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TPA Global is a global alliance network that provides international businesses with integrated and value-added solutions in improving financial performance, operational efficiency, strategic development and talent coaching.

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Introduction

The number of multinationals doing business in Africa has increased significantly over the past five years, given the buoyance of the area in the challenging economy faced by developed countries, this scaling trend expects to continue. Growth often is followed by progress and modernization, thus increasing the existing complexity of the taxation systems and its interactions with the supply chain.

The following pages contain information, from a general point of view, concerning the common outflow transactions that MNEs face when doing business in Africa through subsidiaries.

A detailed knowledge of special deductibility requirements, withholding taxes and mapping opportunities is needed in order to achieve a higher efficiency in the supply chain layout of an MNE.

TPA Global and its alliance partners have gathered this information for you as a checklist of possible requirements and important facts you will need to consider when mapping your supply chain in Africa. The information presented is not intended to be used for planning or for official documentation without consulting a professional beforehand.
Things you need to know when dealing with intercompany transactions in African countries.

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Algeria

INVESTMENT INFO

Petroleum and natural gas, found principally in the Eastern Sahara are Algeria’s most important mineral resources and its leading exports. Other minerals extracted in significant quantities include iron ore, phosphates, uranium, lead, and zinc. And the country’s leading industries include food and beverage processing, (notably olive oil and wine), and petrochemicals.


TAX INCENTIVES

By virtue of Ordinance No. 01-03 of August 20th 2001 on national and foreign investments in the production of goods and services, a declaration for investment must be made to ‘ANDI’ together with an application for incentives. The incentives granted by ANDI depends on the regime:

- On the general regime applicable on investments in good and services creating 100 jobs and for a period 5 years, investors enjoy the following incentives:
  - Exemption from VAT and custom duties on non-excluded goods involved in the investment implementation; from property tax and registration duty, land publication fees on property assigned to the investment; and,
  - Companies in the operation phase may be granted exemptions from taxes on Turnover (TAP) and Corporate Income Tax (IBS);
- The derogatory regime requires participation by the State, and the investment must relate to a particular interest; with the following incentives:
  - Exemption from VAT and custom duties; registration fees at a reduced rate of 0.2%; exemption of transfer tax and registration duties;
  - Total or partial payment by the government of cost on infrastructure for the investment; and,
  - Exemption of tax on professional activities and property and Corporate Income Tax for 10 years;
**EXCHANGE CONTROL REGULATIONS**

In principle, transfer of interest on loans and loan repayments are subject to strong restrictions because investors are encouraged not to resort to foreign borrowings to finance their operations in Algeria. Non-residents may open bank account in Algerian Dinars and or in foreign currencies at an Algerian accredited intermediary bank. Foreign-exchange regulations in Algeria are based on the principle of non-convertibility of Algerian dinars outside Algeria. However, an exchange control approval is required for all international payments.

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During the realization phase companies under this regime may benefit for a period of 5 years the following:

- Exemption from duties in goods and services, registration fees on incorporation deed, and share capital increase; exemption from registration duties and property tax on property assigned to the investment.

And at the exploitation phase, investors enjoy exemptions for a period of 10 years on:

- Corporate income tax; professional activity tax; exemption from registration fees, land registration fees, and compensation for state-owned concessions on real estate assets granted for the realization of investment projects.

As a requirement, profits from exemptions from IBS (Corporate Tax) must be reinvested in real property within a period of 4 years after accrual; otherwise a penalty equal to 30% of the amount must be paid to the government.

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Services

THINGS YOU NEED TO KNOW

With its vast investment opportunities for FDI, Algeria also grants tax deductions for expenses on services provided by non-resident persons to resident entities. As a rule, the expense must be related to an activity generating income in the tax year.

WHAT IS LEFT BEHIND?

In spite the availability of deductions on fees paid for services, technical services fees and general non-resident service income are subject to a WHT of 24% of the gross amount, unless varied by a DTA.

DOUBLE TAX AGREEMENTS

Double tax agreement with Austria

As per the DTA with Austria, director’s fees and similar payments to a non-resident contracting party are taxable at the source. On the other hand, income derived from independent professional services in a contracting State is taxable at the State of residence of the contracting party, unless the 183 days stay rule applies and the services provider had a fixed based available for the performance of the services in the contracting State.

Double tax agreement with Portugal

on the terms with Portugal, income from independent professional services between the two contracting States is taxable at the State of residence of the recipient of the income; unless the recipient has a residence at the source of the income and the 183 days rule applies. On the other hand, director’s fees are taxed at source.

Double tax agreement with UAE

by virtue of the treaty with UEA, director’s fees and similar payments payable to a non-resident contracting party is taxable at source. On the other hand, income derived by the non-resident independent professional in regards to services performed in the contracting State are taxable at the State of residence; unless a fixed base was available to the professional at the State of source for performing the services.
Royalties

THINGS YOU NEED TO KNOW

Royalties for the transfer or concession for using licences, patents, trademarks, manufacturing processes or formulae’s and other similar rights or services paid by resident persons to non-resident persons, except countries having a DTA with Algeria, are NOT deductible expenses for tax assessment, unless the debtor demonstrates that the expenses relate to actual transaction and are not abnormal or exaggerated.

1 Article 55FL, Article 141 CID, page 58

WHAT IS LEFT BEHIND?

Unless reduced by double tax treaty, royalty payments to non-resident persons are subject to a WHT of 24% of the gross royalty.
DOUBLE TAX AGREEMENT

Double taxation treaty with Austria

With Austria royalty payments arising from Algeria to an Austrian resident contracting party is taxable in Austria. However, such payments may also be taxed in Algeria, but where the recipient is a non-resident beneficial owner, the income is subject to a WHT of 10% of the gross amount of royalties. The agreement also disallows excessive and baseless royalty payments arising to a non-resident contracting recipient.

Double taxation treaty with Portugal

On terms with Portugal, royalty payments arising from a contracting State to a non-resident contracting party is taxable at his State of residence. However, such income may also be taxed at source, at a rate of 10%. Excessive royalty payments are equally disallowed. The excess part of any such non-resident royalty payments is taxed according to the laws of the contracting State.

Double taxation treaty with UEA

By virtue of the treaty with the UEA, royalties are taxable at the State of residence of the non-resident contracting party. Where by reason of a fact, the beneficial owner of the income is a non-resident contracting party and the income in taxable at source; the WHT is charged at 10% of the income.
Interest payments

THINGS YOU NEED TO KNOW

In principle, interest payments are deductible only if the interest relate to an income producing activity in the fiscal year. Corporate expenses are deductible within limits during the business year, corresponding to their commitment.

WHAT IS LEFT BEHIND?

In principle an interest payment to non-residents is subject to a non-resident WHT of 10% of the gross interest, unless reduced by a double tax treaty.

DOUBLE TAX AGREEMENTS

Double taxation treaty with Austria

As per the DTA with Austria, director’s fees and similar payments to a non-resident contracting party are taxable at the source. On the other hand, income derived from independent professional services in a contracting State is taxable at the State of residence of the contracting party, unless the 183 days stay rule applies and the services provider had a fixed base available for the performance of the services in the contracting State.

Double taxation treaty with Portugal

On the terms with Portugal, income from independent professional services between the two contracting States is taxable at the State of residence of the recipient of the income; unless the recipient has a residence at the source of the income and the 183 days rule applies. On the other hand, director’s fees are taxed at source.

Double taxation treaty with UEA

By virtue of the treaty with UEA, director’s fees and similar payments payable to a non-resident contracting party is taxable at source. On the other hand, income derived by the non-resident independent professional in regards to services performed in the contracting State are taxable at the State of residence; unless a fixed base was available to the professional at the State of source for performing the services.
Cameroon

INVESTMENT INFO

Cameroon possesses substantial mineral resources, which are not extensively mined. Petroleum as at moment is under exploited and the numerous rapid rivers offer opportunities for hydroelectric development and supply. Its large reserves of bauxite, iron, cobalt, nickel and manganese are also underexploited.

The much-awaited implementation of the ‘Investment Charter 2002’, slated for 2014 will definitely come with many incentives for FDI in these sectors. At the moment, law No. 2013/004 of 18 April 2013 offers incentives for private investment spanning from tax (granted during setup and operational phase), and financial and administrative incentives. Special incentives are further granted in the priority sectors: development of agriculture, fishing, livestock breeding, packaging and storage of products, tourism and recreation, manufacturing, heavy industry, manufacturing of steel and metal for construction, and the development of energy and water supply. Investment in the petroleum, aluminium, wood, textile and shipyards industries also carry special incentives for investors.
TAX INCENTIVES

Applicable to agro-pastoral, manufacturing, energy, tourism, education and the health care sectors, the provisions of Sections 114 and 115 of the Tax Code provides large companies (minimum investment 5 Billion FCFA) registered under the special tax structuring projects the following incentives:

- Exemption from business tax for the first two years of operation;
- A fixed fee of 50,000 FCFA for acts of incorporation, continuance and increase of capital and real estate transfer directly related to the implementation of the project;
- Exemption from VAT on local purchases of building materials and imports for implementation of the project;
- Application of accelerated depreciation at a rate of 1.25% for specific assets acquired during the installation phase; and an
- Extension of the duration of the tax loss carry forward of four (04) to five (05) years.

EXCHANGE CONTROL REGULATIONS

The CEMAC rule (No. 0200/CEMAC/UMAC/CM, dated 29 April 2000) applies. Dividends, capital returns, interest and principal payments on foreign debt, lease payments, royalties, management fees, and returns on liquidation can be freely remitted abroad. Liquidation of a foreign direct investment, however, must be declared to the Minister of Finance (MINFI) and the central bank (BEAC) 30 days in advance. Commercial foreign exchange transfers must also be cleared by MINFI for business deals amounting to more than 100 million francs CFA (about USD 215,000). Below this amount, regulators require commercial banks to verify that the operations are genuine before proceeding with the transfer.
THINGS YOU NEED TO KNOW

As a tax friendly investment hub in the Central African region, management fees, head office expenses and remuneration for technical, financial, or accounting assistance are deductible up to 10% on the taxable profits. The 2013 Finance law further lays down the deductible portion as follows:

- 5% for intermediary earnings as a general rule.
- 2.5% for the turnover for firms specialized in public works; and
- 7.5% for design firms operating in accordance with the regulations relating to design firms and consulting engineers.
- With regards to payment of tuition fees, consulting or assistance paid to non-residents persons are deductible only to the extent of 15% of the turnover.

However, expenses equal to or exceeding XAF1 million are non-deductible if paid in cash\(^1\).

\(^1\) Article 8 bis, page 18.

WHAT IS LEFT BEHIND?

Service fees for the provision of technical services, digital, and professional activities, and non-resident petroleum subcontractor’s fees are generally charged a WHT of 15% of the gross income. The rate also applies to directors’ fees, allowances granted to members of commissions, ad hoc or permanent committees and to members of the public, semipublic, regional or and local bodies, unless reduced by a DTA.
DOUBLE TAX AGREEMENTS

**Canada:** With Canada, independent personal services are taxable at the State of residence of the contracting party, unless the services provider has a fixed base at the State of source of the income. If the services are taxed at source, the WHT is charged at a rate and amount attributable to the source. Director’s fees and other similar payments on the other hand are taxable at the contracting, source of the income.

