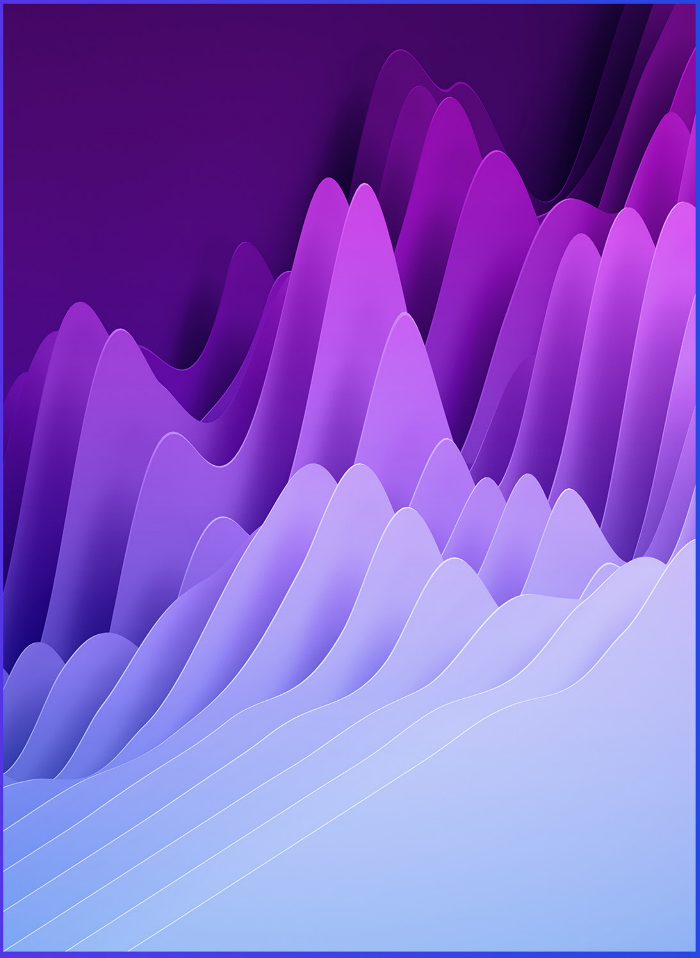
# Middle East & South Asia (MESA) Tax Guide



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# Introduction

Welcome to the 2022 edition of the MESA Tax guide — our flagship thought leadership publication on tax in the Middle East and South Asia (MESA) region.

As we publish this insight, many economies within the region are showing positive signs of economic recovery and growth from the COVID-19 pandemic. This recovery was possible because of the remarkable resilience businesses have shown during the pandemic to withstand the economic shock. CEOs today are more hopeful toward growth than they were 18 months ago.

Globally, the COVID-19 pandemic has accelerated transformation within the tax framework and brought greater synergy among the tax authorities. A good example of this would be the G7 tax deal whereby, on principle, the G7 group has agreed to work closely to stop the world's larger companies from avoiding tax by moving operations between countries.

In the MESA region, relevant authorities are making strides towards a more mature tax system by introducing substantial tax changes. For example, the implementation of VAT in Oman, the introduction of a new transfer pricing regulation in Qatar, and the Economic Substance rules in the UAE and Bahrain, among others, are evidence that the tax transformation globally is now reflected within the region.

Today, it would be fair to say that tax has taken center stage in the boardroom discussions. The KPMG 2021 CEO Outlook Pulse survey found that about 500 CEOs in 11 key markets have ranked tax risk second in the list of growth barriers for the next three years. This Pulse Survey ascertained that the CEOs have started emphasizing the tax function's role in the successful pursuit of organizational goals.

The post-pandemic tax landscape and the constant changes in the tax and regulatory policies mean that today's tax leaders cannot function like their counterparts of yesterday. Time after time, tax leaders at KPMG have also suggested how important it is for executive teams to prioritize tax issues in the boardroom further and how organizations can leverage tax transformation and digitization to identify and achieve their goals better.

Furthermore, the tax leaders of today need to be up-to-date with the changing tax landscapes and keep themselves informed of the cross-border taxation policies. The intent behind publishing this guide is to include a summary of the general framework required to do business in each of the countries, along with some insight on tax and regulatory provisions.

Our 'thinking beyond borders' approach is imbibed in our tax professionals throughout the global network of KPMG member firms and helps us deliver long-lasting value to our clients as well as the communities in which we operate. Our tax professionals work closely with the clients to understand their challenges and offer tailored services to these organization.

We are hopeful that you will find this helpful publication. If you have any further queries or seek assistance in deciphering the regulations, feel free to reach out to your KPMG contact. Alternatively, you can also reach out to the relevant country's contact specified in this publication.

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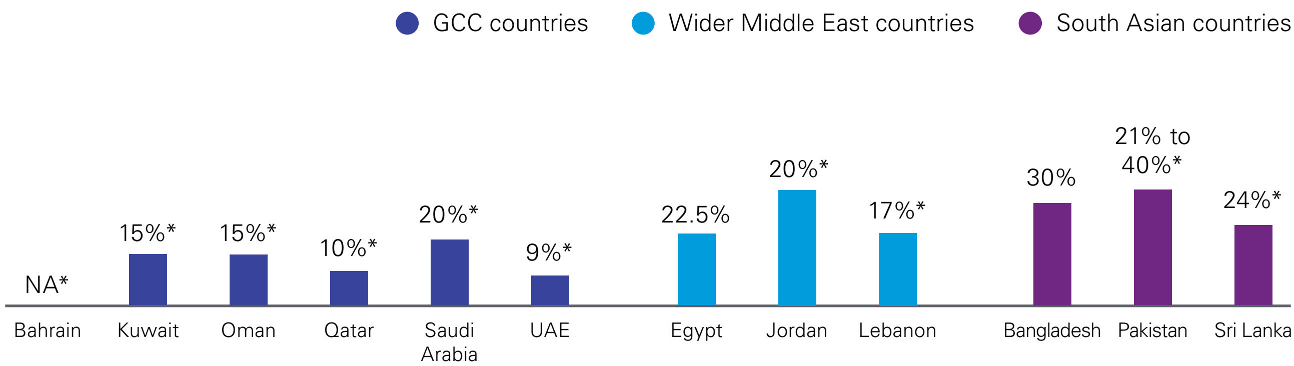
# MESA Tax overview

## Direct taxes — individual, corporate, capital gains and branches/ permanent establishments

### Corporate tax rates




**Source:** Respective KPMG member firms in the MESA region

*** Notes:**

Bahrain: For Oil and Gas industry, the rate is 46%.

Jordan: The corporate tax rate in general is 20%. Banks are taxed at 35%. Industrial Companies are taxed 15% (for 2019 and rate will be increased by 1% annually to reach 20% in the year 2024). Companies in Telecom, Electricity generation and distribution, mining, insurance, and all other financial sectors are taxed at 24%.

In addition, a National Contribution tax is imposed: 1% for trade, retail and service sector (other than financial sector), 4% for financial services, 2% for Telecom; 7% for the primary raw material's mining companies, 3% Banks and Power Sector.

Kuwait: Applicable on taxable income exceeding KWD 5,250.

Lebanon: For Oil and Gas industry, the rate is 20%.

Oman: For Oil and Gas upstream industry the rate is 55%. The rate is reduced to 3%/Nil for certain taxpayers subject to conditions. Oman has announced to economic stimulus plan (for the tax years 2020 and 2021) under which the rate is reduced to 12% (from 15%) for certain taxpayers and 1% rebate is also provided subject to conditions.

Pakistan: For the tax year 2022, small companies are subject to corporate tax at the rate of 21% whereas all other non-banking companies are subject to corporate tax at the rate of 29% except oil exploration companies whose tax rate is 40%. The banking companies are subject to corporate tax at 35%.

Qatar: A 10% CIT rate is applicable on the foreign profit shareholding of Qatar-resident companies. However, companies in the Oil and Gas industry are subject to CIT at the rate of 35%.

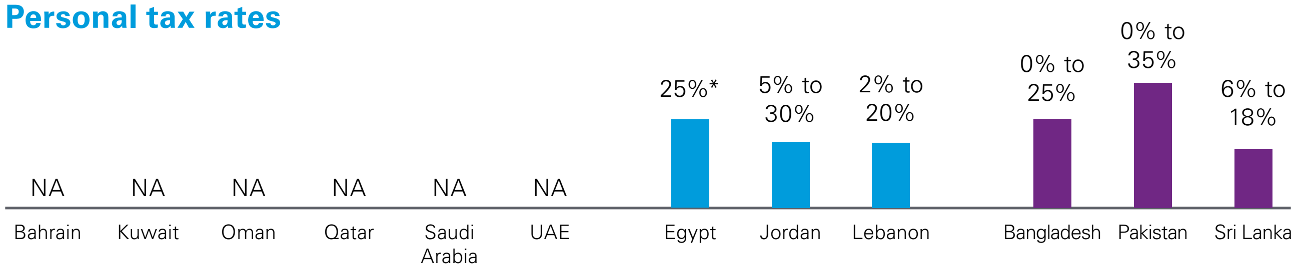
Sri Lanka: Exports, construction, agro processing, tourism and health care are taxed at 14%. Liquor, tobacco, betting and gaming industries are taxed at 40%

UAE: The statutory rate on all annual taxable profits above AED 375,000 shall be subject to 9% rate. 0% for taxable income up to AED 375,000. All MNEs that fall under the scope of Pillar 2 of the BEPS 2.0 framework (i.e. consolidated global revenues in excess of AED 3.15 billion) shall be subject to different rates as per the OECD Base Erosion and Profit-Sharing rules. Businesses engaged in the extraction of natural resources will remain subject to Emirate level corporate taxation at 55% and be outside the scope of UAE Corporate Tax. The banking operations will be subject to UAE. Further details on the current 20% Emirate level corporate taxation on branches of foreign banks is yet to be published by tax authorities.

Yemen: Mobile phone companies are taxed at 50%, Oil and Gas companies and international telecom companies are taxed at 35%.

Saudi Arabia: Companies engaged in oil and hydrocarbons production are taxed at 50 to 85%.

### Personal tax rates

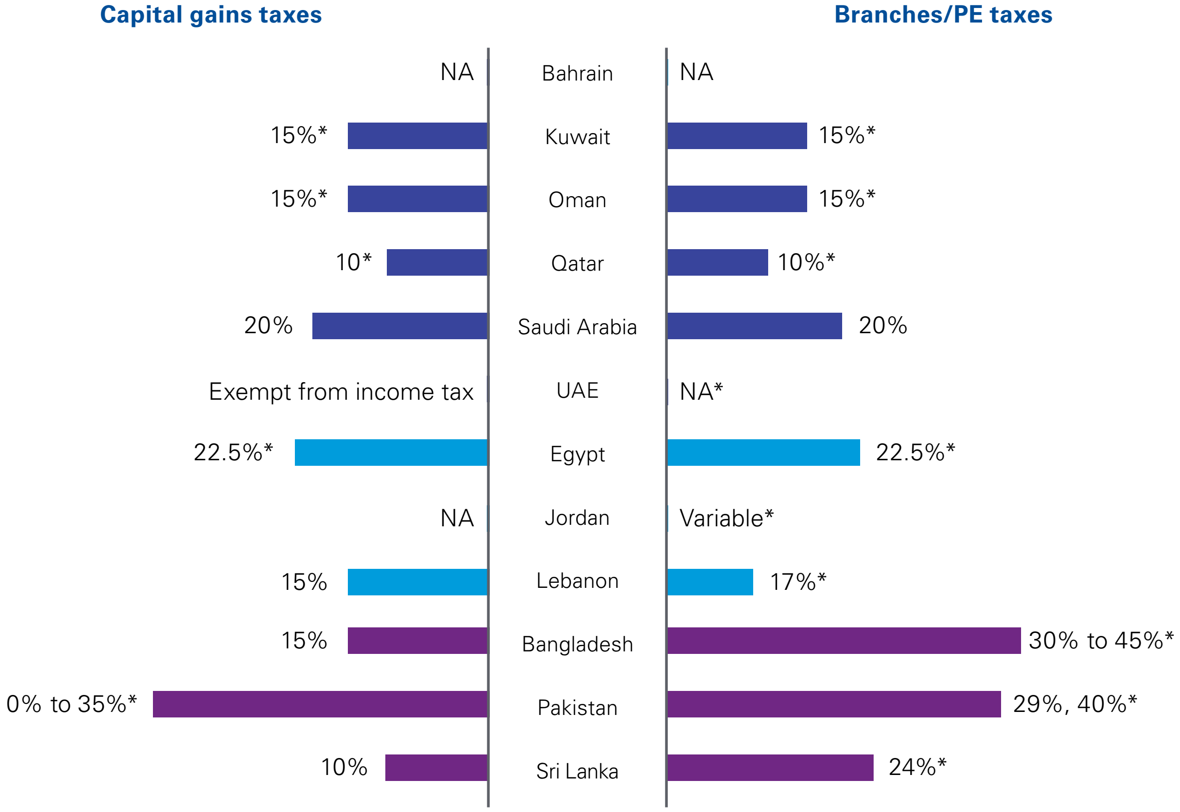



***Notes:**

**Source:** Respective KPMG member firms in the MESA region

Egypt: Indicates that the rates are progressive.

## Capital gains, branches/permanent establishment taxes




**Source:** Respective KPMG member firms in the MESA region

***Notes:**

Bangladesh: Mobile operators are taxed at 45% (40% in year of IPO), Tobacco companies at 45% and bank, insurance, financial institutions and mobile financial service organisations at 40% (listed: 37.5%).

Egypt: For capital gains taxes on listed securities, a 10% tax is applicable. This is on hold until 31 December 2021. In order to establish a branch, there should be a contract in place between either the company as a private sector company and the government or with another private sector company. Alternatively, it is possible to establish a fully owned foreign subsidiary.

Jordan: Branches' profit is taxed based on nature of its operation.

Kuwait: There is no specific tax rate provided in the Kuwait tax law for capital gains. Generally, capital gains derived from the sale of assets are treated as normal business profits and subject to income tax at the standard rate of 15%. In addition, Kuwait domestic tax law does not provide for a definition of a Permanent Establishment (PE) or taxable presence. In practice, the Kuwait tax authority (KTA) considers even a single day's visit of the company's officials in Kuwait or earning income of Kuwait source irrespective of any physical presence in Kuwait, sufficient in determining the taxable presence. Net profits of branches of foreign Companies in Kuwait are considered subject to tax at a fat rate of 15%.

Lebanon: The 17% is on taxable profits and a deemed distribution tax of 10% on profits less corporate income tax is also applicable on branches/PE.

Pakistan: Capital gains tax depends upon the holding period and the nature of investment. For PE, the corporate rate is 29% except for PEs of oil exploration companies where the rate is 40%.

Qatar: A 10% CIT rate is applicable on the foreign profit shareholding of the Qatar Branch/PE.
There is no separate computation mechanism and capital gains are treated as part of business income in the CIT return and subsequently a 10% CIT rate will apply on the capital gains.

Oman: For Oil and Gas upstream industry, the rate is 55%. The rate is reduced to 3%/Nil for certain taxpayers subject to conditions. Oman has announced the economic stimulus plan (for the tax years 2020 and 2021) under which the rate is reduced to 12% (from 15%) for certain taxpayers and 1% rebate is also provided subject to conditions.

Sri Lanka: Exports, construction, agro processing, tourism and health care are taxed at 14%. Liquor, tobacco, betting and gaming industries are taxed at 40%.

UAE: Foreign entities and individuals will be subject to UAE CT only if they conduct a trade or business in the UAE in an ongoing or regular manner. The statutory rate on all annual taxable profits above AED 375,000 shall be subject to 9% rate. 0% for taxable income up to AED 375,000. All MNEs that fall under the scope of Pillar 2 of the BEPS 2.0 framework (i.e. consolidated global revenues in excess of AED 3.15 billion) shall be subject to different rates as per the OECD Base Erosion and Profit-Sharing rules.

## Number of tax treaties


**Source:** Respective KPMG member firms in the MESA region

# Indirect taxes and withholding taxes

## Indirect taxes

| GCC countries | | | Wider Middle East countries | | | South Asian countries | | |
|---|---|---|---|---|---|---|---|---|
| | VAT | Customs | | VAT | Customs | | VAT | Customs |
| Bahrain* | 10% | 5% to 125% | Egypt* | 14% | 0% to 60% | Bangladesh | 15% | 5% to 25% |
| Kuwait* | NA | 5% | Jordan* | 16% | 0% to 35% | Pakistan* | 0% to 19.5% | Variable |
| Oman* | 5% | 5% | Lebanon* | 11% | Variable | Sri Lanka | 8% | 0% to 30% |
| Qatar* | NA | 5% | | | | | | |
| Saudi Arabia | 15% | 5% to 25% | | | | | | |
| UAE | 5% | 5% to 10% | | | | | | |

**Source:** Respective KPMG member firms in the MESA region

***Notes:**

Bahrain: The standard rate of VAT has been increased to 10% with effect from 1 January 2022. There is a transitional period of one year until 31 December 2022 wherein VAT at 5% should be charged on contracts signed before 24 December 2021.

Egypt: Export of commodities or services is subject to VAT at 0%, machinery and equipment will be subject to 5% VAT (except for buses and passenger cars that are subject to the standard VAT rate at 14%) in addition to other tax rates and tax values mentioned under the list of commodities and services subject to table tax which is attached to the VAT law. The above customs rates are applicable except for passengers cars.

Jordan: Public listed company are subject to 0.6% stamp duty, while all other companies are charged 0.3% stamp duty for any contract signed.

Kuwait: We understand that the VAT law has been drafted by the Kuwait MoF, however Parliament clearance is awaited. Once the Parliament approves the law, then formal dates with respect to go-live and executive regulations will be announced.

Lebanon: Customs rates in Lebanon are either determined in percentage or paid as a lump sum per unit of imported products.

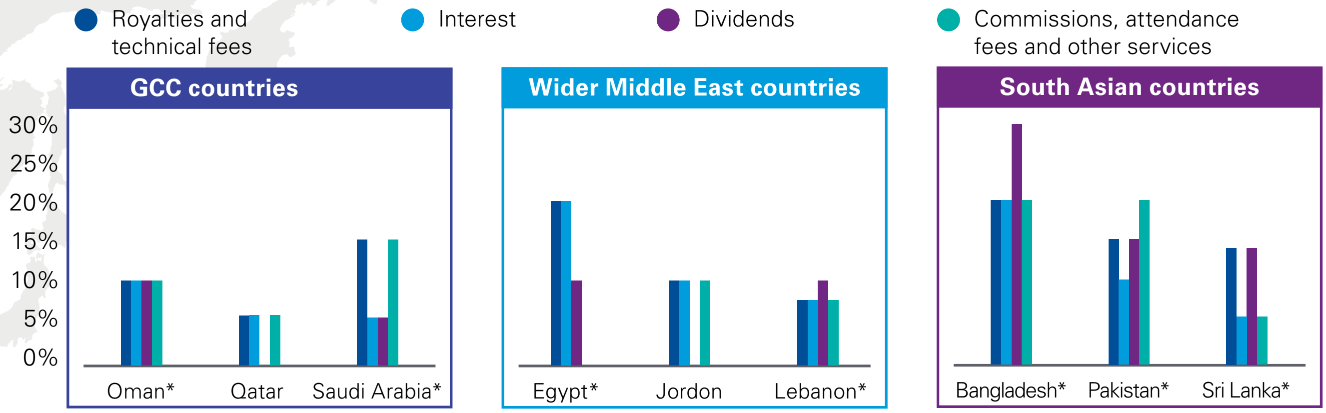
Oman: VAT at the standard rate of 5% was implemented in Oman with effect from 16 April 2021. VAT implementation has been phased by staggering the VAT registration based on the annual value of supplies. By 1 April 2022, all persons with annual supplies exceeding OMR 38,500 will be required to compulsorily register. All persons with annual supplies/expenses exceeding OMR 19,250 may apply for voluntary registration at any point in time. In addition, the scope of excise tax which was introduced with effect from 15 June 2019 has been expanded to cover sweetened beverages (taxable at the rate of 50%) with effect from 1 October 2020.

Pakistan: VAT on goods is 17%, while on services, it ranges from 3% to 16%, while telecom services are taxed at 16% to 19.5%. The customs rate depends upon Harmonized System (HS) code.

Qatar: VAT law is likely to be introduced in 2022 with the effective implementation in early 2023. Excise tax is applicable on Carbonated drinks at 50%, Energy drinks at 100%, Tobacco and tobacco products at 100%, Special purpose goods at 100% (e.g. alcoholic beverages and pork products).

UAE: Base rate is 5%, while 10% is only for specific imports. In addition to customs, excise tax applies to tobacco, smoking products and carbonated/sweetened/energy drinks.

## Withholding taxes




**Source:** Respective KPMG member firms in the MESA region

***Notes:**

Bahrain, Kuwait and UAE do not have withholding taxes. However, under the Kuwait tax retention regulations, all corporate bodies are required to retain 5% from each payment made to all beneficiaries until such time that the beneficiary provides a valid No objection letter issued by the KTA for the release of the retained amount.

Bangladesh: Withholding tax applies to income of non-residents. In particular, dividends are taxed at 20% and 30% where beneficiary is a company and individual, respectively. Reduced rates are applicable for DTAA countries.

Egypt: For dividends, a lower tax rate of 5% applies without deducting any costs where ownership in the distributing entity exceeds 25% of the share capital or voting rights, provided the participation is held for minimum two-year period. A 5% withholding tax would apply to dividends made by foreign registered branches and it is deemed to be distributed within 60 days following the financial year end.

Lebanon: For royalties and technical fees, commissions, attendance fees and other services, it is 7.5%. For interest on bank accounts, the rate is 10% and for interest paid to non-residents it is 7.5%, rate on dividends is 10%.

Oman: Withholding tax (WHT) on interest and dividend has been suspended till the tax year 2024. Also, certain exemption from WHT have been provided for services. Please refer to specific discussions under Oman later in this guide. The above rates are as per Oman domestic tax law and subject to relevant Double Taxation Avoidance Agreements (DTAA), if any.

Pakistan: Tax on commissions vary between 8% and 12%. Attendance fees is taxed at 20%.

Saudi Arabia: Withholding tax on technical, consultancy and certain other service fees is 5% to third parties and 15% to related parties.

Sri Lanka: The tax on commissions, attendance fees and other services is 14% for a non-resident.

# Accounting rules

## Loss carry forward

**Current year**

**Years 3**
— Kuwait
— Lebanon

**Years 5**
— Egypt
— Jordan
— Oman*
— Qatar

**Years 6**
— Bangladesh
— Pakistan
— Sri Lanka

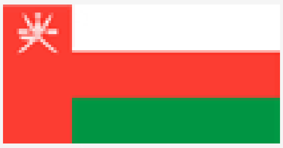
**Note:** For Saudi Arabia, the period is infinite. For all other countries, it is not applicable.
* For Oman, Companies and establishments are allowed unlimited carry forward of tax loss for tax year 2020.

**Source:** KPMG member firms in the MESA region

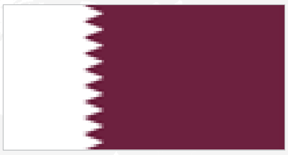
# GCC countries

Bahrain

Kuwait



Oman



Qatar

Saudi Arabia

UAE

# Bahrain

The Kingdom of Bahrain has long been a regional financial center but has recently diversified into technology, manufacturing and logistics. Bahrain welcomes foreign investment including allowing 100% foreign ownership in many sectors. In the last few years, Bahrain has also ranked consistently as the best place in the GCC for expats to live and work.

Bahrain has a limited corporate income tax (CIT) that applies only on entities engaged in the exploration, production or refining of hydrocarbons. It introduced a value added tax (VAT) that applies to supplies of goods and services from 1 January 2019. VAT and other taxes are administered by the Bahrain tax authority — the National Bureau for Revenue (NBR). Bahrain, as a member of the Organisation of Economic Cooperation and Development (OECD) Base Erosion Profit Shifting (BEPS) Inclusive Framework (IF), has committed to align national regulations and processes with the IF, and implement the BEPS minimum standards. Whilst Bahrain has not made any announcements on the potential introduction of a broader CIT, we have witnessed the recent implementation of the following regulations:

1. Economic Substance (ES) rules: The ES rules impose substance requirements for Bahraini entities undertaking geographically mobile activities in, from or through Bahrain — in essence to target corporate structures that shift income or profits to entities in jurisdictions with no or low tax regimes.
2. Ultimate Beneficial Ownership (UBO) disclosure rules: UBO rules identify who has a controlling ownership of an entity — ultimately, this is a natural person(s). The requirement for companies incorporated in Bahrain, and the branches of foreign companies (excluding the Central Bank of Bahrain (CBB) licensed entities) setup in the Kingdom to provide details of their UBOs is a tool that the Bahrain Government has enacted to demonstrate transparency and compliance with global regulations.
3. Country by Country reporting (CbC): CbC reporting requires multinational enterprise groups (MNE) to file a CbC report, setting out financial information for each tax jurisdiction where the group has a formal presence. The objective of a CbC report is for tax authorities around the world to assess risks related to transfer pricing and BEPS for MNE groups.

More recently, on 1 July 2021, Bahrain was one of the 130+ IF member countries to approve a statement providing a framework for international tax reform including the proposal that international businesses pay a global minimum tax of 15%. As Bahrain only has a limited CIT, it will need to make some key decisions in the short to medium term:

— Implement the Income Inclusion Rule (IIR) and CIT on all businesses; or

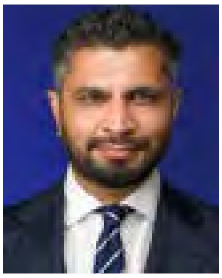
— Implement the IIR and CIT on select businesses.

If it does nothing, profits generated by companies in Bahrain could be subject to tax in other jurisdictions. In essence, Bahrain will lose out on taxing rights. For example:

— An ultimate parent entity (UPE) located in Bahrain may still end up paying top up tax in another jurisdiction on profits generated locally;

— An UPE in a country that has implemented the IIR with subsidiaries in Bahrain would include and pay the top up tax in respect to the low taxed Bahrain subsidiaries — Bahrain would concede the tax revenue that may have been generated from the profits of the Bahrain subsidiaries to another jurisdiction.

Bahrain is already committed to the IF having introduced CbC and ES rules. Bahrain will want to continue to ensure that it is not included in the EU Blacklist of Uncooperative Jurisdictions — therefore, it is likely that Bahrain will be seriously considering the implementation of the IIR and CIT.



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# Regulatory/Legal

## Setting up a business

Bahrain is strategically located in the heart of the Gulf and has an open commercial environment with highly competitive features, including some of the region's lowest business costs. Bahrain is a proven hub for financial institutions and more recently for technology, manufacturing and logistics businesses that want to operate in the GCC.

Foreign investment and 100% foreign ownership are permitted in general, with a limited number of business activities reserved by law for Bahraini and/or GCC citizens and companies only, such as general trade and retail activities where 51% Bahraini participation is required. Numerous Free Trade Agreements (FTAs), including such as with the United States of America and Singapore, enable foreign investors to establish 100% ownership entities. Further exemptions may be approved on a case-by-case basis.

All companies must be registered with the Ministry of Industry, Commerce and Tourism (MoICT) to obtain a Company Registration (CR) certificate before commencing business.

Bahrain invests significantly in integrated logistics, business and infrastructure and has a mature regulatory environment. Businesses can be established in the Bahrain International Investment Park (BIIP) and the Bahrain Logistics Zone (BLZ) which is designed to offer local, regional and international companies a base to operate and take advantage of Bahrain's position to cater to the Northern Gulf market and to access the GCC markets via various means of transportation.

## Commonly used business entities

### Company limited by liability — WLL or BSC (C)

Full foreign ownership in a 'With Limited Liability (WLL)' company is generally permitted except for companies that undertake business activities that require a Bahraini Partner owning at least 51% of company's capital. The minimum share capital requirement for a WLL has been removed. However, certain activities may still require a WLL to be formed with a minimum share capital. A WLL can now have one or more (no limit) shareholders. Previously, WLLs required a minimum of two and could only have a maximum of 50 shareholders. The share capital of WLLs must be divided into equal shares. A WLL company may be a shareholder in another company. Alternatively, a Bahrain Shareholding Company (Closed) (BSC (c)) can be established. A BSC (c) is a closed joint stock company consisting of not less than two persons — who subscribe for negotiable shares that are not offered to the public for subscription. The issued capital must not be less than BHD 250,000.

### Single Person Company (SPC)

All SPCs have been merged with WLL with effect from 1 April 2021.

### Holding Company

A holding company may take the form of a BSC (c) or a WLL. The registration requirements will depend on the legal form chosen. A holding company must own more than 50% of the shares of its subsidiaries.

### Branch Offices: Operational, Representative, or Regional Office

Branches may be registered as an operational office, a representative office, or a regional office of the parent company. The parent company shall bear all liability of its branch. Business operations are allowed only for an operational office while representative and regional offices are only permitted to undertake marketing and promotional activities.

| | |
|---|---|
| Main legal formalities for the formation of a company or registration of a branch | The above forms of entities have to be incorporated under the Bahrain Commercial Companies Law (21) of 2001.<br><br>Required documents are to be submitted through the MoICT's online platform 'Sijilat' include:<br><br>— Passport/ID copies of individual shareholders; or commercial registration details of corporate shareholders;<br><br>— Commercial address details;<br><br>— Draft memorandum and articles of association;<br><br>— Capital deposit certificate (after preliminary approval); and<br><br>— Financial auditor's report or evaluation letter for in-kind capital (if any).<br><br>Additional requirements may apply based on the nature of activities. |
| Currency/Monetary restrictions | There are no foreign exchange control restrictions on repatriation of profits by way of dividends and other payments. |
| Regulatory requirements for Financial Services | Governed by the Central Bank of Bahrain (CBB). |

## Accounting/Finance for companies and branches of foreign companies

| | |
|---|---|
| Financial statements | Companies are required to prepare the accounts in accordance with International Financial Reporting Standards (IFRS). |
| Audit requirements | All public and closed joint stock companies, WLLs and branches of foreign companies are required to have an annual audit. The auditors appointed at the annual shareholders' meeting must be registered with the MoICT. |
| Book year/Accounting currency | The company shall have a financial year that starts on the 1 of January and ends on the 31 December each year, unless otherwise provided for in the company's articles of association. The first financial year shall be an exception. It shall begin at the company's incorporation date and end with the financial year end. |

# TAX

| | |
|---|---|
| Approval requirements | There is currently no specific approval required for tax purposes. Tax Residency Certificates are issued by the NBR on request. |
| Advance tax rulings/ Advance pricing agreements (APA) | There are no advance pricing rulings/ agreements. |
| Income tax compliance | Bahrain has a limited CIT regime at 46% that only applies to entities engaged in the exploration, production or refining of hydrocarbons in Bahrain. Bahrain does not impose capital gains tax, withholding taxes (WHT) or other taxes on the repatriation of profits.<br><br>Anti-avoidance rules are currently not applicable. |
| Double Taxation Avoidance Agreements (DTAA) | Bahrain has concluded approximately 45 DTAAs, including the United Kingdom, Ireland, Bermuda, Isle of Man, Singapore, South Korea, Seychelles, Netherlands, Luxembourg, Malaysia, France and Hungary. |
| Transfer pricing | There are no fixed assets pricing rules but Bahrain has introduced CbC reporting for financial years commencing 1 January 2021. Bahrain has ratified the Multilateral Competent Authority Agreement (MCAA) on the automatic exchange of CbC reports — published in Official Gazette no. 3508 of 28 January 2021. Bahrain has also issued the resolution for the exchange of CbC reports — Ministerial Order (MO) No (28) of 2021 dated 3 February 2021 with respect to CbC reporting. While the MO clearly states that the first reporting year is 2021, the MoICT has communicated to relevant companies that the first reporting year is 2020 and CbC report and notification must be submitted by 28 February 2022.<br><br>CbC applies to all businesses that have a legal entity or branch in Bahrain and are members of a MNE groups with annual consolidated revenue of at least BHD 342 million. An entity that is a member of an MNE group that had at least BHD 342 million consolidated group revenue in the preceding financial year is required to file a CbC notification and/or a CbC report.<br><br>An entity subject to the CbC rules is referred to as a Constituent Entity (CE). Each CE of an MNE Group resident in Bahrain for tax purposes will be required to submit a notification no later than the last day of the reporting financial year of the MNE Group. The notification should identify whether it is the UPE of the MNE Group. Where the CE is not the UPE, the notification should include the identity and tax residence of the Reporting Entity (RE).<br><br>In essence, the CbC notification obligation applies to all Bahrain resident entities that are part of a MNE Group whether or not headquartered in Bahrain. For MNE groups with a financial year end of 31 December 2021, the first notification deadline is 31 December 2021.<br><br>Each UPE (i.e., an RE) resident in Bahrain is required to file its CbC report in compliance with the requirements in Article 5 of the MO no later than 12 months after the last day of the reporting financial year of the MNE group. In essence, the CbC filing obligation only applies to Bahrain-headquartered groups. For MNE groups with a financial year end of 31 December 2021, the first Bahrain CbC report filing deadline is 31 December 2022.<br><br>As Bahrain is a non-reciprocal jurisdiction, the MO does not include a requirement for a Bahrain resident CE of an MNE Group headquartered outside Bahrain (UPE outside Bahrain) to submit the CbC under the secondary filing mechanism (only a notification is required for these entities). |

| | |
|---|---|
| Ultimate beneficial ownership (UBO) rules | The MoICT has issued a Ministerial Order which requires all Commercial Registration (CR) holders in Bahrain to disclose the information of the UBO for each corporate shareholder via the MoICT's online portal (Sijilat).<br><br>The UBO is a natural person who ultimately owns or controls a CR, and/or the natural person on whose behalf a transaction is being conducted.<br><br>It also includes those persons who exercise effective control over a legal person or arrangement and have control on any CR through means other than ownership. |
| Economic Substance Regulations (ESR) | The MoICT and the CBB issued a Directive OG/499/2018 (CBB Directive) on 22 November 2018 and a Ministerial Decision no. 106 (MO 106) on 27 December 2018 (collectively 'ES rules' or 'ESR') imposing substance requirements for Bahraini entities undertaking geographically mobile activities in, from or through Bahrain. The ES rules apply to entities (corporations, branches and partnerships) that are carrying on one or more of the following relevant activities:<br>— Distribution and service centre<br>— Headquarters<br>— Holding company<br>— Leasing<br>— Shipping<br>— Intellectual property (IP)<br>— Banks<br>— Financing companies<br>— Insurance<br>— Investment firms (CBB categories 1 & 2)<br>— Fund administrators<br><br>Some of the above activities are regulated by the CBB and therefore, those CBB-regulated entities will need to report to the CBB. Entities undertaking one or more of the relevant activities must meet the ES tests — they must prove that they have genuine commercial operations and management in Bahrain. The deadline to file the ES return for Bahrain entities is three months from the end of their financial year. For the financial year ended 31 December 2020, the deadline was 31 March 2021. However, the NBR has introduced a new online portal from August 2021 and extended the deadline to 18 September 2021. Businesses that have already filed their returns will need to refile through the new updated online portal. Going forward, the deadline will continue to be three months from the financial year end.<br><br>For the financial year ended 31 December 2021, the deadline was 31 March 2022. However, for entities who did not have their financial statements for FY 2021 audited by 31 March 2022, the MoICT has extended the deadline for ES return submission to mid-August 2022. Further, entities who have submitted their ES returns for FY 2021 by 31 March 2022 based on unaudited financial statements may be required to resubmit their ES return based on their audited financial statements. |
| Value added tax (VAT) | The standard rate of VAT has been increased to 10% with effect from 1 January 2022. There is a transitional period of one year until 31 December 2022 wherein VAT at 5% should be charged on contracts signed before 24 December 2021. |

# Tax regime at a glance

| | |
|---|---|
| CIT rate | 46% only on entities engaged in the exploration, production or refining of hydrocarbons. |
| Capital gains tax rate | NA |
| Branches/Permanent Establishments | NA |
| Personal income tax | NA |
| Alternate minimum tax | NA |
| Withholding tax | |
| Royalties and technical fees | NA |
| Interest | NA |
| Dividends | NA |
| Commissions, attendance fees and other services | NA |
| Carry forward of losses | NA except for above companies on which CIT is applicable |
| Tax year | NA except for Oil and Gas companies which follow calendar year |
| CFC and Thin Capitalization rules | NA |
| Tax treaty network | Approximately 45 countries |
| Wealth tax, estate tax, gift tax | NA |
| Indirect taxes | |
| VAT | 10% (w.e.f. 1 January 2022) |
| Customs general rate | 5% to 125% |
| Excise tax | — Tobacco — 100%<br>— Carbonated drinks — 50%<br>— Energy drinks — 100% |


## Social insurance and unemployment contribution rates revised

The Social Insurance Organisation (SIO) has recently announced the revised social insurance and unemployment insurance contribution rates. The updated rates have been provided below (with maximum monthly income subject to the contribution capped at BHD 4,000/-):

| Revised rates effective from 1 May 2022 | | |
|---|---|---|
| **Particulars** | **Bahraini nationals** | **Expatriates** |
| Employee | 6% + 1%* | 1%* |
| Employer | 14% | 3% |

| Revised rates effective from 1 January 2023 | | |
|---|---|---|
| **Particulars** | **Bahraini nationals** | **Expatriates** |
| Employee | 7% + 1%* | 1%* |
| Employer | 15%** | 3% |

## Property transfers

Bahrain levies a 2% levy on the value of the property on the transfer or registration of real estate. If the levy is paid within 60 days of the transaction date, the levy is reduced to 1.7%.

