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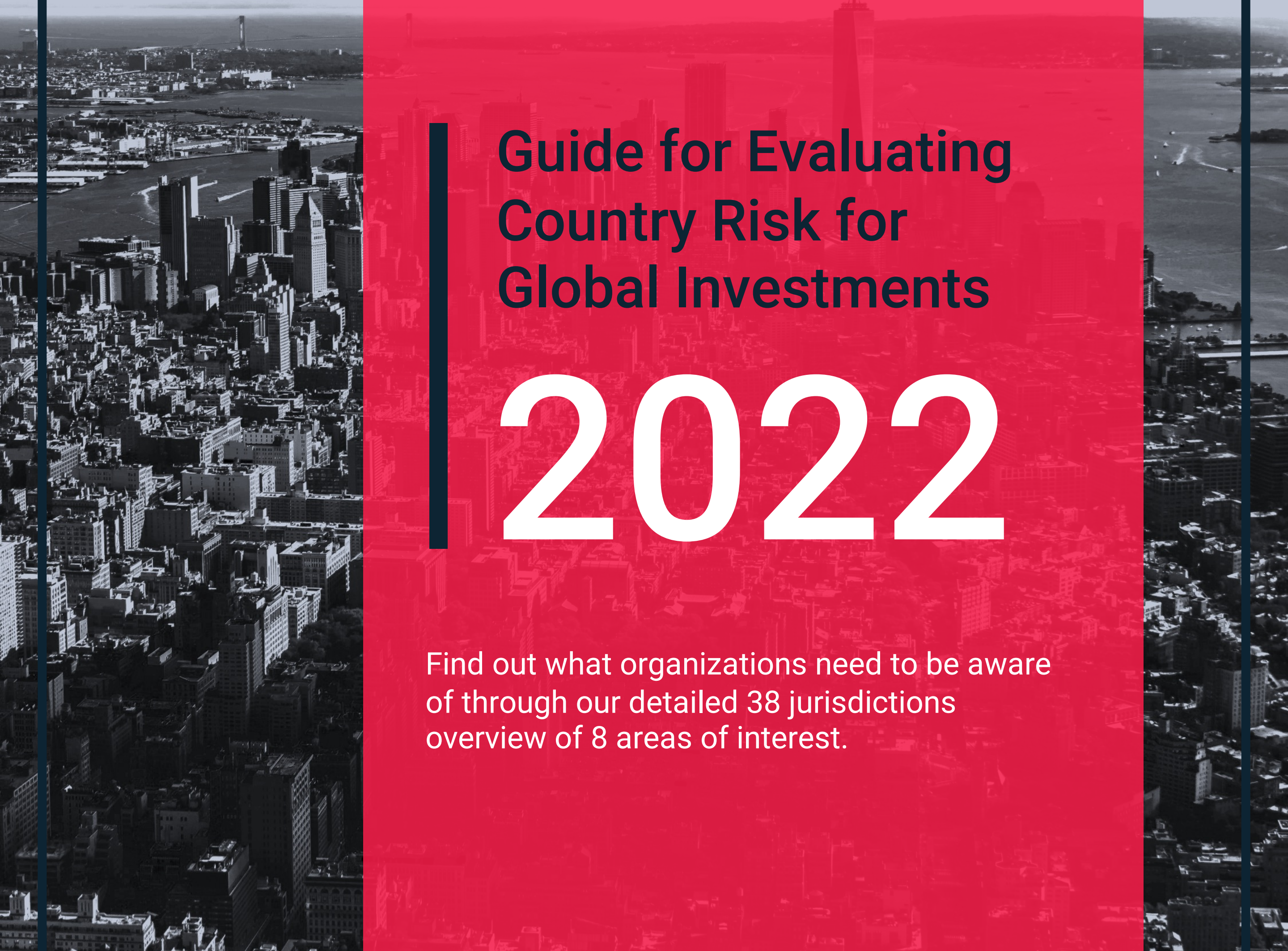

Guide for Evaluating Country Risk for Global Investments

2022

Find out what organizations need to be aware of through our detailed 38 jurisdictions overview of 8 areas of interest.

First Law
International

FOREWORD

Orlando Casares
Chief Executive Officer

Following the 35% COVID-induced drop in global foreign investment, we are seeing a confident rebound in Foreign Direct Investment ("FDI") growth globally and a renewed interest in pursuing both greenfield and brownfield investment opportunities from corporate clients.

As the global elite network of law firms spanning across 100+ countries, it is our responsibility to guide our clients and advise them on potential investment opportunities. It is no longer sufficient for law firms to introduce their clients to a well- known financial investment firm. Indeed, more and more partners in law firms are expected to advise on the location of good investment opportunities and act as the mediator between prospective buyer and seller while looking after the interests of their clients, who are often based offshore.

At FLI we are confident that this year's edition of the Guide for Evaluating Country Risk will expand on its predecessor both in jurisdictional coverage and depth of content. This guide provides the reader with facts, figures and opinions that are not readily available in the marketplace, and which can only be provided by local law firms with the relevant internal know-how.

This guide seeks to raise questions while providing insight to assist the reader's search for the right investment opportunity, be it for their own company or for a corporate client.

TABLE OF CONTENTS

0I. AFRICA & MIDDLE EAST

II. THE AMERICAS

III. APAC

IV. EUROPE

Chapter I.

AFRICA & MIDDLE EAST

CONTRIBUTING FIRMS

Angola	MC&A CARRAZEDO&PASCOAL Associados
Ghana	Centurion Law Group
Israel	Amit, Pollak, Matalon & Co.
Nigeria	Centurion Law Group
United Arab Emirates	Zu'Bi & Partners

ANGOLA

The Market

Major investments in Angola have diversified from the oil and gas sector to benefit infrastructure, construction, agriculture and hotels. The most active sectors in Angola are the oil, construction, banking, pharmaceutical and clinical (dental and aesthetic) sectors. Several international banks and financial institutions have set up local branches, providing the country with a more developed banking system.

Legal System

The most notable law governing foreign investment is the Private Investment Law (Law No 10/18). Passed in 2018, it facilitates the procedure of approval of private investment, eliminating a minimum necessary value of investment from private investors. Despite this, delays are still seen in approving foreign investment, negotiating exchange control regulations and exporting dividends or profits.

The relevant authority for the key Private Investment Law is the Private Investment and Export Promotion Agency (AIPEX), though the importation and exportation of all foreign investment must also be approved by The Central Bank of Angola (BNA).

Angola entered into Double Taxation Treaties (DTT) with Portugal, United Arab Emirates and China. The country also ratified multiple Bilateral Investment Treaties (BITs).

Angola is a member of the World Trade Organisation (WTO), which most notably includes the country in the African Free Trade Zone. Angola is also a member of the Southern African Development Community (SADC), which promotes further regional socio-economic cooperation and integration among 16 countries in southern Africa.

Individual Investors

Foreign investors may obtain either a tourism visa – for business prospecting reasons – or an investor visa, which must be applied for in Angola. If an investor is registered by AIPEX under the terms of the Private Investment Law, visas can be issued to the investor's agents or lawyers for the purposes of entry into Angola to execute an investment proposal. The investor visa allows multiple entries into Angola over a two-year period.

Residents are liable to pay taxes on worldwide income, whether sourced from industrial or commercial activities. Non-resident natural persons are taxed only on income obtained in Angola.

Restrictions

It is mandatory for investments in sectors like oil and gas (exploitation) to involve an Angolan company or individual; the investments in these areas are still regulated by special legislation and maintain an exception to the general regime – Angolan companies or individuals must hold at least 51% of the share capital.

Employers are subject to the 'Angolanisation' policy – Angolan citizens should be preferably hired over foreign citizens. Angolan law expressly states that employers can only employ non-resident foreign employees if their staff (when of more than

Contributing firm

MC&A CARRAZEDO&PASCOAL Associados

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- *Duarte Marques da Cruz, Partner*

ANGOLA

5 employees) is composed of at least 70% Angolan employees.

The BNA controls whether profits can be remitted abroad, restricting exchange and currency regulations. The process is slowed due to the lack of international currency (in particular US dollars) in Angolan commercial banks. Furthermore, the process of acquiring land in Angola is restricted due to bureaucracy and the complex documentation involved.

The restrictions that Angolan law imposes to Angolan companies operating abroad are mainly related to:

- Tax issues: companies incorporated in Angola pay taxes over all the income they make, regardless of the place where the income comes from.
- Capital import: under Angolan exchange legislation, it is necessary to obtain a capital import license to be able to move funds to Angola from abroad.

Imports

A general tax rate of 14% applies to all commercial goods and services, although Angola is part of the Southern African Development Community, it benefits from free-trade among African countries. As Angola is part of the WTO, local technical and standard regulations are, for the most part, compatible with international standards.

Structuring & Tax

Foreign investment is regulated under the Private Investment Law and projects are subject to approval from AIPEX.

The most common legal structures are private limited liability companies and public limited liability companies. There are 4 types of corporate income taxes that businesses are liable for to pay, including a business income tax rate of 35%, as well as investment income tax, special sector taxation (oil, mining and construction) and labour income tax. However, a reduced business income tax rate of 15% is applicable specifically to agricultural, forestry and livestock activities.

Reforms

There is currently public discussion regarding a new law that imposes restrictions on the importation of goods, e.g., requiring that a certain percentage of the goods must be produced by local companies.

Incentives

The Private Investment Law establishes special incentives, which may be granted depending on where a project is to be implemented. The law divides the country into four different zones:

- Zone A: Provinces of Luanda, some municipalities of Benguela and Huíla and the municipality of Lobito.
- Zone B: Provinces of Bié, Bengo, Cuanza-Norte, Cuanza-Sul, Huambo, Namibe and other municipalities in the Provinces of Benguela and Huíla.
- Zone C: Provinces of Cuando Cubango, Cunene, Lunda-Norte, Lunda-Sul, Malanje, Moxico, Uíge and Zaire.
- Zone D: Province of Cabinda.

Private investment in Zone D grants larger benefits than the other zones. Profits resulting from a private investment may be eligible for special benefits regarding the nominal rate of industrial tax for a period of 4-10 years, depending on the amount of investment and the total added value the project provides to Angola as a country.

Private investors seeking to benefit from tax incentives must present an investment project that not only complies with the Private Investment Law and is approved by the BNA, but also fulfils the legal and tax conditions to develop their activity and has an organised accounts system duly certified by an independent auditor.

A reduced business income tax rate of 15% is applicable specifically to agricultural, forestry and livestock activities.

GHANA

The Market

Ghana has a strong performance when it comes to inward investment and is an attractive international destination for inward investment. Reports from the Ghana Investment Promotion Centre (GIPC), show that despite the persistence of the Covid-19 pandemic, the flow of foreign direct investment increased over the first half of 2020. The country's most active sectors are the service industry, manufacturing, trading and construction. However, Ghana has an exceptionally high interest expenditure to revenue ratio – general government debt was at an estimated 83% at the end of 2021. This issue of public debt has a high likelihood of discouraging investors in the long-term.

Legal System

The key laws governing foreign investment in Ghana are:

- The Ghana Investment Promotion Centre Act, 2013 (Act 865).
- The Companies Act, 2019 (Act 992).
- The Free Zone Act, 1995 (Act 504).
- The Income Tax Act, 2015 (Act 896).

The Ghana Investment Promotion Centre (GIPC) is the foremost investment promotion agency in Ghana. The GIPC is guided by the provisions of the Ghana Investment Promotion Centre Act, 2013 (Act 865) in its operations. There is also the Ghana Free Zones Authority, established under the Ghana Free Zones Act, 1995 (Act 504) to provide an enabling environment for the establishment of free zones to promote economic development in the country.

Ghana also holds investment agreements with other countries and is a member of the Trade Organization (WTO), the International Monetary Fund (IMF) and the World Bank.

Individual Investors

Foreign individuals entering Ghana require a visa. Where the foreign individual is entering Ghana for business purposes, they are required to state this one their application and furnish evidence of the fact, such a letter from their firm.

The tax regime in Ghana dictates that an individual is liable to pay income tax where they are resident in Ghana, or their income has a source in Ghana.

Restrictions

Under the GIPC Act, foreigners are excluded from participating in the following sectors:

- The production of exercise books and other basic stationery.
- The sale of goods or the provision of services in a market, petty trading or hawking or selling goods in a stall at any place.
- Operation of a taxi or car rental service with a fleet of less than 25 vehicles.
- Operation of a beauty salon or a barbering salon.

