Full Report

International Tax Systems and Administrations of the Asia-Pacific Countries

2024

International Fiscal Association Korea

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Summary

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1 Introduction

Background and Purpose of the Research

In 2008, the OECD signed a memorandum of understanding with Korea on the establishment of the OECD Korea Policy Centre. Accordingly, the OECD Korea Policy Centre was established in Korea and it is promoting the exchange of policy experiences in the Asia-Pacific region and providing support for non-OECD member countries. It serves as a resource center for supporting OECD projects and promotes projects to enhance the Asia-Pacific community's understanding of OECD's research, analysis, and standard-setting work. The OECD Korea Policy Centre's Tax Programme Division performs the function of disseminating domestic and international tax systems and current issues in the Asia-Pacific region by sharing OECD's systems and experiences with countries in the region.

In the area of international taxation, in order to expand the number of participating countries in the process of promoting the BEPS 1.0 project and BEPS 2.0 project since 2012, the OECD has promoted the former project together with the G20, which includes India and Indonesia in the Asia-Pacific region. For the latter project, the OECD is currently pursuing an inclusive framework in which 138 countries, including many in the Asia-Pacific region, participate.

In order for the Tax Programme Division of the OECD Korea Policy Centre to attain the fundamental purpose of its establishment, it is necessary to actively initiate international tax projects for countries in the Asia-Pacific region. Countries in the Asia-Pacific region are mainly countries that gained independence after the world war, so their tax laws and administration vary in form and content depending on the historical circumstances of each country, and in some cases, they form a unique system that is very different from that of Korea, which joined the OECD in the '90's. In order to effectively pursue cooperative projects with countries in the Asia-Pacific region, it is necessary for the OECD Korea Policy Centre to get a sufficient understanding of the systems and administration

of countries in the region.

From this perspective, this report intends to investigate the international tax legal system and administration of countries in the Asia-Pacific region. In particular, it focuses on matters related to the system to prevent international tax avoidance such as transfer pricing taxation, tax treaty, and the BEPS project, for which the OECD sets international standards. To this end, the researchers of this Report conduct research also on income tax laws among the domestic tax laws of each country and the administrative system for enforcing them.

Scope and Methods of the Research

The countries subject to research in this Report are the 12 countries below that seem to have relatively low awareness of the international tax system and administration among non-OECD countries in the Asia-Pacific region.

- Southeast Asia region (6 countries)
  - Philippines, Indonesia
  - Indochina Peninsula countries (Vietnam, Cambodia, Laos, Myanmar)
- South Asia region (5 countries)
  - India, Pakistan, Bangladesh, Sri Lanka, Nepal
- East Asia region (1 country)
  - Mongolia

Topics subject to research by country include tax-related government agencies, basic structure of the income tax system, international tax avoidance prevention, tax treaties, and BEPS implementation status. Research methods include literature review, collection of data from foreign organizations, and use of data from major DB suppliers.

Below, in this report, the survey results for 12 countries are described in an alphabetical order by country name.

2 Bangladesh

Bangladesh's tax system consists of both direct and indirect taxes. Direct taxes include income tax, gift tax, land development tax, non-judicial stamp, registration, and immovable property tax. Indirect taxes include customs duty, excise duty, motor vehicle tax, narcotics and liquor duty, value-added tax (VAT), supplementary duty, foreign travel tax, turnover tax, electricity duty, and advertisement tax. The main taxes are VAT, customs duty, excise duty, and income tax. These taxes aim to optimize revenue collection and prevent tax evasion and system inefficiencies.

The National Board of Revenue (NBR) is the tax administration agency in Bangladesh, operating under the Internal Resources Division of the Ministry of Finance. The NBR works with three tax-type wings: Customs Wing, VAT Wing, and Income Tax Wing. Tax orders can be appealed to higher tax authorities, with the option for further appeal to the Supreme Court if necessary.

The income tax system in Bangladesh is governed by various laws and regulations, including the Income Tax Act (ITA) and Income Tax Rules 2023. These laws are subject to amendments through the annual Finance Act. The income tax structure includes different rates and exemptions based on the taxpayer's residency status and taxable income. Bangladeshi residents are taxed on worldwide income, while non-residents are taxed only on income earned in Bangladesh. The tax year in Bangladesh runs from July 1st to June 30th of the following year.

Tax residency is determined based on specific criteria for individuals and business entities. Resident individuals stay in Bangladesh for a specified number of days in an income year, while non-residents are short-term visitors or dependents of foreign nationals not earning income in Bangladesh. Resident business entities include companies that are either Bangladeshi or controlled and managed wholly in Bangladesh.

Double tax relief is available for Bangladeshi residents to avoid double taxation on income taxed in both Bangladesh and a foreign jurisdiction. Foreign tax

credits are allowed up to the amount of the foreign tax paid or the Bangladeshi tax payable, whichever is lower. There is no provision for carrying forward or backward excess tax credits.

The concept of permanent establishment is important in determining taxable income for businesses in Bangladesh. Certain income is deemed to accrue or arise in Bangladesh through a permanent establishment, which includes physical presence such as a place of management, branch, office, warehouse, factory, or other economic activities.

Bangladesh offers tax incentives to attract foreign direct investment, including the start-up sandbox and Special Economic Zones (SEZs). Start-up companies meeting certain conditions enjoy various tax benefits for five years. SEZs provide tax exemptions for investors and developers, with exemption percentages decreasing gradually over time.

Withholding tax is applicable in Bangladesh for various types of payments. Rates vary depending on the residency status of the recipient. Anti-avoidance rules are in place to prevent abuse of tax arrangements, and transfer pricing rules apply to cross-border transactions between related parties.

Bangladesh has tax treaties with 42 countries to protect foreign investors from double taxation. However, there is limited information available on major disputes over tax treaty application or Bangladesh's position on the OECD Model Tax Convention. Bangladesh is not a participant in the Inclusive Framework on Base Erosion and Profit Shifting (BEPS) but has implemented measures to tax the digitalized economy.

3 Cambodia

The Kingdom of Cambodia is a constitutional monarchy. The taxation system in Cambodia is relatively new and is still subject to evolving legislation.

Generally, Cambodia does not have a personal income tax, therefore any income that is not subject to the category of "tax on salary(ToS)" or "tax on income(ToI)" will not be taxed. Value added tax (VAT) is imposed on taxable supplies of goods and services other than land and money, and on imports.

The responsibility for administering taxation in Cambodia is the General Department of Taxation (GDT) of the Ministry of Economy and Finance (MEF).

There is no explicit anti-avoidance provision in Cambodian law. However, several penalties in case of violations of tax provisions, including tax avoidance, are expected to be introduced in the near future.

Article 18 of the Law on Taxation sets out the basic tenets of Cambodia's transfer pricing regime, which allows the General Department of Taxation to reallocate income, deductions, or other benefits among related parties where it is deemed that an arrangement has been established to avoid the application of taxes.

There is neither provision for Controlled Foreign Corporation Rule nor provision for thin capitalisation in Cambodia.

Cambodia is not a participant in the Inclusive Framework on BEPS. From 8 September 2021 non-resident entities who provide digital goods/services or E-commerce activities to Cambodian consumers and who expect to have sales of USD 15k or more before the end of the year, over three consecutive months, have 30 days to register for VAT with the GDT in Cambodia.

Cambodia is a country with relatively little experience of democracy and market economy. There are only a few tax laws and the tax administrations do not give certainty to the taxpayers and businesses. Its current network of tax treaties are so narrow. And it does not participte in the Inclusive Framework of

BEPS. The weak legal basis for TP taxation seems to show conversely that the government does not need any significant tax law development in international tax areas until recently. The newly introduced E-commerce VAT system seems to testify the saying that the necessity is the mother of development may apply to the tax legal situation of Cambodia.

The Tax Programme of the OECD Korea Policy Centre may contribute for the development of tax system of Cambodia by sharing Korea's policy experience of reforms in the area of the build-up of tax law system and digital transformation of tax administration.

4 India

India's tax system is based on English law and common law principles, with a three-tiered federal structure. The system includes direct taxes, such as income, gift, and wealth taxes, managed by the Income Tax Department, and indirect taxes, such as Value Added Tax, managed by the Central Board of Indirect Taxes & Customs.

The Central Board of Direct Taxes oversees income tax administration, and appeals against tax decisions can be made to the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal. India's income tax laws are governed by the Income Tax Act of 1961, and other regulations, circulars, and case laws.

The income tax structure in India applies different tax rates to residents and nonresidents, and includes exemptions, deductions, and tax credits. Individuals and companies have the option to choose between the old and new tax regimes, with different rates and thresholds. The tax year in India runs from April 1st to March 31st of the following year.

India's international tax provisions include criteria for tax residency and double tax relief rules, along with definitions for permanent establishment and business connection. The system also includes rules for claiming foreign tax credits under Double Taxation Avoidance Agreements and the treatment of permanent establishments in different tax treaties.

India offers tax incentives to attract foreign direct investment, providing benefits to developers and units in Special Economic Zones (SEZs) and to eligible startups.

SEZs in India provide a favorable business environment and various incentives to promote industrial development and foreign direct investment. Developers and units in SEZs qualify for tax exemptions on their profits and investments for a specific period. SEZ developers receive 100% income tax exemption on export income for the first five years, followed by a 50% exemption for the subsequent five years. SEZ units also receive a 100% income tax exemption on

their profits for the first five years, followed by a 50% exemption for the following five years, and a 50% exemption on reinvested profits for the next five years. However, SEZ units are still subject to Minimum Alternate Tax and Dividend Distribution Tax provisions.

Eligible startups can also benefit from tax incentives. Startups incorporated between 2016 and 2024, whose total turnover does not exceed INR 250 million, qualify for a 100% deduction of profits earned for three consecutive years out of the first seven years beginning with the year of incorporation. Additionally, startups are allowed to carry forward losses under certain conditions.

Withholding tax rates for residents and nonresidents are applicable to various types of payments, such as dividends, interest, royalties, and fees for technical services.

India has implemented anti-avoidance rules against international tax planning, including the General Anti-Avoidance Rule (GAAR). The GAAR provisions aim to deter the misuse or abuse of tax laws through impermissible avoidance arrangements.

Additionally, the Indian Income Tax Act contains provisions for penalties for concealment of income and for false entries in books of account. Transfer pricing rules are also specified in the Act to ensure that income arising from international transactions is computed at arm's length prices.

India has entered into Double Taxation Avoidance Agreements with numerous countries, influencing treaty interpretation and disputes. The country has implemented measures to address Base Erosion and Profit Shifting (BEPS) through changes in domestic laws, including the adoption of the Multilateral Instrument and provisional measures for Pillar 1 of the BEPS Project.

Furthermore, India has introduced significant economic presence provisions and equalization levies to address digital business taxation. While India has not implemented specific measures for Pillar 2 of the BEPS Project, it has taken steps to reduce corporate tax rates and phase out exemptions/deductions in line with the project's objectives.

5 Indonesia

Indonesia has built a statutory tax law system which may be found in many developed civil law countries. The stage of its economic development may be ranked in the developing level in terms of numerical performances such as GDP per capita. But the real economy of Indonesia is surely forming a huge entirety of various industries, which indicates its potential power to rise as an economic leader in the South-east Asian region. Indonesia is pursuing to be admitted to the OECD as its member country.

Major types of taxes in Indonesia are income tax, value added tax, land and building tax, carbon tax, regional taxes. The main tax legislations on income tax and indirect tax are the Income Tax Law (ITL), the General Provision and Procedure on Taxes Law and the Law on Value Added Tax on Goods and Services and Sales Tax on Luxury Goods.

The Directorate General of Taxes operates both as the tax policy maker and the tax administrator. Its head office carries out the functions of policy formulation and technical standardization, analysis and development, as well as oversight and administrative support.

Comprehensive concept of income is stipulated in the ITL. The ITL provides almost all concepts and regulations with respect to international taxation such as residency, double taxation relief, permanent establishment, transfer pricing taxation, controlled foreign corporation taxation and thin capitalization. Indonesia recently introduced pseudo-territorial system. And it also introduced E-Commerce Taxation system. It has been admitted to Inclusive Framework of the BEPS.

One important outlier in terms of Indonesian tax law system against civil law tradition is that the legislation delegates huge authority to the administration in terms of contents and scope of regulation, which definitely allows the administration to directly affect – sometimes have the possibility to inflict upon – the basic

and fundamental rights of taxpayers.

In this regard the experiences of Korea may be shared with Indonesia for the solidification of tax law system of Indonesia. In addition, the experiences of Korea during the digital transformation period of tax administration may be shared with it.

6 Laos

Laos(Lao PDR) is ruled by a single party Communist government. Its major industries are such primary industries as mining, hydro power, agriculture, and light manufacturing.

A set of new tax laws - Tax Administration Law (№ 66/NA, 17 June 2019), Income Tax Law (№ 67/NA, 18 June 2019) and Excise Tax Law (№ 68/NA, 19 June 2019) - are implemented from 1 January 2020. The Value Added Tax Law (№ 48/NA, 20 June 2018) is also an important component of the tax regime.

Taxable incomes upon individuals are salary income, business income, other income, and exempt income. Corporations and partnership businesses are liable for profit tax.

There are no foreign tax credits available under domestic tax law. A credit is not allowed for foreign tax paid on foreign income. However, certain tax treaties have provisions for either deductibility or credit of foreign tax.

There is no definition of permanent establishment (PE) provided in the Lao Tax Law.

There are no concrete anti-avoidance rule provisions whether it is specific or general. Besides there is no anti-treaty shopping provision in Lao tax law, either. Furthermore, there are no specific transfer pricing rules. However, the tax authority has the right to assess the transaction if they determine it is not at the market price or reasonable. There is no guideline of the market rate or reasonable price issued from the authority.

As of the year 2017, any intragroup transaction (financial and operation) shall be adjusted for tax calculation on the basis of guidance given by Tax Law (rates, threshold admission) or on arm's length principle basis.

Laos is not a participant in the Inclusive Framework on BEPS.

Because Laos is a communist state, the legal system built in the western countries may not be found. The reality of its economy does not seem to have

required vast network of tax treaties and intricate rules of taxation until now. The fact that there are no provisions in the current tax laws on the concept of permanent establishment and for the transfer pricing taxation seems to represent the current status of its tax law basis. As is almost always found in the examples of developing countries, the strength and scope of the economy of a country determines the needs for its legal infra-structure whether the area of law is private or public.

The tax authority of Laos promulgated recently the administrative guideline for transfer pricing taxation even without statutory legal basis. And it also pronounced the administrative guideline for the VAT taxation on E-commerce. These guidelines seem to prove the reality that Laos as a country had to have responded to the changes in the market and economy it is facing with. Laos which has not been familiar with market economy and western legal law system seems to have begun to actively introduce such systems. This gives us a strong indication for its necessity of international cooperation with countries such as Korea, which has plenty of recent successful experiences in those aspects.

7 Myanmar

Since 2021, Myanmar maintains an emergency system in which the State Administration Council exercises full authority of the government. Becuase of the instability of the politics and the economic sanctions put by the western countries, the current economy of Myanmar as a whole does not seem to be positioned in a situation to purse the growth and expand the international cooperation.

The State Administration Council may amend, insert or substitute the tax rates of the Union Tax Law. The internal revenue department(IRD) is established as an internal organization of the Ministry of Planning and Finance.

The basis for income tax is the Income Tax Law (ITL) 1974. The tax law system has been formed through intermittent revision of the Union Tax Law (UTL), a unified tax law. UTL has the nature of a special law for existing tax laws. The most recent revision of the UTL has been made in 2023.

There is no provision in either the ITL or the UTL for unilateral relief against international double taxation. Relief may be available pursuant to a tax treaty, but the application of the tax treaties is at the sole discretion of the Ministry of Planning and Finance.

The regulation of the Director General of IRD on Tax Avoidance has been in effect, which is IRD Public Ruling 3/2022 under Tax Administration Law(TAL, 2023.1.1.~). The Ruling provides that Tax Avoidance will apply if a taxpayer fully understands the tax laws and breaches the tax ethics with the purpose of avoiding the tax or acting to reduce the taxable income or tax liability.

Although no formal regulations exist for the transfer pricing taxation, the IRD will use its knowledge of market prices of similar transactions conducted between independent parties as a guideline when assessing whether a transaction between related parties is reasonable, and will use a rationale similar to the basis of the methodologies set out in the OECD guidelines.

There are currently no CFC rules in Myanmar. And there is no specific safe harbour with respect to a debt-to-equity ratio for Myanmar tax purposes.

The tax treaty network is very limited in Myanmar. And Myanmar is not a participant in the Inclusive Framework on BEPS.

Myanmar is not properly equipped with the legal and administrative systems to provide the legal certainty in terms of taxation. It does not seem to exert impressive efforts to replenish its tax system probably because there are lots of other important tasks given before the government authority. The VAT tax system on E-Commerce in effect in the neighboring Indo-china countries such as Cambodia and Laos has not been yet intorduced. Most importantly the check and control system among the legislature, the government and the judiciary does not take roots in the country.

In an effort to increase international cooperation, the Tax Programme of the OECD Korea Policy Centre may share Korea's policy experience of reforms, which may take not a little efforts with step-by-step approach to attain long-term policy goals.

8 Mongolia

Under the revised Personal Income Tax Law, an individual is a resident taxpayer of Mongolia if one of the following two criteria is met: the individual resides in Mongolia for 183 or more days in a given consecutive 12-month period; or income earned in Mongolia and/or Mongolian-sourced income is more than 50% of an individual's worldwide income. Resident individuals are subject to tax on their worldwide income. Resident taxpayer entities are subject to income tax on corporate profits and other forms of income as well as on chargeable gains on a worldwide basis. A company is a resident taxpayer in Mongolia if it is formed under the laws of Mongolia or has its effective place of management in Mongolia. Non-resident individual(company) are individual(company) who are not resident in Mongolia for tax purposes. A non-resident individual(company) are subject to a final withholding tax of 20% on the gross amount for income derived from sources within Mongolia. There is a definition for permanent establishment and taxable income of permanent establishments is generally subject to tax under the normal income taxation rules for residents.

From 1 January 2020, a general anti-avoidance rule (GAAR) is in effect. Under the GAAR, the MTA has the authority to deny the tax benefits of transactions or arrangements believed not to have any commercial substance or purpose other than to generate the tax benefit(s) obtained. Once the GAAR is exercised, the tax authorities will reassess and adjust the taxpayer's tax payable for the 4 previous years as if the tax scheme has not been entered into or the tax benefits have not been obtained.

The new transfer pricing rules applicable from 2020 generally follow the OECD Transfer Pricing Guidelines and arm's length principles. The transfer pricing rules apply to all types of transactions conducted between related parties. The transfer pricing rules apply to both cross-border and domestic related party transactions. A controlled foreign company rule is introduced from 1 January

2020. Under this new rule, a foreign entity with more than 50% of its shares owned directly or indirectly by a resident taxpayer will be considered a controlled foreign company. A controlled foreign company would be subject to tax as a resident taxpayer in Mongolia. The list of countries or territories designated as offshore zones is approved by the government and currently includes 49 countries. From 1 January 2020, the following rules are adopted: deductible interest expenses incurred from the loans received from related parties will be limited to 30% of the EBIDTA. Interest paid in excess of this ratio is not deductible and is treated as a dividend.

The Mongolian government has signed bilateral tax treaties (DTA) with 25 countries, including Korea, a major trading partner. Mongolia is a member of OECD's inclusive framework for the global implementation of the BEPS Project. On 1 June 2020, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, entered into force in respect of Mongolia. The Convention and the amending Protocol generally apply from 1 January 2021.

Mongolia has well-defined a GAAR, such as Transfer Pricing and Controlled Foreign Corporation tax system, and is implementing the BEPS project through domestic law. However, there is a lack of response to Pillar 1 of the taxation of the digitalized economy, so cooperation with the Korea OECD Policy Center appears to be necessary.

9 Nepal

Income is taxed in accordance with the provisions of the Income Tax Act 2002(ITA). Resident individuals are subject to tax on their worldwide income derived from employment, business or investment. Non-residents are subject to tax on their net income earned having a source in Nepal. A person who has resided in Nepal for a period of 183 days or more in a duration of consecutive 365 days or whose normal place of abode is Nepal is considered resident of Nepal. Resident companies are subject to tax on their worldwide income. A resident company is a company formed or established in Nepal or is effectively managed in Nepal during the income year. A foreign permanent establishment of a non-resident person situated in Nepal is treated as a resident in Nepal. Non-resident companies are taxed only on income arising from a source in Nepal in the income year. Tax is imposed at the rate of 5% on the after-tax profits repatriated by a permanent establishment in Nepal.

Section 35 of the ITA is the general anti-avoidance rule. For the purposes of determining income tax liability, the IRD may: recharacterize an arrangement or part of an arrangement that is entered into or carried out as part of a tax avoidance scheme; disregard an arrangement or part of an arrangement that does not have substantial economic effect. There are no specific rules regarding transfer pricing and thin capitalization rules. Pursuant to section 69 of the ITA, where at the end of an income year, a controlled foreign entity distributes dividends out of attributable income (i.e. taxable income of the controlled foreign entity computed as if the entity was a resident entity) derived during the year.

Nepal has entered into double taxation avoidance agreements with 11 countries including India in order to provide relief from the double taxation of income of foreign investors.

There are no specific rules regarding BEPS. However, digital service tax of 2% on transaction value shall be collected on digital services provided by non-residents

to Nepalese individual customers.

Nepal has a general anti-avoidance rule, but the transfer pricing and thin capital tax system are not regulated. Tax treaties have been signed with only 11 countries, so there is a high level of dependence on India. It is not responding to the BEPS project, and only digital service tax is being implemented, so the taxation of the digitalized economy response is also insufficient. Therefore, Nepal will need cooperation and assistance from the Korea OECD Policy Center in many aspects of supplementing a specific anti-tax avoidance rule (SAAR), revitalizing a tax treaties, and responding to the BEPS and the taxation of the digitalized economy.

10 Pakistan

The tax system in Pakistan is overseen by the Federal Board of Revenue and includes income tax, sales tax, federal excise tax, and customs. Tax assessments can be appealed to various authorities, including the Commissioner Inland Revenue (Appeals), Appellate Tribunal, High Court, and Supreme Court.

Residents are taxed on their worldwide income, while non-residents are taxed on Pakistan-source income. There are five categories of income: salary, income from property, income from business, capital gains, and income from other sources. The tax year in Pakistan spans a 12-month period ending on June 30th. Various exemptions are available under the Second Schedule of the Income Tax Ordinance.

Individual tax rates in Pakistan vary based on income levels, with different rates for individuals whose salary income exceeds 75% of their taxable income. Corporate tax rates also vary based on the type of entity, ranging from 20% to 39%. Small companies enjoy a lower tax rate of 20%, while small and medium manufacturing enterprises can opt for a tax rate of 7.5% or 15% based on annual turnover, or they can choose a final tax regime with lower rates based on their gross turnover.

Capital gains on movable assets, excluding securities traded at a stock exchange, are subject to normal income tax rates. However, specific rates based on the holding period apply to specified securities purchased after July 1, 2022. Capital gains from the sale of immovable property in Pakistan are taxed at concessional rates based on the holding period.

Tax residency in Pakistan is determined by criteria such as the number of days spent in the country during the tax year, employment abroad as a government official, or being a Pakistani citizen who hasn't spent more than 182 days in any other country during the tax year. Resident business entities are those incorporated under Pakistani law or with complete control and management in

Pakistan. Nonresident individuals include short-term visitors and dependents of foreign nationals not earning income in Pakistan, while nonresident business entities are those incorporated under foreign law or with management and control outside Pakistan.

Double tax relief allows for a foreign tax credit against foreign-source income, subject to certain conditions. Permanent establishment in Pakistan is determined by the definition provided in the relevant tax treaty with the foreign country.

Pakistan offers tax incentives for domestic and foreign investors, including ten-year tax holidays in special economic zones and sector-specific incentives. Withholding tax rates vary depending on the type of payment and the residency status. Anti-avoidance rules include a general anti-avoidance rule, provisions against concealment of income and offshore assets, penalties for false or misleading statements, and penalties for offshore tax evasion.

Transfer pricing rules are outlined in the Income Tax Ordinance and require maintaining prescribed files and documents for transactions with associates. As part of its implementation of the Base Erosion and Profit Shifting (BEPS) Project, Pakistan has introduced requirements for Master Files, Local Files, and country-by-country reports, along with cooperation with the Commissioner. Controlled Foreign Company taxation and thin capitalization rules are also addressed, ensuring taxation of certain nonresident companies.

Pakistan has signed bilateral agreements with 66 countries to prevent double taxation and limited purpose agreements with India, Jordan, Kenya, and Saudi Arabia. The country is part of the Inclusive Framework on BEPS and has implemented the BEPS Project through domestic laws, including the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. Pakistan has also signed the Multilateral Instrument to eliminate double taxation without facilitating tax evasion or avoidance, although it has not yet committed to implementing Pillar 1 and Pillar 2 of the BEPS Project domestically.

11 Phipippines

Philippine law is a complex system in that it is a mixture of civil law, common law, and the Muslim legal system. In particular, both of written law and unwritten law are applied in each field of law. Based on the National Internal Revenue Code (NIRC), the Bureau of Internal Revenue (BIR) has the authority to interpret tax laws by disclosing regulations for tax law enforcement. Additionally, the rulings of the Supreme Court or the Court of Tax Appeals are interpreted as having judicial nature.

Taxable persons are Filipino citizens, alien individuals (both resident and non-resident), estates and certain types of trusts. Philippine citizenship is determined according to Article 4, Paragraph 1 of the Philippine Constitution, which mentions the four matters. A resident citizen is subject to income tax on worldwide income, while a resident alien is taxed only on income from Philippine sources. Non-resident citizens (including overseas contract workers) and non-resident aliens are also taxed only on income from Philippine sources. Corporate income tax is levied on domestic and foreign corporations. The residence of a company is determined by the place of its registration. Companies created or organized in the Philippines or under its laws are domestic companies. Other companies that are not organized in the Philippines are regarded as foreign companies. Domestic companies are subject to corporate income tax on their worldwide income, while resident and non-resident foreign companies are taxed only on income from Philippine sources.

A non-resident alien engaged in trade or business is one whose aggregate stay in the Philippines during the year exceeds 180 days. The BIR has ruled that an alien who has stayed in the Philippines for almost 2.5 years is still a non-resident for income tax purposes, albeit engaged in trade or business. In general, non-resident aliens are subject to a final tax of 25% of gross income. Non-resident foreign companies are taxed only on income from Philippine

sources. The standard corporate tax rate for resident foreign corporations is 25%, the same as for domestic corporations, and the minimum tax is 2% of total income. Branch profits (gross profits before tax deduction) remitted from the branch to the head office are taxed at 15%. However, transactions occurring at branches registered in the Philippine Economic Zone (PEZA) are excluded.

There are no established anti-avoidance rules, although courts have adopted certain tests to deal with tax evasion, such as the principle of “substance over form”, the “step-transaction doctrine”, and piercing the corporate veil. The NIRC authorizes transfer pricing adjustments to be made among organizations, trades or businesses which are owned or controlled directly or indirectly by the same interests. Transfer pricing guidelines issued by the BIR, by way of RR 2-2013 on 23 January 2013, took effect on 9 February 2013. The guidelines are largely based on the OECD arm’s length pricing methodologies as set out in the OECD Guidelines, and provide guidance in applying the arm’s length principle to cross-border transactions and domestic transactions between associated enterprises. There are no controlled foreign company and thin capitalization rules.

In the case of resident and non-resident foreign corporations, notwithstanding the withholding tax rate mentioned above, if there is a tax rate applied in a country that has concluded a tax treaty with the Philippines, that tax rate will be applied with priority. There are 43 countries that have concluded tax treaties with the Philippines as of the report date, and the tax treaty with the Republic of Korea was concluded in 1987.

Philippine does not have the general anti-avoidance rule, but only regulates the transfer pricing tax system. Although it is responding to the BEPS project, its response to the taxation of the digitalized economy is insufficient. Therefore, the Philippines may need to cooperate with the Korea OECD Policy Center to supplement an anti-tax avoidance rules and respond to the taxation of the digitalized economy.

12 Sri Lanka

Tax administration in Sri Lanka is managed by the Inland Revenue Department (IRD), which oversees direct taxes and value-added taxes. Import taxes are handled by the Customs and Department of Excise, while stamp duty is administered by provincial courts. The IRD is headed by the Commissioner General of Inland Revenue (CGIR) and appeals against tax assessments or decisions can be made to the CGIR, the Tax Appeals Commission, and higher courts if necessary.

The income tax system in Sri Lanka has undergone various reforms, with the introduction of the Inland Revenue Act (IRA) in 2017 and subsequent amendments until 2023. The IRA aims to address tax avoidance, broaden the tax base, introduce a three-tier corporate tax structure, and impose capital gains tax. It also includes provisions for penalties, imprisonment for tax evasion, and personal liability for company directors.

Residents in Sri Lanka are taxed on their worldwide taxable income, while nonresidents are taxed on income derived from sources within the country. Different categories of income, including employment, business, investment, and other income, are subject to taxation. Certain exemptions exist for specific types of income, such as employment income, rental income from investment assets, and income earned in foreign currency for use outside Sri Lanka.

Tax rates vary based on the type of taxpayer and the level of income. For individuals, tax rates range from 6% to 36% for different income brackets. Corporate tax rates vary depending on the entity type and can range from 30% to 40%. Capital gains tax rates for corporations and individuals are 30% and 10% respectively.

International tax issues in Sri Lanka include determining tax residency, double tax relief, and the concept of a permanent establishment. Tax residency is determined based on specific criteria for individuals and companies. Foreign tax credits are available for foreign income taxes paid, and the concept of

permanent establishment is defined in double taxation agreements or under Sri Lankan tax law.

Tax incentives for foreign direct investment in Sri Lanka are provided under the Board of Investment (BOI) Law, the Strategic Development Projects Act (SDP), and the Inland Revenue Act (IRA). The BOI Law allows companies to operate under normal Sri Lankan laws or provides special incentives for qualifying projects. These incentives include enhanced capital allowances, preferential tax rates, constitutional guarantees, exemptions from exchange control, and repatriation of profits and capital.

The SDP Act offers tax incentives and exemptions from certain regulations for larger development projects. It defines SDP as projects that are of national interest, bring economic and social benefits to the country, and have the potential to transform the country's landscape. These projects are eligible for exemptions from legislation on a case-by-case basis.

Withholding tax rates in Sri Lanka vary depending on the type of payment and are the same for residents and non-residents. Sri Lanka has anti-avoidance rules to combat tax planning schemes, and transfer pricing regulations exist to regulate cross-border transactions between associated enterprises.

The country has entered into bilateral agreements with 46 countries to avoid double taxation and protect the income of foreign investors. Sri Lanka is a participant in the Inclusive Framework on Base Erosion and Profit Shifting (BEPS) and has implemented transfer pricing laws based on OECD standards, although certain aspects have not been fully implemented. However, Sri Lanka is not a signatory to the Multilateral Instrument and has not committed to the two-pillar solution under BEPS.

13 Vietnam

In order to liberalize the economy and introduce a market economy, Vietnam has enacted tax laws since 1990 and is continuously revising them. Types of taxes include collection items such as agricultural land tax, income tax, special consumption tax, land use fee, and notary fee. On January 1, 1999, Vietnam opened a new chapter in tax reform by introducing value-added tax and corporate income tax (corporate income tax) for the first time.

Resident individuals are subject to tax on their worldwide income while non-residents are subject to tax only on their Vietnam-sourced income. A resident is a person who either: is present in Vietnam for 183 days or more in a calendar year or during 12 consecutive months counting from the first date of their presence in Vietnam. The Enterprise Income Tax Law(EITL) does not clearly define the term residence. Both Vietnamese and foreign invested companies are subject to EIT on a worldwide basis, except foreign companies without a permanent establishment in Vietnam, which are taxed only on their Vietnam-sourced income. Foreign enterprises (regardless of whether or not a permanent establishment is constituted) are subject to the so-called foreign contractor tax (FCT).

Individuals who do not qualify as residents under the residency test are treated as non-residents. Non-residents are subject to tax only on their Vietnam-source income. Income being salaries and wages is taxed at a flat rate of 20%. Foreign companies earning income in Vietnam were generally subject to EIT at the standard rate of 20%. A permanent establishment refers to a place where some or all of the business activities of a corporation are carried out at a fixed location. A Korean corporation is deemed to carry out business activities through a permanent establishment in Vietnam.

There are no special provisions for anti-avoidance rules. The new Law on Tax Administration 2019, having effect on 1 July 2020, sets out the legal framework for transfer pricing transactions. The prescribed transfer pricing methodology

generally follows the OECD Transfer Pricing Guidelines although some modifications and additional requirements exist. The control threshold is lower than in most other countries, and a 25% control is sufficient for enterprises to be deemed as related parties. There are no controlled foreign company rules and thin capitalization rules.

Tax treaties negotiated by Vietnam generally follow the provisions of the OECD Model. A double taxation prevention agreement has been concluded between Vietnam and Korea, and it applies to residents of Vietnam or Korea, or residents of both Vietnam and Korea. A resident of a country is determined by the local laws of that country and is usually determined based on the period of residence, housing, and whether or not a person has an operating office.

Vietnam has joined the Inclusive Framework on BEPS. Also, on 21 August 2023, the Ministry of Finance submitted the National Assembly's resolution on the application of top-up corporate income tax according to regulations to prevent global tax base erosion, dated 21 August 2023.

Vietnam only regulates the transfer pricing tax system without a general anti-avoidance rule. Response to the BEPS project and the taxation of the digitalized economy is relatively satisfactory. Among countries in the Asia-Pacific region, Vietnam, which is expected to experience high economic growth, seems to have relatively modern regulations and systems. Vietnamese tax administrations may be in need of working together with the Korea OECD Policy Center in terms of supplementing anti-tax avoidance rule.

14 Summary and Conclusion

This report is the product of an in-depth research over the international tax systems and administrations of the Asia-Pacific countries conducted by the team of 3 researchers of the International Fiscal Association Korea.

The 12 countries reviewed in this report are Bangladesh, Cambodia, India, Indonesia, Laos(Lao PDR), Myanmar, Mongolia, Nepal, Pakistan, Phillippine, Sri Lanka and Vietnam(in an alphabetical order). These countries have a few characteristics in common. First of all, they are Asian countries. And they are not OECD member countries, which naturally means that the level of economic development of these countries still remains in the developing stage in terms of numerical indicators such as GDP per capita. However, each of these countries has its own precious tradition and national identity which must be respected and has existential power in the real world.

This report does not assume these countries are sharing any important common traits to be utilized as a barometer to assemble them in a single conceptual framework. This research has been conducted purely for the betterment of policy development work from the perspective of the Tax Programme of the OECD Korea Policy Centre, which has a scope of business covering these 12 countries.

The traits in the tax system of each country are summarized in the 〈Summary〉 of the front page of each chapter (country-by-country chapter). As mentioned in the above, each country in this report has its own specialties in the history, culture, economy and politics, etc. And therefore it may have little meaning for the researchers to try to find some implications through gathering common characteristics shared among these 12 countries.

Notwithstanding such limitations against pulling out any comparison or common traits, the researchers of this report cautiously say that the following phenomena in these countries, some of which seem to be shared among only a

few countries in the above, may be found. Below are the phenomena shared by more than one country when roughly reviewed.

In terms of building the taxable object such as income, transaction, property and etc., the taxable objects under taxation in the current tax laws of not a few countries are relatively limited. In most countries reviewed in this report the comprehensive concept for the taxable object has not been introduced for almost every item of taxes introduced. One exception is the VAT in a few countries. This is probably due to the influence of the EC Value Added Tax Directive. Furthermore, in terms of the computation of taxable amount, which is the numerical size of a specific taxable object, the comprehensiveness is not attained, either. In short, the virtue of "broadening tax base" does not seemt to be effectively achieved. This phenomenon is known to make the tax system stay behind in terms of the equality in taxation. One of the major reason of this phenomenon found in the countries of this report seems to be the underdevelopment of tax administration in each country. The electronic and on-line tax administration of Korea may serve as some good examples for the modernization of their tax administrations.

The tax law and administration does not seem to be built on the firm legal foundation in most of the countries. In some countries the developed legal system based on the check and control by the separation of powers among the legislature, the administration and the judiciary may not be found(Laos). This seems to result in the possibility of the deficiency in the justice and legal certainty. On the other hand, in some countries such as India, Pakistan and Bangladesh, which have common law traditions, the provisions of tax laws are so complicated and multi-leveled to decrease the legal certainty consequently.

Many of these countries have adopted the market-oriented economic system very recently. Both substantive and procedural provisions for taxation, which are understood as the foundation for the legal and proper taxation supporting a market economic system, may not be found in many key topical areas and

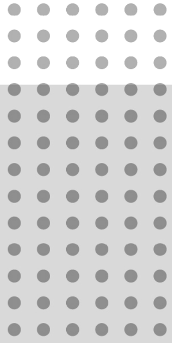
cases. Some countries do not have general personal income tax system but levy income tax only on limited types of income(Cambodia, Laos). In some countries, the concept of tax neutrality in terms of taxation on foreign source income has not yet institutionalized(Laos, Myanmar).

In terms of the tax administration, the systems of a few countries tend to allow huge discretion to the officials with only little meaningful oversight on hand. This may have been caused by, in partly, the administrative inefficiency. And the incompleteness of the laws and the ineffectiveness of judiciary system also seem to aggravate this structural problem. For example, in some countries anti-tax avoidance rules do not have statutory legal basis enacted by the legislature(Indonesia, Myanmar). The tax authority sometimes has the authority to assess and redetermine the substance of a transaction if they determine it is not made at the market price or is not reasonable even though there are no specific transfer pricing rules in the statutory law(Laos, Myanmar). In this respect, Korea's experience could be of great help if countries with such structural problems are active in sharing Korea's experience.

In the international tax issues, most countries have made lots of efforts for the introduction of E-Commerce VAT system. In India, Nepal and Bangladesh even the digital service tax has been in effect. But some countries such as Myanmar has not introduced an E-Commerce indirect tax system. Korea may also share its experiences in this area.

Some countries – especially Indo-china region countries – seem to need to expand tax treaty network to increase and deepen their international economic cooperation. The OECD model along with the UN model may serve as a good guideline if these countries intend to conclude tax treaties with trade and investment partner countries. From the perspective of promoting cooperation with countries in the region, Korea needs to make efforts to actively participate in the formation of international tax norm or guideline in the arena of the OECD as well as the UN.

As for the BEPS project, only a few countries among the 12 countries are participating in the Inclusive Framework, which Korea also participates in. Because it is a brand-new approach to any country on the globe and it has not a few uncertainties up to now, the wait-and-see approach may have its virtue. Since one of the key components of the BEPS project is the prevention of tax avoidance through international cooperation, Korea needs to keep its openness as well as activeness to any countries, not to mention the 12 countries in this report, which intend to go with the project.



01 .

Introduction

Background and Purpose of the Research

In 2008, the OECD signed a memorandum of understanding with Korea on the establishment of the OECD Korea Policy Centre. Accordingly, the OECD Korea Policy Centre was established in Korea and it is promoting the exchange of policy experiences in the Asia-Pacific region and providing support for non-OECD member countries. It serves as a resource center for supporting OECD projects and promotes projects to enhance the Asia-Pacific community's understanding of OECD's research, analysis, and standard-setting work. The OECD Korea Policy Centre's Tax Programme Division performs the function of disseminating domestic and international tax systems and current issues in the Asia-Pacific region by sharing OECD's systems and experiences with countries in the region.

In the area of international taxation, in order to expand the number of participating countries in the process of promoting the BEPS 1.0 project and BEPS 2.0 project since 2012, the OECD has promoted the former project together with the G20, which includes India and Indonesia in the Asia-Pacific region. For the latter project, the OECD is currently pursuing an inclusive framework in which 138 countries, including many in the Asia-Pacific region, participate.

In order for the Tax Programme Division of the OECD Korea Policy Centre to attain the fundamental purpose of its establishment, it is necessary to actively initiate international tax projects for countries in the Asia-Pacific region. Countries in the Asia-Pacific region are mainly countries that gained independence after the world war, so their tax laws and administration vary in form and content depending on the historical circumstances of each country, and in some cases, they form a unique system that is very different from that of Korea, which joined the OECD in the '90's. In order to effectively pursue cooperative projects with countries in the Asia-Pacific region, it is necessary for the OECD Korea Policy Centre to get a sufficient understanding of the systems and administration of countries in the region.

From this perspective, this report intends to investigate the international tax legal system and administration of countries in the Asia-Pacific region. In particular, it focuses on matters related to the system to prevent international tax avoidance such as transfer pricing taxation, tax treaty, and the BEPS project, for which the OECD sets international standards. To this end, the researchers of this Report conduct research also on income tax laws among the domestic tax laws of each country and the administrative system for enforcing them.

Scope and Methods of the Research

The countries subject to research in this Report are the 12 countries below that seem to have relatively low awareness of the international tax system and administration among non-OECD countries in the Asia-Pacific region.

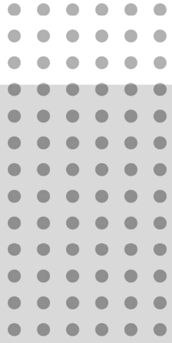
- Southeast Asia region (6 countries)
  - Philippines, Indonesia
  - Indochina Peninsula countries (Vietnam, Cambodia, Laos, Myanmar)

- South Asia region (5 countries)
  - India, Pakistan, Bangladesh, Sri Lanka, Nepal

- East Asia region (1 country)
  - Mongolia

Topics subject to research by country include tax-related government agencies, basic structure of the income tax system, international tax avoidance prevention, tax treaties, and BEPS implementation status. Research methods include literature review, collection of data from foreign organizations, and use of data from major DB suppliers.

Below, in this report, the survey results for 12 countries are described in an alphabetical order by country name.



02.

Bangladesh

The tax system in Bangladesh is influenced by its British and Pakistani roots. It includes direct and indirect taxes such as VAT, customs duty, excise duty, and income tax. The National Board of Revenue is responsible for tax collection and enforcement. They work with the Customs Wing, VAT Wing, and Income Tax Wing. The income tax system is governed by various laws and regulations, with residents being taxed on worldwide income and non-residents on income earned in Bangladesh. Tax rates vary for individuals and corporations, with specific rates for capital gains. Tax incentives are available for foreign direct investment. Withholding tax and anti-avoidance rules are also implemented. Tax treaties and VAT requirements are in place. Bangladesh is not involved in BEPS or the Multilateral Instrument.

Bangladesh's tax system is very complex with multiple tax exemptions, as well as non-transparent and discretion-based. Bangladesh has a very narrow tax base, and the revenue collection is dominated by indirect taxes, and the tax revenue remains low, indicating a serious concern regarding the structure of its tax revenue. A manually run and weak tax administration and low compliance foster issues like tax evasion and avoidance.

In an effort to increase compliance and boost tax revenues, one of the prime minister's policies is to rapidly adopt online technology as the primary mode of transactions with the government. There may be opportunities for the Tax Programme of the OECD Korea Policy Centre to share Korea's policy experience of reforms, especially with respect to the digital transformation of tax administration which can strengthen tax administration and promote revenue collection, as well as the implementation of high marginal tax rates which can promote revenue collection and combat economic inequality.

A. Tax System

Bangladesh, with its eighth largest population (170 million), is the world's most densely inhabited non-city-state country. Between 2010-2020, its annual GDP growth was over six percent. Over the past decade, Bangladesh has made some headway in easing investment restrictions, but inadequate infrastructure, limited financing instruments, bureaucratic delays, lax enforcement of labor laws, and corruption still pose significant obstacles to foreign investment.[1]

Bangladesh's tax system is inherited from its British and Pakistani regimes. As the system was developed based on generally accepted principles, efforts were made to rationalize the tax administration to optimize revenue collection and prevent revenue losses due to tax evasion and system inefficiency.[2]

The tax system consists of both direct taxes (income tax, gift tax, land development tax, non-judicial stamp, registration, and immovable property tax) and indirect taxes (customs duty, excise duty, motor vehicle tax, narcotics and liquor duty, value added tax ("VAT"), supplementary duty, foreign travel tax, turnover tax, electricity duty, and advertisement tax).[3] The principal taxes are VAT, customs duty, excise duty, and income tax.

The Sales Tax Act 1951 became effective on July 1, 1951 when it repealed the Pakistan General Sales Tax Act of 1948. Sales tax was collected under the 1951 Act until 1982, when it was replaced by the Sales Tax Ordinance 1982. The VAT law was promulgated by repealing the Business Turnover Tax Ordinance 1982 and the Sales Tax Ordinance 1982 on July 1, 1991. VAT, supplementary duty, and turnover tax were established as the three types of taxes.[4]

After gaining independence from Pakistan, income tax became effective through the Income Tax Act of 1922. Before June 22, 2023, income tax had been imposed under the Income Tax Ordinance ("ITO") 1984, promulgated on the basis of

1) https://www.state.gov/reports/2023-investment-climate-statements/bangladesh/
2) https://en.banglapedia.org/index.php/Taxation
3) *Id.*
4) *Id.*

recommendations of the Final Report of the Taxation Enquiry Commission submitted in April 1979.[5] On June 22, 2023, the Income Tax Act ("ITA") 2023 came into force, replacing the previous ITO.[6]

The ITA seeks to promote equitable distribution of the tax burden, economic growth, and efficient revenue collection through progressive tax rates, investment incentives, and tax compliance regulations. Bangladesh may keep reviewing and revising the ITA to address emerging issues.

B. Tax Administration Agency

The tax administration agency is the National Board of Revenue ("NBR"). NBR is under the Internal Resources Division of the Ministry of Finance.

NBR website : https://nbr.gov.bd/

NBR works with three tax-type wings, which are Customs Wing, VAT Wing, and Income Tax Wing.[7]

Appeals against the order of the Deputy Commissioner of Taxes ("DCT") may be filed to the Commissioner of Taxes (Appeal). Appeals against the order of the Commissioner of Taxes (Appeal) may be filed to the Taxes Appellate Tribunal. An appeal may be filed against the order of the Taxes Appellate Tribunal only on the point of law to the Supreme Court – High Court Division. Finally, a further appeal may be filed to the Appellate Division if the High Court Division allows for such appeal.[8]

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5) *Id.*
6) https://www.legal500.com/guides/chapter/bangladesh-tax/
7) https://nbr.gov.bd/about-us/about-us/eng
8) https://assets.kpmg.com/content/dam/kpmg/bd/pdf/Taxation_Handbook_(Updated_to_Income_Tax_Act_2023_adn_Finance_Act_2023).pdf

C. Income Tax System

1) Underlying law

The following laws and regulations govern income tax:

- Article 83 of the Constitution of Bangladesh;
- ITA;
- Income Tax Rules 2023;
- Statutory Rules and Orders ("SROs");
- Finance Act passed by the Parliament annually;
- Rules and explanations made by the NBR ; and
- Income tax case law.[9]

Article 83 of the Constitution requires an enabling Act of the Parliament known as the "Finance Act" to impose taxes on taxpayers. The ITA will undergo annual amendment or addition to the law through the Finance Act promulgated every year.

In accordance with the ITA, the income tax officer imposes tax on the assessee, but the DCT and any higher tax officer may grant tax exemptions.[10] The NBR issues SROs to address specific matters related to taxation from time to time.[11]

2) Income tax structure

a) Taxpayer

Bangladeshi residents are taxed on their worldwide income while non-residents are taxed on income earned in Bangladesh regardless of where the payment is made.[12]

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9) Muhammod Shaheen Chowdhury, Implementation of Income Tax Regulations in Bangladesh: Contemporary Trends and Issues (https://www.researchgate.net/publication/258029365_Implementation_of_Taxation_Laws_in_Bangladesh_In_Search_of_an_Innovative_and_Effective_Mechanism_for_Increasing_the_Number_of_Tax_Payers)
10) *Id.*
11) DFDL Tax Guide 2023-2024 Bangladesh 2nd Edition, p.1

b) Taxable income

Sources of income can be classified into the following seven categories: employment, rent, agriculture, business, capital gains, financial assets, and other sources (section 30 of the ITA).[13]

Income below Taka 350,000 is not taxable for resident individuals.[14]

c) Tax year : July 1st to June 30th of the following year (section 26 of the ITA)

d) Tax base (individual income)

Exemption on salary income : Lower of: (ⅰ) 1/3 of salary income; or (ⅱ) Taka 450,000 (6th Schedule, Part 1, Para 27 of the ITA)

e) Tax rate (individual)

Total income (Taka)	Rate
First 350,000[15]	0%
Next 100,000	5%
Next 300,000	10%
Next 400,000	15%
Next 500,000	20%
Residual income	25%

12) https://aceadvisory.biz/wp-content/uploads/2023/09/ACE-Advisory-Tax-Insights-2023-2024.pdf
13) https://icmab.gov.bd/wp-content/uploads/2023/09/Combined-CPD-Book_Income-Tax-Act-2023_22-Sep-2023.pdf
14) The initial exemption limit is: (ⅰ) Taka 350,000 for men; (ⅱ) Taka 400,000 for women and senior citizens above the age of 65; (ⅲ) Taka 475,000 for physically challenged persons and third gender; and (ⅳ) Taka 500,000 for gazetted war-wounded freedom fighters. 2nd Schedule, Part 1 of the Finance Act 2023.
15) *See* footnote 14).

f) Tax rate (corporate)

Entity type	Rate
Publicly traded company if more than 10% of paid up capital is issued through IPO	20%*
Publicly traded company if less than 10% of paid up capital is issued through IPO	22.5%*
One-person company	22.5%*
Non-listed company	27.5%*
Trust, fund, association of persons, and other taxable entity	27.5%*
Bank, insurance and financial institution (except merchant bank) if publicly traded	37.5%
Merchant bank	37.5%
Bank, insurance and financial institution (except merchant bank) if not publicly traded	40%
Publicly traded mobile phone operating company	40%
Private mobile phone operating company	45%
Tobacco company	45%

* All income and receipts, and all expenses and investments over Taka 0.5 million for a single transaction and total Taka 3.6 million in a year has to be made through banking channels. Otherwise, tax rate will be increased by 2.5%.

g) Tax rate (capital gains)

- Capital gains tax on the transfer of shares of listed companies:

Particulars	Rate
Resident companies and firms	10%
Nonresident individuals	15%
Sponsor shareholders and shareholder directors	5%
Resident individuals holding at least 10% of the total share capital of the company	5%

- Capital gains tax in all other cases:

For corporations, 15% on income from such capital gains.

For individuals, (i) if the asset is transferred before five years from acquisition, capital gains tax will be imposed at the applicable income tax rate for the individual's total income including capital gains; (ii) if the asset is transferred after five years from acquisition, the lower of the applicable individual tax rate or 15%.

3) Key issues in international tax

a) Tax residency

Criteria	Definition	Taxable income
Resident individual	Individual who stays in Bangladesh for: (i) 183 days or more in any income year; or (ii) 90 days or more in an income year and that person has also previously resided in Bangladesh for a period of 365 or more days during the four preceding years	Worldwide income
Resident business entity	A company: (i) that is a Bangladeshi company (as defined in section 2(61) of the ITA) or any other company (as defined in section 2(31) of the ITA); or (ii) whose affairs are controlled and managed wholly in Bangladesh in a year[16)] Other transparent entities (e.g., partnerships, firms or other association of persons) if the control and management of their affairs is situated wholly in Bangladesh in that year[17)]	Worldwide income
Nonresident individual	Short-term visitors and dependents of foreign nationals not earning any income in Bangladesh	Income that: (i) is received or deemed to be received in Bangladesh by or on behalf of such person; or (ii) accrues or arises, or is deemed to accrue or arise to such person in Bangladesh[18)]

Criteria	Definition	Taxable income
Nonresident business entity	A company: (i) that is not a Bangladeshi company (as defined in section 2(61) of the ITA) or any other company (as defined in section 2(31) of the ITA); or (ii) whose affairs are not controlled and managed wholly in Bangladesh in a year[19)] Other transparent entities (e.g., partnerships, firms or other association of persons) if the control and management of their affairs is not situated wholly in Bangladesh in that year	Income that: (i) is received or deemed to be received in Bangladesh by or on behalf of such entity; or (ii) accrues or arises, or is deemed to accrue or arise to such entity in Bangladesh[20)]

b) Double tax relief

A foreign tax credit is available to a Bangladeshi resident for any tax paid in a foreign jurisdiction on the same income taxed in Bangladesh. The allowable credit is the lower of the foreign tax paid or the Bangladeshi tax otherwise payable. There is no provision for carry forward or carry back of excess tax credits.

c) Permanent establishment

With respect to a business, the following income is deemed to accrue or arise in Bangladesh:

Any income accruing or arising, directly or indirectly, through or from

(i) any permanent establishment in Bangladesh;

(ii) any intangible property, right or other source of income existing in Bangladesh;

16) Section 2(45)(c) of the ITA.
17) Section 2(45)(d) of the ITA.
18) Section 26 of the ITA.
19) Section 2(45)(c) of the ITA.
20) Section 26 of the ITA.

(iii) the transfer of any assets situated in Bangladesh;
(iv) the sale of any goods or services by any electronic means to purchasers in Bangladesh; or
(v) any intangible property used in Bangladesh (section 27(b) of the ITA).

To determine if a "permanent establishment" exists in Bangladesh, any double taxation avoidance agreement between Bangladesh and the relevant foreign country must be considered (section 244 of the ITA). If there is no such agreement, the definition of "permanent establishment" provided in the ITA will apply.

The ITA defines "permanent establishment" as follows:
Permanent establishment in relation to income from business or profession includes the following:

a place of management; a branch; an agency; an office; a warehouse; a factory; a workshop; a mine, oil or gas well, quarry or any other place of exploration, exploitation or extraction of natural resources; a farm or plantation; a building site, a construction, assembly or installation project or supervisory activities in connection therewith; the furnishing of services, including consultancy services, by a person through employees or other personnel in Bangladesh; and any associated entity or person which is commercially dependent on a non-resident person where the person carries out any activity in Bangladesh in connection with a sale made in Bangladesh by the non-resident person (section 2(92) of the ITA).

d) Tax incentives on FDI

Bangladesh provides tax incentives to facilitate and encourage investment. These include start-up sandbox and Special Economic Zone.

(1) Start-up sandbox[21]

To qualify as a start-up company, the following conditions must be met:

- Annual turnover does not exceed Taka 1 billion;
- Incorporated in Bangladesh under the Companies Act 1994;
- Works towards deployment or commercialization of new products, processes or services driven by innovation, development and technology or intellectual property;
- Not a resulting company of a scheme of amalgamation or demerger; and
- Registered with the NBR by June 30th of the following year of incorporation.

The list of tax benefits for such start-up company for five years (starting from July 1 of the following year of incorporation) are as follows:

- Other than filing an income tax return, there are no reporting requirements if the company provides permanent access to its system or book of accounts.
- Disallowance of deductions/expenses under sections 55 and 56 of the ITA is not applicable.
- The rate of minimum tax under section 163(5) of the ITA is 0.1%.
- Losses which cannot be set off can be carried forward over nine successive years.

(2) Special Economic Zone ("SEZ")[22]

In 2015, Bangladesh introduced tax exemption for investment in setting up industries in SEZs.

For investors:

- Except for income from edible oil, sugar, flour, cement, iron and iron made

21) 8th Schedule, Part 2 of the ITA
22) https://assets.kpmg.com/content/dam/kpmg/bd/pdf/Taxation_Handbook_(Updated_to_Income_Tax_Act_2023_adn_Finance_Act_2023).pdf

product, all other business income is exempt from income tax for the next 10 years from the date of commercial operation as follows:

Year	Exemption (% of income)
1st, 2nd, and 3rd	100%
4th	80%
5th	70%
6th	60%
7th	50%
8th	40%
9th	30%
10th	20%

- Capital gains derived from transfer of share and dividend declared by a company operating in SEZ are exempt from tax for 10 years.

