



ICLG

The International Comparative Legal Guide to:

Corporate Tax 2018

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Contributing Editor
William Watson,
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Editor
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Chief Operating Officer
Dror Levy

Group Consulting Editor
Alan Falach

Publisher
Rory Smith

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Global Legal Group Ltd.
59 Tanner Street
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Fax: +44 20 7407 5255
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Armenia

Concern Dialog law firm

Rustam Badasyan



1 Tax Treaties and Residence

1.1 How many income tax treaties are currently in force in your jurisdiction?

There is a wide network of international treaties for the avoidance of double taxation and the prevention of tax evasion. Such treaties have been concluded between 46 countries (please find the list at the following link: <http://taxservice.am/Content.aspx?itn=TLInternationalTreaties>).

1.2 Do they generally follow the OECD Model Convention or another model?

They usually follow the OECD Model Convention.

1.3 Do treaties have to be incorporated into domestic law before they take effect?

International treaties come into force only after being ratified or approved. International treaties not complying with the Constitution cannot be ratified. Prior to the ratification of an international treaty, the Constitutional Court determines the compliance with the Constitution of the commitments stipulated therein. The National Assembly ratifies international treaties.

1.4 Do they generally incorporate anti-treaty shopping rules (or "limitation on benefits" articles)?

LOB articles are not incorporated into the international treaties. As an example of such an article, see the treaty between Great Britain and Armenia; according to Article 22, no relief shall be available if the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the income is paid, was to take advantage of this Article by means of that creation or assignment.

1.5 Are treaties overridden by any rules of domestic law (whether existing when the treaty takes effect or introduced subsequently)?

International treaties are a constituent part of the legal system of the Republic of Armenia ("RA"). If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail.

1.6 What is the test in domestic law for determining the residence of a company?

All companies duly registered in Armenia are regarded as resident.

2 Transaction Taxes

2.1 Are there any documentary taxes in your jurisdiction?

There are no documentary taxes in Armenia.

2.2 Do you have Value Added Tax (or a similar tax)? If so, at what rate or rates?

The VAT rate is 20 per cent which is applicable to the taxable turnover.

2.3 Is VAT (or any similar tax) charged on all transactions or are there any relevant exclusions?

VAT is an indirect tax, which is applicable when carrying out transactions, such as the supply of goods, rendering of services, importation of goods, and free or partially free consumption.

2.4 Is it always fully recoverable by all businesses? If not, what are the relevant restrictions?

VAT paid for the importation of goods and for acquired goods or services in the territory of RA can be deducted from the VAT derived from VAT-taxable transactions. VAT derived from zero-rated transactions or overpaid VAT amounts may be refunded after an exploration or tax check carried out by the tax authorities. Other VAT debit amounts which have not been used for deduction purposes can be refunded starting from year 2018, when the Tax Code of RA shall come into force. VAT debit amounts may not be refunded if an entity loses its status as a VAT-payer. In this case, such amount may be regarded as losses for the purposes of Profit Tax. There are some limitations on reorganisation; there is a lack of legal regulation regarding the transfer of debit amounts in case of reorganisation, which may result in the restriction of such right. This lack of regulation has been overridden by the Tax Code of RA.

2.5 Does your jurisdiction permit “establishment only” VAT grouping, such as that applied by Sweden in the *Skandia* case?

A practice in Armenia which is similar to VAT grouping is applicable only in the case of joint ventures, where one of the members of a group is deemed a responsible party for calculation and payment of VAT. Not being regarded as an independent legal person, the branch cannot be considered as a party to a joint venture; only the parent company can be a member of such agreement. In this case, only an Armenian-resident company may be defined as the responsible party for the purposes of VAT, and any service provided by a parent company in connection with the joint venture will be regarded as a VAT-taxable transaction.

2.6 Are there any other transaction taxes payable by companies?

Turnover tax is a special type of tax replacing VAT and Profit Tax for companies. The turnover tax rate is 5 per cent for service and supply of goods, excluding expenses.

2.7 Are there any other indirect taxes of which we should be aware?

Excise tax is applicable in case of production or import of some special goods (for example, benzene, some alcohol products, cigarettes, etc.). Excise tax rates were increased by the Tax Code of RA and shall be applicable from 1 January 2018.

3 Cross-border Payments

3.1 Is any withholding tax imposed on dividends paid by a locally resident company to a non-resident?

Dividends paid to foreign corporate shareholders shall be taxed at the rate of 10 per cent.

3.2 Would there be any withholding tax on royalties paid by a local company to a non-resident?

Royalties paid to a non-resident shareholder shall be taxed at the rate of 10 per cent.

3.3 Would there be any withholding tax on interest paid by a local company to a non-resident?

Interest paid to a non-resident shall be taxed at the rate of 10 per cent.