**France:** by virtue of the treaty with France, income from professional services is taxable only at the State of residence of the non-resident contracting party recipient. And, the provision of independent services such as that of an entertainer or an athlete is taxable at source, place of performance of the services.

On the other hand, salaries and wages for studies, technical, financial, or accounting aid, are subject to tax in the Contracting State from which they arise. If the non-resident salary recipient is the effective beneficiary, the tax charged at the source State is levied 7.5% of the gross amount.
Royalties

THINGS YOU NEED TO KNOW

Royalties paid to non-resident parties are deductible to the extent used in the generation of income during the tax year.

The sums paid in respect to royalties to entities within the Economic Community of Central African States ((ECCAS (in French; CEMAC-Communauté Économique des États de l’Afrique Centrale)) are deductible if they are reasonable. On the other hand, royalties paid to entities outside the ECCAS zone that participate in the management or capital of an entity resident in Cameroon are treated as a distribution of profits.
WHAT IS LEFT BEHIND?

In general, royalties paid to non-residents are subject to WHT, at a final rate of 15%. Where the royalty payments are treated as a deductible charge in the tax return of the taxpayer, the maximum deduction to this effect is 15%; otherwise, they will be treated as distributions of profit and taxed at 16.5% where the non-resident recipient participated in the management, and control of the resident company in which it holds shares.

Double tax agreement with Canada

Canada: Royalties as per the treaty with Canada are taxable at the contracting state of residence of the royalty recipient. The royalty income may also be taxed at the State of source; but where the beneficial owner is a non-resident contracting party (Canada), the WHT is levied at 15% and 20% of the gross amount for Cameroon. As a rule, excess royalty payments made to an associated non-resident recipient is disallowed. The part that exceeds a reasonable payment is taxed according to the laws of each contracting State.

Double tax agreement with France

With France, royalty payments are taxable at the contracting State of residence of the non-resident recipient. Such royalties may also be taxed at source when paid to a non-resident recipient of the contracting state at a rate of 15% of the gross amount. Payments for the use of, or the right to use, any copyright of a literary, artistic or scientific work (excluding motion pictures and any other sound or image recordings) arising from a contracting State is taxable only in the State where the recipient, beneficial owner of the remuneration is domiciled.
Interest payments

THINGS YOU NEED TO KNOW

Interest expenses are fully deductible in Cameroon if they relate to an income generating investment. However, the interest paid to partners/shareholders in respect of sums transferred to the company above their capital/shares, irrespective of the type of company is acceptable within the limits of those calculated at the rate of the Central Bank discount rate, raised by two percentile points.

In general, any deductibility for bad debts is subject to the following conditions:

- The debt must be specified (i.e. clarification is needed on the nature, amount, and the debtor).
- The company must show that it has unsuccessfully carried out actions for debt recovery (e.g. reminder letters, notice to pay, complaints).

And, for losses related to bad debts to be deductible, it must have been subjected to all amicable or forced collection methods provided for by the ‘OHADA Uniform Act’ on ‘Simplified Procedures for Debt Collection and Enforcement’, otherwise, it will not be deductible.

WHAT IS LEFT BEHIND?

Interest (other than interest paid to an approved non-resident financial institution) payments made to non-residents are generally subject to a WHT at a final rate of 16.5% of the gross amount.
DOUBLE TAX AGREEMENTS

Double tax agreements with Canada

The treaty with Canada stipulates that interest payments to non-resident recipients of the contracting State are taxable at his residence. If the payment is taxable at the contracting state-source of the income, the WHT is levied at 15% for Canada and 20% for Cameroon. On the other hand, excessive interest payments are disallowed. Any excess part of such payment is taxable according to the laws of the contracting State, source of the income.

Double tax agreements with France

As per the terms of the treaty with France, interest arising from a contracting state to a non-resident recipient is taxable at the State of residence. The interest may also be taxed at source, at the rate of 15% of the gross amount. But, where such interest accrues and is paid to a non-resident PE of the contracting State, the interest is charged as business profit accruing to the non-resident PE.
Ghana

INVESTMENT INFO

Ghana is endowed with natural resources. The ‘Ghana Investment Promotion Centre’ (GIPC) created in 2013 guarantees an attractive incentive and a transparent predictable framework that facilitates investment in Ghana. The major economic sectors are the agricultural sector, cotton and textiles, food processing, forestry, health, horticulture, mining sector, Oil and Gas, tourism, and Utilities.

Non-resident persons are eligible to invest in joint and wholly owned enterprises. For joint enterprises, a non-resident is required to invest at least US$200,000 and US$500,000 for wholly owned enterprises. Foreigners in general may hold up to 100% shares of a company but local participation (10% equity participation) is required in mining by the government for no consideration.

INVESTMENT INCENTIVES

Licensed investors in a free trade zone enjoy the following incentives:

- Exemption from income tax for the first 10 years, and a maximum tax rate of 8% thereafter;
- Exemption tax on dividends;
- Foreigners may hold up to 100% of the shares of the company;
- Up to 30% of sales may be sold on the domestic market; and,
- Imports of goods and services are exempt from taxes and duties.

FOREIGN EXCHANGE REGULATION

Administered and guaranteed by the Bank of Ghana, it operates over imports, exports, outward transfers of capital, profits, and royalties, interest, fees and expatriates income.
Services

THINGS YOU NEED TO KNOW

Services contracts with non-residents must be notified to the Commissioner of taxes within 30 days, with the following information¹:

- The nature of the contract; the duration; name, postal address, and, the total amount estimated to be payable to the Services provider.

As an incentive, imported services from licensed investors in the free-zone enterprise are exempt from taxes and duties.

Losses carry over: available for five years and it is limited to farming, mining, manufacturing (mainly for exports), agro-processing, tourism, ICT (Software Development) and loss on disposal of shares for Venture Capital.

¹ Section 86(1), page 63 of the Act

WHAT IS LEFT BEHIND?

Tax on shipping, aircraft, cable, radio, optical fiber, satellite communications operations are tax at 10% of the gross receipts. And, regardless of whether the income is received in Ghana or abroad, management and technical fees/endorsement fees paid to a non-resident person for services is charged a WHT of 15% of the gross income¹.

¹ Page 118 of the Act Rates of Act (non-resident tax and branch profit tax).
DOUBLE TAX AGREEMENTS

Double tax agreements with Germany

Effective since 1st January 2008, services fees derived from Ghana by a German resident may be taxed in Germany. But where the services fee is taxed in Ghana, the WHT is levied at 8% of the gross income. Excessive fees payments between associated contracting parties are generally disallowed and the excess part of any such payment is taxed according to the State law. Director’s fees on the other hand are taxed at the Source State.

Double tax agreements with The Netherlands

With the Netherlands, director’s fees arising from Ghana to a Dutch resident are taxed at Source (Ghana). Income from professional services is taxed only at the State of residence of the income recipient. However, such income may also be taxed at source if the recipient had a fixed base at source and the stay exceeds 9 months in a calendar year. On the other hand, Dutch professors, researchers and teachers are exempt from WHT on income derived in Ghana for periods not exceeding two years.

Double tax agreements with the United Kingdom

The treaty with the UK is in force since August 1994. By virtue of the terms, whereas director’s fees arising from Ghana to a UK resident is taxable in Ghana, management and technical fees are in principle taxable in the UK. However, the management fees accruing to a UK recipient beneficial owner may be taxed at 10% of the gross income in Ghana if the recipient had a fixed base available for performing the services in Ghana.
Royalties

THINGS YOU NEED TO KNOW

Any transfer of technology agreement must be registered at the ‘Ghana Investment Centre’. The duration of such agreements is 10 years and the agreement must stipulate that the transferor must pay taxes due on royalty payments.

Royalty payments in respect of patents and other industrial property rights generally range from 0% to 6% of the net sales of the technology recipient. The fees for technical services ranges from 0% to 5% of net sales and the maximum fees for know-how is 2% of the net sales. Technology management fees generally ranges from 0% and 2%. But, where the transferor provides management and technical services in addition to patent, know-how and trademarks, the total fees does not exceed 8% of net sales.

The Income Tax Act on deductible expenses stipulates, no deduction is allowed on expenses of a PE to its non-resident head office by way of royalty payments for the use of patents or other rights similar rights. And the amounts charged by a non-resident PE to the head office on royalties, fees and similar payments for the use of patents or other rights are not taken into consideration when ascertaining its chargeable profit.

WHAT IS LEFT BEHIND?

Royalty payments to non-residents is generally charged a 10% WHT on the gross amount disbursed, unless the rate is reduced by a double tax treaty.
Interest payments

Interest deductibility rules apply: the interest must accrue as a result of sums borrowed and used for the production of income. The Ghanaian minister of finance is also empowered to exempt any person, class of persons or income from tax. However, the Ghanaian thin cap rules disallows interest payments by exempt controlled resident entities (50% ownership or controlled) not being a financial institution having a debt to equity ratio that exceeds 2:1.

1 Section 71, page 52 of the Act

WHAT IS LEFT BEHIND?

In principle, non-resident companies are free to transfer abroad their net profits after-tax, unless their activities are financed with locally raised capital. The non-residents WHT, — being final on the payment of interest is charged at 8% of the gross amount. Profits repatriated from a branch, resident in Ghana are taxed at 10%.
DOUBLE TAX AGREEMENTS

Double tax agreements with Germany

Interest arising from Ghana to a German resident may be taxed in Germany. Where the interest is taxed in Ghana, the WHT is levied at 10% of the gross amount. Also, an interest payments to a German resident in connection with a sale of commercial, scientific equipment on credit, or for a loan of any kind made by a bank in Ghana is taxable only in Germany.

Double tax agreements with the Netherlands

With the Netherlands, interest payments are taxable at the State of residence of the recipient. Such payments may also be taxed at the source; but where the beneficial owner of the interest is a Dutch resident, the WHT is charged in Ghana at 8% of the gross amount of interest.

Double tax agreements with the United Kingdom

Interest payments from Ghana to a UK resident may be taxed in the UK. If taxed in the Ghana the WHT is levied at 12.5% of the gross amount. Interest beneficially owned and paid to a UK resident is exempt from a Ghanaian WHT if paid in respect of a loan made, guaranteed or insured, or any other debt claim or credit guaranteed or insured by the UK Export Credits Guarantee Department.
Kenya

INVESTMENT INFO

The ‘Foreign Investment Protection Act’ of Kenya provides a framework for FDI. The ‘Kenya Investment Authority’ (KenInvest)’ implementation of the investment code further attracts and facilitates foreign investment by assisting investors in obtaining the licenses necessary for investment and providing other assistance and incentives.

Kenya is internationally recognized for its flourishing agricultural sector; horticulture, and floriculture, but there are other sectors with vast investment opportunities worth noting; infrastructure, environment and natural resources, manufacturing, information and communications technology, money banking & finance, tourism and the energy sector.