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- *Yorm Ama Abledu, Partner*

GHANA

- The printing of recharge scratch-off cards for the use by subscribers of telecommunications services.
- The retail of finished pharmaceutical products.
- The production, supply, and retail of sachet water.
- Pool betting business and lotteries (excluding football pool).

The Stool, Family and Individuals own about 80% of the lands in Ghana and the State owns the rest. Land from a stool must be purchased from the occupant of the stool with the consent of the elders of the stool; Family land must be purchased from the head of family with the consent of the principal members of the family; state land from the Lands Commission. The purchaser must always ensure that land is bought from the authorized person and the documents are duly witnessed. In order for the above-mentioned entities to validly sell land, they must comply with the statutory and customary rules on land sale.

In addition, according to Article 266 (1) of the 1992 Ghana Constitution, a non-citizen of Ghana shall not hold a freehold interest in or over any land in Ghana and shall not hold a leasehold interest for a term longer than 50 years at any one time.

If a company has one or more foreign shareholders, different minimum stated capital requirements apply to it. The Minimum Capital Requirements are provided for by the GIPC.

In a fully foreign owned company, the minimum stated capital requirement is USD 500,000. In a joint venture between a non-Ghanaian and a Ghanaian the minimum stated capital is USD 200,000.

Imports

The Customs Excise and Preventive Service prohibits the import of goods like narcotics, mercuric medicated soap, toxic waste, contaminated goods, certain tobacco products, certain agricultural material and other goods prohibited under local laws, like used refrigerators and air conditioners.

Ghana's import regime has been harmonized with the Economic Community of West African States (ECOWAS) trade liberalization program. This harmonized system has only four ad valorem import duties (0%, 5%, 10%, 20%), the standard rate being 20%. A 0% rate duty continues to apply to agricultural and industrial machinery, solar, wind, and thermal energy, and educational materials.

Structuring & Tax

Foreign investment, according to the GIPC can be made in either cash or kind. Depending on whether the investment is in cash or in kind, the procedure for bringing in the investment varies.

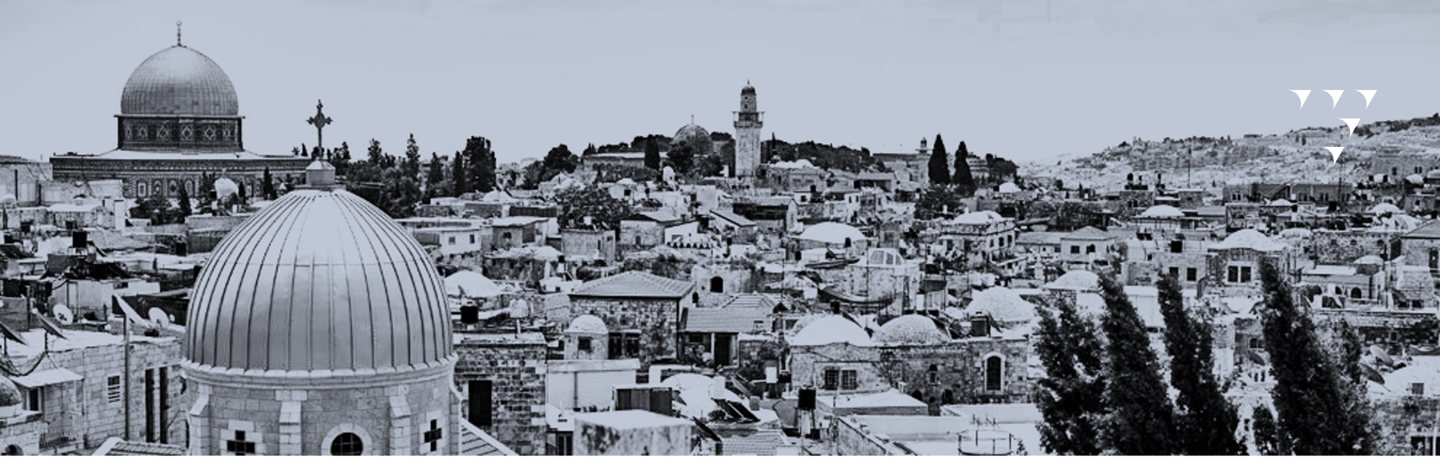
A business is liable to pay tax in Ghana where the income of the business has a source in Ghana or where the business is resident in Ghana for tax purposes. A business' income will be deemed to have a source in Ghana where it accrues in or is derived from Ghana. Corporate income tax is applied at 25% and varied taxes apply to specific sectors.

Incentives

To encourage foreign investment, tax holidays are available for businesses engaged in the agriculture, manufacturing for export trade or using predominantly raw materials, production of agricultural equipment, construction and building, mining and tourism.

Some other incentives include exemption from customs import duties on some plant and machinery, reduced corporate income tax rates, capital allowances on plant and machinery, and guaranteed free transfer of dividends or net profits, and fees and charges in respect of a technology transfer.

0% rate duty continues to apply to agricultural and industrial machinery, solar, wind, and thermal energy, and educational materials.



ISRAEL

The Market

The Israeli market has experienced steady growth in recent years, reaching a total transaction scale of USD 20.4 billion in 2019. Active sectors include high-tech, energy, life science and pharma. The COVID-19 pandemic has caused an economic crisis that put an end to a decade of steady economic growth in Israel. However, the funds currently available and the low interest environment make for unique market conditions which carry plenty of significance in the recovery process of the economy.

Legal System

The acquisition of an Israeli publicly traded company is regulated primarily by the Companies Law, 5759-1999 (the 'Companies Law'), the Securities Law, 5728-1968 and the regulations, rules and opinions promulgated under these laws.

Other relevant regulations include the Economic Competition Law and the Income Tax Ordinance (New Version).

The primary regulators with respect to public merger and acquisition (M&A) transactions in Israel are the :

- Israel Securities Authority (ISA);
- Israel Tax Authority (ITA);
- Israel Competition Authority;
- Israeli Innovation Authority (IIA);
- Israeli Registrar of Companies.

Israel also holds trade and investment agreements with other countries and is a member of the World Trade Organization (WTO), the International Monetary Fund (IMF) and the World Bank.

Individual Investors

Typically, business visas are provided to most visitors upon entry. However, citizens of certain countries (including the majority of APAC and MENA countries) need to request a visa ahead of time.

Israeli resident companies are subject to tax on worldwide profits and gains, with credit granted for overseas taxes in certain countries. A non-resident company is subject to tax only on Israeli-source profits, which includes, inter alia, income deriving from a permanent Israeli establishment or income accrued and produced in Israel.

Restrictions

Foreign entities can freely purchase and sell assets and securities in Israel, and there are currently no sectors in which FDIs are categorically prohibited. Israel does, however, possess a series of stand-alone, sector-specific FDI regulations and requirements.

These restrictions and requirements are sometimes found with respect to investment in companies whose area of activity impacts national security or public utilities and infrastructures. These requirements may also be the result of terms included in governmental licences, public tenders or concessions.

Contributing firm

Amit, Pollak, Matalon & Co.

ISRAEL

Under Israel's regulatory structure, regulators overseeing a specific sector will generally be able to exercise relatively wide discretion regarding the issuance and revocation of licences, concessions and permits. In the framework of such discretion, regulators can include specific conditions, restrictions or approval requirements regarding FDIs and to alter them. Generally, the exercise of regulatory discretion, as well as any action by a regulator, is subject to the principle of legality, the rules of the administrative process and the principles of judicial review of administrative discretion.

Imports

Although there might be local peculiarities in safety regulations and standards applicable to commercial goods, Israel is making significant strides to locally adopt the European or American standards as its own – without any changes.

The United States-Israel Free Trade Agreement (FTA) has eliminated almost all tariffs between the US and Israel, leaving Israel's agricultural sector as the only one with substantial barriers. The FTA also provides for a joint committee comprised of representatives from both countries to review the functioning of the agreement.

Structuring & Tax

Foreign individuals investing in Israel either make direct investments by foreign company or the formation of an Israeli subsidiary which will make the investment directly.

Incentives

The Israeli Innovation Authority (IIA) has set up the following programmes to attract foreign investment:

- The Global Enterprise Collaboration Program – designed to encourage collaboration between Israeli start-ups and multinational corporations (MNCs), combining the highly creative and efficient R&D capabilities of the Israeli start-ups with the strong commercialization, manufacturing and marketing capabilities of the MNCs. As part of the program, the Israeli start-ups and MNCs collaborate on a joint venture (JV) of common interest. The IIA provides financing to the JV equal to 20-50% of the R&D budget. In addition, the MNC provides in-kind resources and support to the Israeli company in the form of consultation and services. The Israeli company may also provide the MNC with a non-exclusive license to the intellectual property. The program features many leading MNCs, such as Infosys, DuPont, Microsoft, P&G, Cisco, General Electric, IBM and Intel.

- Technological Incubator Program – designed to support innovative, high-risk, early-stage technology entrepreneurships experiencing difficulties securing private financing, and to encourage seed investments through a technological innovation environment and to support start-ups in complex and unique high-tech fields (e.g., bio-convergence, clean-tech, agro and food-tech, life sciences, artificial intelligence (AI) and industry 4.0).

In the case of the Technological Incubator Program, the Israeli Government will assist the Incubator's portfolio companies (the 'Incubator Companies') by offering grants for funding R&D and commercialization activities (the 'Government Participation'). When approving an Incubator Company, the IIA also approves a budget for such project (the 'Approved Budget'), which consists of the Government Participation and the amounts to be provided by the Incubator and third parties. Each Incubator Company shall be entitled to receive an aggregate Approved Budget of up to NIS 6.5 million.

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In the case of the Technological Incubator Program, the Israeli Government will assist the Incubator's portfolio companies by offering grants for funding R&D and commercialization activities.

NIGERIA

The Market

With the largest population and economy in Africa, Nigeria is an attractive consumer market for investors and traders, offering abundant natural resources and a low-cost labor pool. The most active sectors for investment are oil – which accounts for approximately 10% of Nigeria's GDP, 70% of the country's revenue, and more than 83% of the country's export earnings – fintech, agriculture, manufacturing and service-related industries.

Legal System

The primary laws which control and regulate foreign investments in Nigeria include the:

- Constitution of the Federal Republic of Nigeria;
- Nigerian Investment Promotion Commission Act (the 'NIPC Act');
- Foreign Exchange (Monitoring and Miscellaneous Provisions) Act (the 'FEMMP Act');
- Federal Competition and Consumer Protection Act;
- Investment and Securities Act ('ISA').

Nigeria also holds trade and investment agreements with other countries and is a member of the World Trade Organization (WTO) and party to the African Growth and Opportunity Act (AGOA). Nigeria also signed a Joint Declaration on Cooperation with the European Free Trade Area (EFTA).

Individual Investors

Foreign individuals entering Nigeria for the purpose of conducting short businesses – such as meetings, conferences, seminars, contract negotiations, etc. – are required to obtain a Business Visa, to enable them enter and conduct business in Nigeria. Expatriates who have obtained business visa are required to also obtain a business permit to enable them conduct business in Nigeria.

Resident individuals in Nigeria, are subject to tax on their worldwide income, while non-resident individuals are liable to tax on Nigerian-sourced income.

Restrictions

Foreign companies intending to carry on business in Nigeria must incorporate a company for that purpose in Nigeria unless such a company qualifies for exemption.

Under the Nigerian Investment Promotion Commission (NIPC) Act and the Immigration Act, companies with foreign shareholding must be registered with the NIPC and obtain a Business Permit from the Federal Ministry of Interior before commencing operations in Nigeria.

A foreigner may invest and participate in the operation of any enterprise in Nigeria except those in the negative list. The negative list prohibits investment by both Nigerian and foreign investors in the production of arms and ammunition, and the production of and dealing in narcotic drugs and psychotropic substances, para-military and military wears and accoutre.

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Contributing firm

Centurion Law Group

- *Emmanuel Dina, Senior Tax and Legal Adviser*

NIGERIA

Restrictions also apply to specific industries – foreigners cannot be granted an aviation license or other related permit and authorization for commercial air operations within Nigeria. Other restrictions include:

- To be competitive in the award of contracts, at least 51% of the shares of the company must be owned by Nigerians.
- The Coastal and Inland Shipping (Cabotage) Act restricts the use of foreign-owned or manned vessels for coastal trade in Nigeria.
- A company applying for a broadcasting licence must demonstrate that it is not representing any foreign interests and that it is substantially owned and operated by Nigerians.
- Only a national agency can advertise to the Nigerian market.