## Levy on hotels and restaurants

A 5% levy is imposed on hotels and restaurants classified as 'tourist' restaurants by the MoICT. Typically, this 5% levy, along with a 10%(optional) service charge, is passed on by hotels and restaurants to customers.

*unemployment insurance contribution
**employers contribution for Bahraini nationals will increase annually by 1% until it reaches 20% in January 2028.

# Kuwait

Oil reserves in Kuwait make up 8.5% (as per latest update by OPEC) of the oil reserves in the world and its economy significantly relies on oil-based revenue. The oil prices have recently rebounded following the increase in the global demand for oil. GDP is expected to bounce this year due to stronger oil exports and private consumption as the impact of the crisis is fading and foreign demand improving. That said, uncertainty over new variants of the virus and political deadlock over debt financing pose risks to the outlook,

The key challenges would still remain dependency on the oil sector and implementation of major structural reforms toward the non-oil sector economy.

'Kuwait Vision 2035' aims to transform Kuwait into a world class financial and commercial center, with the private sector leading economic activities, fostering competitiveness, increasing productivity, supported by viable public institutions, adequate infrastructure, legal framework and enabling business environment.

In line with 'Vision 2035', Kuwait has streamlined its regulations to attract foreign capital and is making an intensive effort to diversify into non-hydrocarbon sectors. This is expected to help the country attract greater foreign investment.

Kuwait was ranked 83rd out of 190 during 2020 in terms of ease of doing business by the World Bank Group.

Kuwait's key development initiative includes the following:

— Moving away from an oil-based economy (Kuwait's non-oil growth is expected to hit 4.7% by 2022)

— The government is reducing the subsidies, encouraging PPPs (public private partnerships) to finance infrastructure projects.

— Proposal for additional revenue measures in the form of introduction of Value Added Tax (VAT) and excise duty expected during 2022 based on recent media reports.

— To attract foreign companies to invest in Kuwait, offering them the ease of doing business, the Kuwait Direct Investment Promotion Authority (KDIPA) continues to improve their systems and bring together all key stakeholders, such as the Ministry of Commerce and Industry, the Ministry of Social Affairs and Labor, etc., to streamline establishment and licensing procedures.

— Kuwait Government is taking reasonable steps to cooperate with peers for a more tax-transparent environment by taking forward Organisation for Economic Co-operation and Development initiatives of Base Erosion and Profit Shifting (BEPS) action plans by signing Multilateral Instruments, Country-by-Country reporting and Common Reporting Standard reporting, etc.

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# Regulatory/Legal

## Setting up a business

Generally, foreign ownership in Kuwaiti companies is restricted to a maximum of 49%.

The Foreign Direct Investment law allows foreign individual or entities to own up to 100% of the shares in a Kuwaiti company provided that the foreign investor is to undertake a permissible activity in a permissible sector. The Foreign Direct Investment Law no. 8 of 2001 has now been superseded by Direct Investment Law no. 116 of 2013 (DIL). Furthermore, Kuwait Direct Investment Promotion Authority (KDIPA) issued executive regulations to the DIL on 14 December 2014.

DIL is an initiative of the Kuwait Government to attract foreign investment in almost all the sectors of the economy with only limited exclusions. It offers up to 100% of foreign ownership, tax credits and custom duty exemption for foreign companies intending to set up a business presence in Kuwait.

The DIL allows following options to foreign companies to set up operations in Kuwait:

- Kuwaiti company with up to 100% foreign ownership;
- A commercial branch of a foreign company; or
- A representative office without engaging in commercial activities.

## Commonly used setup options for doing business in Kuwait

Foreign companies have the option to carry on business in any of the following forms:

- Through a joint venture
- By establishing a Kuwaiti Shareholding Company i.e.,
  - Limited Liability Company (W.L.L.);
  - Closed joint stock company; or
  - Public joint stock company.

Companies Law include certain other forms of companies in Kuwait, including:

- General Partnership Company;
- Limited Partnership Company;
- Partnership Limited by Shares;
- Professional Services Company;
- Single Person Company; and
- Holding Company.

Apart from the above options, a foreign company that intends to carry on business activity but does not wish to incorporate a company may carry on business under the sponsorship of a Kuwaiti-registered agent or sponsor.

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| Main legal formalities for the formation of a company or registration of a branch | Shareholding companies incorporated in Kuwait are regulated by Companies Decree Law no. 25 for the year 2012 which put various restrictions on the minimum amount of share capital, number of shareholders and business sectors available to different kinds of companies formed under the law.<br><br>In the case of a wholly owned GCC company, a Branch office of the company can be established in Kuwait. A license for the branch office will be issued by the Ministry of Commerce and Industry (MOCI) based on the license of the GCC entity and in line with current Kuwait regulations.<br><br>For the non-GCC entities operating in Kuwait, there is no formal registration or separate legal status of foreign branches in Kuwait except under the new Foreign Direct Investment Law no. 116 of 2013 Regarding Promotion of Direct Investment in the State of Kuwait (please refer to our comments above in this respect). However, in practice under sponsorship/agency arrangements, foreign companies operate in Kuwait as an extension of their head office. Under this arrangement, a Kuwaiti merchant or a Kuwaiti entity is appointed as a sponsor/agent of the foreign entity. The agency agreement should set out the authority and responsibility of the principal (foreign entity) and of the Kuwaiti agent.<br><br>A joint venture has no separate legal existence under Commercial Companies Law. The form of Joint venture associations could be incorporated (as a company) or unincorporated (through an agreement between foreign partners, where each partner would be operating through a local sponsor). The sponsorship or agency agreement should be registered with the MOCI. |
| Currency/Monetary restrictions | Currently, there are no foreign currency restrictions in Kuwait. |
| Regulatory requirements for Financial Services | Financial services companies are generally governed, licensed and regulated by the Central Bank of Kuwait. These companies need be either Closed Joint Stock or Public Joint Stock in nature. |

## Accounting/Finance for companies and branches of foreign companies

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| Audit requirements | Annual financial statements must be prepared under International Financial Reporting Standards for all incorporated companies. However, no statutory filing of audited financial statements to the Ministry of Commerce and Industry is required for foreign branches (other than licensed by KDIPA).<br><br>Foreign companies who are filing tax declarations on an 'actual basis' are required to either file accounts prepared in accordance with International Financial Reporting Standards or audited income statement and balance sheet prepared for tax purposes only. |

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| Audit requirements (contd.) | In accordance with Article 13 and 15 of the Executive Bylaws of Law no. 2 of 2008, the following books and financial records are required to be maintained by corporate bodies:<br>— Balance sheet and profit & loss;<br>— Trial balance;<br>— General ledger;<br>— Contracts;<br>— Supporting documents such as invoices, vouchers, custom clearance document, payment advices, etc.;<br>— Stock record showing quantity and value for each item of stock; and<br>— Fixed assets register showing purchase date, their costs, addition, depreciation rate applied, written down value and addition and disposal for each item. |
| Requirements for foreign investors | A foreign investor operating under local agency agreement should register its agency agreement with the Ministry of Commerce and Industry to commence business under the sponsorship of a Kuwaiti individual or company.<br>In addition, a foreign company is also required to register with the Kuwait tax authority (KTA) within 30 days of starting the activity or signing the contract. |
| Book year/Accounting currency | The choice of accounting year depends on the entity. The KTA does not set the accounting year for entities. A taxpayer may select any accounting year with the approval of KTA. The duration of first accounting period can be between seven and eighteen months, with prior approval of KTA.<br>An entity may keep its books of accounts in any currency. In practice, net taxable profit is calculated in the same currency as that of books of accounts and using the average declared by the Central Bank of Kuwait (CBK), it is then converted to Kuwaiti Dinars for determination of the tax liability. However, KTA requires foreign entities to submit tax declaration in Kuwaiti Dinars. |

# Tax

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| Approval requirements | Approval is not required from KTA for setting up a business. However, an application for tax registration with KTA should be submitted within 30 days from the date of starting the activity or signing the contract related to Kuwait. |
| Advance tax rulings/ Advance pricing agreements (APA) | The tax law does not include any provisions for obtaining advance rulings or advance pricing mechanism for proposed agreements/transactions. However, in relation to signed agreements, a foreign company may file a letter with the KTA to obtain a No objection letter (NOL), authorizing the contract owner to release or not to retain 5% tax on the payment in relation the contract, which, in principle confirms that the company is not liable to tax for the contract in Kuwait. |
| Income tax compliance | Income tax compliance is governed by Amiri Decree no. 3 of 1955 and the Law no. 2 of 2008, along with its Executive Bylaws and circulars (collectively the income tax law).<br><br>The income tax law is applied only to foreign entities carrying on trade or business in Kuwait and is not applied, in practice, to Kuwaiti entities or Gulf Cooperation Council (GCC) countries. Tax liability of foreign companies investing in Kuwait for the fiscal years commencing after 3 February 2008 shall be calculated at a fat 15% tax rate on net taxable profit. This has replaced a range of progressive tax rates between 0–55% under the previous tax law.<br><br>The income tax law does not define a permanent establishment for companies operating in Kuwait. Accordingly, foreign companies earning Kuwait sourced income are considered by the KTA as subject to tax in Kuwait.<br><br>Under the current practices of KTA, even a single day's visit of the company's official to Kuwait creates a taxable presence for a foreign company in Kuwait. In cases where a contract provides for services in Kuwait, the entire contract, including the income from supply of material/equipment to Kuwait and services provided outside Kuwait, would be considered subject to tax in Kuwait.<br><br>Royalties/License fees earned from Kuwait are subject to tax irrespective of physical presence of the brand owner in Kuwait.<br><br>**Retentions**<br><br>The Ministry of Finance enforces tax retention regulations. The Ministerial Order (MO) 44 of 1985, Articles 16, 37 and 39 of the Executive Bylaws of Law no. 2 of 2008 (the tax retention regulation) require contract owners to retain 5% from payments to contractors/subcontractors or any beneficiary and to release tax retention only on the provision of a Tax Clearance Certificate (TCC) obtained by the beneficiary from KTA. Article no. 39 of the Executive Bylaw to Law no. 2 of 2008 states that the violating contract owner can be held responsible for paying taxes otherwise payable by the contractors/subcontractors or any beneficiary.<br><br>TCC is obtained from KTA following submission of tax declarations, completion of the tax inspection process and settlement of tax, as stated in the final tax assessment for each year.<br><br>KTA continuously reviews and changes its practices with respect to tax retentions and other tax matters, which are at times enforced retrospectively. |

## Income tax compliance (contd.)

### Capital Gains

Gains derived by a foreign company on the disposal of assets and shares are taxable as normal business profits. However, capital gains derived by a foreign company from mere trading in shares listed on Kuwait Stock Exchange (KSE) (provided no other activity or presence in Kuwait) are exempt from tax.

In addition to the above, income resulting from money lending is taxable in Kuwait under Law no. 2 of 2008.

Please note that there is currently no Kuwait income tax imposed on individuals.

### Zakat

According to Law no. 46 of 2006, Kuwaiti shareholding companies are required to pay Zakat at 1% of net profits. KTA, by reference to Ministerial Order (MO) no. 3 of 1989, concerning equality between citizens of Kuwait and the GCC in terms of tax matters, now requires non-Kuwaiti GCC companies (similar in nature of Kuwaiti shareholding company) with activities in Kuwait to register for Zakat and file annual Zakat declarations. KTA has become very active in this respect and has issued official letters to such entities.

In the past, KTA was accepting exemption of share of profits attributable to the Kuwait government for levy of Zakat. However, under the revised practices KTA is levying Zakat on the entire income i.e., including share of profits attributable to the Kuwait government.

We, however, understand that wholly owned Kuwait government entities are still exempt from Zakat. Although a formal clarification is still awaited from KTA on this matter.

### National Labour Support Tax (NLST)

According to Law no. 19 of 2000, all public Kuwaiti shareholding companies listed on the KSE are subject to NLST at 2.5% of their annual net profit, excluding share of profits attributable to a foreign body corporate and after certain allowable deductions.

## Ministerial Orders issued by the KTA regarding Electronic Submission

The Kuwait Ministry of Finance has issued Circular 3 of 2020 on 24 June 2020 regarding Procedures and Rules of Notification and Electronic Communication for tax matters. Previously, the KTA would require physical submission of the manual's hard copy at the KTA premises. However, recently the KTA has introduced a designated online portal, wherein authorized tax advisors of the foreign companies that are filing tax declaration with the KTA are required to submit the tax declarations, along with the supporting documents, to the online portal and in response, an email acknowledgement is provided by the KTA evidencing the submission of the tax declaration.

Furthermore, all correspondence from the MOF (for example, tax assessments, No objection letters etc.) would be sent through a functional e-mailbox rather than hard copies of letters that were previously sent by the KTA.

## Annual Tax Card for corporate income tax

On 1 January 2017, the Ministry of Finance (MoF) amended the rules regarding Tax Cards issued to foreign companies that are subject to corporate income tax (CIT) in Kuwait. Changes to the rules are as follows:

- Tax Cards will be issued annually, valid up to 31 December of each year. The MoF has issued Tax Cards for tax-registered companies for the year ended 31 December 2017.
- Tax Cards would be renewed each year by the submission of an application issued by the MoF for this purpose.

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| Annual Tax Card for corporate income tax (contd.) | — The MoF has confirmed that government entities, as well as public and private companies are prohibited from dealing with any corporate body that does not hold a valid Tax Card.<br>— A temporary concession is provided for companies that are starting up their business in Kuwait and are in the process of registration with the MoF and obtaining their Tax Card.<br>— Tax Card holders are required to return their Tax Cards to the MoF when they cease activities in Kuwait.<br>— Tax Cards are not to be considered as approval for the release of tax retention amounts or evidence for clearance of tax liabilities. |
| Tax Card no longer required for Kuwaiti companies | The MoF also cancelled a rule that required public and closed Kuwaiti shareholding companies to apply for Tax Cards for Zakat and the National Labour Support Tax (NLST) purposes. Accordingly, Tax Cards will no longer be issued to Kuwaiti companies.<br>Where a Kuwaiti company has a foreign shareholder that is subject to CIT, the foreign shareholder should apply for a Tax Card for corporate income tax, as discussed above. |
| Indirect tax compliance | Sale tax/Value Added Tax (VAT) is currently not levied. The Kuwaiti government has proposed the introduction of Value Added Tax in line with the other GCC countries. However, the precise introduction and implementation date has not been confirmed.<br>Goods imported are subject to customs duty at 5% of the invoice/assessed value of the goods. |
| Other tax compliance | Taxpayers are required to submit 'tax declaration' to KTA on or before the fifteenth day of the fourth month following the end of the taxable period.<br>Taxpayers have a choice to pay the amount of income tax due either in one lump sum payment, along with the tax declaration filing, or in four equal instalments. The instalments shall be due on or before the fifteenth day of the fourth, sixth, ninth and twelfth months, respectively, following the end of the taxable period.<br>In certain circumstances it is possible to obtain a maximum possible extension of up to 60 days for the purpose of filing tax declaration. Where such an extension is granted, no tax payment is necessary until the declaration is filed.<br>The tax law requires that a tax declaration must be prepared on an 'actual basis' by maintaining proper books of accounts for Kuwait operations.<br>In practice, tax declarations may be prepared on a 'deemed profit' basis which has been accepted by KTA. The profit percentage currently applied by KTA for companies for varied line of business ranges from 30% to 40% of the resultant taxable profit. KTA has issued Circular 1 of 2014 (Circular) requiring companies to file tax declaration on deemed profit at a profit percentage accepted by KTA per latest assessment or minimum at 30% deemed profit. KTA may apply an aggressive approach against companies who do not comply with requirements of Circular 1 of 2014 (Circular), resulting in a higher deemed profit percentage being applied and potential delay in the completion of tax assessment.<br>Failure to file tax declaration by the due date results in a penalty at 1% of tax as per the final tax assessment for each period of 30 days or a fraction thereof until the tax declaration is filed. In addition, failure to pay tax by the due date results in an additional penalty at 1% of tax for each period of 30 days or a fraction thereof from the due date to the date of settlement. |

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| Other tax compliance (contd.) | The tax law provides for a statute of limitation for five years from the date of submission of tax declaration or from the time KTA becomes aware of income earned by foreign companies in Kuwait. KTA argues that such statute of limitation does not apply where the taxpayer has not filed tax declaration. In such instances, KTA could levy tax and penalties right from the commencement of activities of such taxpayers in Kuwait.<br><br>A key additional requirement introduced by Circular no.1 of 2014 is that companies which file their tax declaration on an actual basis are also required to formally submit a report to KTA within three months of submitting the said tax declaration. The report should provide a computation of tax and incorporate the adjustments applied by KTA in its most recent tax assessment (provided it is for 2009 or later) of the company.<br><br>Following the tax inspection, an assessment letter is issued. If additional taxes are assessed, foreign body corporate has the option of either paying the additional taxes and obtain a TCC from the MoF or contest the assessment by submitting an objection letter within 60 days from the date of the tax assessment letter. If the tax objection is not satisfactorily resolved within 90 days of submitting the objection letter, the foreign body corporate has the right to have its case heard by an Appeals Committee.<br><br>Tax appeal has to be filed within 30 days from the date of issuance of the tax department's letter in response to the tax objection. In case no response is received from the tax department; the tax appeal has to be filed within 30 days after the end of the 90 day period from the date the objection letter was filed. If the foreign body corporate is not satisfied with the decision of Appeals Committee, it has the option to refer the case to civil courts.<br><br>The KTA has recently issued a letter requesting taxpayers for the submission of soft copies of tax appeal letters to KTA's specified email address. The electronic submission of tax appeal letters is in addition to the manual submission of tax appeal letters. We understand that purpose of electronic submission of the tax appeal is to expedite the administrative burden of typing tax appeal letters and theirs responses. |
| Director's liability to tax | There is no specific liability on the director under the tax laws. However, any person responsible for misstatement, on conviction, may be liable to imprisonment of two years or to a fine or both. |
| Double Taxation Avoidance Agreements (DTAA) | Kuwait has executed DTAA with a number of countries in which 'permanent establishment' has been defined. Accordingly, a taxpayer may avail treaty benefits by applying the beneficial provisions. However, a taxpayer is still required first to file a tax declaration and thereafter claim treaty protection.<br><br>There are 68 countries with whom Kuwait has executed DTAA Countries such as Austria, Belgium, Bulgaria, Canada, China, Germany, Greece, Hungary, India, Iran, Italy, Japan, Lebanon, Malaysia, Netherlands, Portugal, Russian Federation, South Africa, Spain, Tunisia, United Kingdom and Yemen are a few of them.<br><br>On 7 June 2017, Kuwait and 67 other jurisdictions signed the Multilateral Convention to Implement Tax Treaty related measures to prevent Base Erosion and Profits Shifting (MLI). The MLI modifies the application of thousands of bilateral tax treaties concluded to eliminate double taxation. Kuwait submitted a list of 45 tax treaties entered into by Kuwait (40 in force) and other jurisdictions that Kuwait would like to designate as Covered Tax Agreements (CTAs), i.e., tax treaties to be amended through the MLI. |

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| Transfer pricing | There are no explicit transfer pricing regulations in Kuwait for governing related-party transactions and/or transactions made outside Kuwait (such as cost incurred from head office, related parties and third parties). However, in practice KTA closely scrutinizes all inter-group transactions in the course of tax inspection. Accordingly, KTA would disallow a portion of inter-group transactions and/or transactions made outside Kuwait if it does not consider such transaction to be at arm's length, based on the guidance provided in the Executive Rules issued by KTA. |
| Advance Tax Retention Release letter/NOL | Currently, there is no withholding tax in Kuwait. However, tax retention regulations require a contract owner in Kuwait to retain 5% from all invoices paid to any kind of beneficiaries. These amounts are normally retained with the contract owners and released only when the beneficiary of the amount provides a TCC for Kuwaiti companies/100% GCC-owned companies and No objection letter (NOL) for foreign entities/Mixed GCC entities (owned by foreign and GCC shareholders) is issued by the Kuwait tax authority (KTA), authorizing the contract owner to release amounts retained.<br><br>While local Kuwaiti and 100% GCC-owned companies can obtain TCC in advance from the KTA as they are in practice not subject to corporate tax in Kuwait, foreign entities/Mixed GCC entities can obtain tax retentions release letter or NOL from the Kuwait tax authority only after completing full tax compliance procedures. However, in case where all services have been performed outside Kuwait or the arrangement is for pure supply only, foreign entities/mixed GCC entities may request a NOL to KTA on the basis that there was no physical presence in Kuwait and hence the company should not be subject to tax in Kuwait under the Kuwait domestic tax laws. Please note that these matters are reviewed by the KTA on a case-by-case basis.<br><br>MOF has added a new regulation No 60 with regards to issuance of Electronic Tax Clearance Certificate. This regulation will be applicable on Kuwaiti and GCC companies only. The KTA will now charge KD 50 to issue Electronic Tax Certificate from 1 January 2022. |

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| Common Reporting Standard | Pursuant to signing the Multilateral Convention on Mutual Administrative Assistance in Tax Matters on 5 May 2017, Kuwait became the 110th jurisdiction to join the Convention. The Convention will facilitate the first exchange of information between jurisdictions under the Common Reporting Standard (CRS) by 2018.<br>The MoF released the Ministerial Resolution no. (36) of 2017 on guidelines for Implementation of Requirements of the International Agreements for Exchange of Tax Information for complying with CRS.<br>Subsequently, on 14 August 2017, the MoF has also issued Resolution no. (46) of 2017 on the Additional Preliminary Guidelines concerning implementation of the International Agreements on Tax Information.<br>In view of above, Kuwait financial institutions are required to have their internal procedures and information technology systems adapted in order to comply with the reporting for exchange of information on financial accounts held directly or indirectly by non-Kuwait tax-residents. Given that the Automatic Exchange of Information under CRS, financial institutions in Kuwait are required to report the information of the year ended 31 December 2017 and onwards. |
| Foreign Account Tax Compliance Act (FATCA) | Pursuant to signing the Inter Government Agreement between the State of Kuwait and United States of America and in line with the Ministerial Resolution no. (48) of 2015 on preliminary guidelines to implementing FATCA requirements in State of Kuwait, all financial institutions operating in Kuwait are required to complete due diligence procedures and comply with reporting requirements in accordance with the FATCA agreement within the prescribed timeline. It is mandated that Foreign Financial Institution (FFI) shall report before 30th August of each year on balances of reportable accounts as at 31 December of the prior year. |
| Country-by-Country (CbC) reporting status update | Country-by-Country (CbC) reporting is part of Action 13 of the Base Erosion and Profit Shifting (BEPS) initiative led by the Organization for Economic Co-operation and Development (OECD) and the Group of Twenty (G20) industrialized nations.<br>BEPS Action 13 requires large Multinational Groups of Entities (MNEs) to file a CbC Report that should provide a breakdown of the Multinational Group's global revenue, profit before tax, income tax accrued and some other indicators of economic activities for each jurisdiction in which the MNE operates.<br>Kuwait has not signed the BEPS Inclusive Framework (minimum standards), however, Kuwait has signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters on 5 May 2017. While the signing of the convention does not mandate CbC reporting in Kuwait, however, it could be considered as a step toward agreement of the Multilateral Competent Authority Agreements on the Exchange of CbC reports and the potential introduction of CbC reporting.<br>It is pertinent to note that while there are no local CbC reporting requirements, the Kuwaiti MNEs are still required to review their CbC reporting obligations based on their consolidated revenue and the CbC reporting requirement of jurisdictions they are operating. |
| BEPS 2.0 – Global Minimum Tax on MNEs | BEPS 2.0 consists of two pillars, Pillar 1 seeks to reallocate profits to market jurisdictions as it only affects multinational enterprises (MNEs) that have consolidated revenues in excess of Euros 20Bn) and Pillar 2 seeks to apply a global minimum rate of tax of 15% (applies to MNEs that have consolidated revenues in excess of Euros 750M).<br>The UAE, together with Egypt, Saudi Arabia, Jordan, Oman, Qatar and Bahrain are among the 137 countries that support the concept of a global minimum tax rate of 15% for large multinationals. Kuwait is yet to publicly endorse the proposals.<br>As a result, it is expected that the UAE and Bahrain may incorporate the Pillar Two principles and/or a domestic corporate income tax (CIT). The introduction of Pillar Two and a domestic CIT will require a number of filings and elections to be made by MNEs which will significantly add to the compliance burden. These rules are designed to ensure large MNEs pay a minimum level of tax on the income arising in each jurisdiction where they operate.<br>During December 20, 2021, OECD released GloBE (Global Anti Base Erosion) Model Rules release, which represents significant progress in implementing Pillar Two by the intended date of 1 January 2023.<br>While the BEPS proposal is yet to be introduced in Kuwait, since the Kuwaiti MNEs are operating in various countries, they should consider evaluating tax impact of the Pillar two proposal at their head office / Group level. |

## Tax regime at a glance

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| Corporate tax rate | 15% on taxable income exceeding KWD 5,250 |
| Capital gains tax rate | No specific tax rate provided in the Kuwait tax law for capital gains. Generally, capital gains derived from the sale of assets are treated as normal business profits and subject to income tax at the standard rate of 15%. |
| Branches/Permanent Establishments | Net profits of branches of foreign companies in Kuwait are considered subject to tax at a fat rate of 15%. |
| Personal income tax | NA |
| Alternate minimum tax | NA |
| Withholding tax | There are no withholding taxes currently imposed in Kuwait. However, under the Kuwait tax retention regulations, all corporate bodies are required to retain 5% from each payment made to all beneficiaries until such time that the beneficiary provides a valid No objection letter issued by the KTA for the release of the retained amount. |
| Royalties and technical fees | NA |
| Interest | NA |
| Dividends | NA |
| Commissions, attendance fees and other services | NA |
| Carry forward of losses | 3 years |
| Tax year | Calendar year unless the director of the Department of Submissions and Tax Planning provides an approval on adopting an alternative basis other than the calendar year upon the request of the taxpayer |
| CFC and Thin Capitalization rules | NA |
| Tax treaty network | 68 countries |
| Wealth tax, estate tax, gift tax | NA |
| Indirect taxes | |
| Sales tax/VAT | NA* |
| Customs general rate | Custom duty is imposed on the cost, including carriage and insurance cost (CIF) at a fat rate of 5% of the imported goods. |

*We understand that the VAT law has been drafted by the Kuwait MoF, however Parliament clearance is awaited. Once the Parliament approves the Law, then formal dates with respect to go-live and executive regulations will be announced.

# Oman

The Sultanate has implemented wide ranging and fast paced reforms since 2020 under the new leadership of His Majesty Sultan Haitham Bin Tarik to tackle economic challenges Oman is facing like many countries globally. The government's focused agenda is to have financial stability, cut down debt, improve the credit rating, achieve economic diversification, raise the efficiency of government spending through prioritizing of projects, improving the management of government units and enhance social security and well-being.

The Sultanate presented its Budget 2022 aligned with the objectives of Oman 'Vision 2040' and Medium Term Fiscal Plan (2020-2024). In the recent past as part of restructuring, the Sultanate reorganized and reduced the number of ministries to improve efficiency in administration. Oman Investment Authority (OIA) was formed as the new sovereign wealth fund and it encompassed all the government assets under its fold.

On the fiscal policies, the new foreign investment law, effective from January 2020, permits 100% foreign investment in Omani entities, barring an exception for limited activities. The Government is also actively promoting the Public Private Partnership model for new investments and existing infrastructure projects. In March 2021, the government announced an Economic Stimulus Plan across matters relating to taxes, fees, improving investment and business environment, supporting the small and medium sector, labour and banking with a view to spur economic growth.

On tax front, Oman became the fourth nation in GCC to introduce VAT at the rate of 5%, which became effective from 16 April 2021. Oman also implemented the minimum BEPS reforms. Oman has signed and ratified the Multi-lateral instrument (MLI), primarily with a view to mitigate any potential abuse of tax treaty provisions. Similarly, Oman also introduced the Country-by-Country (CbCR) reforms, which require specified multi-national enterprises to notify and report to the Oman Tax Authority about certain global tax attributes and information of the Group. In September 2020, the Oman Income Tax Law was amended to include enabling provisions to facilitate Automatic Exchange of Information (AEOI) between tax jurisdictions, introduction of tax residency provisions and the requirement to file only one annual income tax return. Oman implemented the Excise Tax Law with effect from 15 June 2019. Excise tax is imposed at 100% on alcohol, energy drinks, tobacco and pork products, and at 50% on carbonated and sweetened drinks.

To conclude, the next 12-18 months will be looked as a pivotal period for recovery from the pandemic fall out and achieve the objective of fiscal balance by accelerating economic growth and making Oman an attractive investment market.

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# Regulatory/Legal

**Setting up a business**

The new Foreign Capital Investment Law (FCIL) allows 100% foreign investment in local companies for all activities except a negative list. Only a limited set of activities are in the negative list. Most of these prohibited sectors cater to the indigenous and small-scale industries like repair and maintenance of vehicle, goods transport, wholesale of vegetables and fruits, retail selling of certain products, etc. Oman is amongst very few Gulf countries which now permits 100% foreign participation in local companies outside the free zones.

On 13 February 2019, RD 18/2019 was issued introducing a new Commercial Companies Law (the 'New CCL'), which was made effective April 2019.

On 1 July 2019, RD 50/2019 was issued introducing a new FCIL, which was made effective 7 January 2020.

There are generally no restrictions on setting up of business in Oman. Based on the practices of the Ministry of Commerce, Industry and Investment Promotion ('MOCIIP'), foreign companies wishing to hold shares in an Omani company, need to be incorporated for a minimum period of three years, and provide evidence in the form of an authenticated or apostilled copy of company's articles of association and certificate of incorporation. The practices also require submission of the foreign company's latest three years' audited accounts, to demonstrate its financial standing. Where any of these conditions are not fulfilled, prior specific dispensation will be required from the authorities.

There is a prescribed list of businesses that require a specific license or permit to operate. This includes sectors such as banking and finance, tourism, telecommunication, industrial factory, food and beverages, schools and hospitals, and employment agencies.

**Commonly used business entities**

The popular forms of doing business (apart from individuals carrying on business as a proprietorship) are as under:

- Foreign Branch
- Locally Incorporated Company including the Sole Shareholder Company
- Partnership
- Joint Venture
- Consortium

Foreign enterprises can also set up representative offices. However, their permitted business scope is very limited and does not extend to carrying out commercial activities.

**Main legal formalities for the formation of a company or registration of a branch**

A new entity setup in Oman should be registered with the MOCIIP and the Oman Chamber of Commerce and Industry (OCCI).

**Foreign Branch**

A foreign company is allowed to carry on business in Oman in the form of a branch only if:

- The project is carried out under a contract or agreement with the government (or a quasi-government organization), or is established by a Royal Decree; or
- The project is declared by the Cabinet of Ministers as necessary for the country.

A Branch registration is valid only for the duration of the qualifying project. While the above conditions are not explicitly provided under the FCIL, we understand from our interactions with the authority that these conditions continue to be followed.

Main legal formalities for the formation of a company or registration of a branch (contd.)

### Locally Incorporated Company

The following are the four forms of a locally incorporated company:

— Limited Liability Company (LLC)

— Sole Shareholder Company (SSC)

— Closed joint stock company (SAOC)

— Publicly held joint stock company (SAOG)

The most common form of company in Oman is a LLC.

Under the New FCIL, a foreign company is currently allowed to hold 100% of share capital in an Omani company (except for the activities which are prescribed in the negative list). LLCs are allowed to prescribe in their constitutive contract a profit-sharing ratio which can be different from their capital contribution ratio.

The new CCL has introduced SSC as a new corporate form which is also available for foreign investors. The new CCL has removed the requirement for minimum share capital of Omani Riyal (OMR) 20,000 previously applicable for LLCs. In case the shareholder is a foreign company, the earlier minimum capital requirement of (OMR) 150,000 applies.

The minimum share capital required for SAOC and SAOG companies is OMR 500,000 and OMR 2,000,000, respectively. However, if a public joint stock company is created by converting another type of company, the limit is only OMR 1,000,000. The main difference between the two forms of joint stock companies is that in a closed joint stock company (SAOC) the transfer of shares has to be subjected to other shareholders' preemptive rights. In a public joint stock company (SAOG), the shares issued may be freely sold to third parties through the Muscat Stock Exchange. SAOCs have now been specifically permitted to offer securities — other than shares — for public subscription.

Minimum capital requirements are substantially higher for banks, insurance companies and finance and leasing companies.

Holding companies incorporated in Oman may no longer take the form of LLCs. To comply with the new CCL, any holding company currently in the form of an LLC must be converted into a joint stock company with a share capital of not less than OMR 2,000,000.

### Partnership

A general partnership may be formed with a local individual or other registered entities. Partners will be jointly and severally liable for partnership debts to the full extent of their assets.

A Limited Partnership consists of one or more partners with unlimited liability and one or more partners whose liability is limited to the extent of their contributed capital. Limited liability partners may not participate in partnership's management or act in partnership's name.