For developers:

- Business income is exempt from income tax for the next 12 years from the date of commercial operation as follows:

Year	Exemption (% of income)
1st to 10th	100%
11th	70%
12th	30%

To qualify for the exemptions discussed above, Taxpayer's Identification Number ("TIN") must be obtained and an income tax return must be filed per section 166 of the ITA.

e) Withholding tax

Type of Payment	Withholding tax	
	Resident	Nonresident
Dividends[23]	- Individual: 10% (if TIN is furnished) or 15% - Company: 20%	- Company/fund/trust: 20% - Individual: 30%
Interest on securities[24]	5%	20%
Royalties[25]	- Base amount does not exceed Taka 2.5 million: 10% - Base amount exceeds Taka 2.5 million: 12%	20%

Any person who is required to deduct or collect tax is required to obtain Withholding Identification Number.

D. Anti-Avoidance Rules Against International Tax Planning

1) Principles of anti-avoidance rules

a) General Anti-Avoidance Rule

A new provision regarding avoidance of income tax and tax liability has been introduced in the ITA (section 231 of the ITA).

If it appears to the DCT during the course of any proceedings that an assessee has taken tax benefits through abuse of tax arrangement in any income year, then the DCT shall take action and make necessary adjustments against the tax benefits received through such abuse through, among others, the following methods:

a) enhancement of income,

23) Section 117 of the ITA
24) Section 106 of the ITA
25) Section 91 of the ITA

b) amendment of tax liability,
c) adjustment of tax returns,
d) revision of allowances, concessions etc.,
e) any other order withdrawing the tax benefits.

In this regard, the DCT will issue a notice to the assessee specifying the reasons to believe that the assessee has obtained tax benefits through abuse of tax arrangement and seeking submission of relevant statements, documents and information. The assessee shall also be given an opportunity to represent the assessee in a hearing before the DCT. Upon consideration of the information submitted by the assessee, the DCT shall issue an adjustment order with prior approval of the Commissioner of Taxes.

b) Concealment of income[26]

If an assessee conceals or understates any income, the assessee will be fined with 15% on the tax that would have been avoided. If the concealment is detected after more than one year, additional penalty of 10% will be charged for each of the following year. If the assessee deliberately conceals the information, the assessee will be punishable with an imprisonment of 6 months to 5 years, or fine, or both.

2) Transfer pricing

Cross-border transactions are regulated as "international transactions" under Chapter II, Part 15 of the ITA titled "Transfer Pricing." International transactions include a transaction between associated enterprises, either or both of whom are non-residents.[27] If the prices charged between related parties in different tax jurisdictions are set in a manner that is inconsistent with the arm's length price, concerns of profit shifting may arise.

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26) https://assets.kpmg.com/content/dam/kpmg/bd/pdf/Taxation_Handbook_(Updated_to_Income_Tax_Act_2023_adn_Finance_Act_2023).pdf
27) Section 233 of the ITA

The arm's length price means a price in a transaction, the conditions of which do not differ from the conditions that would have prevailed in a comparable uncontrolled transaction between independent entities carried out under comparable circumstances.[28]

Arm's length price is determined by applying any of the following methods:

- Comparable uncontrolled price method;
- Resale price method;
- Cost plus method;
- Profit split method;
- Transactional net margin method;
- Other appropriate method that yields a result consistent with the arm's length price.[29]

Every entity who has entered into an international transaction has to furnish, along with the return of income, a statement of international transactions and a report from a chartered accountant or a cost & management accountant.[30] Such entity must also keep and maintain information, documents and records if the aggregate value of international transactions exceeds Taka 30 million in the particular income year.[31]

3) Controlled Foreign Corporation ("CFC")

There is currently no CFC regime in Bangladesh.

4) Thin capitalization

There is currently no specific safe harbor with respect to a debt-to-equity ratio for Bangladesh tax purposes. However, the ITA introduced a new rule that

28) Section 233(1) of the ITA
29) Section 235 of the ITA
30) Sections 238 and 239 of the ITA
31) Section 237 of the ITA

limits the interest payment on a loan from a related party up to Taka 15 million.[32)]

E. Tax Treaties

1) Tax treaty status[33)]

Bangladesh has entered into bilateral agreements that protect the income of foreign investors from being taxed in two different countries with the following 42 countries:

> Bahrain, Belarus, Belgium, Bhutan, Canada, China, Czech Republic, Denmark, France, Germany, Hong Kong, India, Indonesia, Iran, Italy, Japan, Korea, Kuwait, Malaysia, Maldives, Mauritius, Morocco, Myanmar, Nepal, Netherlands, Norway, Oman, Pakistan, Philippines, Poland, Romania, Saudi Arabia, Singapore, Sri Lanka, Sweden, Switzerland, Thailand, Turkey, United Arab Emirates, United Kingdom, United States of America, and Vietnam, .

2) Non-OECD economies' positions on the OECD Model Tax Convention

Bangladesh has not provided a comment.

3) Major disputes over the application of tax treaties

It is difficult to find publicly available material on this topic.

F. BEPS Implementation

Bangladesh is not a participant in the Inclusive Framework on BEPS.

1) Implementation of the BEPS Project through domestic laws

Other than VAT with respect to digital services providers discussed below,

32) http://smac-bd.com/wp-content/uploads/2023/06/SMAC_Salient-Features-of-the-New-Income-Tax-Act-2023.pdf
33) https://assets.kpmg.com/content/dam/kpmg/bd/pdf/Taxation_Handbook_(Updated_to_Income_Tax_Act_2023_adn_Finance_Act_2023).pdf

not applicable.

2) Implementation of BEPS Action 15 Multilateral Instrument ("MLI") through domestic laws

Bangladesh is not a signatory nor a party to the MLI.

3) Taxation of the digitalized economy[34)]

Effective July 1, 2019, Bangladesh requires nonresident vendors of digital services to consumers in Bangladesh to register for and collect VAT, regardless of the sales amount.

On June 11, 2020, the NBR issued instructions to local banks to withhold VAT when remitting money to nonresident service providers.

Effective June 1, 2023, Bangladesh expanded the scope of its nonresident digital services rules to include intermediation services provided by nonresident marketplaces facilitating the sale of goods or services.

Effective July 1, 2021, Bangladesh eliminated the obligation for nonresident digital services providers to appoint a local VAT agent. Nonresidents must directly register for VAT if they sell digital services to consumers in Bangladesh.

34) https://kpmg.com/kpmg-us/content/dam/kpmg/pdf/2023/digitalized-economy-taxation-developments-summary.pdf

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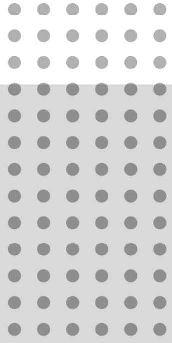

03 .

Cambodia

Summary

The Kingdom of Cambodia is a constitutional monarchy. The taxation system in Cambodia is relatively new and is still subject to evolving legislation.

Generally, Cambodia does not have a personal income tax, therefore any income that is not subject to the category of “tax on salary(ToS)” or “tax on income(ToI)” will not be taxed. Value added tax (VAT) is imposed on taxable supplies of goods and services other than land and money, and on imports.

The responsibility for administering taxation in Cambodia is the General Department of Taxation (GDT) of the Ministry of Economy and Finance (MEF).

There is no explicit anti-avoidance provision in Cambodian law. However, several penalties in case of violations of tax provisions, including tax avoidance, are expected to be introduced in the near future.

Article 18 of the Law on Taxation sets out the basic tenets of Cambodia’s transfer pricing regime, which allows the General Department of Taxation to reallocate income, deductions, or other benefits among related parties where it is deemed that an arrangement has been established to avoid the application of taxes.

There is neither provision for Controlled Foreign Corporation Rule nor provision for thin capitalisation in Cambodia.

Cambodia is not a participant in the Inclusive Framework on BEPS. From 8 September 2021 non-resident entities who provide digital goods/services or E-commerce activities to Cambodian consumers and who expect to have sales of USD 15k or more before the end of the year, over three consecutive months, have 30 days to register for VAT with the GDT in Cambodia.

Cambodia is a country with relatively little experience of democracy and market

economy. There are only a few tax laws and the tax administrations do not give certainty to the taxpayers and businesses. Its current network of tax treaties are so narrow. And it does not participte in the Inclusive Framework of BEPS. The weak legal basis for TP taxation seems to show conversely that the government does not need any significant tax law development in international tax areas until recently. The newly introduced E-commerce VAT system seems to testify the saying that the necessity is the mother of development may apply to the tax legal situation of Cambodia.

The Tax Programme of the OECD Korea Policy Centre may contribute for the development of tax system of Cambodia by sharing Korea's policy experience of reforms in the area of the build-up of tax law system and digital transformation of tax administration.

The Kingdom of Cambodia is a constitutional monarchy. It had been a French protectorate since 1853 and became independent in 1949. It remained the Kingdom of Cambodia until 1970, then converted to a republic system, and became today's constitutional monarchy in 1993 following a referendum. Since 1985, Hun Sen has served as prime minister for 38 years before passing the position to his son.

A. Tax System and Administration

The taxation system in Cambodia is relatively new and is still subject to evolving legislation. Individuals with employment income are subject to tax on salary. Business income or income of sole proprietorship of individuals (including capital gains) is not subject to tax on salary(ToS), but is subject to tax on income(ToI). Generally, Cambodia does not have a personal income tax, therefore any income that is not subject to the category of "tax on salary(ToS)" or "tax on income(ToI)" will not be taxed. Value added tax (VAT) is imposed on taxable supplies of goods and services other than land and money, and on imports.

The responsibility for administering taxation in Cambodia is the General Department of Taxation (GDT) of the Ministry of Economy and Finance (MEF). The main law regarding tax in the Kingdom of Cambodia is the Law on Taxation (LOT), adopted in 1997 and revised in 2003.The Law on Taxation (LOT) promulgated on 16 May 2023. The 2023 LOT repeals the 1997 LOT, the amended 2003 LOT and various supporting regulations (Sub-Decree and *Prakas*) that are contrary to the new LOT. The implementation of the tax on salary is governed by the *Prakas* on Tax on Salary effective 1 January 2004, as amended by Prakas 543 on Tax on Salary of 8 September 2021. The General Department of Taxation (GDT) under the Ministry of Economy and Finance is the primary authority in the administration of taxes in Cambodia. From 1 January 2016, the presumptive tax regime was replaced by a modified real regime of taxation, comprising of small, medium and large taxpayers. Most individuals would fall under the small taxpayer bracket.

General Department of Taxation (GDT) : https://www.tax.gov.kh/en/

B. Income Tax System

1) Underlying Law

The single tax law in Cambodia is the Law on Taxation 2023.

2) Basic Structure

Taxable income is the net income that results from all types of business operations, including capital gains achieved during business or business termination, as well as income from financial or investment assets, wages and royalties.

Taxable income also includes all capital gains from real estate, financial assets, or investment property achieved from operations other than business operations.

There is no withholding tax for dividend distributions to resident individuals. The LOT does not have any specific provisions on the taxation of interest, royalty and rental income. Generally, the income is not subject to tax on salary, but may be subject to tax on income or withholding tax which is withheld by the payer. The LOT was amended in 2017 and capital gains realized by physical persons are included in taxable profits. The GDT introduced *Prakas* 346 related to capital gains tax (CGT) on 1 April 2020 and it was intended to apply to all capital gains from 1 July 2020; however, the implementation was postponed to 1 January 2022. The Ministry of Economy and Finance further postponed the implementation of the CGT regime to 1 January 2024. This deferral does not apply to resident taxpayers under the self-declaration regime. Under *Prakas* 346, CGT applies to taxpayers who make capital gains. A taxpayer is defined as a resident or non-resident taxpayer who has sold or transferred capital to any other person. A resident taxpayer refers to a physical person whereas a non-resident taxpayer can be either a physical person or a legal entity who is not considered to be a resident person.

3) Tax on Salary(ToS)

a) Taxpayer

Cambodian resident and nonresident individuals are subject to Tax on Salary (ToS) on income from their employment activities and withholding tax on certain types of income.

Resident individuals are subject to ToS on their worldwide employment income, while nonresident individuals are subject to tax on their Cambodian-source employment income only.

b) Taxble Object

There is no personal income tax, per se, in Cambodia. Instead, a monthly salary tax is imposed on individuals who derive income from employment. General consulting income is excluded from salary tax but is subject to tax on income, although rules exist that may deem certain consultants as employees.

Sole proprietorship or partnership is a small taxpayer among the three types of taxpayers under the self-declaration regime and pays corporate income tax.

A Cambodian resident's worldwide salary is subject to Cambodia salary tax, while non-residents are taxed on Cambodian-sourced salary.

c) Tax rate

The salary tax rates are 0,5,10,15,20%.

d) Tax collection and withholding

Employees and other individuals are not required to file ToS and withholding tax returns with the tax authority. Employers and withholding agents must withhold ToS and other income taxes from employees and other individuals before making payments.

They must file monthly ToS and withholding tax returns and remit the taxes

to the tax authority on behalf of employees and other individuals.

Effective from January 2021, the ToS and withholding tax return must be filed and the amount of tax must be paid to the tax authority through the tax authority's e-filing system by the 25th of the following month and by the 20th day of the following month for manual filing.

Cambodia does not require the filing of an annual ToS or personal income tax return.

4) Tax on Income(ToI)

a) Taxpayer

Business and professional income of individuals is subject to tax on income based on the self-declaration regime.

Tax on income is imposed on legal persons. The term "legal person" is defined under the new LOT as any enterprise or organization carrying on a business whether or not officially recognized by the competent authorities and includes any capital companies, government institutions, religious, charitable or non-profit organizations, associations, political parties or a permanent establishment of a non-resident person located in Cambodia. For a non-resident person, the term "legal person" means any permanent establishment in the Kingdom of Cambodia. The term "legal person" does not include a pass-through or a sole proprietorship. The term "legal person" does not include a partnership or a sole proprietorship.

There are no specific provisions on the taxation of partnerships and trusts. A pass-through is defined as a general partnership with up to ten resident individual partners. A pass-through is not regarded as a separate taxable person and each partner will be liable to tax on income on his share of income. The income of a pass-through in Cambodia is determined as follows:

(ⅰ) Each member takes into account separately the distributive share of the items of income, gain, loss, deduction, credit, and charitable contributions for the year. For this purpose each item retains its character and is

treated as distributed during the taxable year whether or not actually distributed. The loss to be carried forward will be determined after the items have been distributed;

(ii) The rules for determining the amount distributed, the treatment of contributions, and the adjustment to each member's base distributive share in the pass-through in any taxable year is determined by sub-decree.

b) Taxable Object

Resident companies are taxed on income from Cambodian and foreign sources. Permanent establishments and non-residents are taxed on Cambodian-sourced income only.

Tax on income is determined by subtracting allowable deductions from assessable income. Assessable income includes profit obtained by the operations of a company, gains of the sale of assets in the course of the operations of the business or at the cessation of business, interest, rental, royalty income and income from financial or investment assets (including immovable assets). Taxable income also includes the capital gains from immovable properties, financial or investment assets realized by a physical person or legal person from other operations apart from the business operations. Income is taxed according to the standard tax year which is the calendar year.

Inter-company dividends between residents are exempt from CIT.

Gross dividend income received by a resident company from a non-resident enterprise is subject to CIT. A foreign tax credit for taxes paid on these dividends is allowed for deduction from the CIT. The maximum amount of the foreign tax credit is the CIT liability with respect to that dividend income.

c) Taxable Period

The tax year is the calendar year.

d) Tax Rates

The annual income tax rates are as follows:

1. 20% for the income by a legal entity: The standard rate of corporate income tax (CIT), previously known as tax on profit, for companies who are classified as medium and large taxpayers and PEs is 20%.
2. 30% on the revenue from oil and natural gas distribution, the exploitation of natural resources, including forests, gold, or precious stones: Oil and gas and certain mineral exploitation activities are subject to CIT at the rate of 30%.
3. 0% of eligible income from project investment within the tax exemption period set by the Council for the Development of Cambodia (CDC)
4. In accordance with the table of tax rates, the following shall be achieved for the income by the physical person, the enterprise and the shares allocated to each member of the joint-venture that is not considered a legal entity: For companies who are classified as small taxpayers, the CIT rates are progressive rates from 0% to 20%.

The minimum tax is imposed on taxpayers who maintain improper accounting records. The minimum tax due is equal to one percent of total turnover, except value-added tax (VAT), irrespective of whether the taxpayer is in a profit or loss situation.

e) Tax Collection

Advance Income Tax on Dividend Distribution. The Advance Income Tax on Dividend Distribution (AITDD) is imposed on the distribution of retained earnings to local and overseas share\-holders before ToI is declared to the tax department. The AITDD is payable by the distributing company.

5) Withholding Tax

Withholding tax is imposed on resident individuals at the following rates:

- Services (except payments to a real regime taxpayer with a valid value-added tax [VAT] invoice or payments less than KHR50,000): 15%
- Royalties (except payments to a real regime taxpayer with a VAT invoice for shrink-wrap software, site license, downloadable software and software bundled with computer hardware): 15%
- Interest income: 4% (non-fixed term deposits at domestic banks), 6% (fixed term deposits at domestic banks) and 15% (paid by resident taxpayers except domestic banks)
- Rental income: 10% (except payments to real regime taxpayer with a valid VAT invoice)

Under the Law on Financial Management 2017, which is effective from 1 January 2017 onwards, any resident taxpayer carrying on a business, including a PE of a non-resident person, who pays any Cambodian-source income as defined under Article 33 of the Law on Taxation to a non-resident taxpayer must withhold tax at 14% of the amount paid.

6) Capital Gains

Capital gains from immovable properties, financial or investment assets realized by a company are included as taxable income, following the amendment of the LOT in 2017. On 1 April 2020, the GDT introduced *Prakas* 346, which was intended to impose a capital gains tax (CGT) on all capital gains from 1 July 2020. However, the implementation was postponed several times. According to a recent government press release, the CGT will be implemented from 1 January 2025. This deferral does not apply to resident taxpayers under the self-declaration regime.

Capital gains tax is applicable to resident physical persons and nonresident taxpayers, which can be a physical person or a legal entity.

- Capital assets includes: real estate, leases, investment assets, business reputation, intellectual property, foreign currency.

- Obligations and procedures for tax declaration

The taxpayer must submit the declaration and pay the tax on the capital gain for each transaction to the tax administration within no more than 3 months after achieving the capital gain.

For assets located in Phnom Penh, the declaration must be submitted to the General Department of Taxation and tax payment at the bank in partnership with the Ministry of Economy and Finance.

For assets located in the provinces, the declaration must be submitted to the provincial tax branch where the property is located or at the General Department of Taxation at the request of the taxpayer, and the tax must be paid at the provincial tax branch or at the bank in partnership with the Ministry of Economy and Finance.

- Taxable Base, tax rate and tax calculation

Capital gains tax is levied at a fixed rate of 20% of capital gains. The tax base is capital gains, which refer to taxable income derived from the proceeds from the sale or transfer of capital minus deductible expenses. Taxpayers can choose the following allowable deduction method to calculate capital gain.

- Capital Gain Calculation:
  1) According to the actual cost of all capital

     Capital gain = cost of sale or transfer of assets - cost of assets

     Price of sale or transfer of property: the price set in the contract and related documents

     Cost of property: Cost of purchase of property, including any related expenses that may be deducted

2) As determined by the capital in real estate, the taxpayer is allowed to choose the deductible method (80% of the proceeds from the sale or transfer) or the deductible method based on actual expenses.
   Capital gain = selling or transfer value of assets - (80% x selling or transfer value of assets)

- Calculation of capital gains tax

Capital gains tax payable = capital gains x 20%

- Tax exemptions and tax incentives

Capital gains tax is exempt from sale or transfer:

Agricultural land is owned or occupied by the people who are farmers who are actually cultivating crops and have a residence address in the commune / sangkat where the agricultural land is located.

- Property owned by state institutions

Property owned by foreign embassies or consulates, international organizations or technical cooperation agencies of other governments

The original residence of the taxpayer who held it for at least five years before the sale or transfer. In case the taxpayer has more than one residence or the taxpayer and his spouse have different residence, only one residence is allowed as the original residence.

Immovable property as stated in the stamp duty provisions, except for the transfer of ownership or possession of immovable property between siblings, between parents-in-law and children-in-law, and between grandparents, in-laws and grandchildren

Property sold or transferred to serve the public interest in accordance with the law on expropriation.

7) Patent Tax

Patent tax is an annual business registration tax which all enterprises carrying on business activities in Cambodia are required to pay by 31 March each year. A "patent tax certificate" will be issued by the Tax Office upon registration.

If an enterprise carries out different types of businesses, a separate patent tax certificate is required for each distinct business activity. Likewise, if a taxpayer carries out business in different cities or provinces, a separate patent tax certificate is required for each location.

In accordance with the Law on Financial Management for year 2016 and subsequent Prakas issued by the MoEF in relation to the change of classification of Taxpayers in the Self-Assessment Regime as well as for the management of Patent Tax collection, Patent tax payable has been revised and will now be payable depending on form of the business as well as type of business activity and the level of turnover of taxpayer:

- Small Taxpayers: KHR 400,000 (~USD 100).
- Medium Taxpayers: KHR 1,200,000 (~USD 300).
- Large Taxpayers: either KHR 3,000,000 (~USD 750), if annual turnover is between KHR 2,000 million and KHR 10,000 million; or KHR 5,000,000 (~USD 1,250) if annual turnover is over KHR 10,000 million.

8) Key Issues in International Tax

a) Residency

The term "resident taxpayer" means any legal person or pass-through organised or managed in Cambodia, or having its principal place of business in Cambodia.

Residents are persons domiciled in or having a principal place of abode in Cambodia or present in Cambodia for more than 182 days in a 12-month period.

Resident taxpayers include companies organised, managed, or having their principal place of business in Cambodia.

b) Double Tax Relief

The LOT provides that a resident who has received income from foreign sources and who has paid taxes in accordance with foreign tax law is entitled to a foreign tax credit as a deduction from the tax on income. The credit allowed is the lesser of the actual foreign tax paid or the proportion of total tax on income obtained.

Taxes paid by resident taxpayers on foreign-source salary will be allowed as a credit against Cambodian salary tax on presentation of documentation confirming payment. The credit allowed is the amount of foreign tax paid or the proportion of salary tax on salary from all sources attributable to the foreign-source income, whichever is lower.

Cambodia allows a credit against the ToI for foreign taxes paid on foreign-source income if supporting documentation exists.

c) Permanent Establishment

Non-resident firms must register with the GDT if they are deemed to have a permanent establishment in Cambodia. When they have a permanent establishment, nonresidents are considered as taxpayers on income from Cambodian source.

Branches of foreign corporations are subject to CIT on Cambodian-source income only.

A permanent establishment is considered a resident legal person with respect to its Cambodian source income only.

If any branch of a foreign company transfers its Cambodian-sourced income to foreign countries, the income shall be subject to the withholding tax (WHT) as stated in paragraph 10 of Article 33 of the Law on Taxation.

Permanent establishment is defined in Cambodia as “a fixed place of business in Cambodia, the branch of a foreign company or an agent resident in Cambodia, through which the non-resident person carries on their business. The term PE also includes any other association or connection through which a non-resident

person engages in economic activity in Cambodia”.

A non-resident company may be deemed to have a PE in Cambodia if (i) there is a permanent place or entity through which the non-resident persons carry on their business, (ii) there is an exercise of the authority to conclude a contract on behalf of a foreign entity, or (iii) business activities exceed certain time periods in Cambodia.

A person may be considered as a PE of a foreign entity if the person has and regularly exercises the authority to conclude contracts in Cambodia on behalf of a foreign enterprise or facilitate to have a contract signed.

Factors to be considered in determining a PE include a place of management, an agent or office, a warehouse or factory, a workshop, any place of extraction of natural resources, a plantation, etc. Carrying out projects (e.g. supervisory activities of a construction project, provision of services) exceeding a time period of six months in any 12-month period may also be considered as having a PE.

d) Incentives on FDI

The Council for the Development of Cambodia (CDC) can be approached for a one-stop service to register a project and obtain approval for a Qualified Investment Project(QIP)s status. CDC licensing is, however, not mandatory (except for certain large, politically sensitive projects) and is applicable to those projects that do not fall within the ‘negative list’. There are detailed criteria of “negative list” which are generally small-size investment in agriculture, service, industrial and infrastructure sectors.

The current investment incentives that are applicable to the QIP registered with the CDC include a CIT exemption period from three to nine years based on investment activity categories, or special depreciation and import duty exemptions. Not all QIPs will be entitled to all incentives.

In addition, after the expiry of the full income tax exemption, a QIP is still entitled to a partial Income Tax exemption for the next 6 years including:

Payment of only 25% of total income tax liabilities for the first 2 years after the expiry of a full income tax exemption period
Payment of only 50% of total income tax liabilities for the second 2 years
Payment of only 75% of total income tax liabilities for the third 2 years

Investment projects are required to submit half-year and annual report to the CDC/ the Provincial/Municipal Investment Sub-committee (PMIS) within 20 days after the closing date of tax return submission to guarantee its investment incentives. After receiving the half-year and annual report from the investors, the CDC/PMIS will issue a Certificate of Compliance (CoC) to the investors. The CoC is intended to provide confirmation that the QIP has acted in compliance with the relevant tax regulations.

e) Withholding on Non-residents' Income

Non-resident individuals are taxed only on Cambodian-sourced income. Non-resident employees are subject to tax on salary at a flat rate of 20% on employment income, whereas non-residents deriving the following types of income are subject to a final withholding tax at 14% on such income: interest, royalties, rental income and technical or management services (independent service providers). Non-resident individuals are subject to tax of 20% on capital gains. Business income of non-resident individuals derived through a permanent establishment in Cambodia is subject to tax, and the normal rules for residents apply.

Under the Law on Financial Management 2017, which is effective from 1 January 2017 onwards, any resident taxpayer carrying on a business, including a PE of a non-resident person, who pays any Cambodian-source income as defined under Article 33 of the Law on Taxation to a non-resident taxpayer must withhold tax at 14% of the amount paid.

Business income of non-residents derived through a permanent establishment in Cambodia is subject to tax, and the normal rules for residents apply. A

permanent establishment is subject to tax on Cambodian-sourced income at the prevailing rate of the tax on income for residents.

C. Anti-Avoidance Rules Against International Tax Planning

1) Basic Principles

There is no explicit anti-avoidance provision in Cambodian law. However, several penalties in case of violations of tax provisions, including tax avoidance, are expected to be introduced in the near future.

2) Transfer Pricing Taxation

Article 18 of the Law on Taxation sets out the basic tenets of Cambodia's transfer pricing regime, which allows the General Department of Taxation to reallocate income, deductions, or other benefits among related parties where it is deemed that an arrangement has been established to avoid the application of taxes. The Law on taxation ARTICLE 18(ALLOCATION OF INCOME AND DEDUCTIONS AMONG TAXPAYERS) reads as follows.

> In the case of two or more enterprises, whether incorporated or organized in or outside of the Kingdom of Cambodia, which are under common ownership, the tax administration may as may be necessary distribute, gross income, deductions, or other benefits among such enterprises and their owners in order to prevent the avoidance or evasion of taxes or to clearly reflect the income of such enterprises, or their owners. For purposes of this article, two or more enterprises are under common ownership if a person owns 20 percent or more in the value or the equity interests of each enterprise.

Cambodia's transfer pricing (TP) legislation is stated in the Prakas no. 986 MEF.Prk dated 10 October 2017 issued by the Ministry of Economy and Finance to provide the rules and procedures on income and expense allocation among

related parties. The Prakas represents one of the most important developments in Cambodian tax regulations in the last 20 years. In addition to being in line with Cambodia's tax reform plans, this regulation demonstrates Cambodia's commitment to aligning with global tax frameworks on transparency and combatting tax avoidance.

Prakas no. 986 defines the transfer price as the price of goods, services, or property charged between related parties. TP refers to setting the value of transactions (e.g. the sale or purchase of goods or services, royalties or interest, etc.) between related parties using the most appropriate transfer pricing methodology. If the transactions aren't at arm's length, the tax authority may adjust the value and impose taxes accordingly.

The purpose of transfer pricing rules is typically to make sure related entities compensate each other appropriately in an amount that is commensurate with the value of the property transferred or services provided and to prevent entities from manipulating profits between related parties to minimize tax exposure.

Based on instruction no. 10979 GDT dated 25 May 2022 on the confirmation documents on interest amongst related parties, the taxpayer can determine the rate as they agreed and shall be exempted from the implementation of arm's length principle by having supporting documents for the loan transactions from related parties such as agreement which clearly shows the duration of borrow and repayment, business plan or current and forecasted financial statements upon borrowing and purpose of the loan with explanation, and board resolution.

In case of borrowing from related parties, the rate shall not exceed the market rate at the time of borrowing. For the purpose of this Instruction, the market rate is the average of interest rates from at least 5 big local commercial banks issued every year by the General Department of Taxation ('GDT').[35)]

On 10 October 2017, the MEF issued Prakas No. 986 to provide 'rules and procedures on income and expense allocation among related parties' (known as

35) https://www.grantthornton.global/en/insights/articles/transfer-pricing-guide/transfer-pricing---Cambodia/

the 'Local Transfer Pricing Rules'), which is effective immediately.

While Cambodia is not a member of the OECD, Prakas 986 is generally consistent with OECD guidance.[36]

The Prakas defines the transfer price as 'the price of goods, services, or property charged between related parties'. Transfer pricing refers to setting the value of transactions (e.g. the sale or purchase of goods or services, royalties, or interest) between related parties using the most appropriate transfer pricing methodology. If the transactions aren't at arm's length, the tax authority may adjust the value and impose taxes accordingly.

The purpose of transfer pricing rules is typically to make sure related entities compensate each other appropriately in an amount that is commensurate with the value of property transferred or services provided and to prevent entities from manipulating profits between related parties to minimise tax exposure.

- Related party definition

The Prakas defines 'related party' as a relative of the taxpayer or an enterprise that controls, is controlled by, or is under common control with the taxpayer. The term 'control' means ownership of 20% or more of the equity interest in the enterprise or voting power of the board of directors.

- Transfer pricing methodologies

The acceptable methodologies for determining arm's-length pricing under the Prakas are those endorsed by the Organisation for Economic Co-operation and Development (OECD) in the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. The five methodologies are CUP, CP, RP, TNMM and PSM.

- Transfer pricing documentation

Entities that transact with related parties must prepare and maintain transfer

36) https://www.dfdl.com/insights/legal-and-tax-updates/cambodia-transfer-pricing-requirements/

pricing documentation setting out related-party transactions and the transfer pricing methodologies used to justify an arm's-length value. Documents related to the transactions, such as invoices, must also be kept for ten years from the tax year end.

Entities must also disclose related-party transactions when filing their annual CIT return and provide relevant transfer pricing documents if required by the tax authority.

- Country-by-Country Reporting

Not applicable

- Master and Local Files Reporting

Not applicable

Cambodia currently only requires Local File Transfer Pricing Documentation under its domestic regulations and transfer pricing guidelines. Prakas 986 is generally consistent with OECD BEPS Action 13, as it pertains to Local File Transfer Pricing Documentation.

- Common Reporting Standard

Not applicable

- safe harbor rule[37)]

Instruction 10979 was issued on 25 May 2022 becoming effective immediately. Instruction 10979 outlines criteria for a potential exemption to the "Arm's Length Principle" with respect to inbound and domestic Cambodian related party loans and short duration advances, including the supporting documentation required to potentially be entitled to the exemption.

37) https://www.dfdl.com/insights/legal-and-tax-updates/cambodia-transfer-pricing-requirements/

To ensure compliance with Prakas No. 986 MEF.P. dated 10 October 2017 on Transfer Pricing, and to provide a reasonable basis for determining the interest rate on related party loans, the General Department of Taxation provided the following guidance:

A : A Cambodian enterprise entering into a loan with a related party may determine the interest based on an interest rate that is mutually agreed upon. The enterprise does not need to comply with the Arm's Length Principle (contained in Prakas 986), provided that the enterprise has the following documents to support the loan:

A loan agreement that specifies the terms of loan and repayment obligations.
A business plan or current/forecasted financial statements at the time of borrowing that provides evidence of the purpose of the borrowing, as well as explanations.
Approval of the Board of Directors (for those enterprises that are not single-member private limited companies)

B : When borrowing money from related parties, the interest rate used by the enterprise shall not exceed the prevailing annual market interest rate at the time of borrowing. The prevailing market rate is the average of the lending interest rates of five large Cambodian banks. The market interest rate is issued on an annual basis by the GDT.

C : Those enterprises that have received a cash advance from a related party that is repaid within one year of receipt shall not be considered to be a related party loan for the purpose of Prakas 986 and the Arm's Length Principle contained within.

Instruction No. 4909 GDT, dated 18 March 2019, on the required documents to support the interest charge of the related party loan shall be abrogated.

At this point in time Cambodia's domestic transfer pricing regulations do not allow for APA's.

3) Controlled Foreign Corporation

There is no provision for Controlled Foreign Corporation Rule.

4) Thin Capitalization

There is no provision for thin capitalisation in Cambodia. However, there are various rules and restrictiosn for tax deductions of interest expenses.

Interest deductibility in any year is limited to the amount of interest income plus 50% of the net profits excluding interest income and interest expense. The excess non-deductible interest expense can be carried forward to the following tax years indefinitely.

Based on the GDT's instruction, the tax authorities set maximum interest rates for loans from third parties (i.e. 120% of the market interest rate at the time of obtaining the loan) and loans from related persons (i.e. the market interest rate at the time of obtaining the loan). If the interest rate is higher than the maximum interest rate, the surplus interest expense is not deductible.

D. Tax Treaties

1) Tax Treaty Status

To date as of the year 2023, Cambodia has entered into tax treaties with Brunei Darussalam, China Mainland, the Hong Kong Special Administrative Region (SAR), Indonesia, Korea (South), Malaysia, Singapore, Thailand and Vietnam.

2) Non-OECD economies' positions on the OECD Model Tax Convention

Cambodia has not provided a comment.

3) Major disputes over the application of tax treaties

It is difficult to find publicly available material on this topic.

E. BEPS Implementation

Cambodia is not a participant in the Inclusive Framework on BEPS.

1) Implementation of the BEPS Project through domestic laws

The government is self-evaluating that it has accepted the part regarding local file report in Action 13.

2) Implementation of BEPS Action 15 Multilateral Instrument ("MLI") through domestic laws

Cambodia is not a signatory nor a party to the MLI.

3) E-Commerce tax

From 8 September 2021 non-resident entities who provide digital goods/services or e commerce activities to Cambodian consumers and who expect to have sales of USD15k or more before the end of the year, over three consecutive months, have 30 days to register for VAT with the GDT in Cambodia.

From 2022 onward the same non-resident entities, as described above, that expect to have sales of USD62.5k or more in 2022 or future years, or expected sales in any calendar year of USD15k or more for three consecutive months, will need to register for VAT within 30 days.

Once registered for VAT non-resident entities will need to invoice customers in Cambodia with respect to business-to-business and business-to-consumer

transactions. The VAT registered non-resident will need to file monthly VAT declarations and pay the 10% VAT on business-to consumer sales to the GDT.

E commerce is defined as goods, property and intangible goods bought online, including online shopping, hosting, advertising, data retrieval, software supply, and digital content consumption.[38)]

38) https://www.grantthornton.global/en/insights/articles/transfer-pricing-guide/transfer-pricing---Cambodia/

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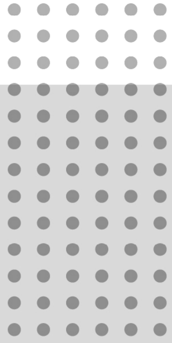

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India

India is actively reforming its laws and regulations to attract foreign investors. The country has a three-tiered federal tax structure and two types of taxes: direct and indirect. The Central Board of Direct Taxes oversees direct taxes, while the Central Board of Indirect Taxes & Customs manages indirect taxes. The Income Tax Act of 1961 governs the levying of taxes, and appeals can be filed with the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal. India offers tax incentives and has different tax rates for individuals and corporations. International tax issues are governed by specific sections of the Income Tax Act. The tax administration in India is complex, with various laws and administrative bodies involved. India has also implemented anti-avoidance rules, penalties for concealment of income, transfer pricing rules, thin capitalization provisions, and tax treaties with numerous countries. The country has also implemented changes in line with the BEPS action plans.

India has a very complex taxation structure featuring a large number of taxes, and complex tax rules and laws. Taxes are levied by the Central Government, the State Governments, and the Local Bodies. In recent years, the Central Government and many State Governments have implemented policy reforms and process simplification to increase predictability, fairness, and automation, as well as providing a range of tax incentives and rate reductions. As a result of various reforms, India's rankings in the World Bank's Ease of Doing Business and the World Competitiveness Index jumped. Introduction of the Goods & Services Tax is one example of such reform aimed to simplify the complex multiple indirect tax regime in India and help Indian businesses to be globally competitive.

Because India's tax authorities are in the process of modernizing their domestic and cross-border tax administration and have signed on for the Two-Pillar solution, there may be opportunities for the Tax Programme of the OECD Korea Policy Centre to share Korea's policy experience of reforms, especially with respect to Korea's recent enactment of the global minimum tax under Pillar Two into domestic law. By working together, the OECD Korea Policy Centre may also learn about the Significant Digital/Economic Presence and Equalization Levy introduced by India to respond to the Two-Pillar solutions.

A. Tax System

India is the world's fastest growing large economy, with a population of about 1.4 billion and GDP of $3.2 trillion, making it the world's fifth largest economy.[39] In recent years, India has eased administrative regulations for foreign investors in some industrial sectors, in addition to conducting a reform of its laws. Despite its reform effort, India still has some restrictive foreign investment laws, excessive bureaucracy, and high levels of corruption.[40]

India's legal system is based on English law, and the basic principles of common law as applied in the United Kingdom are largely prevalent in India. India has a three-tiered federal structure, with the Central Government, the State Government, and the Local Bodies being responsible for the various taxes and duties that apply in the country.

Direct taxes and indirect taxes are the two types of taxes in India. Income tax, gift tax, and wealth tax are examples of direct taxes. The Income Tax Department manages direct taxes, and is governed by the Central Board of Direct Taxes ("CBDT") and a part of the Department of Revenue under the Ministry of Finance. Value Added Tax is an example of indirect taxes, and the Central Board of Indirect Taxes & Customs of the Department of Revenue manages indirect taxes.[41]

In 1961, the Income Tax Act of 1961 ("ITA") was passed and brought into effect, which is still in effect with some minor changes. As per the Constitution, the Government of India has the power to levy taxes on individuals and organizations. All taxes levied within India must be accompanied by the Finance Bill, which is passed by the Parliament or the State Legislature every year. The Central Board of Revenue Act of 1924 established the Board as the governmental entity charged with the administration of income taxes.[42]

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39) https://www.state.gov/reports/2023-investment-climate-statements/india/
40) https://www.lloydsbanktrade.com/en/market-potential/india/investment
41) https://blog.ipleaders.in/law-taxation-constitution-india/
42) Anjali Tyagi, An Analysis of Indian Tax Structure (November 12, 2021), available at https://ssrn.com/abstract=3980513

B. Tax Administration Agency

The tax administration agency for income tax is the CBDT. CBDT is a part of the Department of Revenue, Ministry of Finance.

CBDT website : https://incometaxindia.gov.in/Pages/about-us/central-board-of-direct-taxation.aspx#cbdtl

The Central Board of Revenue was established under the Central Board of Revenue Act, 1924. Subsequently, the Central Board of Revenue was split up into two, the Central Board of Direct Taxes and the Central Board of Excise and Customs, under the Central Board of Revenue Act, 1963.[43]

Appeals against an assessment or other administrative decision of the tax authorities may be filed to the Commissioner of Income Tax (Appeals). Appeals against the decision of the Commissioner of Income Tax (Appeals) may be filed to the Income Tax Appellate Tribunal. A further appeal against the decision of the Income Tax Appellate Tribunal may be filed to the High Court only on a substantial question of law. Finally, an appeal may be filed to the Supreme Court.[44]

C. Income Tax System

1) Underlying law[45]

The following laws and regulations govern income tax:

- Articles 265 and 246 of the Constitution of India;
- Schedule VII of the Constitution of India;
- ITA;
- Income Tax Rules 1962;
- Annual Finance Acts;
- Circulars and notifications;
- Case laws.

43) https://incometaxindia.gov.in/Pages/about-us/central-board-of-direct-taxation.aspx#cbdtl
44) https://incometaxindia.gov.in/Pages/i-am/tax-collector.aspx?k=Appeals
45) https://www.icsi.edu/media/webmodules/Final_Tax_Law_Book.pdf

Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. Article 246 of the Constitution distributes legislative powers including taxation between the Parliament of India and State Legislature. Schedule VII of the Constitution enumerates the matters under which Central Government and State Government have the authority to make laws for the purpose of levying taxes.

CBDT has the power to make Income Tax Rules as may be necessary to implement the ITA and administer direct taxes. Circulars are issued by the CBDT to provide clarification regarding the scope and meaning of certain provisions and to provide guidance to the income tax officers. These circulars are binding on the income tax authorities, but not on the assessee. Notifications are issued either by Central Government or by the CBDT to regulate the procedural aspects of the ITA as may be necessary. These notifications are binding on both the income tax authorities and the assessees. Supreme Court decisions become judicial precedent and are binding on all the courts, Appellate Tribunal, income tax authorities, and assessees. High Court decisions are binding on the assessees and income tax authorities under its jurisdiction unless overruled by a higher authority.

2) Income tax structure

a) Taxpayer

An individual may have one of the following types of residential status:

- Resident and ordinarily resident ("ROR")
- Resident but not ordinarily resident ("RNOR")
- Nonresident ("NR").[46]

Individuals are taxed based on their residential status.

- RORs are taxed on their worldwide taxable income.

46) Please see Section 3(C)(1) below for a discussion of tax residency.

- RNORs are taxed on income that accrues/arises or is deemed to accrue/arise in India, or is received or deemed to be received in India, or is from a business controlled in or a profession set up in India.
- NRs are taxed on income that accrues/arises or is deemed to accrue/arise, or is received or deemed to be received in India.[47)]

A resident company is taxed on its worldwide income, while a nonresident company is taxed on income that is received in India, or that accrues/arises or is deemed to accrue/arise in India.[48)]

b) Taxable income

Income can be classified into the following five heads for individuals: salary, income from house property, income from a business or profession, capital gains, and income from other sources.[49)] For companies, income can be classified into the following three heads: income from a business or profession, capital gains, and income from other sources.[50)]

At present, individuals can choose between the old tax regime and a new tax regime introduced in the Finance Act 2020.[51)] Under the old tax regime, if an individual's taxable income does not exceed INR 250,000,[52)] the rate of income tax is 0%. Under the new tax regime, this amount is increased to INR 300,000.[53)]

c) Tax year : April 1st to March 31st of the following year

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47) https://taxsummaries.pwc.com/india/individual/taxes-on-personal-income
48) https://taxsummaries.pwc.com/india/corporate/taxes-on-corporate-income
49) Shreyas Shah, India - Individual Taxation, Country Tax Guides IBFD (2023)
50) Shreyas Shah, India - Corporate Taxation, Country Tax Guides IBFD (2023)
51) https://www.ndtvprofit.com/business/union-budget-2023-new-vs-old-tax-regime-see-what-has-changed-3742620
52) The basic exemption limit for resident individuals who are 60 years of age or more but less than 80 years of age is INR 300,000. For resident individuals who are 80 years of age or more, it is INR 500,00.
53) Shreyas Shah, India - Individual Taxation, Country Tax Guides IBFD (2023)

d) Tax base

Section 10 of the ITA includes a list of exemptions from income tax. These include the following exemptions:

- Agricultural income;
- Amount received out of family income;
- Interest paid to a non-resident;
- Leave travel concession;
- Amount received as leave encashment on retirement;
- Gratuity;
- House rent allowance;
- Scholarship income;
- Amount received under a life insurance policy.

The following deductions are available to individuals:[54)]

- Standard deduction of INR 50,000 for employees;
- Deduction from income up to INR 150,000 for investments made in the tax year in certain eligible schemes in India;
- Additional deduction of up to INR 50,000 for contribution to a notified pension scheme of the government;
- Additional deduction of up to 10% (14% for contribution made by Central Government) of salary for employer's contribution to the National Pension Scheme;
- Deduction of 50% to 100% of the amount of certain charitable contributions;
- Deduction for education expenses;
- Deduction up to INR 25,000 (INR 50,000 for senior citizen) for medical insurance premiums.

54) https://taxsummaries.pwc.com/india/individual/deductions

e) Tax rate (individual)[55]

The new tax regime first introduced in the Finance Act 2020 provides concessional tax rates without considering prescribed exemptions/deductions.[56] Finance Act 2023 introduced changes in the new tax regime, making the new tax regime the default tax regime for the 2023/24 tax year.

Under the new tax regime, the following tax rates apply for the 2024/25 tax year (April 1, 2023 to March 31, 2024):

Total income (INR)		Tax on column 1 (INR)	Tax on excess (%)
Over (column 1)	Not over		
0	300,000	0	0
300,000	600,000	0	5
600,000	900,000	15,000	10
900,000	1,200,000	45,000	15
1,200,000	1,500,000	90,000	20
1,500,000		150,000	30

Under the old tax regime, the following tax rates apply for the 2024/25 tax year (April 1, 2023 to March 31, 2024):

Total income (INR)		Tax on column 1 (INR)	Tax on excess (%)
Over (column 1)	Not over		
0	250,000	0	0
250,000	500,000	0	5
500,000	1,000,000	12,500	20
1,000,000		112,500	35

55) https://taxsummaries.pwc.com/india/individual/taxes-on-personal-income;
Shreyas Shah, India - Individual Taxation, Country Tax Guides IBFD (2023);
https://incometaxindia.gov.in/budgets%20and%20bills/2023/finance_bill.pdf
https://www.indiabudget.gov.in/doc/memo.pdf

56) Exemptions/deductions disallowed under this new tax regime include: leave travel allowance; house rent allowance; allowance under which incomes that do not form part of the total income; exemption of free food and beverages through vouchers provided by the employer; deduction for professional tax; deduction of interest payment on housing loans; deduction for employee's contribution to provident fund, children tuition fees, insurance premium, donations, medical premium, etc.

f) Tax rate (corporate)[57]

Entity type	Rate
Domestic company engaged in manufacturing or production[58]	15%
Domestic company that opts for this tax rate and disentitles itself from claiming special tax incentives[59]	22%
Domestic company with an annual turnover or gross receipts up to INR 4 billion for the 2020/21 tax year	25%
Other domestic company	30%

Domestic companies are taxed at 30%, unless the concessional tax rate or presumptive tax rate applies.

If the net income of resident companies exceeds INR 10 million but is less than INR 100 million, a 7% surcharge is applicable. If the net income exceeds INR 100 million, a surcharge of 12% is applicable.

In addition, for tax year 2019/20 onwards, a new health and education cess of 4% is applicable on the aggregate of income tax and surcharge.

Companies paying taxes under the existing tax regime are liable to pay MAT on their adjusted book profits if the tax liability (excluding surcharge and health and education cess) for the tax year is not more than 15% (excluding surcharge and health and education cess) of such book profits.

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57) https://taxsummaries.pwc.com/india/corporate/taxes-on-corporate-income;
Shreyas Shah, India - Individual Taxation, Country Tax Guides IBFD (2023);
https://incometaxindia.gov.in/budgets%20and%20bills/2023/finance_bill.pdf
https://www.indiabudget.gov.in/doc/memo.pdf

58) To apply this tax rate, the following conditions must be satisfied:
(i) The company is incorporated on or after October 1, 2019 and commences manufacture or production on or before March 31, 2024.
(ii) The company has not claimed special tax incentives.
(iii) The company has not claimed set-off of loss and unabsorbed depreciation carried forward from any earlier years.
(iv) The company is excluded from the applicability of provisions of Minimum Alternative Tax ("MAT") and MAT credit.

59) Such special tax incentives include the following: tax holiday for a Special Economic Zone; accelerated depreciation; additional depreciation; investment allowances; expenditure on scientific research; deduction for certain income of Offshore Banking Units and International Financial Service Centre. Companies exercising this option cannot claim set-off of loss and unabsorbed depreciation carried forward from any earlier years. Additionally, such companies are excluded from applicability of provisions of MAT and MAT credit.

MAT credit is the amount paid over and above the normal tax liability, and can be carried forward and utilized for 15 years. Excess foreign tax credits are ignored in computing MAT credits.

g) Tax rate (capital gains)[60]

There is no separate tax on capital gains, and gains from the disposal of capital assets are subject to income tax.

Short-term capital asset is capital asset held for not more than 36 months,[61] while long-term capital asset is capital asset held for more than 36 months (or 24 months or 12 months, as the case may be).

Short-term capital gains on the transfer of listed equity shares, units of equity-oriented mutual funds or units of a business trust, on which securities transaction tax has been paid, are taxed at 15%. Other short-term capital gains are taxed at normal income tax slab rates.

Long-term capital gains exceeding INR 100,000 on the transfer of listed equity shares and units of equity-oriented mutual funds are taxed at 10%. Other long-term capital gains are taxed at 20%. However, long-term capital gains on the transfer of listed securities, units, or zero-coupon bonds on which the securities transaction tax is not paid are taxed at 10% (without adjusting the cost for inflation) or at 20% (after adjusting the cost for inflation), whichever is more beneficial to the taxpayer. Also, long-term capital gains for a nonresident (not being a company) or a foreign company from transfer of unlisted securities, shares, debentures, etc. are taxable at 10% without any indexation benefit.

60) https://taxsummaries.pwc.com/india/corporate/income-determination;
Shreyas Shah, India - Corporate Taxation, Country Tax Guides IBFD (2023)

61) For listed shares, listed securities, or units of specified mutual funds or zero-coupon bonds, the short-term holding period is not more than 12 months. For unlisted shares, the short-term holding period is not more than 24 months.

3) Key issues in international tax

a) Tax residency[62]

Criteria	Definition	Taxable income
Resident individual (ROR)	Individual who: (i) is present in India for at least 182 days in the tax year; or (ii) is present in India for at least 60 days[63]	Worldwide income
Resident individual (RNOR)	Individual: (i) who has been a nonresident in nine out of ten tax years preceding the tax year for which residential status is being determined; or (ii) whose physical presence in India is less than or equal to 729 days during the seven tax years preceding the tax year for which residential status is being determined.	Income that accrues/arises or is deemed to accrue/arise in India, or is received or deemed to be received in India, or is from a business controlled in or a profession set up in India
Resident business entity	A company if: (i) It is an Indian company; or (ii) its place of effective management in that year is in India.[64]	Worldwide income
Nonresident individual (NR)	Individual who: (i) is not present in India for at least 182 days in the tax year; or (ii) is not present in India for at least 60 days[65] in the relevant tax year and at least 365 days in four preceding tax years.	Income that accrues/arises or is deemed to accrue/arise, or is received or deemed to be received in India
Nonresident business entity	A company if: (i) it is not an India company; or (ii) its place of effective management in that year is not in India.	Income that accrues/arises or is deemed to accrue/arise, or is received in India

62) https://taxsummaries.pwc.com/india/individual/residence;
Shreyas Shah, India - Individual Taxation, Country Tax Guides IBFD (2023);
https://taxsummaries.pwc.com/india/corporate/corporate-residence;
Shreyas Shah, India - Corporate Taxation, Country Tax Guides IBFD (2023)

63) For seafarers on foreign-bound Indian ships or Indian citizens working overseas who visit India, the 60-day threshold is increased to 182 days. If the total income of such visiting individuals during the tax year from sources in India, other than foreign sources, exceeds INR 1.5 million, the period is reduced to 120 days.

b) Double tax relief[66)]

Sections 90 and 91 of the ITA provide rules on the foreign tax credit. Section 90 provides rules on claiming the foreign tax credit where India has entered into a Double Taxation Avoidance Agreement ("DTAA") with another country and such DTAA provides for claiming of such foreign tax credit. Section 91 provides rules on claiming the foreign tax credit where India has not entered into a DTAA with the country where the income of a taxpayer arises. Under these sections, if the taxpayer is an Indian resident and has paid taxes outside India, the taxpayer can claim a credit of such foreign taxes paid against the tax payable in India. Rule 128 of the Income Tax Rules provides the procedure for claiming the foreign tax credit by Indian residents. Carry forward of excess foreign tax credits is not allowed.

c) Permanent establishment

To determine if a "permanent establishment" exists in India, any double taxation avoidance agreement between India and the relevant foreign country must be considered. The treaty definition of a permanent establishment applies if there is a tax treaty.

Section 92F(iiia) of the ITA defines "permanent establishment" as including a fixed place of business through which the business of the enterprise is wholly or partly carried on.

The concept of a "business connection" is broader than a permanent establishment, and is defined as the following:

Any business activity carried out through a person who, acting on behalf of the nonresident, -

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64) Place of effective management means the place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are in substance made.

65) *See* footnote 26.

66) https://cleartax.in/s/form-67-claim-foreign-tax-credit;
https://www.dsrvindia.com/foreign-tax-credit

- Has and habitually exercises in India, an authority to conclude contracts on behalf of the nonresident or habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by that nonresident and the contracts are—
  (i) in the name of the nonresident; or
  (ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by that nonresident or that nonresident has the right to use; or
  (iii) for the provision of services by the nonresident; or
- has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the nonresident; or
- habitually secures orders in India, mainly or wholly for the nonresident or for that nonresident and other nonresidents controlling, controlled by, or subject to the same common control, as that nonresident (section 9(1)(i), Explanation 2 of the ITA).

The concept of "significant economic presence" does not mandate a physical presence or place of business in India, and extends the scope of business connection. It is defined as the following:

- Transaction in respect of any goods, services or property carried out by a nonresident with any person in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; or
- systematic and continuous soliciting of business activities or engaging in interaction with such number of users in India, as may be prescribed (section 9(1)(i), Explanation 2A of the ITA).

d) Tax incentives for foreign direct investment

India provides tax incentives to developers and units in Special Economic Zones ("SEZs") and eligible startups.

(1) Special Economic Zones[67)]

SEZ is a designated area in India that offers a favorable business environment and various incentives to promote industrial development and foreign direct investment.

SEZ developers and units qualify for tax exemptions on their profits and investments for a specific period. 100% income tax exemption on export income for the first five years, followed by a 50% exemption for the subsequent five years are available to SEZ developers. For SEZ units, a 100% income tax exemption on their profits for the first five years, a 50% exemption for the following five years, and a 50% exemption on reinvested profits for the next five years are available. However, SEZ units are still subject to MAT and Dividend Distribution Tax provisions.

(2) Startups[68)]

To be eligible for this tax incentive, the startup's age must be less than ten years, its annual turnover for any year after incorporation should not exceed INR 1 billion, and it should be engaged in working toward the development and innovation of products and services.

Eligible startup companies incorporated between April 1, 2016 and March 31, 2024 and whose total turnover do not exceed INR 250 million qualify for 100% deduction of profits earned, for three consecutive years out of the first seven

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67) https://www.india-briefing.com/doing-business-guide/india/why-india/incentives-for-doing-business-in-india; https://ksandk.com/startups/investing-in-india-advantages-of-setting-up-in-sez/

68) https://tax2win.in/guide/startup-india-tax-exemptions-eligibility-and-incentives; https://taxsummaries.pwc.com/india/corporate/tax-credits-and-incentives; Shreyas Shah, India - Corporate Taxation, Country Tax Guides IBFD (2023)

years beginning with the year in which the eligible startup is incorporated. Startups are also allowed to carry forward losses if the shareholders who had voting power in the year when the loss was incurred are in possession of their shares on March 31st of the year in which it is to be carried forward, and the loss has been incurred across seven years of the company's incorporation.

e) Withholding tax[69]

Type of Payment	Withholding tax	
	Resident	Nonresident
Dividends[70]	0%/20%	0%/20%
Interest[71]	5%/20%	5%/20%
Royalties	10%	20%[72]
Fees for technical services	10%	20%[73]
Any other services by individuals	30% of income	30% of income
Any other services by companies	40% of net income	40% of net income

D. Anti-Avoidance Rules Against International Tax Planning

1) Principles of anti-avoidance rules

a) General Anti-Avoidance Rule ("GAAR")

Chapter X-A of the ITA contains the GAAR, and ranges from sections 95 to 102 of the ITA.

