and Melilla

Canary Islands sales tax has five types of rates: reduced (3%), general (7%), incremented (9.5%), special incremented (13.5%) and other special rates that vary between 20% and 35%.

Ceuta and Melilla each levy an independent tax on the sale or import of goods or services. The rate varies depending on the place of import and the type of good or service.

9.3 Transfer tax

Transfer tax is triggered on the transfer of assets or rights performed by individuals or entities but, in this case, only on those transactions out of the scope of their business. Additionally, transfer tax could also trigger in transactions subject but exempt from VAT, such as certain real estate transactions.

Where the taxpayer is the acquirer of the asset or right, the applicable tax rate varies in each autonomous region, but the general rates are:

- 6% to 11% for transfers of real estate property
- 1% to 10% for transfers of movable assets and administrative concessions
- 1% on some real estate rights.

10.0 MAIN LOCAL TAXES

10.1 Business activity tax

Business activity tax is a municipal tax levied annually on any business activity conducted within Spanish territory. The tax base will be determined on the basis of several factors, such as the type of activity, the area in which it is conducted and the cadastral value of the real estate asset. Taxpayers that begin their activity in Spain may apply for a two-year exemption on this tax if certain requirements are met.

10.2 Property tax

Property tax is a local tax levied annually on January 1. It applies to the ownership of certain rights over real estate, including the ownership of real property. The owner or the beneficiary of the right over the real estate asset is subject to property tax, which will range between 0.4% and 1.1%, depending on the municipality.

10.3 TIVUL

Transfer of urban real estate assets will be subject to a municipal tax on the increase in value of urban land (TIVUL in its Spanish acronym, also known as the *plusvalía municipal*), provided that the sale of the asset has not reported a loss. TIVUL will be payable by the seller of a urban real estate asset, based on the deemed increase in the value of the land which forms part of the property. The increase in value is calculated as a percentage applicable to the cadastral value of the land, which is an official value given to the land, and the final amount to be paid takes into account other elements such as years of ownership or the location of the property. The applicable tax rate will vary depending on the municipality where the real estate assets are located, to a maximum of 30%.

10.4 Works, constructions and installations tax (WCIT)

Refurbishment works that require a building license would trigger WCIT, the taxable base being the cost of the works, excluding certain expenses (e.g., VAT, public rates, professional fees, business profit). The applicable rate varies by municipality but it cannot exceed 4%.

The Netherlands

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1.0 OVERVIEW

The Netherlands is one of the smallest countries in Europe, with a strategic geographic location, stable economy, reliable political climate and highly educated workforce. These features make the Netherlands one of the most open economies in the world, with an attractive tax climate for international corporations. The Netherlands offers a wide tax treaty network, a competitive corporate income tax rate, a full participation exemption for capital gains and dividends from qualifying participations and branches, and beneficial measures for highly skilled migrants. The Netherlands ranked fourth in the Forbes "Best Countries for Business 2018" list[1].

The Netherlands imposes personal income tax and corporate income tax on worldwide income derived by its tax residents. Tax residency is determined in accordance with the facts and circumstances. An entity incorporated under Dutch law is deemed to be a resident of the Netherlands for Dutch tax purposes. Non-residents that conduct a business enterprise in the Netherlands may be subject to personal income tax or corporate income tax in the Netherlands to the extent that income can be allocated to this business enterprise.

The Netherlands imposes a withholding tax on dividends distributed by entities with a capital divided into shares that are tax residents of the Netherlands. The general dividend withholding tax rate is 15%. The withholding tax rate can be reduced by a double taxation treaty. Dutch dividend withholding tax is a pre-levy and can be credited against the Dutch personal or corporate income tax liability of the recipient of the dividend income.

The Netherlands is a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) and has agreed to adopt the minimum standards (principal purposes test and dispute resolution) as well as certain optional provisions. The ratification process is expected to be completed by the end of 2019.

In addition to income tax, a value-added tax (VAT) is levied in accordance with EU Directives. Based on these regulations, the end consumer bears the final burden of VAT. This objective is achieved by deducting the amount of input VAT that an entrepreneur incurs on supplies from the amount of output VAT charged on goods or services supplied or rendered by the entrepreneur. The positive balance should be paid to the Dutch tax authorities.

2.0 LEGAL SYSTEM

The Netherlands operates under a civil law legal system; The Dutch system of law is based on the French Civil Code with influences from Roman law. The legal system in the Netherlands comprises of three areas of law:

- Private law, which deals with conflicts between individual members of the public and/or organizations
- Administrative law, which prescribes the rules that public authorities must keep to in their decision-making and regulates relationships between government and citizens
- Criminal law, which deals with offenses; cases are brought before courts by the Public Prosecutor's office.

The Dutch court system comprises district courts, courts of appeal and a Supreme Court. Judges are independent and cannot be dismissed by the Ministry of Justice.

3.0 TAX AUTHORITIES

The tax system in the Netherlands is administered by the Dutch Tax and Customs Administration (Belastingdienst), which conducts its activities through various regional offices and centralized knowledge centers. In general, the Dutch tax authorities have a professional and cooperative approach towards taxpayers. It is possible for qualifying corporate taxpayers to enter into a cooperative compliance program, known as horizontal monitoring. Under the horizontal monitoring program, a covenant is concluded between a taxpayer and the Dutch tax authorities pursuant to which the taxpayer commits itself to sharing information proactively and discussing potential issues upfront during regular meetings with the Dutch tax inspector. The aim is to accelerate the certainty for the taxpayer regarding its Dutch tax position.

Certainty in advance can also be obtained in the form of an advance tax ruling or an advance pricing agreement. Dutch minimum substance requirements have to be met by corporate taxpayers for certain types of rulings. In the event that other jurisdiction(s) involved in

1 https://www.forbes.com/best-countries-for-business/list/

a ruling are part of the EU or are a party to a treaty concluded with the Netherlands which accommodates the exchange of information, information on the ruling will be automatically exchanged with the tax authorities in the other jurisdiction(s) involved.

4.0 BUSINESS VEHICLES

Business activities can be undertaken in the Netherlands through a company or partnership or by an individual. In general, a Dutch company can be incorporated in a few days. A foreign person (individual or legal person) can also perform business activities. The Netherlands does not levy capital tax or stamp duty on the incorporation of an entity or on capital contributions thereafter.

4.1 Partnerships

A partnership is established with a partnership agreement between at least two individuals or legal entities. Setting up a partnership does not require the execution of a notarial deed. There are no minimum capital requirements. Although it is considered an entity from a commercial perspective, a partnership does not have legal personality (i.e., a partnership is not capable of having legal ownership of assets). Among the forms of partnerships, the most common are general partnerships and limited partnerships.

4.1.1 General partnership

In a general partnership, all partners are personally liable for the debts of the partnership. Creditors can make a claim on the partners' personal assets if the partnership is not able to satisfy its debt obligations. It is mandatory to list a general partnership in the commercial register maintained by the Chamber of Commerce. General partnerships are treated as transparent for Dutch tax purposes. In other words, partners of a general partnership are subject to income tax on their proportionate share of the profits derived from the partnership.

4.1.2 Limited partnership

A limited partnership has two types of partners: a managing partner and a limited partner. The managing partner runs the business on a day-to-day basis and is personally liable for the partnership's debts. The limited partner limits their involvement to the business' financial affairs and is only liable up to the amount of their financial investment in the partnership. A limited partner is not allowed to represent the partnership publically. If a limited partner does represent the partnership publically, they essentially act as a managing partner and become personally liable for the debts of the limited partnership.

In general, a limited partnership is considered transparent for tax purposes. In other words, partners in a limited partnership are subject to income tax on their proportionate share of the profits derived from the partnership. A limited partnership is considered non-transparent if the admission of limited partners or the transfer of a partner interest does not require the consent of all partners of the limited partnership. If a limited partnership is considered non-transparent, it is treated as a taxable subject for corporate income tax purposes and dividend withholding tax purposes, but only for the interest of the limited partners.

4.2 Cooperative

A cooperative is a special type of association. A cooperative does not have shareholders but it has members; it enters into specific agreements with and on behalf of those members. It is incorporated by the execution of a notarial deed by at least two persons, which will automatically become the members of the cooperative unless the deed of incorporation states otherwise. There are no minimum capital requirements. A cooperative has legal personhood, meaning it has legal rights and duties and can have legal ownership of assets. It assumes liability as a legal entity, but if it is dissolved with debts outstanding, the members are liable for an equal share. It is possible to limit or exclude liability of the members by setting up a cooperative with limited liability (BA, in its Dutch acronym) or a cooperative with excluded liability (UA).

A cooperative is subject to corporate income tax. Profits distributed by a cooperative are not subject to dividend withholding tax unless it acts as a passive group holding and financing company.

4.3 Corporation

There are two types of corporations in the Netherlands. The more common is a private limited liability corporation (BV). The capital of a BV is divided into shares. There are practically no minimum capital requirements (i.e., €0.01 is sufficient). The founders of the BV will determine the issued capital (at least one share) and required paid-up capital.

The shares of a BV are privately owned. Different types of shares are possible to vary the voting rights of shareholders and/or to vary their dividend rights.

The other type of corporation is a public limited liability entity (NV). The capital of a NV should amount to at least €45,000 and its capital is also divided into shares. In principle, the shares are freely transferable and cannot be issued without voting rights or profit rights. The NV is mainly used for corporations that are very large and/or will be listed on the stock exchange.

Both the NV and the BV are incorporated by the execution of a notarial deed, and the liability of the shareholders is in principle limited to the capital contributed. The NV and BV are also both subject to corporate income and their dividend distributions are subject to dividend withholding tax.

4.4 Foundation

A foundation is incorporated by the execution of a notarial deed with the aim to realize a certain objective clearly defined in its articles of association. There are no minimum capital requirements. A foundation has a distinct legal personality and is able to have legal ownership. A foundation does not have any members or shareholders. The liability of the board members is in principle limited. A foundation may conduct a business enterprise but profits must be allocated to the foundation's cause or purpose. It is only subject to corporate income tax to the extent it conducts a business enterprise. It is not subject to dividend withholding tax.

4.5 A foreign person (with or without a Dutch branch)

A foreign person (individual or legal person) that conducts a business enterprise in the Netherlands is subject to corporate income tax with respect to the income that can be allocated to the business enterprise. The determination of whether a business enterprise is conducted in the Netherlands is generally made in accordance with common international tax law principles. In addition, Dutch tax law deems certain activities conducted by a non-resident to be conducting a business enterprise, such as owning real estate assets in the Netherlands. Profit distributions from the branch to the foreign head office are not subject to dividend withholding tax.

5.0 FINANCING A CORPORATE SUBSIDIARY

5.1 Equity financing

5.1.1 Contributions for shares

Where a capital contribution is made into a Dutch entity in exchange for shares, the value of the capital contribution is added to the entity's paid-up nominal share capital account.

5.1.2 Contributions without taking additional shares

Where a capital contribution is made by a shareholder (or member) to a Dutch entity without the issuance of additional shares, the amount is added to the share premium reserve of the entity instead of the paid-up share capital. Share premium can be converted into nominal paid-up share capital by execution of a notarial deed.

5.1.3 Repayments of capital

An entity can reduce its nominal paid-up share capital to a shareholder without adverse tax consequences. In contrast, a distribution of share premium is in principle subject to dividend withholding tax to the extent the entity has profits and reserves.

5.2 Debt financing

5.2.1 Tax treatment of debt

According to case law from the tax courts, funds that qualify as a loan from a civil law perspective are also considered a loan for tax purposes. The Supreme Court defined three exceptions to this rule for tax purposes. Contracts that qualify as a loan from a civil law perspective are treated as equity for tax purposes if:

i. In reality, the intention of the parties involved was to provide equity (i.e., substance over form);

ii. It was clear that the loan could not be repaid at the moment it was provided and the lender had no other business reasons to provide the funds other than shareholder reasons (i.e., loss-financing); or

iii. The loan is granted under such conditions that the lender participates in the business of the borrower (i.e., profit participating loan).

In the case the loan should be treated as equity based on the exceptions as described above, interest payments are not eligible for deduction and can give rise to dividend withholding tax.

Loans should be provided under arm's length circumstances and based on sound business reasons. A loan is not considered to be based on sound business reasons if it is provided under such conditions that independent parties would not have accepted the risk under the conditions of the loan and the conditions applied (i.e., interest rate) cannot be adjusted for tax purposes in such a way that an independent party would be prepared to provide the loan. If the loan is not considered to be based on sound business reasons, a potential write-off of the loan may not be eligible for deduction.

