KPMG

DRC

Fiscal Guide 2015/2016

Tax

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INTRODUCTION

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Income tax

General

The DRC tax system is source based. Taxable income includes all types of income realised or deemed to be realised in the DRC. DRC-source income is generally defined as income relating to activities carried out in the DRC, even if the actual payment takes place outside the DRC. Income realised outside the DRC by a DRC non-resident is not subject to tax in the DRC, unless the income is sourced or deemed to be sourced in the DRC. Services rendered by non-residents are subject to withholding tax of 14%.

Business income

A company is resident in the DRC if it is incorporated in the DRC or has its head office and principal place of business in the DRC. A foreign company is deemed to have residence in DRC when it has registered a branch. It will also be automatically considered has resident when it has operated for more than 6 months in DRC during a 12 months period.

With respect to the taxation of business income, the DRC tax system does not distinguish between individuals and companies. Income Tax is applied on all entities conducting business in the DRC (i.e. source based). Corporate tax is levied on the net income realised during the taxable period. There are special rules for income which is taxed separately under specific rules, such as real estate and rental income.

Non-resident companies which carry on business activities in the DRC are subject to tax in the DRC on the profits realised through their permanent establishments or when they operate for more than six months in the DRC.

Tax calculated on taxable profits includes donations, provisions (except provision for rehabilitation of mines), unrealised exchange losses and special tax on expatriate salaries, but excludes, dividends, royalties and rental revenue, which are taxed at a different rate. The income tax threshold is 1% of the turnover with a minimum of CDF 2.5 million for large enterprises and CDF 750 000 for medium-sized enterprises.

Trading losses

In case of a loss, the company is subject to a minimum tax on earnings equivalent to 1% of its turnover with a minimum of CDF 2.5 million for large enterprises and CDF 750 000 for medium-sized enterprises.

Losses may be carried forward for five years but only 60% of the taxable income can be deducted. Losses carried forward are subject to prior approval of the tax authorities. No carry back of losses is allowed. The time limitation does not apply to deficits from amortisation recognised during the mine exploration and development period.

Rates

Resident companies	
Corporation tax	
- Normal rate	35%
- Mining companies	30%

Rates (continued)

Resident companies (continued)	
Capital gains	35%
Dividends (local)	20% (withholding tax)
Dividends (foreign)	Exempt
Dividends distributed by mining companies and their subcontractors	10% (withholding tax)
Interest	20% (withholding tax) / 0% for mining companies under conditions.
Royalties	20% (withholding tax) on 70% of the invoice.
Rental revenue	22% (monthly withholding tax of 20%; 2% tax on landlord at the end of the year)
Income for services provided by foreign companies	14% (withholding tax)

Resident individuals	
Individual salary tax	Schedule with 30% maximum
Dividends (local – WHT deducted at source)	20%
Dividends (foreign)	Exempt
Dividends distributed by mining companies and their subcontractors	10% (withholding tax)
Rental revenue	22% (monthly withholding tax of 20%; 2% tax on landlord at the end of the year)

Non-residents (taxed on income sourced in the DRC; subject to treaty relief)	
Individual salary tax	Max 30%
Corporation tax	35%
- Non-resident companies	35%
- Non-resident mining companies	30%
Capital gains	35%
Dividends (local)	20% (withholding tax)
Dividends distributed by mining companies and their subcontractors	10% (withholding tax)
Interest	20% (withholding tax)
Royalties	20% (withholding tax)
Rental revenue	22% (monthly withholding tax of 20%; 2% tax on landlord at the end of the year)

*Provisional tax is withheld at source and credited against the final liability
**Final tax withheld at source (rate may be varied by applicable tax treaty)

Resident Individuals Income Tax table in DRC currency		
Up to	524 160	0%
524 161	1 428 000	15%
1 428 000	2 428 000	20%
2 700 001	4 620 000	22,50%
4 620 001	7 260 000	25%
7 260 001	10 260 000	30%
10 260 001	13 908 000	32,50%
13 908 000	16 824 000	35%
16 824 000	22 956 000	37,50%
Over 16 824 000	22 956 001	40,00%

Non-resident Individuals Income Tax table in DRC currency		
Up to	524 160	0%
524 161	1 428 000	15%
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7 260 001	10 260 000	30%
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13 908 000	16 824 000	35%
16 824 000	22 956 000	37,50%
Over 16 824 000	22 956 001	40,00%

Tax on salaries

Personal tax on salary

Salaries and all benefits in cash or in kind paid to local and expatriate employees are taxable at a maximum rate of 30% after deduction of the employee's social security contribution. The tax is withheld by the employer who is liable for the payment of the tax.