The only limitation for foreign investment so far applies as a control on foreign land acquisition and ownership in the agricultural sector. Local participation (30%) is also required in the telecommunication sector, and the minimum threshold for foreign investment is raised to US$100,000. However, the investment incentives in Kenya abound.
TAX INCENTIVES

Business established in the ‘Export-Processing Zones’ enjoy the following benefits:

- Exemption from registration under the VAT Act; exemption from excise duties; exemption from customs and import duties;
- Exemption from corporation tax for 10 years following the date of the first sale and a 25% rate for the next 10 years;
- 100% investment deduction for capital expenditure; and an,
- Exemption from WHT on payments to non-residents for the first 10 years;
- Plus exemption from stamp duties and import/export quota restrictions.

OTHER TAX INCENTIVES AND ALLOWANCES:

Business established in the ‘Export-Processing Zones’ enjoy the following benefits:

- 100% capital allowances for the first year on fixed asset expenditure: new buildings and new machinery used for manufacturing and hotel activities;
- 150% capital allowance on construction of a building or purchase and installation of machinery (more than KES200 million) outside the city of Nairobi, Mombasa and Kisumu.
- Mining allowance at the rate of 40% in the first year and 10% for year two to seven is grant as incurred for capital expenditures, acquisition rights and expenses before commencing production.
- 33.33% deduction per annum for 3 years on expenses related to farm work e.g. fences, dips, drains, dams, water and electrical supply works.

EXCHANGE CONTROL

There are no exchange controls in Kenya. However, the ‘Proceeds of Crime and Anti Money Laundering Act of 2009’ requires a reporting institution to file reports of all cash transactions exceeding US$10, 000 or its equivalent in any other currency carried out to the Financial Reporting Centre.
Services

THINGS YOU NEED TO KNOW

As a major investment hub, services expenses are deductible to the extent it relates to an income generating activity. However, this general rule is limited at the following cases:

- No deduction is allowed on expenses for services rendered by a non-resident director of a non-resident company who has 5% of the total income of the company.
- No deduction is allowed on profits paid by a non-resident PE in Kenya on management or professional fees to its head office; and,
- No deduction, if any, exceeds 150,000 KS, except deemed justified by the commissioner.

WHAT IS LEFT BEHIND?

Depending on the type of services rendered, income derived by non-resident professionals in Kenya is subject to a WHT, which is final. Thus:

- Commissions paid by insurance companies to non-resident brokers and non-resident persons in general are levied a WHT of 20% of the gross income; and
- Management, technical and professional fees, including training provided by non-residents persons are charged to a WHT of 20% of the gross amount.
DOUBLE TAX TREATY

Kenya has a double tax treaty on non-resident management fees with the United Kingdom, Canada, and Sweden.

Double tax treaty with the United Kingdom

As per the terms, management fees may be taxed at the State of residence of the contracting party providing the managerial services. However, where the fees are taxable at source, the WHT is charged at 12.5%. The contracting parties may also elect to be taxed at source as if the fees accrued to a non-resident PE. In such cases, the deductible expense attributable to management fees cannot exceed 75% of the gross amount. Income from independent professional services are taxable only in the State of residence of the contracting party; unless the 183 days rule applies and or the non-resident contracting party had a fixed base available at the source State for performing the services. Director’s fees on its part are taxable at source.

Double taxation treaty with Sweden

Effective since 1st January 1973, management fees paid to a resident of a contracting is taxable at the State of residence of the recipient. It may also be taxed at source, at the rate of 20% of the gross amount. However, a resident of Sweden is exempt from taxation in Kenya on profits derived through professional service if present in Kenya for periods not exceeding 183 days during that year; the services are performed on behalf of a resident of Sweden; and the profits are not borne by a Kenyan PE. The same rules apply for a Kenyan resident upon performing services in Sweden. Director’s fees on the other hand may be taxed at the State of residence of the recipient contracting party.

Double taxation treaty with Canada

The tax treaty with Canada guarantees management and professional fees may be taxed at the State of residence of the recipient contracting party. If the fees are taxed at source, the WHT is charged at 15%. On the other hand, if the tax accrues to a non-resident PE of the contracting State, the tax is charged as business profit accruing to the non-resident PE. Income from independent personal services are taxable only at the State of residence of the contracting party, unless the 183 days rule applies and or a fixed base was available to the services provider at the contracting State where the services are performed. Director’s fees are taxed at the contracting State where they arise.
Royalties

THINGS YOU NEED TO KNOW

No deduction is allowed on profits from royalties paid by a non-resident PE in Kenya.

WHAT IS LEFT BEHIND?

Generally, a WHT is charged in Kenya for royalties paid to a non-resident taxpayer:

- At a rate of 20% for non-resident persons/entities; and,
- At 5% on income from annuities derived by non-residents.

DOUBLE TAX AGREEMENTS

Double tax agreement with the United Kingdom

With the UK, royalties may be generally taxed at the State of residence of the recipient contracting party. Where such royalties paid to a non-resident contracting party is also subject to tax at his State of residence, the WHT taxed is levied at source is 15% of the gross income. Excess royalty payments arising from an intercompany relationship between the contracting State parties are generally disallowed and taxed according to the laws of the contracting States.

Double tax agreement with Sweden

With Sweden, royalties arising from a contracting State to a resident of the other State is taxable at the State of residence of the income recipient. Such royalties may also be taxed at source, at the rate of 20% of the gross income. In general, excess royalty payments are disallowed and the excess part of such payments is taxed according to the laws of the contracting State with due regards to the terms of the treaty.

Double tax agreement with Canada

On the terms of the treaty with Canada, royalties arising from Kenya to a Canadian resident may be taxed in Canada. Where a WHT on the royalties is charge at source, the tax rate is levied at 15% of the gross amount. And, where the royalties paid exceeds the amount originally agreed on by the parties, the excess part of such payment is taxed according to the laws of the contracting parties.
Interest payments

THINGS YOU NEED TO KNOW

No deduction is allowed on interest paid by a PE of a non-resident contracting party in Kenya. On the other hand, the Kenyan thin Capitalisation rules apply where the debt/equity ratio exceeds 3:1. Thus, the safe harbour rules disallow excessive borrowing (debt financing) exceeding the statutory threshold.

WHAT IS LEFT BEHIND?

A WHT is charged on interest payments to non-resident persons for transactions carried out in Kenya. The tax rates vary on the type of loan that gave rise to the payment:

- Interest on governmental-bearer instruments is charged a WHT of 25% for non-residents;
- Interest on Bearer bonds and other instruments at 15% for non-residents;
- Interest rates on housing bonds and deemed interest at a current rate of 15% for non-residents;
- Interest paid to petroleum sub-contractors is levied at a rate of 12.5% for non-resident persons/entities; and,
- A general interest payment rate is levied on non-resident persons/entities of the treaty States at 15%, unless reduced by a DTA.

DOUBLE TAX AGREEMENTS

Double tax agreement with Sweden

The treaty with Sweden stipulates interest payments arising from a contracting party may be taxed at the State of residence of the recipient contracting party. Where such interest payments are taxable at source, the WHT is charged at 15% of the gross amount. Debt claims, and interest payments exceeding the statutory threshold is disallowed and any excess payment is taxed according to the laws of the contracting State.

Double tax agreement with Canada

On the terms of the treaty with Canada, interest payments may be taxed at the State of residence of the contracting party. Where the interest is taxed at source, the WHT is charged at 15%. Associated party debt claims in excess of what would have ensued between residents of the contracting States is disallowed. Any excess interest payment made is re-characterized and taxed according to the laws of the contracting States.

Double tax agreement with the United Kingdom

In principle interest payments may be taxed at the State of residence of the non-resident contracting party. However, it may also be taxed at source, at a WHT rate of 15%. Interest payments arising from a contracting State and paid to the government or its agency of the other contracting party is exempt from taxation. And, as the case may be, the competent authority in Kenya may discretionarily exempt a UK resident from WHT on interest payments.
Malawi

INVESTMENT INFO

In bid to alleviated poverty, the Malawian government encourages investment in agriculture, mining and quarry, manufacturing, tourism, financial and professional services, transport and communication, which constitute the major sectors of the economy. Foreign direct investments in these sectors are registered at the ‘Reserve Bank of Malawi’ (RBM) to ensure a smooth payment and flow of capital.

EXCHANGE CONTROL

According to the exchange regulation in place, an authorization is required for all remittances of profits, interests, royalties and fees payments.
Services

THINGS YOU NEED TO KNOW

No exemption on WHT is granted in respect of fees, commissions and payments made to casual contractors and subcontractors\(^1\).

\(^1\) Section 102A (1), page 70 of the Taxation Act

WHAT IS LEFT BEHIND?

The corporation tax for Malawi resident companies of 30%, and 35% for branches of foreign companies. In this regard licenced non-resident mining companies are levied a 35% tax on income generated per annum; with an additional return tax of 10% if the return exceeds 20%.

Management fees from the provision of services by non-residents generally carry a withholding tax of 15%, or reduced by a tax treaty.

DOUBLE TAX AGREEMENTS

Double tax agreements with The Netherlands

Effective since June 18th 1964, professional services such as those of teachers for periods not exceeding two years at a University or college in Malawi provided by a Dutch resident are tax-exempt. Other exemptions apply where the Dutch resident professional’s stay in Malawi does not exceed 183 days during a year and the income is subject to tax in the Netherlands.

Double tax agreements with the United Kindom

Signed on 25 November 1955, UK residents are exempt from taxation on profits from professional Services. As a condition, the professional’s presence in Malawi must be less than 183 days and or the income is taxable in the UK. Income paid to UK professors and teachers in Malawi are equally exempt form taxation if their presence in Malawi is less than 2 years.

Double tax agreements with Switzerland

As per the treaty with Switzerland, professional and technical services performed by Swiss residents are exempt from a Malawian WHT.
Royalties

THINGS YOU NEED TO KNOW

Registration: licensing and royalty arrangements, and similar transfers require an approval by the ‘Reserve Bank of Malawi’.

As an incentive an allowance is generally granted on premiums paid for the right to use patents, designs, trademark, copyright or other rights used for the production of income. But, where the period of the right to use exceeds 25 years, there is a deduction by one twenty fifth of such premiums.

WHAT IS LEFT BEHIND?

Royalties paid to non-residents are generally charged a WHT of 15% of the gross payment, unless reduced by a double tax treaty.

DOUBLE TAX AGREEMENTS

Double tax agreement with The Netherlands

As per the treaty with the Netherlands, royalties derived from Malawi not associated to a Dutch PE resident in Malawi are tax-exempt. Also, any capital sum derived from the sale of patent rights by a Dutch resident is tax exempt.

Double tax agreement with the United Kingdom

As with the Netherlands, royalties derived by a UK resident, subject to tax in the UK is exempt from a WHT in Malawi. No exemption is however allowed on royalties paid by a Malawi resident company to a UK company that controls, directly or indirectly, more than one-half of the entire voting power in the paying company.

Double tax agreement with Switzerland

With its favourable investment climate, Malawi’s double tax treaty with Switzerland equally exempts Swiss residents from WHT on royalty payments.
Interest payments

THINGS YOU NEED TO KNOW

Interest payments are generally deductible; but it must have been used for business purposes, including interest payable on loans to purchase capital assets. Interest related in the construction period of a building may be capitalized under accounting rules and will then not qualify as a revenue deduction\(^1\).