5.2 Thin capitalization

The Netherlands does not have thin capitalization rules, but does have rules that restrict the deduction of interest (see below).

5.3 Stamp tax

The Netherlands does not levy a registration tax or stamp duty in respect of debt or equity financing.

6.0 CORPORATE INCOME TAX

6.1 Income tax rate

Corporate taxpayers are subject to corporate income tax on their worldwide income. In the year 2019, the rate is 25% (19% for taxable income up to €200,000). It will be lowered to 22.55% in 2020 (16.5% for income up to €200,000) and to 20.5% in 2021 (15% for income up to €200,000).

6.2 Computation of taxable income

6.2.1 Taxable base

The Dutch Corporate Income Tax Act does not provide for a specific method for computing annual taxable profits. Profits should be determined in accordance with sound business practice and in a consistent manner. What is considered sound business practice has been developed in case law and is not defined in the Dutch Corporate Income Tax Act. Pursuant to case law, a method of calculating taxable profits complies with sound business practice if it is based on generally accepted accounting principles.

In principle, taxable income is determined in euros. Provided that certain conditions are met, a taxpayer may obtain approval from the tax authorities to calculate profits using a functional currency other than euros. The actual tax payments have to be made in euros to the tax authorities. Tax losses can be carried back one year and carried forward six years. Certain anti-abuse provisions restrict the possibility to carry forward losses in a change-of-control situation.

6.2.2 Participation exemption

Under the participation exemption, income (i.e., dividends received and capital gains/losses realized) derived from a qualifying shareholding in a subsidiary are exempt from corporate income tax. Generally, the participation exemption applies if a corporate shareholder holds, directly or indirectly, at least 5% of the nominal paid-up share capital of an entity with a capital divided into shares.

In addition, in order for the participation exemption to apply, one of the following conditions has to be met:

i. The shareholding in the subsidiary is not held as a passive investment and is also not deemed to be held as a passive investment ("motive test"); or

ii. If the shareholding in a subsidiary is (deemed to be) held as a passive investment, the participation exemption may nevertheless apply if the subsidiary should not be considered a so-called "low-taxed portfolio participation." A low-taxed portfolio participation is a subsidiary:

    - Of which the fair market value of assets directly or indirectly, generally consists for 50% or more of (low-taxed) freely disposable portfolio assets ("asset-test"); or

    - Of which its profits are not subject to taxation at an effective tax rate of at least 10% calculated on the basis of Dutch tax principles ("subject-to-tax test").

6.2.3 Controlled foreign companies (CFC)

The Netherlands implemented the CFC rule included in the EU Anti-Tax Avoidance Directive (ATAD) for tax years starting on or after January 1, 2019.

Under this new rule, in certain cases, undistributed passive income derived by a CFC will be subject to corporate income tax, and relief from double taxation is provided for foreign tax incurred when the passive income is actually distributed to the Dutch company. In line with the ATAD, a foreign entity qualifies as a CFC if the Dutch taxpayer owns directly

or indirectly more than 50% of the votes or capital of the foreign company. A similar rule applies to a foreign permanent establishment of a Dutch taxpayer.

The rule only applies if the CFC is a tax resident in a jurisdiction that is included in a list annually reviewed by the Ministry of Finance. In October of each year, the Ministry of Finance publishes a draft list for discussion. Jurisdictions are included on this list in case they do not have a profit tax or a statutory profit tax rate of less than 9%, or if they are on the EU's list of non-cooperative jurisdictions.

The first list was published on December 31, 2018. It applies for the 2019 tax year and includes the following jurisdictions: Anguilla, the Bahamas, Bahrain, Belize, Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, Isle of Man, Jersey, Kuwait, Qatar, Saudi Arabia, Turks and Caicos Islands, the United Arabic Emirates and Vanuatu. The following jurisdictions are included on the EU list of non-cooperative countries: American Samoa, the American Virgin Islands, Guam, Samoa, and Trinidad and Tobago.

Passive income for the purpose of the CFC rule means interest, royalties, dividends, capital gains on shares, income from insurance or bank activities and income from certain re-invoicing activities. Income from rented-out real estate is not regarded as passive.

Undistributed passive income derived by a CFC that is tax resident of a jurisdiction mentioned on the list can be excluded from Dutch taxation if: (i) the CFC's income usually consists of 70% or more of non-passive income; (ii) the CFC qualifies as a financial undertaking; or (ii) the CFC carries out meaningful economic activity.

A list of substance elements is published that should be considered a safe harbor rule in order to determine whether a CFC carries out a meaningful economic activity. If all these substance elements are met, the meaningful economic activity test is satisfied. The substance elements include (among others): local decision taking, independence in day-to-day operations, qualified local personnel, own bank accounts, own bookkeeping, minimum wage costs of the local equivalent of €100,000 and a suitably equipped office space that is at the disposal of the CFC for at least 24 months.

6.2.4 Deductions

A taxpayer is generally permitted to deduct its current expenses in computing its taxable income. As a general rule, capital expenses are not deductible. In addition, certain interest deduction limitation rules apply as described below.

6.2.5 Anti-base erosion rule

Interest, foreign exchange results and related costs paid (or accrued) on a loan directly or indirectly attracted by a Dutch taxpayer from a related entity may not be eligible for deduction if the loan is directly or indirectly connected with certain transactions as described below, unless the escape clause is met. An entity is considered related if the Dutch taxpayer, together with an affiliated entity, has or acquires at least a one-third direct or indirect interest in an entity.

A loan provided that, directly or indirectly, relates to one of the below-mentioned transactions falls within the scope of the anti–base erosion rules:

i. A dividend distribution or repayment of capital by the Dutch taxpayer (or a related entity) to a related entity
ii. A capital contribution by the Dutch taxpayer (or a related entity) to a related entity
iii. An acquisition or expansion by the Dutch taxpayer (or a related entity) of an entity that will become a related entity after the acquisition or expansion

An escape clause applies if the taxpayer demonstrates that there are sound business reasons for the transaction as well as the loan (i.e., "double business motive test"), or if the interest in the hands of the recipient is subject to taxation at an effective tax rate that is considered adequate according to Dutch standards (i.e., at least 10%). If the escape clause is met, the interest is eligible for deduction unless limited by another interest deduction rule.

6.2.6 Low-interest bearing long-term loans

The deduction of interest expenses (and value mutations) is limited if a Dutch taxpayer received a loan from a related party with no maturity or a maturity of more than 10 years and the loan carries no interest or an interest rate of more than 30% below the arm's length interest rate. The arm's length interest rate is generally defined as the rate that independent parties would charge each other for a loan under similar circumstances. If the maturity of the loan with an initial term of less than 10 years is extended past the tenth anniversary of the loan, the loan is deemed to have had a term of more than 10 years from inception. Consequently, any interest and capital losses that were deducted in prior years may become non-deductible with retroactive effect in the case of a loan extension.

6.2.7 Interest barrier rules – general restriction on interest deduction

The Netherlands implemented the 30% EBITDA rule included in the ATAD for tax years starting on or after January 1, 2019. Based on this rule, the deductibility of net interest costs are limited if they exceed 30% of earnings before interest, taxes, depreciation and amortization (EBITDA) of a Dutch entity, adjusted for Dutch tax purposes.

"Net interest costs" means deductible interest expenses minus taxable interest income. If the net interest costs amount to €1,000,000 (de minimis allowance) or less, the rule does not limit the deduction of interest. The rule applies to intercompany debt as well as third-party debt.

Interest costs that cannot be deducted due to the above limitation can be carried forward indefinitely and be used in later years, subject again to the same rule. Certain anti-abuse provisions restrict the possibility to carry forward interest costs in the case of a change of control. If an entity forms part of a Dutch fiscal unity, the EBITDA rule applies to the fiscal unity as a whole and not to each single entity that forms part of the fiscal unity.

6.3 Fiscal unity

Upon request, Dutch resident taxpayers (including branches of foreign entities) may form a fiscal unity with their Dutch subsidiaries, in which they directly or indirectly have 95% or more of the legal and economic ownership. It is also possible to form a Dutch fiscal unity between sister companies with a common EU parent company, provided certain criteria are met. After the formation of a fiscal unity, all entities that are part of the fiscal unity are treated as one and the parent of the fiscal unity is recognized as the taxpayer. The main advantage of a fiscal unity is that a consolidated tax return can be filed by the parent of the fiscal unity in which profits and losses are set off.

6.4 Income tax reporting

Dutch resident entities and non-resident entities that carry on business in the Netherlands are required to file an annual corporate income tax return if an invitation for filing a tax return has been received or if corporate income tax is due. In principle, a corporate income tax return must be filed within five months of the financial year-end. Upon request, an extension for filing can be granted for another five months. It is possible to file for a preliminary tax assessment before filing the tax return in order to avoid interest on any unpaid tax balance.

6.5 Special tax regimes

6.5.1 Fiscal investment institutions

A fiscal investment institution (FII) benefits from a tax rate of 0% provided that certain conditions are met, including a specific requirement on the distribution of profits within eight months after the end of the financial year. An FII is only allowed to make portfolio investments, which includes development of real estate for holding and renting out by the FII itself. In addition, certain gearing restrictions and specific shareholder requirements apply to benefit from the FII regime. Profit distributions made by an FII are subject to the dividend withholding tax of 15%, unless reduced by a tax treaty or a domestic dividend withholding tax exemption.

6.5.2 Tax-exempt investment institutions

A tax-exempt investment institution is not subject to corporate income tax. Therefore, it cannot credit withholding taxes or benefit from tax treaties. It should be set up as an open-end investment fund with the aim to invest solely in financial instruments, which includes cash at banks. There are no requirements for shareholders or profit distributions. Profit distributions are not subject to dividend withholding tax.

6.5.3 Innovation box regime

Qualifying profits derived from self-developed intangible assets, for which a specific certificate is granted by tax authorities, are taxed at an effective rate of 7%. Intangible assets qualifying for the innovation box regime include software, patents and licenses, among others.

6.5.4 Tonnage regime

For certain shipping activities (e.g., operating vessels, cable- and pipe-laying activities, towing, dredging, etc.), a tonnage regime is available. Under this regime, the taxable profit of a seagoing vessel is based on its registered net tonnage multiplied by a fixed amount of deemed profit per ton, according to a five-bracket, regressive-scale system, instead of the actual profits from the exploitation. The tonnage tax regime applies upon request and for a fixed period of 10 years or multiples of the 10-year period.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

The Dutch Corporate Income Tax Act contains a provision to adjust taxable income in case related parties did not act on arm's length conditions. Secondary adjustments are allowed. Taxpayers are required to maintain contemporaneous documentation in respect of transactions subject to the transfer pricing rules (such as benchmark reports). The general documentation requirements have an open norm. If a taxpayer has not sufficiently documented transfer pricing, the burden of proof in discussions on pricing adjustments can shift to the taxpayer.

Tax authorities generally adhere to the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines to interpret the arm's length principle. These guidelines are not part of the Dutch law.

The Netherlands adopted Action 13 of the OECD Base Erosion and Profit Shifting (BEPS) project and implemented rules in its tax legislation on country-by-country reporting, master files and local files. In accordance with Action 13 of the OECD BEPS project, corporate taxpayers that are part of a group with a consolidated revenue of €750 million or more in the year preceding the current financial year should file a country-by-country report. A master file and a local file are required be prepared by a multinational group having a total consolidated group revenue of at least €50 million in the fiscal year that immediately precedes the year for which a tax return is filed.

7.2 Withholding tax on dividend distributions

In principle, profits distributed to shareholders by a Dutch entity with capital divided into shares are subject to a dividend withholding tax rate of 15%. An exemption applies if:

i. The corporate shareholder is a tax resident in the European Economic Area (which includes all EU member states) or a jurisdiction with which the Netherlands has concluded a tax treaty that includes a dividend article; and

ii. The corporate foreign shareholder would have been able to apply the Dutch participation exemption to the Dutch entity if it would have been a resident of the Netherlands.

The dividend withholding tax exemption will not apply in cases that:

i. The foreign corporate shareholder holds the interest in the Dutch entity with the main purpose, or one of the main purposes, of avoiding dividend withholding tax; and

ii. The structure can be considered artificial (i.e. lacks economic reality).

Profit distributions by a Dutch entity to a Dutch tax-exempt pension fund are generally exempt from withholding tax. A foreign pension fund that is sufficiently comparable to a Dutch tax-exempt pension fund may also qualify.

A notification of a profit distribution should be submitted to the tax authorities within a month of the distribution, regardless of whether the dividend distribution is exempt from dividend withholding tax.