Both general and limited partnerships must register in the commercial register of the MOCIIP.

| | |
|---|---|
| Main legal formalities for the formation of a company or registration of a branch (contd.) | **Joint Venture**<br><br>A joint venture is an agreement between two or more parties to carry out a project jointly, on mutually agreed terms. It is not a legal entity and, therefore, does not have a juristic personality. A joint venture does not have to be registered in Oman (except for the registration to be obtained under the income tax and VAT law) but the parties to the joint venture would need to be registered in Oman if they carry on commercial activities in Oman. The liability of partners is joint and several.<br><br>**Consortium**<br><br>A consortium is an agreement between two or more parties to carry out their specific obligations in order to complete a project. There is a distinct allocation of risks, responsibilities and revenue to each consortium member. A consortium is not a legal entity and, therefore, does not have a juristic personality. The liability of members is joint and several as far as their client and third parties are concerned. |
| Currency/Monetary restrictions | There are no restrictions on inward or outward remittances. The Omani Rial is currently pegged to the USD at a rate of one Rial per USD 2.6. |
| Regulatory requirements for Financial Services | The Central Bank of Oman and Capital Market Authority regulate the financial services industry. |

## Accounting/Finance for companies and branches of foreign companies

| | |
|---|---|
| Financial statements | Financial statements must be prepared in accordance with International Financial Reporting Standards. Audited financial statements must be filed with the income tax return, to be submitted to the tax department. |
| Audit requirements | LLCs must appoint a statutory auditor if one of the following conditions is met:<br>— More than 7 Partners;<br>— Capital exceeding OMR 50,000;<br>— Constitutive Contract stipulate the appointment of auditor;<br>— Partners representing at least 20% of the company's capital demands the appointment of an auditor. |
| Book year/Accounting currency | The income tax law follows the calendar year. However, companies can choose their accounting year to end at the end of any month. The first financial year of a company may extend to a maximum period of 18 months.<br><br>The financial statements must be prepared in OMR. Permission from the tax authority is required if accounts are to be maintained in foreign currency. |

# Tax

| | |
|---|---|
| Approval requirements | An entity does not require any separate approval from the tax authority. However, all taxable entities should register with the tax department and obtain a tax file number. There is also a requirement to obtain a Tax Card which is explained later. |
| Advance tax rulings/ Advance pricing agreements (APA) | The Income tax law does not contain an APA mechanism and there is no formal route by which a taxpayer could obtain an APA. The tax authority may be willing to provide their views on arrangements — which the taxpayer could consider as binding — but this would only be on a unilateral basis. |
| Income tax compliance | With effect from tax years beginning on or after 1 January 2020, taxpayers are required to file only one tax return within a period of four months from the end of the relevant tax year or accounting period. Tax is also now required to be paid within this period of four months. Previously, two returns were required to be filed — provisional and final returns within three and six months respectively.<br><br>The tax return is required to be filed electronically. Further, revised returns must be filed by the taxpayer within 30 days of an error or omission being found in the original return and before the expiry of the government's right to collect any tax lapses.<br><br>The Income tax law requires taxpayers to keep registers, books of accounts and supporting documents for a minimum period of ten years from the end of applicable accounting period.<br><br>RD 9/2017 has introduced the concept of a 'self-assessment' regime, wherein only a selected sample of returns are to be assessed based on risk profile, adjustments made in past assessments, and other parameters to be decided by the tax authorities from time to time. In practice, the tax authority has still not implemented this regime. |

Income tax compliance (contd.)

The time limit for the tax authority to assess a tax return has been reduced to three years (previously five years) from the end of the tax year in which the return is filed. The time limit for assessing in case of non-submissions of final returns, deception or fraud has been reduced to five years (previously 10 years).

There is now a drive within the tax authority to complete the assessments of the open tax years, with several years' assessments being dealt with at the same time. If documentation was not prepared at the time of completing the tax return, it imposes a significant burden on the taxpayers with adverse consequences if adequate documentation cannot be provided. The tax authority has been increasingly aggressive in tax assessments, often resulting in significant adjustments if not appropriately represented by the taxpayer.

The amended tax law has introduced the provision of a 'Tax Card'. An application for a Tax Card has to be submitted when the taxpayer initiates the procedures for registering its commercial activity with the relevant authorities. The Tax Card number has to be mandatorily mentioned on all contracts, invoices and correspondence.

Indirect tax compliance

**Customs Duty**

A common customs duty regime is in place across the states of the Gulf Cooperation Council (GCC), which imposes a flat 5% customs duty on majority of goods entering the GCC.

**Excise Tax**

Oman has introduced excise tax with effect from 15 June 2019. Excise tax is imposed on importers, manufacturers and warehouse keepers of excise goods in Oman. These taxpayers are required to pay the excise tax due and file excise tax returns on a quarterly basis.

According to the Ministerial Decision on the determination of type, value and tax rate applicable to excisable goods, excise tax is applicable on carbonated drinks at 50% and alcohol, energy drinks, pork products and tobacco products at 100%. The tax authority removed the temporary reduction of 50% in excise tax rate on alcohol and reverted to the original excise tax rate of 100% with effect from 1 July 2020. The tax authority has also extended the levy of excise tax to sweetened drinks at the rate of 50 percent effective 1 October 2020.

The executive regulations to the Excise Tax Law published in July 2020 provide more details on:

— Procedures for excise tax registration and deregistration
— Conditions for setting up and operation of excise tax warehouses for excise tax suspension
— Other situations qualifying for excise tax suspensions
— Excise tax exemptions and refunds
— Procedure for excise tax inspections and audits
— Excise tax dispute resolution, including objections and appeals
— Administrative penalties

**VAT**

Oman has implemented VAT on 16 April 2021 in a phased manner. The Oman VAT law issued vide Royal Decree 121/2020 was published in the Official Gazette on 18 October 2020. The executive regulations to the VAT law issued vide tax authority's decision no. 53/2021 was published in the Official Gazette on 14 March 2021.

The Oman VAT law is based on the GCC VAT Framework Agreement with a standard rate of 5% on supply of most goods and services with certain exemptions and zero-rating for the financial services, oil and gas, transportation, education and healthcare sectors.

All persons with taxable supplies and import of services liable to tax under reverse charge in excess of OMR 38,500 per annum are mandatorily required to register for VAT by 1 April 2022. Further, if the total value of such supplies (taxable outward supplies and import of services) or expenses incurred is between OMR 19,250 to OMR 38,500, registration on a voluntary basis may be obtained at any point in time.

Indirect tax compliance (contd.)

All persons required to register mandatorily must do so within the timelines determined based on the total value of supplies as mentioned in the table below:

| # | Value of annual supplies | Timeline for registration | Effective date of registration |
|---|---|---|---|
| 1 | Exceeding OMR 1 million | 1 February 2021 to 15 March 2021 | 16 April 2021 |
| 2 | Between OMR 1 million to OMR 500,000 | 1 April 2021 to 31 May 2021 | 1 July 2021 |
| 3 | Between OMR 499,999 to OMR 250,000 | 1 July 2021 to 31 August 2021 | 1 October 2021 |
| 4 | Between OMR 249,999 to OMR 38,500 | 1 December 2021 to 28 February 2022 | 1 April 2022 |

Any non-resident person making taxable supplies to a non-taxable person in Oman needs to register for Oman VAT before making the supply, regardless of the value of such supply.

The registered taxpayers can claim input credit of VAT paid on procurements used for making taxable supplies, subject to satisfying the input tax recovery conditions. A taxpayer can claim input tax deduction within three years from the end of the tax period during which the right to deduct input tax arose. However, recovery of input tax on procurement related to food and beverage, certain motor vehicles, entertainment, etc., is specifically blocked.

VAT returns are required to be filed on a quarterly basis by all taxpayers and the return as well tax payment is due within 30 days from the end of the respective quarter.

All taxpayers are required to maintain records of transactions including accounting books, invoices, etc., for a period of 10 years and in case of real estate related transactions for a period of 15 years.

Oman has no property tax or Sales Tax.

Transfer tax will be applicable at the rate of 5% of the property value when purchasing real estate.

A local municipality tax is payable on property leases, calculated by reference to the amount of the rent.

## Other tax compliance

The income tax law imposes a 10% withholding tax on the following payments representing income realized in Oman by a non-resident not carrying on activities in Oman through a PE:

— Royalties including rental income from industrial, commercial and scientific equipment

— Research and development

— Use or right to use computer software

— Fees for management

— Fees for provision of services

— Dividends on shares of Joint stock companies

— Interest

### Suspension of Oman withholding tax on dividends and interest

Following a Royal Directive, the Capital Market Authority Oman announced the suspension of WHT on dividends and interest. This suspension, as per the announcement, began from 6 May 2019 and is valid for a period of three years and can be extended for further, if required. Further, suspension of the WHT on dividends and interest for a period of five years starting from tax year 2020 until tax year 2024 has been announced under the economic stimulus plan which effectively replaces the earlier suspension.

The WHT suspension on interest will potentially benefit all payers and, on dividends, will benefit joint stock companies — other forms of companies were not subjected to dividend WHT.

### Residency provisions

Specific provisions have been introduced recently in the Tax Law to determine the residential status of persons:

— A natural person is considered to be a resident of Oman if he stays in Oman for 183 days or more continuously or intermittently during the relevant tax year.

— A juristic person is considered to be a resident of Oman if it is incorporated in Oman in accordance with the applicable laws and regulations or the place of effective management is in Oman.

### Executive Regulations (ER) amendments

#### (a) General

The term 'income realized in Oman', fundamental to trigger withholding tax provisions in the Sultanate, is now defined in the amended ER. As per the new definition, income would be considered as realized in Oman 'whenever the source of such funds is from Oman'.

Other tax compliance (contd.)

(b) Services

A list of 'seven categories of payments' has been excluded from 'fee in consideration of rendering services' for withholding tax purposes:

- Conferences, seminars or exhibitions
- Training
- Transport and shipping of goods and insurance thereupon
- Airline tickets and cost of staying abroad
- Board meetings
- Payments for re-insurance
- Services rendered in relation to any activity or property located outside Oman

It is to be noted that the amended ERs have not defined the term 'provision of services', but rather have excluded only the above payments from the scope of the definition. This would imply that all other services except for the above, irrespective of place of rendition, are now subject to withholding tax in Oman (subject to tax treaty benefits, wherever applicable).

(c) Dividends and interest (relevant for period post end of suspension)

In regard to dividends, it has now been clarified in the amended ERs that withholding tax is applicable only on 'dividends distributed by joint stock companies and investment funds in relation to investment instruments' and not by LLCs.

The term "interest", for the purpose of withholding taxes, has now been defined in the amended ER.

Interest is widely defined to mean any amount received 'because of loan' and includes income generated from bonds and sukuk (except those issued by the government or Oman-based banks). The following payments have been specifically excluded from the definition of 'interest' and have, therefore, in principle, relaxed their withholding tax obligation in Oman:

- Interest paid on amounts deposited in banks based in Oman
- Returns on bonds and sukuk issued by the government or banks based in Oman
- Interest on inter-bank transactions and facilities with the purpose of providing and managing liquidity or finance (the term of the loan not to exceed five years)

The 10% tax applies on the gross amounts due and must be deducted by the taxpayer and paid to the tax authority within 14 days of the end of the month in which the amounts are paid or credited to the account of the taxpayer.

Tax shall also be deducted on payments made by ministries, government bodies and other units of the state administrative apparatus who do not otherwise meet the definition of a taxpayer.

Anti-abuse provisions are incorporated in the withholding tax provisions, whereby the tax authorities have been empowered to disregard transactions if the main objective is to avoid withholding tax in Oman.

## Director's liability to tax

There is currently no personal income tax in Oman. Hence, a Director of a company is not subject to tax in Oman for the remuneration received in his personal capacity as a Director. However, a director who is the Principal Officer of the company may be subject to certain penalties and punishments for non-compliance. Further, a corporate tax deduction for Director's remuneration is only available up to limits specified in the income tax law.

## Principal Officer

The Principal Officer should be the person responsible for discharging the obligations imposed on the taxpayer under the income tax law as well as VAT law.

There are stringent penalties and punishments that could be imposed on the Principal Officer for non-compliance. The roles and responsibilities of the Principal Officer are of the utmost importance and should be executed in a diligent manner.

## Double Taxation Avoidance Agreements (DTAA)

Oman currently has executed DTAA with 36 countries. The countries with which DTAA has been in force are:

Algeria, Belarus, Brunei, Canada, China (People's Rep.), Croatia, France, Hungary, India, Iran, Italy, Japan, Korea (Rep.), Lebanon, Mauritius, Moldova, Morocco, Netherlands, Pakistan, Portugal, Spain, Sudan, Seychelles, Singapore, South Africa, Sri Lanka, Switzerland, Syria, Slovakia, Thailand, Tunisia, Turkey, United Kingdom, Uzbekistan, Vietnam and Yemen.

## Transfer pricing

Under the income tax law, the related party is defined to cover cases where one party has control over the other or a third party has control over both of them. Control may be direct or indirect. Control will exist where a person has the right to exercise control over the activity and commercial matters of a company. In particular, this will be the case where a person:

— Owns the greater part of the company's capital or voting rights;

— Is entitled to the greater part of distributions by the company (the company to distribute its total income); and

— Is entitled to the greater part of the company's assets on dissolution or cessation.

Transfer pricing (contd.)

The 'control' test shall take into account entitlement to future rights, interests or authority, as well as:

- Rights vested in another person in the capacity of representative
- Rights that are required to be exercised by another person under direction
- Rights held by relatives up to the third lineage (whether direct or indirect)

The income tax law requires that transactions between related parties are conducted in a manner that is consistent with the arms-length principle. There is currently no specific guidance on acceptable methods for determining the arm's length price. There is also no requirement to prepare formal transfer pricing documentation or to have documentation in place at the time of filing the income tax return. In the majority of cases where related-party transactions occur, the tax authorities usually seek detailed supporting information. This need not, necessarily, take the form of a formal transfer pricing report, provided the documentation that is submitted is adequate and appropriate to support the pricing adopted.

The tax authority is open to consider the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ('the OECD Guidelines') as a suitable underlying framework for evaluating the pricing of related-party transactions although these are not binding on them.

The Income tax law provides for thin capitalization rules which restrict the deduction for interest claimed on loans with related parties, where a debt-to-equity ratio of 2:1 is surpassed. The debt-to-equity ratio takes account of all related party and unrelated party debt but the restriction is applied only to related-party interest payments.

### BEPS inclusive framework

Oman has joined the BEPS Inclusive Framework in year 2017. By joining the BEPS Inclusive Framework, Oman has committed to implement the four minimum standards of the BEPS Package as follows:

- Measures against harmful tax practices (Action 5);
- Model provisions against treaty abuse (Action 6);
- Transfer pricing documentation and Country-by-Country Reporting (CbCR) (Action 13); and
- Enhancing dispute resolution through Mutual Agreement Procedure (Action 14).

Further, members of the Inclusive Framework agree to work together on an equal footing to develop further BEPS measures and commit to participate in peer reviews on BEPS measures' consistent implementation. The implementation of tax treaty related measures to prevent BEPS is covered by the multilateral instrument (Action 15) which has been signed, ratified and deposited with the OECD recently by Oman.

Furthermore, Oman signed and ratified, the Multilateral Convention on Mutual Administrative Assistance in Tax Matter. The ratification demonstrates Oman's commitment to international norms for exchanging information with other countries. Consequently, Oman introduced a local legislation allowing specified institutions to undertake the Common Reporting Standard compliances with the designated authority.

Oman also signed the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports for exchange of CbC reports with the relevant jurisdictions. Oman also implemented Country-by-Country (CbC) reporting requirements under its domestic tax law. These provisions have been made effective for Reporting Fiscal Years (based on the accounting period followed by the Ultimate Parent Entity of Multinational Enterprises Group) starting on or after 1 January 2020.

## Transfer pricing (contd.)

Some of the key impacts on Oman entities of the above developments are as follows:

- Increased focus of Omani Tax Authorities on "substance" before providing any treaty benefit to the taxpayer or the foreign company;
- Although the Oman tax law does not emphasize on any documentation in respect of transfer pricing, the Omani tax authorities in practice expect the taxpayer to provide detailed transfer pricing documentation during the assessment proceedings. With the increased focus on transfer pricing as part of the BEPS measures, and CbCR as one of the minimum standards, it is likely that explicit documentation requirements may be introduced in Oman;
- Oman will have to work closely with other member countries to monitor implementation of BEPS. This will facilitate the taxpayers to have access to effective and expedient dispute resolution mechanisms under bilateral tax treaties;
- More detailed disclosures to ensure transparency; and
- Additional compliance requirements.

## Royal Decrees to spur economic growth

In 2019, a Privatisation and Public Private Partnership (PPP) Law was decreed with a view to encourage and provide a framework for the private sector to take up management of some of the state-owned enterprises and undertake some of the public projects in partnership with the government. The law includes procedures for launching and awarding of privatisation projects / PPP contracts, privatisation of government facilities, use of privatisation revenues, and dealing with the status of Omani public servants working in projects affected by privatisation.

Further, a Bankruptcy law was passed to provide a framework for bankruptcy and protect businessmen who go bankrupt while ensuring that any reported bankruptcy is genuine.

## Announcement of economic stimulus plan to counter COVID-19's effects

The economic stimulus plan is aimed at supporting efforts for Oman's economic recovery. The economic stimulus plan falls within the framework of Oman's Fiscal Sustainability Plan (2020-2024), also known as the medium-term fiscal plan (MTFP).

The economic stimulus plan is based on the following five key pillars:

a) Incentives relating to taxes and fees

b) Incentives for improving the investment and business environment

c) Incentives to support small and medium enterprises (SMEs)

d) Incentives for the labour market and employment

e) Banking incentives

Incentives relating to taxes and fees amongst other include:

- Lower tax rate of 12% and 1% rebate subject to conditions
- Suspension of WHT on dividends and interest till the tax year 2024
- Unlimited carry forward of tax loss incurred during the tax year 2020
- Installment based tax payments without levy of additional tax allowed during the year 2021
- A five-year tax exemption for new businesses having main activities in the economic diversification sectors (economic diversification sectors and conditions thereto are yet to be notified and require consultation with tax authority)
- Income tax exemption to hotel establishments in Oman for tax years 2020 and 2021
- Tourist establishments exempted from both tourism and municipal tax levy till end of 2021

## Tax regime at a glance

| | |
|---|---|
| Corporate tax rate | 15%* |
| Capital gains tax rate | 15%* |
| Branches/Permanent Establishments | 15%** |
| Personal income tax*** | NA |
| Alternate minimum tax | NA |
| Withholding tax**** | 10% |
| Carry forward of losses | 5 years (unlimited for the tax loss of 2020) |
| Tax year | Typically calendar year but tax payers are free to choose a different date |
| Exemptions | Exemption from corporate tax available to manufacturing entities and other entities set up on free zones subject to certain conditions. Furthermore, the ESP also provides exemption for activities in economic diversification.<br>Gain on sale of share registered on Muscat Securities Exchange and dividend from Omani companies are exempt from corporate tax |
| CFC and Thin Capitalization rules | Interest limited to debt-equity ratio of 2:1 |
| Tax treaty network | 36 countries |
| Wealth tax, estate tax, gift tax | NA |
| Indirect taxes | |
| Sales tax/VAT | 5% |
| Customs general rate | 5% |
| Excise tax (effective 15 June 2019) | 50% on carbonated and sweetened drinks<br>100% on energy drinks, tobacco products, alcohol, and pork products |

* For Oil and Gas upstream industry the rate is 55%. The rate is reduced to 3%/Nil for certain taxpayers subject to conditions. Oman has announced economic stimulus plan (for the tax years 2020 and 2021) under which the rate is reduced to 12% (from 15%) for certain taxpayers and 1% rebate is also provided subject to conditions.
** Only 1% rebate is provided (i.e. no reduced rate of 12% available) subject to conditions for the tax years 2020 and 2021.
***Currently, there is no Personal Income Tax (PIT) in Oman. However, PIT regime is being evaluated by the Government in its 2020-2024 Medium Term Fiscal Plan. As of now, the government is reviewing PIT from a social, economic and fiscal perspective with its intention to apply it from 2023.
**** Under Oman Domestic tax law. Subject to relevant Double Taxation Avoidance Agreements (DTAA), if any. WHT on dividend and interest have been suspended till the tax year 2024.

# Qatar

With the discovery of the third largest gas reserves in the world, Qatar has become one of the fastest growing economies. This abundance of natural resources and favorable demographics has allowed Qatar to boast of the highest per capita income in the world. In recent times, Qatar has streamlined its regulations to attract foreign capital and is making a concerted effort to diversify into non-hydrocarbon sectors. The Government of Qatar, through its investment arm — Qatar Investment Authority, has also been making strategic investments both in Qatar and overseas to reduce its dependency on Oil and Gas.

The National Vision 2030, which forms the centre piece of Qatar's strategy to develop and diversify the economy and to improve social development and environmental management, will drive the country's long-term goals for the country and provide a framework in which national strategies and implementation plans can be developed. Qatar's economy is projected to experience an expansion this, according to the World Bank. The country's real Gross Domestic Product (GDP) is expected to increase by 4.9% this year, followed by a 4.5% growth in 2023 and 4.4% rise in year 2024 respectively, the World Bank's latest Global Economic Prospects report for June revealed. Qatar's economy will witness the fastest acceleration in the years 2023 and 2024.

Qatar's GDP growth is due to its boosted hydrocarbon exports of 10% as well as its multi-billion plan North Field expansion project, which is the largest of its kind seeking to boost Qatar's annual liquified natural gas production capacity from 77 million metric tonnes to 126 million tonnes by the year 2027.

Qatar will be hosting the most popular sporting event across the globe in 2022: The FIFA World Cup. As a result of such a large-scale event, it is no surprise that Qatar could potentially reap numerous benefits that spread far beyond the realm of the sporting industry. The construction of infrastructure for the purpose of hosting and accommodating visitors will bring many positive economic benefits to the country. Qatar has predicted that hosting the FIFA World Cup will create more than 1.5 million new jobs in key sectors like construction, real estate, and hospitality. The tourism industry is also expected to benefit from the event. Officials predict over one million visitors for the World Cup, generating approximately QAR 66bn by 2025 for the Qatari economy. Whilst the increase in tourists in 2022 is expected to boost Qatar's economy short term, long term effects of increasing Qatar's international profile as a tourist destination are expected to provide lasting economic benefits.

With the rise of Qatar's international profile, there will likely also be an increase in foreign investment. Many foreign businesses are attracted to host countries of large events due to the increase in economic growth. Foreign investment will be beneficial to Qatar by facilitating an in increase economic growth and development. World Cup projects will be open to foreign investments as the government seeks to stimulate investment in infrastructure and major projects such as hotels, airports, ports, hospitals, highway networks, transportation, and railways.

When it comes to taxation, Qatar was one of the first countries in the GCC which introduced a Corporate Income Tax and a Withholding Tax and was a first mover in the introduction of CbCR and Transfer Pricing Reporting requirements. With a Treaty network consisting of 75 countries, Qatar has currently the best treaty network among the GCC countries.

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# Regulatory/Legal

## Commercial arrangements for setting up business

Qatar welcomes foreign investors with various incentives available to attract foreign capital, including tax and customs duty exemptions. Foreign investors can transfer their investments and profits can be repatriated as can sale proceeds and capital on liquidation.

The following commercial arrangements may be used by a foreign investor to establish a legal presence and conduct business activities in Qatar.

### Foreign Capital Investment Law no. 1 of 2019

Foreign investments in Qatar are generally allowed up to 49%, with a local Qatari sponsor (either active or silent) owning the remaining 51% of share capital.

A decision from Minister of Commerce and Industry (The Ministry) for foreign investors to exceed the percentage of their participation from 49% to 100% of the project capital may be allowed in all sectors provided it is in conformity with the development plan of the State and approval from the minister is obtained. In our experience, such approval for 100% ownership to foreign entities are granted on a case by case basis.

100% foreign investments are generally not allowed in banking sector, insurance companies, commercial agencies, real estate and trading.

### Qatar Science & Technology Park (QSTP)

Designated to host companies that are interested in developing new technologies and introduce them to the Qatar market. Companies that are registered in QSTP will enjoy a full exemption from Qatar income tax on profits related to activities carried out in Qatar. Some of the key characteristics of the QSTP are:

- Allowed to operate as a branch of a foreign company
- Incorporation of local companies with 100% foreign ownership
- Trade without local agent
- Sponsorship of expatriate employees
- No import or export duty
- Unrestricted repatriation of capital and profits
- Access to facilities for a low cost

### Qatar Financial Centre (QFC)

QFC is designed to attract financial service companies such as banks, insurance and brokerage firms. Certain 'non-regulated activities' can also apply for a license with the QFC, including shipbroking and shipping agents, investment grading and other grading services, company headquarters, management offices and treasury operations, audit, tax, consulting and legal services, holding companies, special purpose companies, among others.

Companies registered with QFC has no restriction on foreign ownership.

The QFC operates as an independent onshore jurisdiction within Qatar, with access to the local market; and has its own legal framework.

Legal framework

### Partnership Company

A partnership company is formed by two or more natural persons. All partners should be Qatari nationals. A memorandum of association and its schedules should be written and signed by the partners, setting out rights and obligations under the partnership. The shares in the partnership shall not be represented by negotiable instruments nor shall they be transferable. Partners are jointly liable for liabilities of the company. A new partner is liable for all liabilities incurred before or after he joined the partnership company.

### Joint Venture Company

A Joint Venture Company is an unincorporated entity comprising of two or more persons. The Joint Venture Company's memorandum defines its objects, rights and liabilities of each partner, etc. The Joint Venture Company may not issue transferable shares or financial instruments. Third parties dealing with the joint venture company only have the right of action against the particular joint venture partner with whom they dealt with. However, if the partners do any act that shows to a third party that the company exists, the company shall be deemed to have a legal personality and the partners shall be jointly responsible vis-à-vis the third party.

### Limited Liability Company

A limited liability company shall consist minimum of 2 partners and maximum of 50 partners. The company name must be followed by the words LLC or WLL (With Limited Liability). Shares of a limited liability company are not freely transferable. Under the 2015 update, there is no minimum capital requirement, the shareholders of the LLC can determine the capital. This vehicle is generally used to set-up small companies with usual 51% local and 49% foreign holding.

### Branch Office

A foreign entity carrying out a project in Qatar may be permitted to establish a Branch Office with 100% foreign ownership, provided the contract is with a government or quasi government entity. The project should facilitate delivery of a certain service or should be in public interest.

### Representative Trade Office (RTO)

RTO allows a foreign company to market its services and products in Qatar. RTO cannot undertake any commercial activities or contractual work of its parent company in Qatar. Registration of RTO is renewable on an annual basis.

## Main legal formalities for the registration of a branch

In order to register a branch in Qatar, it is first required to obtain Ministerial Decree permitting the company to establish a branch which is 100% owned by foreigners. The following documents are required in order to obtain an approval for registration of a branch office in Qatar:

- Application form, duly completed in Arabic
- A copy of the Certificate of Registration of foreign shareholder at the place of origin
- A Power of Attorney from the foreign company in favor of the branch manager
- Copy of branch manager's passport together with a police clearance certificate
- Memorandum and / or articles of association of foreign shareholder
- Board resolution of foreign shareholder confirming their desire to establish a branch in Qatar
- Contract with government / quasi government entity. This should be translated into Arabic. The Ministry may however, accept Arabic translations of the relevant texts of that document only
- Such other documents as the Ministry may direct

Once the approval is granted, the foreign company must obtain a commercial registration by submitting the following documents:

- An application form in Arabic signed by the branch manager
- Copy of the Ministerial Decree approving the branch office
- Copies of the foreign company's Certificate of incorporation and memorandum and articles of association
- The copy of lease agreement for its business premises
- Such other documents as the Ministry may direct

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| Main legal formalities for the registration of a branch (contd.) | To establish an LLC, the following requirements must be satisfied:<br>— It must have a minimum of one shareholder and a maximum of fifty shareholders<br>— Under the 2015 update, there is no minimum capital requirement, the shareholders of the LLC can determine the capital<br>— On 7 January 2019, Law No.1 of 2019 regulating the investment of non-Qatari capital in economic activity became effective, repealing the erstwhile Law No. 13 of 2000. Foreign ownership up to 100 percent is permitted in all economic sectors subject to specific legislation regarding commercial activities carried out by Non-Qataris and as determined by the executive regulations of the new law.<br>— Certain activities remain excluded - namely banking and insurance (unless exempted by a Council of Ministers' decision), commercial agencies and other sectors as decided by the Council of Ministers.<br>LLC shall be established under a contract signed by all the shareholders, which should include the following:<br>— The name and address of the company adding the phrase 'Limited Liability Company'<br>— The names of shareholders, their titles, their nationalities, and their place of residence<br>— The address of the company's head office<br>— The object for which the company is incorporated<br>— The amount of capital, whether it is in cash or otherwise, which each partner subscribes<br>— Conditions of assignment of shares<br>— The duration of the company<br>— The names of the persons entrusted with the management<br>— The method of distributing profits and losses<br>The above contract should be signed by all the shareholders of the limited liability company and should be registered with the Commercial Registry Department of The Ministry.<br>The following documents are required in order to obtain an approval for registration of a limited liability company in Qatar:<br>— Memorandum of Association<br>— The company lease contract (or proof of ownership)<br>— Copies of the passports and identity cards for all natural partners, however in case of legal partners a copy of the commercial registration is required<br>— Proof that the share capital of a foreign partner does not exceed 49%, while the Qatari partner possesses at least 51% shareholding of the company. |
| Currency/monetary restrictions | There are no exchange control restrictions in Qatar, so both profits and cash are freely transferable. |
| Regulatory requirements for Financial Services | Governed by the Qatar Central Bank (QCB) and Qatar Financial Centre Regulatory Authority (QFCRA) |

# Accounting/Finance for companies and branches of foreign companies

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| Financial statements | Companies are required to prepare the accounts in accordance with International Financial Regulatory Standards. |
| Audit requirements | Under the provisions of Commercial Companies Law No 11 of 2015, all public shareholding companies, limited liability companies, holding companies and limited share partnerships should appoint one or more auditors. Auditors should be registered in Qatar and their term of office cannot exceed five consecutive years. |
| Book year/accounting currency | The normal fiscal year is the Gregorian calendar year (1 January to 31 December). However, with prior approval of the Qatar General tax authority, a company can follow a financial year different from the calendar year.<br><br>According to the general rule, the financial statements need to be prepared in QAR |

# Tax

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| Approval requirements | It is mandatory for every entity, to register on Dhareeba (the Qatari online tax platform) and subsequently obtain a Tax Card from the General tax authority, within 60 days of obtaining the commercial registration in Qatar.<br><br>In a separate tax regime, the Qatar Finance Centre Authority administers the tax affairs of QFC registered, licensed firms. |
| Advance tax rulings/ Advance pricing agreements (APA) | While there are no provision for general advance tax ruling; pursuant to Qatar joining the BEPS Inclusive Framework, the GTA has introduced guidelines for obtaining advance pricing agreements as part of BEPS Action 14. |
| Income tax compliance | CIT rate of 10% will apply to foreign owned entities to the extent of the company's foreign shareholding. However, this rate will not apply to certain entities operating in the petroleum and petrochemical sector for which the tax rate outlined in their prevailing or new agreements with Qatar will take precedence. If the entity falls within the ambit of this exception, tax will apply at least 35%.<br><br>Wholly Qatari (GCC) owned companies are exempt from tax. Note that to qualify for tax exemption, the Qatari and / GCC nationals must be residents in Qatar.<br><br>Under the QFC regime, CIT applicable tax rate is 10%. Entities established under the other special investment laws are generally exempt from CIT, but must register with the General tax authority, register on Dhareeba, file CIT returns and adhere to WHT rules. |

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| Withholding Tax (WHT) | Amounts paid to non-residents in return for services used, consumed and / or exploited in Qatar, will be subject to a final withholding tax (WHT) of 5% deducted at source by the local customer. The WHT must be submitted to tax authorities by the 15th of the month following the month in which actual payment for services is made. |
| Anti-avoidance rules | Under the anti-avoidance rules, tax authorities can impose 'market value' on transactions where it deems a particular transaction is not incurred at arm's length between related parties.<br><br>The arm's length price is determined using Uncontrolled Comparable Price (similar to OECD's CUP) method.<br><br>If application of CUP is not possible, then the taxpayer must request for approval from tax authorities to use any other OECD prescribed method with respect to transfer pricing of multinationals.<br><br>Tax authorities can take a 'substance over form' approach in assessing the reasonableness of a transaction or the expenses incurred. Taxpayer may be requested to reconsider such expenses or produce relevant supporting documents. |
| Indirect or Other tax | **Customs**<br><br>Qatar imposes 5% duty on the majority of imported goods.<br><br>**Excise tax**<br><br>Excise tax is applicable on the following products:<br><br>— Carbonated drinks at 50%<br><br>— Energy drinks at 100%<br><br>— Tobacco and tobacco products at 100%<br><br>— Special purpose goods at 100%(e.g. alcoholic beverages and pork products)<br><br>All businesses that import, produce or store excisable goods must be registered with GTA and are accountable for filing and paying excise tax. There is no minimum threshold for the registration requirement.<br><br>Excise tax returns must be filed on a quarterly basis on the 15th day of the following month of each quarter.<br><br>**VAT**<br><br>VAT is likely to be introduced in 2023. |

## Tax Administration

The General tax authority implements all tax laws and tax compliance in the country.

Entities registered under the Qatar Financial Centre are governed by the QFC.

## Tax Administration

| Description | Penalty |
|---|---|
| Late filing of tax return | QAR 500 per day, up to a maximum of QAR 180,000 |
| Failure to pay income tax within the set period | 2% per month up to a maximum of 100% of the unpaid tax |
| Delay in applying for tax registration | QAR 20,000 |
| Late payment of withholding tax within the set period | 2% per month up to 100% of the unpaid tax |
| Failure to notify the tax authority about the contracts, agreements, transaction executed pursuant to the provisions of the law | QAR 10,000 per contract for the delay in reporting |
| Failure to comply with the regulations issued by the Minister of Finance to enforce obligations of international agreements | Up to a maximum of QAR 500,000 |
| Transfer pricing - Late submission of the master file and/or the local file | QAR 500 per day capped at QAR 180,000 |

## Double Taxation Avoidance Agreements (DTAA)

Qatar has a growing network of DTAA with over 70 countries, including Austria, Cyprus, France, India, Italy, Morocco, Pakistan, Switzerland, Russia, Singapore, Sri Lanka, United Kingdom, Tunisia, Turkey, UK, Netherlands, Luxembourg, among others.

## Transfer pricing

Under the State law, entities which have met the relevant thresholds must prepare and submit TP documentations which include the Statement of TP (TP Declaration), Master File and Local File. Deadline for filing the Master File and Local File is 60 days from the due date of the corporate income tax return.

Key considerations to assess include – thresholds for the TP documentation, Taxpayer TP policy consistency with and appropriateness from both a Qatari law and OECD perspectives and determination of any TP adjustments required in the CIT return.

In the QFC, transactions between connected / associated persons would attract transfer pricing provisions, although there is no mandate to file TP documentation with the QFC Tax Department.

The companies that are ultimate parent entity of a multinational group (MNE) and are resident in Qatar with total revenue of the MNE exceeding QAR 3 billion (approx. USD 824 million) based on consolidated financial statements of the preceding financial year, are subject to CbCR.

The entities meeting the above thresh hold need to file CbCR no later than 12 months from the end of the financial year.

## Economic Substance Regulations

The Ministry of Finance issued its Decision No. 20 of 2021 dated 17 October 2021 on Economic Substance Regulations in Qatar. The Decision requires certain entities that carry on certain specified activities (i.e., IP related activities and geographically mobile activities) to demonstrate economic substance in Qatar if they wish to continue to benefit from a preferential tax regime. The Decision was published in the Official Gazette on 4 November 2021.

These entities need to demonstrate as having appropriate number of full time employees with requisite qualifications and incurring appropriate level of operating expenses in addition to other requirements and filing obligations.