Family allowances, pensions, annuities, housing, transport allowance and medical expenses are exempted up to the proportion published by the Government.

Casual labour

Casual and consultant salaries are taxable at the rate or 15%. The company is liable for the payment of the tax.

Special tax on expatriate salaries

Companies employing expatriates are subject to the payment of a special tax applied on the basic salary of these employees. The rate is 10% for mining companies (and their sub-contractors) and 25% in all other cases.

Capital gains tax

There is no special tax on capital gains in the DRC. Capital gains are treated as ordinary income and subject to corporate tax. It should be noted that latent capital gains on business assets are exempted in so far as they are not realised by the taxpayer. The rate is 35% in common law and 30% for mining companies.

Allowed depreciation rate for fixed assets

Buildings	2.5 – 5%
Plant and equipment	10 – 15%
Furniture and fittings equipment	10 – 15%
Vehicles	20%
Computers and IT equipment	33%

Transfer pricing and thin capitalisation rules

The DRC has no rules regarding thin capitalisation. From 2015, the Government has introduced Transfer Pricing rules, but the details of related procedures are yet to be published. Nevertheless, transactions between related parties must be at arm's length.

Inheritances and donations

There is no estate duty of gift tax in the DRC.

Indirect taxes

Value-Added Tax (VAT)

VAT has been levied since 1 January 2012, replacing the local turnover tax. Imports and transactions within the DRC are taxed at 16%, while exports are zero rated.

Individuals and companies are subject to VAT. Only when the companies' annual turnover is greater than or equal to CDF 80 million (approximately USD 90 000), can they be allowed to collect VAT. Service providers are, however, VAT Collectors regardless of their turnover.

The following steps, *inter alia*, have been taken for the implementation of VAT:

- The election as VAT Collector status is subject to the agreement of the administration, if the taxpayer's turnover is greater than or equal to CDF 80 million;
- Companies based outside the DRC, but rendering services to DRC companies, cannot be VAT Collectors. However, their DRC clients or Tax Representatives are required to declare VAT on those invoices issued without VAT;
- Specifically listed agricultural equipment is exempt from VAT;
- Specifically listed pharmaceutical inputs are exempt from VAT; and
- VAT on the importation of wheat and wheat flour as on local sale of wheat, bread and wheat flower is suspended until further notice.

The law exempts the import and purchase of equipment, materials, reagents and other chemical products intended for prospecting, exploration, research and development and construction of mining and petroleum projects, before the beginning of operations.

VAT refunds are granted to exporters, to companies which have ceased trading, to those that lose Collector status, as well as to those that have made large investments (tangible assets acquired in new condition and necessary for the company's operations and whose project value is at least equal to CDF 1 billion).

Stamp, registration fees and transfer duty

No stamp duty is levied in the DRC. Inter-ministerial Decree No. 243/CAB/MIN/J & DH/2010 and No. 043/CAB/MIN/FINANCES/2010 of 4 May 2010, however, provides registration fees at a fixed rate of 1% of capital for any capital increase operation for limited liability companies, credit and microfinance institutions.

The transfer of assets is subject to registration duty at variable rates ranging from 5% to 10% of the price, depending on the type of property (i.e. developed or undeveloped), its use (business premises or dwellings) and its location.

Vehicles tax

A toll tax on traffic is imposed by law on vehicle owners. The special fee for traffic is applicable to all vehicles permitted to operate on public roads, regardless of the status of the owner.

The Government, NGOs and Embassies are exempt from the payment of toll fees. Public transport companies pay half the tax rate for vehicles used for public passenger transport.

The current rate for Vehicles tax is as follows:

• Motorcycles	6Ff
• Utility vehicles	
▪ < 2 500 kg	20Ff
▪ 2 500 to 10 000 kg	25Ff
▪ > 10 000 kg	45Ff
• Passenger vehicles	
➢ Belonging to an individual	
▪ 01 – 10 HP	6 Ff
▪ 11 – 15 HP	11Ff
▪ Over 15 HP	37Ff
➢ Belonging to companies	
▪ 01 – 10 HP	12Ff
▪ 11 – 15 HP	25Ff
▪ Over 15 HP	37Ff

Property tax

Land (real estate) and buildings owned in the DRC are subject to property tax (*impôt foncier*), which is payable by the landlord. Embassies, churches, NGOs and owners over 55 years of age, living in their properties, are exempt from property tax.