8.0 PAYROLL TAXES

8.1 Wage tax

Employers are required to withhold wage tax from an employee's gross salary and to remit this amount to the tax authorities. Wage tax is a provisional levy of the final personal income tax due by the employee.

For 2019, the income tax rates for an individual that did not reached the official retirement age are as follows:

Taxable income (EUR)

From	Up to	Income tax rate
0	20,384	9%
20,384	34,300	10.45%
34,300	68,507	38.10%
68,507+		51.75%

In addition to income tax, employers are required to withhold and remit national insurance contributions, contributions for insurances of employees and an income-dependent health care insurance contribution.

8.2 Employment insurance

Employers are required to withhold contributions for state social security and remit these to the tax authorities. The state social security insures residents of the Netherlands against the financial consequences of old age, death, exceptional medical expenses and costs of children. The rates for state social security are determined annually. For 2019, the percentage is 27.65% levied over a maximum annual income of €34,300 (i.e., the first two income tax brackets).

Employers are also required to withhold contributions for insurance specifically for employees, and to remit these to the tax authorities. Employer social security insures employees against the financial consequences of illness, occupational disability and unemployment. The rates for employer social security vary by sector.

Employed persons' insurance schemes include, among others:

i. Sickness Benefits Act

ii. Invalidity Insurance Act / Work and Income according to Work Capacity Act

iii. Unemployment Insurance Act

8.3 Special tax benefit – 30% ruling

Upon request, tax authorities may grant a special tax benefit (known as a "30% ruling") to foreign employees who are hired from abroad by or are assigned to a Dutch entity or branch. The 30% ruling is granted to highly skilled expatriates with specific expertise working in the Netherlands, provided that certain conditions are met.

With a 30% ruling, the expatriate can receive tax-free compensation from their employer of up to 30% of their gross salary. In addition, the expatriate may opt to be qualified as a partial non-resident taxpayer of the Netherlands. A partial non-resident taxpayer is not subject to personal income tax with respect to income from substantial interests in foreign companies and income from savings and investments. A 30% ruling is valid for a period of five years.

9.0 INDIRECT TAXES

9.1 Value-added tax (VAT)

The European VAT system is a consumption tax assessed on the value added to goods and services. VAT applies to all commercial activities involving the production and distribution of goods and the provision of services. In principle, it is charged in every leg of the supply chain. VAT-registered businesses are required to pay VAT due, whereby the VAT incurred on costs can be deducted. This mechanism ensures that VAT is neutral, regardless of how many transactions are involved.

In regards to cross-border activities, specific rules exist to determine the place of supply of goods or provision of services. Entities and individuals (including non-residents) who, in the course of their business activities, are involved in making taxable supplies of goods and services in the Netherlands, are required to register, report for, charge, collect and remit VAT.

Depending on the nature of the goods or services, the supplies are domestically sold at the standard VAT rate of 21%. A reduced VAT rate of 9% applies to certain food and beverages, pharmaceuticals and specific labor-intensive provisions of services. The 0% VAT rate applies to intra-EU supplies of goods and exports of goods to non-EU jurisdictions, as well as certain services provided in relation to the mentioned exports. Apart from taxable supplies, certain transactions are VAT-exempt, such as transactions in the public interest, financial/banking/insurance services and transactions conducted by nonprofits.

9.2 Real estate transfer tax

The acquisition of economic or legal ownership of immovable property in the Netherlands is subject to real estate transfer tax at a rate of 6%. A special 2% rate applies for residential property. The tax is calculated based on the higher of (i) the fair market value of the property or (ii) the purchase price.

An exemption from real estate transfer tax applies to the acquisition of building land and the acquisition of newly constructed buildings within six months after the first use of the building. Instead, the supply of building land and the supply of newly constructed buildings within six months after first use is subject to VAT. Under certain conditions, exemptions are also available for mergers, demergers and reorganizations.

The acquisition of shares in a real estate company is subject to real estate transfer tax if a substantial interest is acquired. A real estate company is an entity that primarily trades in or rents out real estate, and whose total assets consist of more than 50% of real estate, and at least 30% of the total assets consists of real estate in the Netherlands. The acquisition of shares in a real estate company is subject to real estate transfer tax if the acquirer acquires an interest of at least 33.33% in the company or increases an existing interest to 33.33% or more.

Uganda

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1.0 OVERVIEW

Uganda's tax regime is geographical for all Ugandan residents and source-based for non-residents. Any non-resident who carries on business in Uganda, or is employed in Uganda, or sells certain types of properties will be subject to the tax system, provided they derive income from sources in Uganda. Uganda does not have a provincial tax system; the tax regime is the same nationwide. Every individual that is liable to pay tax is obliged to apply to the Uganda Revenue Authority for registration. Once this process is concluded, a certificate of registration is issued. The case is the same for any foreign investor seeking to operate in Uganda.

The Ugandan Income Tax Act Cap 340 (ITA) imposes income tax on income of corporations, partnerships, trusts and individuals residing or carrying on business within the country. The aforementioned is subject to various deductions and exemptions under the ITA.

The ITA also imposes a withholding tax on individuals and corporations, which is withheld at source at the time of payment. In Uganda, this tax is imposed while making certain payments, such as employment income ("pay as you earn"), payments on dividends and interests, professional fees and others. This tax is also imposed on every non-resident that derives interest, dividends and royalties from sources in Uganda. The rate of withholding tax on most payments in Uganda is 15%. However, in respect of goods and services, a withholding tax of 6% is levied.

Currently, Uganda has double-taxation treaties (DTTs) with nine countries: Denmark, India, Italy, Mauritius, the Netherlands, Norway, South Africa, the UK and Zambia. The main purpose of these DTTs is to eliminate double taxation and facilitate the allocation of taxing rights. All these treaties pose different legal provisions from those envisaged under the ITA. It is important to note that in the event that there is a conflict between the provisions of ITA and the terms of a particular DTT, the latter takes precedence owing to Uganda's constitution, which enjoins it to respect international law and treaty obligations.

In addition to the above, Uganda levies consumption taxes on goods and services, save for those that are zero-rated or tax -exempt. These include value-added tax (VAT), import duty, export duty and excise duty. The standard VAT rate is currently 18%. Other consumption taxes vary depending on the particular goods or services.

2.0 LEGAL SYSTEM

Taxation has always been a mandate of the Uganda Revenue Authority (URA), a semi-autonomous body of the central government. This is pursuant to articles 152 (i) of the Ugandan Constitution, which provides that no tax shall be imposed except under the authority of an act of Parliament. Therefore, the Uganda Revenue Authority Act Cap 196 was put in place to provide the administrative framework in which taxes under various acts are collected, including:

i. Income Tax Act Cap 340

ii. Value Added Tax Act Cap 349

iii. Customs Tariff Act. Cap 337

iv. East African Customs Management Act

v. Excise Tariff Act Cap 338

vi. Stamps Act Cap 342

vii. The Finance Acts.

3.0 TAXATION AUTHORITIES

The Uganda Revenue Authority Act Cap 196 created URA, the only taxation authority in Uganda. The URA enforces the numerous enacted tax laws on behalf of the Ministry of Finance, Planning and Economic Development to regulate taxes nationwide.

4.0 BUSINESS VEHICLES

A non-resident who wishes to establish their business in Uganda may either incorporate a Ugandan company or operate directly through a foreign entity by simply registering as a branch of the foreign company. Generally, Ugandan business vehicles include corporations (limited liability or unlimited liability), partnerships (general or limited), sole proprietorships and trusts. However, the most common business vehicle for investment is the private limited liability company.

4.1 Corporations

Incorporation of a company usually takes one or two days, depending on the availability of all necessary requirements.

The jurisdiction of incorporation does not impact a company's income tax liability. However, the nature of tax liability will be determined by the nature of registration or operation in Uganda. Therefore, where a foreign company comes to operate in

Uganda, it will be taxed depending on whether it is operating as a branch or a subsidiary of that company. This is irrespective of the nationality of the directors.

A corporation is not required to have received any capital at the time of its incorporation. However, it must have received a nominal amount of capital at the time it allots shares. Capital may be paid in any mode acceptable to the company.

4.2 Foreign corporations

A foreign corporation conducting business in Uganda is subject to taxation under the ITA. This is determined by whether a certain foreign corporation derives its business income from sources in Uganda. A foreign corporation that operates through a branch will be subject to the standard Ugandan corporate income tax as well as an additional tax on the profits repatriated to the country of origin of the corporation.

The ITA imposes a withholding tax of 15% on all payments made to non-resident persons who derive any dividend, interest, royalty, rent, natural resource payment or management charge from sources in Uganda. A withholding tax rate of 20% is imposed on income from government securities.

4.3 Partnerships

Income arising from activities conducted by a partnership is taxed in accordance with the ITA. A partnership, whether general or limited liability, is liable for tax. Unlike corporations, partnerships are not liable for the payment of tax since they are not distinct legal persons. The partners are charged with fulfilling the tax obligations of the partnership. This is paid by both resident and non-resident partners.

The gross income of a resident partner for the year of income includes the partner's share of partnership income for that year, less the allowable deductions incurred in the production of that income. The gross income of a non-resident partner for the year of income includes the partner's share of income attributable to sources in Uganda.

Partnerships in their own right are required to file a return of income. However, it is the partners of the partnership, rather than the partnership itself, that are subject to income tax under the ITA. A partnership in Uganda is considered a resident partnership if any of the partners is a resident person in Uganda during the year for tax purposes under the ITA. The finding of a resident partnership has nothing to do with the nationality or origin of the partners.

5.0 FINANCING A CORPORATE SUBSIDIARY

5.1 Equity financing

5.1.1 Contributions for shares

Equity investment into a Ugandan company is made in exchange for shares for the capital contributed. Where the equity financer is to take up new shares, the company will have to allot new shares, thereby increasing its number of shares. The sale and transferability of shares is governed by the company's articles. The amount of the investment into the company then forms part of its paid-up capital. The transfer of shares is subject to a stamp duty of 1.5%. At the time of payment of dividends to the equity financer, the company is required to withhold tax 15% of the gross amount of the dividend paid.

5.1.2 Distributions of paid-up capital

Distribution of a company's paid-up capital always takes place once it is paid for. This occurs by issuing shares to a person who has made payment. The issuance of such shares does not carry tax implications except in the case of an equity financer acquiring shares for their capital contribution to the company.

5.2 Debt financing

5.2.1 Withholding tax implications

Debt financing of companies involves the company borrowing or getting credit from different lenders, such as banks. No tax is levied on the repayment of the loan principal. At the time of repayment, the ITA levies a 15% withholding tax on the gross amount of the interest paid.

5.2.2 Thin capitalization

Thin capitalization refers to the situation in which a company is financed through a relatively high level of debt compared to equity. Currently, section 25 of the ITA permits a deduction for interest incurred in respect of a debt obligation during the year to the extent that the debt obligation was incurred in the production of income included in gross income.

The thin capitalization rules that were earlier provided by the ITA were repealed by the Income Tax Act (Amendment) 2018, which introduced new interest deductibility rates under section 25 of the ITA. The Amendment Act states that:

i. The amount of the deductible interest in respect of all debts owed by a taxpayer that is a member of a group shall not exceed 30% of the tax earnings before interest, tax, depreciation and amortization (EBITDA)

ii. A tax payer whose interest exceeds 30% may carry forward the excess interest for not more than 3 years and the excess interest shall be treated as incurred during the next year of income.

The amendment defines EBITDA to mean the sum of the gross income less allowable deductions, depreciation and amortization. It also defines "group" to mean persons other than individuals with common underlying ownership.

5.3 Stamp duty

The Stamps Act of Uganda imposes varying duty rates depending on the nature of transaction.

6.0 CORPORATE INCOME TAX

A standard 30% income tax rate is imposed on corporations. This applies to both resident and non-resident corporations. A company is resident in Uganda if it is incorporated or formed under Ugandan law, if it has management and control of its affairs exercised in Uganda or if the majority of its operations are carried out in the country during the taxation year. Residents are taxed on their worldwide income whereas non-residents are taxed only on income sourced in Uganda.

In the case of non-resident corporations, in addition to payment of the standard 30% corporate tax, a withholding tax rate of 15% is levied on a branch of a foreign company on the profit repatriated to the head office.

6.1 Capital gains

Capital gains tax arises from the disposal of a business asset, such as stock investments, land and buildings. Disposal of an asset occurs when an asset has been sold, exchanged or transferred by the taxpayer. A capital gain is calculated as the total sale price minus the original cost of the asset.