Furthermore, in some States in Nigeria, foreigners cannot own land or acquire an interest in land unless Governor consent is sought and obtained upon payment of the prescribed fees. However, a foreigner may directly acquire an interest in Nigerian real estate through a registered company.

In addition, under Nigeria's foreign exchange regulations, foreign investors who intend to access the official foreign exchange market must obtain a Certificate of Capital Importation (CCI) as evidence that their investment was brought into Nigeria.

Imports

Nigeria has a list of goods that are prohibited from being exported to the country or are otherwise restricted. A couple of good featured on the list include:

- Sanitary Wares of Plastics and Domestic Articles and Wares of Plastics;
- Flushing cistern and waterless toilets;
- Paracetamol tablets and syrups;
- Cotrimoxazole tablets and syrups;
- Metronidazole tablets and syrups.

The country also places bans on the importation of certain goods from time to time so as to encourage and develop the factories investing heavily and employing Nigerians to produce such goods in Nigeria.

Customs duties in Nigeria are levied only on imports. Rates vary for different items, typically from 5-35%, and are assessed with reference to the prevailing Harmonized Commodity and Coding System (HS code).

Structure & Tax

There are two major frameworks for foreign investment in Nigeria: Foreign Direct Investments (FDI) and Foreign Portfolio Investments (FPIs).

The FDI allows a 100% foreign shareholding and management control in all sectors. The same protection and incentives enjoyed by Nigeria businesses is also available too foreign investors including tax incentives and asset ownership.

The FPI framework allows for a foreign entity to invest in Nigeria by taking up shares in a private Nigerian company or acquiring securities of a Nigerian company publicly traded on the floor of the Nigerian stock exchange. FPIs do not confer ownership or management of the Nigerian company on the foreign investor.

Nigerian companies are liable to tax on their worldwide income. Foreign companies, however, are subject to tax on profits accruing to them in, or derived by them from, Nigeria, to the extent that the profit is not attributable to operations outside Nigeria.

Income tax for companies ranges between 0-30%, Value Added Tax (VAT) is set at a rate of 7.5%, and other taxes such as capital gains tax, dividend, interest and rent tax and royalties are set at a rate of 10%.

Reforms

There have been a number of updates to laws and regulations which generally would affect investors in different sectors such as the passing of the Petroleum Industry Act 2021, the Finance Act 2021 etc.

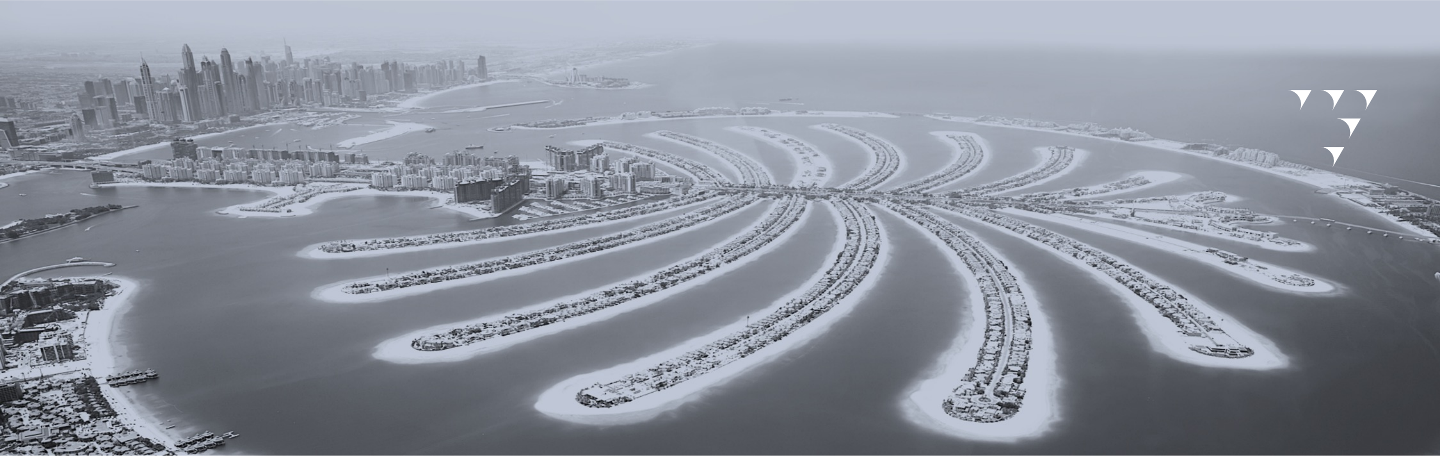
NIGERIA

Incentives

The following incentives are offered to foreign investors:

- Pioneer Status incentive – available to companies operating in industries or producing products or services categorized as pioneer industries and products or services. It is a tax holiday granted for five years (initial period of three years and renewable for additional two years) to qualifying industries.
- Export incentives also exist for every non-oil exporter in Nigeria. The incentives include duty drawback / suspension scheme (DDSS), manufacture-in-bond scheme, free trade zones tax exemptions, export expansion grant etc.
- Foreign tax credits.

The Pioneer Status incentive grants a five-year income tax holiday to qualifying industries.



UNITED ARAB EMIRATES

Contributing firm

Zu'Bi & Partners

- *Raghad Hammad, Partner and Executive Director*
- *Amal Fatima Parekh, Junior Associate*

The Market

The main factors affecting and increasing the UAE's economy are its strategic location, strong financial reserves, large sovereign wealth fund, consistent government spending, progressive policy of economic diversification, free zones and increased foreign direct investment. The foreign direct investment in the UAE is mainly in the sectors of wholesale and retail trade, real estate activities, financial services and insurance, mining and quarry exploration, and manufacturing. The UAE is expected to bounce back and recover to pre-pandemic levels of economic activity over the next three years. Amidst this disruption, UAE officials are implementing notable reforms in an effort to attract investment and capture first-mover advantages in several sectors.

Legal System

The UAE has enacted Federal Decree Law on Foreign Direct Investment (FDI Law) to consolidate and promote the investment environment, promoting and attracting further foreign direct investment. The FDI Law provides for the following:

- Foreign Direct Investment Committee to be set up under a resolution to be issued by the Cabinet, with powers to make recommendations on all aspects of the implementation of the FDI Law.
- Foreign Direct Investment Unit to be set up in the Ministry of Economy.
- "Positive list" determining the economic sectors/activities available to foreign investors, to be decided on and set out in a resolution to be issued by the Cabinet.
- A "negative list" involving the sectors and activities that are not available for foreign investment, such as petroleum, military, banking and funding activities.
- Other provisions covering conditions, procedures and fees to be paid for licences to operate FDI projects.

The Company Law also provides for registration of foreign branch offices, allowing 100% foreign ownership.

The UAE is a member of the GCC, WTO, the Arab League and the UN and its agencies. In addition, public and private companies, investment firms, air transport firms and other companies operating in the UAE, as well as its residents, benefit from over 115 double tax treaties.

Individual Investors

Foreign nationals who are citizens of GCC countries do not require a visa or permit, or to be sponsored by a UAE national or resident.

Foreign nationals or expatriates planning to work in the UAE must secure a legitimate work/residency visa/permit to be able to live and work legally. In most cases, an employer will sponsor the foreign citizen.

The Federal Authority for Identity and Citizenship has introduced 'Investor's visa' which allows for individuals who have purchased a property for a minimum value of AED 1 million to apply for a residence visa in the UAE, provided that such property has been completed and handed over to its owner by the developer. However, the amount invested shall be completely owned by the investor and not by any form of loan, and

UNITED ARAB EMIRATES

further supporting documents should be provided and other requirements must be fulfilled.

There is currently no requirement for an individual residing in the UAE to pay tax to the government on income generated in the UAE. Individuals are also not required to pay tax on income earned outside the UAE. However, individuals must pay indirect taxes, such as VAT and rental tax.

Restrictions

The FDI Law lists certain industries as sectors and activities that are included in the negative list, including exploring, prospecting and producing petroleum and the investigation, security, military sectors, and manufacture of weapons, explosives, military equipment, devices and uniforms.

Additionally, the UAE has a number of commercial sectors in which the government has invested heavily to promote and develop that area of the economy for the benefit of the nation, including real estate, telecommunications, construction, manufacturing, oil and gas, energy, electricity, transport, agribusiness, education, and health services. Typically, companies in these sectors are set up as public or private joint stock companies, with a few exceptions.

Across the UAE (excluding established free zones), both UAE and GCC nationals can own real estate, with a few exceptions. In the free zones and other allocated areas meant for investment, nationals of other countries can own real estate, subject to the restrictions applicable in the respective zone.

There are no minimum capital requirements for foreign investments. However, there are certain industries that have minimum capital requirements such as banking, insurance and money exchange business.

Imports

The GCC Common Customs Law regulates the import of prohibited and restricted goods. Prohibited items include narcotic drugs, gambling tools, nylon fishing nets, items that contradict Islamic faith and public morals, and e-cigarettes.

Under Law No. 15 of 1972 on the Arab League Boycott of Israel, imports of all goods from Israel or bearing Israeli marks or logos are prohibited.

Restricted goods include items regulated by the relevant ministry/government department. For example, the Ministry of Climate Change and Environment regulates live animals, plants, fertilizers and insecticide.

The rate of customs duty is generally 5% of the value of goods, plus cost insurance freight. A few exceptions to this rule include import duty on alcohol, which is 50% and cigarettes, which is 100%.

Structure & Tax

Foreign investors typically prefer to set up their investments in the UAE through a limited liability company established outside the free zones because this affords them the ability to transact with any and all entities located in the UAE. Capital requirements for limited liability companies range from USD41,000 to USD82,000 depending on the emirate in which they are established. This makes them subject to the national ownership requirements, which means they will not be the majority shareholder in the company.

To avoid the national ownership requirements, foreign investors can set up companies in the free zones, which will allow them to retain 100% ownership of the company. However, the company will be unable to conduct its activities outside the free zone in the UAE unless an agent is appointed, which results in intermediaries and therefore increases the cost of goods or services. Additional benefits of setting up in a free zone are that companies conducting business in it are entitled to an exemption from import and export tax, 100% repatriation of capital and profits, no corporate tax and no personal income tax.

The UAE Government has recently introduced corporate taxation which will be effective from 01 June 2023. Corporate tax, which is a form of direct tax, will be imposed over the profits of business entities. However, unlike other jurisdictions which impose a higher rate of tax over business profits, the UAE Government has decided to levy corporate tax of 9% on profits above AED 375,000. Thus, businesses that make profits below AED 375,000 will be exempted from paying any corporate tax.

UNITED ARAB EMIRATES

Reforms

The UAE has concluded negotiations for an investment promotion and protection agreement with Hong Kong, which is yet to be executed. In addition, the UAE has also executed bilateral agreements with countries such as The Netherlands, Nigeria and Columbia, which are yet to come into force.

Incentives

The UAE Government aims to promote foreign investment, thus, allowing flexibility in taxation by supporting small and medium size business entities by offering a 0% tax rate for taxable income up to AED 375,000. Furthermore, businesses established in the free zones may benefit from corporate tax incentives, subject to fulfilment of certain requirements.

As aforementioned, there are number of free zones that provide 100% exemptions from certain taxes. Generally, a free zone allows import and re-export of goods without interference from the customs authorities. Investors should be aware that benefits vary in each free zone.

Furthermore, the Abu Dhabi Airports Free Zone (ADAFZ) recently reduced the fees associated with setting up a business by more than 65% in an attempt to attract further foreign direct investment.

There is currently no requirement for an individual residing in the UAE to pay tax to the government on income generated in the UAE

Chapter II.

THE AMERICAS

CONTRIBUTING FIRMS

Argentina	Zang Bergel & Vines Abogados
Bolivia	PPO Abogados
Brazil	Azevedo Sette Advogados
Canada	Dickinson Wright
Colombia	Brigard Urrutia
Central America: • Costa Rica • Dominican Republic • El Salvador • Guatemala • Honduras • Nicaragua • Panama	Central Law
Peru	Estudio Olaechea
Uruguay	Bado Kuster Zerbino & Rachetti
United States	Steptoe & Johnson PLLC

ARGENTINA

The Market

To remedy the lack of investment in Argentina over the past decade, Argentina's national government has introduced tax benefits and new inward investment incentives in the infrastructure, natural resources and renewables sectors. Additionally, to combat fiscal problems, the current administration has increased foreign exchange restrictions, and has levied a tax at 30% on any purchase of foreign currency through a financial entity or an entity authorised by the Central Bank.