\(^1\) http://www.deloitte.com/assets/Dcom-SouthAfrica/Local%20Assets/Documents/za_tax_Malawi_280907.pdf

WHAT IS LEFT BEHIND?

In principle interest payments to non-residents is charged a WHT of 15%. However, a bank interest in excess of K10,000 is taxed at 20% of the gross amount. However, the WHT on interest payment may be reduced by a DTA.

DOUBLE TAX AGREEMENTS

Double tax agreement with the United Kingdom

An interest payment not associated with a UK PE resident in Malawi derived by a UK resident and subject to tax in the UK is exempt from taxation in Malawi. No exemption is however allowed on interest paid by a Malawi company to a non-resident UK company that controls, directly or indirectly, more than one-half of the entire voting power in the Malawi paying company.

Double tax agreement with The Netherlands

Interest arising from Malawi to a Dutch resident (not applicable to Dutch PE) is exempt from tax. However, where the non taxable interest exceed a fair value in respect of the right for which they are paid, the exemption will only apply to represent such fair and reasonable consideration as deemed appropriate by the commissioner of taxes.

Double tax agreement with Switzerland

the double tax treaty with Switzerland equally exempts Swiss residents from WHT on interest payments arising from Malawi.
Morocco

INVESTMENT INFO

Morocco strongly encourages foreign direct investment in its vibrant sectors; solar energy, wind energy, tourism, agriculture, fishing industry, logistics, ICT, retail and investment banking projects. In order to facilitate foreign investment, the government created a number of ‘Regional Investment Centres’ (CRI) to minimize, and accelerate administrative procedures for foreign investors. The 1995 ‘Investment Charter’ applies to both foreign and Moroccan investment permitted in nearly every sector.

At moment, foreign investment in the agricultural sector has been enhanced by land availability for leasing (long-term leases of up to 99 years). Agricultural venturing investors target mostly citrus and olives farming, with some investments in grapes and berries. As the world’s largest phosphate producer, Morocco’s Office Cherifien des Phosphates (OCP) has several joint venture agreements to set up new fertilizer and chemical plants, thus liberalizing the phosphate sector.

In general, any investments in excess of 200 million MAD (about US$ 24 million) are, in addition to the numerous incentives granted to it, referred to a special ministerial committee chaired by the Prime Minister.

EXCHANGE CONTROL

Characterized by its stringency, financial transfers from Morocco are subject to control by the ‘Office of Morocco Exchange Control’ (Office des Changes). Foreign exchange is available through commercial banks for remittances; repatriation of dividends and capital by foreign investors; and payments for foreign technical assistance, royalties and licenses without prior government approval. The Moroccan dirham is convertible for foreign investors for all current-account and selected capital-account transactions.

INVESTMENT INCENTIVES

Approved investments in the kingdom enjoy tax and other incentives that span from:

- A contribution of the state to certain investment expenses via the ‘Investment Promotion Fund’; the investment must be greater than 200 million MAD, in specific regions, creating at least 250 job; ensuring transfer of technology; and contributing to environmental protection;
- A contribution of the State on expenses in specific industrial sectors and the development of modern technologies: the ‘Hassan II Fund’ stipulates the investment must relate to manufacturing equipment for the car, aviation and electronic industries; and an
- Exemption from customs duties and VAT on investments greater than MAD 200 million, within 36 months.
Services

THINGS YOU NEED TO KNOW

In bid to render the economy more investment friendly, expenses on managerial and profession services are deductible; however, the expenses must have been incurred in the production of income during the tax year, unless specifically excluded. Any deduction may not exceed 30,000 MAD per year.

WHAT IS LEFT BEHIND?

Though services are deductible, management and professional fees paid to a non-resident person are in principle subject to a 10% WHT on the gross income according to the General Tax Code, unless varied by a DTA.

DOUBLE TAX AGREEMENTS

Double tax agreement with Austria

The tax treaty with Austria took effect on January 1st 2007 and under the terms in force, director’s fees and other similar payments received by a non-resident contracting party is taxable at his State of residence. Income from independent professional services between the contracting parties is equally taxable at the professional’s place of residence, unless a fixed base was available at source to the service provider for the purpose of performing the services.

Double tax agreement with China

Under the treaty with China, director’s fees and similar payments are taxable at source, State where the income arise. While income derived by independent professionals for services rendered in the non-residence contracting State is taxable at his residence unless the 183 days rule apply or the services provider had a fixed base available at source for the purpose of performing the services.

Double tax agreement with Turkey

With Turkey income from independent professional services between the contracting parties is taxable only in the State of residence; unless the services provider had a fixed base at the income source State available for the purpose of the activities. On the other hand, director’s fees arising from a contracting party to a non-resident contracting party is taxable solely at the State of source of the income.
Royalties

THINGS YOU NEED TO KNOW

General deductibility rules apply on royalties paid to non-resident persons. The Moroccan Office of Copyright (OMPIC) under the Ministry of Industry and Communications is responsible for the protection and exploitation of copyright and its sister rights: Patents, Designs and Industrial Models, Trademarks, company names, trade names, appellations of origin and geographical indications. The OMPIC also, lays down formalities for protecting the rights of Industrial and Commercial property while applying international and national legislation.\(^1\)

\(^1\) http://www.ompic.ma/

WHAT IS LEFT BEHIND?

In principle royalty payments to non-residents are subject to a 10% WHT of the gross amount, unless the rate is reduced under an applicable tax treaty.

DOUBLE TAX AGREEMENTS

Double tax agreement with Austria

The treaty with Austria stipulates that royalty payments are taxable at the State of residence of the recipient contracting party. However, the WHT may also be levied at source at the rate of 10% of the gross royalties. Where the royalties arises to a non-resident PE of the contracting State, the income attributable to the PE is taxed as business profit.

Double tax agreement with China

The terms of the treaty with China states, royalties arising to a non-resident contracting party may be taxed at his place of residence. Where such royalties is taxable at source, the WHT is charged at 10% of the gross income. Excessive royalty payments between related contracting parties is disallowed and any excess payment is taxed according to the laws of the contracting with due regard to other terms of the treaty.

Double tax agreement with Turkey

By virtue of the treaty with Turkey, royalty payments arising from a contracting State to a non-resident contracting party is taxable at the State of residence. Such payments may also be taxed at source at the rate of 10% of the gross royalties. The gross and disallowed part of any excess royalty payments between associated parties is taxed according to the laws of the contracting State with due regard to the terms of the treaty.
Interest payments

THINGS YOU NEED TO KNOW

Interest paid on loans and other debts is deductible to the extent it relates to borrowings made for income producing purposes. The Moroccan thin capitalization rules apply to reduce the deductions available where the taxpayer is a foreign entity operating in Morocco, a foreign controlled Moroccan entity or a Moroccan resident with foreign business investments. In each of these cases, the deduction for interest payments may be reduced if the taxpayer’s debt exceeds the levels permitted under the thin capitalization provision.

WHAT IS LEFT BEHIND?

However, interest payments on loans obtained from non-resident person are generally subject to a 10% withholding tax on the gross interest.

DOUBLE TAX AGREEMENTS

Double tax agreement with Austria

The treaty with Austria affirms interest payments may be taxed at the State of residence of the contracting parties. Where the interest paid is taxed at source, and the beneficial owner is a non-resident contracting party, the WHT is charged at 10%. Or on a rate mutually agreed to by the contracting States. However, interest payments arising in a contracting State is taxable at the residence of the non-resident recipient where it is an enterprise, and the interest is paid on a concessional loan or a loan granted, guaranteed, or insured by public entities.

Double tax agreement with China

The treaty with China allocates the authority to taxed interest payments between parties of the contracting Stating to the State of residence. However, such interest payments may also be subject to tax at source, but if the beneficial owner is a non-resident contracting party, the WHT is charged at 10%.

Double tax agreement with Turkey

As per the terms of the treaty with Turkey, interest payments between parties of the contracting State is taxable at the contracting State of residence of the interest recipient. The interest may also be taxed at source at 10% of the gross interest. And, any disallowed excess interest payments between associated parties is taxed according to the laws of the contracting States with due regards to the terms of the treaty.
Mozambique

INVESTMENT RULES

In Mozambique the regulations in place define the conditions, procedures and requirements for licensing a business, including import and export activities and representation offices for non-resident investors. An investment proposal must be lodged at the ‘Investment Promotion Centre (CPI)’, for assessment; accompanied by:

- Identification of the investors plus bank references; and a draft charter of the company to be incorporated in Mozambique; and

- Documentation including certificate of incorporation, latest annual report, and any other documents illustrating its business activity.

The minimum value for FDI from foreign investors is set at the equivalent of 2.5 million MT for the specific purposes of transfer of profits abroad and for the re-exportable invested capital.\(^1\)

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EXCHANGE CONTROL

The Mozambique Central Bank regulates all transfers for direct investments and inward/outward payments. Remittance of profits and repatriation of proceeds is permitted for duly approved foreign investment projects. Thus, after paying the tax necessary for the fiscal year, foreign investors with approved investments can transfer abroad their proceeds accruing each financial year via local banks upon presentation of a tax clearance from the Ministry of Finance.\(^1\)

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TAX INCENTIVES

After the CPI assessment and approval, the incentives that follow the issued investment authorization includes:

- Investment credit for cost equal to 5% incurred in investments in Maputo over a 5-year period. Credits may be carried forward for 5 years. The rate is increased of 10% and 20% in other provinces.\(^1\)

- 10 years deductions equal to 150% for expenditure incurred on construction or restoration of infrastructure and public utility works nationwide (120% if incurred in Maputo) and a 3 years 50% reduction on transfer tax for purchase of immovable property for industrial, agro-industrial or hotel activities.

- Other exemptions from customs duties, reduced tax rates, investment credits, and accelerated depreciation allowances are available under Agriculture, Hotel and Tourism, Public Infrastructure & large-scale (over USD500, 000) projects, Mining and the Petroleum sector investments.

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\(^1\) Article 117, page 77, IRPC

Services

THINGS YOU NEED TO KNOW

As a rule, deductions are allowed on investment expenditures on modern technology equipment for a period of 5 years at a rate of 15% of taxable income and 10% in respect of training of Mozambicans in modern technologies. The deductible expense on services is reduced to a maximum of 5% on other fields.\(^1\)

\(^1\) Incentives on services, Page 110 [https://www.wbginvestmentclimate.org/uploads/mozambiquestudyimpactoftaxesenglish.pdf](https://www.wbginvestmentclimate.org/uploads/mozambiquestudyimpactoftaxesenglish.pdf)

WHAT IS LEFT BEHIND?

In principle, income from intellectual or industrial property or the provision of information about an industrial, commercial or scientific experience, received by original titleholders who are non-residents in Mozambique is taxed at 20%.

Income earned by theatre, dance, variety show performers, film actors and extras, musicians, singers or sports professionals or other related professions, resident or not in Mozambique are taxed at 10%. However, these rates have been reduced by the DTA with contracting parties.

Double tax agreement with South Africa

The Double Tax Agreement with South Africa stipulates director’s fees and similar payments are taxed at the State of source of the income.

Double tax agreement with United Arab Emirates

Effective April 15th 2004, professional services fees arising from Mozambique to a UAE resident is exempt from taxation in Mozambique; unless the services provider has a fixed base in Mozambique for performing its services. Director’s fees on its part may be taxed in Mozambique.