Capital gains tax under the current Ugandan tax regime is provided for under Part VI of the ITA. Under the ITA, a taxpayer is deemed to have disposed of an asset when an asset has been sold, exchanged, redeemed, distributed, transferred by way of gift, destroyed or lost.

Capital gains are therefore included in the gross income of the taxpayer and assessed as a business income. Capital gains are taxed at the standard corporate tax rate of 30%.

A non-resident who becomes a resident person will be deemed to have acquired all assets other than those owned by such an individual, at the time of becoming a resident.

6.2 Branch tax

The ITA imposes the standard corporate tax rate of 30% on a branch of a foreign company. The branch has to pay an additional 15% tax on its total profits repatriated to its country of origin. If Uganda has a DTT in place with the country of origin, the branch will only be liable to pay the tax prescribed in the DTT. Before a non-resident can enjoy the benefits of a DTT, they must fulfill the three conditions imposed by the ITA:

i. The non-resident must be the beneficial owner of the income

ii. The non-resident must have full and unrestricted ability to enjoy the income as well as determine its future use

iii. The non-resident must have economic substance in the treaty country.

6.3 Individual income tax

Rates range from 10% to 45%, depending on the individual's income. An individual is a tax resident if they have a permanent home in Uganda, spend at least 183 days in any 12-month period in Uganda or are present in Uganda for an average of more than 122 days during three consecutive tax years.

A taxpayer is generally subject to tax on their income from carrying on their business. The income that is subject to tax is that derived after subtracting any allowable deductions. When computing business income, a taxpayer is generally permitted to deduct expenses and losses incurred in the production of income. As a rule, capital expenditures are not deductible. However, depreciation expense is an allowed capital deduction. Depreciable assets are allowed a deduction as specified in the Sixth Schedule of the ITA.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

The primary legislation regulating transfer pricing is the ITA. It empowers the commissioner general of URA to distribute, apportion or allocate income, deductions or credits between the parties to any transaction who are associates or are in an employment relationship. This is necessary for the purposes of reflecting the chargeable income that the taxpayers would have realized in an arm's length transaction. In so doing, the commissioner general can determine the source of income and the nature of any payment or loss as revenue, capital or otherwise.

The secondary legislation regulating transfer pricing in Uganda is the Income Tax (Transfer Pricing) Regulations 2011. These regulations apply to controlled transactions, defined as transactions between two associated enterprises.

7.2 Withholding tax on passive income

A resident who makes payments to another resident person in respect of certain types of interest payments, rents, royalties or dividends is required to withhold tax at 15% of the gross amount of the interest paid. A tax is also imposed on every non-resident person who derives any dividend, interest, royalty, rent, natural resource payment or management charge from sources in Uganda. A tax is withheld by the payer at a rate of 15% of the gross amount before the payment or remittance of the amount is made. However, this does not apply to income received from activities of a Ugandan branch of the non-resident. The rate may be reduced under an applicable DTT.

7.3 Withholding tax on service fees

Withholding tax (WHT) is imposed on every non-resident person who derives any professional fees or management fees from sources in Uganda. This tax is imposed on specified payments made to both residents and non-residents. The tax is withheld by the payer at the rate of 5% on the gross amount before payment in the case of a professional fee payment from a resident to another resident. A 15% tax is withheld on the payments made to a non-resident. WHT on payments to non-residents may be reduced or eliminated by an applicable DTT.

8.0 PAYROLL TAXES

8.1 Uganda pension plan

Employers paying employment income to employees must make monthly contributions under the National Social Security Fund Act of Uganda. The employer makes a standard contribution of 5% while the employee makes a contribution of 10%, which is withheld from the employee's paycheck at the time of payment.

8.2 Employment insurance

Uganda does not require employers to contribute to employment insurance. The Employment Act of Uganda, 2006, excludes an employee's insurance from the wages an employee is entitled to for the work done or to be done under a contract of service.

However, employers often offer employment insurance as an employee benefit. This insurance is handled by private service providers. Payment for these services is not subject to withholding tax.

9.0 INDIRECT TAXES

9.1 Goods and services tax

Indirect taxes levied on the consumption of goods and services include VAT, excise duty and import duty. These are regulated by, respectively, the Value Added Tax Cap. 349, the Excise Duty Act, 2014, and the East African Community the East African Community Customs Management Act (EAC-CMA).

9.2 Value-added tax (VAT)

Currently, the standard VAT rate is 18% of the gross amount paid. Some goods and services are exempt from VAT or zero-rated.

Exempt goods or services are neither zero-rated nor subject to the standard rate. Exemptions include livestock, unprocessed foods and agricultural products, and financial services, among others as listed under the Second Schedule of the VAT Act.

Zero-rated goods or services attract a zero (0%) VAT rate. These include drugs, medicine and medical services exported from Uganda, among others, as per the Third Schedule of the VAT Act.

Some imports are exempt from customs duty under the Fifth Schedule of the East African Community the East African Community Customs Management Act (EAC-CMA). Imports may also be exempt if the imported good or service would be exempt under the Second Schedule of the VAT Act had it been provided domestically.

9.3 Excise tax

Excisable goods and services are stipulated under the Second Schedule of the Excise Duty Act, 2014, in accordance with the excise duty specified therein. A person providing such an excisable service is liable to pay the duty on that service, and the liability arises on the date of provision.

A manufacturer of an excisable good is liable to pay the duty on the manufactured good when it leaves the manufacturer's premises. An importer of excisable goods pays excise duty at the time of import, as per Section 4 of the Excise Duty Act.

A person liable to pay excise duty shall do so on the date of filling the annual return with the URA commissioner, or in the case of an assessment, pay within 45 days after receiving the notice of assessment. For services, a person becomes liable to pay on either the date on which the performance of the service is completed, the date on which payment of the services is made or the date on which the invoice is issued. An importer pays duty at the time of import.

9.4 Customs duty

Rates of import duties and export duties are set out in the schedules of the EAC-CMA. Such duties and taxes are payable through self-assessment procedures. Taxpayers use Direct Trader Input centers to make declarations, which are captured in the Automated System for Customs Data system to enable payment of tax in designated banks.

9.4.1 Import duty

This refers to the tariff levied on goods at the time of importation into the country. Therefore, everyone who imports goods into Uganda, depending on their classification, is liable to pay import duty. However, certain goods which are classified as duty free have a zero percent duty levied on them.

Most finished products are subject to a 25% duty, while intermediate products face a 10% levy. Raw materials (excluding food stuffs) and capital goods may still enter duty free.

Imported goods are also charged VAT of 18% and a withholding tax of 6%. Imports are also subject to a charge of 1.5% infrastructure tax to finance railway infrastructure development.

9.4.2 Export duty

Almost all exports in Uganda are tax-free, save for fish and unprocessed hides and skins.

Ukraine

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1.0 OVERVIEW

Ukraine's taxation system continues to develop and has become relatively complex. Tax legislation is amended often and sometimes retroactively. Tax law is still characterized by a lack of precise policy or exhaustive explanation. A number of government bodies and different bodies of the state tax authorities issue their own interpretations of tax legislation, which may be contradictory. Many issues remain in need of clarification and require a unified approach. All these factors lead to the risk of inconsistent application of tax law by state tax authorities and taxpayers.

In 2011, Ukraine's first tax code (tax code) came into force and consolidated many (but not all) Ukrainian tax laws into one document. The new tax code eliminated some ineffective taxes and introduced a number of important changes into the taxation system, with the goal of simplifying and updating it. However, there remains a degree of uncertainty around the application of tax code provisions and how it adapts to practical and economic realities.

In 2014 and then in 2017, Ukrainian tax authorities announced tax reforms with several objectives: decreasing the number of taxes, simplifying the administration of taxes, decreasing the tax burden on salaries and decentralizing tax administration. The main goals were to simplify tax administration, motivate taxpayers to conduct business transparently and make Ukraine more attractive for investment purposes. A new round of tax reform is currently on the Ukrainian government's agenda.

Recent changes relate to the Organisation for Economic Co-operation and Development (OECD) base erosion and profit shifting (BEPS) requirements. There were changes in the following areas: information exchange, tax on withdrawn capital tax administration procedures, transfer pricing rules, principles of accounting and tax adjustments, reform of the State Fiscal Service of Ukraine, introduction of a "single window" for efficient customs clearance, reduction of the value-added tax (VAT) rate to 7% for medical goods and deferral of VAT for import of certain goods, among other incentives.

2.0 LEGAL SYSTEM

Ukraine operates under a civil law system. A well-recognized system of precedents does not exist. Courts will not necessarily enforce the laws as written or accessible, and may issue varying opinions, decisions and interpretations of the same law. In addition, courts in Ukraine lack established experience in commercial dispute resolution. Many of the procedural remedies for enforcing and protecting legal rights typically found in Western jurisdictions are not available in Ukraine.

3.0 TAXATION AUTHORITIES

The tax system in Ukraine is administered by the State Fiscal Service of Ukraine (SFS), which interprets and executes effective legislation. SFS operates directly through its regional offices. There are tax police units within the SFS and its regional bodies. In 2019 it is anticipated that SFS will be divided into two state bodies: tax service and customs service. It is anticipated that both will report to the Ministry of Finance of Ukraine.

The SFS is the central body of executive power that implements state tax policy in the areas of state customs and contributions to the obligatory state social insurance (united social contribution). In addition to administering state policy, the SFA combats violations of tax and customs laws.

4.0 BUSINESS VEHICLES

A non-resident may either establish a Ukrainian legal entity to carry on business in Ukraine or operate directly through a representative office in Ukraine.

Under Ukrainian law, companies may be incorporated in one of the following forms:

i. Limited liability companies
ii. Joint stock companies, either private or public
iii. Additional liability partnerships (companies)
iv. General partnerships
v. Limited partnerships.

The limited liability company (LLC) and the joint stock company (JSC) are the most commonly used forms of business organization in Ukraine.

The contribution of assets (noncash contributions) into the charter capital of a Ukrainian legal entity are subject to VAT at a rate of 20%. Cash contributions are not subject to VAT.

4.1 Limited liability companies

An LLC is a company founded by one or more persons (legal or physical persons) with charter capital divided into participation interests (without the issuance of the shares) according to its charter. The LLC's charter capital is formed by its founders or members in cash, securities or other assets contributed in the first six months starting from the date of state registration, unless otherwise stipulated by laws or the LLC's charter. There are no limitations to the contribution amount of founders/members of the LLC and no limitations to the number of founders/members.

4.2 Joint stock companies

A JSC is a company in which the charter capital is divided into a certain number of shares with an equal nominal value. The JSC is liable for its obligations only to the extent of its assets. Under the Law of Ukraine "On Joint Stock Companies," dated September 17, 2008, as amended, (the JSC Law), there are two types of JSCs: (i) public joint stock companies *(publichne aktsionerne tovarystvo)*, of which the shares are publicly listed; and (ii) private joint stock companies *(pryvatne aktsionerne tovarystvo)*, the shares of which are distributed among the founders.

4.3 Partnerships

Ukrainian law recognizes three types of partnerships:

i. An additional liability partnership is an entity in which the charter capital is formed from the contributions of its founders. The founders of an additional liability partnership jointly carry additional responsibility for partnership's obligations with their property in the amount set by the partnership's charter; the amount of such additional liability depends on the amount of the contribution made by each founder. From a tax law prospective, this type of partnership is considered a company. Also, the liability is not limited to the contribution of each participant, but is computed pro rata to the contribution of each participant

ii. A general partnership is an entity in which the founders do business jointly and are held jointly liable for the obligations of the partnership with respect to all their property, beyond their contributions. A person may be a participant in one general partnership only

iii. A limited partnership is an entity in which founders do business on behalf of the partnership; at least one founder is liable to the extent of all their property, beyond their contribution; and the liability of other founders is limited to their respective contributions to the partnership's charter capital. The founders limited to their contributions do not participate in the activity of the partnership.

4.4 Representative offices

Under Ukrainian law, a representative office has no independent legal status separate from its foreign sponsor or parent company. It can be considered an "arm" of the parent company, and the parent company is liable for the obligations of its representative office. Based on the current taxation regime in Ukraine, the representative offices may be of two types: a non-commercial representative office and a commercial representative office.

A commercial representative office is a taxable permanent establishment that represents the parent company's interests in Ukraine and that engages in commercial activities taxable in Ukraine. The commercial representative office may be subject to Ukrainian taxes (including excise taxes) depending upon the type of activities performed.

A non-commercial representative office normally is not subject to Ukrainian corporate income tax (CIT) due to provisions of applicable double-taxation treaties between Ukraine and the state of residence of the foreign parent company. Such treaties exempt from taxation the income of non-commercial representative offices.