69) https://incometaxindia.gov.in/_layouts/15/dit/Pages/viewer.aspx?path=/Charts%20%20Tables/Withholding%20tax%20rates.htm&grp=&searchFilter=&k=&IsDlg=0;
https://www.india-briefing.com/doing-business-guide/india/taxation-and-accounting/country-wise-tax-structure/withholding-taxes-in-india;
https://www.indialawoffices.com/legal-articles/withholding-tax-in-india;
https://taxsummaries.pwc.com/india/corporate/withholding-taxes

70) 0% for dividends paid by domestic companies to nonresidents; 20% for dividends paid by foreign companies

71) 5% for interest paid on loans borrowed by an infrastructure debt fund and money borrowed in foreign currency under a loan agreement or by issuing long term bonds; 20% for interest on money borrowed in foreign currency (excluding the interest chargeable to withholding tax at 5%)

72) Finance Act, 2023 has increased the withholding tax rate on royalties and fees for technical services paid to nonresident from 10% to 20%.

73) *Id.*

Section 95 of the ITA provides that an arrangement entered into by an assessee may be declared to be an impermissible avoidance arrangement and the consequence in relation to tax arising therefrom may be determined subject to the provisions of this Chapter.

Section 96 of the ITA provides that an impermissible avoidance arrangement means an arrangement, the main purpose of which is to obtain a tax benefit, and it—

(i) creates rights, or obligations, which are not ordinarily created between persons dealing at arm's length;

(ii) results, directly or indirectly, in the misuse, or abuse, of the provisions of this Act;

(iii) lacks commercial substance or is deemed to lack commercial substance under section 97, in whole or in part; or

(iv) is entered into, or carried out, by means, or in a manner, which are not ordinarily employed for bona fide purposes.

An arrangement shall be presumed, unless it is proved to the contrary by the assessee, to have been entered into, or carried out, for the main purpose of obtaining a tax benefit, if the main purpose of a step in, or a part of, the arrangement is to obtain a tax benefit, notwithstanding the fact that the main purpose of the whole arrangement is not to obtain a tax benefit.

Section 97 of the ITA provides that an arrangement shall be deemed to lack commercial substance, if—

(i) the substance or effect of the arrangement as a whole, is inconsistent with, or differs significantly from, the form of its individual steps or a part; or

(ii) it involves or includes—

round trip financing;

an accommodating party;

elements that have effect of offsetting or cancelling each other; or a transaction which is conducted through one or more persons and disguises the value, location, source, ownership or control of funds which is the subject matter of such transaction; or

(iii) it involves the location of an asset or of a transaction or of the place of residence of any party which is without any substantial commercial purpose other than obtaining a tax benefit (but for the provisions of this Chapter) for a party; or

(iv) it does not have a significant effect upon the business risks or net cash flows of any party to the arrangement apart from any effect attributable to the tax benefit that would be obtained (but for the provisions of this Chapter).

b) Concealment of income

Section 271(1) of the ITA provides that if any person has concealed the particulars of income or furnished inaccurate particulars of such income, the Assessing Officer or the Commissioner may direct such person to pay as penalty, in addition to tax, if any, payable by such person, a sum which will not be less than, but which will not exceed three times, the amount of tax sought to be evaded by reason of the concealment of particulars of such person's income or the furnishing of inaccurate particulars of such income.

c) False entry in books of account

Section 271AAD provides that if it is found in the books of account maintained by any person that there is a false entry or an omission of any entry which is relevant for computation of total income of such person, to evade tax liability, the Assessing Officer or the Commissioner may direct such person to pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry.

2) Transfer pricing

Chapter X of the ITA contains the transfer pricing rules.

Section 92 of the ITA provides that any income arising from an international transaction shall be computed having regard to the arm's length price. Where in an international transaction or specified domestic transaction, two or more associated enterprises enter into a mutual agreement or arrangement for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises, the cost or expense allocated or apportioned to, or, as the case may be, contributed by, any such enterprise shall be determined having regard to the arm's length price of such benefit, service or facility, as the case may be.

Section 92A defines "associated enterprise" as an enterprise –

(i) which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise; or

(ii) in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

Section 92B defines "international transaction" as a transaction between two or more associated enterprises, either or both of whom are nonresidents, in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any other transaction having a bearing on the profits, income, losses or assets of such enterprises, and shall include a mutual agreement or arrangement between two or more associated enterprises

for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises.

Section 92F defines "arm's length price" as a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled conditions.

Section 92C provides that the arm's length price will be determined by any of the following methods:

(i) comparable uncontrolled price method;
(ii) resale price method;
(iii) cost plus method;
(iv) profit split method;
(v) transactional net margin method;
(vi) such other method as may be prescribed by the Board.

Section 92BA provides that "specified domestic transaction" refers to certain categories of transactions between two or more domestic enterprises, not being an international transaction, and where the aggregate of such transactions entered into by the assessee in the previous year exceeds a sum of INR 200 million.

Indian transfer pricing rules have been updated in 2017 to incorporate the recommendations of the BEPS Project. The "Three Tier Documentation" structure for maintaining transfer pricing documents has been implemented.[74]

3) Controlled Foreign Company ("CFC")

India has not adopted the CFC rules yet, and no tax is payable on profits of

74) https://www.roedl.com/insights/india-faq-transfer-pricing-regulations

foreign companies which are not remitted to India. However, the concept of place of effective management is in section 6 of the ITA. Under the place of effective management provisions, a foreign company may be treated as a resident if its place of effective management is considered to be in India in that year.[75)]

4) Thin capitalization

Section 94B of the ITA provides that where an Indian company, or a permanent establishment of a foreign company in India, being the borrower, incurs any expenditure by way of interest or of similar nature exceeding INR 10 million which is deductible in computing income chargeable under the head "Profits and gains of business or profession" in respect of any debt issued by a nonresident, being an associated enterprise of such borrower, the interest will not be deductible in computation of income under the said head to the extent that it arises from excess interest.

Excess interest is defined as an amount of total interest paid or payable in excess of 30% of earnings before interest, taxes, depreciation and amortization of the borrower in the previous year or interest paid or payable to associated enterprises for that previous year, whichever is less.

Disallowed interest expense can be carried forward to eight assessment years immediately succeeding the assessment year for which the disallowance was first made. It can be deducted against the income computed under the head "Profits and gains of business or profession" to the extent of the maximum allowable interest expenditure.

E. Tax Treaties

1) Tax treaty status[76)]

India has entered into DTAAs with the following countries:[77)]

75) https://orbitax.com/taxhub/countrychapters/IN/India/393f2059a68b4a08ae606cb169bf2195/CFC-and-Similar-Regimes-169
76) https://taxsummaries.pwc.com/india/individual/foreign-tax-relief-and-tax-treaties
77) India has also entered into limite agreements with eight countries.

Albania, Armenia, Australia, Austria, Bangladesh, Belarus, Belgium, Bhutan, Botswana, Brazil, Bulgaria, Canada, China, Colombia, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Ethiopia, Fiji, Finland, France, Georgia, Germany, Greece, Hong Kong, Hungary, Iceland, Indonesia, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kenya, Korea, Kuwait, Kyrgyzstan, Latvia, Libya, Lithuania, Luxembourg, Macedonia, Malaysia, Malta, Mauritius, Mexico, Mongolia, Montenegro, Morocco, Mozambique, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Norway, Oman, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Saudi Arabia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syria, Tajikistan, Tanzania, Thailand, Trinidad and Tobago, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States of America, Uruguay, Uzbekistan, Vietnam, Zambia.

2) Non-OECD economies' positions on the OECD Model Tax Convention[78)]

India has expressed reservations on a number of articles of the OECD Model Tax Convention. Regarding permanent establishment, India reserved the right to deem an enterprise to have a permanent establishment in digital arrangements on the basis of significant economic presence. India also stated that a website may constitute a permanent establishment where it leads to significant economic presence of an enterprise. India's position is that, depending on the facts, an enterprise can be considered to have acquired a place of business through a website on any equipment, if opening the website on that equipment includes downloading of automated software, such as cookies, which use that equipment to collect data from that equipment, process it in any manner or share it with the enterprise.

78) https://www.pwc.in/assets/pdfs/news-alert-tax/2017/pwc_news_alert_28_november_2017_oecd_releases_2017_update.pdf; https://www.in.kpmg.com/TaxFlashNews-INT/KPMG-Flash-News-Indias-reservations-update-to-the-OECD-Model-Tax-Convention-and-Commentary-1.pdf; https://www.oecd.org/ctp/treaties/2017-update-model-tax-convention.pdf

With respect to fiscally transparent entity, India reserved the right not to include any provisions with respect to the same in its tax treaties, thereby such entities would not be eligible for tax treaty benefit.

With respect to the mutual agreement procedure, India considers that a term not defined in the treaty can only have the meaning that it has under the laws of the State applying the Convention and cannot be defined by the competent authorities under the mutual agreement procedure, while resolving by mutual agreement, difficulties or doubts concerning the interpretation or application of the Convention. India also stated that its view is that the mutual agreement procedure can be initiated only where taxation appears as a risk that is certain (and not probable).

3) Major disputes over the application of tax treaties[79)]

Disputes over whether a permanent establishment of a foreign enterprise in India exists have often arisen because business profits of a nonresident attributable to Indian operations will be liable to tax in India if it has a permanent establishment in India. The courts have held that the "disposal test" was critical in analyzing a fixed place permanent establishment. Certain parameters were also defined to determine when a place of business is at the disposal of the foreign enterprise. Depending on whether certain activities are merely preparatory and auxiliary to the core business of the foreign enterprise or whether the activities carried on in India are part of the core business of the foreign enterprise, the courts concluded whether any business was carried on through the fixed place of business.

Another area of contention is whether fiscally transparent entities are eligible to claim treaty benefits. For example, when a partnership is opaque in India but fiscally transparent in a contracting state, it may result in economic double taxation where the same income is taxed in the hands of the partnership in India without giving tax treaty benefits and the partners in the contracting

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79) Dhaval J. Sanghavi, Trends in Judicial Tax Treaty Interpretation in India, Preventing and Resolving Tax Treaties and Transfer Pricing Disputes (October 2018), available at https://issuu.com/comunicadireito/docs/preventing_web

state are taxed as residents of that contracting state. Courts have determined whether such fiscally transparent entity was a "person" eligible to claim treaty benefits, but also looked at whether such a person is "liable to tax" in either state owing to residence, domicile, place of management, etc. and also whether the income of such entity is "subject to tax" in either state.

F. BEPS Implementation

India is a participant in the Inclusive Framework on BEPS.

1) Implementation of the BEPS Project through domestic laws[80)]

As part of the G20, India has been playing an active role in the OECD project on BEPS and is committed to the results of the BEPS Project. India has introduced various changes in its domestic laws in line with the BEPS action plans, including the following:

- Three-tier transfer pricing documentation;
- Detailed guidance on the mutual agreement procedures;
- Interest limitation rules.

2) Implementation of BEPS Action 15 Multilateral Instrument ("MLI") through domestic laws[81)]

India ratified the MLI on June 7, 2017, and the MLI entered into force for India on October 1, 2019. Under the MLI, India has partially adopted the preamble statement (Article 6 of the MLI) and opted for the principal purpose test along with the simplified limitation on benefits provision (Article 7 of the MLI).

80) https://practiceguides.chambers.com/practice-guides/comparison/775/10701/17264-17267-17269-17275-17279-17281-17283-17292-17295-17301-17303-17307-17309-17311-17314-17318-17321
81) https://iclg.com/practice-areas/corporate-tax-laws-and-regulations/india

Article 6 of the MLI provides the following:

> Intending to eliminate double taxation with respect to the taxes covered by this agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of third jurisdictions.

Article 7 of the MLI provides the following:

> Except as otherwise provided in the Simplified Limitation on Benefits Provision, a resident of a Contracting Jurisdiction to a Covered Tax Agreement shall not be entitled to a benefit that would otherwise be accorded by the Covered Tax Agreement, other than a benefit under provisions of the Covered Tax Agreement:
>
> a) which determine the residence of a person other than an individual which is a resident of more than one Contracting Jurisdiction by reason of provisions of the Covered Tax Agreement that define a resident of a Contracting Jurisdiction;
>
> b) which provide that a Contracting Jurisdiction will grant to an enterprise of that Contracting Jurisdiction a corresponding adjustment following an initial adjustment made by the other Contacting Jurisdiction, in accordance with the Covered Tax Agreement, to the amount of tax charged in the first-mentioned Contracting Jurisdiction on the profits of an associated enterprise; or
>
> c) which allow residents of a Contracting Jurisdiction to request that the competent authority of that Contracting Jurisdiction consider cases of taxation not in accordance with the Covered Tax Agreement, unless such resident is a “qualified person” at the time that the benefit would be accorded.

3) Implementation of Pillar 1 and Pillar 2 through domestic laws[82)]

India is an active participant in the two-pillar solution. With respect to Pillar 1, India has adopted interim options until global consensus is reached. An equalisation levy was introduced under the Finance Act, 2016, which imposes a 6% levy on consideration received for online advertisement, provision of digital advertising space or facilities/service for online advertisements. Under the Finance Act, 2020, a 2% levy is imposed on nonresident e-commerce operators for the online supply of goods or provision of services.

India has also introduced significant economic presence provisions under the Finance Act, 2018. These provisions are included in the definition of "business connection" and provides taxing rights to India regarding digital businesses that operate in India without creating any physical presence in India.

With respect to Pillar 2, although India has not taken steps to implement Pillar 2 yet, India has been phasing out exemptions/deductions, and reduced the corporate tax rate and established a special tax regime in an effort to reduce corporate tax rates to the 15% minimum tax mark.

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82) https://practiceguides.chambers.com/practice-guides/comparison/775/10701/17264-17267-17269-17275-17279-17281-17283-17292-17295-17301-17303-17307-17309-17311-17314-17318-17321;
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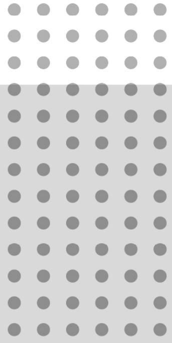


05 .

Indonesia

Summary

Indonesia has built a statutory tax law system which may be found in many developed civil law countries. The stage of its economic development may be ranked in the developing level in terms of numerical performances such as GDP per capita. But the real economy of Indonesia is surely forming a huge entirety of various industries, which indicates its potential power to rise as an economic leader in the South-east Asian region. Indonesia is pursuing to be admitted to the OECD as its member country.

Major types of taxes in Indonesia are income tax, value added tax, land and building tax, carbon tax, regional taxes. The main tax legislations on income tax and indirect tax are the Income Tax Law (ITL), the General Provision and Procedure on Taxes Law and the Law on Value Added Tax on Goods and Services and Sales Tax on Luxury Goods.

The Directorate General of Taxes operates both as the tax policy maker and the tax administrator. Its head office carries out the functions of policy formulation and technical standardization, analysis and development, as well as oversight and administrative support.

Comprehensive concept of income is stipulated in the ITL. The ITL provides almost all concepts and regulations with respect to international taxation such as residency, double taxation relief, permanent establishment, transfer pricing taxation, controlled foreign corporation taxation and thin capitalization. Indonesia recently introduced pseudo-territorial system. And it also introduced E-Commerce Taxation system. It has been admitted to Inclusive Framework of the BEPS.

One important outlier in terms of Indonesian tax law system against civil law

tradition is that the legislation delegates huge authority to the administration in terms of contents and scope of regulation, which definitely allows the administration to directly affect – sometimes have the possibility to inflict upon – the basic and fundamental rights of taxpayers.

In this regard the experiences of Korea may be shared with Indonesia for the solidification of tax law system of Indonesia. In addition, the experiences of Korea during the digital transformation period of tax administration may be shared with it.

A. Tax System

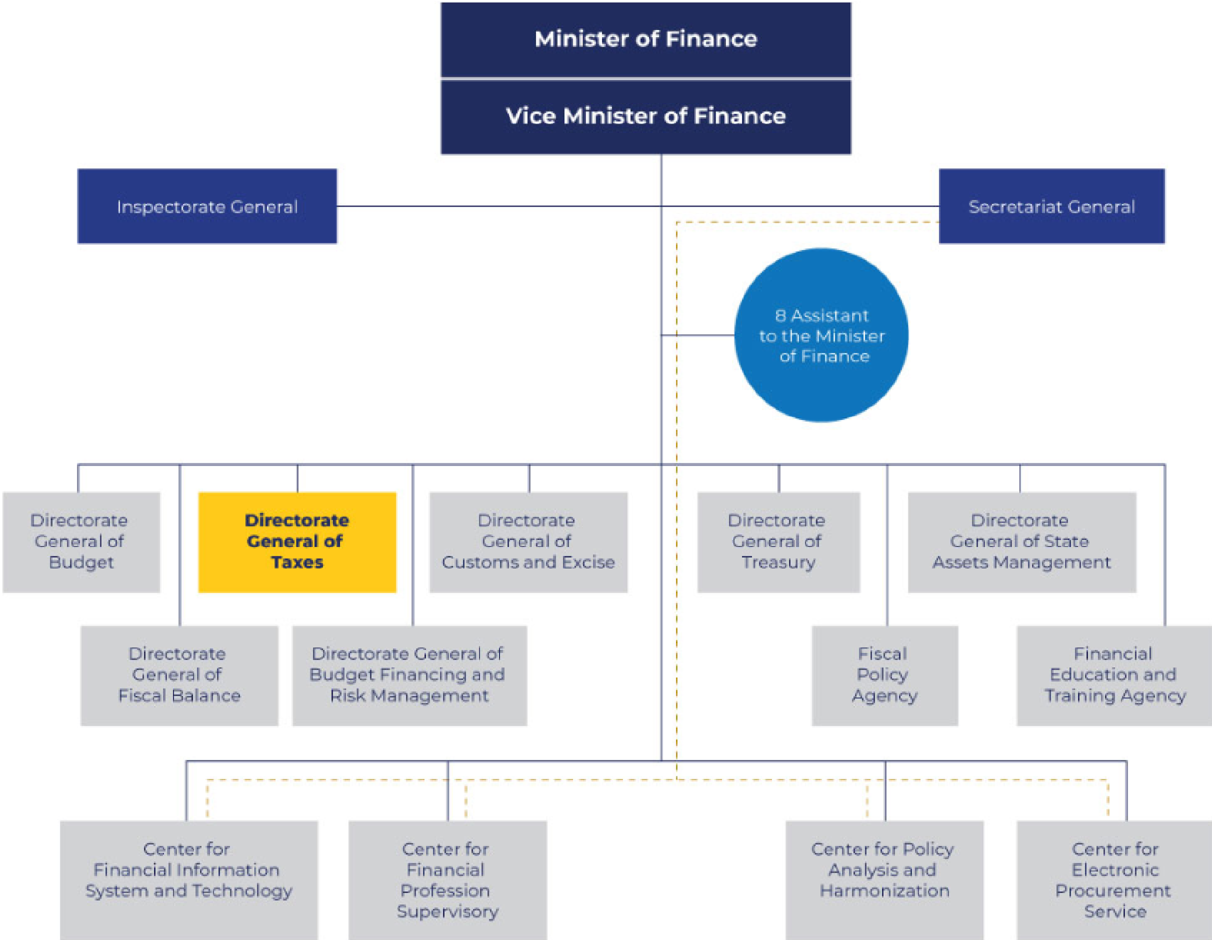
The Indonesian Constitution also adopts tax legalism the same as it is adopted in Articles 38 and 59 of the Korean Constitution. Article 23A of the Indonesian Constitution (Undang-Undang Dasar 1945, 'UUD 1945') stipulates that "taxes (Pajak) and collection for national needs shall be governed by law."

Indonesia's Basic Law on National Taxes (Undang-Undang Ketentuan Umum Perpajakan, 'UU KUP') states in Article 1, Paragraph 1, "Taxes are defined by law to be used for national needs for the maximum prosperity of the people without direct compensation to individuals or organizations. It is a duty to the state enforced by the government." It clearly states that taxes are imposed by law.

Major types of taxes are income tax, value added tax, land and building tax, carbon tax, regional taxes. Individuals are subject to income tax. Capital gains are included in the computation of taxable income and not subject to a separate tax. Value Added tax is imposed on goods and services, and a sales tax is levied on the sale and import of luxury goods.

The main tax legislations on income tax and indirect tax are the Income Tax Law (ITL), the General Provision and Procedure on Taxes Law and the Law on Value Added Tax on Goods and Services and Sales Tax on Luxury Goods.

B. Tax Policy and Administration Agency



The organizational structure of the Directorate General of Taxes can be divided into the head office and operational offices. The head office carries out the functions of policy formulation and technical standardization, analysis and development, as well as coaching and administrative support. The operational office carries out operational and/or technical support functions.

DGT website : https://www.pajak.go.id/en/organization-structure

The Head Office of the Directorate General of Taxes consists of the Secretariat of the Directorate General, 14 directorate units, and 4 advisors to the director general of taxes (pengkaji).

Operational offices within the Directorate General of Taxes consist of Regional Tax Offices (Kanwil Ditjen Pajak); Tax Offices (KPP); Tax Service, Dissemination, and Consultant Offices (KP2KP); and the Technical Implementation Unit (UPT).

The UPT consists of Center for Taxation Data and Document Processing (PPDDP), Taxation Data and Documents Processing (KPDDP), and Information and Complaints Service Office (KLIP).

The number of operational offices can be broken down as follows:

- 34 Regional Tax Offices (Kantor Wilayah)
- 4 Large Taxpayers Tax Offices (KPP Wajib Pajak Besar)
- 9 Special Jakarta Tax Offices (KPP Khusus)
- 38 Medium Tax Payers Offices (KPP Madya)
- 301 Tax Offices (KPP Pratama)
- 204 Tax Counseling and Consultation Service Office (KP2KP)
- 4 Technical Implementation Unit (UPT)

A list of unit names and operational office addresses can be accessed via this link. website: https://www.pajak.go.id/en/organization-structure

Indonesia uses a self-assessment system under which taxpayers are trusted to calculate, pay, and report their own taxes in accordance with prevailing tax laws and regulations. However, the DGT may issue tax assessment letters to a particular taxpayer if it finds that, based on a tax audit or on other information, the taxpayer has not fully paid all tax liabilities. A tax assessment letter may also be issued by the DGT to a taxpayer who ignores a warning letter to file a tax return within a specified period. Failure to maintain books in accordance with the prescribed standards is another condition that may lead the DGT to issue an official tax assessment.

The tax audit of a company may cover only a particular tax or all taxes for a particular tax period (a tax month) or tax year. It may be conducted at the company's premises, at the DGT offices, or at both.

- Conditions triggering a tax audit

Most tax refund request will trigger a tax audit, except for taxpayers eligible for early tax refunds. Due to the requirement for the DGT to decide on a refund request within 12 months, a tax audit will typically begin from a few weeks to several months from the refund request date. A CIT refund request will normally trigger a complete tax audit covering all taxes. A refund request of any other tax will normally trigger a tax audit covering only one particular tax. The DGT will likely broaden the tax audit scope to include other taxes.

C. Income Tax System

1) Underlying Law

The underlying law for income taxation is the Income Tax Law (ITL).

2) Income Tax Structure

a) Taxpayer

A tax resident is generally taxed on worldwide income, although this may be mitigated by the application of double taxation agreements (DTAs).

b) Taxable Object

Residents are subject to income tax on their worldwide income, including capital gains.

Comprehensive concept of income is stipulated as follows in the ITL.

> Any increase in economics capacity received by or accrued by a taxpayer from Indonesia as well as from offshore, which may be utilized for consumption or increasing the taxpayer's wealth, in whatever name and form, including ....

Certain items are exempt from individual income tax, including property

acquired by gift, gains from mutual funds, and profit distribution received by a member of partnership (the net income is already taxed at the entity level).[83)]

c) Taxable Period

The tax year is the calendar year.

d) Tax Rates

With effect from 1 January 2022, resident individuals are taxed on income at the the rates of 5, 15, 25, 30, 35.

Effective 2 November 2020, dividends received by individuals are tax exempt as long as they are reinvested in qualifying investments in Indonesia for a minimum period of 3 years from the fiscal year when the dividend was received or earned. Only the dividends received by resident individuals that meet the reinvestment requirements are exempt from tax. The difference between the amount received and the amount of reinvestment will be subject to a final tax of 10% and the individual will be responsible to remit payment by the 15th day of the following month after the dividend is received.

Residents are generally subject to a creditable withholding tax of 15% on the gross amount of interest. Where the taxpayer does not have a tax identification number, the withholding tax is increased by 100% to 30%.

D. Corporate Tax System

1) Underlying Law

The underlying law for income taxation is the Income Tax Law (ITL).

2) Corporate Tax Structure

Indonesia taxes income on a worldwide basis. The tax is an annual tax imposed

83) Income Tax Law (ITL), Article 4, 23, 26

on accounting profits adjusted for tax purposes.

Effective 2 November 2020, dividends received or earned by a resident company from another resident company are exempt from tax. Dividends received by individuals are tax exempt if the dividends are reinvested in Indonesia for a certain period of time.

a) Taxpayer

Corporate income tax is levied on all legal entities resident in or having a permanent establishment in Indonesia. Legal entities include limited liability companies(PT), partnerships, foundations, representative offices, pension funds and cooperatives. Specified international organizations and their representatives are exempt from tax.

Partnerships are separate taxable persons, i.e. profits are taxed at the partnership level, and exempt in the hands of the partners.

Resident corporations are taxed based on worldwide income. A foreign company carrying out business activities through a permanent establishment (PE) in Indonesia will generally be required to assume the same tax obligations as a resident taxpayer.

Resident taxpayers and Indonesian PEs of foreign companies have to settle their tax liabilities either by direct payments, third party withholdings, or a combination of both. Foreign companies without a PE in Indonesia have to settle their tax liabilities for their Indonesian-sourced income through withholding of the tax by the Indonesian party paying the income.

b) Taxable Object

In principle, dividend income received by a resident taxpayer from a domestic limited liability company (generally referred to as a Perseroan Terbatas or PT) constitutes taxable income. However, it becomes non-taxable if the recipient is domestic corporate taxpayers or domestic individual taxpayers whose dividends

are reinvested in Indonesia within a certain period since 2 November 2020. Where the recipient is not resident in Indonesia, a WHT rate of 20% applies, subject to variation by tax treaties.

Dividends paid by companies abroad received by domestic taxpayers may be exempted if the dividends are reinvested or used for business activities in Indonesia within a certain period.

The same rules apply to stock dividends (bonus shares), including dividends paid out of share premium (agio).

c) Taxable Period

The tax year is the calendar year, but persons carrying on a business may substitute their financial year, provided it is a 12-month period. If a business makes up its accounts for years other than the calendar year, it is assessed for each calendar yearon the basis of its accounting period.

d) Taxable Amount

Taxable business profits are calculated on the basis of normal accounting principles as modified by certain tax adjustments.

e) Tax Rate

Corporate tax is imposed at a flat rate of 22%. This rate applies to Indonesian companies and foreign companies operating in Indonesia through a permanent establishment.

A previously announced reduction of the corporate tax rate to 20% has been canceled.

- Public company discount

Public companies that satisfy a minimum listing requirement of 40% and certain other conditions are entitled to a tax discount of 3% off the standard

rate, providing an effective tax rate of 19%.

- Small company discount

Small enterprises (i.e. corporate taxpayers with an annual turnover of not more than 50 billion rupiah [IDR]) are entitled to a 50% tax discount of the standard rate, which is imposed proportionally on taxable income on the part of gross turnover up to IDR 4.8 billion. Certain enterprises with gross turnover of not more than IDR 4.8 billion are subject to final income tax at 0.5% of turnover.

E. Key Issues in International Tax

1) Residency

An individual is regarded as a tax resident if one fulfils any of the following conditions:

- Is present in Indonesia for more than 183 days in any 12-month period.
- Is present in Indonesia during a fiscal year and intends to reside in Indonesia.

Residency issues may also be impacted by the application of DTAs.

An Indonesian citizen who is present in Indonesia for less than 183 days in any 12-month period may be considered as a non-resident if they fulfil additional requirements, for example having a permanent home, centre of vital interest, habitual abode, the status of tax subject, or other criteria outside Indonesia.

A company is resident in Indonesia if:

- it is stated in the articles of incorporation that its domicile is in Indonesia;
- its head office, central administration or central financial office is in Indonesia;
- it has a controlling office in Indonesia that undertakes management activities;

- its board meetings, at which strategic decisions are made, are held in Indonesia; or
- its management members reside or are domiciled in Indonesia.

In June 2023 the Omnibus Law introduced (i) changes in the foreign tax subject definition for Indonesian citizens and (ii) limited territorial taxation for expatriates.

Residents are subject to income tax on their worldwide income, including capital gains. The tax treatment for foreign income is generally the same as for Indonesia-sourced income.

From 2 November 2020, the following income received by resident individuals may be tax exempt if the income is reinvested in Indonesia for at least 3 years from the fiscal year when the income was earned or received:

- offshore dividends from a listed company; and
- offshore income from active businesses abroad.

Only the dividend or income that is reinvested in Indonesia will be tax exempt while the remaining distributed income would be subject to tax in Indonesia.

In addition, the following income received by resident individuals may be tax exempt if the income is reinvested in Indonesia for at least 3 years from the fiscal year when the income was earned or received, subject to an investment amount of at least 30% of profit after tax:

- offshore dividends from a non-listed company; and
- offshore income received from permanent establishments abroad.

2) Taxation on Non-residents

Foreign citizen individuals who are resident taxpayers in Indonesia will be taxed only on Indonesian-source income if they possess certain expertise within four years of becoming a tax resident.

Foreign individuals with certain expertise include the following:

- Foreign workers who are in certain professions and have satisfied the Ministry of Manpower requirement to employ foreign workers
- Foreign researchers as appointed or determined by the Ministry of Research and Technology or the Head of the National Research and Innovation Agency (Badan Riset dan Inovasi Nasional, or BRIN)

Twenty-five professions could be eligible for this exemption, mostly as experts in the areas of science, engineering, and/or mathematics, and include the following:

- Chemical experts (International Standard Classification of Occupation [ISCO] code 2113)
- Geology and Geophysics expert (ISCO code 2114)
- Chemical engineering expert (ISCO code 2145)
- Civil engineering expert (ISCO code 2142)
- Environmental engineering expert (ISCO code 2143)

The possession of certain skills must be proved by a certificate issued by the Indonesian government or the authority of the home country of the expatriate, an educational certificate and a minimum of five years of work experience in that field of expertise.

The expatriate will need to request approval from the Director General of Taxation (DGT). The DGT will conduct a verification and must respond to the request within 10 days. For a qualifying expatriate, foreign-source income is generally exempt. Income earned or received in relation to employment, services or activities carried out in Indonesia that is paid outside of Indonesia is still taxable. The exemption does not apply to foreign citizens who claim benefits under tax treaty provisions.

An Indonesian citizen who resides outside Indonesia for more than 183 days within a 12-month period is considered to be a nonresident taxpayer if he or

she meets certain conditions (place of residency, place of main activity, place of habitual abode and tax subject status [considered as a resident taxpayer in another country that is supported with a certificate of residence in that country] and meets certain other conditions; that is, the individual fulfills the tax obligation in Indonesia and obtains a statement letter as a nonresident taxpayer issued by the Indonesian tax office).

An Indonesian national who works overseas for more than 183 days within a 12-month period is not subject to tax on his or her employment income that is earned overseas and that is subject to tax overseas if he or she has certificate of residence from the tax authority of the overseas country and obtained a statement letter as a nonresident from the Indonesian tax office.

Non-resident individuals are subject to a general withholding tax (WHT) at 20% in respect of their Indonesian-sourced income. Concessions are, however, available where a DTA is in force.

Under the Omnibus Law[84], income received by an Indonesian taxpayer from a permanent establishment (PE) abroad and other active business income from abroad (not from a PE or foreign subsidiary) is not taxable in Indonesia if being invested in Indonesia within a certain period.

The Omnibus Law has added a provision to the Income Tax Law stipulating that foreigners who have become domestic tax subjects by reason of becoming tax resident in Indonesia can be taxed only on Indonesian-sourced income (including if paid offshore) if they meet certain skill requirements. This will only be available for the first four years they become tax resident. This territorial taxation system may not be applicable when the foreigner receives income from overseas and utilises the applicable tax treaty between Indonesia and the source country. Indonesian citizens that are living outside of Indonesia for more than 183 days in 12 months and meet certain requirements can also be considered as foreign tax subjects.

84) Law 11 of 2020 on Job Creation (Law 11/2020)

3) Double Tax Relief

Subject to certain limitations (such as DTA provisions), a credit is granted for tax paid or due abroad in connection with income received or accrued abroad. Proof of tax paid in the foreign country must be attached to the tax return to substantiate the tax credit claimed.

For exempted income items, foreign taxes paid will not be allowed as a credit or deduction or refunded for Indonesian tax purposes.

Tax paid or payable in foreign countries upon income from abroad received or obtained by a resident taxpayer may be credited against tax payable in Indonesia in the same fiscal year.

The allowable foreign tax credit is computed on a type (basket)-of-income and country-by-country basis.

The allowable foreign tax credit (FTC) amount is either the actual due/paid amount or the amount calculated based on the FTC rules ('certain amount'), whichever is lower. Under the new tax regulation, there is an additional lower limit based on the applicable tax treaty rate. If the tax treaty stipulates that the taxing right of an income is only in Indonesia, any FTC for such income is not creditable. Therefore, there are now three amounts (i.e. actual FTC amount, certain amount, and tax treaty rate) to be considered when determining the lowest amount to determine the allowable FTC amount.

Credit for underlying tax is not granted.

4) Permanent Establishments

Under the Income Tax Law, a non-resident company may be treated as having a taxable presence if it runs a business or conducts activities in Indonesia, which can be in the form of:

- a place of management
- a branch of the company
- a representative office

- an office building...
- the furnishing of services in whatever form by employees or other person, insofar conducted not more than 60 days within a 12-month period
- a person or corporation acting as a dependent agent

an agent or employee of an insurance company that is not established and domiciled in Indonesia that receives insurance premiums or insures risk in Indonesia, and the computers, electronic agent, or automated equipment owned, leased, or used by an electronic transactions provider to conduct business via the Internet.

Domestic regulation on PE also acknowledges the concept adopted under the Organisation for Economic Co-operation and Development (OECD) and United Nations (UN) Commentaries that under the operation of a tax treaty a business form that is used by a foreign subject to carry on only ‘preparatory or auxiliary’ activity in Indonesia will not create a PE.

Where the non-resident company is resident in a country that has a tax treaty with Indonesia, the rules on a PE creation may be changed; usually there is a longer ‘time test’ for certain activities performed in Indonesia.

Income accruing from Indonesia to a for\-eign company having a permanent establishment in Indonesia is taxed as income of the permanent establishment if the business generating the income is of a similar nature to the business of the permanent establishment. This is known as the “force of attrac\-tion” principle.

Branch profits are subject to the ordinary CIT rate of 22%.

The after-tax profits are subject to a withholding tax (WHT) (i.e. branch profits tax or BPT) at 20%, regardless of whether the profits are remitted to the home country. However, a concessional WHT rate may be applicable where a tax treaty is in force (see the Withholding taxes section for more information). The BPT may be exempt if the profits are entirely reinvested in Indonesia (see the Tax credits and incentives section for more information).

- Reinvestment of branch profits

Profits after tax of a PE in Indonesia are exempt from BPT if the PE reinvests the profits within the same year or no later than the following year in certain investment options.

5) E-commerce

From 1 July 2020 Indonesian value-added tax (VAT) applies to sales of digital products supplied by foreign businesses to Indonesian consumers.

Examples of these sales include downloading or streaming of apps, books, computer software, games, magazines, movies, music, and newspapers, as well as the subscription of such products. Online services such as advertising, design, marketing, and video conferencing services are also examples of digital products covered by this measure.

Overseas businesses that make sales like those described above and meet certain criteria will be appointed as VAT collectors by the Indonesian Government and be responsible for:

charging VAT on sales of digital products

making a monthly payment to the Indonesian Government, and

submitting a quarterly VAT return to the Indonesian Directorate General of Taxes (DGT)

The criteria to be appointed as VAT collectors are:

the value of transactions with buyers in Indonesia exceeds IDR 600,000,000.00 in 1 year or IDR 1,000,000.00 in 1 month; and / or

the amount of traffic or access in Indonesia exceeds 12,000 in 1 year or 1,000 in 1 month.

The applicable VAT rate is 11 percent. This means the VAT amount on a

taxable sale will be 1/11th of the price the Indonesian customer pays.

DGT website: https://www.pajak.go.id/en/digitaltax

Deemed permanent establishment or Electronic Transaction Tax. Laws have been passed but not yet implemented to the effect that an offshore seller, offshore service provider or offshore e-commerce organizer meeting the significant economic presence criteria can be treated as a permanent establishment and subject to income tax.

Significant economic presence will be defined in further regula\-tions with reference to the following:

- Consolidated business group turnover of a certain amount
- Sales in Indonesia of a certain amount
- Active users of digital media in Indonesia of a certain number

If income tax cannot be imposed as a result of the application of a tax treaty, the offshore seller, offshore service provider or offshore e-commerce organizer meeting the significant economic presence criteria will be subject to the Electronic Transaction Tax.

This tax will be imposed on the sale of goods or services from outside Indonesia through e-commerce to the buyer or the user in Indonesia if the sale is conducted by an offshore taxpayer, whether directly or via an offshore e-commerce organizer. These laws await implementing regulations before they can enter into effect. Indonesia may pursue an approach consistent with Base Erosion and Profit Shifting (BEPS) 2.0 rather than implementing these laws.

6) Tax Incentives on FDI

- Special Economic Zones (Kawasan Ekonomi Khusus or KEKs)

Taxpayers conducting business in KEKs may enjoy tax facilities. The business should cover the main activities determined for each KEK. The designation of an area as a KEK is set out in a specific government regulation.

CIT reduction may be granted for taxpayers conducting main activities in a KEK.

Taxpayers being rejected for the CIT reduction facility and taxpayers carrying out other activities in a KEK may apply for similar inbound investment incentives under the income tax concessions.

On top of the above income tax facilities, taxpayers in a KEK are also entitled to postponement/exemption of import duty and excise, and non-collection of import taxes and domestic VAT/LST, such as:

- Non-collection of VAT and LST on importation, utilisation, or delivery of certain taxable goods.
- Non-collection of Article 22 Income Tax on importation of certain goods.
- Exemption or postponement of import duty on importation of certain goods.
- Exemption of excise duty on importation of production supporting or raw material goods to be used to produce non-excisable goods.

- Integrated Economic Development Zones (Kawasan Pengembangan Ekonomi Terpadu or KAPETs)

Companies conducting business in KAPET may enjoy tax facilities similar to inbound investment incentives under the income tax concessions. The designation of an area as a KAPET is set out in a specific Presidential Decree.

In addition to the above facility, an Entrepreneur in Bonded Zone (Pengusaha di Kawasan Berikat or PDKB) in a KAPET may be granted tax facilities in the form of:

- Non-collection of VAT and LST on importation of certain goods.
- Exemption of Article 22 Income Tax on importation of certain goods.
- Postponement of import duty on capital goods and equipment, and goods and materials for processing.
- Non-collection of VAT and LST on the domestic purchases of certain goods.

7) Withhloding on Non-residents

Under the Article 23/26 Income Tax (PPh 23/26), withholding tax is payable at the rate of 2% for most types of services where the recipient of the payment is an Indonesian resident and 15% for a variety of payments to resident corporations and individuals.

For non-residents, withholding tax rate of 20% is applicable. The withholding tax rate for bond interest income, including the capital gain (i.e. premium and discount) enjoyed upon disposal, that is received or obtained by non-residents other than PEs can be given a lower withholding tax rate of 10%. Under the operation of a tax treaty, lower rates may be applicable at the following rates:

F. Anti-avoidance Rule on International Tax Planning

1) Basic Principles

Indonesia does not have a specific general anti-avoidance rule or related regulations.

There is a provision under the Indonesian law hierarchy that states that the application of a tax treaty should restrict the application of domestic law.

As a civil law country, there is no court-developed case law for anti-avoidance provisions.

There is no requirement for a court, including a tax court, to follow earlier rulings, even when the case is identical.

Article 32A of the Income Tax Law(ITL) grants the government powers to enter into international treaties, providing that “in efforts of promoting economic and trading relationships with other countries, it is necessary to have a special set of law (lex specialis) which regulates the taxing rights of each country covered in the law to provide legal certainty, to avoid double taxation and to prevent tax evasion. The form and substance of such law refer to the international convention, other regulations, and also the national tax regulation of each country”.

Indonesia has introduced tough anti-treaty abuse rules. The Indonesian tax authority may ignore the provisions of a tax treaty if these rules are not satisfied.

DGT(Director General of Tax) Regulation No. 25/PJ/2018 (PER-25) concerning The Prevention of Misuse of Double Taxation Avoidance (DTA) Agreement stipulates as follows.

- Requirement
  a. transaction that has no economic substance, which is done by using the structure /scheme in such a way with a view solely to obtain tax treaty benefits.
  b. transaction with a structure / scheme where legal form differs from economic substance, in such a way with a view solely to obtain tax treaty benefits
  c. income recipient is not thebeneficial owner

- Tax Effect
  a. DTA does not apply; and Apply regular taxation rules in accordance with Indonesian Income Tax Law.
  b. In the case of difference between the legal form of a structure / scheme with their economic substance (economic substance), the tax treatment will be based on their economic substance (substance over form).

2) Transfer Pricing Taxation

Taxpayers must apply the arm's length principle when there is a "special relationship" between the parties carrying the transactions(ITL Article 18(1)~(4)).

ITL Article 18 Paragraph (3)

The Director General of Taxes has the authority to re-determine the amounts of income and deduction as well as to recharacterize debt as capital for the purpose of calculating the amount of Taxable Income for Taxpayer who is related/associatedwith other Taxpayers in accordance with the arm's length

principle that are not affected the relation by using the price comparison method among independent parties, the resale price method, the cost-plus method, or other methods

The Director General of Taxes can redefine the amount of tax that should be payable based on a substance-over-form principle in the case that tax avoidance cannot be prevented by the listed mechanism.

Elucidation of Article 18 says as below:

> The government has the authority to prevent tax avoidance practices as an effort made by taxpayers to reduce, avoid, or delay the payment of taxes that should be owed that are contrary to the purposes and objectives of the provisions in tax laws. One way to avoid tax is to conduct transactions that are not in accordance with the actual situation, which is contrary to the substance over form principle, namely the recognition of economic substance above its formal forms.

The substance over form application shall observe the following conditions (Article 32(2) of GR 55/2022):

Government Regulation No. 55/2022 (GR-55) under the Income Tax Law('ITL') provisions as stipulated under Law No. 7/2021 regarding Harmonisation of Tax Regulations (UU HPP)

1. limit of authority and procedure of the implementation;
2. the activity of the taxpayer is included in the tax avoidance coverage
3. form and substance test;
4. quality assurance mechanism; and/or
5. taxpayer's right protection

Article 32 (4) of GR 55/2022 stipulates as below

> In the event that there is tax avoidance practice as referred to in paragraph (1) that cannot be prevented using the mechanisms specified in paragraph

(2), the Director General of Taxes may recalculate the tax that should be payable based on the principle of recognizing the economic substance over its formal form.

Transactions between related parties must be consistent with the arm's-length principle. If the arm's-length principle is not followed, the DGT is authorised to recalculate the taxable income or deductible costs arising from such transactions applying the arm's-length principle.

The government requires specific transfer pricing documentation to prove the arm's-length nature of related-party transactions.

Indonesia has enacted the Minister of Finance Regulation Number 213/PMK.03/2016 concerning Types of Documents and/or Additional Information to address Base Erosion and Profit Shifting (BEPS), which causes unfairness in taxation, promote taxpayer transparency in conducting affiliated transactions, and demonstrate Indonesia's commitment as a member of the G20 and the Inclusive Framework on BEPS in implementing the minimum standards of BEPS Action 13. (PMK-213). Based on the regulation, Taxpayers who meet certain criteria are required to prepare and/or submit three types of transfer pricing documents, i.e., three-tiered transfer pricing documentation which are master files, local files, and financial reports and Country by Country Report (CbC Report).

DGT website : https://www.pajak.go.id/en/country-country-report-cbcr

Taxpayers under certain criteria are required to prepare transfer pricing documentation, namely the Master File, Local File, and Country-by-Country (CbC) Report.

Detailed transfer pricing disclosures are required in the CIT return, which include the following:

- The nature and value of transactions with related parties.
- The transfer pricing methods applied to those transactions and the rationale for selecting the methods.
- Whether the company has prepared transfer pricing documentation.

Transfer pricing disputes may be resolved through the domestic objection and appeal process or, where the dispute involves a transaction with a related party in a country that is one of Indonesia's tax treaty partners, the parties may request double tax relief under the Mutual Agreement Procedures (MAP) article of the relevant tax treaty. The MAP may be applied concurrently with a domestic dispute resolution process. If the MAP process has not reached agreement until the announcement of the Tax Court or Judicial Review Decision on the MAP-related content, the DGT may use the Decision result as a position in the MAP negotiation or propose a cessation of negotiation.

The tax law authorises the DGT to enter into Advance Pricing Agreements (APAs) with taxpayers and/or another country's tax authority on the future application of the arm's-length principle to transactions between related parties. An APA's conclusions may potentially be rolled back to open years, albeit on a limited basis. In all cases, the APA period can be up to maximum of five years.

The number of tax audits with transfer pricing as the key focus area has continued to increase following the issuance of regulations relating to transfer pricing. The DGT has issued detailed guidelines that, broadly stated, typically follow OECD principles. Transactions under particularly close scrutiny include payments of royalties and technical or management services fees, inter-company services, royalty and financing transactions, and exports to related parties.

Where a taxpayer has no documentation available to substantiate these transactions, there is a high risk that deductions for the payments will be denied in full. In this regard, the 30-day time limit within which a taxpayer must produce any documentation requested by the Indonesian Tax Office (ITO) during an audit is being strictly enforced. Any documentation provided after the 30-day time limit is being disregarded by the ITO in its decision-making process.

Transfer pricing specific audits are regularly conducted by the ITO, with the high priority targets generally identified based on:

profit performance of the company (companies that have incurred consistent

losses will be the highest priority, but there is also a risk of being selected for companies with profits below industry norms) and

materiality of the company's related-party transactions.

The DGT has also reinforced tax audit procedures for taxpayers with related-party transactions. This regulation provides more clarity and is more relevant with the current transfer pricing issues in practice. Comprehensive forms required to be completed by the taxpayers during a tax audit are also provided in the regulation.

3) Controlled Foreign Corporation

Certain income of a controlled foreign company (CFC) is subject to deemed dividend rules in Indonesia. This income includes dividends, interest, rentals, royalties, and gains from sales or transfer of assets, with certain limitations. A CFC is a foreign entity that is at least 50% owned by an Indonesian taxpayer or at least 50% collectively owned by Indonesian taxpayers. The scope of CFC income also covers income from indirectly owned CFCs with a minimum of 50% ownership by another CFC, collective ownership by an Indonesian taxpayer's CFC, or collective ownership by a number of CFCs (including under the same or different Indonesian taxpayers).

The ownership threshold that is used to determine the CFC status is the ownership percentage at the end of the Indonesian taxpayer's fiscal year, which is based on either the percentage of paid-up capital or the percentage of paid-up capital with voting rights. The only situation in which the rules do not apply is when the CFC's shares are listed on a recognised stock exchange.

On top of foreign dividends, the following income may also be exempted if these incomes are reinvested or used for business activities in Indonesia within a certain period:

Income received by an Indonesian taxpayer from a PE abroad.

Active business income received by an Indonesian taxpayer from abroad (not from a PE or foreign subsidiary).

4) Thin Capitalization

Interest incurred in the ordinary course of business is deductible with certain limitation as long as the related loan is used for business purposes. The acceptable methods to limit the interest deduction are those commonly used internationally, such as percentage of earnings before interest, taxes, depreciation, and amortisation (EBITDA), debt-to-equity ratio, or other methods.

Interest on loans relating to time deposits (which income is subject to a final tax) is not deductible.

Interest on loans used to buy shares where dividends to be received are not subject to income tax is also not deductible.

Under the tax law, the Minister of Finance may determine an acceptable debt-to-equity ratio. In September 2015, the Minister prescribed a maximum debt-to-equity ratio of 4:1, effective from the 2016 tax year. This rule applies only to Indonesian resident companies, which are companies that are established or incorporated in Indonesia or domiciled in Indonesia and that have their equity made up of shares. It does not apply to permanent establishments. Certain taxpayers are exempted from the rule. It is expected Indonesia will move away from a pure debt-to-equity ratio approach in the future in favor of other thin-capitalization tests.

Under the Minister of Finance Regulation regarding the debt-to-equity ratio, if a taxpayer breaches the ratio limit, the Directorate General of Taxation is entitled to adjust the taxpayer's borrowing costs based on the debt-to-equity ratio limit. For a taxpayer that has a nil or negative equity, all costs related to the borrowing are treated as nondeductible for corporate tax purposes. Foreign loans must be reported to the Directorate General of Taxation. Non-reporting of foreign loans results in the forfeiting of the deductibility of the interest.

Interest rates on related-party loans must be at arm's length.

G. Tax Treaties

1) Tax Treaty Status

As of the year 2023, Indonesia has entered into double tax treaties with the 74 jurisdictions.

Indonesia has TIEAs with the Bahamas (pending the exchange of ratification documents), Bermuda, Guernsey, Isle of Man, Jersey, and San Marino.

Indonesia signed the Convention on Mutual Administrative Assistance in Tax Matters on 3 November 2011 and ratified it on 17 October 2014. Indonesia also signed a Multilateral Competent Authority Agreement on Automatic Exchange of:

Financial Account Information using the Common Reporting Standard.

Transfer Pricing Documentation in the form of Country-by-Country Report.

2) Non-OECD economies' positions on the OECD Model Tax Convention

Indonesia has not provided a comment.

3) Major disputes over the application of tax treaties

The issue of beneficial ownership has come under tax office scrutiny. For treaty WHT rates to apply to passive income such as interests, dividends, and royalties, the recipient of such income must be the beneficial owner. The recipient must also provide a Certificate of Domicile (CoD) in the form required by the ITO and certified by their home country tax authority that the recipient is a tax resident of that country. The CoD in the form prepared by the other country's tax authority may only be used in limited circumstances. Further, the CoD form also requires a number of declarations to be made by the recipient that acknowledges that the use of the treaty jurisdiction was not merely for obtaining the benefit of the treaty. These declarations place onerous obligations on both the Indonesian payer and the recipient entity. Without a certified CoD, a WHT at a rate of 20% will apply. These aspects need to be considered when paying income of this nature.

The Supreme Court solved the BO case by taking the position that the BO definition should be based on the definition provided by the Treaty, and not by the domestic rules(Supreme Court Decision 133/B/PK/PJK/2017).

H. BEPS Implementation

Indonesia signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS on 7 June 2017, and it provided a list of reservations and notifications on the same date. This has been ratified on 12 November 2019. On 28 April 2020, Indonesia deposited its instrument of ratification for the Multilateral Instrument (MLI), which entered into force on 1 August 2020. In this ratified document, 47 tax treaties with Indonesia are to be covered by the Convention. By 10 November 2022, Indonesia submitted notification to the OECD (as the depositary of the MLI) to confirm the completion of internal procedures for more than 30 tax treaties.

1) Implementation of the BEPS Project through domestic laws

Indonesia has an established domestic legislation framework which closely aligns with other aspects of the BEPS 15 Action Plan, including Action 3 on controlled foreign company rules, Action 4 on interest reduction, Action 6 on preventing tax treaty abuse, Action 7 on avoidance of permanent establishment status, and Actions 8 to 10 on transfer pricing-related substance issues. For Action 1 on the digital economy, Indonesia delivered its legislation in 2020 following the spread of COVID to formalise the implementation of a VAT regime on foreign e-commerce players.[85)]

85) https://www.internationaltaxreview.com/article/2b6p9yrs66oxxwfnehla8/sponsored/indonesias-vital-breakthrough-with-the-beps-two-pillar-solution

2) Implementation of BEPS Action 15 Multilateral Instrument (“MLI”) through domestic laws

Indonesia has signed on the MLI and has accepted the minimum standard of PPT Rule.

PPT Rule has taken effect in Indonesia(01-08-2020).

In the domestic law area, DGT has developed the sole purpose doctrine. That doctrine does not seem to be in line with the new PPT Rule.

A non-resident taxpayer who has been entitled to the tax benefit of a TT due to the relatively generous approach in the DTLs of Indonesia may not be subject to the TT because of the PPT Rule nowadays.

Listed Agreement Number	Other Contracting Jurisdiction	Date of receipt
1	Australia	26-11-2020
3	Canada	26-11-2020
4	China (People’s Republic of)	10-11-2022
5	France	26-11-2020
6	Hong Kong (S.A.R)	10-11-2022
7	India	26-11-2020
8	Japan	26-11-2020
10	Luxembourg	26-11-2020
11	Malaysia	21-10-2021
12	Netherlands	26-11-2020
13	New Zealand	26-11-2020
15	Singapore	26-11-2020
16	Seychelles	10-11-2022
17	Republic of Korea	26-11-2020
19	Thailand	10-11-2022
20	United Kingdom	26-11-2020
21	United Arab Emirates	26-11-2020
24	Belgium	26-11-2020
25	Croatia	21-10-2021
26	Finland	26-11-2020
29	Poland	26-11-2020
30	Qatar	26-11-2020
31	Slovak Republic	26-11-2020
37	Denmark	26-11-2020
38	Egypt	21-10-2021
39	Hungary	21-10-2021
41	Pakistan	21-10-2021
42	Portugal	26-11-2020
43	Romania	10-11-2022
44	Russia	26-11-2020
45	Serbia	26-11-2020
46	Spain	10-11-2022
47	Sweden	26-11-2020

3) Implementation of Pillar 1 and Pillar 2 through domestic laws

In December 2022, the Indonesian government issued Government Regulation No. 55 (GR-55) to implement the income tax law amendments under the HPP Law[86]. The GR-55 covers two international tax topics: anti-tax-avoidance measures, and international tax agreements.

GR-55 serves as a legal basis to adopt the two-pillar approach as follows:

- Pillar one: MNEs that satisfy certain criteria determined in an international tax agreement (such as consolidated turnover and profit level) are considered to fulfil tax obligations and therefore, are subject to tax in Indonesia; and
- Pillar two: the group of MNEs that fall within the scope of the international tax agreement will be subject to a global minimum tax collected in Indonesia based on said agreement.[87]

Detailed implementation of the two-pillar solution in Indonesia will be regulated further via Ministry of Finance (MoF) regulations.

86) the Harmonization of Tax Regulations
87) https://www.internationaltaxreview.com/article/2b6p9yrs66oxxwfnehla8/sponsored/indonesias-vital-breakthrough-with-the-beps-two-pillar-solution

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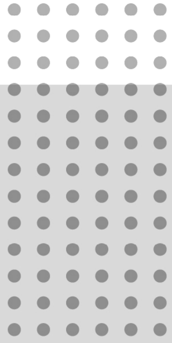

06.

Laos(Lao PDR)

Summary

Laos(Lao PDR) is ruled by a single party Communist government. Its major industries are such primary industries as mining, hydro power, agriculture, and light manufacturing.

A set of new tax laws - Tax Administration Law (№ 66/NA, 17 June 2019), Income Tax Law (№ 67/NA, 18 June 2019) and Excise Tax Law (№ 68/NA, 19 June 2019) - are implemented from 1 January 2020. The Value Added Tax Law (№ 48/NA, 20 June 2018) is also an important component of the tax regime.

Taxable incomes upon individuals are salary income, business income, other income, and exempt income. Corporations and partnership businesses are liable for profit tax.

There are no foreign tax credits available under domestic tax law. A credit is not allowed for foreign tax paid on foreign income. However, certain tax treaties have provisions for either deductibility or credit of foreign tax.

There is no definition of permanent establishment (PE) provided in the Lao Tax Law.

There are no concrete anti-avoidance rule provisions whether it is specific or general. Besides there is no anti-treaty shopping provision in Lao tax law, either. Furthermore, there are no specific transfer pricing rules. However, the tax authority has the right to assess the transaction if they determine it is not at the market price or reasonable. There is no guideline of the market rate or reasonable price issued from the authority.