Legal System

The main law that governs foreign investments is Law No 21,382, which grants foreign persons investing in economic activities in Argentina the same status and rights as local investors. As well as being a member of the UN and WTO, Argentina has also signed international agreements in relation to, the reciprocal encouragement and protection of investment, double taxation and the exchange of tax information.

Individual Investors

Immigration policy admits foreigners under

I. Permanent residence;

II. Temporary residence; or

III. Transitorily residence

depending on their activity in Argentina. Permanent residences are liable to pay taxes.

However, a renewable two-month business visa is usually required to conduct business or commercial activities, and these non-residents are subject to taxation on Argentine-sourced income and personal asset tax on their assets located in Argentina.

Restrictions

Both the Rural Lands Law and the Border Security Zone Law limit the ownership and possession of rural land by foreign individuals or companies, restricting investment in the agrobusiness industry by stipulating that foreign persons must receive authorisation from the National Registry of Rural Lands in order to buy land . Furthermore, Argentina has banned hydrocarbon activities in the disputed Islas Malvinas/Falklands Islands territory, restricting the oil and gas sector.

There is no minimum capital requirement for foreign investment. However, all transfers of foreign currency to and from Argentina must be made through an Argentine-licensed financial entity or foreign exchange business, collectively known as the FX Market. The Argentine Central Bank's prior approval is required to access the FX Market in order to:

- Make remittances of profits and/or dividends outside of Argentina.
- Carry out sales of securities through the settlement of foreign currency and its transfer abroad.
- Carry out any outflow of funds.

Contributing firm

Zang Bergel & Vines Abogados

ARGENTINA

Imports

When importing commercial goods, companies must register at the Customs Import/Export Registry – an application which can take up to 15 days to process. They must also gain access to the FX Market, to get the foreign currency necessary to pay for imports of goods, which is currently subject to restrictions imposed by the Central Bank.

There are **no economic or non-economic prohibitions** applicable to any specific product or goods. Import duties range from **0% to 35%** depending on the cost, freight and insurance (CIF) value of the relevant good. Imports for consumption are subject to value added tax (VAT) and income tax advance payment and statistical rate fees. The safety regulations and standards applicable to commercial goods in Argentina are generally compatible with other internationally recognised standards.

Structuring & Tax

There is no specific legal vehicle for foreign investment. Usually, foreign investors choose between setting up a new vehicle or acquiring a vehicle already set up/created in Argentina. The most common vehicles used to conduct business are corporations and limited liability companies, both of which are subject to the same tax treatment.

Foreign residents are taxed only on their Argentine-sourced income, generally through a 35% withholding on a certain percentage of deemed net income as a single and final payment.

Argentine corporate entities – including entities organised or incorporated under Argentine law – are expected to pay income tax at a rate of up to 35%, as well as capital gains tax, VAT, tax on debits and credits on bank accounts and personal assets tax

Reforms

As a result of major financial difficulties, the Argentine government has reinstated taxes on the exports of goods and services.

In 2018, the Ministry of Energy published the New Gas Export Regime, which recognises six different types of gas export:

- Firm export.
- Interruptible export.
- Operational exchanges.
- Assistance agreements.

The new regime aims to improve new export opportunities in the oil and gas sector, and to attract new foreign and/or local investment.

In January 2022, the Organisation for Economic Co-operation and Development (OECD) Council decided to open accession discussions with Argentina.

Incentives

There are no direct schemes designed or aimed at encouraging foreign investments in Argentina. However, under Law No 21,382, foreign investors enjoy the same rights as local investors when investing in commercial activities, if their investments are made in the form of:

- Foreign currency.
- Capital assets.
- Profits from other investments.
- Repatriable capital resulting from other investments made in the country.
- Capitalisation of foreign credits.
- Intangible assets.
- Other forms acceptable according to special or promotion regimes.

In general, there are no restrictions or prohibitions on foreign investments and no prior government approval is required beyond that applicable to any domestic investor.

Import duties range **from 0% to 35%** depending on the cost, freight and insurance (CIF) value of the relevant good.

BOLIVIA

The Market

Bolivia is an attractive destination for investment due to its natural resources such as natural gas, silver, zinc, soy; and low labour costs. The most active sectors are mining, energy, hydrocarbons and retail. Bolivian authorities have recently announced the reform of hydrocarbons law and regulations, which will likely increase Bolivia's foreign investments in the hydrocarbons sector.

Following the effects of the global pandemic, President Luis Arce's administration has set out an economic recovery agenda which focuses on:

- Social policies (health, education, and reduction of poverty).
- Undertaking large-scale infrastructure projects that were put on hold after the 2019 election.
- Incentivising foreign investment in strategic sectors such as energy, gas, and mining.

To aid with this, the Arce administration is looking to issue $3bn worth of bonds in the international market.

- National and foreign investors are granted the same rights, obligations and guarantees.
- Foreign investors must register all their investments before the Central Bank of Bolivia.
- Foreign capital must be channelled through the Bolivian Financial System. Investors may transfer or remit dividends, interests, or royalties freely once registered in the system.
- Foreign currency can be exchanged at any time, and all business transactions may be carried out in local or foreign currency.
- Investments and commercial disputes may be resolved via arbitration.
- National and foreign investors are free to perform shared-risk or participation agreements.

There is no specific regulatory authority for foreign investments in Bolivia. Key authorities will be the ones that participate in the receipt and registration of foreign investments, namely the Central Bank of Bolivia, the Financial Authority, and the Tax Authority.

P·P·O

Contributing firm

PPO Abogados

- *Carlos Pinto, Partner*
- *Lindsay Sykes, Partner*
- *Pablo Ordoñez, Partner*

Legal System

The main law governing foreign investments is Law No. 515 for Investment Promotion (Ley de Promoción de Inversiones), which has the purpose to stimulate both national and foreign investments in Bolivia. Law No. 515 provides that:

Individual Investors

A specific purpose visa (SPV) can be obtained for 30, 90 or 180 days, which can be requested by a foreign employee or executive of a foreign company to carry out specific work activities. The SPV can be requested from Bolivian Consulates abroad or Bolivia Immigration officials at the airport in Bolivia.

BOLIVIA

Once the visa is stamped, no additional paperwork is required.

The Bolivian tax system is governed by the Principle of Source and Territoriality. An individual is required to pay taxes to Bolivia if they regularly conduct levied economic activities and receive Bolivian-sourced income.

Restrictions

The Bolivian Government exercises control over several industries:

- Hydrocarbons
- Mining
- Banking
- Pension and Insurance
- Telecommunications and Transport
- Electricity

Additionally, in the Broadcast sector, the maximum foreign ownership permitted is 25%.

A foreign person can acquire any property in Bolivian territory by complying with the same requirements as a Bolivian resident. However, foreign persons cannot acquire:

- Land within 50 kilometers of an international border, unless it is declared as a state necessity and approved by law.
- Real estate that belongs to the State.
- Rural property, unless the natural person resides in Bolivia and the legal person is authorized to exercise agricultural activities in Bolivia.

Imports

Import duties generally apply with a rate of 5-40%. Additionally, the importation of all commercial goods is taxed by VAT on imports at a rate of 14.94%, and the import of specific goods, such as vehicles, is taxed by the ICE (tax on specific consumption).

Structuring & Tax

Foreign investment is typically structured through incorporating or acquiring a local entity.

- Direct taxation is triggered with the:
- Receipt of Bolivian-sourced income.
- Receipt of Bolivian-sourced income for the provision of professional services within the national territory.
- Receipt of Bolivian-sourced income by foreign beneficiaries located abroad.

Indirect taxation is triggered through:

- Imports.
- Regular performance of commercial activities of any nature within the national territory.
- Provision of services within the national territory.

In Bolivia there is also a Tax on Large Fortunes that applies to individuals that meet the following conditions:

- Bolivian resident individuals with assets located in or outside the country amounting to more than USD 4.3 million.
- Bolivian non-resident individuals with assets located within national territory amounting to more than USD 4.3 million.

The tax base is the total value of the assets, and the tax rate is progressive (1.4%, 1.9%, and 2.4%).

Reforms

The government has recently announced plans to reform laws and regulations governing the hydrocarbons sector in order to attract more foreign investment.

BOLIVIA

Incentives

Bolivia has entered into Double Taxation Treaties (DTT) with Argentina, France, Germany, Great Britain, Spain, Sweden, and the Andean Community.

The general rule for the compensation losses of Bolivian source is that it can be deducted from the taxable profits that are obtained at most until the following 3 years, with two exceptions in the case of company reorganization and new production ventures.

The tax treatment for distribution of dividends and interest is a withholding tax set at 12.5%.

From August 2021 to September 2022, the mining, agricultural, industry, and construction sectors are beneficiaries of tax incentives regarding imports and commerce of capital goods, industrial plants, and cargo vehicles. In this case, imports of capital goods, industrial plants, and cargo vehicles – related to the mentioned sectors – are exempt from VAT. The merchandise/goods to be imported must not be older than:

- 10 years, in capital goods for the industry and agriculture sectors.
- 10 years, for heavy machinery for the construction and mining sectors.
- 5 years, for refrigerated and high-capacity vehicles in volume and tonnage for the industry and agriculture sectors.

Finally, Law No. 1391 and Supreme Decree No. 4539 provides tax incentives such as:

- Exemption on VAT importation; 0% VAT rate on local sales of goods related to industrial, mining, building, and agricultural sectors;
- Reductions of import duties
- Reduction of ICE (tax of specific consumption) on goods related with the use of electric energy.

0% VAT rate on local sales of goods related to industrial, mining, building, and agricultural sectors.

BRAZIL

The Market

Despite recent economic and political turmoil, Brazil now has favourable conditions to achieve sustainable and inclusive growth. Energy and infrastructure are the most active sectors in Brazil, with growth opportunities for investment in agricultural biotechnology, agricultural commodities, digital technologies, aerospace, petrochemicals and clean energy. Other key sectors for foreign investment include electricity and gas, transportation, crop and livestock related services, and real estate activities.

Legal System

Though Brazilian law does not make a distinction between foreign and national investments, all foreign investors must appoint a representative in Brazil who, jointly with the representative of the company receiving the foreign direct investment, will be responsible for registering the operation with the Central Bank of Brazil's Foreign Direct Investment module.

Foreign investors (individual or legal entities) may also make portfolio investments, usually engaging financial institutions to fulfil the following necessary roles:

- A legal representative
- A tax representative
- An authorised local custodian, registered with the Brazilian Securities and Exchange Commission (CVM).

Individual Investors

A visiting visa for business purposes can be granted to a foreign national, granting a stay of up to 90 days, provided there is no exercise of remunerated activity or immigration intent. This visa is issued for:

- Business meetings
- Market study and research
- Business fairs and workshops
- Contract signing
- Auditing and consulting
- Flight and ship crew members.

A temporary visa may be granted to a foreign administrator/manager, who comes to the country to represent a legal entity or economic group that carries out foreign investment in a company established in Brazil with the potential to generate jobs or income in the country.

Residency authorisations might also be granted to foreign nationals who, with foreign-origin resources of their own, acquire real estate in Brazil in an amount of at least BRL 1,000,000, having potential to generate employment or income in the country.

Foreigners who enter Brazil with a permanent visa are considered residents for tax purposes and are subject to income tax as Brazilian residents. Holders of a temporary work visa are also considered to be residents for tax purposes from the day of arrival if the individual is employed by a Brazilian entity.

Azevedo Sette ADVOGADOS

Contributing firm

Azevedo Sette Advogados

- *Ricardo Barretto Ferreira Da Silva, Partner*
- *Juliana Petrela Hansen, Partner*
- *Fabio Capalletti, Lawyer*
- *Sylvia Werdmüller Von Elgg Roberto, Lawyer*
- *Camila Sabino Del Sasso, Lawyer*

BRAZIL

Restrictions

Foreign capital is prohibited by the government in activities relating to nuclear power, mail and telegraph services, and the aerospace industry. The federal government also holds a monopoly on oil and gas activities.

Brazilian law does not require minimum capital for foreign investment in Brazil. Despite this, the entry or remittance of national or foreign currency in excess of BRL10,000 must be carried out exclusively through financial institutions authorised by the Brazilian Central Bank to operate in the foreign exchange market.