5.0 FINANCING A CORPORATE SUBSIDIARY

5.1 Contributing to the charter capital

5.1.1 Limited liability company

There are no legal restrictions on how the participation interests of an LLC may be distributed. This issue remains entirely within the discretion of the LLC's founders and participants. There is no legislatively established minimum amount of the charter capital for an LLC under current Ukrainian law. Participants in the LLC can make their contributions to the charter capital in cash or in kind. The advantage of a cash contribution is that it is not subject to VAT.

The LLC is entitled to increase or decrease the amount of its charter capital. The charter capital may be decreased upon written notice thereof to all creditors of the LLC. In this case, the creditors may demand early termination or performance of relevant obligations from the LLC, such as securing relevant obligations by means of security agreement, or conclusion of a different agreement with the LLC. In the event an LLC fails to carry out any of the above demands, creditors may seek early termination or performance of LLC`s obligations through judicial means.

The charter capital of the company may be increased by means of additional contributions from the LLC`s participants or from third parties. Each participant has a preemptive right to make additional contribution in proportion to their existing interest in the charter capital.

5.1.2 Joint stock company

A minimum capitalization of 1,250 times the officially established minimum monthly salary as at the date of the formation of the JSC is required to establish a JSC. The JSC law requires 100% of the total amount of shareholders' contributions to be made prior to the date when the results of the first placement of shares are approved. An issuance of shares by both a private and a public JSC should be registered with the Ukrainian National Commission on Securities and Stock Market (the Securities Commission) by registering a report on the results of the placement of the shares and issuing a certificate for the registration of shares being issued.

A JSC's share capital may be increased by increasing the nominal value of shares or placing additional shares under the procedure established by the Securities Commission. A JSC may increase its share capital after registration of reports on the placement of all previously issued shares. An increase of the share capital of a JSC involving additional contributions can be made by placing additional shares. All shareholders enjoy a preemptive right to acquire shares in the process of issuance by the JSC of additional shares, unless a decision not to exercise this right was made at the general meeting of shareholders. Increases of the share capital of a JSC not involving additional contributions must be made by increasing the nominal value of shares. An increase in a JSC's share capital is not permitted for the purpose of covering losses. A JSC's share capital may be decreased using the procedure set out by the Securities Commission by reducing the nominal value of shares or by cancelling the shares that were previously redeemed by the JSC and reducing their total number, if this is provided for in the JSC's charter.

5.2 Debt financing

5.2.1 Tax and regulatory implications

Ukrainian corporations are permitted to borrow funds from related or third parties. Furthermore, there are no Ukrainian tax implications on the repayment of the principal amount of such debt. Interest payments (other than participating interest) made by a Ukrainian resident corporation to a non-resident with which it deals at arm’s length are generally subject to a withholding tax of 15% unless a tax treaty provides for a reduced rate or rate of zero. As previously mentioned, the withholding tax rate can be reduced or eliminated under an applicable double-taxation treaty.

Certain limitations (the thin capitalization) are established with respect to interest payments; the ratio is set at 3.5 to 1. Should the total aggregate amount of the borrowings received from related parties non-residents or non-related if amount of the borrowing exceed the equity of the borrower by 3.5 or more times (by 10 times for financial institutions and leasing companies), the borrower is allowed to recognize as expenses interest payments in an amount not exceeding 50% of earnings before interest, taxes, depreciation and amortization (EBITDA). The non-deductible portion of interest can be carried forward to future periods subject to the same limitation, but the balance carried forward is reduced annually at 5% of the interest amount until the interest deduction is fully utilized. Interest includes liabilities on loans, deposits, REPO transactions, financial lease agreements and other borrowings. If the debt-to-equity ratio is less than 3.5 to 1, interest is deductible in full. REPO is a financial operation between market participants on the sale (purchase) of securities with an obligation to repurchase (purchase) such securities within a specified period of time or at the request of one of the parties, at the preliminary agreed price.

Ukrainian law currently sets a cap on the interest rate for borrowing in a foreign currency from a non-resident lender. In case of receiving a convertible currency loan, the maximum interest rate must not exceed:

- 11% per annum for loans with a maturity of over three years
- 10% per annum for loans with a maturity of one to three years
- 9.8% per annum for loans repayable in less than one year

- LIBOR plus 750 basis points per annum for floating-rate loans.

5.3 Stamp tax

Ukraine does not impose a stamp tax in respect of debt or equity financing.

6.0 CORPORATE INCOME TAX

6.1 Income tax rate

For 2018, the corporate income tax rate on general active business income is 18%. As a general rule, all expenses are deductible if they constitute expenses under financial accounting standards, unless they are defined as expenses having limited deductibility under the tax code. Certain adjustments also may be required in accordance with transfer pricing laws. Expenses are reported as deductible for tax purposes according to the Ukrainian Accounting Standards (UAS) or International Financial Reporting Standards (IFRS).

No special provisions limit the deductibility of costs to a Ukrainian subsidiary for remuneration of goods and services, unless the payment is performed to a company registered in the low-tax jurisdictions, defined by the tax code, or if the operation falls under transfer pricing rules or is subject to other limitations defined in the tax code (e.g., thin capitalization, royalty, etc.).

If the payment is performed with foreign companies established in a low-tax jurisdiction, or in specific legal forms, or with foreign counterparties that are not payers of corporate tax (the criteria and lists are defined by the applicable legislation), the payment might only receive limited tax deductibility (i.e., 70%).

6.2 Capital gains

A Ukrainian resident corporation, including a Ukrainian subsidiary of a foreign corporation, must include all capital gains in its taxable income. Taxable capital gains are taxed in the same manner as ordinary income.

A non-resident corporation is only taxed on gains arising from the disposition of "taxable Ukrainian property," other than gains exempted under an applicable double-taxation treaty. Taxable Ukrainian property includes all of the following:

i. Real or immovable property situated in Ukraine

ii. Property (including goodwill) used or held by a taxpayer in a business carried in Ukraine

iii. Inventory forming part of a business carried in Ukraine.

6.3 Taxation of dividends

Generally, dividends are not treated as taxable income for Ukrainian resident companies. Dividends payable by a Ukrainian resident company are generally subject to advance corporate tax (ACT), to be charged on dividends at the standard corporate tax rate of 18%. ACT is not withheld from the amount of dividends, but must be paid from a taxpayer's own funds without reduction of such amount by the amount of ACT. The ACT is computed as the excess of the amount of dividends to be paid over the taxable object computed for the period (tax year) for which such dividends are paid out, and which monetary obligations are discharged. At the end of the year, ACT can be offset against a taxpayer's corporate profit tax liability.

However, ACT does not apply to dividends that are paid by holding companies out of dividend income received from subsidiaries, such as dividends paid out of tax-exempt profit and dividends paid to individuals.

Ukrainian withholding tax applies to Ukraine-sourced income (including dividends, interest, capital gains and royalties) received by a non-resident company, unless an applicable double-taxation treaty provides otherwise. The income received by a non-resident company from the sale of goods, works and services (subject to certain exceptions) does not qualify as Ukraine-sourced income subject to withholding tax. Withholding tax at the standard rate is 15%.

6.4 Computation of taxable income

6.4.1 Taxable base

A taxpayer is subject to tax on its profits from carrying on its business. Profit is generally considered to be its revenues less its deductible expenditures.

The tax code provides general rules for determining taxable income for taxpayers in Ukraine. Profit and loss before tax is calculated as the difference between income and expenses for the reporting period determined in accordance with UAS or IFRS, as appropriate.

According to the Law "On Statutory Accounting and Financial Reporting," the company and/or commercial representative office (i.e., the permanent establishment, or PE) should make a decision on the applicable standards (UAS or IFRS), unless the law directly requires the application of IFRS, which relates to companies of public interest, public joint stock companies, companies that perform extraction of subsoil resources of national standing or other types of activities specified by the Cabinet of Ministers. Public interest companies operating as issuers of securities listed on stock exchanges include banks, insurance companies, non-state pension funds and other financial institutions.

6.4.2 Deductions

Generally, taxable profit is determined as income less expenses and depreciation charges computed based on financial accounting standards (UAS or IFRS), subject to adjustments and limitations defined by the tax code. Gross worldwide income includes income from all types of activity in any form, except for specifically exempt items of income. A taxpayer can generally deduct reasonable business expenses, unless such expenses are specifically disallowed, restricted or limited by law.

There are limitations with respect to interest payments (thin capitalization rules) as described above. Also, in certain cases, limitations with respect to deductibility of royalty payments exist. As a general rule, the deductibility of royalty is restricted to 4% of the previous year`s taxable profit increased by the current year's income of a taxpayer from royalties, provided that the payment is made to a non-resident company and the transaction does not fall within the scope of the transfer pricing rules. Certain types of royalty payments are non-deductible.

6.4.3 Income tax reporting

Ukrainian resident corporations and non-resident corporations that carry on business in Ukraine through permanent establishments are required to file quarterly (in certain cases annual) corporate income tax returns. Tax returns must be submitted on a quarterly basis, with all returns being compiled cumulatively within 40 days following the quarterly reporting period. Companies that are newly established, agricultural producers, or entities with annual income less then UAH 20 million are allowed to file annual tax returns within 60 days following the annual reporting period.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

For corporate profit tax purposes, transfer pricing regulations apply to control transactions that must be performed at arm's length and that are subject to control by tax authorities.

In 2019, the following transactions are deemed to be controlled if the volume of transactions with each counterparty exceeds UAH 10 million and the annual income of the Ukrainian taxpayer exceeds UAH 150 million.

i. Business transactions with foreign entities and/or related parties

ii. Business transactions structured through agents (commissioners) and/or foreign companies

iii. Business transactions with foreign companies residents of low-tax jurisdictions"

iv. Business transactions with foreign companies that are not payers of corporate tax

v. Business transactions between a foreign entity and its Ukrainian permanent establishment.

As of January 1, 2019, the tax code specifies the definition of business transactions.

i. As of January 1, 2019 the "substance over form" principle has been introduced for transfer pricing purposes. According to this principle, in the case of chain operations (export and import), the controlled/non-controlled status of the transaction is to be determined in accordance with the essential conditions of the transaction performed between the parties and/or participants of such chain transaction. Under transfer pricing rules, the taxable profit for the controlled transaction should be computed on the basis of the principles of the arm's length value, determined based on one of the five transfer pricing methods (similar to those used by the OECD): Comparable uncontrolled price method

ii. Resale price method

iii. Cost plus method

iv. Transactional net margin method or

v. Profit split method.

There are specific requirements regarding the selection of comparable transactions for benchmarking studies. Taxpayers that perform controlled transactions during the reporting year should file a report on such transactions. The report should be filed before October 1 of the year after the reporting year. There are penalties for failure to file such report.

Certain taxpayers may apply the Advance Pricing Agreements (APAs) mechanism and enter into a preliminary agreement with tax authorities related to arm's length pricing and apply the agreed principle in determining and reporting arm's length prices. In order to qualify for an APA, a taxpayer needs to be a large taxpayer. Tax authorities are authorized to conduct specialized transfer pricing audits. The audit may last for 18 months, and extend for another 12 months; the total audit period may last up to seven years.

7.2 Withholding tax

Ukrainian withholding tax applies at the standard 15% rate to Ukraine-sourced income (including dividends, interest, capital gains and royalties) received by a non-resident company, unless an applicable double-taxation treaty provides otherwise. Certain types of income are subject to a 20% WHT payable by the Ukrainian resident from out of its own funds (i.e., not withheld). A special tax rate is established for freight income (6%).

The amount of Ukrainian withholding tax payable on income derived by a non-resident from Ukrainian sources may be reduced or eliminated by tax treaties Ukraine has entered into with certain countries, which prevail over Ukrainian domestic law. Ukraine has a fairly extensive tax treaty network and has entered into double-taxation treaties with more than 70 countries (including the US, the UK, CIS countries and the majority of EU countries), most of which follow the OECD Model Convention. Ukrainian domestic law does not provide for unilateral double-taxation relief.

Ukrainian resident companies can claim foreign taxes as a credit on income received abroad against corporate profit tax due on such income in Ukraine, if it is provided for under an applicable double-taxation treaty. However, the amount of this credit is generally limited by the amount of corporate profit tax due on the foreign income (i.e., the ordinary credit method).

7.3 Withholding tax on service fees

Income received by a non-resident company from the sale of goods, works and services (subject to certain exceptions) does not qualify as Ukraine-sourced income that is subject to withholding tax.