The administration has fixed a scale of property tax rates per location category. Depending on the location of the property, the rate is often insignificant.

Other taxes

Mineral rights tax	
Exploration permit	2,55$/square for the first 2 years
	26,34$/square for the 2 following years
	43,33$/square for 2 renewal years
	124,03$/square for 2 extra renewal years
Operating license	424,78$/square per year
Operating license for discharges	679,64$/square per year
Operating license for small mine	195,40$/square per year
Research authorization of quarry products	4,25$/square per year
Permanent operating license for quarry	169,91$/square per year
* square = a square km space	
Mining royalties	• 0.5% for iron or ferrous metal • 2% for non-ferrous metal • 2.5% for precious metal • 4% for precious stones 1% for industrial metal, solid hydrocarbons and other substances
Prospecting licence fees	From 3,36 $ up to 163 $ (per mining square) depending on the number the years

Other taxes (continued)

Mining licence or mineral permit fees	560,11$ per (mining square)
Export duty	60 $ per ton

Double tax treaties and reduced rates

Country	Dividends (%)	Interest (%)	Technical / Management & Consultancy fees (%)	Royalties (%)
Belgium	15/10*	10	N/A	10
South Africa	15/5*	10	N/A	10

* Lower rate of tax applicable (as agreed with other countries), where beneficial owner is a company with a least 25% shareholding.

Investment incentives

Law No. 004/2002 of 21 February 2002 introduced a new investment code. The code introduced a preferential tax regime in certain regions and investments in certain sectors of activities (i.e. special provision for small and medium enterprises).

This preferential regime allows exemptions in the following regions and is granted for a limited period according to the economic zone.

- 3 years for economic zone A (city of Kinshasa);
- 4 years for economic zone B (Bas-Congo, Lubumbashi, Likisa and Kolwezi); and
- 5 years for economic zone C (Bandundu, Equateur, Kasai-Occidental, Maniema, Nord-Kivu, Sud-Kivu, Province Orientale en Katanga).

Provision for small and medium enterprises (SME) and small and medium industries (SMI)

SMEs and SMIs will receive the following benefits:

- With the exception of the administrative fee, SMEs and SMIs carrying on an investment program receive a total exemption from duty and import taxes for machinery and equipment, second-hand machinery and spare parts for first allocation not exceeding 10% of the CIF value of such equipment, as well as industrial inputs necessary to achieve the approved investment;
- Deduction from their taxable income of amounts spent for training, development of the entrepreneur or his personal protection and nature conservation;
- Calculation of their depreciation on a declining balance method; and
- Exemption from registration fees in the Trade Register and the acts of cooperatives or company.

Tax regime for oil companies

Transactions	Obligations	Base	Tax rate or amount
Inception of company	Congolese State Partnership	Petrol agreement with Congolese State	-
Research and exploration	Exploration licence	Surface of the exploration licence	USD 0.02 per ha

Tax regime for oil companies (continued)

Transactions	Obligations	Base	Tax rate or amount
Exploitation (operation)	Operation licence	Surface of the operation licence	USD 0.04 per ha
Exportation of crude	Import tax	1% FOB of crude	-
Corporate tax	Taxable benefit	Part of taxable income of private companies	35%
Withholding tax	Dividends	Private companies	20%

Tax regime for forestry companies

Tax is payable depending on concession contracts signed by the company with the DRC state. Forestry companies are generally required to pay for operating permits and for special reforestation fees.

Law 011/2002 of 29th introduced a Forestry Code which regulates the forest sector in the DRC. Articles 120 to 125 of this code define the tax regulations in the forestry sector in the DRC.

Tax regime for mining companies

Effective in 2002, the DRC Mining Code envisages a preferential tax and customs system for mining companies. This system applies to any holder of a mining title or quarry and their subcontractors.