As of the year 2017, any intragroup transaction (financial and operation) shall be adjusted for tax calculation on the basis of guidance given by Tax Law (rates, threshold admission) or on arm's length principle basis.

Laos is not a participant in the Inclusive Framework on BEPS.

Because Laos is a communist state, the legal system built in the western countries may not be found. The reality of its economy does not seem to have required vast network of tax treaties and intricate rules of taxation until now. The fact that there are no provisions in the current tax laws on the concept of permanent establishment and for the transfer pricing taxation seems to represent the current status of its tax law basis. As is almost always found in the examples of developing countries, the strength and scope of the economy of a country determines the needs for its legal infra-structure whether the area of law is private or public.

The tax authority of Laos promulgated recently the administrative guideline for transfer pricing taxation even without statutory legal basis. And it also pronounced the administrative guideline for the VAT taxation on E-commerce. These guidelines seem to prove the reality that Laos as a country had to have responded to the changes in the market and economy it is facing with. Laos which has not been familiar with market economy and western legal law system seems to have begun to actively introduce such systems. This gives us a strong indication for its necessity of international cooperation with countries such as Korea, which has plenty of recent successful experiences in those aspects.

A. Tax System

Lao PDR is ruled by a single party Communist government. It was a former French colony that gained independence in 1954.

The major industries in Lao PDR are mining, hydro power, agriculture, and light manufacturing. There has been significant foreign investment in the hydro power and mining industries. Lao PDR's major trading partners (i.e. foreign investors) are Thailand, China, and Vietnam.

The government has instituted several measures to encourage foreign investments and increase private investment.

B. Tax Policy and Administration Agency

Ministry of Finance website: https://www.mof.gov.la/index.php/en/home/

Laos Tax Department website : http://taxservice.mof.gov.la/websquare/websquare.do

There is no formal tax appeal process in Laos. However, a taxpayer who does not agree with the tax audit by the officer may submit a proposal letter to the tax authority for reinvestigation.

C. Income Tax System

1) Underlying Law

Tax Administration Law (№ 66/NA, 17 June 2019), Income Tax Law (№ 67/NA, 18 June 2019) and Excise Tax Law (№ 68/NA, 19 June 2019).

These new tax laws are implemented from 1 January 2020. The Value Added Tax Law (№ 48/NA, 20 June 2018) is also an important component of the tax regime.[88]

88) http://taxservice.mof.gov.la/websquare/websquare.do

2) Income Tax Strucutre

a) Taxpayer

Laos tax law does not separate corporate tax and individual income tax, but taxes each type of income separately. Profits tax as a kind of income tax is levied on profits generated from business income of corporations, individuals, and other organizations.

b) Individual Income

Taxable income is divided into salary income, business income, other income, and exempt income.

Other income includes dividends, interest, royalties, rentals, and capital gains. Exempted income includes dividends and stock transfer income from listed corporations.

Under Income Tax Law No. 67/NA, dated 18 June 2019, all individuals, whether Lao or foreign, that generate income in Laos, must pay income tax in Laos. All employees are taxed under a progressive income tax regime. A resident of Laos who works in a foreign country must declare and pay income tax in Laos, unless that person is subject to and pays income tax in a foreign country that has a tax treaty with Laos. Investment income (e.g. dividends, profit from the sale of shares, interest income, guarantee fees, rental income from immovable property, royalty income) are subject to income tax. Capital gains (e.g. income from the sale of shares, income from immovable property) are subject to income tax.

Profit tax is a direct tax imposed on the profits of enterprises, including individuals who engage in business activities.

Instead of profit tax annual turnover tax(lump-sum tax) is levied on micro enterprises, including freelancers who engage in business activities.

c) Corporate Income

Corporations and partnership businesses are liable for profit tax. Domestic businesses are liable for taxes on your worldwide income. Foreign corporations are liable for tax on domestic source income.

Dividends are taxed at a rate of 10% upon receipt. There are no special provisions for the distribution or receipt of intercompany dividends.

d) Tax Rates

(1) Individual Income

A single, different tax rate is imposed depending on the type of income. As an exception, salary income is subject to progressive tax rates (0, 5, 10, 15, 20, 25%) with a top tax rate of 25%.

(2) Capital Gains

2% of the proceeds from the sale of stocks is levied as capital gains tax. Rregistered stock on the Exchange is exempted from it.

(3) Corporate Profit Tax Rate

Domestic and foreign companies alike are subject to profit tax at 20% (previously 24%), effective as of 1 January 2020.

For companies engaged in the manufacturing, import and sale of tobacco products, the profit tax rate is 22% (previously 26%), of which 20% is remitted to the state budget and 2% is contributed to the Smoking Control Fund (Anti-Smoking Fund).

For companies operating a business related to the development of human resources such as schools, training centres and other educational institutions and business activities related to modern hospitals, medicine production and medical equipment factories, the profit tax rate is 5%, which shall apply after

the expiration of the profit tax holiday under the Investment Promotion Law.

For companies operating a business which utilizes new innovative technology, eco-friendly technology, saving of natural resources and clean energy in manufacturing, the profit tax rate is 7%, which shall apply after the expiration of the profit tax holiday under the Investment Promotion Law.

For companies listed on the Lao Security Exchange (LSX), the profit tax is 13% for a period of 4 years from the date of listing and thereafter the standard profit tax rate of 20% shall apply.

For micro, small and medium-sized enterprises that are registered in accordance with the law and registered in the VAT system, the profit tax rates are:

- micro enterprises: 0.1%;
- small enterprises: 3% for a period of 3 years; and
- medium-sized enterprises: 5% for a period of 3 years.

(4) Withholding Tax Rates

The following withholding tax is levied on both residents and non-residents.

Payment	WHT rate (%)
Dividend (including distribution of partnership income)	10
Interest from lending activities (non-bank) and guarantee fees	10
Profit from sale of shares	2
Prizes and lottery prizes in cash and kind	5
Royalty	5
Sale or transfer of real property	2
Commission and consultancy fees	5

What is unique is that withholding tax is levied on domestic-source business income of non-resident foreign corporations as follows.

A foreign withholding tax applies where a registered entity in Lao PDR contracts with a foreign supplier of goods and services not registered in Lao

PDR regardless of whether the services are provided in Lao PDR or outside Lao PDR. The foreign withholding tax comprises both a PT and VAT (on services only) element and is the final tax on the foreign supplier. The withholding and filing obligation rests with the Lao PDR customer, and it is applied before payment to the foreign supplier.

A non-resident company will be subject to profit tax in the Lao PDR if it derives income from sources in the Lao PDR. For such companies the tax is paid by means of a withholding that is applied by the Lao enterprise that remits the income. This withholding is calculated on a deemed profit basis. The deemed profit is the annual income multiplied by the profit ratio of each type of activity. The deemed rates are determined according to the nature of the contract or activity.

Activity	Deemed profit margin (% of business revenue)	Deemed PT rate (%)
Agricultural manufacturing and handicraft production	7	1.4
Industrial production and other processing industries	10	2
Commerce and services	15	3

On 26 April 2016, Lao Holdings submitted a second “material breach application”. The second time around, the ICSID tribunal determined, inter alia, that: (1) Laos’ imposition of a percentage-based tax (rather than flat lump sum tax) amounted to a material breach of the settlement agreement; and (2) Laos’ failure to discontinue criminal investigations against the claimants constituted a material breach of the agreement. On that basis, the tribunal decided that the arbitration “is revived”.[89]

89) https://www.fiettalaw.com/pil_news/tribunal-revives-suspended-icsid-arbitration-against-laos-following-material-breach-of-settlement-agreement/

3) Key Issues in International Tax

a) International Cooperation

Tax Administration Law Article 10 International cooperation stipulates on international cooperation as follows.

> The state promotes cooperation with foreign countries, regional and international regarding tax management work by sharing technical, technical, information, human resource development and other aspects to develop such work, following bilateral or multilateral negotiations and agreements with tax agencies of various countries, treaties and international agreements to which Lao PDR is a party.

b) Residency

Residence generally has little relevance for tax purposes. The taxation regime depends on the taxable person (legal entity or individual) and on the type of income received, not on the residence of the taxpayer. Residence becomes a relevant criterion when the provisions of a tax treaty are sought to be invoked.

Under the Income Tax Law resident means a person who has a permanent address, lives, earn a living or operates a business in the Lao PDR.[90]

Non-residents means those who come to eat or do business in Lao PDR but do not live and do not have a permanent address;

Foreigners who work in Laos and receive salary in foreign countries, if they live in Laos for 183 consecutive days, or nonconsecutive days but over 183 days within the year, unless an applicable double tax treaty provides otherwise

There is no definition of corporate residence. All companies (i.e. all forms of legal entity) that are registered under Lao law, or that are incorporated under foreign law and are carrying on business in Laos, are subject to Lao profit tax. Foreign entities carrying on a business in Laos are subject to tax on their income derived in Laos.

90) Tax Administration Law Artilce3 #6

c) Non-resident's Taxation

The Laos tax laws do not use the concept of permanent establishment. The permanent establishment concept is generally only applied when double taxation agreements are used.

Non-resident companies are subject to taxation on their revenues sourced from Laos. A non-resident enterprise is subject to Laos profit tax if it derives income from sources in Laos. For such a non-resident enterprise that derives income from sources in Laos, the tax is paid by means of a withholding applied by the Lao enterprise which remits the income to the non-resident. This withholding is calculated on a deemed profit basis.

d) Double Tax Relief

There are no foreign tax credits available under domestic tax law. A credit is not allowed for foreign tax paid on foreign income. However, certain tax treaties have provisions for either deductibility or credit of foreign tax.

e) Permanent Establishments

There is no definition of permanent establishment (PE) provided in the Lao Tax Law.

It is understood that the reason for having no PE definition in the law is because there is foreign withholding tax (FWHT) levied on foreign entities conducting their business activities in Lao PDR.

Income of branches of foreign companies from carrying on business in Lao PDR are subject to the same tax rate as companies registered under Lao PDR laws. However, not all foreign companies can establish a branch in Lao PDR. Only foreign companies in certain industries may establish branches in Lao PDR (e.g. banking, financial institutions, aviation, and consulting).

f) Tax Incentives on FDI

PT incentives are provided under the Investment Law for investments in the prescribed business activities (concession businesses), subject to certain conditions. The law divides the investment areas into three zones. The PT exemptions are as follows:

Zone	Areas	PT exemption (years)	Additional PT exemption (years)*
1	Poor zone, remote zone with socio-economic infrastructure unfavourable to investment	10	5
2	Zone with socio-economic infrastructure favourable to investment	4	3
3	Special economic zone	Shall comply with the specific regulations	

D. Anti-avoidance Rule on International Tax Planning

1) Basic Principles

There are no general anti-avoidance provisions under Lao tax law. There are no special anti-avoidance rules in Laos. The Income Tax Law contains a new provision empowering tax authorities to reclassify certain expenses as non-deductible if they are too high, even if related to business operations.

There is no anti-treaty shopping provision in Lao tax law.

Individuals or organizations that have violated the Tax Law, may be subject to re-education measures, fines, compensation or criminal punishment depending on the seriousness of the case, such as: failure to

provide information, participate in the concealment of facts and encourage wrongdoings related to tax obligations by business persons giving or taking bribes or gifts, conspiring to appropriate government money and threatening and causing physical harm to staff and tax officials or taxpayers.

2) Transfer Pricing Taxation

There are no specific transfer pricing rules.

Laos Tax regulation does not require yet a Transfer Pricing (TP) documentation (Master File MF, Local File LF, Country-by-Country Reporting CBCR) to be prepared and submitted to Tax Authority.

However, the tax authority has the right to assess the transaction if they determine it is not at the market price or reasonable. There is no guideline of the market rate or reasonable price issued from the authority.

As of the year 2017, Any intragroup transaction (financial and operation) shall be adjusted for tax calculation on the basis of guidance given by Tax Law (rates, threshold admission) or on arm's length principle basis.

As of the year 2017, in practice, TP policies of MNC can be a great support in terms of documentation and explanation for intragroup service pricing justification. Yet, to date, the Tax Authority does not have the capacity to read and manage such high-level detailed documentation and only few parts of it might reveal usable during tax audits. No reference to OECD guidelines is made in internal tax regulations.

In 2021 the practice of some tax auditors is to use point 11 of Article 18 of the Amendment of the Tax Laws No. 01/NA dated 7 August 2021 to reject any expense that is "higher than reality".[91]

The "arm's length" principle is the standard universally adopted in international tax law: it should be followed by Lao taxpayers for all expense transactions, whether with third parties or related parties.

91) The current practice of some tax auditors is to use point 12 of Article 34 of the Amended Tax Law 2015 to reject any expense that is "higher than reality"("12. Expenses related to business operations but without invoices or with invalid invoices or any expenses that are higher than reality;"). Intragroup loans are also restricted under the regulation with point 8 of the same article, which forbids the tax deduction of interest paid to partners. The "arm's length" principle is the standard universally adopted in international tax law: it should be followed by Lao taxpayers for all expense transactions, whether with third or related parties. Invoicing is required for any transaction (point 12 of Article 34 of the Amended Tax Law 2015), and contractual documents, such as bills, must be kept for 10 years. If the taxpayer is part of a group that has a transfer pricing group policy, this documentation should also be maintained, even if not required by law, to explain and provide supporting evidence for the pricing used in transactions between the Lao entity and its related parties.

If the taxpayer is part of a group that has a transfer pricing group policy, this documentation should be maintained, even if not required by law, to explain and provide supporting evidence for the pricing used in transactions between the Lao entity and its related parties.

Tax Authority can apply a penalty of 20 to 60% of the corporate income tax due considering the tax result of the multinational is underreported due to Transfer Pricing practice.

Accounting Authority can send to re-education advisor, accountant, auditor and administrator of multinationals in case of misstatements in the financial statements which are impacted by Transfer Pricing practice.

3) Controlled Foreign Corporation

There is no CFC or similar regime in Lao PDR.

4) Thin Capitalization

There are no specific thin capitalisation rules in the Laos Tax Law. However, the Law on Investment Promotion No 14/NA (Investment Law), dated 17 November 2016, provides that the registered capital of companies availing of the incentives shall not be less than 30% of the total capital. All interest payments must be supported by relevant documentation showing that the payments are made for business purposes. Otherwise, the tax authorities may disallow an element of the interest expense.

E. Tax Treaties

1) Tax Treaty Status

As of the year 2023, Laos implements tax treaties signed with Belarus, Brunei, China, Indonesia, South Korea, North Korea, Kuwait, Luxembourg, Malaysia, Myanmar, Russia, Singapore, Thailand, and Vietnam.

2) Non-OECD economies' positions on the OECD Model Tax Convention

Laos has not provided a comment.

3) Major disputes over the application of tax treaties

It is difficult to find publicly available material on this topic.

F. BEPS Implementation

Laos is not a participant in the Inclusive Framework on BEPS.

1) Implementation of the BEPS Project through domestic laws

Other than VAT with respect to digital services providers discussed below, not applicable.

2) Implementation of BEPS Action 15 Multilateral Instrument ("MLI") through domestic laws

Laos is not a signatory nor a party to the MLI.

3) Taxation of the digitalized economy

The Ministry of Finance's Notification on the Implementation of the Tax Obligations of the E-Commerce and Digital Platform No. 0541/MOF, dated 24 February 2022 ("the Notification").

Non-resident E-Commerce and Digital Platform Service Providers

Non-resident companies not registered in Lao PDR that provide E-commerce marketplace and digital platform services to users within Lao PDR (Lao PDR market), such as:

- provision of online movies, music, games, and applications, including YouTube, JOOX, TikTok, Humble, Zoom, CODASHOP;
- provision of Streaming, including NETFLIX, Apple TV+, Disney+;

- provision of advertisement, advertising media, including Facebook, Google;
- provision of booking of hotel, accommodation, travel, including Agoda, Booking.com, Airbnb;
- provision of being an intermediate between the buyers and sellers, including Shopee, Lazada.

If a non-resident company has E-Commerce and digital platform services income from Lao users of more than LAK 400 million per year (approx. US$34,000), it must register for VAT in Lao PDR.

Resident and Non-resident Individuals

Individuals who are residents and non-residents of Lao PDR who have income from E-Commerce and digital platform services must register for a TIN, for individuals, with the relevant tax authorities or through the application PTIN to file and pay tax.

Income of resident individuals from online sales, through E-Commerce channels, trading on E-Commerce marketplaces, the provision of E-Commerce marketplace services will be subject to income tax at 2% on total income (i.e., without the deduction of costs or expenses).

Under the Notification, a non-resident E-Commerce or digital platform service provider is required to withhold income tax before making payments to individuals who are residents of Lao PDR and pay through the online TaxRIS.

〈References〉

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KPMG, Laos Tax Profile, 2018

EY, Worldwide Corporate Tax Guide, 2023

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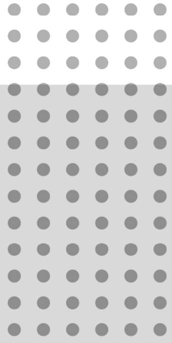
OECD Model Tax Convention 2017



07 .

Myanmar

Summary

Since 2021, Myanmar maintains an emergency system in which the State Administration Council exercises full authority of the government. Becuase of the instability of the politics and the economic sanctions put by the western countries, the current economy of Myanmar as a whole does not seem to be positioned in a situation to purse the growth and expand the international cooperation.

The State Administration Council may amend, insert or substitute the tax rates of the Union Tax Law. The internal revenue department(IRD) is established as an internal organization of the Ministry of Planning and Finance.

The basis for income tax is the Income Tax Law (ITL) 1974. The tax law system has been formed through intermittent revision of the Union Tax Law (UTL), a unified tax law. UTL has the nature of a special law for existing tax laws. The most recent revision of the UTL has been made in 2023.

There is no provision in either the ITL or the UTL for unilateral relief against international double taxation. Relief may be available pursuant to a tax treaty, but the application of the tax treaties is at the sole discretion of the Ministry of Planning and Finance.

The regulation of the Director General of IRD on Tax Avoidance has been in effect, which is IRD Public Ruling 3/2022 under Tax Administration Law(TAL, 2023.1.1.~). The Ruling provides that Tax Avoidance will apply if a taxpayer fully understands the tax laws and breaches the tax ethics with the purpose of avoiding the tax or acting to reduce the taxable income or tax liability.

Although no formal regulations exist for the transfer pricing taxation, the IRD will use its knowledge of market prices of similar transactions conducted

between independent parties as a guideline when assessing whether a transaction between related parties is reasonable, and will use a rationale similar to the basis of the methodologies set out in the OECD guidelines.

There are currently no CFC rules in Myanmar. And there is no specific safe harbour with respect to a debt-to-equity ratio for Myanmar tax purposes.

The tax treaty network is very limited in Myanmar. And Myanmar is not a participant in the Inclusive Framework on BEPS.

Myanmar is not properly equipped with the legal and administrative systems to provide the legal certainty in terms of taxation. It does not seem to exert impressive efforts to replenish its tax system probably because there are lots of other important tasks given before the government authority. The VAT tax system on E-Commerce in effect in the neighboring Indo-china countries such as Cambodia and Laos has not been yet intorduced. Most importantly the check and control system among the legislature, the government and the judiciary does not take roots in the country.

In an effort to increase international cooperation, the Tax Programme of the OECD Korea Policy Centre may share Korea's policy experience of reforms, which may take not a little efforts with step-by-step approach to attain long-term policy goals.

A. Tax System

Since 2021, Myanmar maintains an emergency system in which the State Administration Council exercises full authority following the military coup. The United States is strengthening sanctions against the military government, and Japan is taking measures such as suspending investments. South Korea's Ministry of Foreign Affairs has designated Myanmar's Golden Triangle region as a no-travel zone.

The Burma Income Tax Law (1922) was first implemented in Myanmar in 1922, when the country was under British colonial rule.

During the socialist economic system, the Income Tax Law (1974), Profit Tax Law (1976), and Goods and Services Tax Law (1976) were promulgated.

With the transition to a market economy in 1988, the Goods and Services Tax Act was abolished and the Commercial Tax Act was promulgated.

The Profit Tax Act was repealed in 2011.

As of 2014, 18 types of taxes and duties are being imposed.

The main domestic taxes are income tax, commercial tax, stamp duty, and lottery tax.

B. Tax Policy and Administration Agency

The State Administration Council may amend, insert or substitute the tax rates of the Union Tax Law.

The internal revenue department(IRD) is established as an internal organization of the Ministry of Planning and Finance.

IRD website : https://www.ird.gov.mm/

Under the Director General of IRD, the Income Tax Department, Commercial Tax Department, Stamp Tax Department, and Lottery Tax Department are established for each major domestic tax, and in addition, organizational management departments such as human resources are formed.[92)]

The Ministry of Finance had a Revenue Appellate Tribunal, which changed its

affiliation to the Union Government Office in 2020.[93] A taxpayer who has an objection to a tax disposition must first raise an objection to the Commissioner of the National Tax Service, and if he or she has an objection to the settlement, he or she must file a request for review with the Tax Review Board.[94]

In Myanmar, the departments responsible for individual taxes were divided as follows at the time of the OECD survey in 2014. The tax administration organization under the current military government appears to be structured very fluidly.

Type of tax	Administered by
Income tax	IRD
Profit tax	IRD
Commercial tax	IRD
Excise duties	GAD
Import license fees	Directorate of Trade, Ministry of Commerce
State lottery	IRD
Transportation tax	Department of Road Transport Administration, Ministry of Rail Transport
Stamp duties	IRD
Customs duties	Customs Department, Ministry of Finance
Land revenue	GAD
Water and irrigation tax	GAD
Tax on extraction of forest produce	Forest Department, Ministry of Environmental Conservation and Forestry
Tax on extraction of minerals	GAD
Tax on fisheries	Department of Fisheries, Ministry of Livestock and Fisheries
Tax on rubber	Forest Department, Ministry of Environmental Conservation and Forestry

Note: IRD: Internal Revenue Department, Ministry of Finance.
GAD: General Administration Department, Ministry of Home Affairs.

C. Income Tax System

1) Underlying Law

The basis for income tax is the Income Tax Law (ITL) 1974. This has been revised until 2015. Since 2016, the tax law system has been formed through

92) OECD Investment Policy Reviews: Myanmar 2014, p.167
93) https://www.mopf.gov.mm/en/page/finance/
94) https://orbitax.com/taxhub/countrychapters/MM/Myanmar/e5f4c7d16b644b02bdb68eb4bbc3ab94/Appeal-Procedures-582

intermittent revision[95] of the Union Tax Law[96] (UTL), a unified tax law. UTL has the nature of a special law for existing tax laws. The UTL revised in 2023 includes the following regulations on the taxation system.[97] It contains provisions regarding the tax assessment system below.

5. The State Administration Council may amend, insert or substitute the tax rates of this Law.
9. The relevant Ministry may issue notifications, orders, directives and procedures, without changing the original meanings of the provisions of the specific goods tax, commercial tax, income tax and royalty in this Law, to abide by these provisions clearly.
32. The interpretation of the expressions in Chapter VII of this Law shall have the same meanings defined in the Income Tax Law.
43. The notification, orders, directives, procedures, interpretation satements, practice statements, and public ruling which were issued in relation to the yearly promulgated Union Tax Law, may continue to be applicable in so far as they are not contrary to this Law.

2) Income Tax Structure

a) Taxpayer

A single income tax is imposed on both individuals and corporations.[98]

(1) Individual

Individual income tax is levied on a worldwide basis on income from employment, business and professional activities and on other forms of income including

95) https://www.ird.gov.mm/en/page/621
96) Pyidaungsu Hluttaw Law No 22 of 2016; Pyidaungsu Hluttaw refers to the bicameral parliament established by the 2008 Constitution.
97) UTL Revised 2023 The most recent revision was made by The State Administration Council. Union Tax Law No.18/ 2023; Union Tax Law 2023 No. 55/2023 on September 12, 2023
98) https://orbitax.com/taxhub/countrychapters/MM/Myanmar/fa9f4f61c1a542459116c91455cc240b/Tax-Base-for-Resident-Entities-539

investment income. Tax on capital gains is assessed separately. Income tax is levied on resident and non-resident individuals.

If one has the residency in this country, he or she is liable for tax on worldwide income, but if he or she is not have residency, he or she is only liable for tax on domestic source income. Foreign-source salary income of non-resident citizens has not been taxed since 2015, but taxation began in 2023 through a revision to the law. Non-resident nationals are obligated to pay taxes domestically on overseas-sourced salary income, but only limited deductions for taxes paid abroad are allowed(Union Tax Law 2023 with Law No. 55/2023 on September 12, 2023).[99]

(2) Corporation

Companies are subject to corporate income tax, which is levied on corporate profits and other forms of income, as well as on taxable gains accruing to companies. The tax is levied on a worldwide basis.

Myanmar has a one-tier corporate tax system, under which dividends received from an association of persons (i.e. partnerships, joint ventures, companies, associations

99) UTL Section 22 (a)...tax on nonresident citizens' salary income earned abroad, as detailed below, in addition to the 10% tax on other types of income obtained abroad without deducting the tax reliefs under sections 6 and 6-A of the Income Tax Law. The tax is payable in the same currency as the income obtained. This tax on nonresidents' salary income earned abroad can be calculated according to whichever of the two methods below yields the lowest amount of tax due:

Method 1 Subtract the tax relief (i.e., 20% basic allowance, parents' allowance, dependent spouse and dependent child allowance, etc.,) from the total salary amount in accordance with Section 6 of the Income Tax Law (1974). Calculate the income tax payable at the progressive personal income tax rate under Section 19 (c) of the 2023 UTL and as per Clause 8 of the Income Tax Regulation (2018).
Method 2 Calculate the income tax on the total salary income at 2% without subtracting the tax relief under Section 6 and 6-A of the Income Tax Law (1974).

Taxpayers may also subtract the amount of foreign taxes paid from the total tax calculated under this law(Section 22 (c) of the Amended UTL 2023).
Other income, apart from salaries, means income derived from profession, business, property rental, capital gain, income escaping assessment, and other sources of income.
10% income tax must be imposed on the total income, apart from salaries, received by non-resident Myanmar citizens in foreign countries without granting the tax relief under Section 6 and 6-A of the Income Tax Law (1974).
https://www.tilleke.com/insights/myanmar-mandates-income-tax-on-nonresident-citizens-salary-income/)
https://www.vdb-loi.com/mm_publications/amendment-to-the-union-tax-law-2023-income-tax-on-salary-income-received-by-non-resident-myanmar-citizens-in-foreign-countries/)

formed by individuals, cooperative societies and government economicorganizations) are exempted from income tax in the hands of shareholders at all levels (section 5(a)(viii) of the ITL).

Myanmar Investment Commission-registered companies are not taxed on their foreign income.

b) Taxable Object

(1) Individual

Taxable income is classified into salary income, professional income, business income, property income, capital gains, untaxed income, and other income.

The minimum taxation limit for salary income is 4.8 million kyats (Section 19(1) UTL 2023).

Dividends received from an association of persons (i.e. partnerships, joint ventures, companies, associations formed by individuals, cooperative societies and government economic organizations) are exempt from income tax in the hands of shareholders at all levels (section 5(a)(viii) of the ITL).

Interest is taxable as business income, even if it is not derived from a business source (section 11 of the ITL).

Income from movable property is considered as business income. Income from lease of immovable property will be considered under the head of income from property and will be taxed separately. Other income from investment is generally computed in the same way as business income.

All investment income is subject to the same progressive tax rates.

Capital gains are assessed under a separate head of income. Income tax is levied on gains from the sale, exchange or transfer of capital assets.

(2) Corporation

Organizations (corporations, partnerships, joint ventures, etc.) are subject to corporate income tax and are not taxed on dividends distributed (one-tier

corporate tax system).

Resident companies are subject to income tax on income derived from sources within and outside Myanmar (section 3(n)(ⅰ) ofthe ITL). Non-resident companies are taxed only on income derived from sources within Myanmar (section 3(n)(ⅲ) of the ITL).

Income derived by a company is computed under the following heads of income (section 8 of the ITL):

- business income;
- income from property;
- income from capital gains;
- income from other sources; and
- income that has escaped assessment

Tax on capital gains is assessed separately. Income from movable property is treated as business income. Interest income is also treated as business income, even if it is not derived from a business source (section 11 of the ITL).

Income from immovable property (excluding capital gain) is generally computed in the same way as business income, subject to allowable tax deductions other than capital expenditures, personal expenses, and inappropriate expenses (section 12 of the ITL).

c) Taxable Period(Individual, Corporation)

April 1 - March 31 of the following year

d) Taxable Amount(Individual Income)

- Basic deduction: 20% of total income (limit of 10 million kyats)
- Spouse deduction: 500,000 kyats
- Child deduction: 300,000 kyats per child
- Capital gains deduction: within 5 million kyats

e) Tax Rates(Individual, Corporation)

#	taxpayer/income type	tax rate
1	foreign source income of non-resident national	10%
2	state economic company, domestic corporation, cooperative	22%[100)
3	non-resident or foreign corpooration	35%
4	income unable to ascertain the source(undisclosed income)	30%
5	salary income, business income anc professional income (progressive rate)	0~25%
6	capital gain	
	resident national	10%
	non-resident foreigner	40%
	capital gain from fixed asstes in the peroleum and gas industry	
	~100 billion kyats	40%
	~150 billion kyats	45%
	150 billion kyats~	50%

3) Key Issues in International Tax

a) Residency

Foreigners who reside in Myanmar for at least 183 days during an income year are considered as resident foreigners (section 3(k)(ⅰ) of the ITL). Meanwhile, foreigners who reside in Myanmar less than 183 days during an income year are considered as non-resident foreigners.

A resident company is a company as defined and formed under the Myanmar Companies Law 2017 (previously Myanmar Companies Act 1914) or any other existing law of Myanmar (section 3(k)(ⅱ) of the ITL). A corporation established under the Myanmar Company Act, etc., it is considered a domestic corporation

100) oil and gas exploration and production sector 25%

even if part or all of its assets are held by foreigners (based on the governing law of establishment).

b) Non-resident's Taxation

Royalty income is not a separate income item and is taxed as business income.

A Myanmar corporation can claim a deduction for royalties, management service fees, and interest charges paid to affiliates, provided that these payments are commensurate with the volume of business.

c) Double Tax Relief

There is no provision for unilateral relief. Relief may be available pursuant to a tax treaty, but the application of the tax treaties is at the sole discretion of the Ministry of Planning and Finance.[101]

However, when paying income tax domestically on foreign-source salary income of a non-resident Korean, the amount of foreign tax paid can be deducted(Section 22 (c) of the UTL 2023).[102]

d) Permanent Establishments

Non-residents or foreign corporations are taxed if they have domestic source income. There is no provision in the domestic tax law that requires a permanent establishment in the country as a prerequisite for taxing business income.

In addition, the tax law does not define the concept of permanent establishment. The concept of permanent establishment is defined in tax treaties, and some tax treaties define service PE(e.g., tax treaty with South Korea).[103]

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101) https://taxsummaries.pwc.com/myanmar/individual/foreign-tax-relief-and-tax-treaties

102) Example : A non-resident Myanmar citizen has paid the income tax of US$450 to the tax authority in a foreign country. The tax payable to Myanmar IRD as per Section 22 of the Amended UTL 2023 is US$500. In this scenario, the non-resident Myanmar citizen can exercise his or her right to offset the tax paid in the foreign country against the tax payable in Myanmar. Therefore, the tax balance that must be paid by the non-resident Myanmar citizen to Myanmar IRD will be US$50.

103) https://orbitax.com/taxhub/countrychapters/MM/Myanmar/c99618a7bbae4c058f2a88b05f011dfe/Domestic-PE-of-a-Foreign-Entit-535

Branches of non-residents or foreign corporations are taxed in the same way as residents or domestic corporations. If there are no branches, tax authorities mainly tax withholding tax.

A non-resident or foreign corporation subject to a tax treaty provision that states that it can be taxed in the source country only if it has a permanent establishment may not be taxed in Myanmar under that provision.

e) Tax Incentives on FDI

Foreign investors may register their companies under the Myanmar Companies Law (CA) or in conjunction with the Myanmar Investment Law (MIL) or Myanmar Special Economic Zone Law (Myanmar SEZ Law).

The differences between companies registered under the CA and the Myanmar Investment Commission (MIC)/SEZ are in relation to their eligibility for tax incentives and longer land use terms, as well as minimum foreign share capital requirements.

(1) Myanmar Investment Law

The new MIL 2016 was enLawed on 18 October 2016. The new MIL is a consolidation of the Myanmar Citizen Investment Law (2013) and the MFIL (2012). The Myanmar Citizen Investment Law and MFIL have been repealed with effect from 18 October 2016.

The list of tax benefits under the new MIL are as follows:

- For investments in sectors listed in a notification to be issued by the Commission in order to promote investment, exemption from corporate tax for seven, five, or three years, depending on whether the investment takes place in an underdeveloped, moderately developed, or adequately developed region or state. The designation of these zones are subject to change from time to time, depending on the development in the respective regions. Income tax exemptions shall only be granted to sectors that

the Commission has specified as sectors that are promoted for investments. The Commission may allow more favourable exemptions and reliefs for locations where Myanmar citizen-owned businesses are operated. The government may also provide subsidies, funding, capacity building, and training to Myanmar citizen investors and citizen-owned small and medium-sized enterprises.

- Exemption from customs duties or other internal taxes or both on machinery, equipment, instruments machinery components, spare parts, construction materials not available locally, and materials used in the business that are imported as they are Lawually required, during the construction period, or during the preparatory period of the investment business.
- Exemption or relief from customs duties and/or other domestic taxes on raw materials and semi-finished goods that are imported for the production of export goods by wholly export investment businesses.
- Right to obtain a refund, based on the amount of exported goods, of customs duties and/or other domestic taxes paid at the time of importation of raw materials and semi-finished goods that are used to manufLawure the products in the country and re-export them.
- If the volume of investment is increased and the original investment business is expanded during the period of investment, exemption or relief from customs duties or other internal taxes or both on machineries, equipment, instruments, machinery components, spare parts, materials used in the business, and construction materials not available locally, which are imported as they are Lawually required for use in the business that is being expanded.
- Exemption or relief from income tax if the profits obtained from the investment business is reinvested in the same business or in a similar type of investment business within one year.

- Right to deduct depreciation for the purpose of income tax assessment, after computing such depreciation from the year of commencement of commercial operation based on an accelerated depreciation rate (which is less than the stipulated lifetime of the asset).
- Right to deduct expenses from assessable income incurred for research and development (R&D) related to the investment Lawivities/business required for the development of the country and carried out in the country.
- Foreign investors will pay income tax at the rates applicable to citizens residing within the country.

(2) Special economic zones (SEZs)

In addition to foreign investment under the MFIL, foreign investors may invest under the Myanmar Special Economic Zone Law of 2014 (Myanmar SEZ Law).

The Myanmar SEZ Law is a basic law for any SEZ within Myanmar. The main regulatory body handling foreign investment under the Myanmar SEZ Law is the Central Body for the Myanmar SEZ.

The Myanmar SEZ Law contains provisions relating to the exempted zone, business promoted zone, other zone, exempted zone business, other business, developers and investors, exemptions and reliefs, restrictions, duties of developers or investors, land use, banks and finance management and insurance business, management and inspection of commodities by the customs department, quarantine, labour and guarantee of non-nationalisation, dispute resolution, WHT, bank and financial management and insurance business, etc.

Incentives under the Myanmar SEZ Law include:

For investors:

- Income tax holidays for the first seven years starting from the date of commercial operation in respect of those investment businesses operated in an exempted zone or exempted zone businesses.
- Income tax holidays for the first five years starting from the date of

commercial operation in respect of those investment businesses operated in a business promoted zone or other business in a promoted zone.

- 50% income tax relief for the investment businesses operated in an exempted zone and a business promoted zone for the second five-year period.
- For the third five-year period, 50% income tax relief on the profits of the business if they are maintained for re-investment in a reserve fund and re-invested therein within one year after the reserve is made.
- Exemption on customs duty and other taxes for raw materials, machinery and equipment, and certain types of goods imported for investors in exempted zones; whereas, for investors in prompted zones, exemption on customs duty and other taxes for the first five years in respect of machinery and equipment imported that are required for construction starting from the date of commercial operation, followed by 50% relief of customs duty and other taxes for a further five years.
- Carry forward of loss for five years from the year the loss is sustained.

For developers:

- Income tax holidays for the first eight years starting from the date of commercial operation.
- 50% income tax relief for the second five-year period.
- For the third five-year period, 50% income tax relief on the profits of the business if they are maintained for re-investment in a reserve fund and re-invested therein within one year after the reserve is made.
- Exemption on customs duty and other taxes for raw materials, machinery and equipment, and certain types of goods imported.
- Carry forward of loss for five years from the year the loss is sustained.
- Land use may be granted under an initial lease of up to 50 years and renewable for a period of an additional 25 years. Developers/investors

may rent, mortgage, or sell land and buildings to another person for investment purposes within the term granted with the approval of the management committee concerned.

Investors seeking to register an entity under the SEZ need to obtain an investment permit from the relevant SEZ Management Committee.

D. Anti-avoidance Rule on International Tax Planning

1) Basic Principles

The regulation of the Director General of IRD on Tax Avoidance has been in effect, which is IRD Public Ruling 3/2022 under Tax Administration Law[104] (TAL, 2023.1.1.~).[105]

a) Tax Avoidance

Section 32 of the TAL states that the Director General ("DG") of the IRD may, in conducting an assessment, disregard a transaction or series of tranactions that are artificial or fictitiously presented with the purpose of reducing the amount of tax payable. The IRD may determine transactions or a series of transactions on the economic substance of the transactions.

> Anti-avoidance
>
> 32. In making an assessment, the Director General may disregard a transaction or series of transactions that are artificial or fictitious done with the purpose of reducing the tax payable. Moreover, the transaction or series of transactions that has been mischarLawerised may be treated according to its economic substance.

104) 이 법은 Tax Administration Law Law No. 20 of Union Parliament 2019 June 7, 2019 제정되었다. 현재의 규정은 다음의 링크에 있다. https://www.ird.gov.mm/index.php/my/content/law

105) https://www.dfdl.com/insights/legal-and-tax-updates/myanmar-ird-issues-ruling-on-tax-underpayment-misdeclarations-and-evasion/
(2023-11-25 방문)

Public Ruling 3/2022 clarifies the term "Tax Avoidance" under the TAL. The Ruling provides that Tax Avoidance will apply if a taxpayer fully understands the tax laws and breaches the tax ethics with the purpose of avoiding the tax or Lawing to reduce the taxable income or tax liability. This includes the following matters and schemes:

- Failure to disclose an asset, property, service or benefit at market price;
- Making non-arm's length transfers for cross-border transfer pricing;
- Splitting income between taxpayers and associated enterprises with the purpose of lowering the total tax payable on income;
- Re-organizing the structures of associations to enjoy tax benefits; and
- Tax avoidance by abusing bilateral or multilateral tax treaties.

b) Negligent or Fraudulent Underpayment

Section 68 of the TAL states that if tax is underpaid, or might have been underpaid, as a result of an incorrect statement or material omission in the tax return, and that statement or omission is a result of intentional conduct or negligence, the taxpayer will be subject to the following penalties:

- 25% of the underpayment if the underpaid tax does not exceed MMK 100 million (approx. USD 48,000) nor 50% of the tax payable; or
- 75% of the underpayment if the underpaid tax exceeds MMK 100 million or 50% of the tax payable.

Public Ruling 3/2022 clarifies that "Negligent or Fraudulent Underpayment" will apply if the taxpayer files a tax return and under-reports the tax payable as a result of intentional conduct or negligence. This includes the following matters:

- Deliberate failure to file a tax return for the period;
- Under-reporting of income and proceeds of sales;
- Fraudulently claiming tax relief;
- Fraudulently applying for depreciation;

- Using or submitting false documents or fictitious invoices;
- Receiving tax credit on input tax by fraudulent prLawices;
- Omission of output tax;
- Failure to affix the tax labels on the receipt for tax payable;
- Failure to affix the tax labels on identified specific goods; and
- False or incorrect bookkeeping due to either person or machine.

c) False or Misleading Statements

Section 69 of the TAL states that if the taxpayer provides a false or misleading statements to the tax authorities, the taxpayer (except if Lawing in good faith) will be subject to a penalty of MMK 150,000 (approx. USD 70) plus a higher penalty of:

- The difference between the tax liability that should have been paid and the Lawual tax paid; or
- The difference between the tax refund that should have been claimed and the Lawual tax refunded.

Public Ruling 3/2022 clarifies that "False or Misleading Statements" will apply if the taxpayer submits false or misleading information to the IRD in order to reduce the tax or to receive a non-liable refund, and such statements were relied upon by the IRD as the correct submission of the taxpayer. This includes the following matters:

- Intentional omission of income and proceeds of sales;
- Declaration of false or misleading statements in a tax return;
- Submission of false or misleading statements during an official tax inquiry (whether in written or verbal form);
- Keeping or submitting false or misleading accounting records and documents;
- Illegal importation or export of commodities;

- Transferring the assets to avoid recovery of tax;
- Omission of the bank account information; and
- Keeping more than one financial statement.

d) Tax Evasion

Section 77 of the TAL states that a taxpayer who willfully evades the assessment, payment or collection of tax, or who willfully claims a refund of tax to which the taxpayer is not entitled is liable to the following penalties:

- The higher amount of MMK 250,000 (approx. USD 120) or 100% of the tax amount evaded;
- Seven years imprisonment; or
- Both 1 and 2.

Public Ruling 3/2022 clarifies that “Tax Evasion” will apply if the taxpayer commits or intentionally violates the tax laws, or commits “Negligent and Fraudulent Underpayment” and “False or Misleading Statements” on several occasions, or if the taxpayer’s non-compliance resulted to significant losses to the state. The ruling also clarifies that tax evaders may be prosecuted in accordance with the TAL and the Anti-Money Laundering Law.

2) Transfer Pricing Taxation

There are currently no transfer pricing rules in Myanmar.[106)]

However, in spite of this, groups of companies conducting business in Myanmar should still take care when pricing related party transactions. Although no formal regulations exist, the Internal Revenue Department (IRD) will use its knowledge of market prices of similar transactions conducted between independent parties as a guideline when assessing whether a transaction between related parties is reasonable, and will use a rationale similar to the basis of the methodologies

106) https://taxsummaries.pwc.com/myanmar/corporate/group-taxation(2023-11-25 방문)

set out in the OECD guidelines. Where the IRD deems that a price charged to a related party is not at market value or at arm's-length, it has the power to reassess tax based on a price and margin that it considers to be appropriate for that transaction.

Under Chapter VII of the Income Tax Law (ITA), taxpayers who have filed their annual tax return may also be required to "produce supporting evidence, accounts, and a list of property". If these are not sufficient, "income tax shall be assessed after scrutinising other supporting evidence required..." So, although no specific requirements exist for calculations to substantiate transfer pricing in Myanmar, when tax auditors from the Circle Companies Tax Office (CCTO) conduct their annual tax audits to issue tax assessments, they will require that supporting documents are available for their inspection.

Further, the IRD has the ability to reassess the tax amount where it believes there are instances of fraud, or under the following circumstances:

- Income chargeable to income tax has escaped assessment;
- Income has been under-assessed;
- Assessment has been made at a low rate; or
- Relief in excess of the amount Lawually allowable under the law has been allowed.

The IRD does not provide any further clarification or explanation of the above; hence, if the IRD applies these powers broadly, it may reassess under any circumstances where it believes that income is not being correctly declared, such as undercharged fee income in a related party transaction.

Where the ITL addresses the deductibility of expenses for the calculation of taxable income, it states that for expenses to be allowed to be deducted they must be "commensurate with the extent of the professional service". Again, this non-specific and undefined condition confers to the IRD the ability to disallow expenses in a very broad manner.[107]

3) Controlled Foreign Corporation

There are currently no CFC rules in Myanmar.

4) Thin Capitalization

Generally, there is currently no specific safe harbour with respect to a debt-to-equity ratio for Myanmar tax purposes.

Capitalization of a company might be covered in the licences granted to the company. However, there may be restrictions to the deductibility of interest if the loan is not approved. Interest on a foreign-sourced loan that is approved by the Myanmar Investment Commission and the Central Bank of Myanmar is deductible for income tax purposes. [108)]

The Central Bank of Myanmar (CBM) has set a maximum debt-to-equity ratio of 3:1 or 4:1 (as part of the criteria for a Myanmar entity to obtain a foreign loan).

E. Tax Treaties

1) Tax Treaty Status

As of the year 2023 Myanmar has entered into bilateral agreements that protect the income of foreign investors from being taxed in two different countries with the following 10 countries as follows:

United Kingdom(1950), Vietnam(2004), India(2009), South Korea(2009), Malaysia(2009), Singapore(2010), Laos(2010), Thailand(2012) * not in effect yet : Indonesia(2003), Bangladesh(2008)

2) Non-OECD economies' positions on the OECD Model Tax Convention

Myanmar has not provided a comment.

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107) Cynthia Herman, Myanmar: Transfer pricing in Myanmar, April 24, 2013 (https://www.internationaltaxreview.com/article/2a69p0gxbfuq19az39kow/myanmar-transfer-pricing-in-myanmar)

108) https://assets.kpmg.com/content/dam/kpmg/pdf/2016/07/tax-profile-myanmar.pdf

3) Major disputes over the application of tax treaties

It is difficult to find publicly available material on this topic.

F. BEPS Implementation

Myanmar is not a participant in the Inclusive Framework on BEPS.

1) Implementation of the BEPS Project through domestic laws

not applicable

2) Implementation of BEPS Action 15 Multilateral Instrument ("MLI") through domestic laws

Myanmar is not a signatory nor a party to the MLI.

3) Implementation in relation to Pillar1과 Pillar2

not applicable

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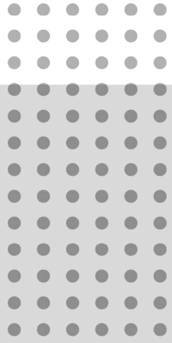

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Mongolia

Under the revised Personal Income Tax Law, an individual is a resident taxpayer of Mongolia if one of the following two criteria is met: the individual resides in Mongolia for 183 or more days in a given consecutive 12-month period; or income earned in Mongolia and/or Mongolian-sourced income is more than 50% of an individual's worldwide income. Resident individuals are subject to tax on their worldwide income. Resident taxpayer entities are subject to income tax on corporate profits and other forms of income as well as on chargeable gains on a worldwide basis. A company is a resident taxpayer in Mongolia if it is formed under the laws of Mongolia or has its effective place of management in Mongolia. Non-resident individual(company) are individual(company) who are not resident in Mongolia for tax purposes. A non-resident individual(company) are subject to a final withholding tax of 20% on the gross amount for income derived from sources within Mongolia. There is a definition for permanent establishment and taxable income of permanent establishments is generally subject to tax under the normal income taxation rules for residents.

From 1 January 2020, a general anti-avoidance rule (GAAR) is in effect. Under the GAAR, the MTA has the authority to deny the tax benefits of transactions or arrangements believed not to have any commercial substance or purpose other than to generate the tax benefit(s) obtained. Once the GAAR is exercised, the tax authorities will reassess and adjust the taxpayer's tax payable for the 4 previous years as if the tax scheme has not been entered into or the tax benefits have not been obtained.

The new transfer pricing rules applicable from 2020 generally follow the OECD Transfer Pricing Guidelines and arm's length principles. The transfer

pricing rules apply to all types of transactions conducted between related parties. The transfer pricing rules apply to both cross-border and domestic related party transactions. A controlled foreign company rule is introduced from 1 January 2020. Under this new rule, a foreign entity with more than 50% of its shares owned directly or indirectly by a resident taxpayer will be considered a controlled foreign company. A controlled foreign company would be subject to tax as a resident taxpayer in Mongolia. The list of countries or territories designated as offshore zones is approved by the government and currently includes 49 countries. From 1 January 2020, the following rules are adopted: deductible interest expenses incurred from the loans received from related parties will be limited to 30% of the EBIDTA. Interest paid in excess of this ratio is not deductible and is treated as a dividend.

The Mongolian government has signed bilateral tax treaties (DTA) with 25 countries, including Korea, a major trading partner. Mongolia is a member of OECD's inclusive framework for the global implementation of the BEPS Project. On 1 June 2020, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, entered into force in respect of Mongolia. The Convention and the amending Protocol generally apply from 1 January 2021.

Mongolia has well-defined a GAAR, such as Transfer Pricing and Controlled Foreign Corporation tax system, and is implementing the BEPS project through domestic law. However, there is a lack of response to Pillar 1 of the taxation of the digitalized economy, so cooperation with the Korea OECD Policy Center appears to be necessary.

A. Tax System

The tax law consists of the Constitution, the same Act, and other laws enacted correspondingly. Mongolia enacted the Framework Act on National Taxes in 1992, and the Tax Imposition, Supervision and Collection Act in 1996. In 2008, these two laws were combined to become the Framework Act on National Taxes that is currently in effect.

If there are separate provisions in an international treaty concluded by Mongolia that are different from this Act, the provisions of the international treaty shall apply. All relationships related to the generation, imposition, change, tax reduction, tax exemption, and collection of taxes must be regulated by tax laws. On behalf of the Mongolian government, the State Councilor in charge of finance may enter into a tax stability protection contract with a strategic investor within the legal scope, and during the validity period of the contract, the provisions of the contract shall be applied regardless of the statutory provisions of the tax law to be enacted after the date of conclusion of the contract.

Taxes in Mongolia consist of national taxes and local taxes. The tax rate set by the National Assembly and the executive branch and commonly implemented within Mongolia is called national tax. The tax rates set by each Aimag council and the capital council and implemented in each administrative district are called local taxes.

Mongolia operates a voluntary tax payment system, and the tax year in Mongolia is the calendar year from January 1 to December 31. In Mongolia's taxation system, revenue consists of taxes, fees, and utility charges as follows.

- Tax is levied on an individual's income, assets, goods, labor, and services at a certain rate for a certain period of time and means a mandatory financial contribution to the government budget: personal/corporate income tax, property tax, livestock tax, automobile tax, gun tax, dog tax, inheritance and gift tax, value-added tax. consumption tax. customs. fuel tax, water tax.

- Fee (including fees/charges, etc.) means monetary contributions paid for the use and pollution of state-owned lands, subsoil, natural resources, forests, plants, springs, minerals, petroleum reserves, air, water and soil, and for hunting.
- Payment means a monetary charge collected by the government for services provided to taxpayers in accordance with law.

According to Mongolia's tax law, tax revenue is classified into taxes, usage fees, and payments, but according to Mongolia's budget law, tax revenue is largely divided into national taxes and local taxes (Aimag, District) depending on the level of collection. National taxes are levied and collected by the Mongolian government at the national level, while local taxes are levied and collected by the local government where the taxpayer resides. Some national taxes are distributed at a certain rate as local taxes. National taxes include corporate income tax (60%), customs duties, value-added tax, consumption tax, and fuel tax.

B. Tax Administration Agency

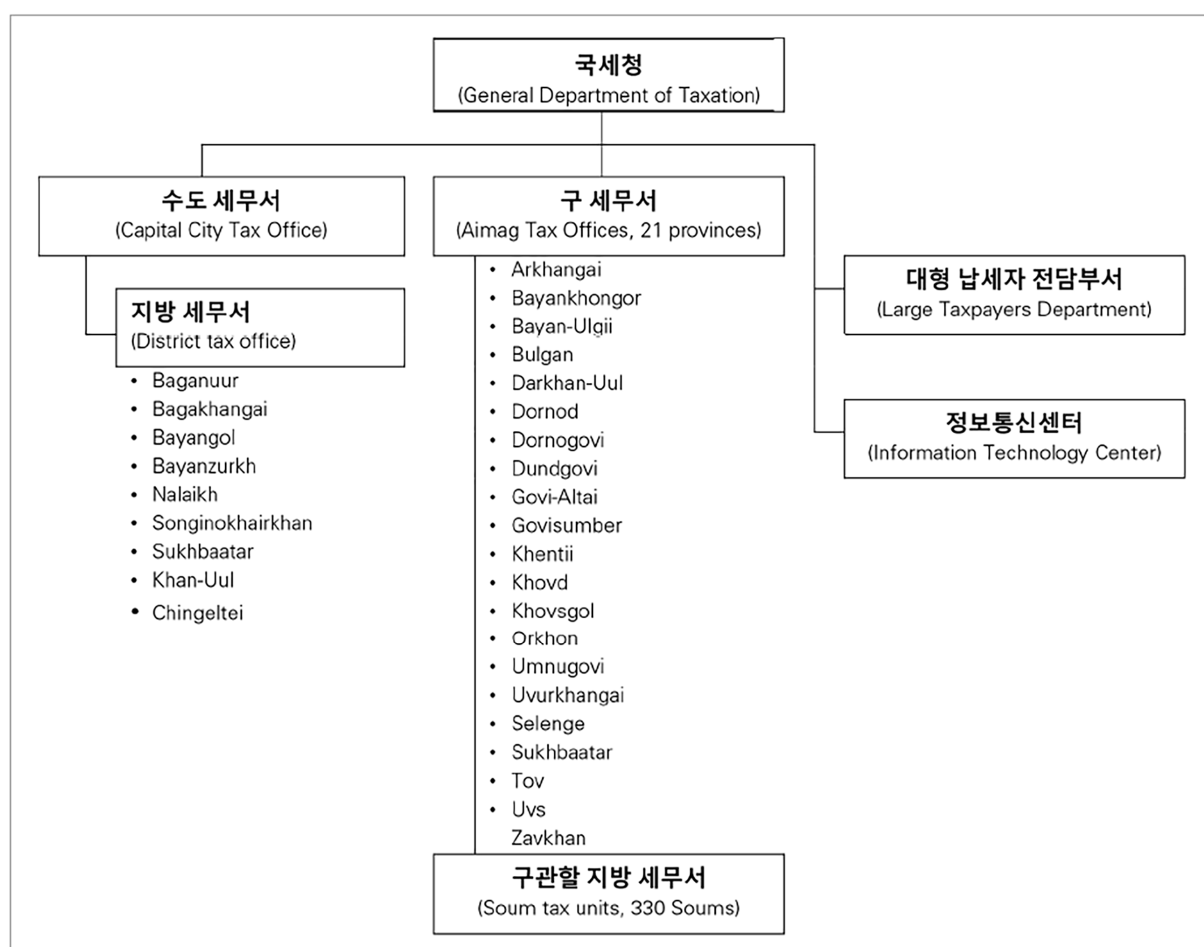
The Mongolian Tax Authority (MTA) is a national administrative agency with the function of applying tax laws throughout Mongolia. The MTA performs the following main functions:

- Manage tax compliance activities, provide information and advice to taxpayers, provide training and raise public awareness
- Supervision of tax law application
- Generation of government budget revenue

MTA is composed of the General Department of Taxation, the capital (Ulaanbaatar) tax office, and the local tax office (Aimag - Korea's provincial-level tax office; District/Soum - Korea's district/county-level tax office). Taxpayers communicate with tax authorities through aimags and local tax offices. Most

foreign investors, liaison offices, and permanent establishments are supervised by the Capital Tax Office, and major corporate income tax payers are supervised by the National Tax Service. The MTA has a separate, dedicated department for large taxpayers that supports and services 600 taxpayers and groups.

〈figure 7-1〉 Jurisdiction of Mongolian tax authorities



C. Income Tax System

1) Personal Income Tax[109)]

The law governing the imposition of personal income tax in Mongolia is the Personal Income Tax Law (PIT Law), which is effective from 1 January 2007. A

109) 「The Personal Income Tax Law」, https://legalinfo.mn/mn/detail?lawId=14410.

revised PIT Law has been approved on 22 March 2019 and it is effective from 1 January 2020.

a) Taxable persons

Under the revised PIT Law, an individual is a resident taxpayer of Mongolia if one of the following two criteria is met:

- the individual resides in Mongolia for 183 or more days in a given consecutive 12-month period; or
- income earned in Mongolia and/or Mongolian-sourced income is more than 50% of an individual's worldwide income.

The above criteria must be considered in hierarchy. In other words, the second criterion must be considered only if the first criterion is not met. The 183-day period is calculated by counting the number of calendar days, starting from the day of entry into Mongolia. In the case of multiple entries, it is determined by the total number of days a taxpayer stayed in Mongolia.