## Tax regime at a glance

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| Corporate tax rate | 10% on the foreign profit sharing |
| Capital gains tax rate | 10%, Capital gains is added as other profit in the corporate tax return (including on sale of shares by non-residents) |
| Branches/Permanent Establishments | 10% on the foreign profit sharing |
| Personal income tax | NA |
| Alternate minimum tax | NA |
| Withholding tax | |
| Royalties and technical fees | 5% |
| Interest | 5% |
| Dividends | NA |
| Commissions, attendance fees and other services | 5% |
| Carry forward of losses | 5 years |
| Tax year | Usually, tax year is calendar year and the tax return is due for submission within 4 months from the end of financial year.<br>Taxpayer can opt to request for change in year end. |
| CFC and Thin Capitalization rules | Qatar has in place Thin capitalization regulations. |
| Tax treaty network | 75 countries |
| Wealth tax, estate tax, gift tax | NA |
| Indirect taxes | |
| Sales tax/VAT | NA* |
| Customs general rate | 5% |

*VAT law is likely to be introduced in 2022

# Saudi Arabia

Saudi Arabia is the largest economy in the region and the only Middle Eastern member state of the G20. The continued development and success of the Saudi economy is instrumental to the economic growth of the region.

The Kingdom continues to advance its ambitious social and economic transformation program under the umbrella of the Kingdom's Vision 2030 despite the impact of the COVID 19 pandemic. In some ways, this unfortunate global event accelerated efforts to achieve fiscal stability and sustainable long term growth. Most notably, the Kingdom took swift action to support public revenue during 2020 by increasing the value-added tax (VAT) rate from 5% to 15% with effect from 1 July 2020 and increased various customs duty rates (ranging from 0.5% to 15%) for a list of products from 10 June 2020. A new tax on property transactions, Real Estate Transaction Tax, was introduced in October 2020 with a rate of 5%.

Total national revenues are expected to reach SAR 849 billion in FY2021 with tax revenues representing 30.3 percent. The budget deficit in 2021 is expected to be SAR 141 billion (4.9 percent of the estimated 2021 GDP), a sharp improvement from SAR 298 billion (12 percent of GDP) for 2020, on the back of a domestic economic recovery and higher oil prices.

Taxation continues to play a pivotal role in the economic development of the Kingdom. In the last two years major initiatives have been undertaken to create a tax environment which seeks to both encourage investment and raise revenue.

A key initiative has been the merger of the General Authority of Zakat and Tax and the Customs Authority to form the Zakat, Tax and Customs Authority ("ZATCA") so that all taxes are administered by a single regulator. Amongst ZATCA's stated aims are: increasing taxpayer compliance and commitment; supporting economic development and facilitate trade; and improving customer experience.

It is hoped that the new authority brings greater consistency in terms of broader tax strategy and policy and leads to a more predictable tax environment for business and other stakeholders.

In addition to the re-organization, ZATCA, in collaboration with the Ministry of Investment, the Commission for Information Technology and Communication and the General Authority for Civil Aviation has supported specific initiatives aimed to improve the business environment and attract investment. Special Economic Zones have been created for this purpose and the tax regime has been a key component of the package of measures agreed.

Of great significance is the recent introduction to the Kingdom of e-invoicing from 4 December 2021, following the global trend of the increasing digitization of tax administration. E-invoicing is expected to have a major impact on tax collections and to minimize fraud.


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## Regulatory/Legal

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| Setting up business | The Foreign Investment Act allows foreign companies to invest in all economic activities other than those listed on the so-called 'negative list'. Broadly, the Foreign Investment Act also allows foreign companies to own 100% of local companies (subject to conditions) with the exception of certain activities like trading, which in certain cases requires a minimum of 25%local shareholding. A Saudi Arabian sponsor or a local partner is no longer required, except in the case of certain business activities. Saudi Arabian Ministry of Investment (MISA) is responsible for dealing with all matters relating to the investment regulations, including issuance of licenses to foreign investors. |
| Commonly used business entities | The main company types are limited liability companies (LLC), joint stock companies (JSC), general partnerships and limited partnerships. Foreign investors generally conduct business through either LLCs or branch Offices. |
| Main legal formalities for the formation of a company or registration of a branch | The establishment of a Branch or LLC (which has foreign ownership) in Saudi Arabia requires a license from MISA. In addition, a Branch and LLC requires Commercial Registration Number from the Ministry of Commerce & Industry (MOCI) as well as 700 File from Ministry of Labor (MOL). There are certain restrictions related to minimum amount of share capital, number of shareholders and business sectors which need to be observed where there is foreign participation. |
| Currency/monetary restrictions | The currency of Saudi Arabia is the Saudi Riyal (SAR). There are no foreign currency restrictions in Saudi Arabia. |
| Regulatory requirements for Financial Services | Financial service companies are generally governed, licensed and regulated by The Saudi Central Bank (SAMA). Capital Market Authority (CMA) regulates and monitors the activities of entities broadly carrying on capital market activities. |

## Accounting/Finance for companies and branches of foreign companies

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| Financial statements | Effective 2018 all businesses are required to prepare annual financial statements under the International Financial Reporting Standards (IFRS) as adopted by the Saudi Organization for Certified Public Accountants (SOCPA). Saudi banks and insurance companies have been already preparing their financial statements under IFRS. MOCI requires Companies to upload their audited financial statements on an e-system called "Qawaem". Zakat, Tax and Customs Authority (ZATCA) has an access of this e-system from where it can compare the financial statements of taxpayers. |
| Audit requirements | Foreign companies subject to income tax in Saudi Arabia are required to submit income tax returns based on audited financial statements. |
| Requirements for foreign investors | The establishment of a Branch or LLC in Saudi Arabia requires a license from MISA and the issuance of Commercial Registration by MOCI. |
| Book year/accounting currency | Generally, the taxable year of taxpayers is the Kingdom's fiscal year (i.e. January to December). However, a taxpayer may use a different fiscal year after obtaining approval from the ZATCA. The taxpayer's first fiscal period will start from the date of its commercial registration or license and it can be for less than 12 months or more than 12 months (generally up to 18 months) if the company's articles of association provides for a long first fiscal period. A Branch's first fiscal period, under no circumstances, can exceed 12 months.<br><br>Business entities registered in Saudi Arabia must maintain book of accounts in local currency (Saudi Riyal) and in Arabic language.<br><br>Gross revenue and taxable profits must be calculated in SAR. Where the calculation of income involves an amount in foreign currency, the amount is converted at the exchange rate published by SAMA on the date of the transaction. |
| Format | Annual financial statements must be prepared under the IFRS. |

## Tax and Zakat

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| Approval requirements | Approval is not required from the ZATCA for setting up a business. However, an application for e-registration with ZATCA should be submitted before the end of the first fiscal year. Failure to register is subject to a penalty ranging from SAR 2,000 to SAR 10,000. |
| Advance tax rulings/ Advance pricing agreements (APA) | There is a formal tax advance ruling system in Saudi Arabia. However, there are non-binding rulings. |

## Income tax compliance

Saudi Arabia has a system which includes corporate income tax, withholding tax and Zakat. Corporate income tax is assessed on the share of profits of the non Saudi/Non GCC shareholders in the local company, a non-resident who conducts business in Saudi Arabia through a permanent establishment. and a person engaged in the field of natural gas investment and oil and hydrocarbon production (except listed entities).

### Corporate Income Tax rate

Standard Corporate tax rate is 20% and also applies to activities related to natural gas investment. Tax rates ranges from 50% to 85% is applicable for production of oil & hydrocarbon depending on capital investment.

### Tax Year

The tax year is the state's fiscal year (i.e. from 01 January to 31 December). The taxable year of a taxpayer starts from the date of it obtains a commercial registration license, unless other documents support a different date.

### Allowable expenses

Ordinary expenses necessary for the realization of taxable income. Expenses such as bad debt write-offs, interest deduction, depreciation expense, repairs and maintenance, etc. are subject to certain rules.

### Interest expense limitation

The Tax Law does not stipulate any minimum debt-equity ratio, and an entity can be formed with the minimum required capital and funded by debt. However, deductions for interest expense incurred during a tax year cannot be more than the entities' total interest income plus 50% of taxable income before interest income and interest expense. Any disallowed interest as a result of this limitation is a permanent loss. The interest expense limitation is not applicable to banks. Interest paid by a branch to its head office is not considered a deductible expense except in the case of a branch of a bank.

### Tax losses

Carry forward is allowed indefinitely. The maximum limit allowed to be deducted in each year must not exceed 25% of the annual taxable profit. Capital companies will be allowed to carry forward losses, irrespective of whether there has been a change in ownership or control, provided they continue to perform the same activity.

### Estimated taxes (Deemed profit tax)

The ZATCA may assess the tax for activities associated with worldwide expenses on an estimated basis, when local expenses for practicing such activities are mixed with worldwide expenses and it is difficult to separate these expenses related to activity in the Kingdom accurately and hence it is impossible to submit actual accounts for the local activity. The minimum deemed profit rates on various activities range from 10% (for construction work contracts) to 80% (for management fees).

### Filing and payment

Tax returns for companies, Branches of foreign company and Permanent Establishment must be filed online with the ZATCA within 120 days from the fiscal year end together with payment of tax due per the return. A taxpayer whose taxable income exceeds SR 1 million before the deduction of expense must certify the tax return by a licensed certified accountant.

Income tax compliance (contd.)

### Penalties

The penalties for failure to file a tax return are the higher 1% of revenue (up to a maximum of SR 20,000) or in case of unpaid tax payable between 5% and 25% of the unpaid tax, depending on the length of delay. In addition, there is a fine of 1% of the unpaid tax for every 30 days of delay in settlement.

### Advance tax payment

Advance tax payment procedures have been introduced based on a formula. If the prior year's tax liability is SR 2 million or more, the taxpayer is required to settle accelerated tax payments in 3 equal installments.

### Income exempt from tax

- Capital gains realized from the disposal of financial instruments traded in the Kingdom's stock exchange acquired after implementation of the new tax law and gains resulting from the disposal of assets that are not part of the activity.
- Capital gains realized from the disposal of securities traded on a stock exchange outside the Kingdom provided the securities are also traded on the Saudi stock exchange (Tadawul), irrespective of whether the disposal occurred through a stock exchange or through any other means.
- Cash or in-kind dividends received from investments made by a Saudi resident capital company in another Saudi resident or non-resident company provided the dividend recipient owns at least 10% of the investee company and for a period of at least one year.

### Withholding tax

The tax law imposes direct withholding tax on payments for services from an in- Kingdom source to non-resident parties.

The taxpayer is required to file a monthly Withholding Tax Return ('WTR') online within 10 days of the end of the month in which the payment was made to the non-resident. Failure to settle the withholding tax would result in a delay fine of 1% for every 30 day- delay in payment.

For transactions with related parties, the date of recording the transaction is construed as the date of payment if transactions are settled through account rather than making payments.

Withholding tax is computed at flat rates ranging from 5% to 20% (depending on the nature of services) on payments made to non-residents. For example, for a payment of SR 100 at a flat rate of 5%, the withholding tax would be SR 100 x 5% = SR 5.

In addition, a taxpayer is required to file an annual WTR within 120 days from end of the fiscal year. For Partnerships, the annual WTR should be submitted within 60 days of the fiscal year end.

ZATCA may request information relating to payments made to non-residents at the time of assessment. The records, such as copies of the contracts, supporting documents with respect to withholding tax, should be maintained for a minimum of 10 years after payment. If the subject is still under the review of ZATCA or the competent authorities, maintenance of such records should be continued till the finalization of such review or the issuance of a final decision by the Appeal Committee.

Income tax compliance (contd.)

**Withholding tax procedures in case of tax treaty relief**

Based on the ZATCA's later circular, the Saudi Arabian entity making taxable payment to a non-resident service provider can apply the provisions of effective tax treaties (i.e. not settle withholding tax on payment to non-resident parties from treaty country or apply a reduced rate) if it complies with the following requirements:

— Reporting of all payments to non-resident parties (including those payments which are either not subject to withholding tax or subject to withholding tax at a lower rate as per the provisions of effective tax treaties) in the monthly withholding tax returns (on a prescribed format);

— Submission of tax residency certificate issued by the tax authorities in the country where the beneficiary is residing. Such tax residency certificate should confirm that the beneficiary is resident in that country in accordance with the provisions of Article 4 of the treaty and the amount paid is subject to tax in that country. Such forms should be on the prescribed format (Form Q7/B). The above-mentioned document should be attested by the Saudi Embassy in the country of non-resident and the Ministry of Foreign Affairs in Saudi Arabia; and

— Submission of an undertaking from the Saudi entity that it would bear and pay any tax or fine due on behalf of non-resident payees due to incorrectness of submitted information or a computation error or misinterpretation of the provisions of tax treaty (Form Q7/C). [Attested by the Chamber of Commerce].

Saudi Arabian entities that cannot comply with the above requirements should pay withholding tax at full rates and then seek a refund based on treaty rates, providing the following documents:

— A certificate issued by tax authorities of the beneficiary's country, certifying that the beneficiary is a resident of that country, in accordance with Article 4 of the relevant tax treaty and that the amount paid is subject to tax in that country; and

— A copy of withholding tax form used to pay the tax, together with the bank receipt confirming settlement of WHT with ZATCA.

Saudi tax laws provide that taxpayer is entitled to refund of any overpayment made under the provisions of the tax law within five (5) years of the year for which the overpayment was made.

Income tax compliance (contd.)

### Assessment and Statute of Limitation

The tax law empowers the ZATCA to:

- Raise an assessment within five years from the date of the statutory deadline to file the declaration.
- Raise an assessment within ten (10) years from the date of the statutory deadline to file the declaration if it is found that the declaration is incomplete or incorrect  with the intent of the evasion.
- Raise an additional assessment at any time with taxpayer's consent

### Appeal and Dispute Resolution Committees

Key features of operating Rules of the Appeal Committees are as follows:

- ZATCA's assessment becomes final and unappealable if the Tax, Zakat and VAT payer didn`t object to ZATCA against the assessment within 60 days of issuance of assessment.
- All undisputed dues should be paid before filing appeal within 60 days of the assessment.
- Following 30 days of ZATCA's full or partial rejection of the appeal, the assessment becomes final and unappealable if the Tax, Zakat and VAT payer didn't request to transfer the dispute to the internal settlement committee or the TVDRC within 30 days following the earlier of the following:
  - Being notified of ZATCA's response against the appeal
  - Elapse of 90 days following the appeal without response from ZATCA
  - Notification of the settlement committee ruling
- In all cases, the notices – fulfilling all the requirements – is considered registered from the date of submitting the notification.

Income tax compliance (contd.)

- The notification could be escalated and the Appeal Memorandum could be submitted to the Appeal Committees through the available electronic means by the General Secretariat of the Tax Committees "GSTC".
- In case the defendant is not reachable, and all the stated notification means as per the Operating Rules have been utilized to reach him without success, the ruling is being issued in absentia. In this case the ruling should be published in the official gazette or any local gazette and the party against which the ruling has been issued, has the right to object against the ruling in front of the ruling committee within 30 days following the publishing date.
- GSTC notifies the defendant with the escalation requirements and he should respond within 30 days which could be extended to additional 30 days based on justifying request subject to the committee's approval, in case of no response, GSTC reviews the case and escalates it as is.
- Hearing sessions could be conducted using the technological means made available by GSTC.
- The committee should issue a verdict within 60 days from the date of the first hearing session, except for the cases which requires more time as per the committee's assessment.
- Arabic language is the official language for the dispute, any non-Arabic documents should be officially translated into Arabic, Non-Arabic speakers can attend with a translator.
- Following the TVDRC's ruling, either party may appeal this ruling within 30 days to be reviewed by the ACTVDR.
- The TVDRC's ruling is considered final in any of the following cases:
  - For the case in which the disputed amount doesn't exceed SAR 50,000
  - Passing the appellate statutory period without appellation
  - The mutual resolution agreement between the parties in front of the TVDRC
- Following ACTVDR's ruling, either parties may request reconsideration of the ruling within 30 days following the original ruling.
- The rulings of the ACTVDR are final and unappealable in front of any other Judicial Body.

### Virtual Permanent Establishment

Payments for services that are sourced in Saudi Arabia are subject to withholding tax, unless exempted by an applicable tax treaty.

If exemption is claimed under a tax treaty, the ZATCA may assert a virtual PE if the services are provided for more than threshold number of days for there to be a service PE under the tax treaty. This is so irrespective of whether there are employees or other personnel in Saudi Arabia on those days. If a virtual PE is asserted, ZATCA will raise an assessment.

If exemption under a tax treaty is not claimed and the withholding tax is paid, ZATCA generally will treat the withholding tax paid as final tax.

## Zakat compliance

Zakat is an obligatory payment required from Muslims according to the Sharia (religious law) and forms one of the five pillars of Islam. In most Muslims countries the payment of Zakat has been left to the individuals, whereas in Saudi Arabia, the collection of Zakat is governed by regulations.

In Saudi Arabia, Zakat is assessed on Saudi and Gulf Cooperation Council ("GCC") nationals and on companies wholly owned by those nationals or their equity interest in companies with foreign (non – Saudi/GCC) participation.

Zakat is assessed on the basis of earnings and holdings. All earnings from business, industry, personal work, salaries, property, monetary acquisitions of whatever kind or description including commercial or financial transactions and generally all income on which the Sharia has levied a Zakat is subject to Zakat. All holdings that are intended for sale are also subject to Zakat. Holdings not intended for sale are not subject to Zakat.

In general, Zakat is levied at a fixed rate of 2.5% on the higher of the adjusted Zakatable profits or the Zakat base (in general comprises equity, loans and provisions reduced by deductible investments and fixed assets).

Zakat rate of 2.5% is applicable on the Lunar year (354 days). Ff a Zakat payer is following Gregorian year (365 days), it will pay Zakat based on the number of days which would result in an increased Zakat rate proportionately.

Zakat is paid on the higher of Zakat base or Zakatable profits. Listed companies are subject to Zakat except for the non-Saudi/GCC founding shareholders.

- Zakat will be payable on the higher of Zakat base or Zakat-able profits.
- The introduction of concept of PE for Zakat purposes also, which was previously tax subject only. Accordingly, PE of non-resident Saudi or GCC nationals would be subject to Zakat if any two of the three conditions laid down in the regulations are met i.e. board of directors holds regular meetings in Saudi Arabia; or executive decisions are made in Saudi Arabia; or non-resident PE earns more than 50% of its revenue from Saudi Arabia.
- Listed companies are subject to Zakat except for the founding shareholders.
- Appeal procedures have also been updated requiring Zakat payer to pay the Zakat liability on the undisputed amounts and in addition to that, for an appeal to be accepted in form, Zakat payer is required to pay minimum 10% to maximum 25% of assessed Zakat liability or provide bank guarantee equal to 50% of assessed Zakat liability.
- Limited relief has been granted to real estate and insurance/re-insurance businesses in the form of deduction of long term projects under development (certain conditions apply) and statutory deposits.
- Addition to Zakat base of long term loans and similar balances has been restricted to long term assets deductible for Zakat purposes.
- Lower of accumulated brought forward losses as per audited financial statements or GAZT's assessment is allowed.
- Net book value of fixed assets as per audited financial statements will be allowed as deduction from Zakat base.
- An adjustment to the value of transaction between related parties would be made if the transaction is not at arm's length.

Indirect Tax

**Value Added Tax (VAT)**

Post the introduction of VAT in 2018, ZATCA continues to develop its capacity to administer taxes in support of the Vision 2030 goal of economic diversification. To recap, VAT was introduced in 2018 at the standard rate of 5% (15% from 1 July 2020) on the supply of the majority of goods and services and is based on the GCC Unified VAT Agreement, Saudi VAT law and the Saudi VAT Implementing Regulations.

As mentioned in previous publications, the VAT system in the Kingdom allows for the zero-rating and exemption from VAT of certain supplies of goods and services to provide relief to consumers. Examples of zero-rating include the export of goods and services, international transport, the supply of investment metals, medicines and medical goods, and healthcare and educational services to nationals. Examples of exemptions include the supply of real estate and certain financial services.

Similarly to other VAT jurisdictions across the globe, taxpayers that make exempt supplies are restricted in their ability to deduct tax incurred on purchases. The compliance requirements for VAT taxpayers remain relatively straightforward with the obligation to file monthly returns (quarterly if the annual turnover is below SAR40mn) and pay the tax by the end of the following month of the tax period. The returns contain summary-level numbers of turnover and VAT on output and input transactions.

With effect from 4 December 2021, the first phase of e-invoicing was introduced to the Kingdom. Phase 2 will start to be rolled out in waves beginning from 1 January 2023. Based on the ZATCA announcement, resident businesses with a taxable turnover of more than SAR 3 billion in the calendar year 2021 are part of the first wave. ZATCA will announce subsequent waves and the timeline for the respective obligations at least six months in advance for the impacted sellers and the buyers. E-invoicing will have a profound effect on the VAT accounting process for taxpayers and on ZATCA's ability to administer the tax (please see below).

ZATCA continues to publish detailed guidelines on various VAT matters. Also, individual rulings are issued to taxpayers that have applied for clarifications. ZATCA remains very active in terms of conducting audits and issuing assessments. As a consequence, the number of disputes with ZATCA has risen dramatically at all levels, with the cour practice being so far mostly in favour of the tax authorities.

Indirect Tax (contd.)

## Customs Duty

The six countries (UAE, Bahrain, Qatar, Kuwait, Oman and Saudi Arabia) of the Gulf Cooperation Council (GCC) form the GCC Customs Union, which uniformly imposes customs duties on the majority of goods entering the GCC.

These duties should be charged at the first point of entry into the GCC and the duty paid goods then generally move freely between member states without payment of any further duty.

Customs duties are imposed on imports at predetermined rates according to the tariff classification at the time of importation in line with the Harmonized System of classification. Customs duties are imposed either on an Ad Valorem basis (i.e. percentage of the value of the goods) or Specific basis (i.e. an amount imposed on the number of units to be imported).If the goods in question are subject to Ad Valorem duty, this is calculated on the landed cost of the imported goods. The landed cost is calculated based on the actual paid or payable to the seller. Typically, the price paid or payable comprises: the price of the imported goods; packing costs; freight and insurance costs to the Saudi port; loading and unloading costs; are all converted to Saudi riyals at the exchange rates published by the Saudi Arabian Monetary Agency (SAMA) on the date of the declaration. In case this procedure is not achievable, the imported goods will be valued based on the most proximate comparable value that could be ascertained as determined according to the rules of valuation.

Imported goods subject to a Specific rate of customs duty are identified in the HS Code. For example, imports subject to a rate of duty based on weight are assessed on the gross weight or the net weight, as shown in the tariff schedules.

The gross weight includes the weight and all internal and external packing materials. The net weight of the goods excludes all internal and external packing materials, including the items used for separating and arranging the goods.

Every importer is required to file a customs declaration and other relevant customs documentation at the time of import into the KSA, as prescribed in the GCC Customs Law.

ZATCA continues to update its approach to the administration of customs duties.

Indirect Tax (contd.)

### Excise tax

Excise Tax was introduced into the Kingdom in June 2017, based on the GCC Unified Agreement for Excise Taxes. The Law states that businesses which undertake any of the following activities must register for excise tax:

- Importation of excisable goods;
- Production of excisable goods; and/or
- Acquisition of excisable goods under a duty suspension arrangement.

The Excise Tax Executive Regulations, published in June 2017 and updated in 2019, provide additional guidance regarding the application of the Law and taxpayers' responsibilities in terms of registration and compliance. The tax is calculated on the tax base of the goods, which is defined as the Retail Sales Price. The tax is due upon the following events:

- Importation into the Kingdom;
- Production in the Kingdom;
- Removal from an excise warehouse;
- Possession of excisable goods for which tax has not been paid; and/or
- Damage/loss in respect of excisable goods whilst in an excise warehouse – unless the damage/loss was due to circumstances beyond the taxpayers control

The Excise tax applies to the following:

- Tobacco products 100%
- Soft drinks 50%
- Energy drinks 100%
- Sweetened drinks 50%
- Electronic devices and tools used for smoking, vaping and alike 100%
- Liquids consumed in electronic devices and tools used for smoking, vaping and alike 100%

It is possible to suspend the payment of excise tax under specific circumstancesand on application through the use of Excise tax warehousing arrangements.

Indirect Tax (contd.)

## Real Estate Transaction Tax (RETT)

In October 2020, Real Estate Transaction Tax (RETT) was introduced to the Kingdom at the rate of 5% on supply of following real estate transactions and calculated on the value of the transaction.

The following transactions are subject to RETT:

— Transfer of ownership;

— Sale of commercial, residential, or agricultural real estate; and

— Sale of developed and undeveloped land.

Transfer of ownership/sale includes gifting, inheritance, financial leasing, long term usufruct contracts exceeding 50 years, lease to own, and Islamic Murabahah. RETT is levied on all individuals and organizations involved in real estate disposals, including natural and legal persons, corporations, companies and government agencies. There is no registration threshold for RETT; therefore, all transactions are taxable except those specifically exempted.

There is an extensive list of exemptions from RETT. Examples of exemptions from RETT include:

— The transfer of real estate by inheritance

— Compulsory disposals of real estate (e.g. seizure of ownership for publicbenefit)— The temporary transfer of property for use as a financial or credit guarantee, etc.

Consequently, the supply of real estate taken place since 4 October 2020 are subject to the RETT. In addition, it was announced that all real estate transactions would be exempt from VAT from this date except for commercial leasing/rental and the provision of short-stay hotel accommodation.

ZATCA is responsible for managing and collecting RETT as per the regulations and policy documents.

RETT should be declared and paid for each transaction by the seller before or during the process of conveyance authentication by the competent authorities, or before or during the processing of disposals as authenticated by the competent authorities.

The exemption of supplies of real estate has a direct impact on the deduction of related input VAT. For example, construction costs will remain subject to VAT at the rate of 15%. However, the corresponding input VAT will not be recoverable unless the real estate developer is qualified by ZATCA for a refund of the respective VAT.

ZATCA has issued the rules and conditions for real estate developers to be considered eligible for the refund of input tax related to exempt real estate supplies.

To support Saudi Nationals, the government has committed to meeting the cost of RETT due on the purchase of a first home up to a value of SAR 1 million provided the citizen produces a certificate of exemption from the Ministry of Housing (MoH).

Indirect Tax (contd.)

**E-invoicing**

Saudi Arabia is implementing e-invoicing as part of its ongoing efforts to improve compliance with VAT legislation, the efficiency of the filing process and align with international administration standards.

Phase 2 is due to commence on 1 January 2023 during the first wave for the resident taxpayers having the taxable turnover exceeding 3 bn Saudi Riyals during 2021.

E-invoicing applies to Saudi Arabian residents for VAT purposes or the persons who issue invoices on their behalf (e.g. e-commerce platforms) for the following transactions:

— All taxable supplies of goods and services (i.e. both standard and zero-rated supplies);

— The export of goods and services from the Kingdom;

— Intra-GCC supplies;

— Nominal supplies; and

— Advance payments/receipts.

Phase 1 requires taxpayers must be able to generate and store electronic invoices with effect from 4 December 2021.

Phase 2 requires taxpayers to integrate their e-invoicing generation solutions with ZATVA's e-invoicing portal and transmit invoices in a non-paper format, and clear or share these documents with ZATCA (depending on the scenario).

ZATCA has issued multiple detailed publications that address the e-invoicing rules and continues to update respective legislation and its software.

Preparation for Phase2 remains challenging. To comply with the regulations that taxpayers must:

— Undertake gap assessment to collect additional data required for e-invoices;

— Issue tax invoices electronically with the format reflecting the specific scenario in XML, PDF/A-3 formats;

— Implement system anti-tampering features;

— Introduce the process for the purchase invoices verification; and

— Integrate the e-invoicing system with the ZATCA system.

## Transfer Pricing

### Background

On 15 February 2019, the Transfer Pricing ("TP") regulations were formally enacted through issuance of TP ByLaws by Zakat, Tax and Customs Authority (ZATCA, formerly GAZT). ZATCA website also hosts Frequently Asked Questions (FAQs). Early March 2019 saw the release of first edition TP Guidelines followed by the second edition release in May 2020 and a third edition in November 2021. The TP Guidelines provide detailed practice approach and represent ZATCA's view on implementation of TP Bylaws in the Kingdom.

### Persons subject to TP regulations

The TP Bylaws are applicable on all Taxable Persons, as defined in the Income Tax Law. This includes entities that are jointly owned by GCC and foreign (non-GCC) shareholders (mixed entities). Companies that are owned 100% by GCC nationals, and are subject only to Zakat, are not subject to TP documentation requirements i.e. Master File, Local File and Disclosure Form for Controlled Transactions (DFCT). Such entities are only subject to requirements relating to the filing of Country by Country Report (CbCR), provided they are part of a Multinational Enterprise Group with consolidated Group's revenues exceeding SAR3.2 bn.

However, ZATCA has issued an amended draft of Transfer Pricing Bylaws (TP Bylaws), inviting comments from public. The deadline for submitting feedback is 1 Muharram 1444 (30 July 2022). The proposed amendment seeks to bring Zakat payers within the ambit of TP Bylaws which was earlier applicable to taxpayers and mixed companies only. The amended TP Bylaws shall be effective pursuant to issuance of Board Resolution by ZATCA in this regard. If the law becomes effective, Zakat payers would also be required to maintain all TP Documentation.

### Transactions subject to TP regulations

From a KSA perspective, all "Controlled Transactions" should be documented. A "Controlled Transaction" is any transaction between "Related Parties" or "Parties under common control".

Individuals are considered as related parties, if they are relatives (up to the fourth degree) or partners in a partnership.

To determine if an individual is related to a juridical person, ZATCA applied the concept of "control". If the individual is able to control the juridical person, they should be considered as related.

Two juridical persons are related for KSA TP purposes, if one person has effective control over the other, or a third person has effective control over both juridical persons. ZATCA provides a long list of examples, how effective control could be established between persons. Ultimately, ZATCA concludes that effective control can be established by (i) Governance, (ii) Funding, or (iii) Business.

The approach is more wider in scope and over and above routinely followed in under OECD principles & guidelines. Under the ZATCA approach, any exclusivity agreement will also lead to the conclusion of a related party scenario and potential TP documentation requirements.

Another important aspect is the fact that the KSA TP regulations also include domestic transactions.

Transfer Pricing (contd.)

### TP Methods

In Article 7 of the TP Bylaws, ZATCA lists down the "approved methods", which are identical with the five OECD TP methods. ZATCA highlights the fact, that there is no hierarchy that the taxpayer should follow when applying a TP method. Taxpayers may even use a non-approved method provided taxpayer can demonstrate that the non-approved method delivers better results than the "traditional" TP methods.

### Documentation

While taxpayers (or mixed companies) are subject to documentation obligations as defined by the KSA TP ByLaws, Zakat payers are only subject to CbCR reporting obligations.

The Disclosure Form of Controlled Transactions (DFCT) is required to be filed along with tax returns. Within the DFCT, the following detailed information needs to be submitted:

- Details of all 'Controlled Transactions' undertaken for or without monetary consideration (such as barter arrangements).
- A list of all shareholders. For listed entities, information of all shareholders, directly owning more than 5% shares would need to be disclosed.
- Where there has been an internal reallocation of functions, assets and risks within a group, the same needs to be reported as part of the DFCT for the reporting year relevant to the change.

The DFCT shall form part of annual tax declaration and submitted electronically by every person engaged in controlled transactions, irrespective of the value of transaction. Along with DFCT, taxpayers are also required to produce an auditor's certificate confirming that the Multinational Enterprises (MNE's) TP policy has been consistently applied by and in relation to the taxpayer.

ZATCA has adopted the new OECD three-tier approach for preparing TP documentation. Taxpayers need to prepare (i) Master File, (ii) Local File and (iii) Country-by-Country reporting (as applicable).

The Master File contain broader information on the global business organizational structure, operations and TP policies of the Multinational Enterprise Group to which the taxable person belongs. In respect of any 'intangibles', the Master File should provide for identity of legal and de-facto owners of intangibles.

The Local File contain detailed information on all Controlled Transactions of the taxable person and information in respect of any business restructurings (transfers of risks, functions, tangible or intangible assets impacting directly or indirectly the taxpayer in Saudi Arabia) in the current year on in the preceding year.

The requirement to maintain a Master File and Local File is not necessary for the following:

- Natural persons;
- Small size enterprises (entities with arm's-length value of 'Controlled Transactions' not exceeding SAR 6 million (USD 1.6 million) in a 12-month period).

Transfer Pricing (contd.)

**Country-by-country reporting**

The CbCR and the notification need to be submitted by members of the MNE Group with consolidated group revenue exceeding SAR 3.2 billion as per consolidated financial statements of the MNE Group.

Where CbCR is being filed in another country that has signed the Multilateral Instrument (MLI) and the Qualifying Competent Authority Agreements (QCAA), the filing of only the CBC notification to the ZAKAT should suffice. However, if the foreign country systematically fails to provide a copy of CbCR to the ZAKAT, then the local constituent entity is required to provide a copy of the CbCR submitted in the foreign jurisdiction.

**Deadlines**

The DFCT needs to be filed together with the annual tax declaration not later than 120 days after the fiscal year end. ZATCA may seek a taxpayer to provide a copy of their Master File or Local File or any part thereof at any time by issuing a notice of not less than 30 calendar days.

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

**FATCA and CRS**

In line with its efforts to improve international tax compliance and transparency, The Kingdom of Saudi Arabia signed several exchange of tax information agreements. The FATCA Intergovernmental Agreement Model 1 (IGA) with the United States of America to exchange information on US accounts and the OECD's Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention) which covers various means of exchanges including the Common Reporting Standard Multilateral Competent Authority Agreement (CRS MCAA)

Under the Model 1 IGA, KSA would annually exchange information on financial accounts held by US specified persons and maintained by Saudi financial institutions. This agreement is non-reciprocal i.e. the US will not exchange similar information with KSA.

On the contrary to the signed IGA, under the CRS MCAA, KSA has concluded a wide range of reciprocal exchange agreements.

Information to be reported include:

— For individual Saudi tax residents, KSA will receive the name, address, tax identification numbers (TIN), date and place of birth, account number, name of financial institutions where the account is held and the balance or value of the accounts.

— For Entity Saudi tax residents, KSA will receive the name, address, TIN, account number, name of financial institutions where the account is held and the balance or value of the accounts. In case this entity is a passive entity and controlled by a reportable person, KSA will receive in addition to the above-mentioned entity details, the name, TIN(s) and date and place of birth for each controlling person*.

In all of the above cases, income such as gross interest, gross dividends (or other income), gross proceeds, surrenders (full or partial) paid to the accounts will be exchanged.

*some countries decided not to receive information
**It is worth mentioning that under CRS, nationality is irrelevant. Tax residency is what really matters. It is easy and common for a person (individual or entity) to have more than one tax residency.
***A controlling person is determined as per the local AML rules.

# Tax regime at a glance

| | |
|---|---|
| Corporate tax rate | 20% |
| Capital gains tax rate | 20% |
| Branches/Permanent Establishments | 20% |
| Personal income tax | NA |
| Alternate minimum tax | NA |
| Withholding tax | |
| Royalties | 15% |
| Technical fees | 15% |
| Interest | 5% |
| Dividends | 5% |
| Commissions, attendance fees and other services | 15% in case of Saudi-sourced income |
| Carry forward of losses | Infinite time period. The deduction is limited to 25% of the taxable profit |
| Tax year | Accounting year |
| CFC and Thin Capitalization rules | NA<br>Earning stripping rules apply |
| Tax treaty network | 55 countries |
| Wealth tax, estate tax, gift tax | NA |
| Indirect taxes | |
| VAT | 15% |
| Customs duty rates | 5% to 25% |
| Excise duty rates | 50% to 100% |
| Real Estate Transaction Tax | 5% |

# United Arab Emirates

The UAE is strategically located between Europe, Africa and Asia. Due to investor friendly legislation, financial and tax environments, as well as an extensive double tax treaty (DTT) network, and well established infrastructure for doing business, UAE is an ideal business location for multiple purposes:

— Conducting local business in the UAE

— Conducting regional business from a hub in the UAE

— Creating holding, financing and support platforms for a Group's worldwide businesses

On 31 January 2022, the tax landscape of the region shifted yet again with the United Arab Emirates (UAE), Ministry of Finance (MoF) making the breakthrough announcement that a new federal corporate income tax (CIT) system will be implemented in the UAE, effective financial years commencing on or after 1 June 2023. The corporate tax will apply to all UAE businesses and commercial activities alike, except for the extraction of natural resources, which will remain subject to Emirate level corporate taxation.