Double tax agreement with Mauritius

Professional services fees emanating from Mozambique to a Mauritius resident is exempt from taxation in Mozambique; unless the Mauritius resident recipient’s presence in Mozambique for its services exceeds 183 days in a year, and or had a fixed base in Mozambique for the purpose of the services. Director’s fees on its part may be taxed at source (Mozambique).
Royalties

THINGS YOU NEED TO KNOW

Income from intellectual property and associated rights fall under the ‘second category’ of income. And, expenses associated to royalties are fully deductible if proven as being necessary for obtaining the income to which they pertain\(^1\). See services above for further deductible expenses.

\(^1\) Article 31 of IRPS, page 24

WHAT IS LEFT BEHIND?

In principle, income from intellectual or industrial property or the provision of information about an industrial, commercial or scientific experience, received by original titleholders who are non-residents in Mozambique is taxed at 20%.

Income earned by theatre, dance, variety show performers, film actors and extras, musicians, singers or sports professionals or other related professions, resident or not in Mozambique are taxed at 10%. However, these rates have been reduced by the DTA with contracting parties.

DOUBLE TAX AGREEMENTS

Double tax agreement with South Africa

The double tax treaty with South Africa holds royalties may be taxed at the State of residence of the contracting parties. However, where it is taxed at source, the WHT is levied at 5%. If the royalties arise in Mozambique to a non-resident PE of South Africa, the royalties are taxed as business profit in Mozambique.

Double tax agreement with United Arab Emirates (UAE)

As per the tax agreement with UAE, royalties may be taxed at the State of residence of the recipient. Where the income is taxed at source, the WHT does not exceed 5% of the gross amount of the royalties.

Double tax agreement with Mauritius

Royalties emanating from Mozambique to a Mauritius resident may be taxed in Mauritius. Where the royalty payment is taxed in Mozambique, the WHT does not exceed 5% of the gross royalties. Also, royalty payments between associated contracting parties cannot exceed the amount that would have been agreed upon by non-associated parties. Any excess payment is taxable according to the State Laws.
Interest payments

THINGS YOU NEED TO KNOW

Interest paid as a result of under-capitalization (2:1 debt to equity) of a Mozambican resident entity by a non-resident related party (25% of capital, management and control) considered excessive is not deductible\(^1\). In principle, the WHT at source if applicable has the nature of an advance tax, which is final.

On the other hand, there is no obligation to withhold a corporate income tax at source when this has the nature of advance tax, e.g.:

- Interest derived from instruments listed on the Mozambique stock Exchange, as well as those derived from Monetary Authority Instruments (TAMs) issued by the Bank of Mozambique for monetary purposes\(^2\).

\(^1\) Article 61, page 42 IRPC
\(^2\) Article 84 (a, and, h), page IRPC

WHAT IS LEFT BEHIND?

In principle a withholding tax is charged on interest payments in Mozambique at 20% of the gross amount of interest. However, the DTA reduces the rates as follows:

DOUBLE TAX AGREEMENTS

Double tax agreement with South Africa

As per the treaty with South Africa, interest payments are taxed at the state of residence of the recipient. Where a WHT on the interest is charged at Source, the rate is levied at 8% of the gross amount. The excess part of any unreasonable and high interest paid between associated parties of the contracting States is disallowed and taxed according to the laws of the source State of the Interest.

Double tax agreement with Mauritius

As per the double tax treaty with Mauritius, interest payments arising from Mozambique to a Mauritius resident may be taxed at his residence. However, where the interest payment is taxed in Mozambique, the WHT is charged at 8% of the gross interest. Excessive interest payments between associated contracting parties are disallowed.

Double tax agreement with United Arab Emirates (UAE)

with the UEA, interest payments arising from Mozambique are exempt from taxation at Source. Where the interest accrues to a UEA non-resident PE in Mozambique, the interest is taxed at the appropriate rates under Mozambican Laws.
INVESTMENT INFO

Namibia’s accommodation of foreign investment in developing its natural resources and industries is positive. The ‘Foreign Investment Act 1990 (The Act) lays down FDI rules administered by the ‘Namibian Investment Centre’ (NIC). In general, where an investment (FDI) in foreign assets is an eligible investment, as defined in the ‘Act’, a ‘Certificate of Status Investment’ is issued by the Ministry of Trade and Industry – which guarantees against expropriation and the availability of foreign exchange for repatriation of profits. Investment opportunities abound in Agri-Business, Aquaculture, Energy, Mining, and Manufacturing.

FOREIGN EXCHANGE REGULATION

The Bank of Namibia guarantees freely convertible currency without restriction to repay loans in foreign assets, interest and service charges invested in the enterprise.

THE TAX INCENTIVES

- Non-resident shareholders’ Tax is 10%;
- Plant, machinery and equipment can be fully written off over a period of three years; and a generous capital allowances are available in respect of expenditure on fixed assets.
- Buildings of non-manufacturing operations can be written off, 20% in the first year and the balance at 4% over the ensuing 20 years;
- Import or purchase of manufacturing machinery and equipment is exempted from Value Added Tax (VAT);
- Deduction by 125% of training costs incurred in respect of employees directly involved in a manufacturing process; and
- Deduction at 125% of certain exports marketing costs.
THINGS YOU NEED TO KNOW

General deductibility rules apply to management or consultancy fees paid to non-resident in Namibia. The fees must however be linked to an income producing activity in the territory. Any tax withheld after the applicable deductions is remitted to the ‘Inland Revenue’ within 20 days after the month in which the services tax accrued.

WHAT IS LEFT BEHIND?

Whether paid to the non-resident directly or indirectly, management fees, consultancy fees, director’s fees or entertainment fees are charged a WHT of 25% on the gross amount of income.

DOUBLE TAX AGREEMENTS

Double tax agreement with the United Kingdom

As per the double tax agreement with the UK, income derived by a UK resident in Namibia in respect of professional services is exempt from taxation in Namibia. Where the services professional (UK) has a fixed base in Namibia regularly available for the purpose of performing the services, and the portion of the income derived in Namibia is taxed therein.

Double tax agreement with Germany

With Germany, income derived by its residents from professional services or other activities of an independent character in Namibia are taxable only in Germany, unless a fixed base was available to the services provider for performing the services or present in Namibia for periods exceeding 183 days per annum. Director and technical qualifying fees payable to a German resident is taxed in Namibia at 10%.

Double tax agreement with France

According the DTA with France, director’s fees arising in Namibia to a French resident is taxable in France. Income from the provision of professional service in Namibia by French resident is taxed only in France. However where the French resident has a fixed base in Namibia available for performing its services, the income may be taxed in Namibia.
Royalties

THINGS YOU NEED TO KNOW

For royalty payments to be deductible the expenses or losses must be incurred in the production of income exclusively for the purpose of the taxpayers trade. The tax authorities also allow deductions on royalties paid by non-resident branches to their foreign head office, except expenses of a capital nature.

As an incentive, the Bank of Namibia guarantees free transfer of funds in payment of license fees and royalties to non-residents under any agreement relating to the transfer of technology or on contract as approved by the Minister¹.


WHAT IS LEFT BEHIND?

Distribution, licensing, leasing and exploitation of motion pictures and films by a non-resident in Namibia are charged a WHT of 10.2%. Royalty payments to non-residents companies are subject to a withholding tax based on the company tax rate applicable to the recipient company’s year-end (currently 34% effective on or after 1 January 2009) on 30% of the gross royalty tax payable.

DOUBLE TAX AGREEMENTS

Double tax agreement with the United Kingdom

With the UK, royalties for the use of any copyright in any literary, dramatic, musical or artistic work derived from sources within Namibia by a resident of the UK who is subject to tax in the United Kingdom is exempt from taxation in Namibia. Other royalties arising from Namibia to a UK resident may be subjected to tax in Namibia at 5% of the gross royalty.

Double tax agreement with Germany

On the terms with Germany, royalties accruing from transactions in Namibia to a German resident may be also taxable in Namibia, at a WHT not exceeding 10% of the gross amount of royalties. Excessive royalty payments between associated parties in the contracting State are disallowed and the excess part of such payments is taxed according to the State Law.

Double tax agreement with France

Royalties arising in Namibia to a French resident are taxable in France. Where the royalties are taxed in Namibia, the amount charge does not exceed 10% of the gross amount of royalties.
Interest payments

THINGS YOU NEED TO KNOW

General deductibility rules apply on interest payment:

- The loans in relation to which the interest is paid must be incurred for purposes of the taxpayer’s trade and or for the acquisition of moveable assets on which the taxpayer is entitled to a wear and tear deduction.

- On the other hand, some interest received by a non-resident is exempt from tax:
  - Interest received from a Namibian Post Office Savings Bank;
  - Interest income from stock or securities (including Treasury Bills) issued by the Government of Namibia.

Furthermore, Namibia has a thin cap rule (Debt – equity 3:1) that disallows excessive interest payments- Excessive financial assistance granted to a Namibian company by non-resident associated persons (25% of the shares) in relation to the company’s capital is disallowed.

WHAT IS LEFT BEHIND?

The 10% WHT on interest is a final tax. Interest from a Namibian banking institution and/or a unit trust is not included in the taxable income, and on the tax returns of affected persons. However, account holders are still liable to pay the withholding tax. The Namibian Banking institutions are thus required to withhold and pay the tax on interest directly to the ‘Inland Revenue’, within 20 days after the month in which the interest accrued or was received by the account holder1.

1 Section 34C of the Income Tax Act
DOUBLE TAX AGREEMENTS

Double tax agreement with the United Kingdom

The withholding tax imposed by Namibia on interest derived from sources within its territory to a resident of the United Kingdom, who is also subject to tax in the UK in respect of the income is levied at 20% of the gross amount of interest.

Double tax agreement with Germany

With Germany, interest payment from sources and transactions in Namibia are Tax-exempt. The provision does not apply to a German PE resident in Namibia. However, excessive interest payments between associated parties in the contracting State are disallowed.

Double tax agreement with France

Interest payments arising from sources in Namibia to a French resident may be taxed in France. Where the interest accruing to a French resident is taxed in Namibia, the WHT taxed is levied at 10%. If the interest accrues to a French PE in Namibia, the income is taxed at the applicable rate as business profit.
Nigeria

INVESTMENT INFO

Nigeria is currently Africa's largest petroleum producer and 8th largest in the world. As investment opportunities in the oil and gas sector abound, the ‘Petroleum Profits Tax Act’ provides a wide range of incentives and deductions on expenses incurred in production operations wholly and exclusively incurred within or without Nigeria.

PETROLEUM TAX INCENTIVE

- Productive and non-productive rents incurred during oil prospecting license or mining lease for disturbance of surface rights are wholly deductible;
- Investment credit rates applicable to the production-sharing contract with Nigeria National Production corporation (NNPC) is 50% of the chargeable profit during the production-sharing contract; and,
- The Corporate Income Tax Act (CITA) allows deductions on director’s remunerations, not exceeding N10,000 per annum on each director and not exceeding three directors in a fiscal year.
Services

THINGS YOU NEED TO KNOW

Technical and managerial services in regards to intangibles by non-resident professionals must be registered at the ‘National Office of Technology Acquisition and Promotion’ (NOTAP). The fees accruing to non-resident are capped at:

- Management Services - 2% - 5% of profit before tax is the norm. Where profit is not anticipated during the early years the fee ranges from 1% - 2% of net sales during the first 3 to 5 years;

- For the management of a hotel within an international chain, a basic or lump sum not exceeding 5% of turnover plus an incentive fee not exceeding 12% of Gross Operating Profit (“GOP”) is applicable;

- Consultancy Services lump sum payments do not exceed 5% of the total project cost; and,

- Technical Services – royalties/fees in respect of technical assistance/services range from 1% - 5% of net sales.