There are no specific provisions for married persons. A partnership is a separate taxable person and treated as an economic entity subject to corporate income tax.

Resident individuals are subject to tax on their worldwide income. Personal income tax is imposed on the following income:

- salaries, wages, bonuses, incentives and other similar employment income;
- income from activities;
- income from property, e.g. dividends, interest, royalties and income from the lease of movable and immovable property;
- income from the sale and transfer of property;
- indirect income; and
- other income.

The Ministry of Finance has issued guidelines on how to determine and calculate the taxable income from the transfer of land possession and land use rights.

b) Tax Rates

The personal income tax rates are as follows:

〈Table 7-1〉 Tax rates of Income and capital gains

Income	Tax rate (%)
Employment income	10/15/20
Business and professional income	10
Income from property, e.g. dividends, interest and royalties	10
Interest and dividend earned from debt instruments issued by resident companies in primary and secondary security markets	5
Interest earned from debt instruments issued by Mongolian commercial banks	5
Sale of immovable property (gross)	2
Income from scientific, literary and artistic works, inventions, product designs and useful designs (gross)	5
Income from sports competitions, art performances, and similar income (gross)	5
Income from quizzes, gambling and lotteries (gross)	40
Income from transfer of land possession or land use rights (paid or free of charge)	10

c) Double taxation relief

Foreign tax credit is available for tax paid in the foreign countries which have concluded an exchange of information agreement with Mongolia. The foreign tax credit is subject to a country-by-country limitation.

In the following cases, the tax paid in the foreign country shall not be

credited against the tax payable in Mongolia:

- taxes paid in foreign countries, but which can be refunded;
- interest, penalty and fine paid for taxes imposed and paid in a foreign country; or
- taxes imposed and paid on non-taxable income under the taxation laws of Mongolia.

The tax credit amount for the foreign tax paid shall be determined by the lowest of the following amounts:

- the actual amount of the tax paid in the foreign country; or
- the amount of tax payable on the foreign income under the taxation laws of Mongolia.

The tax credit amount for the foreign tax paid will be verified by the MTA. The verification will be based on the tax reports submitted to relevant authorities of foreign countries, official letter from such authorities as evidence of the tax imposed and payment as well as proof of tax payment.

Excess foreign tax credits cannot be carried forward or backwards to other years. Tax treaty provisions take precedence over domestic law.

2) Corporate Income Tax

The law governing the imposition of corporate income tax in Mongolia is the Corporate Income Tax Law (CIT Law). Under the government's tax reform package adopted by the parliament on 22 March 2019, key tax laws were revised including the General Taxation Law, CIT Law and Personal Income Tax Law. The revised tax laws are effective from 1 January 2020.

Resident taxpayer entities are subject to income tax on corporate profits and other forms of income as well as on chargeable gains on a worldwide basis.

Mongolia operates a classical system, whereby corporate profits are first taxed

at the corporate level, and then dividends are taxed again in the hands of the shareholders. No credit is granted to the shareholders for tax paid on the dividends.

Corporate income tax is imposed on an entity that earns taxable income for the tax year, or is liable to submit a tax return under the law even though the income may not have been earned. An economic entity is defined as a company, cooperative, partnership, state and local government-owned enterprise and non-governmental organization which conducts business activities, or any other similar legal entity obliged to pay income tax. Pension funds, trusts, investment funds, investment companies and other collective investment vehicles are taxable persons.

a) Residence

A company is a resident taxpayer in Mongolia if it is formed under the laws of Mongolia or has its effective place of management in Mongolia. Prior to 1 January 2020, there was no definition or any criteria for "effective place of management" in the tax legislation. However, from 1 January 2020, a foreign company that meets at least three of the following conditions is to be considered a resident company with an effective place of management in Mongolia:

- more than 50% of the shareholders are residing in Mongolia;
- more than 50% of the shareholders' meetings held consecutively in the last 4 years before a tax year was organized in Mongolia;
- accounting and financial documents are maintained in Mongolia;
- more than 25% of the board members are residing in Mongolia; and
- more than 60% of total sales revenue is earned in Mongolia and/or sourced from Mongolia.

Foreign companies that qualify as resident taxpayers under the criteria of "effective place of management in Mongolia" are obligated to register with the MTA. Otherwise, the MTA may enforce such registration based on the information

received from foreign tax authorities under an exchange of information agreement.

b) Taxable Income

Resident companies are subject to tax on their worldwide income, including capital gains. Corporate income tax is imposed on the following income:

a. income from activities[110];
b. income from property[111];
c. income from sale and transfer of property[112]; and
d. other income.[113]

c) Tax Rates

Corporate income tax is levied at the following rates on taxable income of resident companies. Certain types of income are taxed on a gross basis at the following rates:

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110) Income from activities includes:
- income from the sale of goods, work, and services;
- income from quiz, gambling and lottery activities;
- income from technical, management, consulting and other services;
- income from goods, work and services received from others free of charge; and
- other similar income.

111) Income from property includes:
- income from leases of movable and immovable property;
- royalty income;
- dividend income; and
- interest income.

112) Income from the sale and transfer of property includes:
- income from the sale of immovable property;
- income from the sale and transfer of a right/licence granted by the state authorities;
- income from the sale of shares, securities, and other financial instruments; and
- income from the sale of other intangible assets and movable assets.

113) Other income includes:
- income from interest, penalties and fines due to failure to fulfil obligations under a contract and/or compensation for damage;
- income earned from quizzes, gambling and lotteries;
- profit transferred from a permanent establishment to its head or parent company in the tax year;
- realized gains from foreign exchange rate differences; and
- insurance reimbursements.

〈Table 7-2〉 Resident's corporate income tax rate

Income type		Tax rate (%)
General	Up to 6 billion	10
	Over 6 billion	25
Separate taxable income	Dividends	10
	Royalties	10
	Winning awards from quizzes, gambling and lotteries	40
	Sale of immovable property	2
	Interest	10
	Interest and dividend earned from debt instruments issued by resident companies in primary and secondary security markets	5
	Interest earned from debt instruments issued by Mongolian commercial banks	5

From 1 January 2020, income tax of 1% would apply to legal entities with annual turnover not exceeding MNT 300 million and operating in sectors other than mining, petroleum, tobacco and alcohol beverage productions.

If the simplified method is not applied, taxable income of less than MNT 300 million is 1%, taxable income of less than MNT 1.5 billion is 10%, and 90% is treated as a deduction. The tax law eased the burden on small and medium-sized businesses by applying lower tax rates and introducing a simplified system.

d) Double taxation relief

A foreign tax credit is available for the tax paid in foreign countries which have concluded an exchange of information agreement with Mongolia. The foreign tax credit is subject to a country-by-country limitation.

In the following cases, the tax paid in the foreign country shall not be credited against the tax payable in Mongolia:

- taxes paid in foreign countries, but which can be refunded;
- interest, penalty and fine paid for taxes imposed and paid in a foreign country; or
- taxes imposed and paid on non-taxable income under the taxation laws of Mongolia.

The tax credit amount for the foreign tax paid shall be determined by the lowest of the following amounts:

- the actual amount of the tax paid in the foreign country; or
- the amount of tax payable on the foreign income under the taxation laws of Mongolia.

The tax credit amount for the foreign tax paid will be verified by the MTA. The verification will be based on the tax reports submitted to relevant authorities of foreign countries, official letter from such authorities as evidence of the tax imposed and payment as well as proof of tax payment.

Excess foreign tax credits cannot be carried forward or backwards to other years. Tax treaty provisions take precedence over domestic law.

3) Key issues in international tax

a) Non-resident individuals

Non-resident individuals are individuals who are not resident in Mongolia for tax purposes. A non-resident individuals are subject to a final withholding tax of 20% on the gross amount for income derived from sources within Mongolia which includes:

- employment income;
- dividends received from an economic entity registered and operating in Mongolia;
- interest on loans and finance leases;

- royalties;
- income from goods sold, work performed and services provided in Mongolia;
- rent;
- income from tangible and intangible asset leases;
- payments for issuing guarantees;
- technical or other service fees sourced from Mongolia;
- payments for administrative expenses and management expenses; and
- profits remitted overseas by a permanent establishment in Mongolia to its foreign parent.

b) Non-resident Company

A non-resident company is a foreign corporate entity that conducts its business in Mongolia through its permanent establishment or a foreign corporate entity that earns income sourced from Mongolia.

Non-resident companies without a permanent establishment, are only taxed on income sourced from Mongolia. No tax is imposed on foreign income.

Non-resident companies are subject to 20% withholding tax on gross income that is sourced from Mongolia. Income sourced from Mongolia includes:

- payments to a non-resident for goods sold in Mongolia, for work performed and services provided directly or electronically;
- income earned by a non-resident from sport, arts, culture and other events organized in the territory of Mongolia;
- dividend income paid to a non-resident company;
- interest income provided, transferred to a non-resident company;
- income from sale, transfer or lease of an asset or associated rights in Mongolia that is possessed, used or owned by a non-resident;
- royalty income, income from lease, usage, use right of movable and immovable property, intangible asset, interest of finance lease, income

from technical, management, consulting and other services paid to a non-resident;
- income transferred by a permanent establishment in Mongolia to a non-resident company operating through its permanent establishment;
- income from sale or transfer of an asset or associated rights possessed, used or owned by a permanent establishment of a non-resident company;
- income earned by a non-resident company from sale, lease of movable and immovable property or intangible asset to be used for the activities of permanent establishment in Mongolia; and
- other similar income.

If the tax is not withheld in Mongolia for payments to non-residents, then the non-resident income earner has the obligation to report and pay the tax for income sourced from Mongolia under the self-assessment system.

Non-residents are exempt from tax on oil production-sharing income. A permanent establishment is defined under the domestic law as a unit of the foreign entity where the business activities of that entity are wholly or partly carried on and it includes:

- a place of management;
- branch and unit;
- a workshop (including places where trainings, seminars, fair/exhibition are conducted);
- warehouses, places where trade and service activities are conducted;
- a mine, an oil or gas well, a quarry, a place of extraction of mineral resources;
- a factory; and
- other units or sections which meet the permanent establishment general definition.

c) Permanent Establishment

The definition of a permanent establishment under domestic law also includes the following:

- a building site, construction, installation and assembly project, connected supervisory services may constitute a permanent establishment if it lasts for 90 or more days during the consecutive 12-month period;
- the furnishing of services, including technical, consultancy, management, supervision and other services, through its own employees or other contracted personnel to a resident company for 183 and more days during the consecutive 12-month period may constitute a permanent establishment; and
- a person that carries out the following activities in Mongolia on behalf of a non-resident company may constitute a permanent establishment:
- storing, selling and supplying of goods; and
- concluding a contract in person or playing the principal role leading to the conclusion of the contract without material modification to the main terms or conditions of the non-resident company's contract.

The taxable income of permanent establishments is generally subject to tax under the normal income taxation rules for residents.

D. Anti-Avoidance Rules Against International Tax Planning

1) Principles of anti-avoidance rules

From 1 January 2020, a general anti-avoidance rule (GAAR) is introduced. Under the GAAR, the MTA has the authority to deny the tax benefits of transactions or arrangements believed not to have any commercial substance or purpose other than to generate the tax benefit(s) obtained.

Specifically, GAAR can be exercised for a circumstance that meets the following conditions and is identified during a tax inspection:

- a taxpayer has entered into a tax scheme solely or jointly with other persons; and
- a taxpayer obtained a tax benefit by avoiding from the tax under the tax scheme.

A “tax scheme” is defined as a tax avoidance action taken for the main purpose of obtaining tax benefits.

Tax benefits will be considered as obtained, if the following results were achieved using the tax scheme:

- reduced tax base or changed tax exempt income, tax credit, withholding estimation and deductible expenses by manipulating the bookkeeping;
- the taxpayer deferred an obligation to pay tax and as a result gained tax advantages;
- reduced taxable income by increasing the sum of tax-exempt income or non-taxable income; and
- no tax is levied on taxable income.

Once the GAAR is exercised, the tax authorities will reassess and adjust the taxpayer's tax payable for the 4 previous years as if the tax scheme has not been entered into or the tax benefits have not been obtained.

If the taxpayer has implemented the tax scheme in cooperation with other persons, the tax payable levied on the other persons will be re-assessed and adjusted using same procedures. In addition to the reassessed tax as defined by the tax authority under the GAAR rule, additional penalties may also be levied.

2) Transfer Pricing

Under the revised General Taxation Law, related parties are defined as persons

that can influence each other on the conditions or economic results of transactions through direct or indirect participation in the assets by a person in the other, or the same person in two or more persons' assets, control or management activities.

The new transfer pricing regulation has been approved by Order 308 dated 31 December 2019 of the Ministry of Finance and the regulation is effective from 1 January 2020. The regulation generally follows the OECD Transfer Pricing Guidelines and arm's length principle.

The transfer pricing rules apply to all types of transactions conducted between related parties. The transfer pricing rules apply to both cross-border and domestic related party transactions.

Under the transfer pricing rules, the general transfer pricing principle is if the conditions of the transactions between related parties are different from the conditions of transactions between unrelated parties and consequently the tax base has been reduced because of these differences, the tax base will be increased by the differences of such reduced amount and the relevant reassessed tax will be levied.

If taxpayers did not prepare transfer pricing reports, or reduced a tax base, the tax authorities will make a primary transfer pricing adjustment and reassess the tax. For corporate income tax or personal income tax purposes, differences arising as a result of the primary adjustment will be treated as a dividend and taxed accordingly as a secondary transfer pricing adjustment.

From the year 2020, the following reports should be prepared and submitted to the tax authorities to ensure that taxpayers have fulfilled the transfer pricing principles in establishing the prices between related parties and to provide the tax authorities with the necessary information to conduct the transfer pricing audit:

〈Table 7-3〉 TP report details

Name	Content	Preparer	Submission deadline
Transactional transfer pricing	Information about all related party transactions	All taxpayers with related parties' transactions	10 February following the year end
Local File	Overview of the group's business and operations	Companies or groups with annual turnover of more than MNT 6 billion for the preceding tax year; or foreign invested companies, irrespective of size	10 February following the year end
Master File	Detailed information about activities in Mongolia		
Country-by-Country report	Aggregate financial information per jurisdiction	A group parent entity which resides in Mongolia or other assigned entities of the group, where the consolidated sales revenue is more than MNT 1.7 trillion	Within the 12-month period after the last day of the group financial year

3) Controlled Foreign Corporation

A controlled foreign company rule is introduced from 1 January 2020. Under this new rule, a foreign entity with more than 50% of its shares owned directly or indirectly by a resident taxpayer will be considered a controlled foreign company. A controlled foreign company would be subject to tax as a resident taxpayer in Mongolia.

The following income of a controlled foreign company that operates in a foreign country or a territory designated as an offshore zone will be subject to taxation in Mongolia:

- royalty, interest or dividend income;
- income from the sale of immovable property;
- income from the sale of shares or security and other financial instruments; and

- income from the sale of intangible assets or movable assets (other than income from the sale of (ⅰ) rights or licences provided by the government and (ⅱ) shares).

The list of countries or territories designated as offshore zones is approved by the government and currently includes 49 countries.

Taxes paid by a controlled foreign company in foreign countries may be credited against the tax payable in Mongolia if the foreign countries fully exchange their information with Mongolia.

〈figure 7-2〉 List of countries or territories designated as offshore zone

	국가명				
1	Aruba	18	Guernsey	34	Macao, SAR
2	Andorra	19	Gibraltar	35	Malaysia
3	Antigua & Barbuda	20	Grenada	36	Marshall Islands
4	United Arab Emirates	21	Dominica	37	Monaco
5	Anguilla	22	Jersey	38	Montserrat
6	Botswana	23	Ireland	39	Isle of Man
7	British Virgin Islands	24	Cayman Islands	40	Netherlands Antilles
8	Brunei	25	Curacao	41	Independent State of Samoa
9	Vanuatu	26	Barbados	42	Seychelles
10	Cyprus	27	Bahamas	43	St. Vincent and Grenadines
11	Costa Rica	28	Bahrain	44	St. Kitts and Nevis
12	Liberia	29	Belize	45	St. Lucia
13	Lebanon	30	Bermuda	46	Singapore
14	Mauritius	31	Cook Islands	47	Turks and Caicos Islands
15	Malta	32	Liechtenstein	48	Hong Kong, SAR
16	Panama	33	Luxembourg	49	Switzerland
17	Uruguay				

4) Thin Capitalization

From 1 January 2020, the following rules are adopted:

- deductible interest expenses incurred from the loans received from related parties will be limited to 30% of the EBIDTA;
- a debt-to-equity ratio of 3:1 applies to the interest expense for loans received from investors. Interest paid in excess of this ratio is not deductible and is treated as a dividend; and
- the interest expense of the loan received from a resident individual shareholder is not deductible.

E. Tax Treaties

1) Tax treaty status

The Mongolian government has signed bilateral tax treaties (double taxation avoidance agreements, DTA) with a number of countries, including its major trading partner, the Republic of Korea. As of December 2023, Mongolia has a DTA that is applied to 25 countries as follows.[114]

According to Mongolia's income tax law, the withholding tax rate that non-resident individual and corporate taxpayers pay on Mongolian source income is 20% for most types of income. Taxable income for determining withholding tax is determined based on total income and total transaction proceeds without application of expense deductions.

The withholding income tax rate may be reduced under the DTA. The withholding tax rate applied to Korean resident taxpayers who earned income in Mongolia is 5% for dividends and interest, and 10% for royalties.

Unless a Korean corporation conducts business through a permanent establishment located in Mongolia, business profits and technical service costs earned in

114) China, South Korea, Germany, India, Soviet Union, Turkey, United Kingdom, Hungary, Malaysia. Russia, Indonesia, France, Czech Republic, Belgium, Kazakhstan, Kyrgyzstan, Poland, Bulgaria, Switzerland, Ukraine, Canada, Singapore, North Korea, Australia, Belarus; 『List of double taxation prevention agreement countries』, https://en.mta.mn/c/view/12118,

Mongolia are taxed only in Korea.

Gains arising from the transfer of shares of a company whose assets, directly or indirectly, consist primarily of real estate located in Mongolia may be taxed in Mongolia. Capital gains from the sale of shares of these and other companies in Mongolia are taxed only in Korea.

Remuneration received by a Korean resident in connection with dependent personal services performed in Mongolia is taxable only in Korea if all of the following conditions are met:

- The recipient stays in Mongolia for a single period or periods not exceeding a total of 183 days during the relevant fiscal year.
- The remuneration is paid by or on behalf of an employer who is not a Mongolian resident;
- If the remuneration is not generated by a permanent establishment or fixed facility owned by the employer in Mongolia.

When MTAs and taxpayers require additional interpretation in the practical application of double taxation avoidance agreements, they generally refer to the OECD's Model Convention with Respect to Taxes on Income and on Capital by the OECD) is applied.

2) Non-OECD economies' positions on the OECD Model Tax Convention

Mongolia has not commented.

F. BEPS Implementation

1) Implementation of the BEPS Project through domestic laws

Mongolia is a member of OECD's inclusive framework for the global implementation of the base erosion and profit shifting (BEPS) Project.

On 1 June 2020, the Multilateral Convention on Mutual Administrative Assistance

in Tax Matters, as amended by the 2010 Protocol, entered into force in respect of Mongolia. The Convention and the amending Protocol generally apply from 1 January 2021.

2) Implementation of BEPS Action 15 Multilateral Instrument ("MLI") through domestic laws

〈Table 7-4〉 MLI Article and Mongolia's Position

MLI Article	Position
Listed Tax Agreements	26 Provisional 19 Covered Tax Agreements
Article 1 – Scope of the Convention	Standard MLI provision
Article 2 – Interpretation of Terms	Standard MLI provision
Article 3 – Transparent Entities	Opted out through a Reservation
Article 4 – Dual Resident Entities	Opted in
Article 5 – Application of Methods for Elimination of Double Taxation	Opted out through a Reservation
Article 6 – Purpose of a Covered Tax Agreement	Opted in
Article 7 – Prevention of Treaty Abuse	Opted in
Article 8 – Dividend Transfer Transactions	Opted in
Article 9 – Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property	Opted in
Article 10 – Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions	Opted in
Article 11 – Application of Tax Agreements to Restrict a Party's Right to Tax its Own Residents	Opted in
Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionaire Arrangements and Similar Strategies	Opted in
Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions	Opted in

MLI Article	Position
Article 14 – Splitting-up of Contracts	Opted in
Article 15 – Definition of a Person Closely Related to an Enterprise	Opted in
Article 16 – Mutual Agreement Procedure	Opted in with Reservation(s)
Article 17 – Corresponding Adjustments	Opted out with Reservation(s)
Article 18 – Choice to Apply Part VI	Chose not to apply Part VI
Article 19 – Mandatory Binding Arbitration	Chose not to apply Part VI
Article 20 – Appointment of Arbitrators	Chose not to apply Part VI
Article 21 – Confidentiality of Arbitration Proceedings	Chose not to apply Part VI
Article 22 – Resolution of a Case Prior to the Conclusion of the Arbitration	Chose not to apply Part VI
Article 23 – Type of Arbitration Process	Chose not to apply Part VI
Article 24 – Agreement on a Different Resolution	Chose not to apply Part VI
Article 25 – Costs of Arbitration Proceedings	Chose not to apply Part VI
Article 26 – Compatibility	Chose not to apply Part VI
Article 27 – Signature and Ratification, Acceptance or Approval	Standard MLI provision
Article 28 – Reservations	Standard MLI provision
Article 29 – Notifications	Standard MLI provision
Article 30 – Subsequent Modifications of Covered Tax Agreements	Standard MLI provision
Article 31 – Conference of the Parties	Standard MLI provision
Article 32 – Interpretation and Implementation	Standard MLI provision
Article 33 – Amendment	Standard MLI provision
Article 34 – Entry into Force	Standard MLI provision
Article 35 – Entry into Effect	Standard MLI provision
Article 36 – Entry into Effect of Part VI	Standard MLI provision
Article 37 – Withdrawal	Standard MLI provision
Article 38 – Relation with Protocols	Standard MLI provision
Article 39 – Depositary	Standard MLI provision

3) Taxation of the digitalized economy (Pillar1 & Pillar2)

〈Table 7-5〉 Global Minimum Tax(Pillar 2)

A. GloBE Rules	
Signed agreements/ statements	• Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (11 July 2023) • Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (8 October 2021) • Statement on a Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy (1 July 2021)
Implementation status of the GloBE Rules	• Committed • Mongolia is committed to the Two-Pillar Solution • Members of the Inclusive Framework (IF) who are committed to Pillar Two are not required to adopt the GloBE rules, but if they choose to do so, they will implement and administer the rules in a way that is consistent with the outcomes provided for under Pillar Two, including in light of model rules and guidance agreed to by the Inclusive Framework. Members of the IF also accept the application of the GloBE rules applied by other IF members, including agreement as to rule order and the application of any agreed safe harbours • No draft legislation is available yet
Transposing instrument(s)	-
Legislation applicable	-
Available guidance	-
Implementation status of the Income Inclusion Rule (IIR)	Committed
Effective date for the IIR	-
Collection of top-up tax under the IIR	-
Implementation status of the Undertaxed Profits Rule (UTPR)	Committed

A. GloBE Rules	
Effective date for the UTPR	-
Collection of top-up tax under the UTPR	-
Implementation status of a Domestic Minimum Top-Up Tax (DMTT)	Committed
Effective date for the DMTT	-
Qualified IIR, UTPR and DMTT -Assessment of equivalence/peer review	-
Safe Harbours	-
Filing obligations	-
Penalties	-
Additional information	-
Relevant cases/decisions	-
Related journal articles	-

B. Subject to Tax Rule (STTR)	
Signed agreements/ statements	• Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (11 July 2023) • Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (8 October 2021) • Statement on a Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy (1 July 2021)
MLI for the STTR	-
Effective date	-
Applicable legislation	-
Affected treaties	-
Additional information	-
Relevant cases/decisions	-
Related journal articles	-

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'List of double taxation prevention agreement countries', https://en.mta.mn/c/view/12118,

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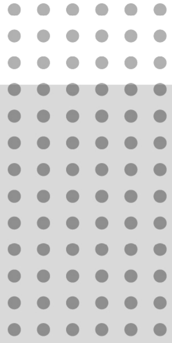


09.

Nepal

Summary

Income is taxed in accordance with the provisions of the Income Tax Act 2002(ITA). Resident individuals are subject to tax on their worldwide income derived from employment, business or investment. Non-residents are subject to tax on their net income earned having a source in Nepal. A person who has resided in Nepal for a period of 183 days or more in a duration of consecutive 365 days or whose normal place of abode is Nepal is considered resident of Nepal. Resident companies are subject to tax on their worldwide income. A resident company is a company formed or established in Nepal or is effectively managed in Nepal during the income year. A foreign permanent establishment of a non-resident person situated in Nepal is treated as a resident in Nepal. Non-resident companies are taxed only on income arising from a source in Nepal in the income year. Tax is imposed at the rate of 5% on the after-tax profits repatriated by a permanent establishment in Nepal.

Section 35 of the ITA is the general anti-avoidance rule. For the purposes of determining income tax liability, the IRD may: recharacterize an arrangement or part of an arrangement that is entered into or carried out as part of a tax avoidance scheme; disregard an arrangement or part of an arrangement that does not have substantial economic effect. There are no specific rules regarding transfer pricing and thin capitalization rules. Pursuant to section 69 of the ITA, where at the end of an income year, a controlled foreign entity distributes dividends out of attributable income (i.e. taxable income of the controlled foreign entity computed as if the entity was a resident entity) derived during the year.

Nepal has entered into double taxation avoidance agreements with 11 countries including India in order to provide relief from the double taxation of income

of foreign investors.

There are no specific rules regarding BEPS. However, digital service tax of 2% on transaction value shall be collected on digital services provided by non-residents to Nepalese individual customers.

Nepal has a general anti-avoidance rule, but the transfer pricing and thin capital tax system are not regulated. Tax treaties have been signed with only 11 countries, so there is a high level of dependence on India. It is not responding to the BEPS project, and only digital service tax is being implemented, so the taxation of the digitalized economy response is also insufficient. Therefore, Nepal will need cooperation and assistance from the Korea OECD Policy Center in many aspects of supplementing a specific anti-tax avoidance rule (SAAR), revitalizing a tax treaties, and responding to the BEPS and the taxation of the digitalized economy.

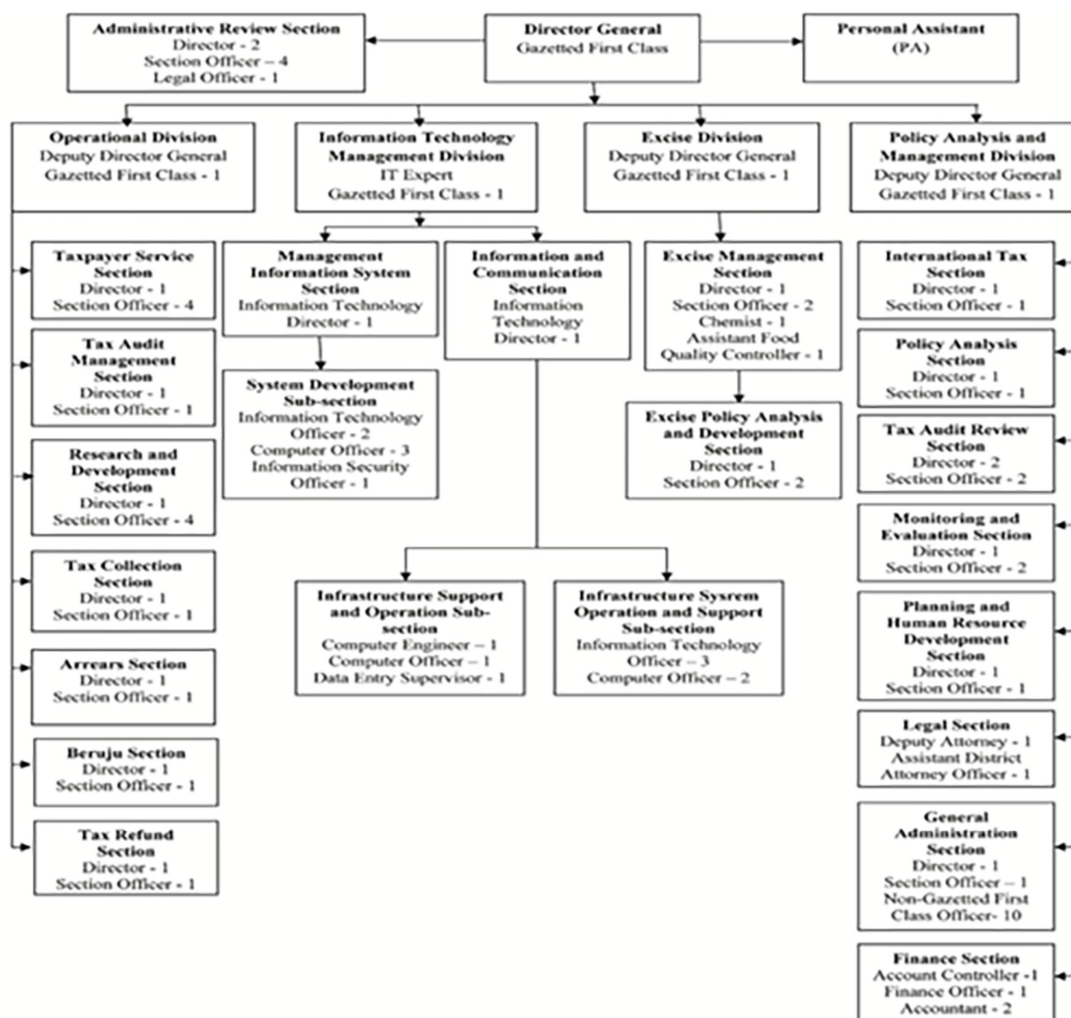
A. Tax System & Administration Agency

The tax is levied on income accrued or received from the business, investment, employment and windfall gains. Both individuals and companies are required to follow a uniform income year that runs from July 16 to the following July 15 corresponding to the Nepali Fiscal Year (NFY). All persons with assessable income are required to register with the Inland Revenue Office (IRO) and obtain a Permanent Account Number (PAN) and to file a tax return annually.

Returns are filed under a self-assessment system under which the IRO considers returns final unless they are subject to a detailed audit of the taxpayer's affairs. In practice, Assessing Officers make tax audit assessments and adjustments in the majority of the cases.

Income tax payments are made in the year in which the income is earned in the form of withholding tax and advance tax. Companies are subject to a flat rate of tax, whereas individuals are taxed at progressive rates. The Director General (DG) of the Inland Revenue Department (IRD) has responsibility for the general administration of the ITA.

〈Figure 8-1〉 Organizational Chart of Inland Revenue Department, Nepal



The field offices also follow a similar structure, consisting of different functional sections and some support functions, depending upon their size.

B. Income Tax System

The main objective of the tax system is to enhance revenue mobilization through effective revenue collection procedures for the economic development of the nation. Income is taxed in accordance with the provisions of the Income Tax Act 2002 (ITA). The salient features of the ITA are:

a. Various concessions and incentives allowed under different Acts have been repealed and provided under the single ITA;
b. The tax liability of residents and non-residents is clearly defined;

c. Worldwide income of a resident, whether individual or company is made taxable in Nepal;
d. Income with source in Nepal is taxable in Nepal irrespective of the place of payment;
e. Specific provision for taxing capital gains is introduced;
f. Procedures for granting credit for international tax are prescribed;
g. General provision for anti-avoidance and income splitting rules introduced; and
h. Clearly defined tax administration and payment procedures are provided.

1) Personal Income Tax

Resident individuals are subject to tax on their worldwide income derived from employment, business or investment. Non-residents are subject to tax on their net income earned having a source in Nepal.

a) Residence

A person who has resided in Nepal for a period of 183 days or more in a duration of consecutive 365 days or whose normal place of abode is Nepal is considered resident of Nepal. Dual residence is not recognized for the purpose of the Nepalese tax.

There is no separate provision for taxing the income of short-term visitors. Depending on the length of stay, they will be classified as resident or non-resident and the Nepal sourced income shall be taxed accordingly.

b) Taxable Income

Tax is levied on the total income earned or received by an individual less deductions, relief and incentives. Certain categories of income are not included in the total income of an individual but are taxed separately under special regimes, including:

a. The amount obtained by a natural person towards the house rental has been excluded from the definition of "Rent". Hence, 10% withholding rate on rental payment does not apply to the house rental payment to a natural person. House rental tax of 10% on payment to a natural person should be deposited in the respective Municipality ward office;
b. Income from bank deposits of resident natural person (not earned as a result of doing business) is taxed separately at source at a flat rate of 5%;
c. Gain in investment insurance of a resident natural person and from unapproved retirement fund is taxed at a flat rate of 5%;
d. Windfall gains tax is taxed at a rate of 25%;
e. Returns distributed by a mutual fund to a natural person are taxed at a rate of 5%;
f. Meeting fee is taxed at a rate of 15%;
g. Amount paid to a non-resident person after withholding applicable taxes under remuneration, fees, commission, royalty, interest and contractual payments are final withholdings; and
h. Dividend received from a resident company and partnership firm is taxed as final tax withholding at a rate of 5% to the resident and non-resident person both.

c) Capital Gains Tax

Net gain derived in respect of the disposal of shares listed on the stock exchange is subject to tax at the rates of 7.5% on short term capital gain (for shares held up to 365 days) and at the rate of 5% on long term capital gain (for shares held more than 365 days) in case of resident natural persons and 10% and 25% for resident natural persons, resident entity and others, respectively, and whereas in case of unlisted shares, tax at the rate of 10%, 15% and 25% are applicable for resident natural persons, resident entities and others, respectively.

Net gain derived from the disposal of land and building is subject to tax at the rate of 5% if owned for more than 5 years and 7.5% if owned for up to 5 years by a natural person. Net gain on disposal of land and building is subject to 1.5% for a person other than a natural person irrespective of the period of holding.

d) Personal Allowances and Rebates of Tax

The basic exemption is NRs 600,000 for a couple and NRs 500,000 for an individual. The exemption limit for handicapped people is 50% in addition to the aforementioned limit. A rebate of 10% of the tax liability is provided to women (having only remuneration income and not opted for couple status) on their income from employment.

e) Tax Rates

The applicable tax rates for the resident individuals of Nepal shall be as follows. Non-resident persons shall be taxed at a flat rate of 25% on the remuneration earned from source in Nepal.

〈Table 8-1〉 Treaty and Non-Treaty Withholding Tax Rates

Tax Banding	Tax Rates			
Resident	Individual		Couple	
Band 1	First 500,000	1%	First 600,000	1%
Band 2	Next 200,000	10%	Next 200,000	10%
Band 3	Next 300,000	20%	Next 300,000	20%
Band 4	Next 1,000,000	30%	Next 9000,000	30%
Additional Tax	Remaining above 2,000,000	36%	Remaining above 2,000,000	36%

2) Corporate Income Tax

Tax is levied under the provision of the Income Tax Act 2002, which provides for the imposition and collection of tax on the income of companies. Resident companies are subject to tax on their worldwide income. Non-residents are required to pay tax on their net income acquired or earned in Nepal or income with a source in Nepal. Tax is levied on the net income after making deductions for certain expenses/allowances as specified in the ITA.

'Company' means a body corporate or a company formed under the Companies Act of Nepal and includes foreign companies and other institutions such as Unit Trust, Co-operatives Society, or group of persons other than a partnership having less than 20 partners and proprietorship firm.

a) Residence

A resident company is a company formed or established in Nepal or is effectively managed in Nepal during the income year. A resident company is taxed on worldwide income. Dual residence is not recognized for the purposes of Nepalese tax.

b) Taxable Income

Income tax is levied on the net income earned or received from each of the following:

a. Business income;
b. Employment income;
c. Investment income; and
d. Windfall gains.

The income in relation to a business consists of the profit or gain derived from conducting the business, including:

a. Service fee;

b. Amounts derived from the disposal of trading stock;
c. Net gains from the disposal of business assets or liabilities;
d. Gain on the disposal of all depreciable assets in a pool of assets;
e. Gifts received in respect of the business;
f. Amounts derived as consideration for accepting a restriction on the capacity to conduct business; and
g. Amounts derived that are effectively connected with the business and that would otherwise be included in income from an investment.

In computing the income from business or investment, all actual costs are deductible to the extent they are incurred during the year by the entity in the generation of income from the business. The following methodology is available for the valuation of inventory:

a. Prime cost or absorption cost method in case of cash accounting system;
b. Absorption cost method in case of accrual accounting system; or
c. Choice between first-in-first-out method and average cost method.

c) Capital Gains Tax

Net gains from the disposal of business assets or liabilities of a business are taxable as business income. Generally, gains are calculated as proceeds from the capital transaction less the tax basis in the relevant property. In the language of the ITA, the gain from the disposal of an asset or liability is calculated as the amount by which the sum of the incomings of the asset or liability exceeds the outgoings of the asset or liability at the time of disposal and is reduced by the following losses:

a. The total of all losses suffered from the disposal of business assets or liabilities;
b. Any unrelieved net loss out of any other business losses; and
c. Any unrelieved net loss for a previous income year out of losses of any business.

Loss on the disposal of an asset or liability with a foreign source can be claimed against the above gain only to the extent that the amount includes gains on the disposal of assets or liabilities with a foreign source. A non-resident is taxed only on gains from the disposal of assets or liabilities sourced in Nepal, however, based on a recent court ruling1 and amendments in the law, non-residents are taxed also on gains which do not have a source in Nepal.

d) Dividend

Dividend distributed by a resident company and partnership firms is subject to a final withholding tax at the rate of 5% to the resident and the non-resident person. These dividends are not taxed at the hand of the recipient and no withholding is applicable on the distribution of dividends from dividend income. Dividends of a non-resident entity, which are distributed to a resident beneficiary, are taxed by inclusion in calculating the income of the beneficiary. Distributions of dividends, which are derived after the final withholding tax, are exempted from tax.

e) Losses

Tax losses can be carried forward for a period of 7 years and in the case of public infrastructure projects to be built, operated and transferred to GoN, projects relating to the construction of power houses and generation and transmission of electricity and petroleum exploration and extradition companies, any unrelieved loss of the past 12 years can be deducted. However, tax losses can be carried back for set-off against the taxable income of an earlier period in case of long-term contracts under international competitive bidding subject to prior approval from IRD.

Entities which has availed full or partial tax exemption in any of the years on investment or business income are not entitled to carry forward losses incurred in these exempt years.

As per section 57 of ITA, accumulated tax losses till the date of change in ownership (more than 50% change over the last three years) is not allowed to be carried forward to the period after the change in ownership.

Capital losses from the disposal of business assets or liabilities of a business are an allowable deduction and can be claimed as a normal business expense. However, a loss on the disposal of fixed assets can only be claimed if after being credited against the outstanding balance of the pool, the value of the pool becomes zero or negative.

f) Tax Depreciation /Capital Allowances

Depreciation is allowed on the acquisition cost of the following assets where such assets are used for income producing purposes:

〈Table 8-2〉 Depreciation Rate according to assets

Pool	Assets Included	Depreciation Rate (%)
A	Buildings, structures and similar works of a permanent nature	5
B	Computers, fixtures, office furniture and office equipment	25
C	Automobiles, buses and minibuses	20
D	Construction and earth-moving equipment and any depreciable asset not included in another class	15
E	Intangible assets other than depreciable assets included in class D.	During the estimated useful life of the asset

Each depreciable asset at the time it is first owned or so used, is placed in a pool referred to as pools of depreciable assets. Depreciation is calculated on the reducing balance method and is based on the pool of assets.

The pool of assets concept suggests the aggregation of all assets with the same depreciation rate into a common block for the computation of depreciation. Depreciation is computed at varying rates as prescribed. In the year of purchase,

depreciation is available for the full year, if an asset is added to the pool for more than six months period during NFY. In other cases, depreciation is allowed at either two thirds or one third of the normal rate, if the addition is made for less than six or three months period, respectively. Amounts derived from the disposal of an asset or assets are reduced from the written down value of the relevant pool.

g) Tax Rates

Corporate income tax is levied at the following rates (paragraph 2, Schedule 1 of the ITA):

- 25%: Normal business
- 30%: Banks, financial institutions, general insurance businesses, the telecommunication industry, internet service providers, money transfer businesses, capital market businesses, securities businesses, merchant banking businesses, commodity future market businesses, securities and commodities broker businesses, cigarettes, bidi, cigars, chewing tobacco, khaini, liquor, beer or petroleum businesses
- 20%: an entity wholly engaged in operating a special industry; an entity that operates any road, bridge, tunnel, rope-way, or flying bridge constructed by the entity; an entity that operates any trolley bus or tram; an entity that derives income from export for an income year; and an entity that builds and operates public infrastructure which will be transferred to the government, and an entity that builds power-house for generation and transmission of electricity.

A capital gains tax is levied at the rate of 10% on disposal of land and buildings. Resident entities are subject to a 10% capital gains tax on the sale of shares of entities registered with the Securities Board; 15% applies in the case of unlisted shares. The rate of capital gains tax is 25% in all other cases.

3) Key issues in international tax

a) Resident Company

A company is resident in Nepal if it is incorporated under the laws of Nepal or it has its effective management in Nepal (section 2(ao) of the ITA). Resident companies are subject to income tax on a worldwide basis, and as such foreign income is also taxable. The tax treatment of foreign income is generally the same as for Nepal-source income.

[Double Tax Relief] Nepal provides relief against international double taxation to residents by granting foreign tax credits. This is restricted to an amount calculated by multiplying the Nepal income tax rate by the income subject to foreign tax. Excess credits can be carried forward and adjusted only against the assessable foreign income.

In addition, double tax relief can be claimed under the provisions of existing DTAs, which Nepal has negotiated with other tax jurisdictions. An unrelieved foreign source loss can be set off only against foreign source income on a standalone basis per country.

[Treaty and Non-Treaty Withholding Tax Rates] Nepal has entered into double taxation avoidance agreements with 11 countries including India in order to provide relief from the double taxation of income of foreign investors. The tax rates applicable as per the double tax avoidance agreement are a section 4.

b) Non-resident Company

A non-resident company is a company that is not a resident of Nepal. A foreign permanent establishment of a non-resident person situated in Nepal is treated as a resident in Nepal (section 2(ao) of the ITA).

Non-resident companies are taxed only on income arising from a source in Nepal in the income year. Such income is subject to income tax under the normal income taxation rules applicable to residents.

Tax is imposed at the rate of 5% on the after-tax profits repatriated by a

permanent establishment in Nepal (paragraph 2(6), Schedule 1 of the ITA).

The taxable income of a non-resident person providing shipping, air transport or telecommunications services in Nepal is taxed at the rate of 5% (paragraph 2(7), Schedule 1 of the ITA). Other income is generally subject to final withholding tax.

C. Anti-Avoidance Rules Against International Tax Planning

1) Principles of anti-avoidance rules

Section 35 of the ITA is the general anti-avoidance rule. For the purposes of determining income tax liability, the IRD may:

- recharacterize an arrangement or part of an arrangement that is entered into or carried out as part of a tax avoidance scheme;
- disregard an arrangement or part of an arrangement that does not have substantial economic effect; or
- recharacterize an arrangement or part of an arrangement the form of which does not reflect its substance.

2) Transfer Pricing

There are no specific rules regarding transfer pricing regulating specifically the international transactions.

However, section 33 of the ITA empowers the IRD to make the necessary adjustments to arrangements between associated parties, to determine the tax payable that would have arisen if the transactions between the associated parties had been carried out at arm's length.

3) Controlled Foreign Corporation

Pursuant to section 69 of the ITA, where at the end of an income year, a controlled foreign entity distributes dividends out of attributable income (i.e.

taxable income of the controlled foreign entity computed as if the entity was a resident entity) derived during the year, the entity will be treated as proportionately distributing a dividend as follows to its beneficiaries:

- in accordance with the beneficiaries' rights to that income upon distribution; or
- where those rights are not reasonably certain, in such manner as the IRD thinks appropriate in the circumstances.

Dividends distributed, other than in the above case, by a controlled foreign entity at the end of the year are exempt from tax.

4) Thin Capitalization

There are no thin capitalization rules.

However, where interest is paid by an exempt-controlled resident entity to a person or an associate of persons having at least 25% ownership or control over the entity, the allowable deduction for interest cannot exceed the total taxable interest derived by the entity plus 50% of the entity's taxable income (calculated without including any interest derived by the entity or deducting any interest incurred by the entity). Any interest, for which a deduction is denied, may be carried forward and treated as incurred during the next income year (section 14 of the ITA).

D. Tax Treaties

1) Tax treaty status

Nepal has entered into double taxation avoidance agreements with 11 countries including India in order to provide relief from the double taxation of income of foreign investors. The tax rates applicable as per the double tax avoidance agreement are a below:

〈Table 8-3〉 Treaty and Non-Treaty Withholding Tax Rates

Countries	Dividend	Interest	Royalty	Service fee
Non-treaty countries	5%	5, 15%[5)]	15%	15%
Treaty countries:				
Austria	5*, 10**, 15%	At most 15, 10%[1)]	At most 15%	15%
China	At most 10%	At most 10%	At most 15%	15%
India	5***, 10%	At most 10%	At most 15%	15%
Korea	5*, 10**, 15%	At most 10%	At most 15%	15%
Mauritius	5****, 10**, 15%	At most 10, 15%[2)]	At most 15%	15%
Norway	5*, 10**, 15%	At most 15, 10%[1)]	At most 15%	15%
Pakistan	10**, 15%	At most 10, 15%[2)]	At most 15%	15%
Qatar	At most 10%	At most 10%	At most 15%	15%
Srilanka	At most 15%	At most 15, 10%[1)]	At most 15%	15%
Thailand	At most 15%[3)]	At most 10, 15%[4)]	At most 15%	15%
Bangladesh	10**, 15%	At most 10, 15%[1)]	At most 15%	15%

* 5% if the beneficial owner of shares is a company and it holds at least 25% of shares of the company paying the dividends.

** 10% if the beneficial owner of shares is a company and it holds at least 10% of shares of the company paying the dividends.

*** 5% if the beneficial owner of shares is a company and it holds at least 10% of shares of the company paying the dividends.

**** 5% if the beneficial owner of shares is a company and it holds at least 15% of shares of the company paying the dividends.

1) Interest shall not exceed 10% if interest is paid to a bank, which is a resident of the other Contacting State and is the beneficial owner of the interest.
2) Interest shall not exceed 10% if the beneficial owner is a financial institution, an insurance company or an investment company receiving income from financial investments.
3) If the beneficial owner of shares is a company and it holds at least 15% of shares of the company paying the dividends.
4) 15% of the gross amount of interest if it is received by a financial institution (including insurance companies)
5) 5% if paid to a natural person, not related to business, by financial institutions, listed company or entity issuing debentures, on deposit, loans, bonds, or debentures. 15% in all other cases.

2) Non-OECD economies' positions on the OECD Model Tax Convention

Nepal has not commented.

E. BEPS Implementation

There are no specific rules.

However, Digital service tax of 2% on transaction value shall be collected on digital services provided by non-residents to Nepalese individual customers. Such tax shall not be applicable in cases when the annual transaction is up to NRs 2 million.

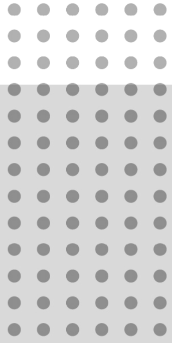
The non resident service providers have to register withteh Inland Revenue Department and will have to file annual tax returns on the income and taxes to be paid. Such service providers shall file the return and deposit tax amount in each fiscal year. Income on which digital service tax has been deposited shall not be taxable under the Income Tax Act, 2058. The administration of digital service tax shall be done by Inland Revenue Department.

〈References〉

PKF, Nepal Taxation, 2022

R. Khadka, Nepal - Corporate Taxation, Country Tax Guides IBFD

R. Khadka, Nepal - Individual Taxation, Country Tax Guides IBFD



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Pakistan

The taxation system in Pakistan is complex and does not seem to be made in a consistent manner, with regulations varying across different levels of government. The Federal Board of Revenue administers the tax system, which is defined by the Income Tax Ordinance, 2001 and the Sales Tax Act, 1990. The income tax system is governed by various laws and regulations, with residents taxed on worldwide taxable income and nonresidents taxed on Pakistan-source income. Tax rates vary based on income brackets for individuals and entity types for corporations. Tax residency is determined based on various criteria, and double tax relief is available for foreign income. The concept of permanent establishment is important for determining tax liabilities. Pakistan provides tax incentives for foreign direct investment. Anti-avoidance rules are in place to address tax planning and avoidance. Recent changes include the requirement to maintain certain documents and the implementation of the Multilateral Instrument to prevent double taxation and tax evasion. Pakistan has not committed to implementing Pillar 1 and Pillar 2 solutions at this time.

Pakistan's tax system is complex and fragmented, with numerous tax exemptions and various taxes split between federal and provincial governments. The tax system prominently relies on indirect tax, and the tax revenue remains low, indicating a serious concern regarding the structure of its tax revenue. Tax evasion and avoidance are also significant issues in Pakistan, resulting from insufficient tax enforcement, a cash-based economy, and ineffective tax obligations. Also, Pakistan does not have financially empowered urban governments, and most urban taxes are implemented by one of Pakistan's four provincial governments, resulting in a low tax collection in cities.

Tax reforms for Pakistan would include adopting better training and modern tools for tax administration, digitizing transactions to improve transparency, introducing progressive taxation, and implementing a Goods and Services Tax. There may be opportunities for the Tax Programme of the OECD Korea Policy Centre to share Korea's policy experience of reforms, especially with respect to the digital transformation of tax administration, which can strengthen tax administration and promote revenue collection.

A. Tax System

Pakistan has a huge domestic market with a population of 216 million, and its GDP growth in recent years have been high.[115] Although Pakistan has a nominally open foreign direct investment regime, Pakistan remains a challenging environment for investors. In 2022, the government implemented additional duties and restrictions on imports, and delayed approvals of letters of credit and repatriation of proceeds. Also, dispute resolution processes are lengthy and taxation is inconsistent, often disproportionately targeting international investors, and regulations vary across the federal, provincial, and local levels of government.[116]

Multinational corporations bear a significant portion of the tax collection in Pakistan. Federal and provincial tax regulations are complex and tax assessments lack transparency. The government requests advance tax payments from companies, but at the same time, tax refunds are intentionally delayed by the government.[117]

Pakistan inherited the tax system from British India, and at the time of independence, Central Board of Revenue was responsible for the collection of federal taxes. In 2007, Pakistan passed the Federal Board of Revenue ("FBR") Act, converting Central Board of Revenue into FBR.[118] FBR administers Pakistan's current tax system which is defined by Income Tax Ordinance, 2001 ("ITO") for direct taxes, and Sales Tax Act, 1990 for indirect taxes.[119]

B. Tax Administration Agency

The tax administration agency is the FBR. FBR is under the Revenue Division of the Ministry of Finance.

FBR website : https://www.fbr.gov.pk/

FBR works with the following tax-type wings: Income Tax, Sales Tax, Federal

115) https://www.lloydsbanktrade.com/en/market-potential/pakistan/investment
116) https://www.state.gov/reports/2023-investment-climate-statements/pakistan/
117) *Id.*
118) https://www.brecorder.com/news/40200024
119) https://en.wikipedia.org/wiki/Taxation_in_Pakistan

Excise, and Customs.[120] The Inland Revenue Service is a department of the FBR. It was established in 2009 and is responsible for overseeing domestic tax, including income tax, sales tax, and federal excise tax.[121]

Appeals against an assessment or other administrative decision of the tax authorities may be filed to the Commissioner Inland Revenue (Appeals). Appeals against the decision of the Commissioner (Appeals) may be filed to the Appellate Tribunal. A further appeal against the decision of the Appellate Tribunal may be filed to the High Court only on the question of law. An intra-court appeal in the High Court may be filed. Finally, a civil petition may be filed for leave to appeal to the Supreme Court.[122]

C. Income Tax System

1) Underlying law[123]

The following laws and regulations govern income tax:

- Articles 77, 165A, and 279 the Constitution of Pakistan;
- ITO;
- Income Tax Rules, 2002;
- Annual Finance Acts;
- Notifications, Statutory Regulatory Orders, and Circulars issued by the FBR;
- Judicial pronouncements by the Inland Revenue Appellate Tribunal, High Courts and Supreme Court of Pakistan.

Article 77 of the Constitution specifies that no tax shall be levied except by or under the authority of Parliament, providing the legal basis for all taxes. Article 165A of the Constitution gives Parliament power to impose income tax

120) https://www.fbr.gov.pk/
121) https://en.wikipedia.org/wiki/Inland_Revenue_Service_(Pakistan)
122) https://maxlewis.com.sg/wp-content/uploads/2020/04/173.pdf
123) Basil Siddique, Taxation of Non-Residents under Income Tax Law of Pakistan, SSRN Electronic Journal - January 2014

on taxable income of all persons including individuals, association of person and companies. Article 279 of the Constitution specifies that all taxes and fees shall continue to be levied until they are varied or abolished by legislation.

2) Income tax structure

a) Taxpayer

Residents in Pakistan are taxed on their worldwide taxable income while nonresidents are taxed on Pakistan-source income. Pakistan-source income is income:

(i) accruing or arising, or treated as accruing or arising, in Pakistan; or
(ii) received, or treated as being received, in Pakistan.[124]

b) Taxable income

Income can be classified into the following five heads: salary, income from property, income from business, capital gains, and income from other sources.[125]

If an individual's salary income does not exceed PKR 600,000, the rate of income tax is 0%.[126]

c) Tax year : 12-month period ending on June 30th and denoted by the calendar year in which it ends (section 74 of the ITO)

d) Tax base

The Second Schedule of the ITO includes a list of exemptions from income tax that are available to both individuals and companies. These include the following exemptions:[127]

124) I. Haq & H. Bukhari, Pakistan - Corporate Taxation, Country Tax Guides IBFD (2023)
125) I. Haq & H. Bukhari, Pakistan - Individual Taxation, Country Tax Guides IBFD (2023)
126) *Id.*
127) https://cdpr.org.pk/wp-content/uploads/2018/04/Personal-and-Corporate-Income-Tax-Pakistan.pdf

Box 1: Key Sectors Exempted from Income Tax

- Capital gains arising from sale of real estate
- Income from mutual funds, investment companies or education institutes
- Income from trusts, welfare, religious and charitable organizations
- Income from federal securities
- Military and non-military pensions
- Annuity payments and other payments from workers participation fund
- Export of IT
- Agriculture income (unless tax payer earns more than Rs. 80,000 of non-agriculture income)

Personal and Corporate Income Tax in Pakistan, Consortium for Development Policy Research (2018)

e) Tax rate (individual)[128]

The following tax rates apply for an individual whose salary income does not exceed 75% of the taxable income:

Total income (PKR)		Tax on column 1 (PKR)	Tax on excess (%)
Over (column 1)	Not over		
0	600,000	0	0
600,000	800,000	0	7.5
800,000	1,200,000	15,000	15
1,200,000	2,400,000	75,000	20
2,400,000	3,000,000	315,000	25
3,000,000	4,000,000	465,000	30
4,000,000		765,000	35

The following tax rates apply for an individual whose salary income exceeds 75% of the taxable income:

128) This tax rate is effective from July 1, 2023.