3.4 Would relief for interest so paid be restricted by reference to “thin capitalisation” rules?

Thin capitalisation rules are not intended for foreign affiliates but are of a general nature. Some maximum amounts are set, above which the deduction of paid interest is not allowed, according to the Law on Profit Tax. The deduction of paid interest for the use of loans or credits in an amount exceeding double the bank interest rate established by the Central Bank of RA, is not allowed (currently the rate is 12 per cent, so the amount exceeding 24 per cent is not

deductible). Interest to be paid on loans received by financial organisations is not deductible if it exceeds double the equity capital; in the case of non-financial organisations, such interest is not deductible if it exceeds nine times the equity capital. Interest to be paid on loans received by financial organisations is not deductible if the received loan is granted to a third party without interest, or if the amount of interest is less than it would have been, had the loan been received from a financial organisation.

3.5 If so, is there a “safe harbour” by reference to which tax relief is assured?

There is no “safe harbour” to assure tax relief (deduction).

3.6 Would any such rules extend to debt advanced by a third party but guaranteed by a parent company?

No such extension is set by law.

3.7 Are there any other restrictions on tax relief for interest payments by a local company to a non-resident?

No other restriction is available.

3.8 Is there any withholding tax on property rental payments made to non-residents?

Rental payments paid to non-residents shall be taxed at the rate of 10 per cent.

3.9 Does your jurisdiction have transfer pricing rules?

According to the Tax Code of RA (coming into force on 1 January 2018), transfer pricing rules are applicable for taxpayers who pay VAT and/or Profit Tax and/or royalties for the use of natural resources. Transactions between interconnected taxpayers who fall into the above-mentioned categories are regarded as supervised transactions. If the amount of all supervised transactions of a taxpayer exceeds AMD 200,000,000 for the current year, transfer pricing rules may apply. In principle, a transfer price should match either what the seller would charge an independent “arm’s length” customer, or what the buyer would pay an independent “arm’s length” supplier.

4 Tax on Business Operations: General

4.1 What is the headline rate of tax on corporate profits?

According to the Law on Profit Tax, the amount of the Profit Tax in respect of the taxable profit shall be calculated at a rate of 20 per cent. This rate is not changed by the Tax Code of RA.

4.2 Is the tax base accounting profit subject to adjustments, or something else?

According to the Law on Profit Tax, when determining taxable profit, deductions from gross income are allowed as mentioned above (expenses, losses and other deductions). The amount of the same deductions may be deducted from gross income only once. The same approach is set in the Tax Code of RA.

4.3 If the tax base is accounting profit subject to adjustments, what are the main adjustments?

1. The main adjustments are as follows:
 - a) the outflow and decrease of assets, or the growth of liabilities within the reporting year which leads to the decrease of the equity capital of a taxpayer, shall be considered as expenses; and
 - b) expenses incurred by a taxpayer exclusively and directly on: the production of goods; the provision of services; progress and/or realisation in the goods (service) market; consulting and legal services; correction of shortcomings found in the course of the accompanying activities; guarantee control and exploitation; the preparation, mastering and conservation of production (construction); the safety of property; the training of staff; as well as other expenses related to and necessary for the receipt of income, shall be considered as necessary expenses.
2. Expenses shall include, in particular:
 - a) material expenses;
 - b) labour costs and other payments deemed equal thereto;
 - c) mandatory social insurance payments;
 - d) depreciation allowances;
 - e) insurance premiums;
 - f) non-refundable (non-credited) taxes, duties and other obligatory payments;
 - g) interest on loans and other borrowings;
 - h) payments on guarantees, letters of guarantee, letters of credit and bank, insurance and lending organisation services;
 - i) advertisement expenses;
 - j) representative expenses;
 - k) business trip expenses;
 - l) court expenses;
 - m) compensation for the damage caused;
 - n) fines, penalties and other proprietary sanctions, with the exception of cases defined in article 16, clause "g", paragraph 1 of this law;
 - o) expenses arising from staff recruitment;
 - p) expenses arising from audit, legal and other consulting, information and administrative services;
 - q) expenses arising from factoring and trust operations;
 - r) reduced expenses revealed in the reporting year for the three directly preceding years; and
 - s) current expenses incurred on fixed assets.

Natural and other losses are also deducted from gross income.

According to the Law on Profit Tax, there is also a definition of "Income not recognised as such". Such types of income are not calculated for tax purposes, and are not calculated on gross income.

4.4 Are there any tax grouping rules? Do these allow for relief in your jurisdiction for losses of overseas subsidiaries?