There are no payroll taxes (except for social contributions in respect of GCC nationals). There are no operational taxes. As to indirect taxation, there is VAT (5%/0%/exempt/out of scope), excise tax (only for "unhealthy" products), and import customs duties (5% general rate).

There are a number of immediate and long term initiatives intended to foster the business environment and promote development within the Emirates – particularly, UN's SDG Agenda 2030. The UAE has taken on a number of initiatives to create a robust investment and tax environment. Some of the notable developments include –

— The UAE has joined the OECD BEPS Inclusive Framework and has been implementing the BEPS Package, including BEPS 2.0 initiatives.

— The UAE introduced the Country-by-Country Reporting (CbCR).

— The UAE ratified the Multilateral Instrument (MLI) to change its existing double tax treaties.

— The UAE has implemented the automatic exchange of information (CRS), and signed the OECD Multilateral Convention on Mutual Administrative Assistance and the CRS MCAA.

— Changes to the Commercial Companies Law, with maximum foreign ownership in mainland UAE entities increased from 49% to up to 100% depending on industry.

— The UAE introduced the Economic Substance rules to be complied with by UAE entities with one or more of 9 "relevant activities".

— The UAE Government encourages inbound investments by reducing cost of doing business in the UAE, including decreased business license and government fees.

— Long term (5 to 10 years) resident visas are issued to a range of professions, investors, and executives.

— Dual licensing system introduced to allow certain free zone (FZ) companies to also operate in mainland UAE.

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# Regulatory/Legal

## Overview

Depending upon business objectives, different options of varying complexity, set-up and maintenance costs are available. Considerations may include proposed activities, expected duration, a need for location in mainland UAE versus FZ, licensing requirements and costs, and tax impacts and differences. Broadly, the options are:

**Business/trading with UAE from overseas:**

— Directly with UAE customers/clients

— Via a UAE agent or distributor

**Projects in the UAE:**

— Fly-in fly-out (to the extent a local license is not required)

— Via a sub-contractor

— Unincorporated joint venture (with a local or foreign partner)

**Legal presence in the UAE:**

— Please refer the section below on 'setting up business'

## Setting up business

Establishing business in the United Arab Emirates (UAE) is subject to licensing requirements as well as foreign investment restrictions. Businesses can be set up in the UAE in:

— Mainland UAE Emirate to undertake business within that Emirate and outside UAE

— Free Trade Zones (FTZ) –

  – as an onshore entity to undertake business only within the FZ and outside UAE

  – In an FZ as an offshore company to undertake business only outside the UAE

Mainland UAE is the area comprising the seven emirates which make up the UAE and the broader investment region outside of the FZs. Mainland entities are permitted to carry out activities both within and outside of the UAE.

FZs are special economic areas established to promote foreign investment and economic activities within the dedicated zones, as well as outside the UAE. At present, there are 45 FZs in the UAE. Each is independent with its own rules and regulations. However they are subject to certain UAE federal laws.

Dual licensing system has been introduced by certain FZs to allow their FZ entities (engaged in certain sectors) to also operate in the mainland UAE.

New Economic Substance regulations have been issued for UAE companies. All UAE entities will have to locally maintain 'Economic Substance' in line with the level and type of activity they undertake. Economic Substance can broadly be considered to consist of employees, premises, management, and costs. There are also various regulatory filing requirements that need to be met in order to comply with the regulations.

## Commonly used business entities

### Mainland UAE

Limited Liability Company (LLC) – historically, foreign investors owned 49% in a mainland company, with 51% held by Emirati nationals. An LLC can conduct all activities included in its license in the respective emirate and outside the UAE.

Significant changes to Commercial Companies Law were introduced at the end of 2020. Now, foreigners can own up to 100% in a mainland company engaged in "approved activities" which cover more than 1000 activities. It is noted that certain limited "strategic activities" remain subject to foreign ownership restrictions.

Branch – foreign companies can establish a 100% owned branch in the UAE to carry out some commercial and non-commercial activities.

Representative office – allowed to carry out only marketing and business development activities.

### FTZs

Many FZs in the UAE are set up with a focus on particular sectors. Some of the specialized FZs are:

- Financial services: Dubai International Financial Centre (DIFC) and Abu Dhabi Global Market (ADGM)
- Ports and logistics: Jebel Ali Free Zone (JAFZA) and Dubai Airport Free Zone (DAFZ)
- Telecom, IT and multi-industry: Dubai Internet City (DIC) and Dubai Multi Commodities Centre (DMCC).

The forms of entities (can be 100% owned by foreign nationals or companies) vary from zone to zone but may include:

- Free Zone branch,
- Free Zone Establishment (FZE): A single shareholder company,
- Free Zone Company (FZCo): A multiple shareholder company,
- Free Zone Limited Liability Company (FZ-LLC): Some FZs do not make a distinction between FZE and FZCo and, instead, refer collectively to these entity types as FZ-LLC.

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|---|---|
| Main legal formalities for the formation of a company or registration of a branch | **Mainland UAE**<br><br>A trade license for a company or branch must be obtained prior to beginning operations. A separate trade license is required for each Emirate in which the company or branch opts to do business.<br><br>Company<br><br>To register an LLC in mainland UAE it is necessary to register with the particular authority in the Emirate concerned. Depending on the Emirate in question, the identity of this authority and the extent of documentation required may vary.<br><br>Branch<br><br>Approval of the Ministry of Economy is required before applying to the relevant local authorities for a trade license and commercial registration with the Foreign Companies Register at the Ministry. Certain activities may require approval of other Ministries. The specific authorities to whom documents must be submitted and approvals obtained generally vary depending on the Emirate in question.<br><br>**FTZs**<br><br>Broadly, the process is split into two phases: initial approval phase and a legal documentation phase.<br><br>In the initial approval the application and the project proposal are submitted and evaluated by the authorities.<br><br>The second stage involves submission of legal documents of the shareholders/owners of the proposed entity. The legal documents must usually be notarized and attested in the home country of the shareholder/shareholding entity.<br><br>Once approval is granted, the legal documents accepted and the registration and license fees are paid, the entity will be registered.<br><br>Thereafter, a license to carry out the proposed activity is issued by the relevant FZ authority, thereby completing the registration process. This license must be renewed periodically. The exact process and the further details on documentation can vary depending on the FZ in question, the feasibility of the proposed business activities and the entity type. |
| Currency/monetary restrictions | The official currency of the UAE is the Dirham (AED). Since 1980, the Dirham has been pegged to the USD (USD 1 is equivalent to AED 3.6727). Exchange controls in the UAE are aligned with FATCA, CRS, and AML frameworks. |
| Economic Substance rules | The UAE has Economic Substance (ES) rules since 2019. These rules apply to all UAE registered entities on an annual basis, with the extent of the application ranging from no action, annual ES notification only, or full annual ES notification plus reporting. There are different factors such as being an entity in scope or exempted, having one or more “relevant activities”, having revenue from such activity(ies), and these factors affect how much ongoing substance may be required in the UAE.<br><br>Non-compliance with ES may result in significant penalties and then termination of business license. |

## Accounting/Finance for companies and branches of foreign companies

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| Financial statements | Audited financial statements are required for companies and branches per the Commercial Companies Law.<br>There are no local accounting standards. Most companies follow the International Financial Reporting Standards (IFRS). |
| Audit requirements | **Mainland UAE**<br>There is no official requirement to lodge audited accounts with the trade license renewal application. In practice, the authorities can request that the audited accounts be provided when the trade license renewal is applied for.<br>There are no similar requirements for a branch of foreign company. In practice, the authorities have been known to ask for local audited financial statements for license renewal.<br>**FTZs**<br>The free trade zone regulations often require filing of audited financial statements in order for the free zone company license to be renewed.<br>More and more FZs now require annual audited financial statements as part of good governance controls. |
| Requirements for foreign investors | No special requirements. |
| Book year/accounting currency | There are no specific requirements, generally it is USD and the financial year follows the group accounting policies. |
| Format | There are no specific prescribed formats for financial statements. |

## Tax

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| Corporate income tax | **CIT now**<br>For mainland entities, CIT has been enacted in some of the seven Emirates through their own Emirate Income Tax Decrees and Bank Tax Decrees. However, in practice, CIT has been applied only to commercial branches of foreign banks at 20% CIT rate, and to oil and gas and petrochemicals concessions at special rates set in Fiscal Letter for each concession.<br>For free zone entities, there has been CIT incentive by way of 0% CIT rate or a tax holiday for periods of up to 50 years. No CIT tax compliance has been required.<br>**New Federal CIT from 2023**<br>The new Federal CIT will apply to all UAE businesses including free zones, with some limited exceptions. The tax will apply for financial years starting on or after 1 June 2023.<br>The general CIT rate will be a three-tier rate:<br>1. 0% annual taxable profits (defined under internationally accepted accounting rules with some tax adjustments) not exceeding AED 375,000;<br>2. 9% annual taxable profits exceeding AED 375,000; and<br>3. A "special rate" (likely 15% alike global minimum tax under BEPS 2.0 Pillar 2, but not confirmed yet) for members of "large MNEs" (with annual consolidated global revenue in excess of EUR 750m).<br>It is important to note that free zone entities will continue to have CIT relief as stated above, but only if they "do not conduct a business with mainland UAE". However, it is not clear if FZ entities of "large MNEs" will be taxed at the "special rate".<br>"Extractive businesses" will continue to be taxed under Fiscal Letter regime and will not be subject to Federal CIT. |

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| Corporate income tax | **BEPS 2.0 impact**<br>The UAE as BEPS IF member has joined the OECD BEPS 2.0 initiative with Pillars 1-2, which includes the introduction of global minimum income (GMT) tax at 15%.<br>Therefore, the impact of the Pillars and the GMT on businesses in the UAE must be considered. |
| Withholding taxes | There are currently no withholding taxes in the UAE. Per MOF FAQs published, there will be no WHT under Federal CIT. |
| Income tax compliance | Due to the existing tax environment, most entities registered in the UAE (mainland and FZs) are currently not required to file corporate tax returns, except for Oil and Gas industry concessions and foreign bank branches. Federal CIT compliance will be required for mainland and FZ entities for FYs starting on or after 1 Jun 2023. |
| Double Taxation Avoidance Agreements (DTAA) | UAE has an extensive network of DTAA. Now more than 106 DTAA are in force, and more are negotiated/ratified. |
| Tax Residency Certificate (TRC) for companies | The UAE Federal tax authority (FTA) issues TRCs to mainland and FZ companies. A TRC is issued for a specific DTT and is valid for one year.<br>Individuals residing in the UAE can apply for a UAE TRC in order to avail tax treaty benefits. UAE tax legislation does not define a 'tax resident.' In practice, however, an individual is considered a resident in the UAE if he/she stays in the country for a total of 180 days in the course of a 12-month period. |
| Transfer pricing | Currently there are no transfer pricing rules in the UAE. Country-by-country reporting for companies headquartered in the UAE has been introduced. OECD based transfer pricing rules will be applied once Federal CIT is introduced. |
| Advance tax rulings | There are currently no advance tax rulings/advance pricing arrangements. |
| BEPS in the UAE | The UAE is a member of BEPS IF and supports all its initiatives, including the latest developments on BEPS 2.0 Pillars 1-2.<br>It has committed to implementing the four minimum Actions of the BEPS 1.0 in the near future, the other BEPS Actions in the medium to long term.<br>The UAE has signed the OECD Multilateral Convention on Mutual Administrative Assistance, the CRS MCAA, and committed to the automatic exchange of information (CRS).<br>MLI became effective for the UAE on 1 September 2019. |

| | |
|---|---|
| Indirect taxes | **Value Added Tax (VAT)**<br>The UAE implemented VAT from 1 January 2018, based on the Common VAT Agreement of the States of the GCC. The standard VAT rate in the UAE is 5%, with zero rate for exports.<br>All goods and services obtained in the course of conducting business in the UAE are taxable, unless specifically exempted or out of scope according to the UAE VAT Decree Law.<br>All local entities making taxable supplies exceeding AED 375,000 (in the last 12 months or next 30 days) are required to register for VAT. Entities making taxable supplies or incurring taxable expenses between AED 187,500 and AED 375,000 can apply for VAT registration on a voluntary basis.<br>Registered entities are required to file monthly or quarterly returns, as stipulated by the Federal tax authority.<br>**Customs duty**<br>The UAE is a member of the GCC Customs Union. The Union uniformly imposed a 5% duty on the majority of goods entering the GCC, with some goods imported free of duty. Duty is charged at the first point of entry into the GCC.<br>Imports into FZs are not subject to customs duty since the area is deemed to be offshore for GCC customs purposes. Duty is only charged once goods leave the FZ and enter mainland UAE.<br>**Excise tax**<br>Excise tax is applicable only to the following products: carbonated drinks, energy drinks, sweetened drinks, tobacco and tobacco/smoking products. |
| Individual income tax and tax residence | Currently there is no individual income tax. Individuals living and working in the UAE may be able to obtain a UAE TRC provided certain requirements are met. |
| Social taxes | Currently there are no social taxes for expatriates. Expatriates employed by a UAE employer are entitled under the UAE Labour Law to a gratuity payment (End Of Service Benefit) linked to their compensation and years of service.<br>Employees who are GCC nationals are subject to a social security regime in the UAE. Generally, the social security payment is at a rate of 17.5% of the employee's gross remuneration (5% by employee and 12.5% by employer). |

# Tax regime at a glance

| | |
|---|---|
| Corporate tax rate | Federal CIT at 0%, 9%, 15% rates will be applied from FY starting on or after 1 Jun 2023 |
| Oil and Gas production companies | Now taxed per Fiscal Letter for each concession and will remain so for extractive businesses |
| Branches of Foreign banks | 20% now, and then will be taxed per Federal CIT rules |
| All other sectors | Currently not enforced but will be subject to Federal CIT |
| Capital gains tax rate | NA now, but will be regulated by Federal CIT rule |
| Branches/Permanent Establishments | NA now, but will be subject to Federal CIT |
| Personal income tax | NA |
| Alternate minimum tax | NA |
| Withholding tax | |
| Royalties and technical fees | NA now, and not planned under Federal CIT rules |
| Interest | NA now, and not planned under Federal CIT rules |
| Dividends | NA now, and not planned under Federal CIT rules |
| Commissions, attendance fees and other services | NA now, and not planned under Federal CIT rules |
| Carry forward of losses | NA now, but will be introduced under Federal CIT |
| Tax year | — Corporate tax – Financial year<br>— VAT – Quarterly/Monthly |
| CFC and Thin Capitalization rules | NA now, but thin cap may be introduced as part of Federal CIT |
| Tax treaty network | 106 in force |
| Wealth tax, estate tax, gift tax | NA |
| Indirect taxes | |
| VAT | 5% |
| Customs general rate | 5% |

# Wider Middle East countries

Egypt

Jordan

Lebanon

# Egypt

Egypt is a transcontinental country and the most populous nation in the Middle East. The economy of Egypt is one of the most diversified in the region, with sectors such as tourism, agriculture, industry and services at almost equal production levels.

The New Investment Law aims at attracting new investments to Egypt, the key feature of which is the Single Window System, which will apply, and such system unifies and simplifies the procedure and protects investors from bureaucracy. The General Authority for Investment (GAFI) would be the only regulatory authority responsible for the entire procedure and for ultimately issuing licenses for the new projects i.e., the investors will no longer have to deal with multiple parties to obtain their operating license.

Egyptian and foreign investors are entitled to benefit from guarantees and incentives with respect to activities falling under any fields of investment outlined under the Investment Law and its executive regulations (for e.g., manufacturing, agriculture, trade, education, health, transportation, tourism, housing, sports, electricity & power, water, communication, and technology).

The New Investment Law would result in triggering new investments to Egypt; it would be a very good opportunity for KPMG Egypt to provide its professional services to the new investors (for e.g., assist in establishing the new projects and provide our tax compliance and consultancy services).

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KPMG in Egypt

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# Regulatory/Legal

## Setting up business

There are no specific restrictions on setting up a business in Egypt. However, some businesses do require a license or permit to operate, for example banks, securities and insurance firms, foreign investment in Sinai, and companies established under the investment law.

## Commonly used business entities

The Companies Law 159 of 1981 is the general law which regulates joint stock companies, limited partnerships by shares, limited liability companies, sole shareholders companies, branches of foreign companies and representation (or scientific or liaison) offices of foreign companies in Egypt.

The main characteristics for each form of entity are detailed below:

**Egyptian joint stock** Company has similar features to that of a standard company elsewhere in the world. The salient features of the Egyptian joint stock company are as follows:

- There should not be less than three founders (who could all be non-residents) nor less than three shareholders at any time.
- The minimum issued share capital of a closed or private joint stock company is EGP 250,000 and that of a company which lists its shares at The Egyptian Stock Exchange is EGP 100,000,000 fully paid.
- A foreign shareholder can sell his shares on the Egyptian Stock Exchange and can repatriate the sale proceeds abroad without any restrictions, including the dividends.
- A joint stock company is managed by a board of directors composed of no less than three. The board of directors is formed by a decision issued by the general meeting of the shareholders. The directors can be selected from the company shareholders or from outsiders. All the directors, including the chairman, can be of foreign nationalities.
- The employees are entitled to receive as profit share at 10% of the profits available for distribution, but with a maximum of 100% of their annual salaries.

**Limited Liability Company (LLC)** is a closed company where the liability of each of its shareholders (called partners) is limited to the value of their shares (called quotas).The number of partners of a LLC should not be less than two. The shares/quotas of the LLC cannot be traded on the Stock Exchange. Other key features are as follows:

- LLC cannot be offered through a public offering. Also such companies cannot engage in banking, securities or insurance activities, nor receive deposits from others, or invest funds for the account of others.
- Although the quotas of LLC cannot be traded in the Stock Exchange, any partner can sell their quotas to anyone after offering them to the other partners and such partners declining to buy them.
- Foreigners can own 100% of the equity capital of a LLC.
- LLC is run by a manager or managers whom can be of foreign nationalities.
- The manager(s) is appointed in the company's Incorporation Contract as approved by the partners and has the same legal status as that of the chairman and the managing director in a joint stock company.

Commonly used business entities (contd.)

— There is no minimum capital required and has to be divided into equal quotas and their value should be fully paid.,

— LLC which has a share capital equal to or exceeding the minimum share capital of a closed joint stock company (i.e. EGP 250,000) has to allocate at least 10% of the profits available to distribution to its employees as profit-sharing provided that these profits should not exceed 100% of their annual salaries.

— Each shareholder liability is limited to the value of their shares.

**Sole Shareholder Companies** have the same features and requirements of LLC Companies except for the Capital as the Minimum capital required for the Sole shareholders companies is 50,000 EGP.

**Representative offices** of foreign companies can register representative offices in Egypt without any right to practice any trade activity as the Rep. Office shall only be registered for market study purposes. The mother company is obliged to establish a new legal entity within 3 years from the registration of the Rep. office.

**Foreign branches**, at present, are allowed to carry out construction works or generally works of a contractual nature, manage hotels and manage mutual funds. The key features are as follows:

— The minimum capital requirement for a foreign branch is EGP 5,000 to be paid in one of the foreign convertible currencies.

— The manager of the foreign branch can be of a foreign nationality.

— At least 10% of the net profit of the branch should be allocated to employees as profit-sharing, but the amount of profit-sharing should not exceed 100% of the annual salaries of the employees.

— The net profit of the foreign branch (according to its audited financial statements) can be repatriated abroad if the branch has sufficient foreign currency to do so. This also applies to the capital of the foreign branch. Foreign currency can be purchased from accredited banks in Egypt, or foreign exchange companies at the ruling rates of exchange.

Main legal formalities for the formation of a company or registration of a branch

**Branch**

Following documents are required:

— The Board of directors resolution of the parent company indicating the approval for registering the company's branch in Egypt.

— A bank Certificate stating that the branch has a foreign currency balance transferred from abroad equals EGP 5,000, as a minimum.

— A copy of the contract concluded between the parent company and the Egyptian company, Egyptian Government or a public sector company.

— The security investigation reports for the company and the foreign manager of the branch.

| | |
|---|---|
| Main legal formalities for the formation of a company or registration of a branch (contd.) | **Representative office**<br>Following documents are required:<br>— The Board of directors resolution of the parent company indicating the approval for registering the company's rep office in Egypt.<br>— The security investigation reports for the company and the foreign manager of the rep. office.<br>**Company**<br>Following documents are required:<br>— A bank Certificate stating that 25% (at least) of the Company's issued capital is deposited at an Egyptian certified bank in a blocked account, to be released after registering the company in the Commercial Registry. As for LLC, the bank Certificate is not required.<br>— The security investigation report of each foreign shareholder and/or board member.<br>— In case the founder of the company is a foreign corporate body, it should present the following additional documents:<br>– Articles of association and all amendments thereto.<br>– Commercial registration certificate. |
| Currency/monetary restrictions | Egypt has no foreign exchange restrictions. However, transfers should be made through Egyptian banks provided the supporting documents for any transaction should be presented to the bank in order to approve the transfer. |
| Regulatory requirements for Financial Services | Banks are regulated by the Central Bank of Egypt (CBE), while companies whose business is related to securities (holding companies, portfolio management companies, etc.) are supervised by the Egyptian Capital Market Authority. |

## Accounting/Finance for companies and branches of foreign companies

| | |
|---|---|
| Financial statements | Companies are required to prepare annual financial statements according to the Egyptian accounting standards which are broadly in line with International Financial Reporting Standards. |
| Audit requirements | Financial statements should be audited by a certified accountant. However banks and mutual funds should have 2 independent auditors to co-audit their financial statements. |
| Requirements for foreign investors | Foreign founders, board members and directors are subject to security investigation and the General Authority for Investment should receive security clearance for them. They are entitled to reside in Egypt for business after obtaining work and residence permits. |

| | |
|---|---|
| Book year/accounting currency | The accounting year end does not need to coincide with the calendar year and financial statements can be prepared using a functional currency. |
| Format | Financial statements are based on local Generally Accepted Accounting Principles (GAAP), which largely conforms to International Financial Reporting Standards principles. |

# Tax

| | |
|---|---|
| Approval requirements | Taxpayers are required to register with the General tax authority before they commence their work in Egypt. |
| Advance tax rulings/ Advance pricing agreements (APA) | Taxpayers can obtain advance tax rulings, for which the normal response time by tax authorities is typically 6 months. Although it can take longer in practice. |
| Income tax compliance | Egypt has adopted the self-assessment system whereby companies must file their annual tax returns, together with all supporting schedules, before 1 May each year or four months from the financial year-end, as the case may be. The tax return should be signed by the taxpayer and an independent tax accountant.<br><br>The current income tax rate is 22.5%.<br><br>Oil & gas exploration and production companies are subject to tax on their net annual taxable income at 40.55%. |
| Indirect tax compliance | Law No. (3) for the Year 2022, to the effect of amending some provisions of Value Added Tax (VAT) law promulgated by virtue of Law No. 67 of 2016 and the stamp duty law no 111 of the year 1980<br><br>This law has been published in the Official Gazette issue No. (3) Bis (E) on January 26, 2022 and shall enter into force as of the day following its publication.<br><br>**Important note:** upon the issuance of the executive regulations of this law, some interpretation stated hereto may change<br><br>**First: Amending the VAT law no 67 of the year 2016**<br><br>1-1 The obligations of the non-resident and non-registered (according to the second clause of Articles Nos. 17,22 and 30).<br><br>— The law introduced the following definitions:<br><br>— Registered Non-Resident Person: is the physical or juridical person who is not deemed a resident of Egypt shall be committed to make registration in the Value Added Tax Inspectorate and calculate the tax upon finalizing the process of selling commodities and upon rendering the imported services to customers not registered in Egypt.<br><br>— Simplified Suppliers Registration System: is a system that permits the registration of non-resident suppliers at the Tax Authority in a simplified manner to be determined by the executive regulations. |

Indirect tax compliance (contd.)

— Every person who is non-resident and non-registered at the Tax Authority in Egypt who sells taxable commodities or renders taxable services to a non-registered person within the country and who does not practice an activity at a stabilized permanent premises must apply to the Authority to be registered pursuant to the Simplified Suppliers Registration System as indicated in the executive regulations.

— The provisions of this Article shall apply to the services during the six months following the enactment of the Simplified Suppliers Registration System ;the matter which shall apply to the commodities during a period that shall not exceed two years from the enforcement date of this system.

— The tax credit on inputs shall not apply to the cases of the Simplified Suppliers Registration System.

— Moreover, this law stipulated that the tax borne by a non-resident person who is registered pursuant to the Simplified Suppliers Registration System for the purpose of practicing his business activity within the country may refund the tax according to the terms and conditions indicated in the executive regulations of this law.

— The tax imposed on the imported commodities shall not be collectible upon their release from the Customs Authority in case it is proven that this tax was collected by the registered non-resident person."

1-2 The treatment of economic Zones of a special nature such as the free zones, cities, markets (according to Articles Nos 6 and 7).

— According to the provisions of this law economic Zones of a special nature shall be treated the same as the free zones, cities, markets.

— Accordingly, the commodities or services exported abroad by the projects of the free zones, cities, markets and the economic Zones of a special nature shall be subject to the tax at the rate of (0%).

— The commodities or services imported to these projects and that are necessary for exercising the licensed activity inside the free zones, cities, markets and the economic Zones of a special nature, with the exception of the passenger cars, shall be subject to the tax at the rate of (0%).

— Tax shall fall due on the imported commodities or the rendered services subject to the tax in accordance with the provisions of this Law, that are provided to the free zones, cities and markets for their domestic consumption within these places.

— Importation of commodities for trading inside the free zones that encompass a whole city, shall be treated as domestic consumption.

— The tax shall also fall due on the taxable commodities or services- in accordance with the provisions of this Law - which are imported from the free zones, cities, markets and the economic Zones of a special nature to the local market inside the country.

— The services and commodities manufactured in the projects of the free zones, cities and commercial zones of special nature shall be treated in the same way as the imported commodities from abroad, upon their withdrawal for domestic consumption or use.

1-3 Reverse Charge Mechanism (according to Articles Nos.17/32)

— The following law introduced Reverse Payment System of VAT:
Reverse Payment System of VAT: is a system by virtue of which the commodity or service beneficiary shall be committed to pay the tax directly to the Tax Authority instead of the obligation that lies on the shoulders of the non-resident commodity supplier or service provider as prescribed in this law.

Indirect tax compliance (contd.)

- In case a person who is non-resident and non-registered with the Authority sells within the country to a registered (body/person)a service which is not required for practicing his activity or sells it to a governmental body or a public or economic Authority or any other Authority, then the service beneficiary shall calculate the tax due on that service and pay it to the Authority within thirty days as of the selling date, unless the non-resident did not make registration pursuant to the Simplified Suppliers Registration System.
- Pursuant to this law the corporate bodies who do not sell taxable commodities or render taxable services but who are committed to calculate the tax on the imported services must apply to the Authority for registration according to the Reverse Payment System of VAT.
- The corporate bodies who are subject to the Reverse Payment System of VAT and who import services must calculate the tax due on these services and remit it to the Tax Authority within thirty days from the date of rendering the service unless the person who is non-resident and non-registered with the Authority who renders the service is registered in the Tax Authority pursuant to the Simplified Suppliers Registration System.

1-4 Refunding the tax (according to Article No. 30).

- According to the provisions of this law the clause pertaining to refunding the tax imposed on commodities and services shall be amended as follows: "The Tax previously settled or charged to the exported commodities and services, whether exported in its original state or included as a component in other commodities or services, not exceeding the credit balance of the commodities and services to which the tax credit apply."
- Taking into account that this law has changed the eligibility of refunding the tax imposed on the machinery and equipment used in manufacturing or rendering taxable commodity or service by introducing a new Article to the VAT law No. 28-Bis which stipulates that "The remittance of the tax due on the machinery and equipment imported from abroad or purchased from the local market for the factories and manufacturing units to be used in the industrial production shall be suspended for one year from the date of their custom release or from the date of purchasing them from the local market, as the case may be, this period may be prolonged for other period or periods according to justifiable reasons acceptable by the Authority in a manner that they shall not exceed one year as a maximum .In the event that it became evident to the Tax Authority that these machinery and equipment were used in the industrial production during this period they shall be exempted from the aforementioned tax in this case their disposal for any purposes other than for which they are exempted are prohibited during the five years following the exemption before notifying the Tax Authority and remitting the due tax according to its working condition, value, tax rate prevailing on the date of payment.
- In case the period aforementioned lapsed before using these machinery and equipment in the industrial production then the tax and additional tax shall fall due from the date of the custom release of these machinery and equipment or from the date of purchasing them from the local market until the payment date, as the case may be.

Indirect tax compliance (contd.)

1-5 Refund of the value added tax and schedule tax due to the Tax Authority under the tax account (according to Article No. 31).

— According to the provisions of this law, Ministries, Authorities, Government bodies, Municipal units, general bodies and other general corporate bodies are committed to remit the schedule tax due from them directly to the Tax Authority within ten days from their maturity date. These bodies shall also be committed to remit (20%) of the value added tax due therefrom immediately to the Tax Authority within the specified period under the tax account; in this case the Tax Authority may not request the taxpayer to collect what was remitted pursuant to the executive regulations.

— The Tax shall be settled for the imported commodities during the stage of their release from the Customs Authority, according to the procedures prescribed for settling the customs duty, and the final release for such commodities may not take place before the payment of the tax due in full unless it becomes evident that the non-resident registered has collected the tax imposed on the imported commodities which are being released from the Customs.

— The head of the Tax Authority or his delegate may temporally release (for a three month period) the incoming shipments imported for the production process or for practicing the business activity according to the guarantees that the Customs Authority, deems appropriate, until the concerned person provides the Tax Authority with the necessary documents to study whether he is entitled to the exemption during the said period or must settle the due tax as well as the additional tax which shall be computed starting from the date of the custom release of these shipment

1-6 Tax refunding to the foreigners leaving the Egyptian territory (according to Article No. 30 Bis).

— Foreigners leaving the Egyptian territory, whose residence did not exceed three months, shall be entitled to reclaim the tax previously paid to the registered seller related to the purchases of taxable goods, provided that the amount of the relevant invoice must not be less than one thousand five hundred Egyptian pounds, and that their purchases are to be taken with them when leaving the Country. The executive regulations specify the controls of applying this Article.

1-7 Amendments introduced to the commodities and services listed in the schedule attached to the Value Added Tax Law.

— Some of these amendments on the first schedule:

  — Serial No. 15 (new)
  "Brand; Trademark and the relation with the customers (components of the business premises or place) at 10% of the rental or sale value as the case may be. The tax due thereon shall be at 10% of this value

— Some of these amendments on the list of exempted goods/services schedule:

  — Legumes, grains, table salt, manufactured spices, and freight services, including what is imported from them.

  — Specific governmental ads.

1-8 Imposing value added tax on Advertising services. (Fifth Article).

— According to the provisions of this law advertising services shall be subject to the Value Added tax at the rate of 14%.

Indirect tax compliance (contd.)

1-9 Penalties for Violation Acts (according to Articles Nos 50 and 67Bis).

— According to the provisions of this law the taxpayer shall pay to the Tax Authority an amount equivalent to 1% of the tax value and the due schedule tax of not less than one thousand Egyptian Pounds and not exceeding ten thousand Egyptian Pounds in addition to the due tax, schedule tax and additional tax in case he violates the provisions, procedures or rules stipulated in this Law without the violation act being one of the tax evasion actions stipulated therein.

— The following cases shall be considered as a violation of the provisions of this law:

1. Discovery of shortage or surplus in the commodities kept in the free zones and markets in violation to the provisions of the Customs Law.
2. Not notifying the Authority of the changes that occurred in the data detailed in the registration application within the specified date.
3. Violating the provisions, procedures or rules stipulated in this law. The amount of the penalty or fine shall be doubled in case of committing any of the aforementioned acts during three years.

— According to the provisions of this law and without prejudice to the penalties stipulated in this law or any other law, in case the registered non-resident person did not fulfill any of the obligations prescribed by this law; the minister may request from the public prosecution to issue an order preventing or banning the importation and entry of commodities to the Egyptian market until the registered person fulfills this obligation and its resulting consequences. The competent bodies must implement this order upon its issuance.

**Second: Amending the stamp duty law no 111 of the year 1980**

— According to the provisions of this law Article No. (60) of Stamp Tax Law promulgated by law No. 111 of 1980 (which is related to the imposition of a tax at the rate of 20% of the advertising fee) shall be revoked.

— Article No.(64) promulgated by law No. 111 of 1980 (which is related to the imposition of certain exemptions from taxation; shall be revoked.

## Stamp duty

— As per the law no (3) of the year 2021, the stamp duty on ads at 20% was waived as of 27 Jan 2022

— As per the law 199 of the year 2020:

  — The sale of listed / unlisted securities is subject to stamp tax at 1.25 per thousand is applied on the non-resident seller and the non-resident buyer

  — The sale of listed / unlisted securities is subject to stamp tax at .5 per thousand is applied on the resident seller and the resident buyer until Dec 31, 2020 and effective Jan 1, 2022 this tax was waived;

## Other tax compliance

### Salary Tax

An employee's income is subject to Salary Tax (income will include salary, bonuses, overtime, and other related benefits paid onshore or offshore) less some specific exemptions (mainly employees' social insurance contributions and collective benefits in-kind). Salary Tax rates are:

| Figures in EGP | | | | | | |
|---|---|---|---|---|---|---|
| **Tax Rate** | **Net income that does not exceed EGP 600,000** | **Net income that exceeded 600 thousand and did not exceed 700 thousand** | **Net income that exceeded 700 thousand and did not exceed 800 thousand** | **Net income that exceeded 800 thousand and did not exceed 900 thousand** | **Net income that exceeded 900 thousand and did not exceed one** | **Net income exceeding one million** |
| **0%** | From 1 pound to 15,000 | | | | | |
| **2.5%** | More than 15 thousand to 30 thousand | From 1 pounds to 30 thousand | | | | |
| **10%** | More than 30 thousand to 45 thousand | More than 30 thousand to 45 thousand | From 1 pounds to 45 thousand | | | |
| **15%** | More than 45 thousand to 60 thousand | More than 45 thousand to 60 thousand | More than 45 thousand to 60 thousand | From 1 pounds to 60 thousand | | |
| **20%** | More than 60 thousand to 200 thousand | More than 60 thousand to 200 thousand | More than 60 thousand to 200 thousand | More than 60 thousand to 200 thousand | From 1 pounds to 200 thousand | |
| **22.5%** | More than 200 thousand to 400 thousand | More than 200 thousand to 400 thousand | More than 200 thousand to 400 thousand | More than 200 thousand to 400 thousand | More than 200 thousand to 400 thousand | From 1 pounds to 400 thousand |
| **25%** | More than 400 thousand | More than 400 thousand | More than 400 thousand | More than 400 thousand | More than 400 thousand | More than 400 thousand |

The employer is required to compute employees' salary tax on a monthly basis, withhold tax at source and then remit this to the tax authority within the first 15 days of the month following the month of salary payment. In case the employer has no permanent establishment in Egypt or it is non-resident for tax purposes in Egypt, then the employee himself is obliged to submit an annual salary tax form which outlines the total payments and total tax liability.

Non-resident employees (stayed in Egypt for less than 183 days) are subject to normal salary tax rates determined above.