Imports

In general, goods can be imported into Brazil without the need for licences, requiring only previous registration of the importer and the corresponding import declaration at SISCOMEX (the system used to register foreign merchandise transactions). Imports in Brazil are subject to a number of taxes and fees, which are paid for the completion of the customs clearance procedure, including:

- Import tax.
- Federal excise tax (IPI).
-
- State Sales and Services tax (ICMS) which is similar to VAT.
- Contribution to the social integration programme (PIS) and to finance social security (COFINS).

Structuring & Tax

Brazilian legal entities are subject to taxation on worldwide income. Foreign companies may be subject to withholding income tax when providing services to Brazilian customers (individuals or legal entities).

Though Brazilian legislation does not provide a definition of 'permanent establishment' for taxation, a permanent establishment will likely be found when:

- An entity is productive, with a fixed presence, maintaining facilities and turning a profit.
- An entity can enter into contracts through agents or representatives in Brazil, perform sales activities and submit invoices directly to a Brazilian buyer.

Corporate tax in Brazil is composed of IRPJ (Corporate Tax on Legal Persons) and CSLL (Social Contribution on Net Profit) on worldwide income at a maximum combined tax rate of about 34%. In general, the corporate income tax rate levied on taxable income (i.e., net book income) is 15%, and a 10% surtax is imposed on the amounts exceeding BRL 240,000 of taxable income per year.

Brazilian companies may deduct the income tax paid abroad from their corporate income tax in Brazil, up to the limit of the Brazilian corporate income tax levied on profits, earnings or capital gains.

'Actual Profit' and 'Presumed Profit' are the two main methods provided by Brazilian tax law that can be used by companies to determinate their corporate taxable income. Both methods should be applied to determine only the tax base, since tax rates are always the same defined by law.

Reforms

In relation to foreign investors, the National Monetary Council (CMN) has authorised foreign investment in the Brazilian bond Letra Imobiliária Garantida (LIG), to be acquired by foreign investors through depositary receipts (DRs). In addition, Resolution 4,761/2019 of the Central Bank of Brazil is in effect, expanding potential sources of funding for the construction industry. The Brazilian Data Protection Act (Law no. 13,709/2018 (LGPD)), is also in effect, allowing greater legal security for investors.

BRAZIL

Incentives

Tax incentives are granted to Brazilian companies. Therefore, if a foreign investor incorporates a subsidiary or a branch in Brazil, there is no difference in the tax incentive granted to a foreign or local investor. The main federal incentives include:

- Inclusion in the Manaus Free Trade Zone, which reduces corporate income tax by 75%, and provides exemption from contributions to the social integration programme (PIS) and contributions to finance social security on imports (COFINS).
- A special customs regime for export and import of goods for exploration and production of petroleum and natural gas (REPETRO), which suspends import duty, federal excise tax, PIS-importation, COFINS-importation and freight surcharge for merchant marine vessels.
- A tax reduction or exemption on construction, expansion, modernisation or diversification projects in industries considered to be priorities for regional development in the areas covered by Superintendence for Development of Amazônia (SUDAM) and Superintendence for Development of the Northeast (SUDENE).

Brazilian companies are included in the Manaus Free Trade Zone, which reduces corporate income tax by 75%.

CANADA

The Market

The key factors that make Canada an attractive location for investment include its strong, stable and resilient economy; welcoming business environment; highly educated labour force; well-developed innovation ecosystem and extensive market access. Manufacturing is the top sector for investment, with other key sectors including the management of companies and enterprises, mining and oil and gas extraction, finance, retail trade, artificial intelligence and fintech.

Legal System

The Investment Canada Act (ICA) is federal legislation governing foreign direct investment in Canada. The ICA allows the Federal Government to screen very large proposed foreign investments to ensure that they are likely to produce a 'net benefit to Canada', which is determined by:

- The effect of the investment on the level and nature of economic activity in Canada.
- The degree and significance of participation by Canadians in the Canadian business and the relevant Canadian industry.
- The effect of the investment on productivity, industrial efficiency, technological development, product innovation and product variety in Canada.
- The effect of the investment on competition within any industry in Canada.
- The compatibility of the investment with national industrial, economic and cultural policies.
- The effect of the investment on Canada's ability to compete in world markets.

However, the vast majority of transactions fall under the financial thresholds, such that they do not require a 'net benefit to Canada' approval. In those cases, the only filing obligation under the ICA is a simple notification, which may be done on a post-closing basis. Investments in Canada are also screened under the ICA for national security issues, as applicable and regardless of their size, although there is no mandatory pre-notification national security regime.

Individual Investors

Though some countries are 'visitor visa exempt', an electronic travel authorisation (eTA) is still required from foreign nationals travelling to Canada by air. The eTA is valid for up to five years.

Temporary entry without a permit is granted when an individual's activities are limited to:

- Meeting and consulting with other employees of a Canadian parent company, subsidiary or branch office;
- Selling goods to parties other than the general public; or
- Purchasing Canadian goods and services.

Temporary foreign workers who are not citizens must generally apply for a work

Contributing firm

Dickinson Wright

- *Wendy Hulton, Partner*
- *Carly Walter, Associate*

CANADA

permit at a Canadian Consulate or High Commission outside of Canada prior to arrival. The permit is usually issued for an initial period of one to three years.

In the case of foreign workers, The North American Free Trade Agreement (NAFTA) and the Immigration and Refugee Protection Action (IRPA) assist in expediting temporary access to Canada through a streamlined application process under which the foreign worker may apply for a work permit at a port of entry.

An individual is generally considered to be a resident of Canada if they are physically present in Canada for an aggregate of 183 days or more during the year. Residents are subject to tax on their worldwide income. Non-residents of Canada are generally subject to tax only on their Canadian-sourced income.

Restrictions

In addition to the general ICA process, various federal and provincial statutes place additional foreign ownership restrictions in certain industries. This includes the following:

- The federal government has exclusive jurisdiction over broadcasting and telecommunications.
- At least 75% of the voting interests of an air service must be owned and controlled by Canadians.
- Non-resident ownership of uranium mining properties is restricted to 49% at the stage of first commercial production.
- The Bank Act requires ministerial approval for any foreign bank to acquire or hold control of, or a substantial investment in, a Canadian bank.

Imports

Certain goods may be prohibited or controlled, or require special permits, inspections, or conditions to be allowed into Canada; the Canada Border Services Agency (CBSA) provides a guide to help importers determine whether their goods may be subject to special rules or conditions.

The Customs Tariff also imposes duties on a wide range of goods. Rates of duty depend on the country of origin and the nature of the product being imported. In addition, a federal tax with a current rate of 5% called the Goods and Services Tax (GST) is imposed on most goods imported into Canada.

Further excise taxes and duties may also be levied with respect to certain goods, such as automobiles, air conditioners for automobiles and gasoline products.

Structuring & Tax

The forms of business organization available in Canada are:

- Corporations (including unlimited liability companies and a co-operative corporations);
- Partnerships (including limited partnerships and general partnerships);
- Joint Ventures;
- Sole proprietorships; and
- Contractual arrangements such as licensing, distribution, agency or franchising.

The federal and provincial tax rates for corporations vary. Manufacturing and small Canadian-controlled business corporations enjoy preferential tax rates on their profits. In general, the combined federal and provincial general corporate tax rates on active business income range from 25-31%, depending on the province.

Reforms

The Government of Canada has updated its model Foreign Investment Promotion and Protection Agreement (FIPA). This new modernized and inclusive model FIPA text will serve as the basis for Canada’s future FIPA negotiations and represents the first comprehensive revision since 2003.

CANADA

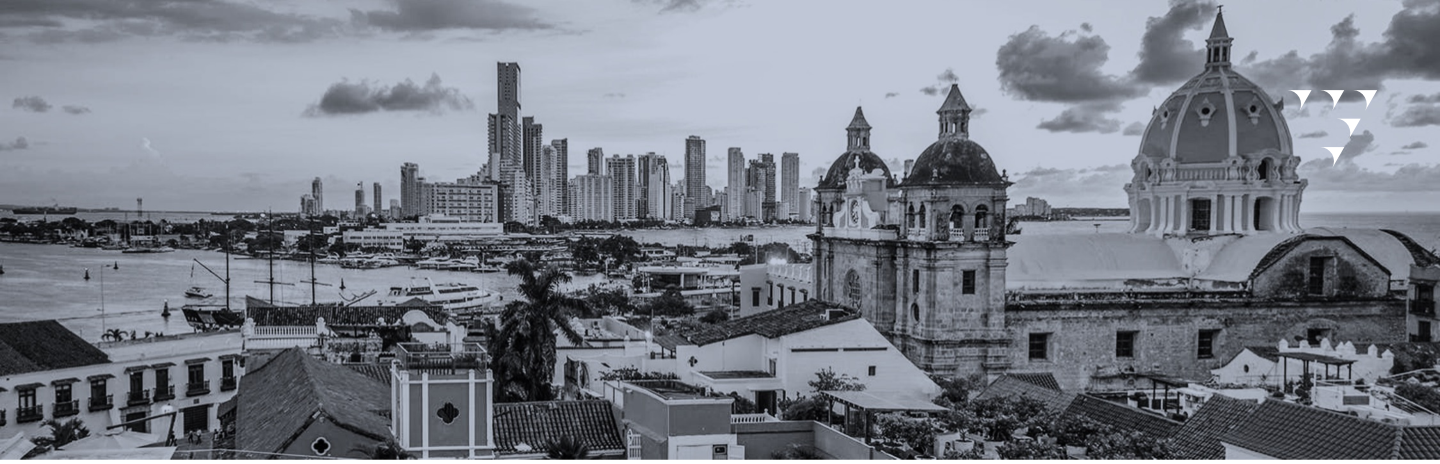
Incentives

The Canadian tax system provides for preferential tax treatment in certain situations based on the nature of the taxpayer and the nature of the income being earned. In particular, the ITA contains a number of fiscal incentive regimes designed to encourage investment in particular sectors of the Canadian economy.

Where a corporation incurs expenditures that qualify as scientific research and experimental development (SR&ED) for the purposes of the ITA, such expenditures may generally be deducted in the current year in computing taxable income. In addition, a federal investment tax credit equal to 15% of qualifying SR&ED expenditures may be available.

The Accelerated Investment Incentive provides an enhanced capital cost allowance (CCA) on equipment purchases. Full expensing in the first year for manufacturing and processing (M&P) and clean energy equipment purchases was also introduced as part of the Accelerated Investment Incentive.

A federal investment tax credit equal to 15% of qualifying SR&ED expenditures may be available.



COLOMBIA

The Market

Colombia has the lowest FDI barriers of Latin America and provides both a strategic point for regional supply – because of its location and its network of free trade agreements – and privileged access to the continent's largest markets. The most active sectors for foreign investment are agribusiness, manufacturing industries, technology, tourism, infrastructure, energy and capital funds. The Government's commitment to health and economic recovery has allowed the country to capitalize 50 years of sustained economic growth to overcome the COVID-19 challenge.

Legal System

The international investment regime is governed by the following regulatory framework:

- Law 9 of 1991: Framework law on international exchange.
- Decree 1068 of 2015 and Decree 119 of 2017: whereby foreign investment and exchange operations are regulated.
- Resolution 1 of 2018 of the Board of Directors of the Colombian Central Bank which regulates the international exchange regime.
- External Regulatory Circular DCIP-83 of the Colombian Central Bank, whereby the procedures applicable to exchange operations are regulated.
- Decree 1746 of 1991, sanctioning regime applicable to the Superintendence of Corporations.

The main regulatory authorities for international investments are the Ministry of Finance and Public Credit, the Colombian Central Bank (Banco de la República) and the Superintendency of Corporations

Individual Investors

Non restricted nationalities may enter Colombia without a visa for business purposes. Restricted nationalities should request a visitor visa for business purposes at a Colombian consulate prior to their trip.

A foreign individual is deemed as a Colombian tax resident if they stay in the national territory for more than 183 calendar days within a year. In case the 183 days are completed through permanence across more than one year, the individual would be deemed a tax resident only for the year in which the days are completed.

Colombian tax residents are subject to progressive income tax rates – from 0-39% – on their world-wide income, whereas non-residents are subject to income tax solely on their Colombian-sourced income at a fixed rate of 35%.

Income derived from the provision of services within the Colombian territory is considered to have its source in the country, even if the employer is a foreign company.

Restrictions

Foreign capital investments may be made in all sectors of the economy, except for the defence and national security activities, and

Contributing firm

Brigard Urruita

- *Johan Schomberger, Director*
- *Marianna Boza Morán, Director*

COLOMBIA

disposal of toxic, dangerous, or radioactive wastes not produced in the country.