Total income (PKR)		Tax on column 1 (PKR)	Tax on excess (%)
Over (column 1)	Not over		
0	600,000	0	0
600,000	1,200,000	0	2.5
1,200,000	2,400,000	15,000	12.5
2,400,000	3,600,000	165,000	22.5
3,600,000	6,000,000	435,000	27.5
6,000,000		1,095,000	35

f) Tax rate (corporate)[129]

Entity type	Rate
Banking company	39%
Public company other than a banking company	29%
Any other company	29%
Small company	20%

A public company refers to a company listed on any stock exchange in Pakistan or one in which not less than 50% of the shares are held by the federal government or a public trust.[130]

A small company refers to a company which:

- has a paid-up capital plus undistributed reserves not exceeding PKR 50 million;
- has not more than 250 employees;
- has annual turnover not exceeding PKR 250 million;
- is not formed by the splitting-up or reorganization of an existing company; and
- is not a small and medium manufacturing enterprise ("SME").[131]

129) This tax rate is effective for tax year 2023 and onwards.
130) https://taxsummaries.pwc.com/pakistan/corporate/taxes-on-corporate-income

An SME refers to a person who is engaged in manufacturing and whose business turnover in a tax year does not exceed PKR 250 million. Tax rate for an SME depends on its annual business turnover. If the annual business turnover does not exceed PKR 100 million ("Category 1"), the tax rate is 7.5% (of taxable income). If the annual business turnover exceeds PKR 100 million but does not exceed PKR 250 million ("Category 2"), the tax rate is 15% (of taxable income). However, if the SME opts to be taxed under the final tax regime, the tax rate for Category 1 SME is 0.25% (of gross turnover) and the tax rate for Category 2 SME is 0.5% (of gross turnover).[132)]

g) Tax rate (capital gains)[133)]

There is no separate tax on capital gains, and capital gains on the sale, exchange, or transfer of movable capital assets, except for securities traded at a stock exchange, are taxable at normal income tax rates described above. Capital gains from the disposal of specified securities are subject to the following specific rates based on the holding period for securities purchased after July 1, 2022.[134)]

- 15% for holding period of less than one year
- 12.5% for holding period from one year to two years
- 10% for holding period from two years to three years
- 7.5% for holding period from three years to four years
- 5% for holding period from four years to five years
- 2.5% for holding period from five years to six years
- 0% for holding period of more than six years

Capital gains from the disposal of immovable property are taxed at concessional

131) I. Haq & H. Bukhari, Pakistan - Corporate Taxation, Country Tax Guides IBFD (2023)
132) *Id.*
133) *Id.*; https://taxsummaries.pwc.com/pakistan/individual/income-determination
134) For securities purchased on or before June 30, 2022, the rate will be 12.5% regardless of the holding period. For securities purchased before July 1, 2013, the rate will be 0%.

rates if the property is situated in Pakistan. Different graduated rates apply based on the holding period of the property.

3) Key issues in international tax

a) Tax residency

Criteria	Definition	Taxable income
Resident individual	Individual who: (i) is present in Pakistan for a total of at least 183 days in the tax year; (ii) is an employee or official of the federal government or a provincial government posted abroad in the tax year; or (iii) is a citizen of Pakistan and not present in any other country for more than 182 days during the tax year or not a resident taxpayer of any other country.[135]	Worldwide income
Resident business entity	A company if: (i) It is incorporated or formed by or under any law in force in Pakistan; or (ii) the control and management of its affairs is situated wholly in Pakistan.[136]	Worldwide income
Nonresident individual	Short-term visitors and dependents of foreign nationals not earning any income in Pakistan	Pakistan-source income
Nonresident business entity	A company if: (i) it is incorporated or formed by or under any law in force outside Pakistan; or (ii) the management and control of its affairs are exercised outside Pakistan	Pakistan-source income

b) Double tax relief

A foreign tax credit is available only against the foreign source income chargeable to tax. The allowable credit is the lower of the foreign income tax

135) I. Haq & H. Bukhari, Pakistan - Individual Taxation, Country Tax Guides IBFD (2023)
136) I. Haq & H. Bukhari, Pakistan - Corporate Taxation, Country Tax Guides IBFD (2023)

paid or the domestic tax payable in respect of that income. The Pakistani tax payable in respect of foreign-source income is computed by applying the average rate of Pakistani income tax for the year against the net foreign-source income for the year. A credit is allowed only if the foreign income is paid within 2 years from the end of the tax year in which the foreign income was derived.[137] Carry forward or carry back of excess foreign tax credits is not allowed.[138]

c) Permanent establishment

To determine if a "permanent establishment" exists in Pakistan, any double taxation avoidance agreement between Pakistan and the relevant foreign country must be considered. The treaty definition of a permanent establishment applies if there is a tax treaty.

Section 2(41) of the ITO defines "permanent establishment" in relation to a person as follows:

A fixed place of business through which the business of the person is wholly or partly carried on, and includes the following:

- A place of management, branch, office, factory or workshop, premises for soliciting orders, warehouse, permanent sales exhibition or sales outlet, other than a liaison office except where the office engages in the negotiation of contracts (other than contracts of purchase);
- A mine, oil or gas well, quarry or any other place of extraction of natural resources;
- An agricultural, pastoral or forestry property;
- A building site, a construction, assembly or installation project or supervisory activities connected with such site or project but only where such site, project and its connected supervisory activities continue for a period or periods aggregating more than ninety days within any twelve-months period;

137) *Id.*
138) Section 103 of the ITO

- The furnishing of services, including consultancy services, by any person through employees or other personnel engaged by the person for such purpose;
- A person acting in Pakistan on behalf of the person ("agent"), other than an agent of independent status acting in the ordinary course of business as such, if the agent –

    has and habitually exercises an authority to conclude contracts on behalf of the other person or habitually concludes contracts or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the person and these contracts are—

        in the name of the person; or

        for the transfer of the ownership of or for the granting of the right to use property owned by that enterprise or that the enterprise has the right to use; or

        for the provision of services by that person; or

    has no such authority, but habitually maintains a stock-in-trade or other merchandise from which the agent regularly delivers goods or merchandise on behalf of the other person;
- any substantial equipment installed, or other asset or property capable of activity giving rise to income;
- a fixed place of business that is used or maintained by a person if the person or an associate of a person carries on business at that place or at another place in Pakistan and

    that place or other place constitutes a permanent establishment of the person or an associate of the person under this sub-clause; or

    business carried on by the person or an associate of the person at the same place or at more than one place constitute complementary functions that are part of a cohesive business operation.[139]

d) Tax incentives for foreign direct investment

Pakistan provides both domestic and foreign investors the same tax incentives for investment. These include incentives under the 2012 Special Economic Zones ("SEZ") Act, amended in 2016 as well as sector wise incentives in different sectors of the economy.

(1) Special Economic Zones

SEZs are conceived as large areas with special incentives for businesses. Any manufacturer that introduces technologies that are unavailable in Pakistan can receive the same incentives available to companies operating in Pakistan's SEZs, including a ten-year tax holiday.[140] The zone developers/co-developers and zone enterprises are exempt from all income tax on income derived by zone enterprise for ten years. Developers submit applications to the provincial SEZ authorities, and the Federal Board of Investment reviews the applications.[141]

(2) Sector wise incentives

Pakistan also offers incentives for various sectors such as the agriculture and food, real estate, information technology, energy, and textile. Incentives can be in the form of tax holidays, reductions in tax rates, tax credits, enhanced deductions, accelerated depreciation, and loss carry forwards. However, some of these exemptions and tax credits have been withdrawn, and in some cases, tax holidays have been converted into a tax credit.[142]

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139) https://taxsummaries.pwc.com/pakistan/corporate/corporate-residence
140) https://www.state.gov/reports/2023-investment-climate-statements/pakistan/
141) https://www.invest.gov.pk
142) https://www.invest.gov.pk/incentives-database;
https://taxsummaries.pwc.com/pakistan/corporate/tax-credits-and-incentives;
https://oosga.com/briefings/pak-incentives/

e) Withholding tax[143]

Type of Payment	Withholding tax	
	Resident	Nonresident[144]
Dividends[145]	0%/7.5%/15%/25%	0%/7.5%/15%/25%
Interest	15%	10%
Royalties	15%	15%
Fees for technical services	15%	15%

D. Anti-Avoidance Rules Against International Tax Planning

1) Principles of anti-avoidance rules

a) General Anti-Avoidance Rule

Chapter VIII of the ITO contains anti-avoidance provisions directed against perceived tax avoidance in particular circumstances, especially with respect to transfer pricing.

Section 109 of the ITO provides that the Commissioner may -

(i) recharacterize a transaction or an element of a transaction that was entered into as part of a tax avoidance scheme;

(ii) disregard a transaction that does not have substantial economic effect;

(iii) recharacterize a transaction where the form of the transaction does not reflect the substance;

(iv) from tax year 2018 and onwards, disregard an entity or a corporate structure that does not have an economic or commercial substance or was created as part of the tax avoidance scheme; or

(v) from tax year 2018 and onwards, treat a place of business in Pakistan

143) https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-pakistanhighlights-2020.pdf?nc=1; https://download1.fbr.gov.pk/Docs/20237211872416372IncomeTaxOrdinance,2001Amendedupto30.06.2023.pdf

144) This rate is applicable to nonresidents that have no permanent establishment in Pakistan.

145) 0% rate applies to dividends received by a REIT scheme from Special Purpose Vehicle. 7.5% rate applies to dividends paid by Independent Power Purchasers, where such dividend is a pass through item. 25% rate applies if no income tax is payable by the payer due to a tax exemption, the use of carried forward losses, or the use of tax credits.

as a permanent establishment, if the said place fulfills the conditions as specified in section 2(41)(g)[146].

b) Concealment of income and concealment of an offshore asset

Section 192A of the ITO provides that where any person has concealed income or furnished inaccurate particulars of such income and revenue impact of such concealment or furnishing of inaccurate particulars of such income is PKR 500,000 or more will commit an offense punishable on conviction with imprisonment up to two years or with fine or both.

Section 192B of the ITO provides that any person who fails to declare an offshore asset to the Commissioner or furnished inaccurate particulars of an offshore asset and revenue impact of such concealment or furnishing of inaccurate particulars is PKR 10 million or more will commit an offense punishable on conviction with imprisonment up to three years or with a fine up to PKR 500,000 or both.

c) False or misleading statements

Section 195 of the ITO provides that a person who

(i) makes a statement to an income tax authority that is false or misleading in a material particular; or

(ii) omits from a statement made to an income tax authority any matter or thing without which the statement is misleading in a material particular,

will commit an offense punishable on conviction - where the assessment or omission was made knowingly or recklessly, with a fine or imprisonment for a term not exceeding two years, or both; or in any other case, with a fine.

146) Section 2(41)(g) of the ITO provides that “permanent establishment” includes a place of business that is used or maintained by a person if the person or an associate of a person carries on business at that place or at another place in Pakistan and - (i) that place or other place constitutes a permanent establishment of the person or an associate of the person; or (ii) business carried on by the person or an associate of the person at the same place or at more than one place constitute complementary functions that are part of a cohesive business operation.

d) Offshore tax evasion

Section 195B of the ITO provides that any enabler who enables, guides or advises any person to design, arrange or manage a transaction or declaration in such a manner which results in offshore tax evasion, will commit an offense punishable on conviction with imprisonment for a term not exceeding seven years or with a fine up to PKR 5 million or both.

2) Transfer pricing

Section 108 of the ITO provides that the Commissioner may, in respect of any transaction between persons who are associates, distribute, apportion or allocate income, deductions or tax credits between the persons as is necessary to reflect the income that the persons would have realized in an arm's length transaction.

Chapter VI of the Income Tax Rules, 2002 provides specific rules with respect to transfer pricing, and applies for the purposes of section 108 of the ITO mainly.

Arm's length standard refers to the standard of a person dealing at arm's length with a person who is not an associate. The arm's length result refers to the result that would have been realized if uncontrolled persons had engaged in the same transaction under the same conditions.[147)]

Arm's length result is determined by applying any of the following methods:

- Comparable uncontrolled-price method;
- Resale price method;
- Cost plus method;
- Profit split method.[148)]

Two significant changes have been made to the Pakistani tax regime in response to the developments under the BEPS Project. First, every taxpayer entering into a transaction with its associate must maintain a Master File and a Local File

147) Rule 23 of the Income Tax Rules, 2002
148) Rule 23(3) of the Income Tax Rules, 2002

containing documents and information as prescribed; keep and maintain prescribed country-by-country reports, where applicable; keep and maintain any other information and documents in respect of transactions with its associate as prescribed; and keep the files, documents, information and reports as prescribed. Second, any taxpayer that enters into a transaction with its associate must provide, within 30 days, such documents and information as the Commissioner may require.[149]

3) Controlled Foreign Company ("CFC")

Under section 109A of the ITO, CFC is defined as a nonresident company, if -

(i) more than 50% of the capital or voting rights of the nonresident company are held, directly or indirectly, by one or more persons resident in Pakistan or more than 40% of the capital or voting rights of the nonresident company are held, directly or indirectly, by a single resident person in Pakistan;

(ii) tax paid, after taking into account any foreign tax credits available to the nonresident company, on the income derived or accrued, during a foreign tax year, by the nonresident company to any tax authority outside Pakistan is less than 60% of the tax payable on the said income under the ITO;

(iii) the nonresident company does not derive active business income;[150] and

(iv) the shares of the company are not traded on any stock exchange recognized by law of the country or jurisdiction of which the nonresident company is resident for tax purposes.

149) https://download1.fbr.gov.pk/Docs/2021621163532304M.AshfaqAhmed-ImplementingKeyBEPSAction-Pakistan.pdf

150) A company will be treated to have derived active business income if more than 80% of its income includes income from dividend, interest, property, capital gains, royalty, annuity payment, supply of goods or services to an associate, sale or licensing of intangibles and management, holding or investment in securities and financial assets, and it does not principally derive income under the head "income from business" in the country or jurisdiction of which it is a resident.

The income of a CFC is taxed in Pakistan at the rate applicable to dividends, which is generally 15%. The CFC rules do not apply if the capital or voting rights of the resident person is less than 10% or if the CFC's income is less than PKR 10 million. The income attributable to a CFC and taxed in Pakistan will not be taxed again at the time of actual distribution.[151)]

4) Thin capitalization

Section 106 of the ITO provides that where a foreign-controlled resident company[152)] (other than a financial institution or a banking company) or a branch of a foreign company operating in Pakistan, has a foreign debt-to-foreign equity ratio in excess of 3:1 at any time during a tax year, a deduction will be disallowed for the interest paid by the company in that year on that part of the debt which exceeds the 3:1 ratio.

Section 106A of the ITO provides a fixed ratio test applicable from July 1, 2020. Foreign interest incurred by a foreign-controlled resident company (other than an insurance company or a banking company) that exceeds 15% of the taxable income before interest, depreciation, and amortization will be disallowed. This restriction will not apply to a foreign-controlled resident company if the total foreign interest claimed as deduction is less than PKR 10 million for a tax year. Also, where both the fixed ratio test and the debt-to-equity ratio apply, the disallowed amount will be the higher of the disallowed amounts under each test.

E. Tax Treaties

1) Tax treaty status[153)]

Pakistan has entered into bilateral agreements that protect the income of

151) I. Haq & H. Bukhari, Pakistan - Corporate Taxation, Country Tax Guides IBFD (2023)

152) Section 106(2) provides that a foreign-controlled resident company refers to a resident company in which 50% or more the underlying ownership of the company is held by a nonresident person either alone or together with an associate or associates.

153) https://fbr.gov.pk/bilateral-full-scope-treaties/132245/152329

foreign investors from being taxed in two different countries with the following 66 countries:[154)]

> Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Bosnia and Herzegovina, Brunei Darussalam, Bulgaria, Canada, China, Czech Republic, Denmark, Egypt, Finland, France, Germany, Hong Kong, Hungary, Indonesia, Iran, Ireland, Italy, Japan, Jordan, Kazakhstan, Korea, Kuwait, Kyrgyz Republic, Libya, Lebanon, Malaysia, Malta, Mauritius, Morocco, Nepal, Netherlands, Nigeria, Norway, Oman, Philippines, Poland, Qatar, Romania, Saudi Arabia, Serbia, Singapore, South Africa, Spain, Sweden, Switzerland, Syria, Tajikistan, Thailand, Tunisia, Turkey, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, United States of America, Uzbekistan, Vietnam, Yemen.

2) Non-OECD economies' positions on the OECD Model Tax Convention

Pakistan has not provided a comment.

3) Major disputes over the application of tax treaties

It is difficult to find publicly available material on this topic.

F. BEPS Implementation

Pakistan is a participant in the Inclusive Framework on BEPS.

1) Implementation of the BEPS Project through domestic laws[155)]

On September 12, 2016, Pakistan signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters ("Convention") under the OECD, as part of the prevention of BEPS. Pursuant to the Convention, Pakistan signed the Automatic Exchange of Tax Related Information, and the Multilateral Competent Authorities Agreement.

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154) Pakistan has also entered into limited purpose agreements with India, Jordan, Kenya, and Saudi Arabia.
155) https://taxsummaries.pwc.com/pakistan/corporate/other-issues

Pakistan amended/enacted relevant domestic laws to provide for the following

- Transfer pricing documentation and country-by-country reporting;
- CFCs;
- Treaty abuse/shopping;
- Common Reporting Standard.

Transfer pricing rules are in section 108 of the ITO and chapter VI of the Income Tax Rules, 2002. CFC rules are in section 109A of the ITO. Treaty abuse/shopping rules are in section 109 of the ITO, and section 109(3) specifically provides that a reduction in tax liability includes within its scope that achieved as a result of availing benefit under a tax treaty. Common Reporting Standard is addressed in sections 107(1) and 165B of the ITO and S.R.O. 166(I)/2017 dated March 15, 2017.

2) Implementation of BEPS Action 15 Multilateral Instrument ("MLI") through domestic laws

Pakistan signed the MLI on June 7, 2017, and the MLI entered into force for Pakistan on April 1, 2021. Pakistan is implementing the minimum standard through the inclusion of the preamble statement (Article 6 of the MLI) and the physical presence test (Article 7 of the MLI).[156]

Article 6 of the MLI provides the following:

Intending to eliminate double taxation with respect to the taxes covered by this agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of third jurisdictions;

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters.

156) https://www.oecd-ilibrary.org/sites/d528608c-en/index.html?itemId=/content/component/d528608c-en

Article 7 of the MLI provides the following:

Where a benefit under a Covered Tax Agreement is denied to a person under provisions of the Covered Tax Agreement (as it may be modified by this Convention) that denial or part of the benefits that would otherwise be provided under the Covered Tax Agreement where the principal purpose or one of the principal purposes of any arrangement or transaction, or if any person concerned with an arrangement or transaction was to obtain those benefits, the competent authority of the Contracting Jurisdiction that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income or capital, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person in the absence of the transaction or arrangement. The competent authority of the Contracting Jurisdiction to which a request has been made under this paragraph by a resident of the other Contracting Jurisdiction shall consult with the competent authority of that other Contracting Jurisdiction before rejecting the request.

3) Implementation of Pillar 1 and Pillar 2 through domestic laws

Although Pakistan is a part of the Inclusive Framework, Pakistan has not yet committed to the two pillar solution.[157]

157) Ameya Kunte and Vasudevan G, OECD/International - Asian Trends on Pillars One and Two - Who is Jumping on Board and Who May Be Jumping Ship, Issue: Talking Points, 2022, No. 13 (April 16, 2022)

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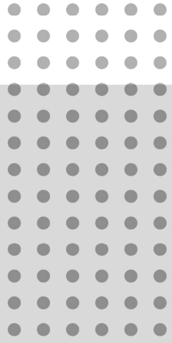

11.

Philippines

Summary

Philippine law is a complex system in that it is a mixture of civil law, common law, and the Muslim legal system. In particular, both of written law and unwritten law are applied in each field of law. Based on the National Internal Revenue Code (NIRC), the Bureau of Internal Revenue (BIR) has the authority to interpret tax laws by disclosing regulations for tax law enforcement. Additionally, the rulings of the Supreme Court or the Court of Tax Appeals are interpreted as having judicial nature.

Taxable persons are Filipino citizens, alien individuals (both resident and non-resident), estates and certain types of trusts. Philippine citizenship is determined according to Article 4, Paragraph 1 of the Philippine Constitution, which mentions the four matters. A resident citizen is subject to income tax on worldwide income, while a resident alien is taxed only on income from Philippine sources. Non-resident citizens (including overseas contract workers) and non-resident aliens are also taxed only on income from Philippine sources. Corporate income tax is levied on domestic and foreign corporations. The residence of a company is determined by the place of its registration. Companies created or organized in the Philippines or under its laws are domestic companies. Other companies that are not organized in the Philippines are regarded as foreign companies. Domestic companies are subject to corporate income tax on their worldwide income, while resident and non-resident foreign companies are taxed only on income from Philippine sources.

A non-resident alien engaged in trade or business is one whose aggregate stay in the Philippines during the year exceeds 180 days. The BIR has ruled that an alien who has stayed in the Philippines for almost 2.5 years is still a non-resident for income tax purposes, albeit engaged in trade or business. In

general, non-resident aliens are subject to a final tax of 25% of gross income. Non-resident foreign companies are taxed only on income from Philippine sources. The standard corporate tax rate for resident foreign corporations is 25%, the same as for domestic corporations, and the minimum tax is 2% of total income. Branch profits (gross profits before tax deduction) remitted from the branch to the head office are taxed at 15%. However, transactions occurring at branches registered in the Philippine Economic Zone (PEZA) are excluded.

There are no established anti-avoidance rules, although courts have adopted certain tests to deal with tax evasion, such as the principle of “substance over form”, the “step-transaction doctrine”, and piercing the corporate veil. The NIRC authorizes transfer pricing adjustments to be made among organizations, trades or businesses which are owned or controlled directly or indirectly by the same interests. Transfer pricing guidelines issued by the BIR, by way of RR 2-2013 on 23 January 2013, took effect on 9 February 2013. The guidelines are largely based on the OECD arm’s length pricing methodologies as set out in the OECD Guidelines, and provide guidance in applying the arm’s length principle to cross-border transactions and domestic transactions between associated enterprises. There are no controlled foreign company and thin capitalization rules.

In the case of resident and non-resident foreign corporations, notwithstanding the withholding tax rate mentioned above, if there is a tax rate applied in a country that has concluded a tax treaty with the Philippines, that tax rate will be applied with priority. There are 43 countries that have concluded tax treaties with the Philippines as of the report date, and the tax treaty with the Republic of Korea was concluded in 1987.

Philippine does not have the general anti-avoidance rule, but only regulates the transfer pricing tax system. Although it is responding to the BEPS project, its response to the taxation of the digitalized economy is insufficient. Therefore, the Philippines may need to cooperate with the Korea OECD Policy Center to supplement an anti-tax avoidance rules and respond to the taxation of the digitalized economy.

A. Tax System

Philippine law is a complex system in that it is a mixture of civil law, common law, and the Muslim legal system. This is the result of the migration of Muslim Malaysians in the 14th century and the colonial rule of Spain and the United States. In particular, both of written law and unwritten law are applied in each field of law. The written law system is applied to civil law and criminal law such as family relations law, property, inheritance, and contract, and to the constitution, procedural law, company law, insurance, labor relations, and finance/currency law. In related fields, unwritten laws apply. Tax law belongs to the latter field where unwritten laws apply.

The two biggest elements that make up Philippine courts are statutory law (statutes or statutory law) and legal interpretation (jurisprudence or case law). Written law refers to the constitution and enacted laws. In the Philippines, it consists of the constitution, treaties, enacted laws, municipal charters and laws, court rules, administrative rules and orders, subordinate laws, and presidential decrees. Legal interpretation refers to a sentence or written opinion from a judge or a person performing judicial functions, and in the Philippines, it also includes decisions made by the president or executive or legislative bodies such as the Senate and House of Representatives. There is also an argument that customary law is also recognized as a de facto court at some level. This is based on Article 6, Paragraph 2 of the Constitution: "The state shall recognize, respect, and protect the rights of indigenous cultural communities in order to preserve and develop their culture, traditions, and institutions." Meanwhile, there is controversy over the recognition of the legality of Muslim laws such as Sharia.

Likewise, in the tax aspect, based on the National Internal Revenue Code (NIRC), the Bureau of Internal Revenue (BIR) has the authority to interpret tax laws by disclosing regulations for tax law enforcement. Additionally, the rulings of the Supreme Court or the Court of Tax Appeals are interpreted as having judicial nature.

National taxes are imposed by the federal government and governed by the National Tax Service, and consist of the following tax items.

① Personal Income tax
② Corporate Income tax
③ Value Added Tax
④ Estate Tax, Donor's Tax
⑤ Excises Tax
⑥ Percentage Tax
⑦ Documentary Stamp Tax
⑧ Withholding Tax

Provinces, cities, municipalities, and barangays in the Philippines have the authority to tax and collect the following items:[158)]

① Real Property Tax
② Business Tax and Barangay Clearance
③ Community Tax
④ Public Utility Charge

B. Tax Administration Agency[159)]

The Department of Finance (DOF) is the Philippine government's steward of sound fiscal policy. It formulates revenue policies to ensure funding of critical government programs that promote the people's welfare and accelerate economic growth and stability. It serves a fundamental role in revenue generation, resource mobilization, and fiscal management, ensuring adequate financing of the country's needs.

158) https://dilg.gov.ph/, Local Government Code-Book2 Local Taxation and Fiscal Matters, Local Government Code of 1991.

159) For information, you may visit the following website:
- Department of Finance : https://www.dof.gov.ph/
- Bureau of Internal Revenue : https://www.bir.gov.ph/
- Bureau of Customs : https://customs.gov.ph/

There are various bureaus, agencies, and government corporations under the supervision of the DOF, among which are the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC).

The BIR is mandated to assess and collect all national internal revenue taxes, fees, and charges. It is also responsible for enforcing all forfeitures, penalties, fines, and execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. Likewise, it exercises supervisory and police powers conferred by the National Internal Revenue Code, as amended, or other laws.

On the other hand, the BOC is mandated to assess and collect customs revenues, curb illicit trade and all forms of customs fraud, and facilitate trade through an efficient and effective customs management system.

C. Income Tax System

1) Personal Income Tax

Philippine tax law does not provide a separate distinction between income tax and corporate tax, but separates taxation of corporations and individuals only to the extent necessary within the income tax category. 'Title II.' of the National Internal Revenue Code of 1997. Articles 22 through 59 of 'Tax on Income' stipulate taxation of individual and corporate income.

a) Taxable Persons

Taxable persons are Filipino citizens, alien individuals (both resident and non-resident), estates and certain types of trusts. Philippine citizenship is determined according to Article 4, Paragraph 1 of the Philippine Constitution, which mentions the following four matters.

① Individuals who had the status of citizens of the Philippines at the time of adoption of the 1987 Constitution

② At least one parent is a citizen of the Philippines at the time of birth
③ In cases where a person born before January 17, 1973 of Philippine maternal descent chose Philippine citizenship when he or she reached the age of majority.
④ When eligible for naturalization is granted by law

All citizens are considered resident unless they fulfil the criteria for non-residents. A citizen who has been previously considered as a non-resident citizen, and who arrives in the Philippines at any time during the taxable year to reside permanently in the Philippines, is a non-resident with respect to his income derived from sources abroad until the date of his arrival in the Philippines.

An alien is considered a resident based on his intentions with regard to the length and nature of his stay. While there is no stipulated period within which an alien may be considered a resident, the BIR has ruled that an alien who has stayed in the Philippines for almost 2.5 years is still a non-resident for income tax purposes, albeit engaged in trade or business (a nonresident alien engaged in trade or business).

Married individuals are separately taxable. Partnerships are generally taxed as corporations. An exception exists in the case of a general professional partnership that is formed by persons for the sole purpose of exercising their common profession and no part of the income of which is derived from engaging in any trade or business. Each partner is required to report as gross income his distributive share actually or constructively received, in the net income of the partnership, the net income of the partnership being computed in the same manner as that of a corporation.

A resident citizen is subject to income tax on worldwide income, while a resident alien is taxed only on income from Philippine sources. Non-resident citizens (including overseas contract workers) and non-resident aliens are also taxed only on income from Philippine sources.

b) Taxable Income

Taxable income means the pertinent items of gross income specified in the NIRC, less deductions, if any, allowed for such types of income by the NIRC or other special laws.

Gross income means all income derived from whatever source, including (but not limited to) the following items:

- compensation for services including fees, salaries, wages, emoluments, allowances, commissions and similar items and fringe benefits;
- gross income from the conduct of trade, business or profession;
- gains derived from dealings in property;
- interest;
- rent;
- royalties;
- dividends;
- annuities;
- prizes and winnings;
- pensions; and
- a partner's distributive share from the net income of a general professional partnership.

c) Capital Gains

Generally, capital gains are subject to the ordinary income tax rates applicable to the taxpayer that realizes the gains. However, capital gains from the sale of certain shares and real property are subject to tax at specific rates.

Net capital gains from the sale, exchange or other disposition of shares in a domestic company not traded or listed on the stock exchange are subject to a tax of 15%. The sale of shares listed on a local stock exchange is exempt from income tax, but subject to a stock transaction tax. In case the fair market value of the shares sold, bartered or exchanged is greater than the amount of

money and/or fair market value of the property received, the excess of the fair market value of the shares of stock sold, bartered or exchanged over the amount of money and the fair market value of the property received as consideration is deemed to be a gift subject to donor's tax.

Capital gains from the sale, exchange or disposition of lands and/or buildings held as capital assets is subject to a 6% final tax based on the higher of the property's gross selling price or fair market value. In the case of a sale to the government, the taxpayer has the option to apply progressive tax rates.

d) Tax Rates

The following progressive rates of income tax apply to citizens and resident aliens, on net or gross income.

〈Table 10-1〉 Personal income tax rate

Taxable income (PHP)	Tax rate (%)
~ 250,000	5
250,001 ~ 400,000	15
400,001 ~ 800,000	20
800,001 ~ 2,000,000	25
2,000,001 ~ 8,000,000	30
8,000,001 ~	35

Self-employed individuals and/or professionals whose gross sales or receipts and other non-operating income do not exceed the VAT threshold (PHP 3 million) have the option to avail of an 8% income tax on gross sales or receipts and other non-operating income in excess of PHP 250,000 in lieu of the graduated income tax rates and the percentage tax. The election must be made in the income tax return for the first quarter of the taxable year.

The 8% flat tax option is not available to:

- partners of general professional partnerships;
- VAT-registered taxpayers; or
- taxpayers subject to the percentage tax, except for non VAT-registered taxpayers whose gross sales and/or receipts do not exceed the VAT threshold.

Capital income is generally subject to the tax rate as ordinary income, but capital income arising from the transfer of stocks of domestic companies and the transfer of specific real estate classified as capital assets is separately taxed and taxed at a separate tax rate. Basically, the items and calculation method of capital income are the same as the taxation method for corporations. A holding period applies to capital income, so if held for more than 12 months, only 50% of the income is taxed. However, stocks of domestic corporations to which a fully paid withholding tax rate of 15% is applied, and listed stocks to which a transaction tax of 0.006% of the transfer amount is applied, the holding period does not apply to real estate located in the Philippines, which is classified as a capital asset and subject to 6% of the transfer amount.

e) Double Taxation Relief

Employees earning pure compensation income are entitled to a foreign tax credit.

Two alternative methods for double taxation relief are available for self-employed individuals: they may claim foreign taxes as a deduction from gross income or as a tax credit.

The tax credit is subject to the following limitations:

- the amount of the credit in respect of the tax paid or incurred in a foreign country must not exceed the same proportion of the tax against which such credit is taken, as the taxpayer's taxable income from sources within such country bears to his entire taxable income for the same taxable year; and

- the total amount of the credit must not exceed the same proportion of the tax against which such credit is taken, as the taxpayer's taxable income from sources outside the Philippines bears to his entire taxable income for the same taxable year.

However, alien individuals are allowed a deduction only to the extent that the foreign tax is connected with income from Philippine sources; such individuals are not entitled to foreign tax credits.

2) Corporate Income Tax

Corporate income tax in the Philippines is levied on the net profit obtained by subtracting expenses from the corporation's gross profit, but according to special tax treatment provided to companies located in free economic zones, it can be taxed as a certain percentage of gross income.

The Philippines adheres to a modified classical tax system. However, dividends paid by a domestic company to other domestic companies and resident foreign companies are exempt, while dividends paid to non-resident companies are subject to the regular income tax rate.

Dividends paid to citizens, resident individuals and non-resident aliens engaged in trade or business in the Philippines out of profits that have been subjected to income tax at the company level are subject to a reduced rate. Dividends paid to other nonresident individuals are subject to the relevant regular income tax rate.

Closely held domestic companies that accumulate their earnings for the purpose of avoiding the income tax with respect to its shareholders were previously subject to an improperly accumulated earnings tax.[160)]

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160) The improperly accumulated earnings tax (IAET) is repealed effective from 11 April 2021. Previously, a 10% IAET was imposed on the adjusted taxable income of a closely held domestic company which was accumulated for the purpose of avoiding the income tax with respect to its shareholders or shareholders of another company. A company is closely held if at least 50% in value of its outstanding capital stock or total combined voting power of all classes of stock entitled to vote is owned directly or indirectly (e.g. through another company, partnership, estate or trust, or under an option to acquire shares) by or for not more than 20 individuals.

a) Corporate Income Taxpayer

Corporate income tax is levied on domestic and foreign corporations. Partnerships, joint-stock companies, joint accounts (cuentas en participacion) and associations are taxed as corporations separately from the individual partners. The following are not taxed as corporations:

- general professional partnerships formed by persons for the sole purpose of exercising their common profession and no part of the income of which is derived from engaging in any trade or business. Each partner is required to report as gross income his distributive share actually or constructively received, in the net income of the partnership, the net income of the partnership being computed in the same manner as that of a corporation; and
- joint ventures or consortiums formed for the purpose of undertaking construction projects or engaging in petroleum, coal, geothermal and other energy operations pursuant to an operating consortium agreement under a service contract with the government.

Certain government-owned or government-controlled companies are exempt, such as the Government Service Insurance System, the SSS, the Philippine Health Insurance Corporation, Home Development Mutual Fund (HDMF), and the local water districts.

The following private companies, among others, are exempt to the extent that their activities are not conducted for profit:

- non-stock corporations or associations organized and operated exclusively for religious, charitable, scientific, athletic or cultural purposes, or for the rehabilitation of veterans, no part of the net income or asset of which belongs or inures to the benefit of any member, organizer, officer or any specific person;
- a business league, chamber of commerce, or board of trade, not organized

for profit and no part of the net income of which inures to the benefit of any private stockholder or individual;

- a civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;
- non-stock and non-profit educational institutions;
- labour, agricultural or horticultural organizations;
- mutual savings banks not having capital stock represented by shares and cooperative banks without capital stock organized and operated for mutual purposes;
- beneficiary societies, orders or associations, operating for the exclusive benefit of the members;
- cemetery companies owned and operated exclusively for the benefit of its members;
- farmers or other mutual typhoon or fire insurance companies, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses; and
- farmers, fruit growers, or like associations organized and operated as a sales agent for the purpose of marketing the products of its members and returning to them the proceeds of sales, less the necessary selling expenses on the basis of the quantity of produce finished by them.

b) Residence

The residence of a company is determined by the place of its registration. Companies created or organized in the Philippines or under its laws are domestic companies. Other companies that are not organized in the Philippines are regarded as foreign companies.

In this survey, foreign companies that are engaged in trade or business in the

Philippines, such as branches, are referred to as resident foreign companies. Foreign companies that are not engaged in trade or business in the Philippines are referred to as non-resident foreign companies.

c) Taxable Income

Domestic companies are subject to corporate income tax on their worldwide income, while resident foreign companies are taxed only on income from Philippine sources. Non-resident foreign companies are also subject to corporate income tax on income from Philippine sources only.

Domestic companies and resident foreign companies are subject to the higher of the ordinary corporate income tax and the minimum corporate income tax. The discussion in this section on taxable income and deductions applies to the ordinary corporate income tax.

"Taxable income" means the pertinent items of gross income specified in the NIRC, less any deductions authorized for such types of income by the NIRC or other special laws. Gross income includes:

- compensation for services, including fees, commissions and similar items;
- gross income derived from the conduct of trade or business;
- gains derived from dealings in property;
- interest;
- rent;
- royalties; and
- dividends.

d) Capital Gains

Generally, capital gains are subject to the ordinary income tax rates applicable to the taxpayer that realizes the gains. However, capital gains from the sale of certain shares and real property are subject to tax at specific rates.

Net capital gains from the sale, exchange or other disposition of shares in a

domestic company not traded or listed on the stock exchange by a domestic corporate seller are subject to a tax of 15%. The sale of shares listed and traded through the local stock exchange is exempt from income tax, but subject to a stock transaction tax. In case the fair market value of the shares sold, bartered or exchanged is greater than the amount of money and/or fair market value of the property received, the excess of the fair market value of the shares of stock sold, bartered or exchanged over the amount of money and the fair market value of the property received as consideration is deemed to be a gift subject to donor's tax.

Capital gains from the sale, exchange or disposition of land and/or buildings held as capital assets is subject to a 6% final tax based on the higher of the property's gross selling price or fair market value.

e) Rates

Effective 1 July 2020, the ordinary income tax rate for resident companies is:

- 20% for domestic companies with net taxable income not exceeding PHP 5 million and total assets not exceeding PHP 100 million, excluding the land on which the particular business entity's office, plant, and equipment are situated; and
- 25% for all other domestic corporations and resident foreign corporations.

Prior to 1 July 2020, the ordinary corporate income tax rate for companies is 30%.

Domestic companies and resident foreign companies are subject to the higher of the ordinary corporate income tax and the minimum corporate income tax (MCIT). The MCIT applies from the 4th taxable year immediately following the year in which the company commenced its business operations.

The MCIT rate is 2% of gross income as of the end of the taxable year. Effective 1 July 2020 until 30 June 2023, the MCIT rate is reduced to 1%. Gross income means:

- gross sales less sales returns, discounts, allowances and cost of goods sold; or
- in the case of a taxpayer engaged in the sale of services, gross receipts less sales returns, discounts, allowances and cost of services.

The MCIT is computed and paid at the time of filing the quarterly corporate income tax. However, the quarterly MCIT payment cannot be set-off by the excess MCIT from the previous taxable year(s). Nonetheless, the expanded withholding tax, quarterly corporate income tax payments under the normal income tax, and the MCIT paid in the previous taxable quarter(s) can be applied against the quarterly MCIT.

The BIR has issued guidelines on the determination of the "cost of goods sold" or "cost of services" for specific lines of business.

MCIT in excess of the ordinary corporate income tax may be carried forward and credited against the ordinary corporate income tax for up to 3 years.

f) Double Taxation Relief

Two alternative methods for double taxation relief are available: a domestic company may claim foreign taxes as a deduction from gross income or as a tax credit.

The tax credit is subject to the following limitations:

- the amount of the credit in respect of the tax paid or incurred in a foreign country must not exceed the same proportion of the tax against which such credit is taken, as the taxpayer's taxable income from sources within such country bears to his entire taxable income for the same taxable year; and
- the total amount of the credit must not exceed the same proportion of the tax against which such credit is taken, as the taxpayer's taxable income from sources outside the Philippines bears to his entire taxable income for the same taxable year.

Resident foreign companies are allowed a deduction only to the extent that the foreign tax is connected with income from Philippine sources. Such companies are not entitled to a foreign tax credit.

g) Branch Profits Remittance Tax

Profits remitted by a branch to its head office are subject to a branch profits remittance tax at the rate of 15% of the total profits applied or earmarked for remittance, without any deduction for the tax component thereof.

Interest, dividends, rents, royalties, including remuneration for technical services, salaries, wages, premiums, annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits, income and capital gains are not treated as branch profits unless they are effectively connected with the branch's trade or business in the Philippines.

3) Key issues in international tax

a) Non-resident Individuals

A citizen is a non-resident if he:

- establishes to the Commissioner of Internal Revenue's satisfaction the fact of his physical presence abroad with a definite intention to reside therein;
- leaves the Philippines during the taxable year to reside abroad, either as an immigrant or for employment on a permanent basis; or
- works and derives income from abroad and his employment requires him to be physically present abroad most of the time during the taxable year.

A citizen who has been previously considered as a non-resident citizen, and who arrives in the Philippines at any time during the taxable year to reside permanently in the Philippines, is a non-resident with respect to his income

derived from sources abroad until the date of his arrival in the Philippines.

Taxpayers are required to submit to the Commissioner proof of their intention to leave the Philippines to reside permanently abroad or to return to and reside in the Philippines as the case may be.

Non-resident aliens are classified into those engaged in trade or business or not engaged in trade or business, in the Philippines.

A non-resident alien engaged in trade or business is one whose aggregate stay in the Philippines during the year exceeds 180 days. The BIR has ruled that an alien who has stayed in the Philippines for almost 2.5 years is still a non-resident for income tax purposes, albeit engaged in trade or business.

Non-resident citizens and aliens are taxed only on income from Philippine sources. Non-resident citizens and non-resident aliens engaged in trade or business are taxed in the same manner as resident citizens on their income from Philippine sources, including the tax rates.

In general, non-resident aliens not engaged in trade or business are subject to a final tax of 25% of gross income, including interest, dividends, rents, salaries, wages, premiums, annuities, compensation, remuneration, emoluments and capital gains. Interest from a deposit in a foreign currency deposit unit or an offshore banking unit is exempt if paid to a non-resident, including a non-resident citizen.

Capital gains on the sale of shares and real properties realized by non-resident citizens and non-resident aliens, are taxed in the same way as for residents, including the option of applying progressive tax rates in the case of a sale to the government.

b) Non-Resident Companies

A foreign corporation that is not engaged in trade or business in the Philippines is referred to in this survey as a non-resident foreign company. A foreign corporation that is engaged in trade or business in the Philippines, e.g. through a branch, is referred to in this survey as a resident foreign company.

Non-resident foreign companies are taxed only on income from Philippine sources. Non-resident foreign companies are subject to a final withholding tax on gross income, including royalties, received during each taxable year from Philippine sources. A business presence, such as a branch, is not necessary for such income to be taxable, as the test of taxability is the source of the income.

The sale of listed or unlisted shares in a domestic company is taxed in the same manner as sales made by a domestic company.

The standard corporate tax rate for resident foreign corporations is 25%, the same as for domestic corporations, and the minimum tax is 2% of total income, the same as the regulations for domestic corporations. However, special tax rates are applied to resident foreign corporations in special cases.

Branch profits (gross profits before tax deduction) remitted from the branch to the head office are taxed at 15%. However, transactions occurring at branches registered in the Philippine Economic Zone (PEZA) are excluded. The collection and payment procedures for branch tax are carried out in accordance with the withholding method under the Philippine Income Tax Act. Since only income that is related (effectively connected) to a business conducted in the Philippines is considered taxable branch profit, income generated in the Philippines, such as interest income, dividend income, rental income, royalty income, various remuneration, and capital gains, is related to business in the Philippines. If not, it is not subject to branch tax.

Non-resident foreign corporations are taxed at a withholding tax rate of 25% on income listed in the law, such as interest income, dividend income, rental income, and royalty income generated in the Philippines, unless otherwise provided by law. However, if a non-resident foreign corporation falls under any of the following, a special tax rate is applied.

① Income from film distribution and rental business: 25%

② Ship rental income: 4.5%

③ Rental income from aircraft, machinery, etc.: 7.5%

④ Other income

- Interest income received from foreign currency loans: 20%
- Dividend income received from corporations: 15%
- Capital gains on unlisted stocks: 5~10%.

D. Anti-Avoidance Rules Against International Tax Planning

1) Principles of anti-avoidance rules

There are no established anti-avoidance rules, although courts have adopted certain tests to deal with tax evasion, such as the principle of "substance over form", the "step-transaction doctrine", and piercing the corporate veil.

In addition, no interest deduction or loss on a sale or exchange of property may be recognized in transactions involving the following:

- family members;
- an individual and a corporation in which the individual directly or indirectly owns 50% of the value of the outstanding capital stock, except distributions upon liquidation;
- the grantor and a fiduciary of a trust;
- the fiduciaries of two trusts that have a common grantor; and
- the fiduciary of a trust and its beneficiary.

2) Transfer Pricing

The NIRC(the National Internal Revenue Code) authorizes transfer pricing adjustments to be made among organizations, trades or businesses (whether or not incorporated and whether or not organized in the Philippines) which are owned or controlled directly or indirectly by the same interests.

Transfer pricing guidelines issued by the BIR, by way of RR 2-2013 on 23 January 2013, took effect on 9 February 2013.

The guidelines are largely based on the OECD arm's length pricing methodologies

as set out in the OECD Guidelines, and provide guidance in applying the arm's length principle to cross-border transactions and domestic transactions between associated enterprises.

Two or more enterprises are "associated" or "related" if one participates directly or indirectly in the management, controlor capital of the other, or if the same persons participate directly or indirectly in the management, control or capital of the enterprises.

"Control" refers to any kind of control, direct or indirect, whether or not legally enforceable and however exercisable or exercised. Control is deemed if income or deductions have been arbitrarily shifted between two or more enterprises.

The arm's length pricing methodologies provided in the guidelines are essentially the same as those under the OECD Guidelines, e.g. comparable uncontrolled price method, resale price method, cost-plus method, profit split method, residual profit split approach, and transactional net margin method. In applying these methods, further reference may be made to the OECD Guidelines.

The BIR(the Bureau of Internal Revenue) issued RR 34-2020 on 18 December 2020 to streamline the guidelines and procedures for the submission of the Information Return on Transactions with Related Party (RPT Form (BIR Form No. 1709)), transfer pricing documentation and other supporting documents, by providing safe harbours and materiality thresholds.

While the requirement to file an RPT Form under RR 19-2020 covered all entities with related-party transactions, RR 34-2020 mandates only the following taxpayers to file and submit the RPT Form together with their annual income tax returns:

(1) large taxpayers;
(2) taxpayers enjoying tax incentives;
(3) taxpayers reporting net operating losses for the current taxable and the immediately preceding 2 consecutive years; and
(4) a related party which has transactions with (1), (2) or (3) above.

In addition, the transfer pricing documentation and other supporting documents required under RR 19-2020 are not required to be attached to the RPT Form, but must be submitted within 30 calendar days upon receipt of the request by the Commissioner or his duly authorized representatives, pursuant to a duly issued Letter of Authority covering all internal revenue taxes, subject to a non-extendible period of 30 calendar days based on meritorious grounds.

However, the following taxpayers are required to submit their transfer pricing documentation together with the RPT Form:

(1) taxpayers with annual gross revenue exceeding PHP 150 million and the total amount of related-party transactions with foreign and domestic related parties exceeds PHP 90 million;

(2) taxpayers with related-party transactions that meet the following materiality thresholds:

- transactions involving the sale of tangible goods in the aggregate amount exceeding PHP 60 million; or
- service transactions, payment of interest, utilization of intangible goods or other related-party transactions in the aggregate amount exceeding PHP 15 million; or

(3) taxpayers that were required to prepare transfer pricing documentation during the immediately preceding taxable period for exceeding the thresholds under either (1) or (2) above.

3) Controlled Foreign Corporation

There are no controlled foreign company rules.

4) Thin Capitalization

There are currently no rules on thin capitalization. However, the BIR has acknowledged that the most common form of tax avoidance scheme using corporate structures is high-debt financing of a thinly capitalized controlled

company. In the absence of rules prescribing guidelines and presumptions as to what constitutes thin capitalization, the BIR determines the reasonableness of the ratio of debt over equity considering all factors surrounding the case.

E. Tax Treaties

1) Tax treaty status

In the case of resident and non-resident foreign corporations, notwithstanding the withholding tax rate mentioned above, if there is a tax rate applied in a country that has concluded a tax treaty with the Philippines, that tax rate will be applied with priority. There are 43 countries that have concluded tax treaties with the Philippines as of the report date, and the tax treaty with the Republic of Korea was concluded in 1987.

2) Non-OECD economies' positions on the OECD Model Tax Convention

The Philippines has not commented.

F. BEPS Implementation

1) Implementation of the BEPS Project through domestic laws

The Philippines has joined the Inclusive Framework on BEPS. The specific details are as follows.

〈Table 10-2〉 BEPS implementation status

1. Addressing the Tax Challenges of the Digital Economy	
Cross-Border B2C supplies of services and intangibles	
Applies the principles of the International VAT/GST Guidelines on cross-border B2C supplies of services and intangibles	Planned
Simplified registration and collection mechanisms	Planned

Low value imports	
VAT/GST exemption threshold for low value imports	No
2. Neutralizing the Effects of Hybrid Mismatch Arrangements : No	
3. Designing Effective Controlled Foreign Company Rules : No	
4. Limiting Base Erosion Involving Interest Deductions and Other Financial Payments : No	
5. Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance	
Substantial activities requirement	
IP regime	No
Framework for improving transparency in relation to rulings	
Legislation that provides for the spontaneous exchange of information in respect of rulings	Yes
Legislation covers rulings relating to preferential regimes	Yes
Legislation covers unilateral APAs or other crossborder unilateral rulings in respect of transfer pricing	Yes
Legislation covers cross-border rulings providing for a downward adjustment of taxable profits	Yes
Legislation covers permanent establishment (PE) rulings	Yes
Legislation covers related party conduit rulings	Yes
Legislation covers any other type of ruling agreed by the FHTP that in the absence of spontaneous information exchange gives rise to BEPS concerns	Not applicable
6. Preventing the Granting of Treaty Benefits in Inappropriate Circumstances : No	

7. Preventing the Artificial Avoidance of Permanent Establishment Status : No	
8-10. Aligning Transfer Pricing Outcomes with Value Creation	
Transfer pricing rules	
Has transfer pricing rules	Yes
Application of the arm's length principle	
Actual business transactions undertaken by associated enterprises are identified, and transfer pricing is not based on contractual arrangements that do not reflect economic reality	No
Contractual allocation of risk is respected only when it is supported by actual decision-making	No
Capital without functionality generates no more than a risk-free return, assuring that no premium returns will be allocated to cash boxes without relevant substance	No
Tax administrations may disregard transactions when the exceptional circumstances of commercial irrationality apply	Planned
Commodity transactions	No
Intangibles	No
Low value-adding intra-group services	No
Cost contribution arrangements (CCAs)	No
11. Measuring and Monitoring BEPS	
Status	Action 11 addresses the issue of measuring data on base erosion and profit shifting (BEPS) and recommends that the OECD work with governments to report and analyse more corporate tax statistics and to present them in an internationally consistent way. As this Action focuses on quantifying BEPS rather than preventing it, implementation at a country level is not considered here.

12. Mandatory Disclosure Rules : No	

13. Transfer Pricing Documentation and Country-by-Country Reporting : No	

14. Making Dispute Resolution Mechanisms More Effective	
Has legislation or practices in place to ensure that treaty obligations related to the mutual agreement procedure are fully implemented in good faith and that MAP cases are resolved in a timely manner	Yes
Has legislation or practices in place to ensure that administrative processes that promote the prevention and timely resolution of treaty-related disputes are implemented	No
Has legislation or practices in place to ensure that taxpayers can access the MAP when eligible	No
15. Developing a Multilateral Instrument to Modify Bilateral Tax Treaties Further Information	
Participated in the development of the Multilateral Instrument	Yes
Has signed the Multilateral Instrument	No

2) Taxation of the digitalized economy (Pillar1 & Pillar2)

There are no rules.

〈References〉

J. Ocampo & K. Ocampo, Philippines - Corporate Taxation, Country Tax Guides IBF

J. Ocampo & K. Ocampo, Philippines - Individual Taxation, Country Tax Guides IBFD

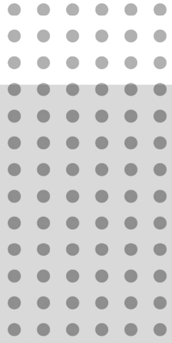
Philippines - BEPS Country Monitor, Tables IBFD

https://dilg.gov.ph/, Local Government Code-Book2 Local Taxation and Fiscal Matters, Local Government Code of 1991.

Bureau of Internal Revenue: https://www.bir.gov.ph/

Department of Finance: https://www.dof.gov.ph/

KPMG, https://assets.kpmg



12.

Sri Lanka

Sri Lanka faces tax system challenges due to an economic crisis from unsustainable external debt and budget deficits. To tackle this, the country has implemented the Inland Revenue Act to combat tax avoidance and evasion, expand the tax base, and penalize offenders. The Inland Revenue Department handles direct and value-added taxes, while other departments manage imports and stamp duty. Appeals can be made to the Commissioner General of Inland Revenue, the Tax Appeals Commission, and the Court of Appeal. The income tax system follows different laws for residents and nonresidents. Tax incentives are provided to attract foreign investment, and anti-avoidance rules and penalties exist for underpaid taxes and evasion. Transfer pricing regulations aim to prevent profit shifting between related parties, and tax treaties have been established with other countries. However, further implementation is needed in transfer pricing and country-by-country reporting, and Sri Lanka has not signed the BEPS Action 15 Multilateral Instrument or committed to the two-pillar solution proposed under BEPS.

Sri Lanka has a very complicated taxation structure, with numerous tax exemptions and discretionary taxes. The government revenue excessively relies on indirect tax and there is a low revenue collection from income tax, which indicates a serious concern regarding the structure of its tax revenue. In an effort to fix tax administration and create an efficient and transparent tax environment, Sri Lanka has taken steps to automate revenue collection. Also, under the Extended Fund Facility arrangement with the IMF, Sri Lanka implemented economic and financial policies, yielding positive real GDP growth, low inflation, increased revenue collection, and a build-up of external reserves.

Some of the tasks lying ahead for tax reform include strengthening tax administration, removing tax exemptions, and actively combatting tax evasion. The Export-Import Bank of Korea and the Ministry of Economy and Finance of Korea has in the past provided policy consultation for the establishment of an automated taxation system in Colombo, Sri Lanka. Similarly, there may be opportunities for the Tax Programme of the OECD Korea Policy Centre to share Korea's policy experience of reforms, especially with respect to the introduction of progressive property tax, which can help ensure fair burden sharing and sustain revenue-based consolidation.

A. Tax System

Sri Lanka is a lower middle-income country with a population of approximately 22 million. It is facing an unprecedented economic crisis from unsustainable external debt burden and budget deficit. Sri Lanka's economy contracted by an estimated 8.7% in 2022. According to the IMF, GDP is expected to contract by about 3% in 2023 before positive growth returns in 2024.[161)]

Sri Lanka is a constitutional multiparty socialist republic. Although Sri Lanka began to move away from socialist and protectionist policies and increase foreign investment in 1978, Sri Lanka remains a difficult place to do business due to high transaction costs exacerbated by an unpredictable economic policy environment, inefficient government services, and opaque government procurement policies.[162)]

Income tax was first introduced in 1932, and the Income Tax Department was established in the same year to administer this tax.[163)] Sri Lanka passed the new Inland Revenue Act ("IRA") in 2017, which came into force on April 1, 2018.[164)] The IRA modernizes rules on cross-border transactions to address tax avoidance, broadens the tax base, expands income tax sources, introduces a three-tier corporate tax structure, and imposes capital gains tax as well as fines and imprisonment for tax evasion and personal liability for company directors.[165)]

Direct taxes and value added taxes are administered by the Inland Revenue Department ("IRD"). However, areas related to taxes payable on imports are managed by the Customs and Department of Excise. Stamp duty is administered by the provincial courts, and transfers of immovable property, motor vehicles and court documents are administered by the IRD.[166)]

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161) https://www.state.gov/reports/2023-investment-climate-statements/sri-lanka/
162) *Id.*
163) http://www.ird.gov.lk/en/about%20IRD/SitePages/Since%201932.aspx?menuid=110405
164) The Inland Revenue Act No.10 of 2006 was amended each year until 2015 except for 2010. The new Inland Revenue Act introduced in 2017 (Inland Revenue Act No.24 of 2017) has since been amended each year from 2021 to 2023.
http://www.ird.gov.lk/en/publications/sitepages/Acts.aspx?menuid=1601
165) https://www.state.gov/reports/2023-investment-climate-statements/sri-lanka/
166) N. Gajendran, Sri Lanka - Corporate Taxation, Country Tax Guides IBFD (2023)

B. Tax Administration Agency

The tax administration agency is the IRD.