### Withholding Tax

Withholding tax of 20% is imposed on royalties, interests, and fees paid to non-resident companies for services performed by them to Egyptian companies in Egypt (this should be reviewed on a case by case basis based on the agreements in place). However, this withholding tax does not apply to payments related to some activities (e.g., training) and in cases where the recipient is a resident of a country which has a tax treaty with Egypt (in such case the Double Taxation Avoidance Agreement (DTAA) overrides the domestic tax law).

### Dividends

— Dividends distributed by corporate bodies, including companies established under special economic zones system, to a non-resident natural person and to a resident/non-resident corporate bodies, including profits of non-resident persons realized through a permanent establishment in Egypt, shall be taxable at 10% without deducting any costs.

— A lower tax rate of 5% applies without deducting any costs in the company is listed in the Egyptian Stock Exchange.

— The provision of the Double Tax Treaties (DTT) should be considered, in case of dividends paid to non-resident corporate bodies.

## Other tax compliance (contd.)

**Capital Gains Tax**

— Capital gains realized by resident and a non-resident corporate body from the disposal of securities or quota which are not listed in the Egyptian Stock Exchange are subject to tax without any deductions at 22.5% tax rate.

— As per the law no 199 of the year 2020:

1. Regarding the resident individual/corporate bodies

   Capital gains realized from trading in securities which are listed in the Egyptian Stock Exchange shall be subject to tax at 10% without any deductions against costs. However, such provision was suspended many times from the date of enactment of the relevant law until December 31, 2021. The sale of securities shall not subject to stamp tax (.5 per thousands) as of 1 Jan 2022.

2. Regarding the non-resident individual/corporate bodies

   Capital gains realized from trading in securities which are listed in the Egyptian Stock Exchange shall be subject to tax at 10% without any deductions against costs. However, such provision was suspended many times from the date of enactment of the relevant law until May 16, 2020, and as per the law no 199 of the year 2020;

   — The tax due on the period from May 17 until September 1, 2020 is waived;

   — No tax shall be imposed as of October 1, 2020

## Director's liability to tax

Chairman, board of directors and the managers of corporations are subject to salary tax for their administrative work's payments. However, any other payments, which are not related to the administrative work, are not considered as a tax deductible expense for income tax purposes.

## Property Tax

— Property tax is imposed on all buildings in Egypt. Tax is borne by the owner whether a natural person or a corporate body.

— The tax rate is 10% on the annual rental value of the taxable buildings after the deduction of 32% (30% for residential units) allowed for maintenance.

— Free zone units are also subject to property tax.

— A residential property is tax exempt if annual rental value is less than EGP 24,000 and a non-residential property is exempt if the annual rental value is less than EGP 1,200.

— For owners of the non-residential units, the tax paid will be considered as a deductible expenses for corporate tax purposes.

— The tax is due as from the first of July 2013 and afterwards, it will be due as from January of each year.

— Tax is collected on two equal installments (the end of June and the end of December of the same year).

— Interest is paid for the late of payment of the tax due within the due dates at 2% plus the discount rate declared by the Central Bank of Egypt.

— Taxpayers are required to file a tax return and failure to do so will expose the taxpayer to pay a penalty which should not be less than EGP 200 and not exceeding EGP 2,000.

## Social Insurance

**On salaries; in August 2019 the government issued a social law no.148 for the year 2020, this law will be valid starting from first of January 2021. based on this law all the S.I. laws issued before will be canceled.**
**Herein the most important points of the new law;**

— Salaries are subjected to Social insurance and the monthly ceiling of salaries that are subject to social insurance starting from first of January 2020 is EGP 1000 per month as a minimum insurable salary and EGP 7000 as a Maximum insurable salary.

— The monthly maximum ceiling will be increased by 15% on the first of January of every year for seven years .,And after that the annual increment will be according to the announced inflation rate from the Central Bank of Egypt "CBE". Accordingly, the monthly max. insurable salary is EGP 8100 and the Minimum insurable salary is EGP 1200 starting from January 2021,

— The employee may ask for extra pension from the social insurance Authority incase his salary exceed the extra wage can be subscribed shouldn't exceed the 100% of the maximum insurable salary .And in this case the employee is committed to contribute by 10% from the excessive salary and there 're no employer share.

— And there are some allowances will not considered as an insurable salary like ( meal, housing, transportation and travel allowance and the allowances on which the employee bear for the work requirements) provided that the total of these exempted allowances shouldn't exceed 25% of the insurable salary.

— The company's share of social insurance is 18.75% from the insurable salary and the Employee's share is 11%.

— The foreigners that working in Egypt and subjected to the labor law, will be subject to the social insurance law like the Egyptians otherwise there's a consent agreement .

— The employer is required to compute employees' social insurance contributions on a monthly basis, employer shares at source and then remit all of the contributions due to the competent social Insurance office within the first 15 days of the month following the month of salary payment.

### On construction contracts

Constructions contracts are subject to social insurance at specified rates, on a case by case basis. The awarding party and the contractor are considered jointly responsible for settling the social insurance obligations due on the project.

The awarding party shall be committed to notify the S.I authority of the contractor's name, address and data about the operation within three days before the commencement of work and not paying any dues to him before he provides the documents supporting the payment of contributions pertaining to these works.

The contractor shall inform the competent contracting social insurance office, where the contracting operation lies within its area, of each contracting operation carried out by the contractor before its implementation and of each change that occurs to the size of such operation. Such notification shall be attached to a copy of the contracting agreement.

The contractor is required to deduct 11% of the employees' salaries and remit it on monthly basis.

Social Insurance (contd.)

The contractor shall pay to the competent contracting social insurance office, the contribution due for each payment or payable extract at no later than the beginning of the month following the receipt of the payment or extract notification. In case of delay He shall be obligated to pay an additional monthly amount calculated at a rate equal to the average return on Treasury issues of bills and bonds in the month preceding the month in which the payment is required plus 2%. Exemption is granted if payment is made within fifteen days from the due date of the payment.

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Double Taxation Avoidance Agreements (DTAA)

Egypt has wide DTAA network with as many as 61 countries, including, USA, UK, Ireland, Spain, Netherlands, Switzerland, Albania, Algeria, Bahrain, Belarus, Belgium, Bulgaria, Canada, China, Germany, Greece, Iraq, South Africa, Spain, Russia, Singapore, Kuwait, UAE, Saudi Arabia, Qatar to name a few.

## Transfer pricing

Egypt was one of the first countries in the Middle East and North Africa to introduce specific transfer pricing rules in its tax code, and the first to release transfer pricing guidelines in Arabic. At the end of Oct 2018, Egyptian tax authority introduced first part of the transfer pricing guidelines, similar to the Organization for Economic Co-operation and Development (OECD) model.

The first part mainly discussed the basis of the arm's length principle, the arm's length pricing methods and the importance of documentation. The Egyptian Transfer Pricing Guidelines and the amended executive regulations of the income tax law explicitly list the following benchmarking methods:

Traditional transaction methods:

— Comparable Uncontrolled Price (CUP) method

— Resale Price (RP) method

— Cost plus (CP) method Transactional profit methods:

— Profit Split (PS) method

— Transactional Net Margin Method (TNMM) Other methods:

— Global Formulary Apportionment.

**The updated Egyptian Transfer pricing Guidelines, which will be mandatory from the financial year 2018:**

— A three-tiered transfer pricing documentation is required by the Egyptian tax authority "Master file, Local File and CBCR (Country by Country Report )".

— The transfer pricing documentation should be submitted to the tax authority on an annual basis.

— The local file is required to be submitted to the tax authority's transfer pricing department two months following the date of filing the tax return.

— Master file should be prepared in accordance to the group's ultimate parent's tax return filing date since it relates to the group as a whole.

— The CBCR should in general be submitted within one year following the close of the relevant financial year that it covers. However, it should be noted that only Egyptian parent companies, will be required to file a CBCR with The Egyptian tax authority if the group for which a taxpayer resident in Egypt is the mother company achieved an annual consolidated group revenue of equal to or exceeding EGP 3 billion.

— After the master file clause (In case the ultimate parent is resident in Egypt or there is obligation to the non-resident ultimate parent to submit this master file in its country, the such master file should be submitted the same deadline of the local file).

— The CbCr notification should be submitted before the fiscal year-end of the taxpayer.

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|---|---|
| Transfer pricing (contd.) | — As per the unified law of tax procedures, the Taxpayer is exempted from submitting the master file and the local file in case its related party transactions do not exceed EGP 8 million. |
| Comprehensive health insurance | **Takaful Contribution in Accordance With The Comprehensive Health Insurance Law no. 2 of 2018.**<br><br>— The comprehensive health insurance law has been issued recently which obligated companies to calculate 2 .5% per thousand from its annual revenues and remit such contributions to the competent authority.<br><br>— Moreover, these contributions are not considered as tax deductible costs for corporate income tax purposes.<br><br>— The comprehensive health insurance law will be applied based on the Geographical distributions on six phases;<br><br>— The first phase commenced with the Canal Governorates (Ismailia – Port Said –Suez).<br><br>— The health insurance Authority setup a database to be applicable on the beneficiaries of the law provisions and connected with the NOSI and Department of Civil status.<br><br>— To be eligible, for the comprehensive health insurance service the beneficiary shall be subscribed and paid the contributions due starting from the date of the execution of law in his governance. |

## Comprehensive health insurance

Schedule (no.1) insured employees contributions and dependents

<table>
<tr><th>Type</th><th>Contributions</th><th>Dependents</th></tr>
<tr><td>the employees subject to the social insurance law</td><td>1% from the insurable salary</td><td rowspan="4">3% on the non-worker spouse or with no fixed salary,<br>1% on every dependent or child maximum two,<br>1.5% thereafter in children .</td></tr>
<tr><td>The insured employees and persons of equivalent status are subject to the social insurance law for the employers.</td><td rowspan="3">5% from the insurable salary or from the salary according to the tax return or the ceiling insurable salary whichever is greater</td></tr>
<tr><td>Freelancers ( who are not subject to the above mentioned points)</td></tr>
<tr><td>The Egyptian employees who work abroad.</td></tr>
</table>

## Raising fund in honor of martyrs, victims,injured and missed soldiers and their relatives in security, terrorist and marital operations

— **The Egyptian Parliament issued a law authenticated by the Egyptian President to raise fund in honor of martyrs, soldiers and their relatives in the security and terrorist operations.**

— Egypt grants the injured and victims marital soldiers and their relatives the privileges to receive the national services from education, club subscriptions, cultural activities .. etc. ". with free subscriptions and renewal fees.

— A five percent of ten thousand (5/10,000) shall be deducted on monthly basis from the workers in private and public sector starting from March 2021, except the irregular or daily paid employment. Such deducted percent should be remitted to the Ministry of Finance ten days after the end of each calendar month

— A five Egyptian pound tax imposed on the services or documents that issued or submitted by the Public Entities and Authorities and its companies, also the companies completely owned by Egypt or its share exceed 50% upon the stakeholders request;

## Tax regime at a glance

| | |
|---|---|
| Corporate tax rate | 22.5% |
| Capital gains tax rate | 22.5% |
| Capital gains tax rate on listed securities | 10% and on hold until 16 May 2020 |
| Branches/Permanent Establishments | 22.5% in case of registered branches or PE. There should be a contract in place between either the company as a private sector company and the government or with another private sector company in order to establish a branch in Egypt. Alternatively, it is possible to establish a fully owned foreign subsidiary in Egypt. |
| Personal income tax | Progressive up to 22.5% |
| Alternate minimum tax | NA |
| Withholding tax | |
| Royalties and technical fees | 20% |
| Interest | 20% |
| Dividends | 10% tax rate. A lower tax rate of 5% applies without deducting any costs where ownership in the distributing entity exceeds 25% of the share capital or voting rights, provided the participation is held for minimum 2-year period |
| Commissions, attendance fees and other services | NA |
| Carry forward of losses | 5 years; loss carryback is allowed in case of long term contracts e.g. contracting activities |
| Tax year | Either fiscal or calendar based on the company's policy |
| CFC and Thin Capitalization rules | Interest deduction is limited to four times the total annual average of the shareholders equity |
| Tax treaty network | 61 countries |
| Wealth tax, estate tax, gift tax | NA |
| Indirect taxes | |
| Sales tax/VAT | The standard rate is 14%, export is subject to VAT at 0%, machinery and equipment is subject to 5% VAT (except for buses and passenger cars that are subject to the standard rate) |
| Customs general rate | 0% to 60% |

# Jordan

“Jordan may be small, but it’s rich in terms of it’s strategic assets. Re-envisioning these assets is vital for our growth. Jordan is a gateway for regional and world trade and business”

**His Majesty King Abdullah II**

**Khaled Tuffaha**

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KPMG in Jordan

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The Hashemite Kingdom of Jordan is committed to the promotion of investments for the purposes of achieving comprehensive and sustainable economic development, access to global markets, increased competition, availability of high value-added job opportunities, and funding of development projects.

In line with His Majesty vision, Jordan Government has introduced a variety of tax incentives under Investment Law 30 for the Year 2014 which aims to attract and encourage both local and foreign investment in Jordan, a 5% reduced corporate income tax rate for technology sector, manufacturing companies, tourism related investments operating carried out inside Development Zones.

Under the new amendments to income tax law which entered into force effective 1 January 2019, a reduced income tax at rate of 5% is applied on manufacturing companies registered in the Development Zone where the company has an in country value of not less than 30%.

Other types of companies registered inside of Development Zones shall be taxed at 10%.

Companies registered inside of Aqaba Special Economic Zone shall be subject to a reduced corporate income tax rate of 5%.

In addition, other tax incentives granted to investors in energy sector are in areas of corporate income tax, Withholding tax (WHT), General Sales Tax (GST) and Custom Duties.

# Regulatory/Legal

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| Setting up business | All foreign investments are approved and monitored through appropriate government bodies and principally controlled by the Jordan Investment Commission. In certain sectors, such as banking and exploitation of natural resources, foreign investments are governed by relevant ministries. There are certain business sectors that are closed or may be restricted to investment by foreigners. |
| Commonly used business entities | A new entity should be registered with the Ministry of Industry and Trade (MIT). Approval for registration typically takes ten working days upon submission of all required documents. Common forms of business entities in Jordan are:<br>— A company incorporated in Jordan<br>— A Limited Liability Company (LLC) is a popular form of entity<br>— A Private shareholding Company (PSC) is another popular form of entity for foreign investors.<br>— A branch of a company incorporated outside Jordan<br>— General and limited partnerships<br>— Representative offices of foreign companies are also permitted |
| Main legal formalities for the formation of a company or registration of a branch | **Company**<br>The company name must first be cleared from MIT. A set of memorandum and articles of association for the company has to be lodged with MIT, together with the prescribed details and the prescribed fees for registration.<br>The most popular form of company is a private shareholding company (whereby the liability of shareholders is limited to the extent of their shareholding). A private shareholding company can be incorporated with a minimum paid-up capital of Jordanian Dinar (JOD) 50,000. Foreign investors must have a Jordanian partner and foreign investment should not exceed 50% of the share capital with respect to some sectors that has restrictions such as construction and trade.<br>If the foreign investor seeks to own more than 50% of the share capital, a special approval is required from the Cabinet and the resultant share capital will be as approved by the Cabinet.<br>**Branch**<br>An Operating Foreign Company (Branch) means<br>— A company or an entity which is registered outside Jordan;<br>— Whose headquarters are in another country; and<br>— Whose nationality is considered non-Jordanian.<br>— In terms of its nature it can be divided into two types:<br>— Companies operating for a limited period, which are awarded tenders in order to realize work in Jordan for a limited period. Their registration shall cease upon completion of such work, unless the company obtains new contracts, in which case its registration shall extend to cover the execution of such additional work.<br>— Their registration shall be cancelled after all the work in Jordan is completed and all rights & obligations are settled.<br>— Companies operating permanently in Jordan, such as foreign banks, under license by the competent official authorities. |
| Currency/monetary restrictions | Jordan does not restrict the flow of JOD or foreign currency in or out of the country. |

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| Regulatory requirements for Financial Services | The Central Bank of Jordan regulates activities of Banks, Insurance Regulation Commission regulates activities of Insurance companies and Jordan Securities Commission regulates the Amman Stock Exchange. |

## Accounting/Finance for companies and branches of foreign companies

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| Financial statements | Annual financial statements must be prepared and lodged with the Registrar and should be prepared in accordance with International Financial Reporting Standards. |
| Audit requirements | Under Jordan company law financial statements must be audited annually. Auditors are appointed/re-appointed in the Annual General Meeting of the company. |
| Requirements for foreign investors | Please refer to earlier comments on setting up business. |
| Book year/accounting currency | The accounting year end need not coincide with the calendar year. Financial statements can be prepared in the company's functional currency, which may be a currency other than JOD. |
| Format | There are specific formats used by banks, according to the Central Bank of Jordan. Similarly, insurance companies have specific formats according to the Insurance Regulation Commission. |

## Tax

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| Approval requirements | A business does not require approval from the Jordanian Tax Department to commence its operations. However, taxpayers should obtain a tax registration to be able to start remitting payroll taxes deducted and to import good through Customs. |
| Advance tax rulings/ Advance pricing agreements (APA) | It is generally possible to obtain advance tax rulings, subject to the prevailing agreements, policies and guidelines. In most cases these rulings are considered not binding by the tax inspector, although they can serve as a guideline.<br><br>There is no provision for advance pricing agreements. |
| Income tax compliance | The tax year is the calendar year. However, the income tax department needs to be notified in case where the company's fiscal year is different than the calendar year.<br><br>The annual taxable profit (or loss) is calculated by making certain adjustments to the annual accounting profit (or loss), as required by the tax legislation and after taking into account any available losses brought forward. |

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| Income tax compliance (contd.) | Income tax returns should be filed within four months after the end of taxpayer's financial year.<br><br>General corporate tax rate effective 1 January 2019 is 15% for manufacturing in 2019 which will be increased by an additional 1% over the coming five years reaching up to 20%, 20% for trade and services. However, Banking companies are taxed at 35%. Insurance, telecommunications, stockbrokers, finance companies, currency exchanges, mining and power companies are taxed at 24%.<br><br>In addition to the above effective 1 January 2019, an additional National Contribution tax is imposed on the taxable income at a rate that varies from 1% for trade and service companies, 3% for power and banking sector, 4% for financial companies, 7% for mining companies and 2% for telecom and insurance companies. |
| Indirect tax compliance | Most goods and services supplied for domestic consumption, by a General Sales Tax registered person, and goods imported into Jordan would be liable to General Sales Tax at the prevailing standard rate (currently 4% and 16%, as the case may be). General Sales Tax exemptions apply to financial services and letting- out of residential properties. A Nil rate of General Sales Tax applies to supply<br><br>of exported goods and services in addition to certain goods locally purchased/ imported.<br><br>A registered taxpayer is ordinarily required to file a General Sales Tax return every two months. This compliance becomes every one month if the taxpayer is subject to special tax imposed on certain goods and services such as cars, cigarettes, alcohol and mobile phone services. Special taxes are imposed on certain categories of goods and services as stated in the Sales Tax Law. The tax rate varies from 6% to 102%. The General Sales Tax system is similar to the Value Added Tax system in terms of crediting the input General Sales Tax against General Sales Tax due.<br><br>Stamp duties are charged on all agreements and contracts if presented in Jordan to any local authority or court at 0.3% or 0.6%, as the case may be. |
| Other tax compliance | Every person upon paying un-exempted income to a non-resident for services provided should withhold tax at 10%. Such withholding tax is considered as final tax for the non-resident service provider. In addition, the payer is liable to remit 16% General Sales Tax, if it is a taxable transaction.<br><br>Salaries and wages are subject to payroll tax and social security contributions. |
| Director's liability to tax | Director of a company is subject to income tax in Jordan for the remuneration received as director of a Jordan company. Where the remuneration is paid/payable to a non-resident director, withholding tax provisions may apply. |
| Double Taxation Avoidance Agreements (DTAA) | Jordan has executed DTAA with around 39 countries – Algeria, Azerbaijan, Bahrain, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Egypt, France, Hong Kong, India, Indonesia, Iran, Italy, Korea (Rep.), Kuwait, Lebanon, Malaysia, Malta, Morocco, Netherlands, Pakistan, Palestinian Autonomous Areas, Poland, Qatar, Romania, Syria, Tunisia, Turkey, Ukraine, United Kingdom and recently added KSA and UAE. |
| Transfer pricing | Jordan has issued transfer pricing regulation on June 2021 under which taxpayers who have related party transactions' volume of more than JOD 500,000 during any executive twelve month will be obliged to submit a related parties' disclosure to ISTD along with the corporate income tax return of the company, prepare local file and Masterfile and company with CbC reporting requirements where applicable. |

# Tax regime at a glance

| | | |
|---|---|---|
| Corporate tax rate | The corporate tax rate in general is 20%. Banks are taxed at 35%. Industrial Companies are taxed 15% (for 2019 and rate will be increased by 1% annually to reach 20% in the year 2024). Companies in Telecom, Electricity generation and distribution, mining, insurance, and all other financial sectors are taxed at 24%.<br>In addition, a National Contribution tax is imposed: 1% for trade, retail and service sector (other than financial sector), 4% for financial services, 2% for Telecom; 7% for the primary raw material's mining companies, 3% Banks and Power Sector. | |
| Capital gains tax rate | Capital Gain is exempt except for Depreciable Assets and for capital gain realized from transfer of shares and listed stocks as it becomes taxable in Jordan effected from the year 2019 | |
| Branches/Permanent Establishments | Branches profit are taxed based on nature of its operation | |
| Personal income tax | 5% to 30% in addition to 1% National Contribution for annual taxable income in excess of JOD 200,000. | |
| Alternate minimum tax | NA | |
| Withholding tax | WHT | NCT |
| Royalties and technical fees | 10% | 1% |
| Interest | 10% | 1% |
| Dividends | NA | NA |
| Commissions, attendance fees and other services | 10% | 1% |
| Carry forward of losses | 5 years | |
| Tax year | Calendar year | |
| CFC and Thin Capitalization rules | NA | |
| Tax treaty network | 39 countries | |
| Wealth tax, estate tax, gift tax | NA | |
| Indirect taxes | | |
| Stamp Duty | — Public listed company are subject to 0.6%<br>— 0.3% (any contract signed apart from public listed company) | |
| Sales tax/VAT | 16% | |
| Customs general rate | 0% to 35% | |

# Lebanon

Income Tax in Lebanon is territorial (i.e., tax is imposed on profits earned in Lebanon only). Under the income tax law in Lebanon, tax is levied based on income type.

There are three categories of taxable income, each of which is taxable separately at different rates and under different rules and regulations.

The three categories of taxable income are as follows:

1. Profits from industrial, commercial, and non-commercial professions, private concerns and shareholding companies

2. Salaries, wages and pensions

3. Income from movable capital (interest, dividends and other)

The income tax law does not deal with what is known as global tax on income, where a progressive tax is levied on the individual's income grouped from different sources. Accordingly, where a taxpayer has income from different sources, each type of income will be taxed according to the tax chapter it falls under.

The net profit is computed by considering all income derived in Lebanon, resulting from all transactions made, and after deduction of all expenses relating to the business or enterprise.

Tax payable in any year is based on the profit of the previous year, it follows.

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# Regulatory/Legal

| | |
|---|---|
| Setting up business | Lebanon has traditionally been open to foreign direct investment. A foreigner, establishing a business in Lebanon, is subject to substantially the same regulations applicable to a Lebanese national, although special rules and regulations come into force in relation to acquisition of land and ownership of shares in Banks. |
| Commonly used business entities | The common types of corporate entities are:<br>— Joint stock company (Société Anonyme Libanaise – SAL)<br>— Limited Liability Company (Société à Responsabilité Limitée – SARL)<br>— Holding and offshore companies<br>— Representative office and Branch office of foreign companies |

Main legal formalities for the formation of a company

**Joint stock company (SAL)**

A joint stock company may engage in all forms of legal business activities. It must have at least three members (who are its shareholders) and capital of Lebanon Pound (LBP) 30 million, with at least 25% paid-up. Shareholders are liable only up to the nominal value of their shares.

There are no restrictions on foreign participation in joint stock companies, except for certain restricted sectors that have specific requirements on the percentage shareholding of Lebanese nationals for example:

— Joint stock companies managing a public sector

— Joint stock companies engaging in media, commercial representation, real estate and other specially regulated industries

In all SAL companies, the majority of the board of directors must be Lebanese citizens.

**Limited Liability Company (SARL)**

Members of a limited liability company are partners (one up to 25 ) who are liable only to the extent of their parts, they may be foreigners, with the exception of companies seeking to engage in commercial representation.

The company’s capital is divided into parts rather than shares.

Limited liability companies may not be active in certain sectors of the economy, such as in insurance, banking, fund management, or air transportation.

A limited liability company is managed by one or several directors (managers) who may or may not be selected from among the partners.

**Holding Companies**

Holding companies are exempt from the requirement to have Lebanese citizens or corporations on its board of directors. In addition, a non-Lebanese chairman of a holding company is exempt from the requirement of a work permit.

The principal purpose/objective of a holding company is share ownership in SAL and/or SARL, managing local or foreign companies in which it holds shares, and lending to companies in which it holds 20% or more of share capital (20% or more in Lebanese companies).

## Main legal formalities for the formation of a company (contd.)

### Offshore Companies

A Lebanese offshore company was introduced by Legislative Decree no. 46 as a Lebanese joint stock company (SAL) that engages exclusively in:

— Negotiation and conclusion of agreements concerning goods and products located outside Lebanese territory or in Lebanese Free Zone

— Offering studies and consultations for the benefit of foreign institutions

— Using free zone facilities in order to stock imported goods for re-export

— Buying or renting real estate in Lebanon to the extent they are necessary for its operations

Decree no. 19 dated 5 September 2008 amended the offshore companies' regulations and enlarged the scope of offshore companies' activities, mainly to include in addition to the above:

— Administration of companies/institutions outside Lebanon, including export of services, software of any kind to such companies/institutions

— Doing activities related to maritime shipping

— Acquiring shares in foreign corporations, companies or institutions

— Opening branches and representative offices abroad

The minimum capital requirement is the same as for joint stock companies, although it can be denominated in a foreign currency. According to law 85 dated 18 October 2018, the offshore company can be owned and managed by one shareholder only.

### Representative office

Foreign companies undertaking marketing and promotional activities may register a representative office in Lebanon. Representative offices are not subject to corporate income tax since they do not generate income in Lebanon. However, representative offices are required to submit an annual tax declaration form to MoF according to instructions no. 4068 dated 23 December 2011.

### Branch

Branch of a foreign entity is also one of the forms of entities that can be established in Lebanon, and it is subject to corporate income tax.

## Currency/monetary restrictions

Since 17 October 2019, banks started to apply an informal capital control over the repatriation of capital from Lebanon on bank accounts that existed before that date. There are no restriction on the repatriation of capital on inflows that were transferred to Lebanon after that date.

## Regulatory requirements for Financial Services

Banks and financial institutions are closely monitored by the Central Bank of Lebanon (CBL) and Banking Control Commission (BCC), in addition to their compliance with MoF. These two bodies issue circulars and instructions to banks and financial institutions, such as liquidity requirements, money laundering

requirements, solvency requirements and other related matters. There are several reports, including balance sheet, income statements, and other statistical reports that should be submitted to CBL and BCC on a monthly, quarterly, semi- annual, and annual basis.

## Accounting/Finance for companies and branches of foreign companies

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|---|---|
| Financial statements | Ministerial Decree no. 8089 (1996) requires annual financial statements to be prepared in accordance with International Financial Reporting Standards.<br>These statements consist of balance sheet, profit and loss account, cash flow statement, changes in equity statement, and notes to the financial statements. |
| Audit requirements | Audited financial statements must be submitted annually for approval by the general assembly of shareholders. Financial statements must be accompanied by a directors' report and by an auditor's report issued by an independent auditor. The auditor must be registered with the Lebanese Association of Certified Public Accountants.<br>Audited financial statements along with the auditor's report must be submitted annually to MoF and within 8 months of the end of company's fiscal year. |
| Requirements for foreign investors | Foreign investments are not subject to any special requirements except for certain regulated industries and sectors, acquisition of land and real estates, and ownership of shares in Banks |
| Book year/accounting currency | The fiscal year ends on 31 December and generally covers 12 months. However, companies can adopt a different fiscal year in conformity with its group financial reporting period after procuring an approval from the Ministry of Finance.<br>Limited liability companies and branches of foreign companies must submit all financial statements with the MoF within 8 months of the end of the fiscal year.<br>Financial statements can be prepared in the company's functional currency, which may be different from the local currency. |
| Format | Ministerial Order no. 1/6258 (1996) requires that companies present audited financial statements in conformity with International Financial Reporting Standards and provide a true and fair view of the financial position and performance of the company.<br>Financial statements may be presented in English, unless otherwise requested by MoF. |

## Tax

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|---|---|
| Approval requirements | The MoF issued law no. 57 in the official gazette no. 48 dated 12 October 2017 relating to the Oil and Gas sector in Lebanon. The law detail tax treatment for companies that will operate in the Oil and Gas sector. MoF is also in process of establishing a unified income tax law.<br>Law no. 248 dated 15 April 2014 stipulates for exemption of profits resulting from industrial exports of Lebanese origin by 50% of due income tax. Certified<br>country of origin documentation is used as a proof and customs forms are used to confirm the value of the exports. Entities investing in resources that are available underground are excluded from this law, as well as entities suggested by both, the Ministers of Industry and MoF. The application of this law is to be issued later through a decision from MoF. The application of this law was issued by decision 854/2016.<br>A business must notify MoF and obtain a tax number within two months of incorporation. |

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| Advance tax rulings/ Advance pricing agreements (APA) | MoF has been more inclined in recent years to provide written interpretation of tax legislations. According to the tax procedures code (TPC), taxpayers can request a tax ruling by paying certain fees,the MOF must provide taxpayers with a written answer within 2 months. |
| Income tax compliance | All legal entities whether individuals, partnerships or companies are liable to income tax on their income/profits derived in Lebanon. The tax year is usually referred to as the 'income year' or 'year of income' and it covers the period from 1 January to 31 December. Taxable income is computed by reference to the accounting profit before tax with adjustments prescribed by tax laws and regulations.<br><br>Companies are subject to a 17% tax rate on profits. Dividends are subject to a withholding tax of 10%. Non-bank and bank interest are subject to 10% tax.<br><br>Tax returns for both joint stock companies and limited liability companies must be filed within 5 months of the fiscal year end.<br><br>Holding companies enjoy tax advantages in that they are exempt from tax on profits and distribution of dividends to shareholders. Holding companies remain subject to other tax provisions including:<br><br>— A lump sum tax (that varies depending on the company's capital and reserves) capped at LBP 5 million annually; and<br><br>— A 5% tax on management fees collected from affiliated companies, provided that such fees do not exceed 2% of the total revenue of affiliates.<br><br>Offshore companies enjoy certain tax advantages and are subject to a lump sum yearly tax of LBP 1 million and exempted from tax on dividends distribution.<br><br>Branch is subject to corporate income tax of 17% on taxable profits and a deemed distribution tax of 10% on taxable profits less corporate income tax. Effectively, Branch is subject to tax rate of 25.3%.<br><br>Companies that own petroleum rights are subject to special tax rules and rates according to law 57 dated 5 October 2017, income tax rate and dividend distribution tax for these companies is 20%. |
| Indirect tax compliance | **Value Added Tax (VAT)**<br><br>A taxable person is any person (individual, company or partnership) who makes taxable supplies (standard rated at 11%) and zero-rated supplies under the Value Added Tax Law, if the turnover of one or four consecutive quarters exceeds LBP 100 million, starting 3 November 2017.<br><br>All importers and exporters should register with VAT regardless of their turnover.<br><br>Businesses may register for Value Added Tax voluntarily when taxable supplies exceed LBP 50 million for one or four consecutive quarters. Value Added Tax should be declared quarterly, 20 days after the end of each quarter.<br><br>Banking and financial services provided only by banks, financial institutions and similar intermediary entities authorized under a license from CBL are exempt from Value Added Tax.<br><br>Financial services provided by a Lebanese holding company can also benefit from this exemption such as:<br><br>— Sale of shares/parts in its resident and non-resident subsidiaries.<br><br>— Interest resulting from loans given to its subsidiaries.<br><br>The other activities of banks, financial institutions and holding company remain subject to VAT. |

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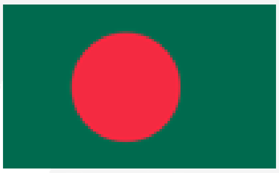
| Indirect tax compliance (contd.) | **Stamp Duty**<br><br>Lebanon charges stamp duty on many legal documents and agreements. All deeds and written materials, which mention a specific sum of money, are subject to the proportionate stamp duty of 0.4% of the contract amount. Stamp duty should be paid within 5 working days from the day of signature. |
| Other tax compliance | **Capital Gains Tax**<br><br>Profits realized from the disposal of fixed assets and/or sale of parts is subject to 15% capital gains tax. Companies may carry out a revaluation of its fixed assets. The revaluation surplus is subject to 10% tax if the amount is recognized in the profit and loss.<br><br>Law no. 64 of 2017 introduced a new tax regarding the profits generated on selling of real estates by non-taxable persons. The law states that in case the non-taxable person sold a real estate before completing 12 years of ownership, a tax of 15% will be assessed on the profits after deducting 8% yearly of the profit.<br><br>**Payroll Tax**<br><br>Salaries, wages, and benefits, paid to local and expatriate employees, are taxed at escalating rates from 2% to 25%. Payroll taxes are paid quarterly.<br><br>**Non-Resident Tax**<br><br>Non-residents are subject to 7.5% tax on services rendered, and 2.25% on delivery of materials.<br><br>**Movable capital tax**<br><br>Movable capitals are subject to 10% tax noting that transfer of stocks by individuals and foreign companies is exempted from movable capital tax. |
| Double Taxation Avoidance Agreements (DTAA) | Lebanon has executed DTAA with many countries such as Algeria, Armenia, Bahrain, Belarus, Bulgaria, cuba, Cyprus, Czech Republic, Egypt, France, Iran, Italy, Jordan, Kuwait, Malaysia, Malta, Morocco, Sultanate of Oman, Pakistan, Poland, Qatar, Romania, Russia, Senegal, Sudan, Syria, Tunisia, Turkey, Ukraine, UAE and Yemen. |
| CRS | Pursuant to signing the multilateral convention on mutual administrative assistance in tax matters and according to law 55 dated 27 October 2017, Lebanon started the exchange of information between jurisdictions under Common Reporting Standard (CRS) by 2018. |
| Transfer pricing | Although there is no specific transfer pricing law, there are specific requirements introduced by the Tax Procedure Code in relation to treatment of related party transactions from a Lebanese perspective. As part of this introduction, form and substance are acknowledged as well as certain fair market value concepts for evaluating such related party transactions. |

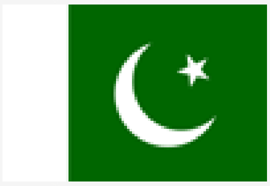
## Tax regime at a glance

| | |
|---|---|
| Corporate tax rate | 17% |
| Capital gains tax rate | 15% |
| Movable capital tax rate | 10% |
| Branches/Permanent Establishments | 17% on taxable profits and deemed distribution tax of 10% on profits less corporate income tax |
| Payroll tax | 2% to 25% |
| Alternate minimum tax | NA |
| Withholding tax | |
| Royalties and technical fees | 7.5% |
| Interest | 10% (on bank accounts)<br>7.5% (paid to non-resident) |
| Dividends | 10% |
| Commissions, attendance fees and other services | 7.5% |
| Carry forward of losses | 3 years |
| Tax year | 31 December unless there is a special date approved from MoF |
| CFC and Thin Capitalization rules | NA |
| Tax treaty network | 32 countries |
| Wealth tax, estate tax, gift tax | Wealth tax - NA;<br>Inheritance tax 3% - 45% (it relates to the degree of kinship between the 2 parties) |
| Indirect taxes | |
| Sales tax/VAT | VAT is 11% starting 1 January 2018 |
| Customs general rate | It relates to the kind of product. |
| Stamp duty | 0.4% |

# South Asian countries



Bangladesh



Pakistan

Sri Lanka

# Bangladesh

Bangladesh has shown remarkable economic performance, achieving GDP growth of 6% on average over the last decade and of 5.2% in its fiscal year 2020/21.