The Colombian state is the owner of mineral resources in the soil and subsoil. Private parties can carry out mining and O&G activities by means of a concession agreement for a fixed-term and subject to the payment of certain remunerations.

There are no restrictions on foreign ownership or occupation of real estate. However, it is important to consider that decree 1415 of 1940 establishes that unoccupied land (vacant lots) on the national coasts or bordering areas of the country cannot be awarded to foreigners.

The following foreign exchange transactions qualify as 'controlled' and must be paid through authorized intermediaries of the foreign exchange market:

- Import and export of goods
- International indebtedness
- Foreign Investment in Colombia
- Investment of Colombian capital abroad
- Financial investments in assets located abroad and their returns (except those made with resources currently in the free market)
- Guarantees and collateral structures in foreign currency
- Derivative transactions

Imports

Colombia does not pose extraordinary restrictions to the importation of commercial goods other than those accepted by the WTO.

The general import taxes applicable to commercial goods that enter Colombia are VAT (at a rate of 19%) and customs duties (at a rate of 0% to 15% dependent on its Harmonized Tariff Code). However, Colombia is party to several multilateral and bilateral Free Trade Agreements.

Structuring & Tax

Simplified stock companies (SAS) are the most common type of legal entity to be incorporated in Colombia considering the advantages offered for its management and operation, including: the possibility to be formed by one shareholder, having a capital formed by different types of share and not being required to have administrative positions other than an officer or legal representative.

Local entities incorporated under Colombian law, domiciled in Colombia or with the effective place of management in Colombia, are liable to corporate income tax (at a general rate of 35%) on their world-wide income. Financial institutions, with a taxable income of at least 120.000 Tax Units (approximately USD$1.1M) are required to pay an additional 3% for 2022 through 2025. Other business taxes include:

- Value Added Tax (VAT): as a rule, 19%.
- Local Industry and Commerce Tax: approximately 1% over gross receipts.
- Debit tax (disposal of funds in a banking or checking account): 0.4%.

Reforms

In January 2022 the Government sanctioned Law 2195 The Law 2195 on Transparency, Prevention, and Fight against Corruption, which brings new obligations for companies. That includes implementation of controls to prevent crimes against public heritage, due diligence procedures to identify beneficial owners, and the obligation to provide the information required by those obliged to implement anti-money laundering, counter-terrorism financing and financing of the proliferation of weapons of mass destruction programs.

COLOMBIA

Incentives

Columbian tax incentives include:

- Free trade zones preferential 20% income tax rate
- Economic and Social Special Zones (Zona Económica y Social Especial – ZESE) 10-year tax Benefit (0% of the income tax rate for the first 5 years and 50% of the income tax rate for the following 5 years). This benefit is only applicable to industrial, commercial, tourism, medical and agricultural activities conducted in certain cities and regions. This benefit is only applicable to entities that are incorporated and start operations before May 24, 2022.
- Tax incentives for investments in renewables – special income tax deduction that amounts to 50% of the investment; accelerated 5-year depreciation; VAT exclusions; custom duties exemptions.
- Orange economy 5-year income tax exemption. This is focused to certain economic activities conducted through an entity that is incorporated and functioning before June 30, 2022.
- Investment to increase the agricultural productivity can benefit from a 10-year income tax exemption.

Colombian tax residents are subject to progressive income tax rates – **from 0% up to 39%.**

COSTA RICA

The Market

Costa Rica's well-educated labour force, relatively low levels of corruption, physical location, living conditions, dynamic investment promotion board, and attractive free trade zone incentives offer strong appeal to investors. Currently, light manufacturing, food processing, medical device manufacturing, life sciences, service sector, software and IT and business service sectors account for 60% of Costa Rican inward FDI projects. The Costa Rican economy has a strong dependency on the American Dollar, and therefore its overall value and currency exchange do have a strong effect on the market of goods and services.

Legal System

The main government entity that regulates foreign investment is the Ministry of Foreign Trade ("COMEX" in Spanish). This entity is the one responsible to enforce the Free Trade Zone Act, which grants incentives and benefits to local and foreign companies registered under such regime.

Costa Rica is a current member of international treaties for free trade, with the following jurisdictions:

- Central America and the United Kingdom.
- Central America and Korea.
- Central America and European Association of Free Trade.
- Colombia.
- Central America and the European Union.
- Central America and México.
- Peru.
- China.
- Singapore.
- Central America, United States and Dominican Republic.
- Costa Rica and CARICOM (Caribbean Community).
- Central America and Panama.
- Canada.
- Central America and Chile.

In 2021, Costa Rica was also accepted into the Organisation for Economic Co-operation and Development (OECD).

Individual Investors

Costa Rica has two different immigration regimes for foreigners to apply for a visa or residence in Costa Rica for business purposes – investor visa and/or rentier visa. In order to apply for an investor visa, the petitioner must demonstrate that such has invested at least US$150,000.00. To apply as rentier, petitioner must demonstrate that it perceives from abroad, at least a monthly income of US$2,500.00. Foreigners could also apply for a work visa in Costa Rica working for a local company.

All individuals in Costa Rica, that intend to provide a service or sell any kind of goods, need to be registered under the local Tax Administration Office. Depending on the

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Contributing firm

Central Law

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- *Tomás Quirós, Partner*

COSTA RICA

nature of the business and the goods or services that such business, different tax regimes will apply.

Restrictions

There are no restrictions on foreign investment in specific industry sectors, Costa Rica welcomes foreign investment to the country and has a developed Free Trade Zone Regime in place governed by the Free Zone Regime Law, Number 7210, and its regulations.

Additionally, there are extremely limited restrictions on foreign ownership/occupation of real estate, applicable only for properties located in the Maritime Zone Regime (coastal properties). Foreigners that have not resided in the country for at least five years, and companies or entities domiciled outside of the country, cannot own coastal properties.

Imports

Goods must be brought into the country and filed for importation before the local customs administration. There are a series of restrictions regarding the importation of some commercial goods. Goods determined to be of explosive, corrosive, inflammable, products that need to be registered before the Ministry of Health, Ministry of the Environment, Ministry of Agriculture and Farming and Ministry of Governance and Police.

Structuring & Tax

Large foreign investors located in Costa Rica will set their corporate structure utilizing one of the following two methods:

- The investor will set a new Costa Rican company or corporation to run business.
- The already existing investor company or corporation, will register a foreign agency in Costa Rica, and thus such agency will operate as a 'branch' in Costa Rica.

Both options will be suitable to operate, but utilizing a new company or corporation means that such will be an independent legal entity from its parent company (but bound in terms of stock ownership, corporate government and corporate organization).

Since July 2019, VAT has been made applicable, which in Costa Rica is of 13% for most goods and services. Lower rates will depend on the nature of the goods and services provided.
Income tax is established in gross income brackets, ranging from 10-30%. Currently there is also tax on remittance of services up to 25%, based on the gross amount of the service.

Reforms

Due to the current political circumstances in Costa Rica (Presidential and Congressional elections), the result might have significant changes on the country's position within already signed treaties, or even the adhesion to new treaties and organizations.

Incentives

Investors and companies located in Free Trade Zones (Zona Franca), get a series of tax incentives and benefits, including exonerations in VAT tax, the import and export of goods, and from 50% to a 100% on total income tax. Such incentives will be determined by a series of different factors, including the location of the Free Trade Zone and the estimate investment of the company.

Investors in Free Trade Zones can gain exonerations from 50% to 100% on their total income tax.

DOMINICAN REPUBLIC

The Market

As a mixed emerging economy with strong reliance on the service sector, the Dominican Republic has been improving its institutions, property registration, construction permits and cross-border trade regulations. It boasts a strong domestic banking sector and a considerable capital market. Active sectors for foreign investment include real estate, electricity generation (especially renewables), commerce, mining and light manufacturing. The country has seen a remarkable recovery in tourism, but the Covid 19 pandemic is still a formidable challenge for the economy.

Legal System

The authority overseeing FDI depends upon the area of the investment. The main applicable laws for foreign direct investment are:

- The foreign investment law No.16-95.
- Law that creates the Export and Investment Center of the Dominican Republic No.98-03.
- Regulations on the application of the Registration of Foreign Investment in the Dominican Republic No.214-04.

The Dominican Republic holds trade and investment agreements with other countries and is a member of the Central American Integration System, World Trade Organization (WTO), International Monetary Fund (IMF), and the World Bank.

Individual Investors

Most developed nations are covered by a visa waiver program that permits visiting the country with few restrictions. Foreign investors benefit from the investment residency program, created by Decree No. 950, which allows foreign investors to obtain definitive residency within 45 days.

If an individual stays more than 183 days in a year in the country or earns a Dominican-based income, they are considered liable to pay taxes.

Restrictions

Dominican legislation does not establish limitations or restrictions for the participation of foreigners in economic activities, with the notable exceptions of:

- Disposal or waste of toxic, dangerous, or radioactive garbage not produced in the country.
- Activities that affect public health and the environment.
- Production of materials and equipment related to national defence and security.

The government has a strong regulatory role and considers 'reserve activity' (requires approval) for:

- Banking
- Capital Markets
- Mining
- Fiduciary Activities

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DOMINICAN REPUBLIC

Imports

Depending on the item, imports may need to be registered and comply with the established requirements. The Dominican Republic currently has seven different tariff rates (0%, 3%, 8%, 14%, 20%, 25% and 40%). In addition, imports of agricultural goods included in the WTO Technical Rectification, are subject to higher tariff rates.

Structuring & Tax

Dominican law recognises different types of corporate for doing business in the country, regulating matter relating to the company name, capital, and transfer of shares in said corporate forms, as well as administration, supervision, decision-making, transformations, corporate mergers, divisions and dissolutions. The main companies recognized by Dominican law are: Limited Liability Company (SRL), Corporation (SA), Simplified Corporation (SAS), Individual Enterprise of Limited Liability (EIRL).

Businesses are obligated to pay tax when they become permanent establishments in the country or obtain income categorized as 'Dominican-sourced'. The current corporate income tax rate is 27%. Profits remitted abroad or paid locally are subject to a withholding tax of 10% as a definitive tax payment. Free Trade Zone entities should also make the 10% withholding on profit remittance or dividend distribution.

Reforms

At the end of 2021, the Dominican and U.S. governments held the second high-level bilateral dialogue. During the dialogue, President Abinader reiterated his commitment to the implementation of a series of institutional reforms that will promote human rights, democracy, and transparency of the laws.

Incentives

The following incentive schemes are accessible in the Dominican Republic:

- Incentives for the promotion of solid waste projects;
- Incentives for the promotion of free zones;
- Incentives for special border development zone;
- Incentives for the competitive development of the manufacturing industry;
- Incentives for the film industry;
- Tourism incentives for development;
- Incentives for the development of renewable sources of energy;
- Incentives to foreign retirees.

Investors also benefit from a higher degree of protection through Investment Promotion and Protection Agreements (IPPAs); they include provisions on expropriation and compensation, capital transfers and dispute settlement.

Investors also benefit from a higher degree of protection through Investment Promotion and Protection Agreements (IPPAs).

EL SALVADOR

The Market

Even though El Salvador is a small country, many big companies have set operations in consideration of the highly-qualified labor force and constant economic growth. The most active sectors are retail, FinTech's and energy. El Salvador's Government is investing heavily in infrastructure, which is also pushing the construction sector forward along with its related industries. The country has also recently adopted Bitcoin as legal tender. This attracts investment from many other countries in the world, considering that the use of Bitcoin is not broadly adopted yet.

Legal System

The key laws governing foreign investment are the Act of Investments and the Act for the Legal Stability of Investments. Both Acts aim to protect investment projects and investors in order to provide them with assurance of the stability needed to start their operations in El Salvador.

The key regulatory authority is PROESA ('Agencia Promotora de Inversiones de El Salvador' or Salvadoran Agency for the promotion of investment), which is the main entity is focused on the attraction of foreign investment.

El Salvador holds trade and investment agreements with other countries and is a member of the Trade Organization (WTO) and MCCA ('Mercado Común Centroamericano' or Central American Common Market).

Individual Investors

Depending on the nationality of the foreign individual, El Salvador's Migration Office grants visas and permits for business purposes as follows:

- Visa for investors, businessmen, commercial representative.
- Temporary residence for investors.
- Temporary residence for businessmen.
- Temporary residence for commercial representatives.