WHAT IS LEFT BEHIND?

Petroleum production is subject to tax at 85%, but lowered to 65.75% during the first 5 years of operation. Where an oil company operates under a production sharing contracts, the profits are subject to a 50% WHT during the period under the production-sharing contract.

Non-resident professional consultancy, management and technical services fees are generally subject to a 10% WHT, unless exempt or reduced by a DTA.
DOUBLE TAX AGREEMENTS

Double tax agreement with Belgium

As per the double tax agreement with Nigeria, income from professional and independent personal services accruing to a Belgian resident is taxable in Belgium, unless, the professional has a fixed base in Nigeria for the purpose of performing the service. And director’s fees may be taxed in Nigeria (10%).

Double tax agreement with the United Kingdom

With the UK, income derived on professional and independent services in Nigeria is taxable in the UK. But, where the service professional has a fixed base in Nigeria available for performing the services, a WHT may be levied in Nigeria. Director’s fees accruing to a UK resident are taxable in Nigeria (10%).

Double tax agreement with France

Income accruing to a French from professional services performed in Nigeria are taxable in France, unless where the Professional has a fixed base in Nigeria. On the other hand, director’s fees and other similar payments may be taxed in Nigeria (10%).
Royalties

THINGS YOU NEED TO KNOW

Foreign intangibles in general must be registered at NOTAP, which regulates contracts on the transfer and acquisition of foreign technology, the right to use trademarks; patented inventions; the supply of technical expertise/assistance; engineering drawings; machinery and plant, and the provision of operating and managerial assistance and the training of personnel.

Duration: technology transfer agreements are governed by the law of Nigerian; and 10 years is the maximum duration for the contract; unless where the licensee subleases the intangible over a period of 10 years; the technology involves a changing continuing process and a longer duration for proper absorption is required.

Incentives and expense deductions on royalties paid by companies engaged in Oil and gas production operations abound:

• Intangible expenditures directly incurred in connection with drilling of an exploration well and next two appraisal wells in the same field, whether productive or not, are deductible; and

• Royalty payments incurred in respect of natural gas and crude oil sold or disposed of are deductible.

WHAT IS LEFT BEHIND?

Royalties in respect of know-how, patents and other industrial property rights, ranges from 1% - 5% value;

Trademarks – royalties for foreign trademarks is not allowed except where the trademark is internationally recognised, accompanied with a licensed know-how, and the product is allowed by the licensor for the export market.
ROYALTY PAYMENT

- Royalties in respect of know-how, patents and other industrial property rights, ranges from 1% - 5% value;

- Trademarks – royalties for foreign trademarks is not allowed except where the trademark is internationally recognised, accompanied with a licensed know-how, and the product is allowed by the licensor for the export market.

DOUBLE TAX AGREEMENTS

Double tax agreement with Belgium

Effective since 1990, interest payment to a Belgian resident (non-resident) is taxable in Belgium; but a WHT can also be charged at the source state (Nigeria) at a rate of 7.5% of the gross amount even though the beneficial owner of the interest is a Belgian resident. These provisions only apply if the right giving rise to royalties is bona fide.

Double tax agreement with the United Kingdom

The double tax agreement on royalty payment with Ireland took effect on July 5th 1988. The agreement sets the tax rate for royalties at 7.5%, applicable only if the rights giving rise to the royalty payments are bona fide.

Double tax agreement with France

Effective as from January 1st 1991, the double tax treaty equally levies a tax on royalties at 7.5%, of the gross amount of royalties.
Interest payments

THINGS YOU NEED TO KNOW

With its always lucrative and inviting Oil and Gas sector, the Nigerian Petroleum Profits Tax Act' outlines incentives in production operations as follows:

• Interest payments on loans, where the ‘FIRS’ is satisfied the interest is payable on capital employed in carrying on petroleum operations in the Nigerian oil industry are deductible;

• Debts directly incurred by the company and proved to the satisfaction of the FIRS to be bad or doubtful in the accounting period;

• Interest payment on inter-company loans obtained under terms prevailing in the open market i.e. the London Inter-bank Offer rate; by companies that engage in crude oil production are deductible.

• In regards to ‘Gas utilization’, deductibility of tax on interest payable on loans prior approved by the minister of gas projects 1.

• Customs or Excise Duty and repairs expenses in respect of machineries, fixtures, premises, plant equipment and good’s used in the company’ petroleum operation are deductible;

• Interest payments on loans by companies engaged in ‘Gas utilization’, are fully deductible; upon approval by the minister of gas projects 2.

• Further, interest earned on deposit accounts in foreign currencies by non-residents (effective from 1st January 1990) is exempt from Tax 3.

1 Section 39(1)(e), PITA
2 Section 39(1)(e), PITA

WHAT IS LEFT BEHIND?

In principle, a WHT is charged on interest payment to non-residents person at a rate of 10%. But, the double tax treaties usually reduces the WHT; applicable also to Oil and Gas operators interest payments.
DOUBLE TAX AGREEMENTS

Double tax agreement with Belgium

As per the Tax treaty with Belgium, interest payments arising from sources in Nigeria to a Belgian resident is taxable in Belgium. The Interest may also be taxed in Nigeria at a rate of 7.5%, even if the beneficial owner of the interest is a Belgian resident.

Double tax agreement with the United Kingdom

the double tax treaty with Ireland guarantees interest payments arising from Nigeria to an Irish resident be taxable in Ireland. Where such interest payments are taxable Nigeria, the WHT is levied at 7.5% of the gross amount. Further, where the beneficial owner of the interest is the government of United Kingdom, the interest paid is exempt from taxation.

Double tax agreement with France

with France, where the interest payment is taxable at the source state, the WHT is levied at 7.5% of the gross amount. However, where the interest payment is made to the government of the other State, in respect to a loan, the interest paid is exempt from taxation.
INVESTMENT INFO

Senegal has a friendly business climate for foreign direct investment. In fact 100% foreign ownership is possible and there is no requirement of government participation in business. The Senegalese new ‘Investment code’ (Code de Investissements) provides equitable treatment for foreign and local firms, as well as incentives to companies willing to locate outside the Dakar Region. The Code defines eligibility for investment incentives according to a firm’s size and type of activity, the amount of the potential investment and the location of the project.

In general, to qualify for incentives, the investment must be of at least CFA 100 million, with the exception for activities in the enterprises operating in “priority” sectors (agriculture, fishing, animal-rearing and related industries, and in the services maintenance of industrial property) where the minimum capital is reduced to CFA15, 000, 000F. Other lucrative industries with vast opportunities for foreign direct investment are the manufacturing, tourism, mineral exploration and mining, and the banking sector.
TAX INCENTIVES

Applicable to new enterprises and on extension projects:

- Customs exemptions (3 years)
- Suspension VAT (3 years)

TAX CREDIT

- 40% for eligible investment and 50% of taxable income for 5 years;
- Exemption CFCE = five (05) years and eight (08) years if creating at least 200 jobs or 90% of jobs are outside the region of Dakar.

Conditions (alternatives)

- Increase of 25% of the acquisition value of the fixed assets or production capacity; investments in production equipment at least 100 million FCFA.

SPECIAL REGIME APPLICABLE TO APPROVED EXPORT FIRMS

Approved export firms are obliged to export 80% or more of their turnover. The benefits of this regime remain valid for a period of 25 years and can be renewed. The benefits of this regime are:

- The corporate tax rate is 15%;
- Exemption from customs duties and duty stamps on utilitarian vehicles and tourism vehicles and means of transportation clearly intended for production;
- Exemption from taxes based on salaries paid by companies;
- Exemption from all registration and stamp duties; exemption from patent fee, property tax on constructed and unconstructed property, and from the license fee.

PROVISIONS APPLICABLE TO MINING ENTERPRISES

The mining code provides for exemption from all taxes and levies for holders of mining concessions. However, holders of mining concessions for research or exploitation are still subject to certain duties expressly mentioned by the new code.

EXCHANGE CONTROL

Senegal has exchange control restrictions only with non-ECOWAS (Economic community of West African States) member states. A resident can freely make payments through financial intermediaries after showing evidence of the nature and validity of the transaction. All other payments abroad can only be made upon approval by the Finance Minister after a request supported by documents. In case of transfers not exceeding CFA 300,000, no supporting documents are required.
Services

THINGS YOU NEED TO KNOW

Deductions for expenses on the provision of services are generally available to company's e.g. technical services provided to insurance companies regulated under the CIMA (Conférence Interafricaine des Marchés d'Assurance) code¹. And, expenses incurred during installation of an information office for the proper functioning of the business are deductible during the first three tax years of the business.


WHAT IS LEFT BEHIND?

Any fees derived by a non-resident person in Senegal in respect to management and professional income is generally taxed as ordinary income.

DOUBLE TAX AGREEMENTS

Double tax agreement with France

by virtue of the treaty with France, director’s fees (Tantièmes) paid to a non-resident recipient of a contracting State is taxable at Source; with due regards to the provisions governing professional services under the treaty. Income from professional services arising from a contracting State to a non-resident contracting recipient is taxable only at the State of residence, unless the service provider has a habitual base in the state where his services are performed.

Double tax agreement with Italy

As per the terms of the treaty with Italy, director’s fees (Tantièmes) arising from a contracting State and paid to a non-resident recipient of the other State are taxed at residence. And, independent professional services rendered by parties from the contracting States is taxable only at the State of residence; except the 183 days presence at the source State rule is applicable.

Double tax agreement with Quatar

By virtue of the treaty with Qatar, independent non-resident contracting professionals are subject to tax only at their State of residence. The rule is inapplicable where the services provider has a fixed base at the contracting State for performing the services and the stay therein exceeds 183 days in a 12 months period. Director’s fees are taxed at the State of source of the income.
Royalties

THINGS YOU NEED TO KNOW

Royalties are deductible if they relate to an income generating activity.

The Senegalese legal system enforces private property rights. Senegal is a member of the World Intellectual Property Organization (WIPO) and African Organization of Intellectual Property (OAPI), a grouping of thirteen Francophone African countries, which has established among its member states a common system for obtaining and maintaining protection for patents, trademarks and industrial designs.

WHAT IS LEFT BEHIND?

Royalty payments to a non-resident are generally subject to a WHT of 20% of the gross royalties, unless reduced under a tax treaty in force.
DOUBLE TAX AGREEMENTS

Double tax agreement with Italy

With Italy, royalties arising from a contracting state to a non-resident recipient of the other contracting State is taxable at his residence. However, such payments can also be taxed at source, at a rate of 15%, even though the non-resident is the beneficial recipient/owner. Royalty payments in excess of the due amount is disallowed and taxed according to the laws of the contracting States.