IRD website : http://www.ird.gov.lk/en/sitepages/default.aspx

The hierarchy of tax administration officers of the IRD is as follows: Commissioner General of Inland Revenue ("CGIR"), Deputy Commissioner Generals, Senior Commissioners, Commissioners, Senior Deputy Commissioners, Deputy Commissioners, and Assistant Commissioners.[167)]

Appeals against an assessment or other decision may be filed to the CGIR to review the decision in an administrative review. Appeals against the decision of the administrative review may be filed to the Tax Appeals Commission. A further appeal against the decision of the Tax Appeals Commission may be filed to the Court of Appeal only on the point of law.[168)] Finally, an appeal may be filed to the Supreme Court.[169)]

C. Income Tax System

1) Underlying law

The following laws and regulations govern income tax:

- Articles 148 and 152 of the Constitution of Sri Lanka;[170)]
- IRA;
- Public rulings and private rulings by the CGIR;[171)]

Article 148 of the Constitution specifies that no tax shall be imposed except under a law passed by Parliament, providing the legal basis for all taxes. Article 152 of the Constitution controls who may introduce legislation related to public

167) https://www.casrilanka.com/casl/images/stories/2018/2018_pdfs/chapter_5_compliance_and_administration_of_income_tax.pdf
168) *Id.*
169) https://assets.kpmg.com/content/dam/kpmg/xx/pdf/2018/09/sri-lanka-2018.pdf
170) https://www.imf.org/external/pubs/ft/scr/2002/cr02233.pdf
171) https://www.casrilanka.com/casl/images/stories/2018/2018_pdfs/chapter_5_compliance_and_administration_of_income_tax.pdf

finance and under what circumstances, ensuring parliamentary control over finances.[172]

Public rulings are opinions of the CGIR and not a decision, and binding on the CGIR until withdrawal but not binding on taxpayers. Private rulings provide the CGIR's position on the application of the IRA to a transaction, and are binding on the CGIR against the specific taxpayer until the CGIR's withdrawal but not binding against the taxpayer.[173]

2) Income tax structure

a) Taxpayer

Residents in Sri Lanka are taxed on their worldwide taxable income while nonresidents are taxed on income arising in or derived from a source in Sri Lanka.[174]

b) Taxable income

Sources of income can be classified into the following categories: employment, business, investment, and other income.[175]

A resident individual or a nonresident individual who is a citizen of Sri Lanka will receive an aggregate relief of LKR 3 million for each year of assessment commencing on or after January 1, 2020.[176]

c) Tax year : April 1st to March 31st of the following year (section 20 of the IRA)

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172) https://www.casrilanka.com/casl/index.php?option=com_content&view=article&id=2847%3Aeminent-lawyer-dr-k-kanag-isvaran-highlights-need-for-tax-ombudsman-at-ca-sri-lankas-22nd-annual-tax-oration-&catid=3%3Amember-news&Itemid=212&lang=en

173) https://www.casrilanka.com/casl/images/stories/2018/2018_pdfs/chapter_5_compliance_and_administration_of_income_tax.pdf

174) https://taxsummaries.pwc.com/sri-lanka/corporate/taxes-on-corporate-income

175) http://www.ird.gov.lk/en/Type%20of%20Taxes/SitePages/Income%20Tax.aspx?menuid=1201

176) *Id.*

d) Tax base (individual income)

- Exemption on employment income : LKR 700,000 for each year of assessment, up to the total of the individual's income from employment for the year (section 2(b) of the Fifth Schedule of the IRA)
- Exemption on rental income from an investment asset : 25% of the total rental income for the year of assessment (section 2(c) of the Fifth Schedule of the IRA)
- Exemption on income earned in foreign currency in Sri Lanka from any service rendered in or outside Sri Lanka to any person to be utilized outside Sri Lanka : LKR 15 million for each year of the assessment, up to the total of such income for the year (section 2(e) of the Fifth Schedule of the IRA)

e) Tax rate (individual)[177]

Total income (LKR)	Rate
First 500,000	6%
Next 500,000	12%
Next 500,000	18%
Next 500,000	24%
Next 500,000	30%
Over 2.5 million	36%

f) Tax rate (corporate)[178]

Entity type	Rate
Small and medium enterprise conducting business in Sri Lanka if annual turnover is less than LKR 500 million	30%
Company exporting goods and services	30%
Company conducting agricultural business	30%
Company providing educational services	30%
Company engaged in an undertaking for the promotion of tourism	30%

177) This tax rate is for years of assessment from and including 2023/2024.
178) This tax rate is for years of assessment from second six months period of 2022/2023 and onwards, except for a company providing information technology which is in effect from April 1, 2023.

Entity type	Rate
Company providing information technology services	30%
Company with income from a business consisting of betting and gaming, liquor and tobacco	40%
Construction services company	30%
Manufacturing company	30%
Healthcare company	30%
Company with business other than stated above	30%

g) Tax rate (capital gains)

For corporations, 30%[179] of the gain on the realization of an asset. Gains made on the realization of shares quoted in any official list published by any stock exchange licensed by the Securities and Exchange Commission of Sri Lanka are exempt from income tax.[180]

For individuals, 10% of the gain on the realization of an investment asset.

3) Key issues in international tax

a) Tax residency

Criteria	Definition	Taxable income
Resident individual	Individual who: (i) resides in Sri Lanka; (ii) is present in Sri Lanka during the year and that presence falls within a period or periods amounting in aggregate to 183 days or more in any 12-month period that commences or ends during the year; (iii) is an employee or an official of the government of Sri Lanka and one's spouse is posted abroad during the year; or (iv) is an individual who is employed on a Sri Lanka ship during the period the individual is so employed.[181]	Worldwide income

179) The rate is 10% up to September 30, 2022 and 30% thereafter.
180) However, such gains are subject to a share transaction levy of 0.3% on both the seller and the buyer based on the transaction value.
181) Section 69(1) of the IRA.

Criteria	Definition	Taxable income
Resident business entity	A company if: (i) it is incorporated or formed under the laws of Sri Lanka; (ii) it is registered or the principal office is in Sri Lanka; or (iii) the management and control of its affairs are exercised in Sri Lanka.[182]	Worldwide income
Nonresident individual	Short-term visitors and dependents of foreign nationals not earning any income in Sri Lanka	Income arising in or derived from a source in Sri Lanka[183]
Nonresident business entity	A company if: (i) it is registered or the principal office is outside Sri Lanka; or (ii) the management and control of its affairs are exercised outside Sri Lanka	Income arising in or derived from a source in Sri Lanka

b) Double tax relief

A foreign tax credit is available for any foreign income tax paid to the extent to which the foreign income tax is paid with respect to the assessable foreign income for the year. The allowable credit is the lower of the foreign tax paid or the domestic tax otherwise payable. There is no provision for carry forward or carry back of excess tax credits.

c) Permanent establishment

To determine if a "permanent establishment" exists in Sri Lanka, any double taxation avoidance agreement between Sri Lanka and the relevant foreign country must be considered (section 76(2)(b) of the IRA).

182) Section 59(4) of the IRA.
183) Section 4 of the IRA.

The IRA defines "permanent establishment" as follows:

(i) in relation to a country with which an agreement has been entered into on avoidance of double taxation means, a permanent establishment defined in an agreement for the relief of double taxation where an agreement is in force between the government of Sri Lanka and the government of any territory in which any person and their agencies, branches, or establishments in Sri Lanka is resident; or

(ii) in relation to a country with which an agreement has not been entered into on avoidance of double taxation, includes any business connection or a fixed place of business through which the business of the enterprise is wholly or partly carried out irrespective of the number of days of such business is carried out in Sri Lanka (section 76(2)(b) of the IRA).

d) Tax incentives for foreign direct investment

Sri Lanka provides tax incentives to facilitate and encourage foreign direct investment. These include incentives under the Board of Investment ("BOI") of Sri Lanka Law No. 4 of 1978 (as amended, the "BOI Law"), the Strategic Development Projects ("SDP") Act, No. 14 of 2008 (as amended, the "SDP Act"), and the IRA.

(1) BOI incentives

The BOI provides two types of investment approvals under sections 16 and 17 of the BOI Law.

Section 16 of the BOI Law allows companies to operate under the normal laws of Sri Lanka for projects that do not qualify for special incentives under the IRA, Customs Laws or Exchange Control regulations.[184]

184) https://investsrilanka.com/setting-up-in-sri-lanka_new/

Section 17 of the BOI Law provides special incentives for projects that meet certain eligibility criteria. Special incentives include enhanced capital allowances,[185] preferential tax rates, constitutional guarantees on investment agreements, exemptions from exchange control, and 100% repatriation of profits and capital.[186]

In addition to the normal depreciation allowance, enhanced capital allowances are granted to persons investing in new and expansion of existing projects in Sri Lanka.

Total Investment Made (US$ Mn.)	Enhanced Capital Allowance (ECA)		Period for Deducting Unrelieved Losses
	Northern Province	Other than Northern Province	
> 3 and ≤ 100	200%	100%	10
>100 and ≤ 1,000	200%	150%	10
>1,000	200%	150%	25

Depreciable Assets:
Class 1: computers and data handling equipment together with peripheral devices.
Class 2: buses and minibuses, goods vehicles, construction and earthmoving equipment, heavy general purpose or specialised trucks, trailers and trailer-mounted containers, plant and machinery used in manufacturing.
Class 3: railroad cars, locomotives, and equipment, vessels, barges, tugs, and similar water transportation equipment, aircraft, specialised public utility plant, equipment, and machinery, office furniture, fixtures and equipment, any depreciable asset not included in another class.
Class 4: buildings, structures and similar works of a permanent nature.
Class 5: intangible assets, excluding goodwill.
Class 6: Milking machines with latest technology, used to manufacture local liquid milk related products.

Investment Incentives - 2023, Board of Investment of Sri Lanka

(2) SDP incentives

The SDP Act provides tax incentives and exemptions from certain regulations for larger development projects. The period of such exemptions granted to the SDP shall not exceed a period of 25 years (section 2 of the SDP Act).

SDP is defined as a project which is in the national interest and which is likely to bring economic and social benefit to the country and which is also likely to change the landscape of the country, primarily through:

(i) the strategic importance attached to the proposed provision of goods and services, which will be of benefit to the public;

185) For section 17 projects that meet the minimum investment threshold of US$ 3 million upwards (https://investsrilanka.com/setting-up-in-sri-lanka_new/)
186) https://www.sltda.gov.lk/en/investment-support

(ii) the substantial inflow of foreign exchange to the country;
(iii) the substantial employment which will be generated and the enhancement of the income earning opportunities; and
(iv) the envisaged transformation in terms of technology (section 6 of the SDP Act).

The SDP Act provides for exemptions from the legislation in whole or in part on a case-by-case basis, depending on the nature of the investment.[187]

e) Withholding tax[188]

Type of Payment	Withholding tax[189]	
	Resident	Nonresident
Dividends	15%	15%
Interest	5%	5%
Royalties	14%	14%
Rent	10% (only if the rent exceeds LKR 100,000 per month)	14%

D. Anti-Avoidance Rules Against International Tax Planning

1) Principles of anti-avoidance rules

a) General Anti-Avoidance Rule

The IRA addresses tax avoidance schemes in section 35(2) of the IRA.

The CGIR may determine the tax liability of the person who obtained the tax benefit as if the scheme had not been entered into or carried out, or as if a reasonable alternative to entering into or carrying out the scheme would have

187) https://siska.lk/boi-srilanka.html
188) http://www.ird.gov.lk/en/publications/SitePages/Tax_Chart_2223.aspx?menuid=1404
189) The withholding tax rate in this table is with effect from January 1, 2023.

instead been entered into or carried out, or that any transaction which reduces or would have the effect of reducing the amount of tax payable by any person is artificial or fictitious and can make compensating adjustments to the tax liability of any other person affected by the scheme.

In this regard, the CGIR will issue an assessment giving effect to the determination or adjustment, and such assessment will be served within 5 years from the last day of the year of assessment to which the determination or adjustment relates.

b) Negligent or fraudulent underpayment

Section 180 of the IRA provides that if tax is underpaid, as a result of an incorrect statement or a material omission in a taxpayer's tax return, and that statement or omission is a result of intentional conduct or negligence, the taxpayer will be subject to the following penalties:

(i) 25% of the underpayment; or

(ii) 75% of the underpayment if the amount of the underpayment is higher than LKR 10 million or higher than 25% of the person's tax liability for the period.

c) False or misleading statements

Section 181 of the IRA provides that if the taxpayer provides false or misleading statements to tax officials, the taxpayer will be subject to a penalty if an amount properly payable by or refundable to the taxpayer exceeds or is less than the amount that would be payable or refundable if the taxpayer were assessed on the basis that the statements were true. The amount of the penalty will be the greater of LKR 50,000 and the following:

(i) if an amount payable by the taxpayer would have been less if the statements were true, the amount by which that amount would have been so reduced; or

(ii) if the amount of refund that the taxpayer applied for would be

increased if the statements were true, the amount by which that amount would have been so increased.

d) Tax evasion

Section 189 of the IRA provides that a person who willfully evades or attempts to evade the assessment, payment or collection of tax or who willfully and fraudulently claims a refund of tax to which the person is not entitled, shall be guilty of an offense and shall be liable on conviction to a fine not exceeding LKR 10 million or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

2) Transfer pricing

Cross-border transactions are regulated as "international transactions" under Part I, Chapter VII, Division III of the IRA titled "Transfer Pricing." International transactions include a transaction between associated enterprises, either or both of whom are nonresidents.[190] If the prices charged between related parties in different tax jurisdictions are set in a manner that is inconsistent with the arm's length price, concerns of profit shifting may arise.

The arm's length price means for the purpose of ascertaining income, gain or profits arising in, derived or accruing from or losses incurred in any transaction, operation or scheme entered into between two associated enterprises calculated in accordance with the arm's length principle, as that where a connected transaction is carried out taking into account the terms and conditions that would have been used in comparable independent transactions.[191]

Arm's length price is determined by applying any of the following methods:

- Comparable uncontrolled price method;
- Resale price method;

190) Section 76(2)(d) of the IRA
191) Section 77(5)(e) of the IRA

- Cost plus method;
- Transactional net margin method;
- Profit split method.[192)]

Transfer pricing documentation requirement does not apply to all enterprises, but only applies to enterprises that carry out aggregate controlled transactions that exceed LKR 200 million with associated enterprises during a year of assessment. Such enterprises are required to prepare and file an annual transfer pricing disclosure form along with the return of income.[193)] Also, with respect to the preparation and maintenance of transfer pricing documentation, enterprises that have declared group value whose value exceeds EUR 50 million or its equivalent in LKR for each year of assessment is required to prepare and maintain a master file containing standardized information relevant for all the members of a multinational group.[194)]

3) Controlled Foreign Corporation ("CFC")

There is currently no CFC regime in Sri Lanka.

4) Thin capitalization

A ceiling applies to limit the deductibility of interest deducted in calculating taxable income on financial instruments based on a debt-to-equity ratio of 4:1 for all companies effective from April 1, 2021. Interest exceeding the limit can be carried forward and treated as incurred during any of the following six years of assessment, subject to the above limitation. However, if no interest is incurred during the year, in calculating the unused limitation, the limit will be calculated by using the same amounts of the immediately preceding year and so on.[195)]

192) Regulation 2 of the Regulations on Transfer Pricing No. 02 of 2020
193) Regulation 6(d) of the Regulations on Transfer Pricing No. 02 of 2020
194) Regulation 6(a) of the Regulations on Transfer Pricing No. 02 of 2020
195) Section 18 of the IRA

E. Tax Treaties

1) Tax treaty status[196)]

Sri Lanka has entered into bilateral agreements that protect the income of foreign investors from being taxed in two different countries with the following 46 countries:

Australia, Bahrain, Bangladesh, Belarus, Belgium, Canada, China, Czech Republic, Denmark, Finland, France, Germany, Hong Kong, India, Indonesia, Iran, Italy, Japan, Jordan, Korea, Kuwait, Luxembourg, Malaysia, Mauritius, Nepal, Netherlands, Norway, Oman, Pakistan, Palestine, Philippines, Poland, Qatar, Romania, Russia, Saudi Arabia, Seychelles, Singapore, Sweden, Switzerland, Thailand, Turkey, United Arab Emirates, United Kingdom, United States of America, and Vietnam.

2) Non-OECD economies' positions on the OECD Model Tax Convention

Sri Lanka has not provided a comment.

3) Major disputes over the application of tax treaties

It is difficult to find publicly available material on this topic.

F. BEPS Implementation

Sri Lanka is a participant in the Inclusive Framework on BEPS.

1) Implementation of the BEPS Project through domestic laws

The laws relating to transfer pricing are in the statutes and regulations, and they are based to a large extent on the OECD standards. However, the following aspects of transfer pricing have not yet been implemented:

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196) http://www.ird.gov.lk/en/publications/sitepages/International%20Relations.aspx?menuid=140101

- Specific guidance on commodity transactions;
- Specific guidance on pricing of controlled transactions involving intangibles;
- Specific guidance for intra-group services;
- Simplified approach for low value-adding intra-group services;
- Specific guidance for financial transactions.[197]

Also, with respect to country-by-country reporting, Sri Lanka's domestic laws satisfy the OECD requirements except for the following:

- The annual consolidated group revenue threshold calculation rule should be amended or clarified so that it is consistent with the OECD guidance on currency fluctuations for a multinational enterprise group whose ultimate parent entity is not located in Sri Lanka;
- Local filing implementation should be aligned with BEPS Action 13 minimum standard.[198]

2) Implementation of BEPS Action 15 Multilateral Instrument ("MLI") through domestic laws

Sri Lanka is not a signatory nor a party to the MLI.

3) Implementation of Pillar 1 and Pillar 2 through domestic laws

Although Sri Lanka is a part of the Inclusive Framework, Sri Lanka has not yet committed to the two pillar solution.[199]

197) https://www.taxadvisor.lk/data/uploads/ca_sri_lanka_tax_journal_volume_01_issue_no_03.pdf; https://www.oecd.org/ctp/transfer-pricing/transfer-pricing-country-profile-sri-lanka.pdf
198) https://www.oecd-ilibrary.org/sites/c19380f4-en/index.html?itemId=/content/component/c19380f4-en
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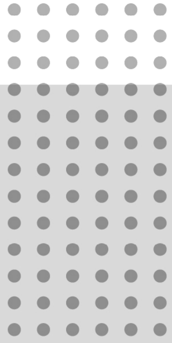

13 .

Vietnam

In order to liberalize the economy and introduce a market economy, Vietnam has enacted tax laws since 1990 and is continuously revising them. Types of taxes include collection items such as agricultural land tax, income tax, special consumption tax, land use fee, and notary fee. On January 1, 1999, Vietnam opened a new chapter in tax reform by introducing value-added tax and corporate income tax (corporate income tax) for the first time.

Resident individuals are subject to tax on their worldwide income while non-residents are subject to tax only on their Vietnam-sourced income. A resident is a person who either: is present in Vietnam for 183 days or more in a calendar year or during 12 consecutive months counting from the first date of their presence in Vietnam. The Enterprise Income Tax Law(EITL) does not clearly define the term residence. Both Vietnamese and foreign invested companies are subject to EIT on a worldwide basis, except foreign companies without a permanent establishment in Vietnam, which are taxed only on their Vietnam-sourced income. Foreign enterprises (regardless of whether or not a permanent establishment is constituted) are subject to the so-called foreign contractor tax (FCT).

Individuals who do not qualify as residents under the residency test are treated as non-residents. Non-residents are subject to tax only on their Vietnam-source income. Income being salaries and wages is taxed at a flat rate of 20%. Foreign companies earning income in Vietnam were generally subject to EIT at the standard rate of 20%. A permanent establishment refers to a place where some or all of the business activities of a corporation are carried out at a fixed location. A Korean corporation is deemed to carry out business activities through a

permanent establishment in Vietnam.

There are no special provisions for anti-avoidance rules. The new Law on Tax Administration 2019, having effect on 1 July 2020, sets out the legal framework for transfer pricing transactions. The prescribed transfer pricing methodology generally follows the OECD Transfer Pricing Guidelines although some modifications and additional requirements exist. The control threshold is lower than in most other countries, and a 25% control is sufficient for enterprises to be deemed as related parties. There are no controlled foreign company rules and thin capitalization rules.

Tax treaties negotiated by Vietnam generally follow the provisions of the OECD Model. A double taxation prevention agreement has been concluded between Vietnam and Korea, and it applies to residents of Vietnam or Korea, or residents of both Vietnam and Korea. A resident of a country is determined by the local laws of that country and is usually determined based on the period of residence, housing, and whether or not a person has an operating office.

Vietnam has joined the Inclusive Framework on BEPS. Also, on 21 August 2023, the Ministry of Finance submitted the National Assembly's resolution on the application of top-up corporate income tax according to regulations to prevent global tax base erosion, dated 21 August 2023.

Vietnam only regulates the transfer pricing tax system without a general anti-avoidance rule. Response to the BEPS project and the taxation of the digitalized economy is relatively satisfactory. Among countries in the Asia-Pacific region, Vietnam, which is expected to experience high economic growth, seems to have relatively modern regulations and systems. Vietnamese tax administrations may be in need of working together with the Korea OECD Policy Center in terms of supplementing anti-tax avoidance rule.

A. Tax System

In recent years, with the goal of international cooperation and entry into the international community, the Vietnamese government has implemented tax system reforms to promote various business activities, encourage export and investment expansion, and technological reform for the convenience of corporations and individual businesses. Additionally, tax system reform contributes to creating a fairer and more attractive investment environment for foreign investors.

Vietnam's tax system is regulated, guided, and defined by laws passed and promulgated by the National Assembly, enforcement decrees promulgated by the government, and enforcement regulations promulgated by the Ministry of Finance. In addition, there are various documents issued by the General Administration of Taxation and each regional tax bureau or tax branch office to help taxpayers fulfill their tax obligations.

In order to liberalize the economy and introduce a market economy, Vietnam has enacted tax laws since 1990 and is currently revising them. Types of taxes include collection items such as agricultural land tax, income tax, special consumption tax, land use fee, and notary fee.

On January 1, 1999, Vietnam opened a new chapter in tax reform by introducing value-added tax and corporate income tax (corporate income tax) for the first time.

With its accession to the World Trade Organization (WTO) (January 11, 2007) and full-fledged integration into the global economic system, Vietnam's outward-oriented growth method has been solidified and has been concluding and implementing bilateral and multilateral agreements on taxation, etc. In this process, a new policy was submitted to the National Assembly for tax management tailored to the pace of economic growth while ensuring financial resources, that is, tax revenue purposes. One of them is the Government Decree No. 201/2004/QĐ-TTg passed on December 6, 2004 on approval of the 2010 tax reform process.

Recently, Vietnam has continued to implement tax reform by adopting the 2011-2020 tax reform policy (according to the Government Enforcement Decree No. 732/QĐ-TTg passed on May 17, 2015), and the basic principles are as follows.

- Reforms to develop production, promote exports, attract investment and restructure the economy.
- Simplification of tax procedures and other related procedures for the convenience of taxpayers and tax authorities
- Development and application of information technology to build a nationwide database on taxpayers and strengthen interaction between related administrative procedures
- Expansion of cooperative relationships with overseas tax agencies, government offices, or international organizations
- Modernization and integration among agencies such as tax authorities, Korea Customs Service, Social Welfare Corporation, and Environmental Protection Management Corporation in performing administrative tasks.

The taxes applicable to Vietnam are announced in legal form and include personal income tax, corporate income tax (corporate tax), value-added tax, special consumption tax, natural resources tax, agricultural land tax, non-agricultural land tax, environmental protection tax, export tax and import tax (customs duty), and other taxes and collections.

B. Tax Administration Agency

In order to improve the efficiency of tax management, there is a corresponding tax authority at each administrative level. Vietnam's tax authorities at all levels perform tax management and related tasks under the management of the Ministry of Finance. There are local tax authorities at the central government level and municipalities/provinces/districts/counties/counties, etc.

The Ministry of Finance (or Ministry of Finance) is an agency directly under

the central government of Vietnam and is responsible for the financial budget (national budget, taxes, other expenses for the national budget or other collection items, national reserves, national financial funds, financial investments and loans, and corporate finance), cooperative finance, public property in accordance with the provisions of the law), customs, accounting, independent accounting audit, prices (price), securities, insurance, financial services or other services within the scope of management in performing the national management functions of the Ministry of Finance. It performs national management functions and acts as a representative for the portion of national capital in companies that have received national capital investment in accordance with the provisions of the law.

The General Tax Administration, as an affiliated organization of the Ministry of Finance, is responsible for providing advice on tax laws or their implementation and preparing relevant documents. In addition, establishing/operating plans for tax reporting/payment nationwide and in each region, providing guidance/training/education on related work to tax officials in the implementation of various tax laws, and conducting research on the formation and development of administrative structures in the tax law system. To ensure efficient implementation of tax laws, perform duties such as conducting investigations/audits on whether tax laws are implemented nationwide or in each region, and handling tax-related grievances and appeals.

The Tax Bureau is a direct agency of the General Tax Administration and is established in each centrally administered province, city, and special region. The structure of the tax bureau is composed of departments or divisions that perform special tasks such as tax registration/reporting/payment for each taxable object. The Tax Bureau also plays a guiding role in implementing the tax laws of the jurisdiction, provides guidance/training/education on related work to tax officials in all regions or affiliated tax offices, establishes/operates plans for tax reporting/payment, and establishes/operates plans for tax reporting/payment. Guides and investigates related grievances or complaints to the affiliated tax

office. In addition, it performs the task of collecting taxes or other applicable items in the jurisdiction.

The Taxation Branch is a direct agency of the Taxation Bureau and is composed of each regional tax office. The structure of each tax office consists of a dedicated department, special task department, or direct tax collection management team. The tax branch office performs duties such as establishing/operating a specific collection plan for taxes incurred in all counties/districts, performing management tasks for each taxable object, and checking/investigating whether tax laws are implemented.

Enterprises that register their business activities are directly managed by the tax bureau or tax branch office of the jurisdiction. Foreign-invested enterprises are directly managed by the relevant tax bureau of the province/city under central jurisdiction.

C. Income Tax System

1) Personal Income Tax

The legal basis for the imposition of personal income tax (PIT) is the Personal Income Tax Law (PITL), along with the accompanying decrees and circulars which detail and guide the implementation of the main legislation.

The current PITL, which took effect from 1 January 2009, significantly changed Vietnam's PIT system. Under the PITL, PIT is imposed on all regular income, irregular income, and other income not included in salaries derived from business, which is neither exempt income nor subject to business income tax. The PITL removed the previous disparity in tax rates and bands between Vietnamese citizens and expatriate residents, and introduced personal and family allowances. In addition, owners of private household businesses pay PIT, as opposed to business income tax under the previous tax regime.

Resident individuals are subject to tax on their worldwide income while non-residents are subject to tax only on their Vietnam-sourced income.

a) Residence

A resident is a person who either:

- is present in Vietnam for 183 days or more in a calendar year or during 12 consecutive months counting from the first date of their presence in Vietnam; or
- has a place of habitual residence in Vietnam, which is a registered place of permanent residence or a rented house for dwelling in Vietnam under a term rent contract of 183 days or more.

Residents are subject to progressive rates of taxation, Non-residents are subject to a flat rate on their Vietnam-sourced income.

Individuals whose taxable monthly income is VND 11 million or less are exempt from PIT. There are no provisions for the joint taxation of married couples.

Under the Enterprise Income Tax Law (EITL), a partnership is categorized as an enterprise engaged in the production and trading of goods and/or the provision of services and is thus subject to enterprise income tax.

Under the PITL, income liable to personal income tax includes the following kinds of income, except for income eligible for tax exemption specified in article 4 of the PITL.

b) Taxable Income

Assessable income includes regular and irregular income. Regular income includes business income, as well as salaries and wages, while income from capital investment, capital transfers, real estate transfers, prizes and winnings, copyright royalties, commercial franchising, inheritances or gifts that are securities, capital holdings in economic organizations or business establishments, real estate and other assets subject to ownership or use registration are regarded as irregular income and must be declared and taxed separately in respect of each transaction at rates differing from those applicable to regular income.

c) Capital Gains

Income from the transfer of real estate (including of rights transferred for land and property usage) is taxed at 2% of the transfer price. There are various exemptions, such as transfers of real estate between family members, transfers of residential houses and inheritances or gifts from family members.

Income from capital transfer is taxed as follows:

- income from transfers of contributed capital is taxed at a rate of 20% on net proceeds receivable; and
- the transfer of securities is taxed at 0.1% of the selling price.

Capital gains arising from the transfer of capital by an owner of a private enterprise may be subject to tax at the standard enterprise income tax rate. This is generally referred to as the capital assignment profits tax, although it is not a separate tax as such.

d) Tax Rates

From 1 January 2009, unified tax rates apply to Vietnamese and foreign nationals who reside in Vietnam. The unified progressive tax rates applicable to income from wages and salaries for all individual tax residents are as follows:

〈Table 13-1〉 Personal income tax rate and taxable income

		Tax rate (%)
income from wages and salaries	~ 5,000,000	5
	5,000,001 ~ 10,000,000	10
	10,000,001 ~ 18,000,000	15
	18,000,001 ~ 32,000,000	20
	32,000,001 ~ 52,000,000	25
	52,000,001 ~ 80,000,000	30
	80,000,001 ~	35

		Tax rate (%)
Income type	Income from capital investment	5
	Income from copyright, commercial franchising	5
	Income from prizes	10
	Income from inheritances, gifts	10
	Income from contributed capital transfers	20
	Income from securities transfers	0.1
	Income from real estate transfers	2

e) Double Taxation Relief

Tax treaties negotiated by Vietnam generally follow the provisions of the OECD Model. Vietnam's treaties generally provide for an ordinary credit in order to avoid double taxation, i.e. foreign taxes paid can be credited against the domestic tax payable, but the amount of credit is restricted to that part of the tax which is appropriate according to domestic law.

Generally, tax treaty provisions take precedence over domestic law, except when a domestic tax law is enacted specifically with the intent and purpose of overriding the provisions of the tax treaty.

2) Corporate Income Tax

Vietnam does not operate an imputation system. Once enterprise income tax(EIT) is paid on corporate profits, no further taxes are imposed on dividends where they are received by an enterprise. Individuals receiving dividends are subject to personal income tax, but dividends paid by private enterprises and single liability companies owned by an individual are exempt from personal income tax.

Different laws govern different types of taxes. The Enterprise Income Tax Law 14/2008/QH12 of 3 June 2008 (Luật Thuế Thu Nhập Doanh Nghiệp, EITL), as amended by Law 32/2013/QH13 of 19 June 2013 and the Law on Amendments to Tax Laws 71/2014/QH13 of 26 November 2014, governs the imposition of

EIT and focuses not only on public companies, but also private enterprises.

a) Enterprise Income Taxpayer

An "enterprise income taxpayer" means any organization engaged in the production and/or trading of goods and services which has taxable income:

- state enterprises;
- limited liability companies;
- joint-stock companies;
- partnerships;
- foreign enterprises entering into business contracts under the Law on Investment in Vietnam (LOI);
- foreign companies and organizations doing business in Vietnam not under the LOI;
- private enterprises;
- law offices;
- notary offices;
- parties to business co-operation contracts;
- parties to oil and gas production sharing contracts;
- oil and gas joint ventures;
- cooperatives and cooperation groups;
- economic establishments of political organizations;
- social organizations, socio-political and socio-professional organizations;
- people's armed force units;
- administrative agencies; and
- non-business units engaged in the production and trading of goods and/or services.

The following are not deemed as taxable persons for the purposes of EIT: households, individuals, sole practitioners and cooperatives deriving income from

agricultural activities such as cultivation, husbandry and aquaculture. Business income derived by an individual is subject to personal income tax.

Under the EITL, a partnership is categorized as an enterprise engaged in the production and trading of goods and/or the provision of services and thus is subject to EIT.[200)]

b) Residence

The EITL does not clearly define the term residence. Both Vietnamese and foreign invested companies are subject to EIT on a worldwide basis, except foreign companies without a permanent establishment in Vietnam, which are taxed only on their Vietnam-sourced income.

c) Taxable Income

Vietnam-registered enterprises are taxed on their worldwide income. Foreign enterprises with a permanent establishment in Vietnam are taxed on the worldwide income related to the operations of the permanent establishment, as well as on their income arising in Vietnam and not related to the operations of the permanent establishment. Foreign enterprises without a permanent establishment in Vietnam are taxed only on their Vietnam-sourced income.

Foreign enterprises (regardless of whether or not a permanent establishment is constituted) are subject to the so-called foreign contractor tax (FCT), which is a specific mechanism for calculating and withholding EIT.

Taxable income is determined by deducting allowable expenses from turnover and adding other taxable income (including income from the transfer of capital or the liquidation of assets). Tax-exempt income and losses brought forward from previous years are also deductible before calculating the tax payable on the remaining income (Decree 218/2013/ND-CP, as amended by Decree 91/2014/ND-CP, Decree 12/2015/ND-CP and Decree 146/2017/ND-CP).

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200) This survey is restricted to Vietnam-incorporated public companies and private limited companies.

d) Capital Gains

Capital gains are treated as other taxable income and are subject to tax at the normal EIT rate. Capital gains on the transfer of interest in an FIE or Vietnamese enterprise are subject to the capital assignment profits tax. Capital gains from a transfer of real estate are assessed separately.

e) Rates

The standard EIT rate of 20% applies to both FIEs and domestic enterprises.

Businesses conducting exploration and exploitation of oil and gas and other precious mineral resources are subject to tax rates ranging from 32% to 50%. From 1 July 2023, pursuant to the Law on Oil and Gas 12/2022/QH15 of 14 November 2022, the EIT rates for petroleum activities will range from 25% to 50% for each oil and gas contract while the EIT rates for the search, exploration and exploitation of other rare and precious natural resources in Vietnam will range from 32% to 50% for each project and each business establishment.

Preferential rates apply to entities which have been granted tax incentives.

Generally, payments to other resident companies do not attract withholding tax. EIT levied on foreign entities is subject to a specific withholding scheme, i.e. the foreign contractor withholding tax, regardless of whether or not it has a permanent establishment in Vietnam.

〈Table 13-2〉 Corporate tax payer and scope of application

Taxpayer	applied area	
	taxable income generated in Vietnam	taxable income outside of Vietnam
A corporation established and operating under Vietnamese law	O	O
Foreign corporations with a permanent establishment in Vietnam	O	O (Related to permanent establishment activities)

Taxpayer	applied area	
	taxable income generated in Vietnam	taxable income outside of Vietnam
Foreign corporations without a permanent establishment in Vietnam	O (Pay tax in accordance with foreign contract tax regulations*)	O
Organization established under the Partnership Corporation Act	O	O
Administrative agency established under Vietnamese law	O	O

* Foreign contract tax is imposed on foreign individuals and foreign corporations (organizations) that are not established or carry out business activities under Vietnamese law and generate source income by conducting business in Vietnam or providing goods and services.

f) Double Taxation Relief

Tax treaties negotiated by Vietnam generally follow the provisions of the OECD Model. Vietnam's treaties generally provide foran ordinary credit in order to avoid double taxation, i.e. foreign taxes paid can be credited against the domestic tax payable, but the amount of credit is restricted to that part of the tax which is appropriate according to domestic law.

Generally, tax treaty provisions take precedence over domestic law, except when a domestic tax law is enacted specifically with the intent and purpose of overriding the provisions of the tax treaty.

3) Key issues in international tax

a) Resident Individuals

Individuals who do not qualify as residents under the residency test are treated as non-residents. Non-residents are subject to tax only on their Vietnam-source income. Income being salaries and wages is taxed at a flat rate of 20%.

Tax rates on business income differ depending on the type of business as follows:

- Goods trading: 1%
- Services provision: 5%
- Production, construction, transportation and other business activities: 2%

Irregular income is taxed at the following rates:

- Income from capital investment: 5%
- Income from copyright, commercial franchising (more than VND 10 million): 5%
- Income from prizes, inheritances or gifts (more than VND 10 million): 10%
- Income from share transfers: 0.1%
- Income from real estate transfers: 2%

There are no recurrent or annual taxes on capital.

b) Resident Companies

The EITL does not clearly define the term residence.

Foreign income and capital gains are taxable in Vietnam according to article 2(2) of the EITL. Vietnamese companies are subject to tax on their worldwide income, while foreign companies with a permanent establishment in Vietnam pay EIT on worldwide income generated by the permanent establishment, as well as on specified Vietnam-sourced income that is not related to the permanent establishment. The standard EIT rate for domestic income applies.

[Non-resident companies] A foreign enterprise is subject to tax in Vietnam if it derives income in Vietnam, whether or not it has a resident establishment(similar to a permanent establishment). Foreign companies with no permanent establishment in Vietnam pay EIT on income arising in Vietnam.

Foreign companies earning income in Vietnam were generally subject to EIT at the standard rate of 20%. However, in response to the high number of foreign

entities delaying or failing to pay taxes in Vietnam, the so-called foreign contractor tax (FCT) was introduced. The FCT represents a specific mechanism for calculating and deducting taxes for foreign enterprises and individuals operating in Vietnam (with or without a permanent establishment).

c) Permanent Establishment

A permanent establishment refers to a place where some or all of the business activities of a corporation are carried out at a fixed location. Specifically, it is as follows. A Korean corporation is deemed to carry out business activities through a permanent establishment in Vietnam.

a. Pursuant to the Enforcement Decree of No. 205/2013/TT-BTC on Guide to Implementing the Agreement, a corporation from a country that has concluded the agreement (e.g. Korea) is recognized as having a permanent establishment in Vietnam if it satisfies the three conditions below. do.
   - Maintain the location of buildings, offices, facilities, etc. in Vietnam.
   - The location must be fixed. Being fixed means that it must be maintained continuously in a specific place, meaning that it must be maintained in a specific geographical location for a certain period of time.
   - When some or all of the business activities are carried out at the relevant location
b. Permanent establishment includes the following places: Head office, branch, office, factory, small-scale factory, mine, oil well, gas field, quarry or other natural resource development location
c. Locations where construction work, assembly and installation work is performed for more than 6 months
d. Distributor/Agency: When acting on behalf of another corporation and carrying out a contract in Vietnam under the delegation of that other corporation (except when the activity is a business preparation activity or a permanent establishment arrangement activity)

The FCT may be levied in one of three ways:

- payment of VAT under the credit method and payment of EIT on net income (declaration method). The EIT is payable at the standard rate;
- payment of VAT directly and payment of EIT as a percentage of turnover (direct method); and
- payment of VAT under the credit method and EIT on percentage of turnover (hybrid method).

EIT and VAT under the deemed rate method are collected from foreign companies and individuals at different rates depending on the line of business. The prescribed EIT rates are as follows:

- trading (including distribution, supply of goods, materials, machinery and equipment in Vietnam): 1%;
- restaurant, hotel and casino management services: 10%;
- services, and lease of machinery and equipment: 5%;
- loan interest: 5%;
- insurance: 5%;
- assignments of securities, certificates of deposit, overseas reinsurance and reinsurance commission: 0.1%;
- financial derivatives: 2%;
- construction (including installation, with or without the supply of materials, machinery or equipment): 2%; and
- manufacturing, transportation and other business activities: 2%.

Foreign contractors and foreign subcontractors are defined as foreign persons or entities carrying out a business in, or deriving income from, Vietnam without a foreign investment licence issued by the Ministry of Planning and Investment or its designated authorities.

D. Anti-Avoidance Rules Against International Tax Planning

1) Principles of anti-avoidance rules

There are no special provisions for anti-avoidance rules.

2) Transfer Pricing[201]

The new Law on Tax Administration 2019, having effect on 1 July 2020, sets out the legal framework for transfer pricing transactions.

The regulations are elaborated on in Decree 132/2020/ND-CP, which came into force on 20 December 2020, replacing Decree 20/2017/ND-CP of 24 February 2017 and Decree 68/2020/ND-CP of 24 June 2020. The prescribed transfer pricing methodology generally follows the OECD Transfer Pricing Guidelines although some modifications and additional requirements exist.

The control threshold is lower than in most other countries, and a 25% control is sufficient for enterprises to be deemed as related parties. The definition also extends to companies under the common control of an individual through capital contribution or direct management, and where a company is substantially controlled or managed by another company.

The prescribed transfer pricing methods are: comparable uncontrolled price, resale price, cost-plus, transactional net margin and profit split. The decree does not stipulate the preference of any method over the others.

An annual declaration of related-party transactions must be submitted together with the taxpayer's annual corporate income tax return, comprising a transfer pricing declaration, a Master File, a Local File and a country-by-country (CbC) report.

The CbC report is prepared and submitted by the taxpayer if it is an ultimate parent company (UPC) in Vietnam with global consolidated revenue in a fiscal year of at least VND 18 trillion. The CbC report must be submitted within 12

201) Government Decree No. 20/2017/NĐ-CP on Tax Management of Related Party Transaction Enterprises. Circular No. 41/2017/TT-BTC of the Ministry of Finance annexed to Government Decree No. 20/2017/NĐ-CP.

months after the end of the fiscal year of the UPC.

In the case that the Vietnamese taxpayer has a foreign UPC that must submit a CbC report in its home tax jurisdiction, where the Multilateral Competent Authority Agreements (MCAA) - Automatic Exchange of Information (AEOI) exists and applies, the Vietnamese taxpayer is not required to submit the CbC report. Otherwise, the Vietnamese taxpayer must submit CbC report in the case that:

- the country where the UPC resides has not signed an MCAA - AEOI with Vietnam at the deadline of submitting the CbC report; or
- the country where the UPC resides has signed the MCAA but has suspended the AEOI or the EOI is not automatically provided to Vietnam.

Taxpayers are also required to prove that arm's length pricing has been adopted and are required to maintain contemporaneous records. If the pricing strategy is found not to be at arm's length, the tax authorities may impose the deemed appropriate pricing and deemed taxable profits in order to impose the deemed tax.

Advance pricing agreements (APAs) are possible.

3) Controlled Foreign Corporation

There are no controlled foreign company provisions.

4) Thin Capitalization

There are no thin capitalization rules, but restrictions on interest deduction.

Nevertheless, foreign loans exceeding a period of 12 months must not exceed the difference between the total invested capital and the charter/share capital as stated in the investment registration certificate.

For example, an enterprise with a charter capital of VND 1 billion and an investment capital of VND 2 billion borrowed VND 0.5 billion of foreign loans exceeding a period of 1 year. Accordingly, the enterprise can still borrow another VND 0.5 billion(VND 2 billion - VND 1 billion - VND 0.5 billion).

There is no restriction on short-term (foreign or domestic) loans, i.e. loans with a term of less than 12 months.

E. Tax Treaties

1) Tax treaty status

A double taxation prevention agreement has been concluded between Vietnam and Korea, and it applies to residents of Vietnam or Korea, or residents of both Vietnam and Korea. It covers taxes levied on income and assets, and in the case of Vietnam, includes income tax and corporate tax.

A resident of a country is determined by the local laws of that country and is usually determined based on the period of residence, housing, and whether or not a person has an operating office. If an individual meets the requirements for residency in both countries, residency status will be confirmed in the following order of priority:

- If you have a residence in the country where your residence is located, or if you have residences in both countries, you are considered a resident of the country with closer economic activities.
- If a person does not have a permanent home in both countries or economic activities in both countries cannot be compared, he or she is considered a resident of the country where he or she primarily resides.
- If you mainly stay in both countries or do not mainly stay in either country, you are considered a resident of the country where you have nationality.
- If a person holds the nationality of both countries or does not hold the nationality of the relevant countries, the relevant organizations of both countries will jointly discuss and decide on the residence status of the individual.

If the subject is not an individual and is a resident of both countries, he or she will be recognized as a resident of the country where the actual operating

office is located. In cases where a decision is difficult, the decision is made through joint consultation between the relevant organizations of both countries.

If there is a difference between the double taxation avoidance agreement and local law, the agreement shall take precedence. Double taxation avoidance agreements do not cover taxes that are heavier than those specified in local law or that are not specified in local law. For example, if an agreement provides for the collection authority or imposes a certain tax rate on certain income in Vietnam, but there are no tax collection regulations on income corresponding to Vietnamese local law or a lower tax rate is applied, in accordance with local law. No tax is collected or a low tax rate is applied. Terms not defined in the Double Taxation Avoidance Agreement shall follow the definitions of Vietnamese law at the relevant time. In the case of double taxation prevention agreements, terms that are not defined in all Vietnamese and Korean laws or are defined simultaneously are decided through negotiations with relevant organizations of both countries.

〈Table 13-3〉 Taxation on income of Korean passport holders in Vietnam

<table>
<tr><th colspan="2">type of income</th><th>Korea
(country of residence)</th><th>Vietnam
(income-generating country)</th></tr>
<tr><td colspan="2">real estate income</td><td>O</td><td>O</td></tr>
<tr><td rowspan="2">Income from business activities</td><td>permanent establishment O</td><td>O</td><td>X</td></tr>
<tr><td>permanent establishment X</td><td>O</td><td>△
(Vietnam generated income)</td></tr>
<tr><td colspan="2">international shipping</td><td>O</td><td>X</td></tr>
<tr><td colspan="2">dividends</td><td>O</td><td>maximum 10%*</td></tr>
<tr><td colspan="2">loan interest</td><td>O</td><td>maximum 10%</td></tr>
<tr><td colspan="2">copyright</td><td>O</td><td>consideration paid 5~15%</td></tr>
<tr><td colspan="2">Asset transfer income</td><td>O</td><td>O</td></tr>
<tr><td colspan="2">salary</td><td>O</td><td>O</td></tr>
</table>

* Currently exempt from corporate tax, 5% personal income tax applies.

2) Non-OECD economies' positions on the OECD Model Tax Convention

- ARTICLE 4 (Resident)

In the opinion of Vietnam the personal relations and economic relations mentioned in paragraphs 14 and 15 of the Commentary should be separated and one given priority over the over. For Vietnam, economic relations, particularly the criterion of the country where employment is exercised, is more important to determine the country of residence for treaty purpose in the case of a dual resident individual.

- ARTICLE 5 (Permanent Establishment)

Vietnam do not agree with the words "the twelve month test applies to each individual site or project" found in paragraph 51 of the Commentary. They consider that a series of consecutive short term sites or projects operated by a contractor would give rise to the existence of a permanent establishment in the country concerned.

- ARTICLE 8 (International Shipping and Air Transport)

Vietnam disagrees with the interpretation presented in paragraph 5 of the Commentary.

Vietnam disagrees with the interpretation presented in paragraph 10 of the Commentary in relation to the incidental leasing of the containers.

- ARTICLE 12 (Royalties)

Vietnam does not agree with paragraph 9 of the Commentary. Even if the phrase "for the use of, or the right to use, industrial, commercial or scientific equipment" is not included in paragraph 2 and income from the leasing of equipment falls under Article 7, the fact that an enterprise of a Contracting State leases heavy equipment to a person resident in Vietnam will constitute a permanent establishment of that enterprise in Vietnam.

F. BEPS Implementation

1) Implementation of the BEPS Project through domestic laws

The Vietnam has joined the Inclusive Framework on BEPS. The specific details are as follows.

〈Table 13-4〉 BEPS implementation status

1. Addressing the Tax Challenges of the Digital Economy	
Cross-Border B2C supplies of services and intangibles	
Applies the principles of the International VAT/GST Guidelines on cross-border B2C supplies of services and intangibles	Yes
Simplified registration and collection mechanisms	No
Low value imports	
VAT/GST exemption threshold for low value imports	No
2. Neutralizing the Effects of Hybrid Mismatch Arrangements : No	
3. Designing Effective Controlled Foreign Company Rules : No	
4. Limiting Base Erosion Involving Interest Deductions and Other Financial Payments : No	
Best practice	
Fixed ratio rule limiting an entity's deductions for net interest expense to a percentage of its EBITDA	Yes ; interest/EBITDA ratio is 30%
Group ratio rule allowing an entity to deduct net interest expense up to its multinational group's net interest/EBITDA ratio, where this is higher than the benchmark fixed ratio	No ; there is no different group ratio rule

Targeted interest limitation rules to restrict interest deductions on payments made under specific transactions or arrangements	No
Specific interest limitation rules for banks and insurance companies	No
Optional elements of the best practice	
De minimis monetary threshold of net interest expense to exclude low risk entities from the application of the limitation of interest deductibility rules	No
Carry forward of disallowed interest	Yes
Carry forward of unused interest capacity	No
Carry back of disallowed interest	No
5. Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance	
Substantial activities requirement	
IP regime	No
Framework for improving transparency in relation to rulings	
Legislation that provides for the spontaneous exchange of information in respect of rulings	Yes
Legislation covers rulings relating to preferential regimes	No
Legislation covers unilateral APAs or other crossborder unilateral rulings in respect of transfer pricing	Yes
Legislation covers cross-border rulings providing for a downward adjustment of taxable profits	No
Legislation covers permanent establishment (PE) rulings	No

Legislation covers related party conduit rulings	No
Legislation covers any other type of ruling agreed by the FHTP that in the absence of spontaneous information exchange gives rise to BEPS concerns	No
6. Preventing the Granting of Treaty Benefits in Inappropriate Circumstances : No	
Has its own Model Convention	No
Formal or informal announcement of intent to incorporate the recommendations in its treaty policy	Yes
7. Preventing the Artificial Avoidance of Permanent Establishment Status : No	
8-10. Aligning Transfer Pricing Outcomes with Value Creation	
Transfer pricing rules	
Has transfer pricing rules	Yes
Application of the arm's length principle	
Actual business transactions undertaken by associated enterprises are identified, and transfer pricing is not based on contractual arrangements that do not reflect economic reality	No
Contractual allocation of risk is respected only when it is supported by actual decision-making	No
Capital without functionality generates no more than a risk-free return, assuring that no premium returns will be allocated to cash boxes without relevant substance	No
Tax administrations may disregard transactions when the exceptional circumstances of commercial irrationality apply	No

Commodity transactions	
The CUP method is an appropriate transfer pricing method for commodity transactions	Yes
Quoted prices can be used under the CUP method, as a reference to determine the arm's length price for the controlled commodity transaction	Yes
Reasonably accurate comparability adjustments should be made, when needed, to ensure that the economically relevant characteristics of the controlled and uncontrolled transactions are sufficiently comparable	Yes
Tax authorities may impute, under certain conditions, the shipment date (or any other date for which evidence is available) as the pricing date for the commodity transaction	No
Intangibles	No
Low value-adding intra-group services	No
Cost contribution arrangements (CCAs)	No
11. Measuring and Monitoring BEPS	
Status	Action 11 addresses the issue of measuring data on base erosion and profit shifting (BEPS) and recommends that the OECD work with governments to report and analyse more corporate tax statistics and present them in an internationally consistent way. As this Action focuses on quantifying BEPS rather than preventing it, implementation at a country level is not considered here.
12. Mandatory Disclosure Rules : No	

13. Transfer Pricing Documentation and Country-by-Country Reporting : No	
Has implemented legislation that provides for delivery of a Master File	Yes
Has implemented legislation that provides for delivery of a Local File	Yes
Has implemented legislation that provides for delivery of a Country-by-Country Report	Yes
Has implemented legislation that provides for automatic exchange of Country-by-Country Reports	No
14. Making Dispute Resolution Mechanisms More Effective	
Has legislation or practices in place to ensure that treaty obligations related to the mutual agreement procedure are fully implemented in good faith and that MAP cases are resolved in a timely manner	Planned
Has legislation or practices in place to ensure that administrative processes that promote the prevention and timely resolution of treaty-related disputes are implemented	Planned
Has legislation or practices in place to ensure that taxpayers can access the MAP when eligible	Planned
15. Developing a Multilateral Instrument to Modify Bilateral Tax Treaties Further Information	
Participated in the development of the Multilateral Instrument	Yes
Has signed the Multilateral Instrument	Yes

2) Implementation of BEPS Action 15 Multilateral Instrument ("MLI") through domestic laws

〈Table 13-5〉 MLI Article and Vietnam's Position

MLI Article	Position
Listed Tax Agreements	75 Confirmed 55 Covered Tax Agreements
Article 1 – Scope of the Convention	Standard MLI provision
Article 2 – Interpretation of Terms	Standard MLI provision
Article 3 – Transparent Entities	Opted out through a Reservation
Article 4 – Dual Resident Entities	Opted out through a Reservation
Article 5 – Application of Methods for Elimination of Double Taxation	Opted out through a Reservation
Article 6 – Purpose of a Covered Tax Agreement	Opted in
Article 7 – Prevention of Treaty Abuse	Opted in
Article 8 – Dividend Transfer Transactions	Opted out through a Reservation
Article 9 – Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property	Opted in with Reservation
Article 10 – Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions	Opted out through a Reservation
Article 11 – Application of Tax Agreements to Restrict a Party's Right to Tax its Own Residents	Opted out through a Reservation
Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionaire Arrangements and Similar Strategies	Opted in
Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions	Opted in
Article 14 – Splitting-up of Contracts	Opted out through a Reservation
Article 15 – Definition of a Person Closely Related	Opted in

MLI Article	Position
to an Enterprise	
Article 16 – Mutual Agreement Procedure	Opted in with Reservation
Article 17 – Corresponding Adjustments	Opted in with Reservation
Article 18 – Choice to Apply Part VI	Chose not to apply Part VI
Article 19 – Mandatory Binding Arbitration	Chose not to apply Part VI
Article 20 – Appointment of Arbitrators	Chose not to apply Part VI
Article 21 – Confidentiality of Arbitration Proceedings	Chose not to apply Part VI
Article 22 – Resolution of a Case Prior to the Conclusion of the Arbitration	Chose not to apply Part VI
Article 23 – Type of Arbitration Process	Chose not to apply Part VI
Article 24 – Agreement on a Different Resolution	Chose not to apply Part VI
Article 25 – Costs of Arbitration Proceedings	Chose not to apply Part VI
Article 26 – Compatibility	Chose not to apply Part VI
Article 27 – Signature and Ratification, Acceptance or Approval	Standard MLI provision
Article 28 – Reservations	Standard MLI provision
Article 29 – Notifications	Standard MLI provision
Article 30 – Subsequent Modifications of Covered Tax Agreements	Standard MLI provision
Article 31 – Conference of the Parties	Standard MLI provision
Article 32 – Interpretation and Implementation	Standard MLI provision
Article 33 – Amendment	Standard MLI provision
Article 34 – Entry into Force	Standard MLI provision
Article 35 – Entry into Effect	Standard MLI provision with Reservation(s)
Article 36 – Entry into Effect of Part VI	Standard MLI provision
Article 37 – Withdrawal	Standard MLI provision
Article 38 – Relation with Protocols	Standard MLI provision
Article 39 – Depositary	Standard MLI provision

3) Taxation of the digitalized economy (Pillar1 & Pillar2)

〈Table 13-6〉 Digital Taxation(Pillar 1)

Global solution (Pillar One) - country position and implementation	
Signed agreements / statements	• Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (11 July 2023) • Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (8 Oct. 2021) • Statement on a Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy (1 July 2021)
Multilateral convention	Planned The Multilateral Convention to implement Amount A of Pillar One (MLC) is expected to be signed in the future.
Effective date	-
Commitment not to impose new unilateral measures	Yes From 8 October 2021 until 31 December 2023. Subject to 30 jurisdictions accounting for at least 60% of the Ultimate Parent Entities of in-scope MNEs signing the MLC before the end of 2023, countries refrain from imposing newly enacted DSTs or relevant similar measures from 1 January 2024 until 31 December 2024 or the coming into force of the MLC (whichever happens earlier).
Commitment to remove existing unilateral measures	Planned The MLC establishes the requirement for parties to remove all Digital Service taxes and other relevant similar measures with respect to all companies (and not to introduce such measures in the future). A list of existing measures which must be removed is in Annex A of the MLC.
Transitory measures	-
Additional information	For details on the Inclusive Framework/OECD joint statements and the new framework for international tax reform, including key elements on Pillar One(Amounts A and B).
Relevant cases/decisions	-
Related journal articles	-

〈Table 13-7〉 Global Minimum Tax(Pillar 2)

A. GloBE Rules	
Signed agreements/statements	• Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (11 July 2023) • Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (8 October 2021) • Statement on a Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy (1 July 2021)
Implementation status of the GloBE Rules	Planned On 21 August 2023, the Ministry of Finance submitted the National Assembly's resolution on the application of top-up corporate income tax according to regulations to prevent global tax base erosion, accompanied by the 5th version of the draft resolution dated 21 August 2023, to the Ministry of Justice for appraisal, to relevant Ministries and to the public for consultation
Transposing instrument(s)	The draft resolution on the application of top-up corporate income tax according to regulations to prevent global tax base erosion, 5th version dated 21 August 2023 The draft resolution is one of the legislative documents under development to pilot the implementation of the GloBE Rules in Vietnam. It will be in effect until the Law on Corporate Income Tax is amended
Legislation applicable	-
Available guidance	National Assembly's resolution on the application of a top-up corporate income tax according to regulations to prevent global tax base erosion
Implementation status of the Income Inclusion Rule (IIR)	Planned Articles 2 and 5 of the draft resolution The resolution will apply to constituent entities of MNE groups with annual revenue equivalent to EUR 750 million or more for at least 2 years of the 4 fiscal years immediately preceding the tested fiscal year. Article 9.3.5. of the OECD GloBE Model Rules has not been implemented.