An individual becomes liable to pay taxes once they receive any sort of income based on an economic activity or when they own real estate properties for which they must pay property taxes and related.

Restrictions

In accordance with the provisions of the Constitution of the Republic and secondary laws, investments in the following activities and terms will be limited:

- Small trade, industry and the provision of services, and specifically inshore fishing, are the exclusive patrimony of Salvadorans by birth and of natural Central Americans.
- The subsoil belongs to the State, which may grant concessions for its exploitation.

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EL SALVADOR

- Rural real estate ownership may not be acquired by foreigners in whose countries of origin Salvadorans do not have equal rights.
- The maximum extension of rural land belonging to the same natural or legal person may not exceed two hundred and forty-five hectares. This limitation shall not apply to associations cooperatives or peasant communities, which are subject to a special regime.
- The State will have the power to regulate and monitor public services provided by private companies, as well as the approval of their rates, except those established in accordance with treaties or international agreement.
- The concession of the State is required for the exploitation of docks, railways, pipelines, and other works materials for public use, in the form and conditions indicated in the applicable law.
- Investments made in shares of Banks, Finance Companies and Currency Exchange Houses Foreign, will be subject to the limitations indicated in the laws that govern said institutions.

Imports

El Salvador has an economy open to the outside world, with Free Trade Agreements with a large number of countries. Product restrictions will depend on the Free Trade Agreements entered into, with sugar, bananas and coffee generally being sensitive products.

Imports of goods and services in El Salvador are subject to the payment of several taxes, the first of which is the Import Tax (DAI). The amount due varies considerably depending on the imported merchandise (from 0% to 40%).

Value Added Tax (VAT) is 13%, and the payment of the Free on Board (FOB) is 1.25% for goods coming from the Central American region and 1.5% if the goods are outside the region.

Structuring & Tax

Foreign individuals must first register their investments with the ONI (National Investment Office), who will issue a credential that will grant them the quality of foreign investor, with expression of the registered investment. This registration does not exempt the investor from obtaining all permits, authorizations and registrations necessary to operate in the country.

Foreign investors and the commercial companies in which they participate will have the same rights and obligations as national investors and companies, without being subject to unjustified or discriminatory measures that hinder the establishment, use, extension, sale and liquidation of their investments.

Foreign investors may incorporate companies in Salvadoran territory or acquire all or part of existing companies, which is a type of investment in El Salvador.

In El Salvador, the Corporate Income Tax rate is 30%. The amount is calculated on the Net Income (revenues) a company obtains while exercising their business activities, during one business year.

The Corporate Income Tax rate can be of 25% for all companies that had a taxable income equal to or less than USD $150,000 in one fiscal year.

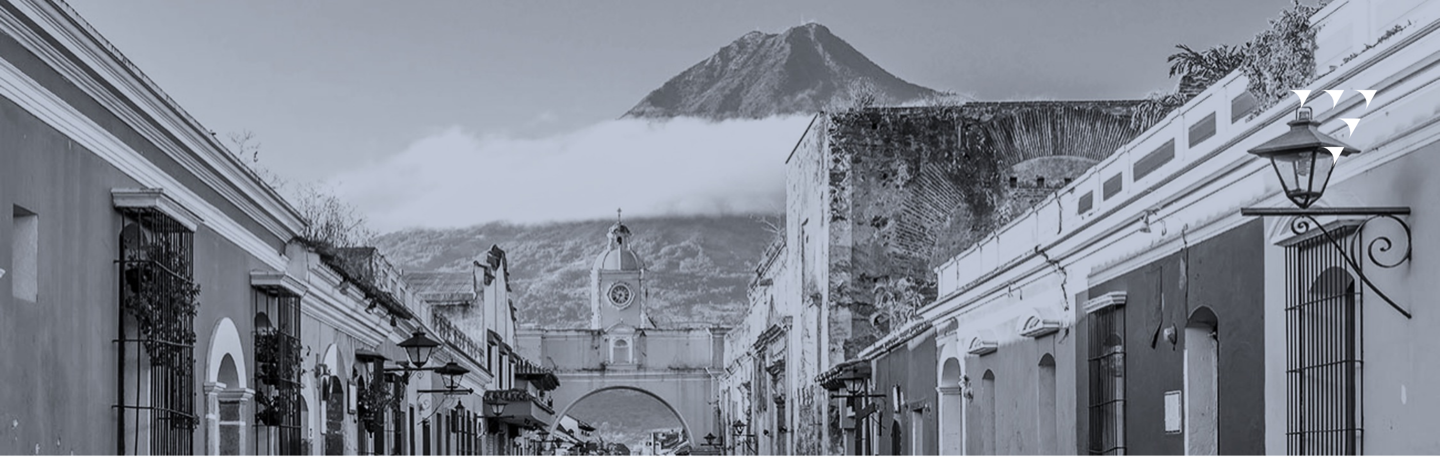
El SALVADOR

Incentives

The following four special laws encourage foreign investment and grant the incentives:

- Industrial and Commercialization Free Zones Law – Provides exemptions from: VAT, Corporate Income Tax, Municipal Tax, Real Estate Transfer Taxes and from import duties on machinery, raw materials, equipment and intermediate goods used for production.
- Tourism Law – If the foreign investment is of USD$25,000, it may be qualified as a 'tourism project of national interest' which may obtain benefits such as the exemption of: customs duties, Income Tax (for a period of up to 10 years), Transfer Tax for acquiring real estate that is destined to develop the 'project' and partial exemption from Municipal Taxes for 5 years.
- Law of Fiscal Incentives for the Promotion of Renewable Energies in the Generation of Electricity – This law grants exemption from: customs duties for the importation of machinery, equipment and materials (for up to 10 years), Income Tax (for 5-10 years) and taxes on income from the sale of Certified Emission Reductions, when certain requirements are met.
- International Services Law – This law allows the same benefits as the Free Zones Law, but its beneficiaries are those companies operating as Service Centers (Call Centers, BPO, and others).

13% – Value Added Tax (VAT).



GUATEMALA

The Market

Guatemala has a strategic geographical location, is the largest country of the Central American region, has abundant natural resources and a stable financial system. The most active sectors attracting foreign investment is the contact center sector, mining and energy industry and commodity trading industries. There is a strong belief that Guatemalan exponential economic growth and investments, resilience of remittances and unprecedent support from monetary and fiscal policies, will foresee a significant recovery from the COVID-19 impact with GDP growth in 2022.

Legal System

Guatemalan law explicitly promotes investment and includes provisions that recognise and guarantee private property rights equally for Guatemalan nationals and foreign investors.

The legal framework to regulate foreign investment is mainly composed by:

- Political Constitution of the Republic of Guatemala (“Constitución Política de la República de Guatemala”): establish that the State of Guatemala has the obligation to protect the formation of capital, savings and investment, and to establish satisfactory conditions for promoting the investment of both Guatemalan and foreign capital.

- Foreign Investment Law (“Ley de Inversion Extranjera”): its main objective is to encourage domestic and foreign investment in Guatemala, and it was issued to comply with the fundamental obligation of the State of Guatemala, as indicated above.

Both the Political Constitution of the Republic of Guatemala and the Foreign Investment Law clearly establish an equal treatment between domestic and foreign investors.

Foreign investors and their investment are mainly regulated by the stipulations of Foreign Investment Law. When foreign investment occurs in a sector of the economy governed by a law of a special nature, the investor must also be guided by the precepts of the latter.

Guatemala also holds trade and investment agreements with other countries and is a member of the Trade Organization (WTO) and the Central American Common Market (Mercado Común Centroamericano’).

Individual Investors

Foreigners acting individually or in duly accredited representation of foreign entities of a lucrative nature, who travel for lawful business purposes may apply for a business visa, which can be extended by an accredited Guatemalan Consulate abroad or by the General Directorate of Immigration in Guatemala. This visa will be valid for 180 days, extendable for the same period and only once. The requirements will depend on the nationality of the foreigner.

Guatemala operates a territorial tax system under which residents and non-residents are taxed only on Guatemalan-sourced income.

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GUATEMALA

Restrictions

All sectors of the Guatemalan economy are open to both local and foreign investment and ownership. However, some restrictions apply to sectors considered to be of strategic interest, such as telecommunications and some forms of transportation.

The government retains control over industry sectors such as airports, ports, water, public transportation, electricity and telecom.

Foreign investors can wholly own investment vehicles and real estate in Guatemala. There are a few exceptions, such as owning property next to the borders of the country.

Imports

Guatemala has no explicit prohibition to imports of goods. However, there are some regulations that companies importing products to Guatemala must follow. This regulation includes different types of registrations like the sanitary and phytosanitary, the labelling regulations and the inspection regulations.

The import duties applied to the goods coming to Guatemala can go from 15% to 0%, depending on the product and the export country.

Structuring & Tax

Foreign investment in Guatemala is usually carried out by establishing a local company or a branch of a foreign company. No special business permits are needed for rendering regular services. Special services that may require special permits include mining, oil, health and education providers, banking and financial services, communication, and transport.

The Commercial Code of Guatemala ('Código de Comercio'), provides several types of corporations, the most commonly used being:

- Corporations or Stock Companies ('Sociedad Anonima'): which is an entity that has its capital divided and represented by stock. No bearer shares are permitted. A minimum of two persons, individual or legal entities, are necessary to form a corporation. The responsibility of each stockholder is limited to the payment of the stock that had been subscribed. Dividends, whether paid to local or foreign shareholders are subject to an income tax at the rate of 5%. Minimum paid capital is Q.200.00, and registration takes approximately 15 labour days.
- Branch Offices: A corporation legally established abroad, may obtain registration and authorization to operate and conduct business in Guatemala. The registration of foreign commercial entities may be done permanent or temporary (for up to 2 years).

A business becomes liable to pay taxes as soon as the company is established in accordance with Guatemalan laws, have their tax domicile, parent company or branch of foreign entities in Guatemala.

The main business taxes rates are the income tax (ISR) (at a rate of between 5-25%), value added tax (IVA) (at a rate of 12% to the consumer), single tax on immovable property (IUSI) and the solidarity tax (ISO).

Reforms

Guatemala is currently negotiating a Free Trade Agreement with South Korea. This agreement will be the tenth Free Trade Agreement for Guatemala.

Incentives

Guatemala has established an equal treatment between domestic and foreign investors, so foreign investors don't receive any disadvantages compared to local parties. This applies to the few investment incentives that are available, such as incentives for the draw-back industry (including lowering tariffs on the import of raw materials, machinery, and others, for the purpose of exporting manufactured products from those materials outside Central America) and forestry projects.

Foreign investors do not face any regulatory / administrative disadvantages compared to local parties.

HONDURAS

The Market

Honduras is a country that has a great diversity of investment sectors, with great potential for development and growth in the medium term. Currently, the processing of raw materials, the textile industry, call centers and outsourcing of services are the ones that attract the most attention from foreign investors, due to tax benefits, privileged geographical location and the large bilingual population that exists in the country. A good investment environment is foreseen particularly in the agro-industrial, textile, service and tourism areas, as the new Government that took office on January 2022 has emphasized support and incentives for those sectors.

Legal System

Key laws that govern direct investment in Honduras include:

- Constitution of the Republic.
- Civil Code.
- Penal Code.
- Tributary Code.
- Civil Procedure Code.
- Criminal Procedure Code.
- Law for the Promotion and Protection of Foreign Investment.
- Conciliation and Arbitration Law.
- Law of Representatives, distributors and agents of national and foreign companies.

Honduras also holds trade and investment agreements with other countries and is a member of the World Trade Organization (WTO), the Central American Common Market (MCCA) and the International Labor Organization (ILO).

Individual Investors

There is a business/tourism visa, which allows a foreigner to stay legally in the country for up to 90 days, with the possibility of extending it to 120 days if requested prior to expiration. Additionally, there are residences and special stay permits of various types according to the migratory status of the foreigner and the activity to be developed, including:

- Foreigners in commercial activities or public shows;
- Foreigners hired as temporary employees by a natural or legal person;
- Entrepreneurs, directors of national or foreign commercial companies authorized to carry out acts of commerce in the country;
- Foreigners hired for projects/programs financed by the Honduran Government, foreign governments, international organizations, or by government institutions.

Honduras operates a territorial tax system under which residents and non-residents are taxed only on Honduran-sourced income.

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HONDURAS

Restrictions

There are generally no or extremely limited restrictions of foreign investment. In the case of owning Honduras real estate, the only restrictions are those that are applicable to Hondurans themselves.