Double tax agreement with Qatar

By virtue of the treaty with Qatar, royalty payments arising from one contracting State to a non-resident contracting party is taxable only at the non-resident recipient’s State of residence and according to the State Laws.

Double tax agreement with France

Under the treaty with France, royalties arising from a contracting State and paid to a non-resident recipient of the other contracting State is taxable at his domicile. Such royalty payments may also be taxed at source, at the rate of 15% of the gross royalties. However, payments of any kind received for the use or right to use a copyright in a literary, artistic or scientific - including films, works recorded for radio and television and other audio-visual works are taxable only in the State where the beneficial owner/recipient is resident¹.

¹ Article 20
Interest payments

THINGS YOU NEED TO KNOW

Senegal does not have a specific thin cap rule but limits are imposed on interest paid to partners on funds provided by them to a company. The maximum interest rate is the lending rate of West African States Bank, plus 2% points at the time the interest payments are due.

With supporting documentation provided for all outbound transfers, there is no limit on the profit repatriation derived from Senegal.

WHAT IS LEFT BEHIND?

In principle, interest payments to non-residents are charged a WHT of 16% of the gross interest payment, unless reduced by a DTA.
DOUBLE TAX AGREEMENTS

Double tax agreement with Italy

The Senegalese/Italian tax treaty stipulates interest payments are taxable at the State of residence of the contracting party. However, it may also be taxed at source, at the rate of 15% of the gross amount. Notwithstanding the above, interest payments from a government of the contracting State and or its agency payable to a non-resident recipient of the other contracting State is exempt from taxation at the source State.

Double tax agreement with Qatar

And, under the agreement with Qatar, interest payments arising from one of the contracting State to a non-resident recipient of the other contracting state is taxable only in the State of residence of the recipient party and according to the State laws.

Double tax agreement with France

However, interest payments arising from a contracting State (France or Senegal) to a non-resident recipient of the other contracting State is taxable at his state of residence. Such payments may also be taxed at source, at a rate of 15% of the gross amount of the interest. Interests payments to a contracting State or its entity paid in regards to credit of any industrial, commercial, scientific equipment and the provision of services by an enterprise of the contracting state are taxable only at the State of residence of the contracting party.
Tanzania

INVESTMENT INFO

Natural resources, Agriculture, petroleum and mining, and Energy constitute some of the priority areas of investment in Tanzania. Substantial reserves of natural gas (about 33 billion cubic meters) discovered in the southern coast both onshore and offshore and mineral production (especially gold 40% of export) has increased in recent years. With its well-balanced investment incentives and guarantees, the petroleum and mining sector currently presents a wealth of opportunities for foreign investment.

TAX INCENTIVES

- 100% Capital expenditure allowance in Agriculture; and 100% deduction on mining operations;
- The Income tax laws allows 50% capital allowance in the first year of the use of plant and machinery used in manufacturing; and 37.5% for computers;
- 0% duty on capital goods; and 0% duty on fuel;
- Royalty of 4% is charged on gold and other metallic minerals;
- Royalty of 5% on diamond, uranium and gemstone;
- Royalty of 1% on gem (cut and polished); and a
- Royalty of 3% on other minerals (e.g. coal, industrial minerals and building minerals).

1. And, investors in the Free Trade Zones enjoy:
   - 100% retention of all profits;
   - 100% foreign ownership allowed;
   - Free repatriation of profit.
   - Companies operating in the Export Processing Zone (EPZ) are exempt from corporate tax for the first 10 years. They are also exempt from WHT on interest.

FOREIGN EXCHANGE REGULATION

Tanzania's trade and exchange system is completely free of restrictions on payments and transfers. Expatriates can maintain a foreign currency account with a local bank and can remit earnings to an offshore destination. However, non-residents require the approval of the Bank of Tanzania on investments outside Tanzania and foreign lending operations.
Services

THINGS YOU NEED TO KNOW

Services in the petroleum and mining sectors provided by non-residents are levied a WHT. Expenses in these sectors are deductible if incurred in conducting the business\(^1\). And, there is currently no cap on services fees paid to foreign personnel/assignees as guaranteed by the Investment Act 1997.

\(^1\) Section 83(2)(a) of the Act, page 72

WHAT IS LEFT BEHIND?

- Non-resident services are generally levied a WHT of 15%. Income derived from technical and managerial services provided by non-residents on mining services is equally taxed at 15% of the gross income.

DOUBLE TAX AGREEMENTS

Double tax agreement with Denmark

With Denmark, management and professional fees arising from Tanzania to Danish residents are in principle taxable in Denmark. The income may also be taxed in Tanzania at 12.5% where the Danish resident has a fixed base in Tanzania available for providing the services.

Double tax agreement with South Africa

Residents of South Africa are exempt from taxation on management and professional fees arising from Tanzania where the service provider is present in Tanzania not exceeding 183 days in the fiscal year; and the income is subject to tax in South Africa.

Double tax agreement with Italy

With Italy, management and professional fees arising from Tanzania and paid to an Italian resident are exempt from taxation in Tanzania, unless the 183 days rule apply and the Italian resident maintained a fixed base in Tanzania for performing the services. Director’s fees on it part are taxed in Tanzania.
Royalties

THINGS YOU NEED TO KNOW

To promote FDI in Tanzania, the Investment Act 1997 guarantees unconditional transfer of royalty payments to non-resident persons. The beneficiary of the Technology must register the technology transfer agreement. Royalties’ deductibility rules apply where the expenditure was incurred in the production of the income from an investment in Tanzania.

WHAT IS LEFT BEHIND?

Royalty payments sourced in Tanzania and paid to non-resident persons are subject to a WHT of 15% of the gross amount of royalties.
DOUBLE TAX AGREEMENTS

Double tax agreement with Denmark

On the terms of the treaty with Denmark, royalty payments arising from Tanzania to a Danish resident may be taxed in Denmark. Where the royalty payment is taxed in Tanzania, the WHT is levied at 20%. And where the royalty payments stem from a Danish PE in Tanzania, the income is taxed in Tanzania as business profits.

Double tax agreement with South Africa

With the Republic of South Africa, royalty payments earned from sources in Tanzania are levied a WHT of 10% of the gross amount. Excessive royalty payments in related party transactions between the contracting parties are disallowed - the excess part of such payments is taxed according to the State law.

Double tax agreement with Italy

Royalties arising in Tanzania and paid to an Italian resident is taxable in Italy. Where the royalties is taxable in Tanzania, the WHT is levied at 15%. Where the payment arises to an Italian PE in Tanzania, the profits is taxed as business profits.
Interest payments

**THINGS YOU NEED TO KNOW**

Interest payments on sums wholly and exclusively used in the production of income from a business investment are deductible. Thus, the total amount of interest that an exempt-controlled resident entity may deduct for a year’s profit cannot exceed 70% (debt-to-equity ratio of 7:3). Exceeding the 70% threshold, the excess part may be carried forward to the next tax year.

Tax exemptions generally apply on interests payable to strategic investors (foreign banks) as defined by Tanzania Investment Act. The Zanzibar Investment Protection Act, 2004, also provides for tax exemptions on interest on borrowed capital.

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**WHAT IS LEFT BEHIND?**

Tanzania charges a WHT of 30% corporate tax in general; and 25% for newly listed companies with at least 35% of shares available to the public. For all interest payments disbursed and taxable where applicable to non-residents, the WHT is charged at 10% of the gross amount.

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**DOUBLE TAX AGREEMENTS**

**Double tax agreement with Denmark**

Interest arising from Tanzania and paid to a Danish resident may be taxable in Denmark. The interest may also be taxed in Tanzania at a rate of 12.5% of the gross interest.

**Double tax agreement with South Africa**

As per the tax treaty with the Republic of South Africa, interest payments arising from Tanzania to a South African resident are exempt from taxation in Tanzania.

**Double tax agreement with Italy**

Interest arising from Tanzania and payable to an Italian resident may be taxed in Italy. Where the interest payment is taxable in Tanzania, the WHT is levied at 12.5%. Associated party transaction with excessive interest payments between the contracting parties is disallowed and the excess part of such payments taxed according to the contracting State Law.
Uganda

INVESTMENT INFO

Uganda has a positive attitude towards foreign private investment as guaranteed and protected by the 'Investment Code'. The 'Uganda Investment Authority (UIA)' in partnership with the private sector and the Government of Uganda aims to drive national economic growth and development through private and foreign investments. As one of the leading producers of coffee and bananas in the world, and a major producer of tea, cotton, tobacco, cereals, oilseeds, fresh and preserved fruit, vegetables and nuts, essential oils, flowers and sericulture (silk), agriculture is one of the sectors with a lot to offer for investment. Foreign and local investors may engage in any type of business activity in one of the key sectors: agriculture, tourism, ICT, energy, food and beverages, mining, leather, metal & metal products, iron & steel, financial services, pharmaceuticals and transport and communication. Foremost, foreign investors are required to obtain and investment license from the Investment Authority, before registering their company at the 'Uganda Registration Service Bureau' (URSB).


GENERAL INVESTMENT INCENTIVES

The investment incentives in Uganda are currently as follows:

- Investment capital allowances;
  - Initial allowance on plant and machinery of 50 – 75%, depending on where the investment is located; and start-up costs allowed for tax purposes over a four-year period i.e. at 25% per annum;
  - 100% scientific research expenditure allowance for tax purposes;
  - 100% training expenditure allowance for tax purposes;
  - 100% mineral exploration expenditure allowance for tax purposes;
  - Initial allowance on hotel and industrial buildings of 20% in the year they are put into use;
  - Allowable tax depreciation rates of 20 – 40% depending on the type of asset; allowable tax depreciation rate for hotels, industrial buildings, and hospitals and approved commercial buildings of 5% per annum; and a
  - Duty and tax free import of plant and machinery

First arrival privileges in the form of duty exemptions for personal effects and motor vehicle (previously owned for at least 12 months) to all investors and expatriates coming to Uganda are also granted.
EXPRESS ZONES INCENTIVES

At the Export Zones incentive companies enjoy a ten-year corporation tax holiday plus:

- Duty exemption on raw materials, plant and machinery and other inputs; and stamp duty exemption
- Duty draw back to apply on input of goods from domestic tariff area;
- No export tax;
- Exemption of withholding tax on interest on external loans.

EXCHANGE CONTROLS REGULATIONS

Administered by the Bank of Uganda as governed by the ‘Exchange Control Act (Cap 171) residents and non-residents are free to bring in and take out capital with minimal restriction. Non-residents are equally allowed to hold local and foreign currency accounts in local banks and the possibility to transfer their profits abroad without restriction.
Services

THINGS YOU NEED TO KNOW

Non-resident services charges are generally deductible\(^1\). For example- a deduction for scientific research expenditure incurred during the year of income in the course of carrying on a business is generally deductible. And a non-resident services contracts must be notified to the commissioner of taxes within 30 days\(^2\).

\(^1\) Section 32, page 42 ITA
\(^2\) Section 121(1) page 105 ITA

WHAT IS LEFT BEHIND?

Provision of a professional and management services by non-resident persons/entities to persons/entities resident in Uganda are subject to WHT of 15% of the gross income, unless reduced by a DTA.