The country is focused on developing its infrastructure and improving its energy sector as well widespread digitisation. It has recently signed memorandum of understandings with China, Japan and Russia to increase foreign investment in these areas, and the tax authority has already initiated the process of issuing formal gazettes, orders or notifications which is very positive signal to the investors.

Fiscal benefits are available for energy and power sectors, infrastructure, IT sector, investments in economic zones, etc.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# Regulatory/Legal

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| Setting up business | Bangladesh Government continues to make improvements in this area to streamline the process of setting up a business. Foreign investors may own 100% of the capital or may set up joint venture entities in most sectors. There are also no laws regulating debt equity ratio except foreign borrowings.<br><br>There is abundant supply of semi skilled local manpower at low costs, and there are very few restrictions on engagement of expatriate employees, subject to meeting some conditions.<br><br>Industrial policy ensures equal treatment for local and foreign investment.<br><br>The Foreign Private Investment (Promotion & Protection Act) ensures legal protection to foreign investment in Bangladesh against nationalization and expropriation. Bangladesh has paved roads connecting all the towns and cities. It has two sea ports (a deep sea port is soon to be launched) and the country is connected by road, railways and airways. |
| Commonly used business entities | The main forms of doing business (apart from individuals carrying on business as a proprietorship) are:<br>— Locally Incorporated Company;<br>— Branch Office;<br>— Liaison Office; and<br>— Partnership. |
| Main legal formalities for the formation of a company or registration of a branch/liaison office or partnership | **Locally Incorporated Company**<br><br>There are various types of companies and now all of the companies are created by registering under the Companies Act, 1994. The most common types of companies are Public Limited Company and Private Limited Company.<br><br>Public Limited Company<br><br>The number of members of a Public Limited Company is minimum 7 and the maximum number is limited by share according to share capital described in memorandum of association. The liability of a member is limited by his/her share capital. The special significance of a Public Limited Company is that such a company is permitted to offer shares and securities to the public. The shares of this company can be transferred without any restriction. Where non listed shares are being transferred, the transfer value may be subject to regulatory approval for remittance purpose.<br><br>Private Limited Company<br><br>The number of members of a Private Limited Company is limited and this limit is minimum 2 and maximum 50. It cannot invite the public to subscribe for its shares or debentures. The liability of the members is limited by their share capital.<br><br>Private and Public Limited Company can carry out any legally permissible business in any locations of Bangladesh if its Memorandum of Association and Article of Association permit it. |

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| Main legal formalities for the formation of a company or registration of a branch/liaison office or partnership (contd.) | Typically, it takes 2–4 weeks to incorporate a company under The Companies Act 1994 from Registrar of joint stock company and firms (RJSC).<br><br>A Company has to comply with the regulations of The Companies Act 1994. Key compliances may include submission of the annual return, submission of annual audited accounts, etc. A company has to submit its annual tax return along with its audited accounts to the income tax authority.<br><br>Branch Office (BO)/Liaison Office (LO)<br><br>— Permission from Bangladesh Investment Development Authority (BIDA) has to be obtained to open BO/LO in Bangladesh. BO/LO has to comply with the requirements mentioned in BIDA permission letter. Other major compliances may include submission of quarterly statements of accounts for inward remittances from head office and expenses therefrom to BIDA, its Authorised Dealer (normally its Banker) and Income tax authority. Normally audited accounts of BO/LO are required for submission to income tax authority.<br><br>— Operations and locations of BO/LO are limited to as stated in BIDA permission letter. For new locations/customers and operations a new application will have to be submitted to BIDA. However, broader locations and operations could be requested at the time of obtaining BIDA permission.<br><br>— Permission of BO/LO is typically limited to 2–3 years which is renewable upon expiry. It takes almost 5-6 weeks to get permission from BIDA.<br><br>Partnership<br><br>— A general partnership may be formed with local individual or other registered entities; and the partners are jointly and severally liable for partnership debts to the full extent of their assets.<br><br>— The Partnership Act, 1932 governs it. Its formation is easier than a company. There is a contractual relationship among the partners.<br><br>— The minimum number of partners is 2 and the maximum number is 20 in ordinary cases and 10 in case of banking business. Partner's liability is unlimited.<br><br>— Profits are distributed according to profit sharing ratio. |
| Currency/monetary restrictions | There are no restrictions on inward remittances. Bangladesh Taka (BDT) is convertible in the Current Account, however prior permission of central bank and/or Bangladesh Investment Development Authority (BIDA) is needed in certain circumstances. |
| Regulatory requirements for Financial Services | Banks, financial institutions are all regulated by the Central Bank of Bangladesh (Bangladesh Bank) and the Bank Company Act 1991. Insurance Development & Regulatory Authority Bangladesh (IDRA) under the Insurance Act 2010 regulates insurance companies. |

## Accounting/Finance for companies and branches of foreign companies

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| Financial statements | Financial statements of companies as well as BO/LO are required to be prepared in accordance with International Financial Reporting Standards (IFRSs).<br>Audited financial statements are required to be filed along with the return of income to the tax authorities in addition to their mandatory filing to the Registrar of Joint Stocks Company (RJSC) and Firms. |
| Audit requirements | An independent auditor recognised by the Institute of Chartered Accountants of Bangladesh must audit financial statements annually. |
| Requirements for foreign investors | Foreign and local investors are treated substantially the same under the law. |
| Book year/accounting currency | Bangladesh Government follows fiscal year which runs from July to June. Companies in Banking, Finance and Insurance are required to follow 31 December year end. All others are required to follow 30 June year end. However, subsidiary of a foreign company can opt for different year end to align with its group.<br>The functional currency in Bangladesh is Taka (BDT). |
| Format | Companies are required to prepare their financial statements according to IFRSs and provide disclosures required therein and/or by the Companies Act 1994. |

# Tax

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| Approval requirements | Every company is required to obtain a Taxpayer's Identification Number (TIN) and register with the Value Added Tax (VAT) authorities (where applicable). |

Income tax compliance

**Individual and Partnership**

| Total income | Tax rate |
|---|---|
| First BDT 300,000* | NA |
| Next BDT 100,000 | 5% |
| Next BDT 300,000 | 10% |
| Next BDT 400,000 | 15% |
| Next BDT 500,000 | 20% |
| On the balance | 25% |

*Initial exemption limit for women, person of third gender and senior citizens aged 65 years or over is BDT 350,000, for physically challenged persons is BDT 450,000 and for gazetted war-wounded freedom fighters is BDT 475,000. Parent/legal guardian of a physically challenged persons are entitled to a further BDT 50,000 exemption.

Non-residents other than Bangladeshi non-residents shall pay tax on the total income at the maximum rate of 30%.

Minimum tax payable is as follows depending on location of the assesse:

| Location | Minimum tax |
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| Within Dhaka North City Corporation, Dhaka South City Corporation and Chattogram City Corporation | BDT 5,000 |
| Within other City Corporation | BDT 4,000 |
| Any area other than city corporation | BDT 3,000 |

**Surcharge**

Surcharge of between 10% to 35% is applicable on total tax payable by individuals whose total net worth exceeds BDT 30m.

**Company**

— Tax rate of 20% for publicly traded companies whose more than 10% of the paid-up capital is generated through IPO and subject to fulfillment of certain conditions. i.e. companies listed with any stock exchanges in Bangladesh other than banks, insurance and other financial institutions.

— Tax rate of 22.5% for publicly traded companies whose 10% or less than 10% of the paid-up capital is generated through IPO and subject to fulfillment of certain conditions. i.e. companies listed with any stock exchanges in Bangladesh other than banks, insurance and other financial institutions.

— 22.5% for one person company.

— 27.5% for non-listed companies including branch offices other than banks, insurance and other financial institutions. The tax rate shall be 30% if the companies fail to receive all income and receipts and to make payments and investments amounting BDT 0.5 million or more for single transaction and annually total BDT 3.6 million through bank transfers.

— 37.5% for listed banks, insurance, mobile financial service organisations and other financial institutions whereas 40% for non-listed banks, insurance and other financial institutions.

— 37.5% for merchant banks.

— 45% for cigarette, bidi, chewing tobacco and any other tobacco products manufacturing companies. Additional surcharge will be applicable on these business at the rate of 2.5%.

— 45% for Mobile phone operator companies.

— 40% for mobile phone operator companies that converted itself into a publicly traded company by transfer of at least 10% shares through stock exchanges, of which maximum 5% may be through Pre-Initial Public Offering Placement.

— A reduce rate of 15% is applicable for textile companies up to 30 June 2025 subject to fulfillment of certain conditions

Income tax compliance (contd.)

- 15% for research institutes and certain educational institutes.
- Industries in Export Processing Zone (EPZ) enjoy a tax exemption period for 5 years in Dhaka and Chattogram Division and 10 years in other divisions.
- Private power generation companies (other than coal based) enjoy exemption from corporate tax in addition to certain other incentives provided it starts commercial operation within 1st January 2020 to 31 December 2022 and will enjoy exempted benefits up to 31st December 2034.
- Private power generation companies (other than coal based) enjoy first 5 years 100% tax exemption and subsequent 5 years partial tax exemption; provided it starts commercial operations on or after 1 January 2023.
- Coal based Private Power generation companies enjoy 15 years tax exemption from corporate tax in addition to certain other incentives provided it enters into agreement within 30 June 2020 and starts commercial production within 30 June 2023.
- Companies established in government declared economic zones and hi-tech park enjoy tax exemption for 10 years up to several rates.
- Minimum tax at 0.60% on the company's gross receipt would be applicable. In addition to company, every firm having gross receipts of more than BDT 5 million shall be liable to pay minimum tax at 0.60% on firm's gross receipts.
- Initial 3 years, 0.10% minimum tax would be applied for industrial undertaking engaged in manufacturing of goods.
- A reduced rate of 12% is applicable for export oriented companies (excluding Transportation Service, Mobile Telecommunication Service, Internet and Internet Related Service) up to 30 June 2028. 10% rate would be applied, if the factory is having Leadership in Energy and Environmental Design (LEED) Certification.
- Minimum tax at 2% on the company's gross receipt would be applicable for mobile companies.
- Industries undertakings enjoy a tax exemption period for 5 years in Dhaka, Mymensingh and Chattogram Division (excluding some specific area) and 10 years in other divisions (excluding city corporation area) if the undertaking is set up between July 2019 to June 2024.
- Physical infrastructure facilities set up between the periods from July 2019 to June 2024, enjoy a tax emption for 10 years.

Capital gains tax

**Capital gains tax other than sale of shares of listed companies**

In the case of a company, income from capital gains will be separated from total income and tax at 15% is payable on such capital gains regardless of the period of holding of the asset from the date of its acquisition.

In the case of an assessee other than a company, if the asset is transferred before the expiry of five years from the date of acquisition, the capital gains will be taxed at the usual rate applicable to the assessee's total income including the capital gains. If the asset is transferred at any time after expiry of five years from the date of its acquisition, the capital gains will be taxed at the usual rate applicable to the assessee's total income including the capital gains or at 15% on the amount of capital gains whichever of the two is lower.

Advance tax

Companies and self-employed individuals with income more than BDT 600,000 are required to pay advance tax based on 100% of their last assessed income or 75% of their estimated income. The 75% rate is only applicable to new taxpayers or where the estimated tax is less than the last assessed tax.

Advance tax is payable in quarterly instalments beginning on September 15 of the income year; the balance of/outstanding tax, if any, is payable before filing the tax return.

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| Returns and assessment | In general, residents within the meaning of the Income Tax Ordinance 1984 are taxed on their worldwide income.<br>Individuals who have taxable income (i.e. income above BDT 300,000 for men) are required to file tax returns. Tax returns must be filed by November 30th (which is extendable by 2 to 4 months) for the income year ending previous June 30th.<br>Companies have to file their tax returns within 15th Day of seventh months from the end of the accounting period/year or following September 15th, whichever is later. The filing date may be extended by the tax authorities upon application.<br>The tax return of a company, branch office and liaison office has to be accompanied with audited statement of accounts, computation of total income along with supporting schedules.<br>An individual or a company who feels aggrieved may file an appeal against the order of Deputy Commissioner of Taxes to the Joint Commissioner/Commissioner of Taxes (Appeal) and against the order of the Joint Commissioner/Commissioner of Taxes (Appeal) to the Taxes Appellate Tribunal. An assessee can file appeal against the order of the Taxes Appellate Tribunal only in the area of law to the Supreme Court – High Court Division and then to the Appellate Division. |
| Alternate dispute resolution (ADR) | **Alternate dispute resolution:**<br>Assessees may apply for any disputes pending before tax authority, tribunal or court to be heard at ADR session. The NBR appoints a Facilitator and determines their terms of reference. |
| Indirect tax compliance | **Indirect tax/Value Added Tax (VAT)**<br>New VAT and Supplementary Duty Act 2012 (VAT and SD Act 2012) and the VAT and Supplementary Duty Rules 2016 (VAT and SD Rules 2016) has been effective from 1 July 2019.<br>— Standard rate of VAT is 15%. There are also reduced VAT rates for certain categories of goods and services, rates varying from 2% to 10%.<br>— There are certain categories of goods and services which are exempted from VAT.<br>— For many services and goods, there are reduced rates of VAT. Under this system full amount of VAT mentioned in VAT invoice (i.e. VAT form- 6.3) is deducted by the buyer at the time of making payments and the seller/ service provider is not allowed to take any input Value Added Tax credit.<br>— VAT on export and Deemed export industries is zero-rated.<br>— No VAT is levied on agricultural products and livestock.<br>**Turnover Tax**<br>Organizations with annual turnover of less than BDT 30 million but more than BDT 5 million and who not fall under mandatory VAT registration regardless of turnover as per VAT law may pay turnover tax at 4% instead of VAT.<br>**Stamp Duty**<br>Stamp duty is levied on legal documents, but the rates vary depending on the nature of documents.<br>— For the transfer of shares of unlisted companies, stamp duty is imposed at 1.5% on the transfer price.<br>— The duty on transfer of immovable property is 3%.<br>— For all other documents, the stamp duty varies starting from BDT 1. |

## Other tax compliance

### Customs Duty

Customs duty is levied on goods entering Bangladesh. The rates vary depending on the type of goods imported. No customs duty is levied on plant and machinery imported by an export oriented industry. Exemptions are also available for import of capital machinery in other sectors. Power generation companies are allowed to import plant, equipment and spares without payment of customs duties.

Duty rates vary from 5% to 25%, with the exception of cigarettes, alcohol and firearms, which are subject to higher duties.

### Supplementary Duty/Tax

This is imposed on luxury goods imported into Bangladesh, non-essential and socially undesirable goods (such as cigarettes, alcohol, etc.) produced and supplied in Bangladesh and on services provided by top class hotels.

The rates vary from 10% to 500%.

### Excise Duty

There is excise duty for banking companies and airlines in Bangladesh.

### Property Taxes

This is collected by the land and revenue office and the rates vary depending on location. However the tax is not significant.

### Payroll Tax

The employer has to withhold tax at the time of payment of salary applying the average rates appropriate to individuals' salaries.

The applicable rates are those for individual as mentioned above. For a non-resident individual the maximum rate of 30% will be applicable.

### Gift Tax

Gift tax shall not be charged amongst others in respect of gifts made by any person:

- Of property situated outside Bangladesh
- To the Government or any local authority
- To certain charitable institutions
- To a dependent relative up to BDT 20,000 on the occasion of his marriage
- By way of payment of policy of insurance or annuity for any person (other than wife) dependent upon him for support and maintenance up to BDT 20,000
- Under a will
- Under contemplation of death
- To sons, daughters, father, mother, his or her spouse, own brothers and sisters

In addition to the above exemption, gifts made in any financial year up to value of BDT 20,000 are exempt from gift tax. The Government may by notification exempt any class of gift or any class of person from gift tax.

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| Other tax compliance (contd.) | **Withholding Tax (WHT)**<br>— Bangladesh has a withholding tax regime.<br>— All companies including private companies, branch companies, liaison offices, banks and other financial institutions, etc. are required to collect/withhold tax (if applicable) at appropriate rates prescribed in the ordinance at the time of payments to suppliers/service providers.<br>The WHT so deducted have to be deposited to the government exchequer within the stipulated time, i.e. within 2 weeks from the end of the month for such deduction/collection from July to May of a year, within seven days from the date of deduction for the first to the twentieth day of June of a year, etc. |
| Director's liability to tax | Where any private limited company is wound up and any tax assessed on the company, whether before, or in the course of, or after its liquidation, in respect of any income of any income year cannot be recovered, every person who was, at any time during the relevant income year, a director of that company, shall, notwithstanding anything contained in the Companies Act, be jointly and severally liable to pay the said tax and shall, for the purposes of recovery thereof, be deemed to be an assessee in respect of such tax ; and the provisions of the Income Tax Ordinance - 1984 shall apply accordingly.<br>The liability of any person there under in respect of the income of a private limited company shall cease if he proves to the Deputy Commissioner of Taxes that non recovery of tax from the company cannot be attributed to any gross neglect, misfeasance or breach of any duty on his part in relation to affairs of the company. |
| Principal Officer | The Principal Officer of a Bangladeshi Company should be the person responsible for discharging the obligations imposed on the company in accordance with the Law.<br>As there are stringent penalties and punishments that could be imposed on the Principal Officer for non-compliance, the role and responsibilities of the Principal Officer is therefore of utmost importance and should be executed in a diligent manner. |
| Double Taxation Avoidance Agreements (DTAA) | Bangladesh has executed DTAA with 37 countries - United Kingdom, Singapore, Sweden, Republic of Korea, Canada, Pakistan, Romania, Sri Lanka, France, Malaysia, Japan, India, Germany, Bahrain, the Netherlands, Italy, Denmark, China, Belgium, Thailand, Poland, Philippines, Vietnam, Turkey, Norway, United States of America, Indonesia, Switzerland, Oman (air traffic only), Mauritius, UAE, Myanmar, Kingdom of Saudi Arabia, Nepal, Bhutan, Czech Republic and Morocco.<br>Major trading partners are United Kingdom, Singapore, Japan, India, Malaysia, United States of America and Germany.<br>To avail tax treaty benefit, a Certificate needs to be collected from National Board of Revenue. |

## Transfer pricing

Bangladesh has transfer pricing regulation incorporated into its tax law.

Bangladesh transfer pricing regulation targets international transactions between two associated entities, either or both of whom are non-residents; hence transfer pricing regulation will mostly affect multinational companies or foreign companies having direct or indirect transactions with their subsidiaries, associates or other legal form of entities (e.g. branch office, agent, etc.) in Bangladesh. Transfer Pricing regulation covers only international transactions between two associated enterprises either or both whom are non-resident (that means domestic transactions between two associated enterprises are excluded in Bangladesh TP regulation). If the volume of international transactions exceeds BDT 30 million, transfer pricing documentation is mandatory and also the company needs to appoint a Chartered Accountant to issue a report certifying that the company has maintained required and adequate transfer pricing documentation in support of arm's length price of the international transactions. The company can appoint any competent form (not necessary the statutory auditor) for audit report on TP documentation. Finally, a prescribed TP return has to be prepared and submitted to the tax authority on annual basis along with corporate tax return.

Bangladesh transfer pricing regulation is broadly in line with Organisation for Economic Co-operation and Development Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2010 and Transfer Pricing Legislation – A Suggested Approach 2011 issued by OECD. If a company fails to comply with the requirement and regulation of transfer pricing, following penalties will be applicable:

- Penalty up to 1% of value of international transaction for failure to keep, maintain or furnish information, documents or records to the tax authorities;
- Penalty up to 1% of value of international transaction for failure to comply with the notice or requisition issued by tax authorities;
- Penalty BDT 300,000 for failure to furnish report from Chartered Accountant; and
- Penalty up to 2% of value of each International Transactions for failure to submit TP return in due date.

## Tax regime at a glance

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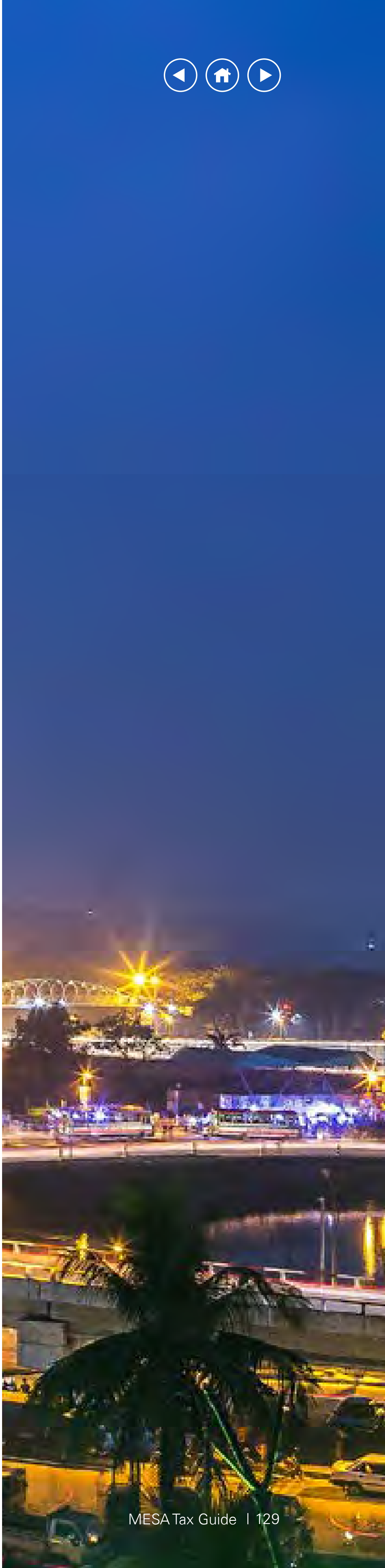
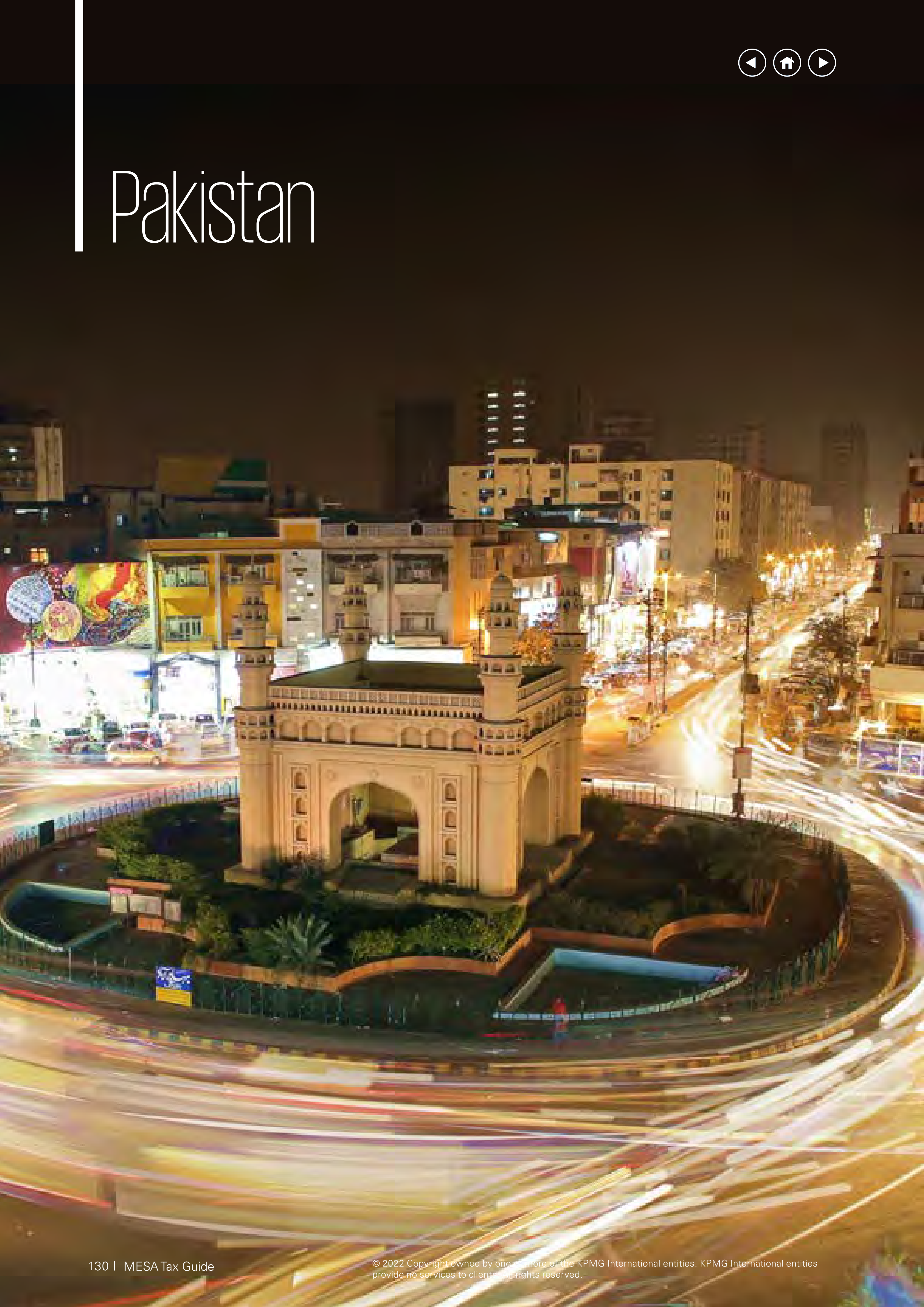
| Corporate tax rate | 27.5% |
| Capital gains tax rate | 15% |
| Branches/Permanent Establishments | 27.5% |
| Personal income tax | 0% to 25% |
| Alternate minimum tax | 0.6% to 2% |
| Withholding tax | |
| Royalties and technical fees | 20% |
| Interest | 20% |
| Dividends | 20%/30% |
| Commissions, attendance fees and other services | 20% |
| Carry forward of losses | 6 years |
| Tax year | Fiscal year<br>July – June |
| CFC and Thin Capitalization rules | No regulation for CFC;<br>Gearing ratio for Thin capitalization suggested at 70:30 or lower by BIDA guidelines |
| Tax treaty network | 37 countries |
| Wealth tax, estate tax, gift tax | 0% to 20% |
| Indirect taxes | |
| Sales tax/VAT | 15% |
| Customs general rate | 5% to 25% |



# Pakistan



Ease of doing business and promoting investment through a knowledge based economy is the foremost priority of the Government of Pakistan. With this objective, the Government has recently set up Special Technology Zones Authority to establish software and hardware technology parks, high-tech industrial areas, science and technology zones and knowledge cities requiring technological intervention. A tax holiday for 10 years and exemption on dividend distribution and capital gains has been allowed to zone enterprises and their investors.

The Government is also focused on digitization for smooth function of the processes as well as to ensure transparency. Tax credits have been introduced for the vendors installing 'point of sale' machines integrated with Inland Revenue. Through the Finance Act 2021, small and medium enterprises have also been incentivized by introducing simplified taxation while export of services has been brought at par with export of goods, with option to pay tax at 1% of receipts. The primary focus is to reduce the cost of doing business to compete in international market. At the same time, much needed protection has also been given to the manufacturing sector of the country. In 2020-21, the economy performed much better than the downturn expected due to COVID-19 pandemic with the Inland Revenue exceeding its revenue targets for the first time.

The China Pakistan Economic Corridor [CPEC] is a flagship and most actively implemented project of China's 'One Belt, One Road' initiative with successful launch of 41 projects on ground having total investment of USD 34.5 billion. The CPEC has the potential to revolutionize regional cooperation across all fields of socio economic development, trade, infrastructure development, shipping and railways transportation, communication and financial services and to transform Pakistan into the regional economic hub. It is expected that with increased investor's confidence coming from CPEC as well as the measures taken by the Government, the economy will continue to show growth and resilience amid the pandemic.

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# Regulatory/Legal

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| Setting up business | Pakistan has one of the most liberal foreign direct investment (FDI) regimes in South Asia where 100% foreign equity is permitted in the manufacture and infrastructure sectors excluding a few such as arms and ammunitions, high explosives, radioactive substances, security printing, currency and mint. With a consumer base of more than 220 million people with a strong middle class, Pakistan holds great potential for foreign investors; with power, infrastructure and natural resources sectors being the major avenues for investment over the last two years.<br><br>FDI in Pakistan is governed by the following Acts:<br><br>— Foreign Private Investment (Promotion & Protection) Act, 1976<br><br>— Protection of Economic Reforms Act, 1992<br><br>Pakistan has signed Bilateral Investment Treaties (BITs) with 48 countries, of which 37 are currently in force. |
| Regulatory Framework for Investors | In order to protect and stimulate investments (both local and foreign) in Pakistan, the Investment Policy 2013 provides a comprehensive framework for creating a conducive business environment. Following basic principles provide the theme of the policy:<br><br>**Reducing cost of doing business in Pakistan**<br><br>To facilitate market entry of small and medium sized enterprises; steps have been taken to reduce cost of doing business (money and time). State Bank of Pakistan (SBP) and Securities and Exchange Commission of Pakistan (SECP) have removed equity caps on banking and non-banking financial services. Incentives have also been introduced in the tax law to encourage investment in manufacturing sector, including expansion in existing plants. This includes tax credit for a period of<br><br>five years for newly set up industries, including corporate dairy farms; subject to setting-up the industry through equity, including FDI. The credit is admissible in proportion to the percentage of equity in total project financing.<br><br>**Reducing the processes of doing business**<br><br>Pakistan Board of Investment (BoI) is moving towards one-window operations. The aim is to offer constructive policy parameters for removing unnecessary regulations (deregulation) and minimizing the business cost by means of necessary regulations (streamlining). Creation of Special Economic Zones is a step towards this direction.<br><br>**Ease of doing business with creation of industrial clusters and special economic zones**<br><br>Special Economic Zones (SEZs) Act 2012 has been promulgated to establish SEZs. This law is the capstone of Investment Policy 2013. The incentives and exemptions granted for creation of these industrial clusters are protected by law and cannot be withdrawn prematurely. |
| Commonly used business entities | Foreign companies can choose between setting-up a liaison office, branch office or incorporate a Pakistani company, as either its wholly owned subsidiary or joint venture with a Pakistani/overseas partner. From a long term business perspective, the limited liability company (LLC) with share capital would be the type of company contemplated by non-residents interested in investing in Pakistan. A company incorporated in Pakistan may either be a 'Public company' or a 'Private company' including a 'Single member company'. A public company can also be a listed company. |

Commonly used business entities (contd.)

### Private company

A private company can be easily formed by a minimum of two members(only one member required for a single member company) and may commence its business immediately after obtaining Certificate of incorporation. The Companies Act, 2017 requires a private company to appoint at least two natural persons as directors. The maximum number of shareholders is 50 and it is not allowed to raise capital through public issue of shares.

### Public company

A public company can be formed by three members or more. It is entitled to commence business after fulfilling the requirement and filing the relevant documents/forms with the Registrar of Companies.

A public company does not have restrictions with regard to maximum number of members and transferability of shares. Public companies have the option to get their securities listed on a stock exchange.

A company cannot be listed unless it has made a public issue which is subscribed for by at least 500 applications. However, this is applicable only for listing of shares. For listing of securities other than shares, minimum number of members is three. The minimum number of directors for a public unlisted company is three and seven for the public listed companies.

A listed company may buy back its own shares subject to conditions specified in the Companies Act, 2017.

### Limited Liability Partnership (LLP)

A recent concept, Limited Liability Partnership (LLP) is an alternative form of business introduced in Pakistan by SECP through Limited Liability Partnership Act 2017 supported by Limited Liability Partnership Regulations 2018. LLP is an alternative form of business establishment that has the flexibility of a general partnership as well as advantages of a limited liability company. It is an alternative to the concept of partnership and company structure to enable professionals, entrepreneurs and small and medium enterprises to jointly organize and operate their businesses in an efficient manner.

The regulations specify the form and manner of registration of the partnership, proprietary of partners, accounts and audit requirements and conversion of existing firms and private companies into a limited liability partnership.

### Liaison office (LO)

The activities of a LO of a foreign entity are restricted to undertaking promotional activities, provision of technical assistance, exploring the possibility of joint collaboration and export promotion on behalf of its parent company. Such an office is strictly restricted from entering into revenue generating activities and is required to meet its operational expenses through remittances from its parent company through normal banking channels and converted into local currency account.

### Branch office (BO)

A foreign entity can operate in Pakistan by establishing a BO. A BO is set up specifically to execute contracts awarded to the foreign entity; therefore activities are restricted to the extent stated in the signed agreement/contract. BO cannot indulge in other commercial/trading activities.

Revenue generated/profit earned from BO activities can be repatriated to head office, subject to payment of applicable taxes. Such repatriation should be in compliance with the procedures mentioned in the Foreign Exchange Regulations of Pakistan, through an authorized dealer (banker), under normal banking channels and in compliance with tax regulations.

## Main legal formalities for registration of a liaison office or branch office or formation of a company

**Setting up of a liaison office/Branch office**

A foreign company desirous of setting up a LO or BO in Pakistan is required to obtain permission from the BoI by submitting an application in a specified format with requisite processing fee. The application processing generally takes up to seven weeks, after giving relevant authorities an opportunity for consultation. If comments from such authorities are not received within the allocated period, the application is considered approved on a 'no objection' basis. Approvals are granted for a period of maximum five years and renewals/extensions are granted after fulfilment of all requirements prescribed under the governing rules.

A foreign company (LO/BO) is required to file prescribed returns/documents with the Registrar of Companies at the place where principal place of its business is located. Such filing should be done within 30 days after obtaining permission from BoI, as per the provisions of Companies Act, 2017 read with The Foreign Companies Regulations, 2018. LO/BO are further required to be registered with tax authorities in Pakistan.

**Pakistan subsidiary/joint venture**

A foreign company can set-up its own wholly owned subsidiary in Pakistan or establish a joint venture company with a Pakistani or foreign partner, subject to fulfilling the FDI policy provisions and requirements of the Companies Act, 2017 read with Companies (Incorporation) Regulations, 2017. A subsidiary or a joint venture company can be formed as a private company or a public company.

SECP obtains security clearance of foreign directors/sponsors/promoters from the Government agencies after obtaining certified copies of constituting documents of the foreign company and its profile, copies of foreign directors' and CEO's passports, CV and recent photographs, etc. Certified copies are required to be authenticated by a Pakistan Diplomatic Consular or Consulate Officer in the country of residence.

After incorporation of the company and receipt of share money, share capital can be registered with the SBP on a repatriable basis.

**Work visa**

Every expatriate engaged as an employee by LO/BO operating in Pakistan is required to obtain work visa prior to commencement of employment in Pakistan. The work visa policies are considerably relaxed with Pakistan commissions abroad authorized to grant five year validity (multiple entry) visa within 48 hours to businessmen of various countries appearing on Business Visa List (BVL), with the duration of each stay restricted to three months. Business persons and investors from any of the BVL listed countries will also be granted a thirty day visa-on-arrival at any airport in Pakistan.