Effective date for the IIR	1 January 2024 The IIR will take effect from 1 January 2024
Collection of top-up tax under the IIR	Articles 5 and 6 of the draft resolution The top-up tax will apply to the domestic parent company.
Implementation status of the Undertaxed Profits Rule (UTPR)	Committed No draft legislation has been issued yet for the UTPR
Effective date for the UTPR	-
Collection of top-up tax under the UTPR	-
Implementation status of a Domestic Minimum Top-Up Tax (DMTT)	Planned Articles 4 and 6 of the draft resolution A DMTT will apply to constituent entities of MNE groups, as prescribed in article 2 of the draft resolution, with production and business activities in Vietnam. Domestic excess profits will be calculated in the same manner as for the GloBE Rules.
Effective date for the DMTT	1 January 2024 The DMTT will take effect from 1 January 2024
Qualified IIR, UTPR and DMTT -Assessment of equivalence/peer review	-
Safe Harbours	Planned Articles 4.9 and 5.13 of the draft resolution The draft resolution provides that the top-up tax will not apply to constituent companies that meet the revenue and income thresholds under the de minimis test. The de minimis test will also apply to the DMTT.

Filing obligations	Planned Article 6 of the draft resolution Covered taxpayers under article 2 of the draft resolution will be required to submit declarations and pay top-up tax according to the GloBE Rules. The GloBE Information Return and DMTT must be submitted and paid within 9 months after the end of the fiscal year. The GloBE Information Return and jurisdictional top-up tax must be submitted and paid within 15 months after the end of the fiscal year.
Penalties	Information not yet available
Additional information	-
Relevant cases/decisions	-
Related journal articles	-
B. Subject to Tax Rule (STTR)	
Signed agreements/statements	• Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (11 July 2023) • Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (8 October 2021) • Statement on a Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy (1 July 2021)
MLI for the STTR	-
Effective date	-
Applicable legislation	-
Affected treaties	-
Additional information	-
Relevant cases/decisions	-
Related journal articles	-

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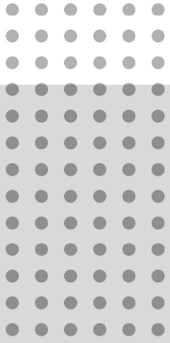


14. Summary and Conclusion

This report is the product of an in-depth research over the international tax systems and administrations of the Asia-Pacific countries conducted by the team of 3 researchers of the International Fiscal Association Korea.

The 12 countries reviewed in this report are Bangladesh, Cambodia, India, Indonesia, Laos(Lao PDR), Myanmar, Mongolia, Nepal, Pakistan, Phillippine, Sri Lanka and Vietnam(in an alphabetical order). These countries have a few characteristics in common. First of all, they are Asian countries. And they are not OECD member countries, which naturally means that the level of economic development of these countries still remains in the developing stage in terms of numerical indicators such as GDP per capita. However, each of these countries has its own precious tradition and national identity which must be respected and has existential power in the real world.

This report does not assume these countries are sharing any important common traits to be utilized as a barometer to assemble them in a single conceptual framework. This research has been conducted purely for the betterment of policy development work from the perspective of the Tax Programme of the OECD Korea Policy Centre, which has a scope of business covering these 12 countries.

The traits in the tax system of each country are summarized in the 〈Summary〉 of the front page of each chapter (country-by-country chapter). As mentioned in the above, each country in this report has its own specialties in the history, culture, economy and politics, etc. And therefore it may have little meaning for the researchers to try to find some implications through gathering common characteristics shared among these 12 countries.

Notwithstanding such limitations against pulling out any comparison or common traits, the researchers of this report cautiously say that the following phenomena in these countries, some of which seem to be shared among only a few countries in the above, may be found. Below are the phenomena shared by more than one country when roughly reviewed.

In terms of building the taxable object such as income, transaction, property and etc., the taxable objects under taxation in the current tax laws of not a few countries are relatively limited. In most countries reviewed in this report the comprehensive concept for the taxable object has not been introduced for almost every item of taxes introduced. One exception is the VAT in a few countries. This is probably due to the influence of the EC Value Added Tax Directive. Furthermore, in terms of the computation of taxable amount, which is the numerical size of a specific taxable object, the comprehensiveness is not attained, either. In short, the virtue of "broadening tax base" does not seemt to be effectively achieved. This phenomenon is known to make the tax system stay behind in terms of the equality in taxation. One of the major reason of this phenomenon found in the countries of this report seems to be the underdevelopment of tax administration in each country. The electronic and on-line tax administration of Korea may serve as some good examples for the modernization of their tax administrations.

The tax law and administration does not seem to be built on the firm legal foundation in most of the countries. In some countries the developed legal system based on the check and control by the separation of powers among the legislature, the administration and the judiciary may not be found(Laos). This seems to result in the possibility of the deficiency in the justice and legal certainty. On the other hand, in some countries such as India, Pakistan and Bangladesh, which have common law traditions, the provisions of tax laws are so complicated and multi-leveled to decrease the legal certainty consequently.

Many of these countries have adopted the market-oriented economic system very recently. Both substantive and procedural provisions for taxation, which are understood as the foundation for the legal and proper taxation supporting a market economic system, may not be found in many key topical areas and cases. Some countries do not have general personal income tax system but levy income tax only on limited types of income(Cambodia, Laos). In some countries,

the concept of tax neutrality in terms of taxation on foreign source income has not yet institutionalized(Laos, Myanmar).

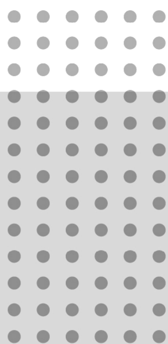
In terms of the tax administration, the systems of a few countries tend to allow huge discretion to the officials with only little meaningful oversight on hand. This may have been caused by, in partly, the administrative inefficiency. And the incompleteness of the laws and the ineffectiveness of judiciary system also seem to aggravate this structural problem. For example, in some countries anti-tax avoidance rules do not have statutory legal basis enacted by the legislature(Indonesia, Myanmar). The tax authority sometimes has the authority to assess and redetermine the substance of a transaction if they determine it is not made at the market price or is not reasonable even though there are no specific transfer pricing rules in the statutory law(Laos, Myanmar). In this respect, Korea's experience could be of great help if countries with such structural problems are active in sharing Korea's experience.

In the international tax issues, most countries have made lots of efforts for the introduction of E-Commerce VAT system. In India, Nepal and Bangladesh even the digital service tax has been in effect. But some countries such as Myanmar has not introduced an E-Commerce indirect tax system. Korea may also share its experiences in this area.

Some countries – especially Indo-china region countries – seem to need to expand tax treaty network to increase and deepen their international economic cooperation. The OECD model along with the UN model may serve as a good guideline if these countries intend to conclude tax treaties with trade and investment partner countries. From the perspective of promoting cooperation with countries in the region, Korea needs to make efforts to actively participate in the formation of international tax norm or guideline in the arena of the OECD as well as the UN.

As for the BEPS project, only a few countries among the 12 countries are participating in the Inclusive Framework, which Korea also participates in.

Because it is a brand-new approach to any country on the globe and it has not a few uncertainties up to now, the wait-and-see approach may have its virtue. Since one of the key components of the BEPS project is the prevention of tax avoidance through international cooperation, Korea needs to keep its openness as well as activeness to any countries, not to mention the 12 countries in this report, which intend to go with the project.



요약본

아시아·태평양 국가들의 국제조세제도와 행정

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1 서론

연구의 배경과 목적

OECD는 2008년 우리나라와 OECD정책센터 설립에 관한 양해각서를 체결하였으며, 이에 따라 우리나라에서 설립된 OECD정책센터는 아시아·태평양 지역에서의 정책경험의 교환을 촉진하고, 비OECD 회원국을 상대로 한 OECD의 사업 후원을 위한 지원 센터로서의 역할을 수행하며, OECD의 연구, 분석 및 기준 설정 작업에 대한 아시아·태평양 지역사회의 이해를 증진하는 사업을 추진하게 되었다. OECD정책센터의 조세정책본부는 아시아·태평양 지역에서의 국내 및 국제조세에 관한 제도 및 현안에 대해 해당 지역 국가들에게 OECD의 제도와 우리나라의 정책경험을 공유함으로써 이를 전파하는 기능을 수행하고 있다.

OECD는 국제조세의 영역에서 2012년 이래의 BEPS 1.0 project와 BEPS 2.0 project를 추진하고 있으며, 참여국가를 확대하기 위해 전자를 위해서는 아시아·태평양 지역 내 인도, 인도네시아가 포함된 G20와 공조하고, 후자를 위해서는 현재 아시아·태평양 지역의 다수의 국가들이 포함된 138개 국가들이 참여하는 포괄적체제(Inclusive Framework)를 구성하여 논의하는 방식으로 추진하고 있다.

OECD정책센터의 조세정책본부가 그 설립의 기본적 목적에 충실하기 위해서는 아시아·태평양 지역국가에 대한 국제조세 사업을 적극적으로 추진하는 것이 필요한 것이다. 아시아·태평양 지역 국가들은 전후 독립한 국가들이 주를 이루고 있어서 조세법제 및 행정이 각국의 역사적 사정에 따라 그 형태와 내용이 다양하며, 오래전 OECD에 가입한 우리나라와 다른 독특한 제도를 형성하고 있는 경우가 많다. 아시아·태평양 지역 국가들에 대한 협력사업을 내실있게 추진하기 위해서는 그 지역 국가들의 제도와 행정에 대한 충분한 이해가 필요한 것이다.

이 보고서는 이러한 관점에서 아시아·태평양 지역 국가들의 국제조세의 법제와 행정에 대해 조사하는 것을 목적으로 한다. 특히 OECD가 그 국제적 기준을 설정하고 있는 이전가격과세 등 국제적 조세회피를 방지하기 위한 제도, 이중과세방지협약, BEPS 프로젝트와 관련한 사항을 중점으로 한다. 이를 위해 각국의 국내세법 중 소득과세에 관한 법, 그것을 집행하기 위한 행정체계에 대한 연구를 병행한다.

연구의 범위와 방법

이 보고서에서의 조사연구 대상 국가는 아시아･태평양 지역 내 비OECD 국가들 중 국제조세의 제도와 행정에 대한 인지도가 비교적 낮은 것으로 보이는 아래의 12개국으로 한다.

- 동남아시아 권역(6개국)
  - 필리핀, 인도네시아
  - 인도차이나반도국가들(베트남, 캄보디아, 라오스, 미얀마)
- 남아시아 권역(5개국)
  - 인도, 파키스탄, 방글라데시, 스리랑카, 네팔
- 동아시아 권역(1개국)
  - 몽골

국가별 조사연구 대상 항목은 조세관련 정부기관, 소득세제의 기본구조, 국제적 조세회피 방지 제도, 조세조약, BEPS 이행 현황 등으로 한다. 연구 방법은 문헌 조사, 외국 관계 기관으로부터의 자료 수집, 주요 DB 기관 자료 이용 등으로 한다.

이하 이 보고서에서는 12개 국가들에 대한 조사결과를 알파벳 국가명 순으로 하여 서술한다.

2 방글라데시

방글라데시의 조세 체계는 직접세와 간접세로 구성되어 있다. 직접세에는 소득세, 증여세, 토지 개발세, 비사법 인지세, 등록세, 부동산세가 포함된다. 간접세에는 관세, 물품세, 자동차세, 마약 및 주류세, 부가가치세, 부가세, 해외여행세, 매출액세, 전기세, 광고세 등이 있다. 주요 세금은 부가가치세, 관세, 소비세, 소득세이다. 조세정책은 세수 징수를 최적화하고 탈세 및 시스템 비효율을 방지하는 것을 목표로 한다.

방글라데시 국세청(NBR)은 방글라데시의 조세행정기관으로, 재무부 내부 자원과 산하에 있다. NBR은 세 가지 조세 유형(관세과, 부가가치세과, 소득세과)으로 운영된다. 과세처분은 상위 세무당국에 항소할 수 있으며, 필요한 경우 대법원에 추가로 항소할 수 있다.

방글라데시의 소득세 제도는 소득세법(ITA) 및 소득세 규칙 2023을 비롯한 다양한 법률과 규정의 적용을 받는다. 이러한 법률은 매년 재정법을 통해 개정될 수 있다. 소득세는 납세자의 거주성과 과세대상소득에 따라 다양한 세율과 면제가 적용된다. 방글라데시 거주자는 전세계소득에 대해 과세하는 반면, 비거주자는 방글라데시에서 벌어들인 소득에 대해서만 과세한다. 방글라데시의 과세연도는 7월 1일부터 다음 해 6월 30일까지이다.

과세 목적상 거주성 여부는 개인과 사업체의 특정 기준에 따라 결정된다. 거주자는 소득연도에 지정된 일수 동안 방글라데시에 체류하는 개인이며, 비거주자는 방글라데시에서 소득이 없는 단기 방문자 또는 외국인의 부양가족이다. 거주 사업체에는 방글라데시인이거나 방글라데시에서 전적으로 통제 및 관리하는 회사가 포함된다.

방글라데시 거주자는 방글라데시와 외국 관할권 모두에서 과세되는 소득에 대한 이중과세를 피하기 위해 이중세금감면 혜택을 받을 수 있다. 외국납부세액공제는 납부한 외국 세금 또는 납부할 방글라데시 세금 중 낮은 금액까지 허용된다. 초과 세액공제의 이월 또는 소급에 대한 규정은 없다.

고정사업장의 개념은 방글라데시 내 사업체의 과세대상소득을 결정하는 데 중요하다. 특정 소득은 관리장소, 지점, 사무실, 창고, 공장 또는 기타 경제활동과 같은 물리적 존재를 포함하는 고정사업장을 통해 방글라데시에서 발생하거나 발생하는 것으로 간주된다.

방글라데시는 스타트업 샌드박스 및 경제특구(SEZ) 등 외국인직접투자를 유치하기 위한 세제지원을 제공한다. 특정 조건을 충족하는 스타트업 기업은 5년 동안 다양한 세금 혜택을 누릴 수 있다. 경제특구에서는 투자자와 개발자에게 세금면제 혜택을 제공하며, 시간이 지남에

따라 면제 비율이 점차 감소한다.

방글라데시에서는 다양한 유형의 소득에 원천징수세가 적용된다. 세율은 수취인의 거주성에 따라 다르다. 조세조약의 남용을 방지하기 위해 조세회피 방지 규정이 마련되어 있으며, 특수관계자 간의 국경 간 거래에는 이전 가격 규정이 적용된다.

방글라데시는 외국인 투자자를 이중과세로부터 보호하기 위해 42개국과 조세조약을 체결하고 있다. 방글라데시는 BEPS에 관한 협약에 참여하지는 않지만 디지털 경제에 과세하는 조치를 시행하고 있다.

3 캄보디아

캄보디아 왕국은 입헌군주국이다. 캄보디아에서는 일반적인 개인소득세가 없으며, “급여세(ToS)” 또는 “소득세(ToI)” 항목에 해당하지 않는 소득에 대해서는 과세되지 않는다. 부가가치세(VAT)는 토지와 돈을 제외한 과세 대상 상품 및 서비스 공급과 수입에 부과된다.

캄보디아의 조세 행정 책임은 경제재정부(MEF) 산하 조세총국(GDT)에 있다.

캄보디아 세법에는 명시적인 조세회피 금지 조항이 없다. 그러나 조세 회피 등 조세 규정을 위반하는 경우에 대한 처벌 규정이 가까운 시일 내에 도입될 것으로 예상된다.

조세법 제18조는 캄보디아 이전가격 과세체제의 기본 원칙을 명시하고 있으며, 이에 따라 국세청에게는 과세를 피하기 위한 거래가 형성된 것으로 간주되는 경우 관련 당사자 간에 소득, 공제 또는 기타 혜택을 재분배할 수 있는 권한이 부여되어 있다.

캄보디아에는 피지배외국법인에 대한 과세규정이나 과소자본과세제도가 없다.

2021년 9월 8일부터 캄보디아 소비자에게 디지털 상품/서비스 또는 전자상거래 활동을 제공하고 연말까지 3개월 연속으로 USD 15,000 이상의 매출을 올릴 것으로 예상되는 외국법인은 30일 이내에 부가가치세 사업자등록을 해야 한다.

캄보디아는 민주주의와 시장경제 경험이 상대적으로 적은 나라이다. 세법은 필요한 조항을 충분하게 규정하지 않고 있으며, 그 결과 과세당국은 납세자와 기업에 확실성을 부여하지 못하고 있다. 현재 조세 조약 네트워크는 매우 좁게 형성되어 있다. 그리고 캄보디아는 BEPS의 포괄적 프레임워크(Inclusive Framework)에도 참여하지 않고 있다. TP 과세에 대한 법적 기반이 취약하다는 점은 역으로 캄보디아 정부가 최근까지 국제 조세 분야에서 중요한 세법 규정의 도입을 그다지 필요로 하지 않고 있었음을 보여주고 있다. 새롭게 도입된 전자상거래에 대한 부가가치세 제도는 “필요성이 발전의 어머니”라는 말을 캄보디아의 세법적 상황에 적용할 수 있음을 보여주고 있는 것으로 보인다.

OECD 한국정책센터의 조세 프로그램은 세법체계 구축과 조세행정의 디지털 전환 분야에서 한국의 개혁 정책 경험을 공유함으로써 캄보디아 조세제도 발전에 기여할 수 있을 것이다.

4 인도

인도의 조세 체계는 영국법과 영미법 원칙을 기반으로 하며, 3단계 연방 구조로 이루어져 있다. 이 체계에는 중앙직접세위원회에서 관리하는 소득세, 증여세, 부유세 등의 직접세와 중앙간접세 및 관세위원회에서 관리하는 부가가치세 등의 간접세가 포함된다.

중앙직접세위원회는 소득세 행정을 감독하며, 과세처분에 대한 이의 제기는 소득세청장(항소) 및 소득세 항소심판소에 할 수 있다. 인도의 소득세법은 1961년 소득세법 및 기타 규정, 회람, 판례법에 의해 규율된다.

인도의 소득세 구조는 거주자와 비거주자에게 서로 다른 세율을 적용하며 면제, 공제, 세금 공제 등을 포함한다. 개인과 기업은 세율과 한도가 다른 구세제와 신세제 중에서 선택할 수 있다. 인도의 과세연도는 4월 1일부터 다음 해 3월 31일까지이다.

인도의 국제조세 규정에는 고정사업장 및 사업 연관성에 대한 정의와 함께 조세 목적상 거주자 기준 및 이중세금 감면 규정이 포함되어 있다. 또한 이중과세 방지 협약에 따른 외국납부세액공제 청구 규정과 다양한 조세조약에서 고정사업장의 대우에 대한 규정도 포함되어 있다.

인도는 외국인직접투자를 유치하기 위한 세제지원을 제공하여 경제특구(SEZ)의 개발자 및 유닛과 적격 스타트업에 혜택을 제공한다.

인도의 경제특구는 산업 발전과 외국인직접투자를 촉진하기 위해 유리한 비즈니스 환경과 다양한 세제지원을 제공한다. 경제특구의 개발자와 유닛은 특정 기간 동안 수익과 투자에 대한 세금 면제 혜택을 받을 수 있다. 경제특구 개발자는 첫 5년간 수출 소득에 대해 100% 소득세를 면제받고, 이후 5년간은 50%를 면제받는다. 또한 경제특구 유닛은 첫 5년간 이익에 대해 100% 소득세를 면제받고, 이후 5년간 50% 면제, 재투자 이익에 대해 향후 5년간 50% 면제를 받는다. 그러나 경제특구 단위는 여전히 최소 대체세 및 배당 분배세 조항의 적용을 받는다.

적격 스타트업은 세제지원 혜택도 받을 수 있다. 2016년부터 2024년 사이에 설립된 스타트업 중 총 매출액이 2억 5천만 루피를 초과하지 않는 스타트업은 설립 연도부터 첫 7년 중 3년 연속 발생한 이익에 대해 100% 공제 혜택을 받을 수 있다. 또한 스타트업은 특정 조건에 따라 손실을 이월할 수 있다.

배당금, 이자, 로열티, 기술 서비스 수수료 등 다양한 유형의 소득에 대해 거주자와 비거

주자에 대한 원천징수 세율이 적용된다.

인도는 일반 회피방지 규정(GAAR)을 포함하여 국제조세 계획에 대한 회피방지 규정을 시행하고 있다. GAAR 규정은 허용되지 않는 회피 계획을 통해 세법을 오용하거나 남용하는 것을 억제하는 것을 목표로 한다.

또한 인도 소득세법에는 소득 은닉 및 회계장부 허위기재에 대한 처벌조항이 포함되어 있다. 또한 국제거래에서 발생하는 소득이 적정가격으로 계산되도록 이전가격 규정이 법에 명시되어 있다.

인도는 여러 국가와 이중과세방지협정을 체결하여 조약 해석 및 분쟁에 영향을 미치고 있다. 인도는 다자간 협약의 채택과 BEPS 프로젝트의 필라1 잠정 조치 등 국내법 개정을 통해 BEPS를 해결하기 위한 조치를 시행하고 있다.

또한, 인도는 디지털 경제 과세 문제를 해결하기 위해 상당한 경제적 실질 거주지 조항과 균등 부과금을 도입했다. 인도는 BEPS 프로젝트의 필라2에 대한 구체적인 조치를 시행하지는 않았지만, 프로젝트의 목표에 따라 법인세율을 인하하고 면제/공제를 단계적으로 폐지하는 조치를 취했다.

5 인도네시아

인도네시아는 많은 선진 대륙법계 국가에서 볼 수 있는 세법 시스템을 구축하고 있다. 인도네시아의 경제 발전 단계는 1인당 GDP 등 수치적 성과 측면에서 개발도상국 수준으로 분류할 수 있을 것이나, 인도네시아는 그 실물경제가 다양한 산업으로 거대한 집합체를 형성하고 있다는 점에서 동남아시아 지역의 경제 리더로 성장할 수 있는 잠재력을 갖고 있다. 인도네시아는 현재 OECD 회원국 가입을 추진하고 있다.

인도네시아의 주요 세금으로는 소득세, 부가가치세, 토지 및 건물세, 탄소세, 지방세가 있다. 소득세 및 간접세에 대한 주요 세법은 소득세법(ITL), 조세법 일반 조항 및 절차, 상품 및 서비스에 대한 부가가치세 및 사치품 판매세에 관한 법률이다.

국세청은 조세 정책 입안과 조세 행정의 역할을 모두 수행하고 있다. 본청은 정책 수립과 기술 표준화, 분석 및 개발 기능과 감독 및 행정 지원 기능을 수행하고 있다.

소득세법에는 소득에 대한 포괄적인 개념이 규정되어 있다. 소득세법은 거주, 이중과세 조정, 고정 사업장, 이전 가격 과세, 피지배 외국 법인 과세 및 과소 자본세제 등 국제 조세와 관련된 거의 모든 개념과 규정을 규정하고 있다. 인도네시아는 최근 준원천지주의 과세 제도를 도입했다. 아울러 전자상거래 과세제도도 도입했다. 인도네시아는 BEPS의 Inclusive Framework에 가입하고 있다.

대륙법계 국가의 전통에 예외적인 인도네시아 세법 시스템의 한 가지 중요한 특이점은 법률이 규제의 내용과 범위 측면에서 행정부에 막대한 권한을 위임하고 있다는 점이다. 이는 확실히 행정부가 납세자의 기본적이고 근본적인 권리에 직접적인 영향을 미칠 수 있도록 하고 있다.

이러한 점에서 인도네시아 세법체계의 공고화를 위해 한국의 경험을 인도네시아와 공유할 수 있을 것이다. 또한, 조세행정의 디지털 전환 기간 동안 한국의 경험을 공유할 수도 있을 것이다.

6 라오스

라오스(Lao PDR)는 단일 정당 공산당 정부에 의해 통치되고 있다. 주요 산업은 광업, 수력발전, 농업, 경공업 등 1차 산업이다.

새로이 마련된 조세행정법(No 66/NA, 2019년 6월 17일), 소득세법(No 67/NA, 2019년 6월 18일) 및 소비세법(No 68/NA, 2019년 6월 19일)은 2020년 1월 1일부터 시행되고 있다. 부가가치세법(No 48/NA, 2018년 6월 20일)도 세법의 중요한 구성 요소가 된다.

개인의 소득으로는 과세소득으로 급여소득, 사업소득, 기타소득이 있으며, 아울러 비과세소득이 규정되어 있다. 법인과 합자회사는 소득세를 납부할 의무가 있다.

국내 세법상 외국납부 세액공제는 규정되어 있지 않다. 따라서 외국 소득에 대해 납부한 외국 세금에 대해서는 세액공제가 허용되지 않다. 그러나 조세 조약에 따라서는 외국 세금의 공제 또는 공제 조항이 규정되어 있으며, 그 경우 공제가 허용된다.

라오스 세법에는 고정사업장(PE)에 대한 정의가 없다.

구체적인 것이든 일반적인 것이든 조세회피방지조항은 규정되어 있지 않다. 아울러 조세조약남용방지조항도 규정되어 있지 않다. 또한, 법규상 개별적인 이전가격과세 규정이 마련되어 있지 않다. 그러나 세무 당국은 거래가 시장 가격에 부합하지 않거나 합리적이지 않다고 판단하는 경우 거래를 재구축할 권한을 가지고 있다. 과세당국이 공표하는 시장 환율이나 합리적인 가격에 대한 공표된 지침은 없다.

2017년부터 모든 기업그룹 내 거래(재무 및 운영)는 세법의 지침(세율, 허용 한도) 또는 독립기업가격원칙에 따라 과세상 조정될 수 있다. 라오스는 BEPS의 포괄적 프레임워크에 참여하지 않고 있다.

라오스는 공산주의 국가이기 때문에 서구 국가에서 구축한 법체계를 찾아보기 어렵다고 할 수 있다. 지금까지의 경제상황은 조세 조약의 광대한 네트워크와 복잡한 과세 규칙을 필요로 하지 않았던 것으로 보인다. 현행 세법에 고정사업장의 개념과 이전가격과세에 대한 규정이 없다는 점은 조세법규의 현주소를 대변하는 것으로 보인다. 개발도상국의 사례에서 거의 항상 발견되는 것처럼, 국가 경제의 힘과 범위는 해당 법률 분야가 사적이든 공적이든 관계없이 그것을 위한 법적 인프라 구조의 필요성을 결정한다.

라오스 과세당국은 구체적 성문법적 근거가 없음에도 불구하고 이전가격과세에 관한 행정지침을 공표했다. 아울러 전자상거래에 대한 부가가치세 과세 행정지침도 공표했다. 이러한

지침은 라오스가 직면한 시장과 경제의 변화에 국가로서 대응해야 한다는 현실을 입증하는 것으로 보인다. 시장경제와 서구의 법체계에 익숙하지 않았던 라오스가 이러한 제도를 적극적으로 도입하기 시작하고 있는 것이다. 이 점은 최근 이러한 측면에서 많은 성공 경험을 갖고 있는 한국과 같은 국가들과의 국제 협력의 필요성을 강력하게 시사한다.

7 미얀마

미얀마는 2021년부터 국가행정위원회가 정부의 전권을 행사하는 비상체제를 유지하고 있다. 정치 불안과 서구 국가들의 경제 제재로 인해 현재의 미얀마경제는 전체적으로 성장을 도모하고 국제 협력을 확대할 수 있는 상황에 놓여 있지 않은 것으로 보인다.

국가행정위원회는 연합세법(UTL)상의 세율을 수정, 삽입 또는 대체할 수 있다. 국세국(IRD)은 기획재정부의 내부 조직으로 설치되고 있다.

1974년 소득세법(ITL)은 소득과세의 기본법이다. 세법체계는 통일세법인 연합세법(UTL)의 간헐적인 개정을 통해 형성되고 있다. UTL은 기존 세법인 소득세법(ITL)에 대한 특별법의 성격을 갖고 있다. UTL의 가장 최근 개정은 2023년에 이루어졌다.

ITL이나 UTL에는 국제적 이중과세에 대한 국내세법적 구제 규정이 없다. 조세조약에 따라 이중과세의 방지가 이루어질 수도 있지만, 조세조약의 적용은 기획재정부의 재량에 달려 있다.

조세회피에 관한 IRD 국장의 규정이 조세행정법(TAL, 2023.1.1.~)에 따른 IRD 훈령 3/2022로 시행되었다. 이 훈령은 납세자가 조세를 회피하거나 과세소득 또는 납세의무를 줄이기 위한 목적으로 세법을 완전히 이해하고 조세윤리를 위반하는 경우 조세회피에 해당하게 된다고 규정하고 있다.

이전가격 과세에 대한 공식적인 규정은 없지만 IRD는 특수관계자 간 거래가 합리적인지 평가함에 있어서 OECD 가이드라인에서 제시된 방법론에 따라 독립 당사자 간에 수행되는 유사한 거래의 시장 가격에 대한 정보를 지침으로 사용하는 규칙을 수립하고 있다.

미얀마에는 피지배외국법인 세제 규정이 없다. 미얀마 조세 목적상 부채비율과 관련하여 과세상 특별한 면책 조항은 없다.

미얀마의 조세 조약 네트워크가 매우 제한되어 있다. 미얀마는 BEPS의 포괄적 프레임워크에 참여하지 않고 있다.

미얀마는 과세 측면에서 법적 확실성을 제공할 수 있는 법적, 행정적 시스템을 충분히 갖추고 있지 않은 것으로 보인다. 정부 당국에 맡겨진 다른 과제가 훨씬 더 많기 때문인지 조세제도를 보충하기 위한 노력은 그다지 눈에 띄지 않는 것으로 보인다. 캄보디아, 라오스 등 인접 인도차이나 국가에서 시행 중인 전자상거래에 대한 부가가치세 시스템도 아직 도입되지 않았다. 입법부, 정부, 사법부의 견제 시스템이 국내에 뿌리를 내리지 못하고 있다.

국제협력 증진을 위한 노력의 일환으로 OECD 한국정책센터의 조세 프로그램은 한국의

개혁 정책 경험을 공유할 수 있을 것이며, 이를 위해 장기적인 정책 목표를 달성하기 위한 단계별 접근을 위한 적지 않은 노력이 필요할 것으로 보인다.

8 몽골

개인소득세법에 따라 개인은 개인이 주어진 연속 12개월 기간 중 183일 이상 몽골에 거주하거나, 몽골 원천소득이 개인의 전 세계 소득의 50%를 초과하는 경우 전 세계 소득 모두 과세대상인 몽골 거주자가 된다. 거주 납세자 법인은 전 세계적으로 기업 이익 및 기타 형태의 소득에 대해 소득세가 부과된다. 회사가 몽골 법률에 따라 설립되었거나 몽골에 실질적인 경영 장소가 있는 경우, 회사는 몽골 거주자이다. 비거주 개인(회사)은 세금 목적으로 몽골에 거주하지 않는 개인(회사)이고, 몽골 내 원천에서 발생한 소득 총액에 대해 최종 원천징수세 20%를 납부해야 한다. 고정사업장에 대한 정의가 있으며, 고정사업장의 과세소득은 일반적으로 거주자에 대한 소득세 규정에 따라 과세된다.

2020년부터 일반 조세회피방지 규정(GAAR)이 적용된다. GAAR에 따라 몽골 국세청은 취득한 세금 혜택을 창출하는 것 외에 상업적인 내용이나 목적이 없다고 판단되는 거래 또는 약정의 조세혜택을 거부할 권한이 있다. GAAR이 실행되면, 세무당국은 세제가 적용되지 않았거나 조세혜택이 없는 것처럼 납세자의 지난 4년간 납부해야 할 세금을 재평가한다.

2020년부터 적용되는 새로운 이전가격 규정은 일반적으로 OECD 이전가격 지침과 정상가격 원칙을 따른다. 이전가격 규정은 특수관계자 간에 이루어지는 모든 유형의 거래에 적용되고, 국가 간 거래와 국내 특수관계자 거래 모두에 적용된다. 특정외국법인세제는 2020년 1월 도입되었고, 이 규정에 따라 거주자가 직접 또는 간접적으로 지분의 50% 이상을 소유한 외국기업은 특정외국법인으로 간주되고, 몽골 거주자로서 과세된다. 조세피난처로 지정된 국가 또는 지역 목록은 정부의 승인을 받아 현재 49개국이 포함되어 있다. 2020년부터 관련 당사자로부터 받은 대출에서 발생한 공제가능한 이자 비용은 EBIDTA의 30%로 제한되며, 이 비율을 초과하여 지급된 이자는 공제되지 않으며 배당금으로 처리된다.

몽골 정부는 주요 무역 상대국인 한국을 포함한 25개 국가와 양자조세조약(이중과세방지협정)을 체결했다. 몽골은 BEPS 프로젝트의 글로벌 이행을 위한 OECD의 포괄적 프레임워크의 회원국으로, 조세의 상호행정지원에 관한 다자간 협약이 2020년 6월 1일 몽골에 발효되었고, 협약과 개정 의정서는 일반적으로 2021년부터 적용된다.

몽골은 이전가격, 특정외국법인 세제 등 일반적인 조세회피방지 규정(GAAR)을 잘 규정하고 있으며, 국내법을 통해 BEPS 프로젝트를 시행하고 있다. 그러나 디지털세의 Pillar1에 대한 대응이 부족한 부분은 OECD 한국정책센터와의 협력이 필요할 수 있다.

9 네팔

2002년 소득세법(ITA)에 따라 거주자 개인은 전 세계 소득에 대해 과세대상이고, 비거주자는 네팔에 원천이 있는 순수입에 대해 과세된다. 연속 365일 중 183일 이상 네팔에 거주했거나, 정상적인 거주지가 네팔인 사람은 네팔 거주자로 간주된다. 거주 회사는 전 세계 소득에 대해 과세대상이고, 거주 회사는 네팔에서 설립 또는 설립되었거나 소득 연도 동안 네팔에서 실효적으로 관리되는 회사이다. 네팔에 위치한 비거주자의 외국 고정사업장은 네팔 거주자로 간주되고, 비거주 회사는 해당 소득 연도에 네팔의 원천에서 발생한 소득에 대해서만 과세된다. 네팔의 고정사업장에서 송환된 세후 이익에 대해 5%의 세율이 세금이 부과된다.

ITA 제35조는 일반적인 조세회피방지 규정이다. 소득세 납부 의무를 결정하기 위해 네팔 국세청은 조세회피 계획의 일부로 체결되거나 수행된 약정 또는 일부를 재구성하고, 실질적인 경제적 효과가 없는 약정 또는 일부를 무시한다. 이전가격 및 과소자본세제에 관한 특정 규정은 없다. ITA 제69조에 따라, 과세연도 말에 특정외국법인은 해당 연도에 발생한 귀속소득(즉, 해당 법인이 거주 법인인 것처럼 계산된 특정외국법인의 과세소득)에서 배당금을 분배한다. 네팔은 외국인 투자자의 소득에 대한 이중과세를 완화하기 위해 인도를 포함한 11개국과 이중과세방지협정을 체결했다.

BEPS에 관한 특별한 규정은 없다. 그러나 비거주자가 네팔 개인 고객에게 제공하는 디지털 서비스에 대해서는 거래 가치에 대해 2%의 디지털서비스세가 징수된다.

네팔에는 일반적인 조세회피방지규정이 있지만, 이전가격과 과소자본세제는 규정하지 않았고, 조세조약을 체결한 국가는 11개국에 불과해 인도에 대한 의존도가 높다. BEPS에 대응하지 않고 디지털서비스세만 시행하고 있어 디지털세에 대한 대응도 미흡하다. 따라서 네팔은 개별적인 조세회피방지 규정의 보완, 조세조약 활성화, BEPS 대응 및 디지털세 대응 등 여러 측면에서 OECD 한국정책센터의 협력과 지원이 필요할 것이다.

10 파키스탄

파키스탄의 조세 체계는 연방 국세청에서 감독하며 소득세, 판매세, 연방 소비세 및 관세를 포함한다. 과세처분에 대해서는 국세청(항소), 항소심, 고등법원, 대법원 등 다양한 기관에 이의를 제기할 수 있다.

거주자는 전세계소득에 대해 과세되며, 비거주자는 파키스탄 원천소득에 대해 과세된다. 소득에는 급여, 재산소득, 사업소득, 자본이득, 기타소득의 다섯 가지 범주가 있다. 파키스탄의 과세연도는 6월 30일에 끝나는 12개월 기간에 걸쳐 있다. 소득세 조례의 두 번째 부록에 따라 다양한 면세 혜택을 받을 수 있다.

파키스탄의 개인에 대한 소득세율은 소득수준에 따라 다르며, 급여소득이 과세대상소득의 75%를 초과하는 개인에게는 다른 세율이 적용된다. 법인세율도 법인 유형에 따라 20%에서 39%까지 다양하다. 소규모 기업은 20%의 낮은 세율이 적용되며, 중소 제조기업은 연간 매출액에 따라 7.5% 또는 15%의 세율을 선택하거나 총 매출액에 따라 더 낮은 세율의 최종 세제를 선택할 수 있다.

증권거래소에서 거래되는 증권을 제외한 동산 자산의 자본이득에는 일반 소득세율이 적용된다. 그러나 2022년 7월 1일 이후에 매입한 특정 증권에 대해서는 보유기간에 따른 특정세율이 적용된다. 파키스탄에서 부동산을 매각하여 발생하는 자본이득은 보유기간에 따라 낮은 세율이 적용된다.

파키스탄의 거주자 여부는 과세연도 동안 파키스탄에서 보낸 일수, 해외에서 공무원으로 근무하거나 과세연도 동안 다른 국가에서 182일을 초과하지 않은 파키스탄 시민인 경우 등의 기준에 따라 결정된다. 거주자 사업체는 파키스탄 법에 따라 설립되었거나 파키스탄에서 완전한 통제 및 관리권을 가진 법인을 말한다. 비거주자 개인은 파키스탄에서 소득이 없는 단기 방문자 및 외국인의 부양가족을 포함하며, 비거주자 사업체는 외국 법률에 따라 설립되었거나 파키스탄 외부에서 관리 및 통제권을 가진 사업체를 말한다.

이중세금 감면은 특정 조건에 따라 외국 원천소득에 대한 외국납부세액공제를 허용한다. 파키스탄 내 고정사업장은 외국과의 관련 조세조약에 규정된 정의에 따라 결정된다.

파키스탄은 경제특구 내 10년간 세금 공제, 업종별 인센티브 등 국내외 투자자를 위한 세제지원을 제공한다. 원천징수세율은 소득 유형과 거주자 여부에 따라 다르다. 조세회피방지 규정에는 일반적인 조세회피방지 규정, 소득 및 역외자산 은닉금지 조항, 허위 또는 오

도된 진술에 대한 처벌, 역외탈세에 대한 처벌이 포함된다.

이전가격 규정은 소득세 조례에 명시되어 있으며, 특수관계자와의 거래에 대해 규정된 파일과 문서를 유지해야 한다. 파키스탄은 BEPS 프로젝트 시행의 일환으로 마스터 파일, 현지 파일, 국가별 보고 요건을 도입하고 국세청과의 협력을 강화했다. 또한 특정 비거주자 기업에 대한 과세를 보장하기 위해 CFC 과세 및 과소자본 규정도 도입했다.

파키스탄은 66개국과 이중과세 방지를 위한 양자협정을 체결했으며 인도, 요르단, 케냐, 사우디아라비아와는 제한적 목적 협정을 체결했다. 파키스탄은 BEPS에 관한 포괄적 프레임워크에 참여하고 있으며, 조세 문제에 관한 상호 행정지원에 관한 다자간 협약 등 국내법을 통해 BEPS 프로젝트를 시행하고 있다. 파키스탄도 탈세나 회피를 조장하지 않고 이중과세를 없애기 위한 다자간 협약에 서명했지만, 아직 BEPS 프로젝트의 필라1과 필라2를 국내적으로 이행하기로 약속하지는 않았다.

11 스리랑카

스리랑카의 소득세 제도는 2017년에 내국세법(IRA)이 도입된 이후 2023년까지 다양한 개혁을 거쳤으며, 이후 개정이 이루어지고 있다. IRA는 조세회피 문제를 해결하고 과세기반을 확대하며 3단계 법인세 구조를 도입하고 자본이득세를 부과하는 것을 목표로 한다. 또한 탈세에 대한 벌금, 징역형, 회사 이사의 개인적 책임에 대한 조항도 포함되어 있다.

스리랑카 거주자는 전세계소득에 대해 과세하며, 비거주자는 스리랑카 내에서 발생한 소득에 대해 과세한다. 고용소득, 사업소득, 투자소득 및 기타소득을 포함한 다양한 범주의 소득이 과세 대상이다. 고용소득, 투자자산의 임대소득, 스리랑카 외에서 사용하기 위해 외화로 벌어들인 소득 등 특정 유형의 소득에 대해서는 특정 면제가 적용된다.

세율은 납세자의 유형과 소득수준에 따라 다르다. 개인의 경우 세율은 소득구간에 따라 6%에서 36%까지 다양하다. 법인세율은 법인 유형에 따라 다르며 30%에서 40%까지 다양하다. 법인 및 개인의 자본이득 세율은 각각 30%와 10%이다.

스리랑카의 국제조세 문제에는 거주지 결정, 이중세금 감면, 고정사업장의 개념이 포함된다. 조세 거주지는 개인과 기업에 대한 특정 기준에 따라 결정된다. 납부한 외국 소득세에 대해 외국납부세액공제를 받을 수 있으며, 고정사업장의 개념은 이중과세방지 협정 또는 스리랑카 세법에 정의되어 있다.

스리랑카의 외국인직접투자에 대한 세제지원은 투자청(BOI)법, 전략개발 프로젝트법(SDP), 내륙세법(IRA)에 따라 제공된다. BOI법은 기업이 스리랑카의 일반 법률에 따라 운영하거나 적격 프로젝트에 특별 인센티브를 제공하는 것을 허용한다. 이러한 인센티브에는 강화된 자본 허용, 우대세율, 헌법적 보장, 외환관리 면제, 이익 및 자본 송환 등이 포함된다.

SDP법은 대규모 개발 프로젝트에 대해 세제지원과 특정 규제면제를 제공한다. 이 법은 국익에 부합하고 국가에 경제적, 사회적 이익을 가져다주며 국가의 입지를 변화시킬 수 있는 잠재력을 가진 프로젝트를 SDP로 정의한다. 이러한 프로젝트는 사례별로 법률 면제를 받을 수 있다.

스리랑카의 원천징수세율은 소득 유형에 따라 다르며 거주자와 비거주자 모두 동일하게 적용된다. 스리랑카에는 조세회피 계획에 대응하기 위한 조세회피 방지규정이 있으며, 특수관계자 기업 간의 국경 간 거래를 규제하기 위한 이전가격 규정이 존재한다.

스리랑카는 이중과세를 방지하고 외국인 투자자의 소득을 보호하기 위해 46개국과 양자

협정을 체결했다. 스리랑카는 BEPS에 관한 포괄적 프레임워크에 참여하고 있으며, 일부 측면이 완전히 이행되지는 않았지만 OECD 표준에 기반한 이전가격법을 시행하고 있다. 그러나 스리랑카는 다자간 협약의 서명국이 아니며 BEPS에 따른 두 가지 필라에 동의하지 않았다.

12 필리핀

필리핀법은 민법, 관습법, 이슬람법이 혼합된 복잡한 체계이고, 특히 각 법률 분야에는 성문법과 불문법이 적용된다. BIR(국세청)은 세법집행규정을 공개하여 세법을 해석할 권한을 갖고, 아울러 대법원이나 조세법원의 판결도 사법적 성격을 지닌 것으로 해석된다.

과세대상자는 필리핀 시민, 외국인 개인(거주자 및 비거주자 모두), 유산 및 특정 유형의 신탁이다. 필리핀 시민권은 4가지 사항을 언급하고 있는 필리핀 헌법 제4조 1항에 따라 결정된다. 거주 시민은 전 세계 소득에 대해 소득세가 부과되는 반면, 거주 외국인은 필리핀 원천소득에 대해서만 과세된다. 비거주 시민(해외 계약 근로자 포함) 및 비거주 외국인도 필리핀 원천에서 얻은 소득에 대해서만 과세된다. 법인소득세는 국내기업과 외국기업에 부과되고, 회사의 거주지는 등록지에 따라 결정된다. 필리핀에서 또는 필리핀 법률에 따라 설립되거나 조직된 회사는 국내기업이다. 필리핀에 조직되지 않은 기타 회사는 외국기업으로 간주된다. 국내기업은 전 세계 소득에 대해 법인세를 부과하는 반면, 거주 외국기업과 비거주 외국기업은 필리핀 원천에서 발생한 소득에 대해서만 과세된다.

무역이나 사업에 종사하는 비거주 외국인은 해당 연도 동안 필리핀에 총 체류 기간이 180일을 초과하는 사람이다. BIR은 필리핀에 거의 2.5년 동안 거주한 외국인이 무역이나 사업에 종사하더라도 소득세 목적상 여전히 비거주자로 간주된다고 판단했다. 일반적으로 비거주 외국인에게는 총 소득의 25%가 최종 세금으로 부과된다. 비거주 외국기업은 필리핀 원천으로부터 발생한 소득에 대해서만 과세되고, 적용법인세율은 내국법인과 동일한 25%이다. 지점에서 본점으로 송금되는 지점 이익(세금 공제 전 총 이익)에는 15%의 세금이 부과된다. 다만, 필리핀경제구역(PEZA)에 등록된 지점에서 이루어지는 거래는 제외된다.

명시적 조세회피방지 규정은 없지만, 법원은 '형식보다 실질' 원칙, '단계거래 원칙' 등의 원칙을 확립하여 조세회피행위를 규제하고 있다. 동일한 이해관계에 의해 직간접적으로 소유되거나 통제되는 조직, 거래 또는 사업체 간에 이전가격 조정이 이루어질 수 있도록 승인한다. BIR이 발표한 이전가격 가이드라인은 2013년 2월 9일에 발효되었고, 이 가이드라인은 주로 OECD 가이드라인에 명시된 OECD 정상가격 방법론을 기반으로 하며 지침을 제공한다. 특수관계기업 간의 국가 간 거래와 국내 거래에 정상가격 원칙을 적용한다. 특정외국법인세제와 과소자본세제는 규정이 없다.

거주자 및 비거주 외국기업의 경우, 상기 원천징수세율에도 불구하고, 필리핀과 조세조약을

체결한 국가에서 적용되는 세율이 있는 경우에는 해당 세율을 우선적으로 적용한다. 현재 필리핀과 조세조약을 체결한 국가는 43개국이며, 대한민국과 조세조약은 1987년에 체결되었다.

필리핀에는 일반적인 조세회피방지규정이 없고, 이전가격세제만 규정하고 있다. BEPS IF에 가입하는 등 BEPS 프로젝트에 대응하고 있지만, 디지털세 대응은 미흡하다. 따라서 필리핀은 조세회피 규정 보완 및 디지털세 대응 측면에서 OECD 한국정책센터와 협력할 수 있을 것이다.

13 베트남

베트남은 경제 자유화와 시장경제 도입을 위해 1990년부터 세법을 제정하고 지속적으로 개정하고 있다. 세금의 종류에는 농지세, 소득세, 특별소비세, 토지사용료, 공증료 등의 징수항목이 있고, 1999년 1월 베트남은 부가가치세와 법인소득세(법인소득세)를 도입하여 조세개혁의 새로운 장을 열었다.

거주자 개인은 전 세계 소득에 대해 과세대상이 되는 반면, 비거주자는 베트남 원천소득에 대해서만 과세대상이 된다. 거주자는 1년에 183일 이상 베트남에 거주하거나 베트남에 처음 거주한 날부터 계산하여 연속 12개월 동안 베트남에 거주한 경우에 해당하는 사람이다. 법인세법에서는 거주라는 용어를 명확하게 정의하지 않고, 베트남과 외국 투자기업 모두 전 세계 소득에 적용받는다. 다만, 베트남에 고정사업장이 없는 외국기업은 베트남 원천소득에 대해서만 과세된다. 외국기업은 외국인 계약자세(FCT)가 적용된다.

거주지 심사에서 거주자 자격을 갖추지 못한 개인은 비거주자로 간주된다. 비거주자는 베트남 원천소득에 대해서만 과세대상이 되고, 급여 및 임금 소득에는 20%의 단일세율이 과세된다. 베트남에서 소득을 얻는 외국 기업은 일반적으로 20%의 표준세율로 EIT를 적용받는다. 고정사업장이란 기업의 영업활동의 일부 또는 전부가 고정된 장소에서 수행되는 장소를 말하고, 한국법인은 베트남 내 고정사업장을 통해 사업활동을 수행하는 것으로 간주된다.

조세회피방지에 대한 일반적인 규정은 없다. 2020년 7월부터 발효되는 새로운 조세행정법 2019는 이전가격 거래에 대한 법적 틀을 제시한다. 규정된 이전가격세제는 일부 수정 및 추가 요구사항이 있지만 일반적으로 OECD 이전가격 가이드라인을 따른다. 기업이 특수관계자로 간주되기 위해서는 25% 지배라면 충분하다. 특정외국법인세제나 과소자본세제는 없다.

베트남이 협상한 조세조약은 일반적으로 OECD 모델의 조항을 따른다. 베트남과 한국 간에는 이중과세방지협정이 체결되어 있으며, 이는 베트남 또는 한국 거주자, 또는 베트남과 한국 양국 거주자에게 적용된다. 한 국가의 거주자는 해당 국가의 현지 법률에 따라 결정되며, 일반적으로 거주 기간, 주거 기간, 운영 사무소 유무에 따라 결정된다.

베트남은 일반적인 조세회피방지 규정 없이 이전가격세제만 규정하고 있고, BEPS 프로젝트와 디지털세에 대한 대응은 준수한 편이다. 아시아태평양 지역 국가 중 높은 경제성장이 예상되는 베트남은 비교적 현대적인 규제와 제도를 갖고 있는 것으로 보인다. 베트남 과세당국은 조세회피방지 규정을 보완하기 위해 OECD 한국정책센터와 협력할 수 있다.

14 요약 및 결론

이 보고서는 한국국제조세협회 연구원 3인으로 구성된 팀이 아시아태평양 국가의 국제조세제도 및 행정에 관한 심층적인 연구용역을 수행한 결과물이다.

이 보고서에서 검토한 12개국은 방글라데시, 캄보디아, 인도, 인도네시아, 라오스, 미얀마, 몽골, 네팔, 파키스탄, 필리핀, 스리랑카, 베트남(알파벳순)이다. 이들 국가에는 몇 가지 공통점이 있다. 먼저 이 국가들은 아시아 지역에 소재하고 있는 국가들이다. OECD 회원국이 아니라는 점은 이 국가들의 경제 발전 수준은 1인당 GDP 등 수치적 지표로 볼 때 여전히 발전 단계에 머물러 있음을 의미한다. 그러나 이 국가들 각각은 존중받아야 할 고유한 전통과 민족 정체성을 갖고 있으며, 현실 세계에서도 실존적 힘을 갖고 있다.

이 보고서는 이 국가들이 단일 개념 체계로 통합하기 위한 지표로 활용될 중요한 공통 특성을 공유하고 있다고 가정하지 않는다. 이 연구는 순수하게 이들 12개국을 대상으로 업무 범위를 갖고 있는 OECD 한국정책센터의 조세 프로그램 관점에서 정책 개발 업무 개선을 위해 수행되었기 때문이다.

각 나라의 조세제도의 특징은 각 장(국가별 장)의 첫 페이지 〈요약〉에 요약되어 있다. 위에서 언급한 바와 같이, 이 보고서상 각 국가들은 역사, 문화, 경제, 정치 등 각 분야의 특수성을 갖고 있으므로, 연구자들이 이 12개 국가들 간에 공유되는 공통적인 특징을 모아 시사점을 찾는 데에 큰 의미를 두기는 어려울 수 있다.

비교나 공통점을 도출하는 것에 대한 이와 같은 한계에도 불구하고, 이 보고서의 연구자들은 개략적이나마 이 국가들 중 일부에서 다음과 같은 현상이 발견되는 것으로 파악하였다. 다음은 이런 관점에 개략적으로 살펴본 다수 국가들간 공통된 현상이다.

소득, 거래, 재산 등 과세 대상을 설정하는 측면에서 볼 때 다수 국가들의 현행 세법상 과세 대상은 상대적으로 제한적으로 규정되어 있는 것으로 보인다. 이 보고서에서 검토된 대부분의 국가에서는 도입된 거의 모든 세금 항목에 대해 과세 대상에 대한 포괄적인 개념이 도입되지 않고 있다. 한 가지 예외로 볼 수 있는 것은 일부 국가의 VAT 제도이다. 이는 아마도 유럽 부가가치세 지침의 영향 때문인 것 같다. 또한, 특정 과세 대상의 수치상 규모인 과세표준의 계산에 있어서도 포괄성이 확보되어 있지 않은 것으로 보인다. 한마디로 '과세기반 확대'의 가치는 효과적으로 달성되지 못하고 있는 것이다. 이러한 현상은 조세평등 측면에서 조세제도를 뒤처지게 만드는 것으로 알려져 있다. 이 보고서의 국가들간 발견되는

이러한 현상의 주요 원인 중 하나는 각 국가의 조세행정이 미흡하기 때문인 것으로 보인다. 한국의 전자 및 온라인 조세행정은 조세행정 현대화의 좋은 사례가 될 수 있을 것이다.

세무 행정 측면에서 일부 국가들의 제도는 의미 있는 감독이 거의 없이 공무원에게 큰 재량권을 부여하는 경향이 있다. 이는 부분적으로 행정상의 비효율성으로 인해 발생했을 수 있다. 그리고 법의 불완전성과 사법제도의 비효율성 역시 이러한 구조적 문제를 악화시키는 것으로 보인다. 예를 들어, 일부 국가에서는 법률에 명시적 조세회피방지 규정이 존재하지 않는다(인도네시아, 미얀마). 법령에 구체적인 이전가격 규정이 없음에도 불구하고 과세당국은 거래가 시장가격에 의한 것이 아니거나 합리적이지 않다고 판단하는 경우 거래의 실질을 평가하고 재결정할 수 있는 권한이 있기도 하다(라오스, 미얀마). 이러한 세무행정 및 납세자 보호 측면에서 한국의 경험은 큰 도움이 될 수 있을 것이다.

국제조세 문제에 있어 대부분의 국가에서 전자상거래 부가가치세(VAT) 제도 도입을 위해 많은 노력을 기울여 왔다. 인도, 네팔, 방글라데시에서는 디지털 서비스세까지 시행되었다. 다만, 미얀마 등 일부 국가에서는 전자상거래 간접세 제도를 도입하지 않고 있다. 한국은 이 분야에서의 경험을 공유할 수 있을 것이다.

일부 국가, 특히 인도차이나 지역 국가들은 국제 경제 협력을 확대하고 심화하기 위해 조세 조약 네트워크를 확장할 필요가 있는 것으로 보인다. UN 모델과 함께 OECD 모델은 이들 국가가 무역 및 투자 파트너 국가와 조세 조약을 체결하려는 경우 좋은 지침이 될 수 있을 것이다. 역내 국가들과의 협력을 증진하는 관점에서 한국은 UN은 물론 OECD 무대에서 국제조세규범이나 가이드라인 형성에 적극적으로 참여하기 위한 노력이 필요하다.

BEPS 프로젝트의 경우 한국도 참여하고 있는 포괄적 프레임워크(Inclusive Framework)에 12개 국가들 중 소수의 국가만이 참여하고 있다. 이는 세계 어느 나라에나 적용되는 새로운 접근 방식이고 현재까지도 그 불확실성이 적지 않기 때문에 기다려 보고 결정하는 접근 방법이 바람직한 점이 있음을 부인할 수 없다. BEPS 프로젝트의 핵심 중 하나가 국제협력을 통한 조세회피 방지이기 때문에, 한국은 그 사업에 참여하고자 하는 12개국과의 관계에서는 물론 모든 국가에 대한 개방성과 적극성을 유지하는 것이 필요할 것이다.