Tax grouping rules are intended for joint ventures. Two different legal persons can act based on a joint venture agreement without forming a new legal person. In this case, one of the members shall be responsible for the calculation and payment of taxes, but both members are jointly and severally liable for tax purposes. There are no special rules for relief of losses of overseas subsidiaries. As

taxable income for residents also includes any income received overseas, such relief may be granted for any losses attributable to the income received overseas if such income is not taxed in the other State. We shall deal with double taxation treaties for these cases.

4.5 Do tax losses survive a change of ownership?

In cases of change of ownership (change of shareholders), tax losses will survive, and are attributable to the same legal person. If ownership changes as a result of reorganisation of the company, there might be some difficulties, as the article states that tax liabilities shall be transferred to the new entity, although there is no mention of losses; nevertheless, bearing in mind many other regulations, tax losses will survive a change of ownership.

4.6 Is tax imposed at a different rate upon distributed, as opposed to retained, profits?

Tax is imposed at the rate of 20 per cent for taxable income notwithstanding the distributed or retained profits. Only one exception is intended in the Tax Code of RA. The distribution of dividends will become taxable for individuals in 2018 at the rate of 5 per cent; legal persons are deemed as tax agents for shareholders. In the case of reinvesting the distributed dividends in the charter capital of the legal person, no tax will be applicable.

4.7 Are companies subject to any significant taxes not covered elsewhere in this chapter – e.g. tax on the occupation of property?

Fixed land and property taxes are set at different rates based on the type and size of the property. A taxpayer shall pay royalties on the utilisation of natural resources; there are some other natural utilisation payments. Taxes for environmental protection are also set by the law.

5 Capital Gains

5.1 Is there a special set of rules for taxing capital gains and losses?

According to the Law on Profit Tax, the difference between distributed and nominal value of shares shall not be deemed as income and thus is not taxable. Capital gains received from the alienation of property or other assets are taxable for non-residents.

5.2 Is there a participation exemption for capital gains?

No such exemption is prescribed.

5.3 Is there any special relief for reinvestment?

There is no special relief for reinvestment.

5.4 Does your jurisdiction impose withholding tax on the proceeds of selling a direct or indirect interest in local assets/shares?

Withholding tax is imposed at the rate of 10 per cent.

6 Local Branch or Subsidiary?

6.1 What taxes (e.g. capital duty) would be imposed upon the formation of a subsidiary?

No such taxes are applicable.

6.2 Is there a difference between the taxation of a local subsidiary and a local branch of a non-resident company (for example, a branch profits tax)?

A local subsidiary of a non-resident is a legal person which is deemed as resident. A local branch of a non-resident company is deemed as a Permanent Establishment in Armenia; it may be registered and have a Taxpayer Number. A local branch is not deemed as a separate legal entity; the parent company may deduct losses attributable to the branch.

6.3 How would the taxable profits of a local branch be determined in its jurisdiction?

A local branch shall submit tax returns on its income and losses on general conditions. The parent company must register separate accounting for the income and losses of the branch.

6.4 Would a branch benefit from double tax relief in its jurisdiction?

If a tax treaty includes a special provision that some type of income shall be taxed only in another State, the branch will be exempted from paying taxes on such income in Armenia.

6.5 Would any withholding tax or other similar tax be imposed as the result of a remittance of profits by the branch?

It will be regarded as a transfer within one legal entity and not be taxed.

7 Overseas Profits

7.1 Does your jurisdiction tax profits earned in overseas branches?

Branches are not regarded as a legal person; they form a part of parent company. Taxable income is derived both from Armenian sources and from overseas. In the case that income attributable to the branch is taxed in another State, such income may be exempted from tax in Armenia according to the tax treaties.

7.2 Is tax imposed on the receipt of dividends by a local company from a non-resident company?

Dividends received by the company which pays Profit Tax are deemed as deductible from the gross income, and are therefore not taxed.

7.3 Does your jurisdiction have “controlled foreign company” rules and, if so, when do these apply?

There are no controlled foreign company rules specifically set in the

law. Artificial deferral of tax by using low-tax offshore areas may qualify as tax evasion and lead to criminal liability.

8 Taxation of Commercial Real Estate

8.1 Are non-residents taxed on the disposal of commercial real estate in your jurisdiction?

Non-residents have to pay VAT on the disposal of commercial real estate. An Armenian-resident VAT-payer shall act as a tax agent in this case, and shall calculate and pay VAT at the rate of 20 per cent. According to the legislation currently in force, if the Armenian counter-agent is not regarded as a VAT-payer, there is no mechanism for payment of VAT either by the non-resident or by the counter-agent. This gap was eliminated by the Tax Code of RA, which will come into force on 1 January 2018; if the Armenian counter-agent is not regarded as a VAT-payer, the foreign company shall calculate and pay VAT on its behalf. The income received by the non-resident from the disposal of commercial real estate is also subject to withholding tax at the rate of 20 per cent.