Tax	Notes	Tax rate or amount
Surface mining fees	Square	• PR: Year 1 3.068 • Year 2 3.068 • Year 3 31.692 • Year 4 31.692 • Year 5 31.692 • Year 6-10 52.100 • Year 11-15 149.223 • PE: per year 235.106 • PEPM: per year 511.096 • PER: per year 817.744
Tax on mining surface and hydrocarbon	Hectare	• PR: Year 1 0.0241 • Year 2 0.0361 • Year 3 0.0421 • Year 4 - plus 0.0481 • PE: year a 0.0481 • PEPM year 2 0.0772 • PER: year 3 0.0842 • Year 4 – Plus 0.0963
Importation duties	The exemption should be requested by the company	• 2% during exploration period • 5% during the production (exploration) period • 3% for fuel, lubricants, reagents and consumer goods for mining activities
Mining royalties	Tax based on sales less cost of sales (commercial cost)	• 0.5% for iron or ferrous metal • 2% for non-ferrous metal • 2.5% for precious metal • 4% for precious stones • 1% for industrial metal, solid hydrocarbons and other substances

Tax regime for mining companies (continued)

Tax	Notes	Tax rate or amount
VAT		• Preferential treatment of turnover tax is replaces by a single rate of 16% VAT on domestic foods and import • Exports are taxed at 0% • VAT on investment of over one billion Congolese francs is subject to reimbursement scheme • Exploration period is exempted from VAT
Tax on salary	All salaries and benefits in cash or in kind paid to local and expatriate for their employment in DRC are taxable	• Scaled salary tax not exceeding 30% of the basic salary, deductible on salary; • 15% on casual labour salaries • 10% special tax on expatriate basic salary; tax supported by the employer, not the employee
Corporate tax	Taxable benefit	30%
Withholding tax	Dividends, interest and royalties	10%
	Services provided by foreign companies established abroad	14%

Tax regime for telecom companies

Law No. 011/32 of 29 June 2011 removes any tax on the import of telecommunications equipment. The licence cost to operate in telecommunications is USD 60 million.

Exchange controls

There are no restrictions on fund transfers. In particular, there is no exchange control restriction on the repatriation of profit for a foreign company after paying dividends tax.

The DRC Reserve Bank collect an exchange control fee of 0.2% on all money transfers from or towards the DRC, regardless of the status of the customer or beneficiary. A minimum fee of USD 1 is requested.

Detention of foreign currency

In the DRC, travellers (residents and non-residents) can freely carry foreign currency when travelling. Travellers are, however, required to declare any amount exceeding USD 10 000 or the equivalent in other currencies.

Over and above the USD 10 000 limit, transactions in foreign currencies must be realised via a bank transfer.
Transactions and services in foreign currency

Transactions and services within the national territory can be performed both in local and foreign currency.

Transfers of income

All transactions relating to transfers of income, current transfers and capital movements with a value exceeding USD 10 000 require the purchase of a licence (Model “RC”) at an approved commercial bank.

Capital movements

The entry of capital under direct investment of export pre-financing is permitted subject to subscription of a declaration RC model. The capital must come from transactions with a legitimate economic origin.

For an external loan, repayment of the principal and interests is made through voluntary subscription to the “Model LR”.

Residence and work permits

There are no discriminatory or excessively onerous visa, residence or work permit requirements designed to prevent or discourage foreigners from investing in the DRC. Application for a work permit must be made on arrival in the DRC. The Ministry of Labour and Immigration Administration Officers may, however, control expatriate residence and work permits.

Annual budget announcement

The Ministry of Finance generally announces the annual budget and taxation proposals in December of the previous year or January of the new financial year.

Trade and bilateral agreements

The DRC has signed two treaties: with Belgium and South Africa. These treaties are, however, not yet being applied by the Congolese Government.

Entry of DRC into OHADA

The DRC has officially become the 18th member state of the *“Organisation pour l’Harmonisation du Droit des Affaires en Afrique* (OHADA)” in September 2012.

Economic statistics

Prime interest rate (last estimated in December 2012)	28.45%
US$ Exchange Rate (March 2016)	FC 930
Inflation (January 2016)	2%
GDP (December 2015)	7.8%

Travel information

Visa requirements	An entry visa is required by all foreign citizens. Visa requirements are generally on a reciprocal basis.
Flights	No restriction of approved airlines. The DRC airline, Congo Airways, is only local.
Inoculations	• Compulsory for Yellow Fever and Cholera; • Recommended for Typhoid, Tetanus, Polio, Meningitis; and • Hepatitis A.

Currency

The official currency is the Congolese Franc (CDF). US Dollars is also accepted.

Languages

The official language is French, and four national languages are also spoken: Kiswahili, Tshiluba, Kikongo and Lingala.

Official public holidays

- 1 January (New Year's Day)
- 4 January (Martyr's Day)
- 16 January (M'zee Laurent Désiré Kabila's Day)
- 17 January (Lumumba's Day)
- 1 May (Labour Day)
- 17 May (Liberation Day)
- 30 June (Independence Day)
- 1 August (Parents' Day)
- 25 December (Christmas Day)

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