8.0 PAYROLL TAXES

Ukrainian legal entities and/or permanent establishments act as tax agents in Ukraine with respect to their employees. Employers are required to withhold from an employee's gross salary 18% for personal income tax (PIT) and 1.5% for temporary military tax (TMT). In addition, the employer pays tax authorities an amount equal to 22% of the employee's gross salary as the Uniform Social Tax (UST).

Ukrainian legal entities and/or permanent establishments are required to withhold and remit the these taxes to the state budget as of the date when the payment of remuneration is executed. The taxable base for 22% of the Uniform Social Tax contribution is capped. For 2019, the cap is set at 15 times the minimal salary; from January 1, 2019, through December 31, 2019, the cap is UAH 62,595 per month per employee.

9.0 INDIRECT TAXES

9.1 Value-added tax (VAT)

Ukrainian VAT at a rate of 20% applies to domestic supplies of goods or services and imports of goods into Ukraine. The VAT rate of 7% applies to supply of pharmaceuticals and health care products. The export of goods from Ukraine is taxed at a 0% VAT rate. Generally, VAT payers must submit VAT returns on a monthly basis.

VAT due to the budget or the state treasury is calculated as the positive difference between VAT liability (output VAT collected from the customers for goods, works and services sold) and VAT credit (the VAT paid to Ukrainian suppliers of goods, works or services and import VAT). The taxpayer has the right to report VAT credit if an electronic VAT invoice is issued and duly registered by the subcontractor in the electronic unified register of VAT invoices.

For VAT purposes, the taxable base should be determined based on contract value taking into account all of the mandatory state taxes. In certain cases, the taxable base should be determined based on usual prices, balance value, etc.

9.2 Stamp tax

There are no stamp taxes in Ukraine, but a stamp duty is imposed on certain actions, such as notarizing contracts and filing documents with courts. In most cases, the amount of stamp duty involved is nominal. Operations on commodity exchanges and real estate sales incur a stamp duty of 1%.

United Kingdom

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1.0 OVERVIEW

The UK imposes corporate and personal income taxes and capital gains taxes on the worldwide income and gains of its residents. Non-residents who carry on business in the UK, who are entitled to income with a source in the UK or who hold interests in land or buildings situated in the UK may also be subject to UK taxation.

Although the UK does not have a fully federal system of government, competence for certain taxation matters has been devolved from the UK Parliament to the devolved administrations in Scotland and Wales.

The UK imposes a 20% withholding tax on non-residents who receive certain interest payments, rents or royalties from the UK. The payer of any such amounts is liable for withholding and remitting this tax on behalf of the non-resident recipient. Generally, no withholding is imposed on dividends paid by UK companies or payments for management or other professional services.

The UK has an extensive double taxation treaty network that will reduce or eliminate the 20% withholding tax rate in many cases. While it has also been possible for EU residents to benefit from the provisions of the EU Interest and Royalties Directive in respect of relevant UK withholding taxes, this is not expected to continue once the UK ceases to be a member of the EU.

The UK is a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI), which it ratified on June 29, 2018. The ratification process for individual UK treaties is not yet complete.

Value-added tax applies to supplies of goods and services made in the UK and will continue to apply in a modified form following the UK's departure from the EU. In addition, land transaction taxes apply in each of the UK's constituent jurisdictions, while stamp taxes apply to the purchase of securities.

2.0 LEGAL SYSTEM

The UK is a constitutional monarchy consisting of three separate jurisdictions: England & Wales, Scotland and Northern Ireland. Each jurisdiction has its own legal system, based on a mixture of statutory and common law. The principal legislative body is the UK Parliament, which may pass legislation that applies to all or some of the jurisdictions. The monarch's role in the legislative process is now ceremonial, although it remains the case that primary legislation takes effect only once Royal Assent has been given.

Following the passage of the Scotland Act 1998 and the Government of Wales Act 1998, legislative competence over certain matters was devolved from the UK Parliament to the Scottish Parliament and the National Assembly for Wales respectively. These include the power to make legislation in respect of certain aspects of the taxation system in Scotland and Wales. The Good Friday Agreement in 1998 led to the establishment of the Northern Ireland Assembly, the devolved legislative body for Northern Ireland. The Assembly is currently suspended.

At the time of writing, the UK remains a member of the European Union and, save where EU law has direct effect, is required to enact or amend domestic legislation to give effect to relevant measures of EU law, including the EU customs and value added tax regimes. It is currently understood that the UK will cease to be a member of the European Union on March 29, 2019.

3.0 TAXATION AUTHORITIES

HM Revenue & Customs (HMRC) is the unitary taxation authority in the UK, formed following the merger of the Inland Revenue and HM Customs and Excise in 2005. HMRC is responsible for the administration and collection of all UK taxes, including value-added tax and customs and excise duties.

The taxation authorities responsible for the administration and collection of taxes devolved to Scotland and Wales are, respectively, Revenue Scotland and the Welsh Revenue Authority.

4.0 BUSINESS VEHICLES

A non-UK resident may establish either a UK business vehicle to carry on business in the UK or operate directly through a non-UK entity (with or without a UK permanent establishment). UK business vehicles include companies (limited or unlimited) and partnerships (general, limited or limited liability). While it is also possible to use certain trust structures to carry on business in the UK, these are less commonly used.

4.1 Partnerships

Most forms of business in the UK may be carried on by a partnership, provided two or more partners carry on business with a view to a profit. General, limited and limited liability partnerships are available in the UK.

General partnerships are unincorporated partnerships in which the constituent partners have unlimited liability for the debts and obligations of the partnership. Limited partnerships are similarly formed, but must have at least one general partner (which may itself be a limited liability company or other limited liability entity) with unlimited liability for the debts and obligations of the partnership. A limited partner in a limited partnership is liable for the partnership's debts only up to the amount of its capital contribution.

In Scotland (but not England & Wales or Northern Ireland), both general and limited partnerships have legal personhood separate from that of their partners.

Unlike general and limited partnerships, limited liability partnerships are bodies corporate. A limited liability partnership has legal personality separate from that of its members, who generally have no personal liability for the debts and obligations of the partnership.

For UK tax purposes, general, limited and limited liability partnerships are each normally treated as fiscally transparent for direct tax purposes, meaning that taxes on income and capital gains are assessed on the members individually according to their attributable share of the income or gains, rather than on the partnership itself.

A partnership (or its designated nominee partner) is required to file an annual partnership tax return on behalf of all the partners showing, among other things, the taxable profits or losses of the partnership and their allocation among the partners. The partnership return is then used by each partner as the basis for the partnership section of the partner's individual tax return.

4.2 Private companies limited by shares

The private company limited by shares is the most common form of trading entity in the UK and is generally incorporated as a subsidiary of a non-UK holding company or as a stand-alone company. The liability of the shareholders is limited to the fully paid-up amount of the shares in the company. There is no minimum share capital requirement for a private limited company, nor any requirement that the capital must be paid up. A single shareholder/director may incorporate the company, and there is no maximum number of directors or any legal requirement for any of the directors to be a UK resident or national. Such companies may be incorporated quickly (often same day).

A company will be UK-resident if it is incorporated in the UK or if its place of central management and control is in the UK. A UK-resident company is subject to corporation tax on its worldwide income profits and capital gains, with credit generally granted for overseas taxes paid.

4.3 Private companies limited by guarantee

Private companies limited by guarantee are normally incorporated for non–profit making functions (e.g., charities, property management companies, trade and research associations). With no shareholders, members undertake to contribute a predetermined nominal sum to the liabilities of the company, which becomes due in the event of the company being wound up.

As a corporate body, the tax treatment rules are the same as for private companies limited by shares.

4.4 Unlimited liability companies

The UK permits the incorporation of a private unlimited liability company, which may be formed with a single member. Such a company does not provide protection to members or shareholders from the liabilities of the company in event of formal liquidation. As the members and shareholders have no limit on their liability, rules regulating the maintenance of capital do not apply to unlimited companies to the same extent as they apply to limited companies. An unlimited company can therefore help to facilitate the free movement of capital within a group. In terms of reductions of share capital, redemptions and purchases of its own shares, an unlimited company enjoys far greater flexibility than a limited company.

An unlimited company is not required to have a share capital, and there are only limited circumstances in which an unlimited company is required to file accounts with Companies House (the body responsible for maintaining the UK register of companies) or to return allotments of shares.

An unlimited liability company is subject to tax on the same basis as a private company limited by shares.

4.5 Companies incorporated outside the UK

Companies incorporated outside the UK seeking to set up a place of business in the UK will be required to register with Companies House as an overseas company (note that partnerships and unincorporated bodies are not able to register). Companies are not required to register with Companies House unless they have a base in the UK.

A company that is incorporated outside the UK is liable to UK corporation tax only if it carries on a trade in the UK through a UK permanent establishment (and then only in respect of the profits or gains attributable to the permanent establishment), or if it carries on a trade of dealing in or developing interests in land or buildings situated in the UK (in respect of the profits of that trade). The charge to corporation tax will be extended, from April 2019, to non-UK resident companies that realize capital gains from the disposal of interests in land or buildings situated in the UK or from the disposal of certain interests in certain UK property-rich entities and, from April 2020, to non-UK resident companies that receive rental income from such land or buildings.

The current rate of corporation tax is 19%, which is expected to fall to 17% from April 1, 2020. The UK's corporation tax rate is lower than that of several major economies, and is particularly attractive in comparison to many European countries' rates.

A non-UK resident company that is not subject to corporation tax may be subject to income tax if it derives income from a source in the UK, although the charge to income tax in respect of passive income is typically limited to the amount of tax (if any) withheld at source. Currently, a non-UK resident company that realizes capital gains from residential property situated in the UK may be subject to capital gains tax in respect of the gains. As noted, these gains (as well as gains from non-residential property situated in the UK) will become subject to corporation tax from April 2019.

In each case, relief may be available if the relevant income, profits or gains are already subject to tax in another country, where a relevant double taxation treaty is in force.

5.0 FINANCING A CORPORATE SUBSIDIARY

5.1 Equity financing

5.1.1 Contributions for shares

Where an equity investment is made into a UK company with a share capital in exchange for new shares, the amount of the investment is first allocated to the nominal value of each share acquired (which value is governed by the articles of association, for example £1 each) and the excess will be included in the share premium account.

A company's share capital is made up of the shares that it has issued to its members, whether on, or subsequent to, its incorporation. The UK companies legislation allows significant flexibility in the formation of a company, as well as the ability to change the articles of a company at a later date and divide shares into various different classes.

Specific additional rules apply to different forms of body corporate. For example, public companies are required to have a minimum issued share capital of £50,000.

5.1.2 Returns to shareholders

Subject to solvency requirements and, in certain cases, the consent of the court, a UK company limited by shares may reduce its share capital by making payments to shareholders out of capital or by redeeming shares. A company may also purchase its own shares, but only where it is able to fund the purchase out of distributable reserves or the proceeds of a fresh issue of shares. Other than attracting stamp duties (at a rate of 0.5%) in certain cases, a return of capital funded from cash resources would not ordinarily have significant tax consequences for the company.

A company limited by shares may only make a distribution to its members (including the declaration of a dividend) out of "distributable reserves." Generally, distributable reserves are made up of the profits generated or accumulated by that company.

Except in certain limited cases, there is no withholding tax in the UK on the payment of dividends by a UK-incorporated company.

5.1.3 Corporate capital

There is no tax on corporate capital, branch remittance tax, excess profits or alternative minimum tax in the UK.

5.2 Debt financing

5.2.1 Withholding tax implications

Payments of "yearly" interest with a UK source are generally subject to withholding tax at a rate of 20%. An exception may apply where the recipient of the interest is subject to UK corporation tax in respect of the interest, so that interest payable in respect of loans made by non-UK companies or banks through a permanent establishment situated in the UK should normally be exempt from withholding. The rate of withholding on interest payable to a non-resident lender may be reduced or eliminated under an applicable double taxation treaty or, in relation to EU lenders (while the UK remains part of the European Union), under the EU Interest and Royalties Directive.

There is no withholding in the UK on the repayment of the principal amount of a loan.

5.2.2 Thin capitalization

If a UK subsidiary is financed with debt, it may be subject to thin capitalization rules. These rules, which now form part of the UK's transfer pricing regime, restrict the deductibility of interest paid or payable by a corporation that is tax-resident in the UK to certain non-resident shareholders where the ratio of interest-bearing debt to equity exceeds what a third party would agree to lend to that company, taking into consideration the borrower's particular circumstances. To the extent that debt is excessive, there will be a proportionate denial of the interest deduction.

Since the UK does not operate a safe harbor in relation to thin capitalization, each case will need to be considered in light of its own facts and circumstances and benchmarked for transfer pricing purposes.