## Currency/monetary restrictions

Foreign exchange dealings are regulated under the Foreign Exchange Regulation Act, 1947. Foreign currencies are made available to persons/companies doing business in Pakistan for all purposes under rules which have been clearly defined by SBP. There are no restrictions on availability of foreign currency for imports (except for import of banned items or for imports from Israel). Business houses can buy foreign currencies for all other commercial transactions like payments for export claims, commission payment to foreign agents on exports, royalty, franchise/technical fees and dividends, software licenses/maintenance/support fee, advertisement abroad in newspapers and magazines, business travel, etc.

Foreign investment in Pakistan enjoys full protection and repatriation facilities.

The Foreign Private Investment (Promotion and Protection) Act, 1976 provides guarantees for repatriation of foreign investment to the extent of original investment, profits earned on such investment and appreciation of capital.

## Regulatory requirements for Financial Services

SBP was established in 1948. In addition to monitoring the implementation of Banking Companies Ordinance 1962, SBP specifies regulations relating to the monetary system, credit and banking policy and supervises their implementation.

The main law governing banking companies in Pakistan is the Banking Companies Ordinance, 1962 that regulates and governs the establishment and running of banking companies in Pakistan, in addition to business of commercial banking.

The Banking Companies Ordinance, 1962 and SBP Act, 1956 specify various regulations, some of which are listed below:

— Capital and reserve requirement

— Cash reserve

— Liquid assets

— Assets outside Pakistan

— Annual accounts and audit

— Remittance of profits

— Number of branches

— Prudential regulations

SBP has introduced specific Prudential Regulations for Corporate and Commercial Banks, Small & Medium Enterprises, Financing, Consumer Financing, Micro Finance Banks & Institutions and Agriculture Financing.

The Prudential Regulations cover four categories viz. Risk Management, Corporate Governance, Know your customer (KYC)/Customer Due Diligence (CDD) and Anti-money Laundering and Operations. Following are the important conditions prescribed in these prudential regulations for Corporate & Commercial Banks:

— Limit on exposure to a single person

— Limit on exposure against contingent liabilities

— Minimum conditions for taking exposure

— Limit on exposure against unsecured financing facilities

— Linkages between financial indicators of the borrower and total exposure from financial institutions

— Exposure against shares/Term Finance Certificates (TFCs) and acquisition of shares

— Classification and provisioning for assets

— Payment of dividend

— Margin requirements

— Corporate governance/board of directors and management

— Credit rating

— KYC

— Anti-money laundering measures

— Window dressing

## Accounting/Finance for companies and branches of foreign companies

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| Financial statements | All companies including foreign companies(BO and LO) are required to prepare financial statements for every financial year. Foreign companies mean and include those companies which are incorporated or formed outside Pakistan and have a LO/BO in Pakistan whether by itself or through an agent, physically or through electronic mode; or conduct any business activity in Pakistan in any other manner as may be specified.<br><br>Every listed company is also required to prepare quarterly financial statements within thirty days of the close of first and third quarter, respectively, of its accounting year; and half yearly financial statements within sixty days of the close of the second quarter, and transmit the same to the members and stock exchange.<br><br>Directors of every company (except single member company) are required to present audited financial statements in the Annual General Meeting (AGM) within one hundred and twenty days of the close of financial year and not later than 16 months after the date of incorporation and subsequently once at least in every calendar year.<br><br>The Board of directors of a company (excluding a private company, not being a subsidiary of public company, having paid up capital not exceeding three million rupees) are required to prepare directors' report and also to attach the same with the financial statements in the prescribed format. In case of listed company, Chairman review report is also required to be attached. |

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| Audit requirements | Following companies are required to have their annual financial statements audited by a Chartered Accountant:<br>— a public company<br>— a private company, which is a subsidiary of a public company; or<br>— a private company having a paid-up capital of Pakistani Rupee (PKR) 3 million or more.<br><br>The first auditor is required to be appointed by the directors within 90 days from the date of incorporation and thereafter in each AGM of the company.<br><br>A public listed company is required to ensure that its half yearly financial statements are subject to limited scope review by statutory auditor. |
| Book year/accounting currency | Generally, financial institutions follow the calendar year as their accounting year and other companies (except sugar and textile companies) follow financial year July-June. Sugar and textile companies follow period of October-September as their accounting year.<br><br>The determination of currency for the purpose of preparation and presentation of financial statements depends upon the currency of the primary economic environment in which the Company operates. Typically, the financial statements are presented in PKR, which is the company's functional and presentation currency.<br><br>The requirements relating to preparation of accounts, audit and submission of accounts to Registrar of Companies are also applicable to LO/BO of a foreign company. |
| Format | The statutory financial statements are prepared in accordance with the approved accounting standards as applicable in Pakistan. The approved accounting standards comprise of such International Financial Reporting Standards issued by the International Accounting Standards Board and are notified under the Companies Act, 2017 and/or under relevant/applicable laws (e.g. Banking Companies Ordinance, Insurance Ordinance, etc.). In case requirements differ, the provisions of directives issued under the Companies Act, 2017 and/or relevant/ applicable laws shall prevail. |

# Tax

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| Approval requirements and registration | No specific tax approval is required for setting up business in Pakistan. Every business is however required to get registered with Pakistan tax authorities and obtain a National Tax Number (NTN) soon after having established business or business connection in Pakistan. Similarly, foreign individuals working in Pakistan are also required to obtain NTN. Businesses subject to indirect taxation are also required to be registered under Sales Tax or federal excise duty laws. As Sales Tax on services is collected by provinces, the service providers in the provinces are required to register themselves with the revenue authorities of these provinces. |
| Advance tax rulings/ Advance pricing agreements (APA) | A foreign company may seek an advance ruling from the Federal Board of Revenue (FBR) in respect of Pakistan tax implications on a transaction entered into or proposed to be entered into. An advance ruling issued by FBR is binding on tax authorities but not on the taxpayer. Therefore, in case of an adverse ruling, the taxpayer may proceed with own interpretation and contest the dispute, if any, in appeals.<br><br>There is no other specific law dealing with advance pricing agreements. However, law contains rules for Mutual Agreement Procedure (MAP) where a reference is received from the competent authority of a country outside Pakistan under an agreement with that country with regard to any action taken by any income tax authority in Pakistan. |
| Income tax compliance | **Corporate income tax**<br><br>Pakistan income tax law, embodied in the Income Tax Ordinance, 2001 provides for two separate regimes of taxation, generally known as the 'normal tax regime' (NTR) and 'final tax regime' (FTR). Under NTR, tax is charged on taxable income computed after deducting admissible expenditure from gross revenue earned by the company during a certain period. Generally, all expenditure incurred for the purposes of business is tax admissible with exception of certain expenses such as payments made otherwise through banking channels or without withholding tax and excess interest expense incurred by a 'foreign controlled resident company' under the 'thin capitalization' rule.<br><br>Graduated tax rates apply to associations of persons (AoPs) comprising non-corporate members, such as partnerships paying tax under NTR. For the Tax Year commencing 01 July 2021 (Tax Year 2022), the highest bracket of 35% will apply in case (net) taxable income of the AoP for a tax year exceeds PKR 6 million. For companies paying tax under NTR including those working as an AoP member, a flat tax rate of 29% applies for the Tax Year 2022 irrespective of quantum of (net) taxable income, except for 'Small companies' which pay tax at 21%. The Banking companies are subject to tax at 35%.<br><br>In case of Banking companies, super tax at the rate of 4% is payable for Tax Year 2022 in addition to corporate tax.<br><br>BO or permanent establishment of foreign company, paying tax under NTR is also entitled to deduction for head office expenditure capped in accordance with the percentage of Pakistan revenues to global revenues. It is however not allowed deduction for any royalty, fee for services or interest, etc. paid by it to its head office. A permanent establishment is entitled to tax treaty benefits, if any, available under the circumstances. |

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| Income tax compliance (contd.) | Business loss sustained in a tax year can be carried forward to the following six tax years. Loss representing unabsorbed depreciation can however be carried forward indefinitely until fully set-off against future business income. However, effective 01 July 2018, only 50% of taxable income for a year can be adjusted against unabsorbed depreciation loss unless such income is less than PKR 10 million in which case it can be fully adjusted.<br><br>Under FTR, tax withheld at source from payments at a flat prescribed rate constitutes discharge of final tax liability in relation to income arising from such payments. Accordingly, neither any deduction is allowed for expenditure incurred in earning such income nor such income is allowed to be reduced by set-off of any other loss. The concept of FTR is being rapidly replaced by the concept of minimum taxation, whereby the taxpayers are required to compute tax under NTR. In case tax under NTR is less than the withholding tax, then that withholding tax constitutes minimum tax liability of the taxpayer. |
| Indirect tax compliance | **Sales Tax on supply of goods**<br><br>Sales Tax is governed by the Sales Tax Act of 1990, administered by FBR. Sales Tax is generally applicable at 17% ad-valorem on import and supply of taxable goods and it operates in Value Added Tax (VAT) mode. In certain cases, fixed Sales Tax and upfront value addition Sales Tax schemes are in place, where input tax adjustment/refund may or may not be admissible. Thus, Sales Tax is charged, collected and paid against taxable supplies made by a registered person in course of furtherance of any taxable activity carried on or on goods imported into Pakistan.<br><br>**Sales Tax on services**<br><br>Sales Tax on services is collected by provincial revenue authorities under the provincial Sales Tax laws. The charge of Sales Tax depends upon the nature and value of services contract as well as the province in which the services are rendered. The general provincial Sales Tax rate is 16% in Punjab and Islamabad Capital Territory [ICT] (which is not part of any province), 13% in Sindh and 15% in Khyber Pakhtunkhwa (KPK) and Baluchistan, though many services are subject to Sales Tax at reduced rates with no input tax credit allowed. Further, Federal excise duty applies on specified products as well as certain services rendered / received in ICT. |
| Mergers & acquisition | Pakistan income tax law contains specific provisions whereby a merger under a scheme of arrangement and reconstruction approved by the High Court, SBP or SECP under the provisions of relevant statutes are taken as a tax neutral event for the entities as well as their shareholders. |
| Other tax compliance | Every industrial or commercial establishment is required to pay workers' welfare fund at 2% of taxable income as per the return of income filed.<br><br>A company engaged in an industrial undertaking, if the number of workers employed at any time during a year is 50 or more, or the paid up capital as on the last day of accounting year is PKR 5 million or more, or the value of fixed assets is PKR 20 million or more, is required to establish a Workers' Profit Participation Fund and pay 5% of its profits to it every year. However, following a constitutional amendment in 2010, collection and administration of these levies has devolved to the provinces and Sindh and Punjab have enacted their own laws, broadly following the principles contained in the Federal law. |

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| Director's liability to tax | The company's tax liability cannot generally be recovered from the directors; except in case of a private company where such liability could not be recovered from the Company. Further, any person responsible for misstatement on conviction may be liable to penal actions under relevant taxation laws. |
| Double Taxation Avoidance Agreements (DTAA) | Pakistan has entered into DTAA with a number of countries. DTAA are in place with respect to all major trading partners of the country, including China, United States of America, UAE, United Kingdom, Saudi Arabia and almost all major European countries that includes Germany, France, Switzerland, Spain, Norway, Sweden, and Belgium.<br><br>Pakistan is a signatory to Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Sharing (MLI). It has shared a list of notifications and reservations and ratified the MLI, which is effective in Pakistan from 01 April 2021. |
| Transfer pricing | Pakistan income tax laws contain specific rules relating to transfer pricing which prescribe internationally recognized methods (comparable uncontrolled price method, resale price method, cost plus method and profit split method) for determination of arm's length results in respect of transactions between associates. More recently, the Board of Revenue has adopted OECD rules and procedures relating to Country by Country reporting by Multinational groups on transactions within the group. |

## Tax regime at a glance

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| Corporate tax rate | 29% in general but 21% for small companies for the Tax Year 2022. 35% for banking companies. | |
| Corporate super tax rate | Non-banking company | Banking company |
| Tax Year 2019 | 2% | 4% |
| Tax Year 2020 | 0% | 4% |
| Tax Year 2021 | 0% | 4% |
| Tax Year 2022 | 0% | 4% |
| Capital gains tax rate | 0% to 35% (other than immovable property) as per holding period.<br>For immovable property, 0-15% as per holding period. | |
| Branches/Permanent Establishments | 29% for the Tax Year 2022 except oil exploration companies whose tax rate is 40%. | |
| Personal income tax | 0% to 35% | |
| Alternate minimum tax | 17% | |
| Withholding tax | | |
| Royalties and technical fees | 15% | |
| Interest | 15% | |
| Dividends | 7.5% - 25% | |
| Commissions | 8% to 12% | |
| Attendance fees | 20% | |
| Carry forward of losses | 6 years, however unlimited carry forward for unabsorbed tax depreciation | |
| Tax year | It is fiscal year (July to June) for individuals, partnerships and those companies who have not chosen special tax year. For those following special year, it is year ending during the fiscal year | |
| CFC and Thin Capitalization rules | Applicable | |
| Tax treaty network | 65 countries | |
| Wealth tax, estate tax, gift tax | NA | |
| Indirect taxes | | |
| Sales tax/VAT | 17% (on goods)<br>1% to 16% (on services)<br>19.5% on telecom services | |
| Customs general rate | Depends upon Harmonized System (HS) code | |

## Note on the Finance Act 2022

By the time this publication got into print, the Pakistan Finance Act 2022 had become effective from 01 July 2022. There have been certain developments in the tax regime, consequent to Pakistan's commitment with the IMF as well as the need to raise revenues in view of rising prices of commodities globally. While the general corporate rate has been maintained at 29%, a 'super tax' at 10% has been imposed on ten industries including amongst others, fertilizer, textile, sugar, automobiles, cement, chemicals and pharmaceuticals, in case the income for the Tax Year 2022 exceeds Rs. 300 million. In all other cases except banking companies, the super tax will be payable at rates ranging from 1% to 4% for Tax Year 2022 in case of income exceeding PKR 150 million. The said super tax will continue at 1% to 4% for Tax Year 2023 and onwards for all persons, except banks. For the banks, it will be payable at 10% in addition to enhanced corporate rate of 39%.

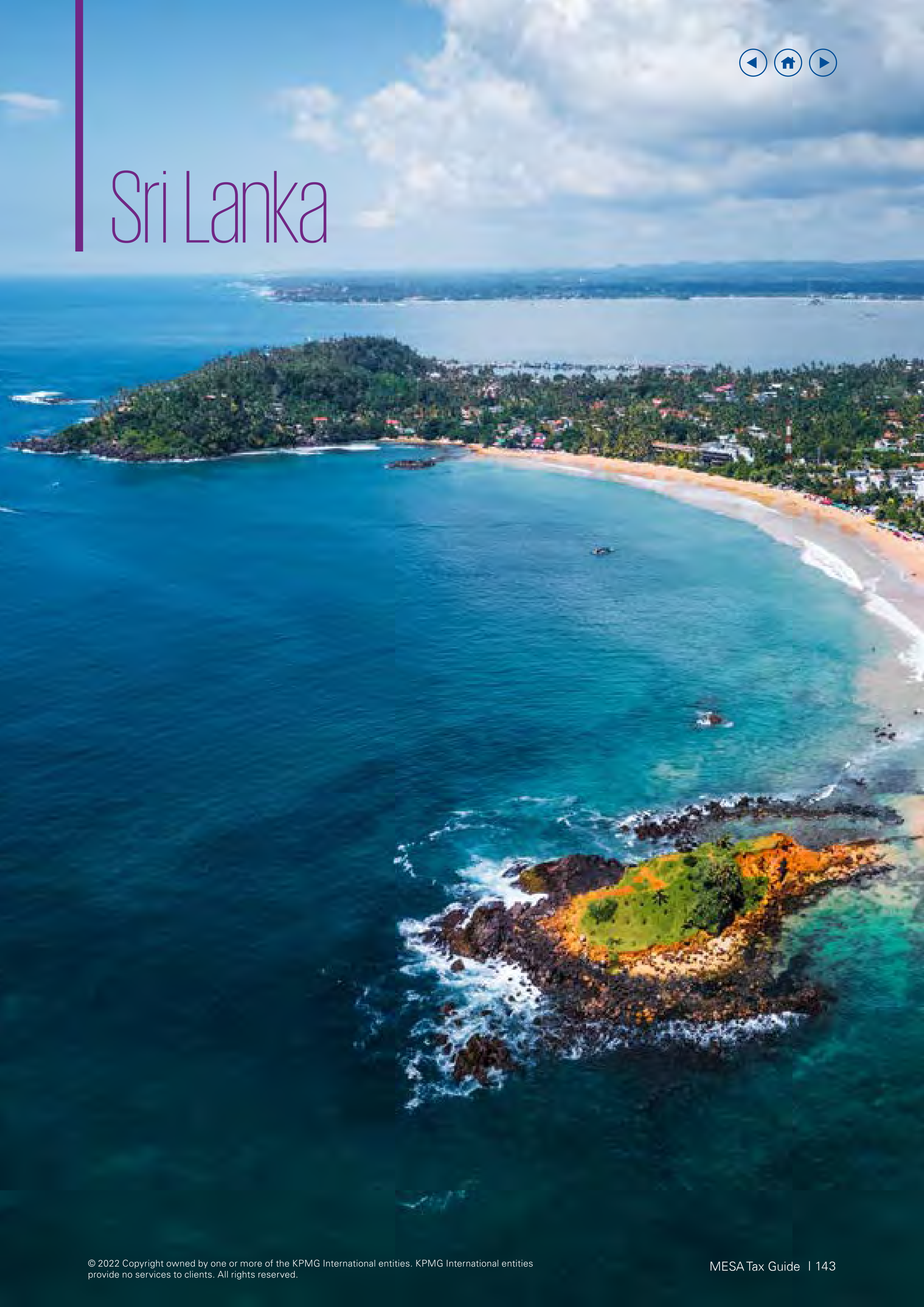
As an additional revenue measure, a tax of 20% has been imposed on 'deemed rental income' from immoveable property or properties in aggregate valuing more than PKR 25 million, that are not self-occupied or used for business or agricultural purposes, with certain exceptions. This tax is also applicable with effect from Tax Year 2022.

The Finance Act, 2022 has further rationalized the rate of capital gains tax on listed securities acquired after 01 July 2022 and open plots from 2.5% to 15% depending upon the holding period with no tax in case of holding of more than six years, whereas a flat rate of 12.5% has been imposed on gain arising on securities acquired prior to 01 July 2022, irrespective of holding period.

The Finance Act 2022 has further reduced the general rate of sales tax on services in Islamabad capital territory from 16% to 15%.

For more information on Pakistan's current tax regime, please reach out to Kamran Butt, KPMG Pakistan's head of tax.

# Sri Lanka



Recently the Parliament of Sri Lanka enacted the Colombo Port City Economic Commission Act. Among other things Port City will establish infrastructure and other facilities within the Zone for the promotion and facilitation of economic activity including international trade, shipping logistic operations, offshore banking and financial services, information technology and business process outsourcing, corporate headquarters operations, regional distribution operations, tourism, and other ancillary service.

Any investment in the Zone will be afforded with plethora of direct and indirect tax exemptions and concessions. The Commission will act as a single window investor facilitator.

In addition to the Colombo Port City Economic Commission, the Strategic Development Project Act has been revamped to facilitate large scale investments. Under Strategic Development Project Act, many economic zones have been established to aid foreign Investment. Board of Investment of Sri Lanka also continues their support for investors who wish to make Investments outside the Port City area.

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# Regulatory/Legal

## Setting up business

A company incorporated outside Sri Lanka can set up a business in the country either by incorporating a company in Sri Lanka or by registering an overseas company in the form of a Branch Office, Project Office and Liaison or Representative office. A foreign company may also register an offshore company in Sri Lanka solely for the purpose of carrying out business outside Sri Lanka.

Foreign investment into Sri Lanka could be made either with an agreement with the Board of Investment (BoI) of Sri Lanka under Section 17 of the Board of Investment Law no. 4 of 1978 or with approval under Section 16 of the said Law. Approval under Section 17 would enable the company to benefit from exemptions/ concessions from customs duty and exchange control. Further large scale investment projects could be facilitated under the Strategic Development Project Act or under the Colombo Port City Economic Commission.

A foreign company may also incorporate a company directly by applying to the Registrar General of Companies. 100% foreign equity investment is permissible on shares of Sri Lankan companies and it does not require any prior sanction from the Sri Lanka authorities. There are exceptions to this, such as:

### Prohibited Activities

These areas are reserved for Sri Lankan citizens - pawn broking, retail trade with a capital of less than USD 5 million and coastal fishing.

### Regulated Activities

The extent of any foreign investment percentage is subject to regulation by a separate statutory authority in certain industries - air transportation, coastal shipping, large scale mechanized mining of gems, lotteries and industrial undertakings set out in the Second Schedule to Industrial Promotion Act no. 46 of 1990, namely:

- Any industry manufacturing arms, ammunition, explosives, military vehicles and equipment aircraft and other military hardware
- Any industry manufacturing poisons, narcotics, alcohol, dangerous drugs and toxic, hazardous or carcinogenic materials
- Any industry producing currency, coins or security documents

### Restricted Activities

In these areas, foreign investment above 40% requires prior approval of the BoI on a case-by-case basis in consultation with the relevant state authority. The areas falling within such restriction are – production of goods where Sri Lanka's exports are subject to internationally determined quota restrictions, growing and primary processing of tea, rubber, coconut, cocoa, rice, sugar and spices, mining and primary processing of non-renewable national resources, timber based industries using local timber, fishing (deep sea fishing), mass communication, education, freight forwarding, travel agencies and shipping agencies.

### Tax concessions under the Inland Revenue Act

The Inland Revenue Act no. 24 of 2017 is effective from 1 April 2018. Under the new Inland Revenue Act, tax concessions are awarded by way of an enhanced depreciation allowance which is granted in addition to tax depreciation allowance.

In the case of new investments into capital assets exceeding USD 3 million, the enhanced depreciation allowance rate would vary from 100% - 200% based on the quantum of investment and the area in which the investment is made.

A temporary concession is available for new investments upto USD 3 million into capital assets for a period of 6 years effective from 1 April 2018. The enhanced depreciation allowance rate is 100% and same is increased to 200% if the investment is made in the Northern Province.

Setting up business (contd.)

### Strategic Development Projects (SDP)

Tax concessions can be conferred under Strategic Development Projects Act No 14 of 2008 for Projects which are in the national interest and which are likely to bring economic and social benefit to the country and also likely to change the landscape of the country.

SDPs may be granted exemptions up to twenty five years from taxes stemming from The Inland Revenue Act, Value Added Tax (VAT) Act, Excise (Special Provisions) Act, Customs Ordinance (Chapter 235, Port and Airport Development Levy Finance Act no. 11 of 2002, Sri Lanka Export Development Act, no. 40 of 1979 and Betting and Gaming Levy Act. no. 40 of 1988.

Commonly used business entities

A foreign company could establish a business presence in Sri Lanka via one of the following types of vehicles:

- Company incorporated in Sri Lanka
- Overseas Company in the form of a Branch Office, Project Office, Liaison or Representative office
- Offshore company

Main legal formalities for the formation of a company or registration of a branch

### Company

A company could be incorporated pursuant to obtaining approval for the name, and furnishing documents as prescribed by the Registrar of Companies e.g. Articles of association, consent and Certificate from the directors and the secretary, location of registered office and payment of a registration fee – maximum Sri Lankan Rupees (LKR) 30,000/-.

Investment via BoI entails making an application to the BoI and either execution of an agreement or obtaining a letter of approval for the said investment.

### Branch Office (overseas company)

A Branch of a foreign company could be registered in Sri Lanka, under the provisions of the Companies Act no. 7 of 2007. Documents specified by the Act should be submitted to the Company Registrar (resolution of board of directors and a special resolution of the entity, English translation of the certified documents of the company's constitution, Certificate of Incorporation, etc.).

Additionally, a sum of LKR 60,000 should be paid as a registration fee. Further, a minimum investment of USD 200,000/- is required to be placed with a commercial bank operating in Sri Lanka.

### Offshore Company

Sri Lanka Company Law provides for registration of what are termed 'Offshore Companies'. Under the said law, offshore companies are not entitled to carry on business in Sri Lanka. An offshore company is deemed to be incorporated in Sri Lanka and is able to carry out business transactions with other countries in the region as a Sri Lanka registered entity. Incorporation in Sri Lanka is not a prerequisite for registration. However, such companies must submit the following specified documents, including those relating to the constitution of the company, with the Registrar of Companies:

- A registration fee of LKR 150,000 must be paid to the Registrar of Companies
- A deposit of USD 100,000 must be placed with a commercial bank operating in Sri Lanka to defray expenses of the offshore company

An offshore company is not precluded from securing benefits and advantages conferred by law.

## Currency/monetary restrictions

**Investments in shares**

All investments in listed and unlisted securities by non-residents should be made via an Inward Investment Account (IIA).

An IIA enables sales proceeds from disposal of shares to be remitted offshore without any restriction from Exchange Control Authorities. Documentary evidence of sale and tax clearance is required to

be submitted with the exchange control authorities by the selling broker. Dividends credited to these accounts can also be remitted offshore on the same basis.

**Setting up branches in Sri Lanka**

As per Central Bank guidelines for foreign exchange transactions, non-resident companies are permitted to set up an 'overseas company' to carry out business in Sri Lanka subject to specific exclusions and restrictions. All investment made by such non-resident companies must be made through an IIA.

An IIA can be opened with any commercial bank in Sri Lanka with a minimum investment of USD 200,000. Evidence of remittance must be made to the Registrar of Companies within 90 days of registration of such overseas company and the investment must be recorded in company's books until it ceases business in Sri Lanka.

Capital account transfers require prior permission of the Exchange Control Authorities.

## Regulatory requirements for Financial Services

Companies engaged in banking, insurance, finance, finance leasing, hire purchase are regulated by respective statutory regimes and are under the supervision of institutions such as Central Bank and the Insurance Board of Sri Lanka.

# Accounting/Finance for companies and branches of foreign companies

## Financial statements

The Companies Act mandates preparation of financial statements within six months or within such extended period as may be determined by the Registrar General of Companies after the balance sheet date of the company. The said law also stipulates contents and form of financial statements and the obligation to prepare group financial statements.

With effect from 1 January 2012, financial statements in Sri Lanka are required to be prepared in accordance with new Sri Lanka Accounting Standards (SLAS) prefixed both Sri Lanka Financial Reporting Standards (SLFRS) (corresponding to International Financial Reporting Standards) and Lanka Accounting Standards (LKAS) (corresponding to IAS) promulgated by the Institute of Chartered Accountants of Sri Lanka.

Therefore, in view of the convergence of the Sri Lankan GAAP (SLAS) with International Financial Reporting Standards, the accounting would be in line with International Financial Reporting Standards.

Every company should at least once in every year deliver to the Registrar General of Companies an annual return in the prescribed format. All companies, except private companies, must forward a copy of financial statements together with the auditor's report for registration to the Registrar of Companies within twenty working days of the said statement being signed.

Under and in accordance with the Companies Act, a company as well the branch office (an overseas company) is required to furnish financial statements to the Registrar General of Companies on an annual basis along with other documents as required.

The financial statements are required to be in Sinhala or in English. If a different language is used, then a translated copy is to be attached with the certified accounts and forwarded to the Registrar General of Companies and to the Department of Inland Revenue along with the return of income.

The Companies Act no. 7 of 2007 sets out record keeping requirements, including the place of maintaining such records.

## Audit requirements

A company shall get the financial statements audited and group financial statements, if required. The Companies Act mandates appointment of an auditor at each Annual General Meeting (AGM) to hold office until the conclusion of the next AGM. The auditor's report to the shareholders should state the basis of opinion, the scope and limitations of audit, whether in the auditor's opinion financial statements or any group financial statements give a true and fair view of the matters to which they relate and if they do not, the respects in which they fail to do so.

As per the Inland Revenue Act, the Audited Financial Statements are part of the Income Tax Return. Submission of the Income Tax Return without Audited Financial Statements amounts to the lodgment of an invalid Income Tax Return and will attract penalties.

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| Requirements for foreign investors | Foreigners investing in shares must follow the procedure set out in Gazette including routing the investment via IIA, disclosing the required facts in the share transfer form and observing investment at the prescribed investment thresholds.<br><br>A sum of USD 200,000 is to be deposited in an IIA where a branch office is registered in Sri Lanka. |
| Book year/accounting currency | Most entities in Sri Lanka maintain books to 31 March, while banks and financial institutions prepare accounts to 31 December. However for income tax purposes the year of assessment is defined in the Inland Revenue Act as the year ending 31 March and with the approval of the Commissioner General of Inland Revenue, the books of accounts can be prepared for a different period.<br><br>Financial statements may be prepared in a functional currency other than LKR. However for tax purposes, as a practice, financial statements in foreign currency must be translated into LKR. |
| Format | As prescribed in the Sri Lanka Accounting Standards and the Regulations prescribed under the Companies Act. |

## Tax

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| Approval requirements | No specific approval requirements. Any person liable for any tax must register with the Department of Inland Revenue. Tax registrations include income tax (TIN), withholding tax (WHT), Advance Income Tax (AIT), Advance Personal Income Tax (APIT), Value Added Tax registration, etc. |
| Advance tax rulings/ Advance pricing agreements (APA) | The Inland Revenue Act also contains provisions in relation to an advance ruling system. The Commissioner General of Inland Revenue may issue public rulings to provide guidance to the general public with regard to certain provisions in the law. Private rulings will be issued by the Commissioner General upon an application made by a tax payer. In terms of the law, a private ruling must be issued within 90 days from the receipt of the application at a fee of LKR 25,000/-<br><br>The transfer pricing regulations have been introduced into the law to ensure arm's length pricing on transactions between related parties as defined in the law. |

## Income tax compliance

Assessment year/tax year in Sri Lanka runs from 1 April to 31 March and the related income tax for each assessment year is computed on a current year basis. However, if a taxpayer has obtained approval from the Commissioner General of Inland Revenue to prepare tax accounts for a different accounting period and accordingly, to calculate the income tax payable based on such accounting period, under the previous Inland Revenue Act, such approval can be continued.

Sri Lanka has a self-assessment system. Tax is collected by deduction at source on certain types of income if the payment is made to a non-resident person and the same is considered a final tax in the hands of the non-residents. Certain interest and dividend received by non-resident are exempt from Income. Entities and individuals will have to pay taxes on self-assessment basis quarterly.

The Inland Revenue Act has introduced capital gains tax on disposal of investment assets as prescribed by law. The tax is levied at 10% and same should be settled within 30 days from the end of a calendar month in which the realization took place .

The standard rate of corporate tax is 24%. Foreign source income and foreign services income of residents are exempt from income tax . Further certain identified gains and profits taxed at the lower rate of 14%. Where tax is suffered in an overseas jurisdiction, a tax credit may be available subject to the provisions of the income tax law or under a Double Taxation Avoidance Agreement (DTAA) exists between Sri Lanka and that overseas jurisdiction.

Countries and territories which with Sri Lanka has executed DTAA are listed below:

| # | Country/Territory | # | Country/Territory |
|---|---|---|---|
| 1 | Australia | 25 | Oman (Limited) |
| 2 | Bahrain | 26 | Pakistan (Rev.) |
| 3 | Bangladesh | 27 | Philippines |
| 4 | Belarus | 28 | Poland |
| 5 | Belgium | 29 | Qatar |
| 6 | Canada | 30 | Romania |
| 7 | China | 31 | Russia |
| 8 | Denmark (Rev.) | 32 | Saudi Arabia (Limited) |
| 9 | France | 33 | Singapore |
| 10 | Finland | 34 | Sweden |
| 11 | Germany | 35 | Switzerland |
| 12 | Hong Kong (Limited) | 36 | Thailand |
| 13 | India (Rev.) | 37 | U.A.E. (Limited) |
| 14 | Indonesia | | U.A.E. (Comprehensive) |
| 15 | Iran | 38 | U.K. |
| 16 | Italy | 39 | U.S.A. Protocol |
| 17 | Japan | | U.S.A |
| 18 | Korea | 40 | Vietnam |
| 19 | Kuwait | 41 | Seychelles |
| 20 | Malaysia (Rev.) | 42 | Czechoslovakia |
| 21 | Mauritius | 43 | Palestine |
| 22 | Nepal | 44 | Luxembourg |
| 23 | Netherlands | 45 | Jordan (Limited) |
| 24 | Norway (Rev.) | | |

The return of income is due on or before 30 November succeeding the end of the assessment year.

## Indirect tax compliance

The current Value Added Tax system has been in effect since 1 August 2002. Liability to Value Added Tax arises on:

- Import of goods into Sri Lanka; and
- Making of a taxable supply of goods or services by a registered person in course of carrying out a taxable activity in Sri Lanka.
- Any person or partnership engaged in the business of wholesale and retail trade.

Export of goods and certain services are zero-rated.

Exempted and excluded supplies are however not liable to VAT. Exempt supplies are set out in the statute.

Persons registered for Value Added Tax are entitled to claim credit for taxes paid on inputs, attributable to the making of taxable supplies. The standard rate of Value Added Tax is 08%.

Sri Lanka levies Value Added Tax on the business of provision of financial services at 15% (Financial VAT) based on the value addition to be computed in accordance with the guidelines to be issued by the Commissioner General of Inland Revenue. Such supplies are exempt from the mainstream VAT.

While 'Financial VAT' is based on a return and monthly payments, Value Added Tax based on invoice credit method follows monthly/quarterly returns and monthly payments.

## Other tax compliance

Sri Lanka has a fascinating web of taxes such as import levies including Customs Duties, Excise Duties, Ports and Airport Development Levy, Cess and Stamp Duty, etc.

The charging of these taxes is generally subject to meeting a liability threshold. In the case of import taxes, chargeability arises on the incidence of importation.

## Director's liability to tax

Various tax statutes contain provisions to penalize the directors and principal officer of the company for un-discharged tax liabilities of the company. Where any private company is wound up, directors are jointly and severally liable for payment of tax unrecoverable from the company.

The Income Tax Act, Value Added Tax Act provide for proceeding against a director in case of company default, as if such director was responsible for the default.

## Tax regime at a glance

| | |
|---|---|
| Corporate tax rate | 14% 24%, and 40% |
| Capital gains tax rate | 10% |
| Branches/Permanent Establishments | 14%, 24% and 40% |
| Personal income tax | Progressive rates 6% - 18% |
| Alternate minimum tax | Not Applicable |
| Withholding tax | |
| Royalties and technical fees | 14% |
| Interest | 5% |
| Dividends | Exempt |
| Commissions, attendance fees and other services | 14% |
| Carry forward of losses | 6 years |
| Tax year | April to March |
| CFC and Thin Capitalization rules | Limited to 4 times of Stated Capital & Reserves |
| Tax treaty network | 45 countries |
| Wealth tax, estate tax, gift tax | NA |
| Indirect taxes | |
| Sales tax/VAT | 08% |
| Customs general rate | 0% to 15% |

## Recent amendments

At the time of the MESA tax guide going to print the Government of Sri Lanka had introduced some amendments. The key recent changes affecting the tax landscape in Sri Lanka are as follows:

- The standard Value Added Tax rate was increased to 12% from 8% with effect from 01 June 2022.
- A one-off tax named Surcharge Tax was introduced and is payable by any individual, partnership, company or each company of a group of companies (holding and subsidiaries) whose taxable income for the Year of Assessment 2020/21 exceeded LKR 2 billion. The rate of Surcharge Tax is 25% of the Taxable Income of the Year of Assessment 2020/21 and is payable in two equal installments.
- A Bill to introduced Social Security Contribution Levy (SSCL) has been proposed. SSCL is payable by any Importer of any article, Manufacturer of any article. Service provider of any description and Wholesaler or retailer of any article for every quarter whose aggregated turnover exceeds LKR 120 million per annum. The rate of SSCL will be 2.5% on the "liable turnover" and the term "liable turnover" has been defined in the Bill. The said Bill is yet to be enacted into law.

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