Double tax agreement with South Africa

As per the terms of the treaty, technical/management fees may be taxed in the State of residence of the income recipient contracting party. Where the income is taxed at source, the WHT is levied at 15%. Excess fees paid in related party transactions are disallowed. Whereas director’s fees arising from Uganda to a UK resident may be taxed in Uganda, income from independent professional services may be taxed only at the State of residence, unless the 183 days stay rule applies.

Double tax agreement with The Netherlands

Effective since 1st November 2006, director’s fees and related remunerations are taxed at the State of source of the income. Payments for technical services, including studies or surveys of a scientific, geological or technical nature, or for consultancy or supervisory services are deemed to be business profit and thus taxed at a WHT of 10% of the gross amount.

Double tax agreement with Italy

Management and administration fees arising from a contracting State are taxed at the non-residents contracting party’s State of residence. Where the income is taxable at source, the tax is levied at 10%. However, non-resident contracting parties may elect to compute their taxes as if it were a PE; thus taxable as business profit. And the income derived by a non-resident contracting party via independent private services may also be taxed at the State of residence. It is taxable at source if the 183 days rule is applicable or the professional had a fixed base at the source State.
Royalties

THINGS YOU NEED TO KNOW

In general, expenditures that give rise to royalties are fully deductible. However, the expenditures must be incurred in acquiring an intangible asset having an ascertainable useful life. And, the deduction is allowed in each year of income during the useful life of the asset in which the person wholly uses the asset in the production of income. Where an intangible asset is disposed in the income year, the cost base of the asset is reduced by any deductions allowed.  

1  Section 31, page 41 of ITA

WHAT IS LEFT BEHIND?

In principle, income derived from royalties on cross-border trade between a Ugandan resident person/entity and a non-resident entity is subject to a WHT tax of 15% of the gross amount of royalties.
DOUBLE TAX AGREEMENT

However, a double tax treaty with the following countries reduced the WHT on royalties to the following rates:

Double tax agreement with Denmark

The treaty with Denmark stipulates, royalties are taxable at the State of residence of the contracting party recipient of the income. It may also be taxed at the source State, at the rate of 10%, where the beneficial owner is a non-resident contracting party. Royalty payments connected with a PE resident in the State where they arise is taxed as business profit. The treaty equally disallows excess and unreasonable royalties payments; the excess part of such payments is taxed according to the laws of the source state.

Double taxation treaty with The Netherlands

With the Netherlands, royalties arising from Uganda to a Dutch resident may be taxed in the Netherlands. The royalties paid may also be taxed in Uganda, even though the beneficial owner of the royalties in a Dutch resident at a rate of 10% of the gross royalties.

Double taxation treaty with the United Kingdom

as per the agreement, royalties are taxable at the State of residence of the recipient of the royalties. The royalties may also be taxed at source at the rate of 15% of the gross amount where the beneficial owner is a non-resident contracting party. And where the party to whom the royalties arise is a PE, the income is charged a WHT as business profit according the source State corporate tax rate.
Interest payment

THINGS YOU NEED TO KNOW

Interest deductions are generally allowed in full, except where a non-resident controlled company (not a financial institution) has a foreign debt-to-equity ratio in excess of 2:1 during the income year. Interest payments to non-resident banks from funds borrowed for a business in Uganda is exempt from taxation. Uganda has a liberal exchange control policy; foreign currency remittances in to and out of the country may only be done through licensed commercial banks and/or foreign exchange bureaus.

1 Section 89 of the Act

WHAT IS LEFT BEHIND?

Interest payments from a person/entity resident in Uganda to a non-resident company are subject to a non-resident withholding tax of 15%. And, the branch of a non-resident company is taxed on any repatriated income at the rate of 15%.

Double tax agreement with The Netherlands

As per the tax agreement with the Netherlands, interest payments arising from Uganda to a Dutch resident may be taxed in the Netherlands. But, when the interest is taxed in Uganda, and the beneficial owner of the interest is a Dutch resident, the WHT is levied at 10% of the gross amount. In general interest payments are tax-exempt when paid to a financial institution, and or government agency.

Double tax agreement with the United Kingdom

With the UK, interest payments are generally taxable at the State of residence of the contracting parties. However, it may be taxed at source, at the rate of 15% of the gross income where the beneficial owner of the income is a resident of the other contracting State. The tax authorities of the contracting States may disallow and tax any excessive interest payments according to the Laws of the State.

Double tax agreement with Denmark

According to the tax treaty with Denmark, interest payments may be taxed at the State of residence of the beneficial owner of the gross income. However, the income may also be taxed at the State where it arises, the WHT is levied at 10% of the gross interest. And, interest payments from a contracting State to the government or its agency to the other contracting State is exempt from WHT.
INVESTMENT INFO

Zambia has a favourable investment climate with key economic (growth) sectors: Agricultural Sector, Energy, Mining, and construction. In a bid to foster investment the ‘Zambia Development Agency (ZDA)’, guarantees FDI and acts as one stop shop for business registration and licensing.

FISCAL INCENTIVES

Incentives for an investment of $500,000 or more in a priority sector abound:

- Companies operating under the ‘Multi- Facility Economic Zone’ (MFEZ) enjoy a corporate tax rate of 0% for an initial period of 5 years from the first year profits are made. For years 6 to 8 thereafter the corporate tax rate is 50% and 75% of the profits in year 9 to 10;
- Dividends are exempt from tax for 5 years from the year of first declaration; and;
- Improvement allowance of 100% on capital expenditure on improvement or for the upgrading of infrastructure;
- Customs duty of 0% for 5 years on machinery and equipment importation.
- Buildings for manufacturing, mining or hotels qualify for wear and tear allowance of 5% per year plus an initial allowance of 10%. Buildings for manufacturing also qualify for 10% investment allowance for the first year of use only.
- Losses in the mining sector incurred by companies in the extraction of base metals are carried forward for up to 10 years. Losses in other cases up to 5 years.

FOREIGN CURRENCY EXCHANGE

Foreign investors with Zambian registered foreign capital can transfer in foreign currency management fees, and proceeds of sales, and the principal/interest of any foreign loan; and the deductibility rules do not apply to interest payable on a bill of exchange drawn for 180 days or less.
THINGS YOU NEED TO KNOW

Professional, management and technical services fees paid wholly and exclusively in relation to income generation in a business resident in Zambia is fully deductible. Payments made for the purposes of technical education, for obtaining further experience, training or qualifications and on experiments or research relating to the business are deductible.

WHAT IS LEFT BEHIND?

In principle mining companies holding large-scale mining licenses are taxed at 30%. And the WHT on haulage is charged at a rate of 15% or as provided by the Commissioner. On the other hand, management consultancy fees are charged on non-residents at 20% of the gross income. While income from farming activities is taxed at 10%, income from export of non-trading products is taxed at 15%.
Double tax agreement with The Netherlands

Effective since January 1st 1983, directors fees accrued to Dutch residents may be taxed in Zambia. On the other hand, income from independent professional services arising from Zambia to a Dutch resident is tax exempt in Zambia. (Taxed in the Netherlands), unless the Dutch resident had a fixed base in Zambia for performing the activities/services.

Double tax agreement with the United Kingdom

In principle income from professional services derived by a UK resident in Zambia is exempt from WHT. Such income may however be taxed in Zambia if the service professional had a fixed base in Zambia available for performing the services. On the other hand directors fees and similar payments accruing to a UK resident may be taxed in Zambia.

Double tax agreement with Ireland

Professional services, management services, qualifying consultancy and technical services provided by an Irish resident in Zambia is exempt from WHT. Such “Professional services” includes independent scientific, literary, artistic, physicians, lawyers, engineers, architects, dentists and accountants.
Royalties

THINGS YOU NEED TO KNOW

Generally, royalty payments sourced in Zambia that exceed 62,500ZMK are taxed at the statutory rates otherwise tax exempt. As an incentive, royalties are freely transferred if the foreign investors had a Zambian registered foreign capital.

The sums paid in respect to royalties to entities within the ‘Economic Community of Central African States (ECCAS (in French; CEMAC-Communauté Économique des États de l’Afrique Centrale)) are deductible if they are reasonable. On the other hand, royalties paid to entities outside the ECCAS zone that participate in the management or capital of an entity resident in Cameroon are treated as a distribution of profits.

WHAT IS LEFT BEHIND?

Non-resident royalty payments arising from cinematographic films, patent, trademark, design or model, plan secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial scientific experience are charged a WHT; at a final rate of 15%, unless reduced by a DTA.
Double tax agreement with The Netherlands

Royalty payments to a Dutch resident arising from Zambia are taxable in the Netherlands. Such royalties may also be taxed in Zambia, at a rate of 10% of the gross amount. And, excess royalty payments by associated parties to the treaty are disallowed and the excess part of such payment is taxed according to the laws of the contracting State.

Double tax agreement with the United Kingdom

Royalty payment arising from Zambia to a UK resident may be taxed in the UK. The WHT on such payments if taxable in Zambia does not exceed 10% of the gross amount.

Double tax agreement with Ireland

As per the highly favourable tax treaty with Ireland, no WHT is levied on royalties arising from Zambia to an Irish resident.
Interest payments

THINGS YOU NEED TO KNOW

Further general incentives apply to interest payments.

- Payments to individuals during any one-month on any single savings or building society account that does not exceed 62,500ZMK is exempt from taxation.

With a thin cap ratio set at 3:1, the maximum deduction for debts set out by the ‘Banking and Financial Services Act’ must not exceed the minimum level¹. Foreign exchange losses incurred on borrowings used for the building of industrial or commercial buildings are deductible².

1 Section 43A, Page 46  
2 Section 29A, page 36, the Act.

WHAT IS LEFT BEHIND?

Zambia charges a non-resident WHT on every interest payment at a rate of 15% per annum, unless a double tax treaty reduces the rate.
DOUBLE TAX AGREEMENTS

Double tax agreements with The Netherlands

In principle, interest payments may be taxed at the State of residence of the contracting parties (exempt from taxation at source). Where the interest payments are taxed at source, the WHT is levied at 10% of the gross interest. And, where the interest payment accrues to a non-resident PE, the income is taxed as business profit.

Double tax agreements with the United Kingdom

As per the treaty with Ireland, no WHT is charged in Zambia for interest payment to an Irish resident. However, excessive interest payment between associated enterprises in the contracting States is disallowed.

Double tax agreements with Ireland

Same as the treaty with the Netherlands, the tax treaty with the UK, in principle obliges interest payments arising from Zambia to a UK resident to be taxable in the UK. However, where the interest is taxed at source (Zambia), the WHT is levied at 10% of the gross interest.
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TPA Global is an independent professional service and solution provider of expert transfer pricing, valuation and customs services. With our vast global network covering over 50 countries and a highly diverse staff with profound knowledge, extensive professional and industry experiences, we deliver premium quality services and solutions customized to your global business.

We are dedicated in helping our clients:

- Reduce costs and improve bottom line performance;
- Optimize supply chain operations in a tax efficient manner;
- Simplify the management of tax and transfer pricing processes;
- Mitigate tax, transfer pricing and customs risks in cross-border transactions;
- Resolve tax, transfer pricing, valuation and customs related disputes and controversy.