5.3 Stamp tax

The UK does not impose a stamp tax in respect of debt or equity financing.

6.0 CORPORATE INCOME TAX

6.1 Rate of corporation tax

The rate of corporation tax is currently 19%, reducing to 17% for the year commencing April 1, 2020. The rate applies to both income profits and capital gains, and to both UK-resident companies and non-UK resident companies within the corporation tax regime.

Non-UK resident companies that are subject to income tax in respect of their UK-source income are subject to tax at the income tax basic rate of 20%.

6.2 Capital gains

A UK-resident company must include chargeable capital gains that arise on the disposal of its worldwide assets in its taxable profits for the purposes of corporation tax, while a non-UK resident company which carries on a trade in the UK through a UK permanent establishment must include such chargeable capital gains as arise on the disposal of UK-situs assets held for the purposes of the permanent establishment.

Currently, a non-UK resident company that realizes capital gains from residential property situated in the UK may be subject to capital gains tax in respect of the gains. With effect from April 2019, the charge to corporation tax will be extended to non-UK resident companies that realize capital gains from the disposal of all interests in land or buildings situated in the UK or from the disposal of certain interests in certain UK property-rich entities.

6.3 Computation of taxable income

6.3.1 Taxable base

The taxable base depends on the source of the income and on whether the entity is subject to corporation tax or income tax in respect of the income.

In the case of a company that carries on a trade or property business, its taxable trading profits will be based in the first instance on its accounting profits—provided that its accounts are computed in accordance with UK generally accepted accounting principles (GAAP) or international accounting standards (IAS)—as adjusted for tax purposes. For example, it will be necessary to adjust the accounting profit or loss to exclude receipts and expenses of a capital nature, and to exclude expenditure that is not wholly and exclusively incurred for the purposes of the trade or property business.

Companies deriving investment income from passive sources will generally be subject to corporation tax or income tax on the gross amount of the income, although a company within the corporation tax regime carrying on an investment business may be entitled to a deduction for the expenses of managing its investments, provided that the expenses are revenue in nature.

6.3.2 Chargeable gains

Broadly, chargeable gains are calculated by deducting the acquisition cost and any enhancement expenditure incurred in respect of the assets from the proceeds of disposal. Generally, capital losses arising on the disposal of an asset must be offset against gains arising in the same taxable period or carried forward and offset against gains arising in future periods.

6.4 Corporation tax reporting

Companies are subject to a self-assessment regime in the UK and must notify HMRC when they first come within the charge to UK tax.

A company within the charge to corporation tax is required to report by reference to accounting periods, which will generally be aligned with the company's own period of account, provided that such period does not exceed 12 months. The company must file its tax return within 12 months after the end of the accounting period to which it relates.

A company within the charge to income tax will generally be required to report its income by reference to the UK tax year, from April 6 to April 5, and to submit its income tax return by the next January 31 following the end of the relevant tax year.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

The UK's transfer pricing regime largely conforms to the principles of the Organisation for Economic Co-operation and Development (OECD) and generally seeks to prevent connected parties obtaining a UK tax advantage by entering into transactions on the basis of non–arm's length pricing. Under the applicable rules, it may be necessary for companies to make a transfer pricing adjustment in respect of a transaction that is not made on arm's length terms, to the extent that a UK tax advantage as been obtained. UK taxpayers must maintain contemporaneous documentation in respect of transactions subject to the transfer pricing rules.

Generally, an exemption from the transfer pricing rules applies to companies that are classified as small or medium-sized entities under European guidelines (entities with fewer than 250 employees and either a turnover of less than €50 million or an annual balance sheet value of less than €43 million).

7.2 Withholding tax on passive income

Payments made by a resident of the UK to a non-resident in respect of certain types of interest payments, royalties and dividends may be subject to UK tax withholding. Specifically, UK withholding at the rate of 20% may be imposed on payments of "yearly" interest where such interest payments have a UK source, and also on payments of royalties paid in connection with certain types of IP rights, including patents, copyright and design rights.

The UK does not impose withholding tax on dividends paid by UK-incorporated companies, except in limited circumstances.

Payments for professional services and other services outside the above descriptions may generally be made free from UK tax withholding.

In all cases where a UK withholding tax obligation does arise, the rate may be reduced or relieved entirely under an applicable double taxation treaty.

8.0 PAYROLL TAXES

8.1 Employment tax

Employees (including, for these purposes, directors and other officeholders) are subject to UK income tax in relation to their employment income and benefits. Individuals have a tax-free personal allowance, with all income above this amount being taxable. The rates of income tax are progressive, with different rates applying depending on how much annual income falls into different bands. Employers are responsible for deducting amounts of income tax from the sums paid to employees and paying them to HMRC under the pay as you earn (PAYE) regime.

8.2 Employment insurance

In addition to income tax, employees (including directors and other officeholders) and their employers are liable to pay National Insurance contributions (NICs) based on the employees' employment income. The contributions are made up of a deduction from the employee's pay, and an amount paid by their employer. The employer is responsible for withholding the employee's NICs and for paying this (along with the employer's NICs) to HMRC. Employers' NICs are currently chargeable at a rate of 13.8%.

9.0 INDIRECT TAXES

9.1 Value-added tax (VAT)

Value-added tax (VAT) is imposed on the final consumption of most goods and services supplied in the UK. Specific rules with respect to the place of supply exist to determine whether a supply is deemed to be made in UK.

The current VAT rate is 20%, with a 5% rate for certain prescribed supplies (e.g., energy for domestic use). In addition, certain "zero-rated" supplies are subject to VAT at the rate of 0% (e.g., exported goods and services, prescription drugs, newly constructed residential property and basic groceries) or are exempt from VAT (e.g., health care services, educational services and most financial services).

Since the burden of VAT is intended to fall on the final consumer of the relevant goods or services, businesses engaged in making only supplies of goods or services that are subject to VAT (whether at the 20%, 5% or 0% rate) will generally be entitled to recover their VAT costs in full.

9.2 Land transaction taxes

Land transaction taxes are payable in the UK in respect of the acquisition of interests in UK real property, including the grant of a lease. In England and Northern Ireland, this is stamp duty land tax. In Scotland and Wales, competence for the imposition and administration of land transaction taxes has been transferred to the devolved administrations. The Scottish and Welsh equivalents of stamp duty land tax are known as land and business transaction tax and land transaction tax, respectively. The different regimes are based on broadly the same principles, but with certain local variations, including in respect of rates, reliefs and their application in certain situations.

9.3 Stamp duty and stamp duty reserve tax (SDRT)

Two transfer taxes, stamp duty and SDRT, are payable in the UK by a purchaser on the acquisition of securities (which can include both shares in a company and certain loan instruments) pursuant to a transaction of sale. In the normal course, the taxes apply only to the purchase of securities issued by UK-incorporated companies.

Stamp duty is charged on the document transferring the security and, where payable, the document must be submitted to HMRC for the duty to be physically stamped onto it. Technically, SDRT applies to all agreements to sell securities, but is waived where stamp duty is paid. In practice, SDRT applies only to agreements for the sale of securities held in uncertificated form. The rate of both stamp duty and SDRT is currently 0.5% of the consideration paid for the securities. Both taxes are subject to numerous exemptions and reliefs.

United States

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1.0 OVERVIEW

The US imposes corporate and personal income tax on its residents (including US subsidiaries of foreign entities) in respect of income and gains earned worldwide, subject, however, to certain exceptions with respect to non-US corporate income. Federal income tax is imposed under the provisions of the Internal Revenue Code of 1986, as amended, and income tax regulations issued by the US Department of Treasury. Non-residents who carry on a trade or business in the US, who are employed in the US or who otherwise derive gross income from activities effectively connected to the US are also subject to US income tax.

Most of the separate states within the United States also impose corporate and personal income taxes on corporations and individuals residing or carrying on business within the state. However, certain states do not impose a corporate and/or individual income tax, opting instead to derive tax revenues from other activities within the state. For example, Nevada does not impose a corporate income tax on corporations doing business within the state, but does impose an excise tax on gambling and similar revenues; Florida does not impose a personal income tax but it does impose a corporate income tax. Accordingly, each state must be considered separately as to the tax regime that it imposes.

Generally, the classification of an entity for federal income tax purposes as a corporation or partnership will be respected for state income tax purposes as well, and taxable income for state income tax purposes is computed in a manner similar to the computation of federal taxable income under the tax code. In this regard, most states require taxpayers to start with their federal adjusted gross income in computing their separate state income tax liability. However, each state provides for certain modifications to federal adjusted gross income in the calculation of state tax liability, including the provision of specified tax incentives for various activities within the state, and, in some cases, the requirement to add back certain deductions otherwise allowable under federal law in computing federal income tax liability.

The federal tax code also imposes a withholding tax on non-residents who receive dividends, certain interest payments, rents, royalties or certain other forms of gross income from activities that are not effectively connected with the US. The US payor of any such amounts is responsible for withholding and remitting this tax on behalf of the non-resident recipient. In some cases, the non-resident recipient may also be responsible for filing certain US income tax returns in connection with the receipt of such income as well. The US withholding tax laws with respect to payments to non-residents is complex.

The US has an extensive income tax treaty network that may reduce or eliminate the withholding tax rate on all or certain types of such income. For example, the US-UK income tax treaty eliminates withholding tax on most cross-border interest and royalty payments and reduces the rate on dividends to 0%, 5% or 15%, depending on the circumstances.

The US is **not** a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). Rather, the US relies on the limitation on benefits provisions in its existing income tax treaties and the provisions of its domestic law to implement the Base Erosion and Profit Shifting standards.

No uniform federal sales or property tax is imposed on corporate and individual taxpayers. However, a variety of targeted federal excise taxes are imposed on the production, distribution and/or sales of certain products within the US. For example, the tax code imposes excises taxes on the manufacture, distribution and/or sales of alcoholic beverages and firearms.

At the state level, in addition to corporate and personal income tax, most states impose a sales and use tax on the sale or use of tangible personal property within the state (generally based on the ultimate destination of the product). In certain cases, such tax applies to the provision of intangible property, as well as on the provision of specified services within a state.

In addition, virtually all states and their local political subdivisions impose annual property taxes on real commercial and residential property within the taxing jurisdiction. Many of these states and local political subdivisions impose property tax on business personal property as well. Specific additional taxes, including realty transfer taxes, may also be imposed in certain states where real estate or certain specified commercial activities are an essential revenue source.

2.0 LEGAL SYSTEM

The US and the separate states and territories generally operate under a common law legal system. While the ability to make federal law is within the exclusive domain of the federal government, the laws of each state are within the scope of the state's legislative authority. For example, while the federal government has the authority to regulate interstate trade and commerce within the US, the states have the right to, among other things, regulate the incorporation and dissolution of companies and other business entities under applicable state law, as well as the property rights of businesses and individuals residing within the states.

3.0 TAXATION AUTHORITIES

The federal tax system in the US is administered by the Internal Revenue Service (IRS). State income tax and sales taxes are administered by each state's taxing authority (with varying names, but each commonly referred to as a department of revenue). Various local taxes are administered at the local level.

Take for example a corporate or individual resident of New York City. The IRS collects federal income taxes owed by the resident; , while the New York Department of Taxation and Finance collects state income taxes as well as state sales taxes and other statewide taxes; and the New York City Department of Finance collects applicable local income, sales and property taxes. However, many state revenue departments will often collect various local taxes on behalf of local political subdivisions and distribute the tax revenues to those localities.

4.0 BUSINESS VEHICLES

Business entities in the US are incorporated, organized or formed under the laws of each state. To the extent such business entities are formed in one state but operate in several states, they generally will be subject to the corporate and tax laws of each state in which they operate. In all states, the most common business entities are corporations, limited liability companies and partnerships (general or limited). Many states provide for certain variations of the foregoing entities, including limited liability partnerships. While it is also possible to use a trust to carry on business in the US, it is not commonly done due to a number of complexities.

4.1 Partnerships

A state law partnership (whether general, limited or limited liability partnership) is generally treated as fiscally transparent for US federal income tax purposes. That is to say, it is treated as a "pass-through entity." While such entities are required to file annual information returns with the IRS (and most states), it is the partners of the partnership, rather than the partnership itself, who are subject to income tax on their allocable share of the partnership's income, gains as well as losses, deductions and credits.

A partnership formed under state law and otherwise operating within the US may have one or more non-resident (that is, non-US) partners. Non-resident partners of a domestic US partnership that is engaged in a trade or business in the US or with US-source investments are subject to complex US federal withholding tax rules on distributions of income to such non-resident partners, subject to applicable income tax treaty conventions governing US tax treatment of such payments.