8.2 Does your jurisdiction impose tax on the transfer of an indirect interest in commercial real estate in your jurisdiction?

This matter will be regulated according to question 5.4.

8.3 Does your jurisdiction have a special tax regime for Real Estate Investment Trusts (REITs) or their equivalent?

No such regime is intended.

9 Anti-avoidance and Compliance

9.1 Does your jurisdiction have a general anti-avoidance or anti-abuse rule?

These rules are generated in the chapter of the Tax Code of RA which sets out responsibility for breaching tax provisions. Criminal liability is intended by the Criminal Code of RA for tax evasion. Tax evasion is described as entering obviously false data into tax returns or not providing tax returns which result in bringing damage to the State in large amounts.

9.2 Is there a requirement to make special disclosure of avoidance schemes?

No such requirement is provided by law.

9.3 Does your jurisdiction have rules which target not only taxpayers engaging in tax avoidance but also anyone who promotes, enables or facilitates the tax avoidance?

According to the Criminal Code of RA, anyone who promotes, enables or facilitates tax avoidance can be regarded as a “Helper” and may be liable for promoting tax evasion. Please also note that a cross-checking procedure may be implemented if, during the tax audit procedure, there is evidence that the counter-agent of the taxpayer being audited is engaged in unlawful actions relating to tax evasion.

9.4 Does your jurisdiction encourage “co-operative compliance” and, if so, does this provide procedural benefits only or result in a reduction of tax?

Recently the system of a “law-abiding taxpayer” was implemented. Taxpayers may apply for and receive special reference under this system, which enables them to be qualified as low-risk. This means that tax audit procedures cannot be imposed more than once in a five-year period. In order to be qualified as such, a taxpayer must submit all tax returns on time, in order not to be held liable for breaching tax legislation.

A horizontal monitoring system was introduced in the Tax Code of RA. This enables large taxpayers to cooperate with the tax authorities. All the data relating to transactions is visible to the tax authorities by means of a special electronic system. A taxpayer may also apply for a tax ruling via this system, and the tax authorities shall provide the answer within the time limits set by law. For the duration of the agreement, taxpayers shall not be included in the high-risk group (this means that a tax audit cannot be implemented for each year).

10 BEPS and Tax Competition

10.1 Has your jurisdiction introduced any legislation in response to the OECD’s project targeting Base Erosion and Profit Shifting (BEPS)?

No such legislation has been introduced. The Minister of Finance of RA has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, on behalf of Armenia. The necessary legal basis will be developed after ratification of the treaty.

10.2 Does your jurisdiction intend to adopt any legislation to tackle BEPS which goes beyond what is recommended in the OECD’s BEPS reports?

See question 10.1 above.

10.3 Does your jurisdiction support public Country-by-Country Reporting (CBCR)?

This system has not yet been incorporated.

10.4 Does your jurisdiction maintain any preferential tax regimes such as a patent box?

The legislation provides a possibility of forming a free economic zone. The plan and aims of setting up such zone have been provided to the Government of RA, which shall adopt a decision on its formation. The supply of goods and rendering of services are free from VAT for organisations operating in such zones; profit is exempted from Profit Tax entirely. Currently, a company operating in the IT sector manufacturing mobile and other electronic equipment, is working under a free economic zone regime.

There is also an incentive whereby start-up IT companies may apply for a tax certificate exempting them from all applicable taxes (VAT, Profit Tax). The income of the employees is taxed at the rate of 10 per cent (in general income tax rates, these are 24.4 per cent for income not exceeding AMD 120,000 and 26 per cent for amounts exceeding this).



Rustam Badasyan

Concern Dialog law firm
1 Charents str., office 207
Yerevan
Armenia

Tel: +374 94 910017
Email: roustam.badasyan@dialog.am
URL: www.dialog.am

Rustam Badasyan is a Junior Partner at Concern Dialog law firm and is responsible for the firm’s Tax Law practice. Rustam Badasyan has previous work experience in the public sector, in the Pre-Investigation and Legal departments of the State Revenue Committee of the Republic of Armenia.

Rustam Badasyan has also been involved in consultancy on tax optimisation matters relating to the acquisition of a major mining company in Armenia and on tax consequences relating to the issuance of Eurobonds by one of the major financial organisations. This also included consulting on the implementation of tax treaties.

Rustam Badasyan has significant experience in the representation of entities in tax cases during administrative procedures and in court. Successful cases include representation of a mining company in connection with the interpretation of the legislation concerning the payment of royalties for the usage of natural resources, and representation of a branch of an international entity concerning VAT-taxable transactions implemented by the parent company in Armenia and attributed to the branch by the tax authorities.

Rustam Badasyan is member of the Chamber of Advocates of the Republic of Armenia.



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59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk

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