4.2 Corporations

Corporations are incorporated under applicable state law. In all states, shareholders are generally not liable for the corporation's debts. Corporations can be incorporated quickly (often in a single day) in any state in which the incorporators intend to begin a trade or business by filing with the applicable state agency the articles of incorporation and paying a filing fee. The state jurisdiction of incorporation does not impact the corporation's federal income tax liability. Often the choice of jurisdiction is based on the particular state corporation laws and their impact on the desired internal governance structure of the corporation.

For federal and, in most cases, state tax purposes, corporations are not pass-through entities but instead are subject to taxation on income earned at the corporate level and again on income distributed or paid out to the corporation's shareholders. These are commonly referred to as "C-corporations." Consequently, corporations are subject to "double taxation" insofar as the corporation itself is subject to federal income tax on its income (in addition to any applicable state income tax) and the shareholders are also subject to federal and applicable state personal income tax on amounts received from the corporations by dividends or redemptions in excess of their investment in such corporations.

In contrast to C-corporations, the tax code allows certain shareholders (generally, individuals who are US citizens or residents) to incorporate a corporation under state law that is treated as a pass-through entity under federal tax law. Specifically, a state-law corporation that would otherwise be treated as a C-corporation may elect to be treated as a pass-through entity, commonly known as an "S-corporation." Similar to other pass-through entities, an S-corporation is not subject to federal income tax at the entity level; rather the income (gains as well as losses), deductions and credits are passed through to the shareholders, who must report such items on their separate returns. However, S-corporations must pass though such items on a pro rata basis to their shareholders, and thus have less flexibility than state-law partnerships and limited liability companies (see below) that are taxed as partnerships for federal income tax purposes. Despite their tax transparency, S-corporations continue to retain the liability protections of corporations under state law. The federal tax laws governing S-corporations are complex, and not all states recognize the pass-through nature, for state income tax purposes, of S-corporations.

As with domestic partnerships, a corporation formed under state law and operating within the United States may have one or more non-resident shareholders. Non-resident shareholders of a domestic C-corporation are subject to US withholding tax rules on distributions of income to such non-resident shareholders, subject to reduction or elimination under an applicable income tax treaty.

4.3 Limited liability companies

All states permit the organization under applicable state law of a limited liability company (LLC). As with other business entities, an LLC can be formed quickly, usually within one day. Generally, an LLC provides the members with protection from the liabilities of the LLC in the event that the LLC is insolvent or wound up, and in this regard is similar to a state-law corporation. However, absent an election to be treated as a C-corporation, an LLC formed under state law that has more than one member is treated as a partnership for federal income tax purposes (and usually for state income tax purposes, though this should always be verified), and so retains the status of a "pass-through entity" for tax purposes similar to that of state-law partnerships, thereby avoiding the double taxation inherent in the C-corporation structure. A wholly owned LLC is treated as a "disregarded entity" of its owner, absent an election to be treated as a C-corporation.

4.4 Foreign corporation (with or without a US branch)

A foreign corporation that carries on a trade or business in the US is subject to tax on gross income derived from such activities. The determination of whether a corporation is carrying on business in the US is very fact-specific and does not depend on whether the foreign corporation formally has a branch in the US.

If the foreign corporation is resident in a country with which the US has an income tax treaty, and if it is eligible to claim treaty benefits, it will generally be exempt from US withholding tax on its business profits except to the extent that the profits were earned through a permanent establishment in the US.

A foreign corporation that is subject to US corporate income tax (i.e., because it is engaged in the conduct of a trade or business in the US and, if it is eligible for the benefits of a US income tax treaty, has a permanent establishment in the US) will be subject to US income tax as well as branch profits tax (see details below).

As noted, the tax code imposes a 30% withholding tax (subject to reduction or elimination by treaty) on payments to non-resident individuals and foreign corporations on US-source income that is not "effectively connected" with a US business. Generally, the US payor (e.g., a corporation paying dividends to a foreign shareholder, or an LLC making distributions to its members that include one or more foreign members) will withhold the applicable amount from such payments and remit the tax to the IRS.

5.0 FINANCING A CORPORATE SUBSIDIARY

5.1 Equity financing

5.1.1 Contributions for shares

Contributions to the capital of a corporation in exchange for shares are not treated as gross income of the corporation for federal income tax purposes. Contributions of cash in exchange for shares are generally not taxable to the shareholder. Contributions of appreciated property in exchange for shares are generally not taxable to the shareholder if it and the other shareholders making contributions in exchange for shares are in control of the corporation.

5.1.2 Contributions without taking additional shares

Depending on the circumstances, the corporation may be deemed to issue shares to the shareholder in exchange for the contribution.

5.1.3 Distributions

Distributions to a shareholder are generally taxed as a dividend to the extent that the corporation has either current **or** accumulated earnings. Distributions in excess of the corporation's current and accumulated earnings are treated as non-taxable return of capital to the extent of the shareholder's basis in the shares of the corporation. Distributions in excess of basis are treated as gain from the sale or other disposition of the shares. Because non-residents are generally not subject to US tax on gain from the sale of shares of a corporation unless the corporation is a US real property–holding corporation, distributions to a non-resident shareholder in excess of the shareholder's basis are often not subject to US tax even though such distributions result in taxable gain to a US resident shareholder.

5.2 Debt financing

5.2.1 Withholding tax implications

US corporations are permitted to borrow funds from related or third parties without the receipt of borrowed funds being treated as gross income for tax purposes. Furthermore, there are no US tax consequences on the repayment of the principal amount of such debt. Interest payments are subject to income tax (or withholding tax, in the case of non-residents who are not considered to be engaged in a US trade or business) on the recipient. The payor may generally take a current deduction or, in certain cases, capitalize such interest payments, subject to certain limitations. Subject to significant exceptions for portfolio interest and bank deposit interest, interest income received by a foreign corporation from US sources and not effectively connected with the conduct of a US trade or business is subject to a 30% withholding tax. As previously mentioned, the withholding tax rate may be reduced or eliminated under an applicable income tax treaty. For example, the Canada-United States Tax Convention eliminates withholding tax on cross-border, non–arm's length interest payments (other than participating interest).

5.2 .2 Thin capitalization

The characterization on the use of funds by taxpayers as either debt or equity, particularly in the cross-border context, is a topic of great concern to the IRS. A significant body of common-law jurisprudence, as well as statutory and regulatory actions, has arisen over many decades on this topic. In this arena, the thin capitalization of a purported foreign or domestic borrower, relative to the debt considered to be incurred, is a factor that the IRS and the courts regard as indicative of a debt instrument being more akin to equity. This may, along with other factors, cause a debt instrument to be recast for tax purposes as equity, resulting in, among other things, the loss of deductions attributable to that financing.

There is no objective standard as to what constitutes a thinly capitalized borrower for this purpose. However, taxpayers devote a great deal of consideration to properly supporting their equity or debt financing in order to avoid these issues. Due to the complexity of structured debt, equity and hybrid instruments, as well as the distinct tax treatment of debt and equity financing under the tax code and the potential for abuse, the US has sought to limit certain tax benefits attributable to debt financing, including limitations on business interest expense deductions.

5.3 Stamp tax

The US does not impose a stamp tax in respect of debt or equity financing.

6.0 CORPORATE INCOME TAX

6.1 Income tax rate

For taxable years beginning on and after January 1, 2018, the federal corporate income tax rate on general active business income is 21%. State corporate income tax rates vary widely and, as noted, certain states do not impose a corporate income tax at all.

6.2 Capital gains and losses

For corporations, capital gains are taxed in the same manner as ordinary income, while capital losses can, subject to limitations, be used to offset only capital gains in the year. The excess capital loss may generally be carried forward with limitations to be applied against taxable capital gains in other years. The tax code restricts the use of capital losses (as well as net operating losses) by a corporation following an acquisition of control of the corporation.

6.3 Branch profits tax

The branch profits tax is imposed on foreign corporations and is equal to 30% of the "dividend equivalent amount" for the tax year. This tax is in addition to the corporate-level tax imposed on taxable income effectively connected with a US business. A foreign corporation is subject to the branch profits tax if it owns an interest in a partnership, or a trust, or an estate that is engaged in a US trade or business or has income treated as effectively connected with the conduct of a trade or business in the US. The branch profits tax generally is reduced or eliminated under an applicable income tax treaty to the same extent that dividends are reduced or eliminated.

6.4 Computation of taxable income

6.4 .1 Taxable base

An individual taxpayer is generally subject to tax on his or her worldwide gross income less certain allowable deductions and credits. A corporate taxpayer is subject to tax on its taxable income from carrying on its business. Taxable income is generally considered to be gross income less deductible expenditures, to which any credits are applied.

6.4 .2 Deductions

A business taxpayer is generally permitted to deduct its current operating expenses from adjusted gross income. As a general rule, capital expenses must be capitalized into the basis of the property to which such expenditures are dedicated are not currently deductible. However, the tax code provides for certain exceptions to that rule, including depreciation expense.

6.5 Income tax reporting

Domestic corporations, and foreign corporations that carry on business in the US or that dispose of certain US property during a taxable year, are required to file an annual corporate income tax return. Non-resident individuals and foreign corporations subject to withholding tax due to their being considered to be engaged in the conduct of a US trade or business are also required to file certain federal tax returns for the year of the withholding.

Corporate tax returns generally must be filed within five months of the fiscal year-end of the corporation in order to avoid late filing penalties. Estimated installment tax payments are required in respect of current-year taxes. Interest on any unpaid tax balance will start accruing from the due date of the return on which such tax was required to be paid.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

US transfer pricing rules generally conform to the arm's length principle of the Organisation for Economic Co-operation and Development (OECD), although special deemed royalty provisions apply to the transfer of intangible property. Section 482 of the tax code permits the IRS to impose a transfer pricing adjustment in respect of a transaction between related parties that is not made on arm's length terms or that does not meet certain conditions. US taxpayers can be subject to significant penalties if the IRS determines that a transfer pricing adjustment is appropriate and the taxpayer cannot produce upon request contemporaneous documentation regarding the transactions subject to the transfer pricing rules

7.2 Withholding tax on nonresident income

For individuals who are US citizens and residents, capital gains from assets that are held for more than one year are subject to a maximum income tax rate of 20% and capital losses may, subject to limitations, be used to offset capital gains. However, in certain circumstances, capital gains may be upwards of 28% in the case of the sale or exchange of certain properties referred to as "collectibles" (normally artwork, jewelry and related high-value personal items), or up to 25% of the gain on certain depreciable property. Some taxpayers will also be subject to a 3.8% tax on their net income, which includes capital gains and other investment income.

A non-resident's excess capital gains from US sources over capital losses from US sources are subject to US income tax if such gains are effectively connected with a US business or may be subject to withholding tax if the non-resident otherwise resides within the US for a certain period of time within such taxable year, unless such gains are exempted under an applicable income tax treaty. As described herein, payments made by a US person to a non-resident (including non-resident partners and shareholders) in respect of certain types of interest payments, rents, royalties, dividends, management fees, administration fees and capital gains from the sale of a US real-property interest are subject to a 30% withholding tax. However, the rate may be reduced under an applicable income tax treaty.

8.0 PAYROLL TAXES

8.1 US employee withholding for income taxes and imposition of payroll taxes

US employers paying remuneration to employees are required to withhold and pay over to the IRS income and related Social Security and Medicare taxes on behalf of such employees. To the extent an employee may be subject to both US and foreign social security taxes, a Social Security Totalization Agreement may eliminate double payroll taxation for a US employer with employees outside the US or a foreign employer with employees in the US.

8.2 Employment insurance

Employers are also required to withhold from each employee's compensation and pay over to the IRS the employee's allocable share of premiums under the federal unemployment insurance program.

8.3 State payroll taxes

States also impose similar income and unemployment insurance payroll taxes that must be withheld by an employer from each employee's compensation.

9.0 INDIRECT TAXES

9.1 Goods and services tax

The US does not impose any value-added tax on the final, domestic consumption of most goods and services supplied in the US. However, as noted previously, the US does impose certain excise taxes on specified goods manufactured, distributed or used within the US.

9.2 Harmonized sales tax

There is no federal sales tax. Each state authorizes and imposes its own sales and use tax on goods sold to residents of such state.

9.3 Land transfer tax

There is no specific federal land transfer tax. However, as a general matter, any gain from the sale of real property is includible in federal gross income.

A transfer tax is payable in certain states on any acquisition of real property. In certain states, the transfer tax is payable regardless of whether the acquisition is in respect of a legal or a beneficial interest in real property, subject to specified exceptions.

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