Imports

Chemical products must be authorized for importation into Honduran territory. Commonly verified aspects of these products are quantities and origins.

In general, the following taxes and tariffs apply to imports:

- Sales tax;
- Import Tariff Law;
- Excise tax;
- Tax on production and consumption;
- Contribution for attention to Social programs and conservation of Road Heritage.

These are determined by the Central American Import Tariff, according to their origin and composition.

Structuring & Tax

By definition, it is the legitimate acquisition by a natural or legal person of any asset – owned by an investor or controlled by the same directly or indirectly – that has the characteristics of an investment. This includes characteristics such as the commitment of capital or resources, the expectation of obtaining profits or profits or assuming risk for their holders.

It can be taken in the form of company shares, capital, and any other form of participation in a company, turnkey contracts, construction, management, production, concession, participation in income and public-private partnership.

Assets are any good that is part of the assets of a legal person that has been acquired with the sole and exclusive purpose of generating a profit or profit for its owner – they may be capital contributions, financial instruments, shares, industrial property, securities or any other means of transfer of resources.

Since a company, whether legally constituted or in violation of the laws, generates income from a Honduran source, it is materially obliged to pay taxes. The general rate that companies will pay for this tax is 25% of the net income.

In addition, the following taxes are applicable:

I. Tax on net assets;

II. Personal income tax; and

III. Municipal tax of industry and commerce.

Indirect taxes and property taxes can also apply.

Incentives

Amongst other incentives, incorporation to the following special regimes can be beneficial to investors:

- Free Zone Regime;
- Tourism Sector Regime;
- Regime to promote the development of Call Centers and Outsourcing of Services;
- Regime for Employment and Development Zones.

There are generally no or extremely limited restrictions of foreign investment.

NICARAGUA

The Market

Foreign investors are drawn to Nicaragua for its strategic location, favourable business climate, growing economy and its preferential access to the most important markets in the world. The sectors expected to drive growth are mining, manufacturing, construction, and agriculture, amid favourable international commodity prices. However, investors should keep in mind that the World Economic Forum (WEF) classified the top risks facing the country in 2022 as being the potential of state collapse, prolonged economic stagnation, extreme weather events and the collapse of social security systems.

Legal System

Under Law No. 344 (Law for the Promotion of Foreign Investments), the Nicaraguan legal framework establishes the duties, rights, benefits and guarantees that foreign investments in Nicaragua will benefit from.

As a result of this legal framework, the foreign investor has free access to the purchase and sale of available foreign currency and to the free convertibility of currency on equal terms with the national investor. The foreign investor may freely perform, without prejudice to any obligation required in the country:

- Transfers abroad related to the invested capital, or by dissolution, liquidation or voluntary sale of foreign investment;
- Remittance of any dividend or profit generated in the national territory, after the payment of the corresponding taxes;
- Transfers abroad related to the invested capital, or by dissolution, liquidation or voluntary sale of foreign investment;
- Remittance of any profit, dividend or profit generated in the national territory, after the payment of taxes;
- Payment and remittance of payments originated by debts contracted abroad and the interests accrued by them, as well as royalties;
- Income and technical assistance; and
- Payments derived from compensation for expropriation.

This law provides that foreign investors will enjoy the same rights as national investors. It also recognises the foreign investor's right on the ownership of property related to the investment without further limitations.

Nicaragua also holds trade and investment agreements with other countries and is a member of the World Trade Organization (WTO), the Central American Integration System (SICA) and the Council of Ministers for Economic Integration (COMIECO).

Individual Investors

Investors have the right to apply for a visa under the category of 'investor', for which the investment must be accredited before the Ministry of Industry and Commerce (MIFIC) – this entitles the investor to a permanent visa for a period of five years. The minimum amount of investment to be credited is US$30,000.00. However, it is common practice for foreigners entering for business purposes, to do so as tourists.

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- *Avil Ramirez Mayorga, Associate*

NICARAGUA

Residents and non-residents must pay Income Tax ('IR' for its acronym in Spanish) on the following Nicaraguan-sourced income:

- Income from work;
- Income from economic activities;
- Capital income and capital gains and losses.

IR also taxes any increase in unjustified wealth and income that is not expressly exempt by law. Additionally, it is key to note that to date Nicaragua has not signed any double taxation treaty.

Restrictions

The government owns and operates the National Sewer and Water Company (ENACAL), National Port Authority (EPN), National Lottery, and National Electricity Transmission Company (ENATREL) – private investment is not permitted in these sectors.

The government can also limit foreign ownership for national security or public health reasons under the Foreign Investment Law. The government requires all investments in the petroleum sector to include one of Nicaragua's state-owned enterprises as a partner. Similar requirements are in place for the mining sector as well.

Nicaragua allows foreigners to be shareholders of local companies, but the company representative must be a Nicaraguan citizen or a foreigner with legal residence in the country. Many companies satisfy this requirement by using their local legal counsel as a representative. Legal residency procedures for foreign investors can take up to eighteen months and require in-person interviews in Managua.

Imports

Law 2014/891, which is an amendment to Nicaragua's Harmonized Tax Code, prohibits the importation of vehicles that are ten years or older. There are several exceptions such as classic or historic vehicles.

As a member of the Central American Common Market (CACM), Nicaragua applies a harmonized external tariff on most items at a maximum of 15%, with some exceptions. Approximately 95% of tariff lines are harmonized among Central American countries at this rate or lower.

In response to rising prices in 2007, Nicaragua issued a series of decrees to reduce tariffs on many basic foodstuffs and consumer goods to 5%. These decrees have been regularly extended every six months, most recently in June 2021.

Structuring & Tax

The most common way to structure foreign investment is through corporations (sociedades anónimas), limited liability companies (sociedades colectivas de responsabilidad limitada) and branches of foreign entities.

Businesses wholly or partially conducting activities in a place of management, a branch, an office or any place of extraction of natural resources trigger a Permanent establishment (PE) in Nicaragua, and consequently are liable to pay taxes. The tax base of the annual IR is Net Income resulting from gross income less deductible costs and expenses. This is taxed at up to 30%.

The VAT rate is 15% of the value of the product or cost of the activity carried out except for exports of domestically produced goods and services provided abroad, on which a 0% rate is applied.

Reforms

The Ultimate Beneficiary Ownership (UBO) Registry recently entered into force, obliging all local companies to disclose – in a private and confidential manner – before this registry its shareholder structure, as well as the designation of the UBO.

Incentives

As part of investment promotion, the Nicaraguan legal system contemplates a series of special benefit regimes, which include tax exemptions. These regimes seek to attract high economic investment; for its application, it's necessary to observe a series of technical, financial or environmental requirements, in attention to each sector. The economic areas that have regimes with tax benefits include Free Trade Zones and BPO; Hydrocarbon and natural gas; Renewable energy; Mining; Forest; Tourism; Construction of low-income housing; Fishing and aquaculture; and Public-Private Partnerships.

Nicaragua issued a series of decrees to reduce tariffs on many basic foodstuffs and consumer goods to 5%.

PANAMA

The Market

Foreign investors are drawn to The Republic of Panama's geographical position and convenient access to the Panama Canal, which connects the two oceans Pacific and Atlantic which aids in facilitating logistics and transportation activities. The country's most active sectors for investment include multimodal logistics, advanced manufacturing, financial services, telecommunications, energy and mining. International organizations, such as the World Bank, estimate that Panama will see the highest growth in Latin America.

Legal System

The key laws governing foreign investment in Panama are:

- Law 54 for the 'legal stability of investment in Panama' – aims to promote and protect investment made in the country in all sectors of economic activity. The law establishes that foreign investors have and their companies the same rights and obligations as national investors and companies.
- Law No. 41 – creates a special regime for the establishment and operation of the Panama-Pacific Special Economic Area, and an entity autonomous of the State, called Agency of the Special Economic Area Panama-Pacific. It grants Multinational Company Headquarters Licenses and a special regime for the establishment and operation of Multinational Company Headquarters (SEM).
- Law No. 207 – creates a state that allows it to attract foreign direct investment and promote exports with the purpose of contributing effectively to the economic and social development of the country and to the growth of strategic sectors.

Authorities that govern foreign investment include: The President of the Republic of Panama – Executive Branch, through the Ministry of Commerce and Industries and the supervision of the Comptroller General of the Republic.

Panama also holds trade, investment and cooperation agreements with other countries and has the Colon Free Zone – one of the most important free zones worldwide. It is a distribution centre with warehouses, port and traffic systems for all types of merchandise that is constantly being modernized.

Individual Investors

The Immigration Department of the Republic of Panama depending on the case have special types of pf visas for foreign investors, such as:

- Forest Investor.
- Investor of the Panama Pacific Economic Area.
- Workers Permit for the Panama Pacific Area, within 10% of the ordinary workers of a company, developer, or operator.
- Investor in Processing Zones for export.

Contributing firm

Central Law

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PANAMA

Panama operates under a territorial tax system under which residents and non-residents are taxed only on Panamanian-sourced income.

Restrictions

The government does not control the industrial sectors, only those that require a concession or authorization from the government, such as mining, energy, hydrocarbons, among others. Monopoly in economic activities is prohibited and free competition is promoted.

Foreigners may also not engage in retail trade.

Imports

As the Republic of Panama has several trade agreements (FTA), there are no restrictions on imports of goods and services, only those established by law, which require import permits such as food, medicine, drugs and weapons, among others.

The import duties applied are those agreed in the Free Trade Agreements and the Customs Code of Panama.

Structuring & Tax

Foreign investments are structured depending on the type of investment and the conditions agreed between investors and beneficiaries. Every company whose economic activity is in national territory must pay its corresponding taxes. The main taxes are:

- Income taxes;
- Movable property transfer taxes (ITBMS);
- Real estate taxes;
- Patent taxes, single rate, and money transfer.

Incentives

In Panama there are tax incentives depending on the economic activities where it is invested, for example: agriculture and agro-industrial, real estate, tourism, export zones, etc.

Panama also created a special economic zone named Panama Pacifico that generates new investments through the Panama Pacific Agency. The Panama Pacific Area is one of the most important state projects which contemplates the development of an international business center and economic incentives that attract foreign direct investment and the generation of new jobs in Panama. This economic area features customs, immigration, labor, and fiscal benefits, among others.

The law establishes that foreign investors and their companies have the same rights and obligations as national investors and companies.

PERU

The Market

Peru remains an attractive country for private and international investment; global companies hold the most investments in Peru. The most active sectors for investment are traditional industries such as mining, agriculture and fishing alongside large investments in fintech, digital industries, and start-ups. In 2022, economic growth is projected to return to pre-pandemic levels, at a rate of approximately 3% per year, as expected better external conditions would be partially offset by the effects of political uncertainty.

Legal System

Laws linked to labour and tax matters are the most relevant to foreign investment.

Peru also holds trade, investment and cooperation agreements with other countries and is a member of the World Trade Organization (WTO), the Andean Community and the Pacific Alliance.

Individual Investors

Foreign investors require a business visa, which allows them to carry out business, legal and contractual activities, specialized technical assistance, or other similar activities. Depending on the nationality of the person who enters as an investor, a business visa could be requested at the immigration control post. This visa does not allow them to work or receive income from Peruvian sources.

Resident companies are subject to tax on their worldwide income, while non-resident companies are subject to tax only on their Peruvian-sourced income. In the case of resident individuals, Peruvian-sourced passive income is taxed at an effective rate of 5%, while employment income is subject to a progressive tax ranging from 8-30% on net income (some deductions are applicable).

Restrictions

In Peru, there is no restriction on foreign ownership and investment in specific industrial sectors, except for the national commercial aviation sector, where it has been provided that 51% of the company's share capital must be owned by Peru.

Foreigners are prohibited from acquiring or owning mines, lands, forests, waters, fuels or energy sources, directly or indirectly, located within 50 km of the borders, except in cases of public necessity expressly declared.

Imports

Peru imposes no quantitative restrictions on imports. As a full member of the Andean Community, Peru follows the Nandina code, a fully harmonized tariff system that all members use, and which conforms to the Harmonized System (HS) of the World Customs Organization.

The taxes levied on the importation of the goods are Customs Duties, General Sales Tax, Municipal Promotion Tax and Selective Consumption Tax – the applicable taxes depend on the imported goods.

ESTUDIO OLAECHEA

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PERU

Restrictions

Foreign investment enjoys the same benefits as domestic investment, except for specific exceptions regarding concessions. Foreign investment may be direct or through subsidiaries or affiliates. There is the possibility of signing legal stability agreements which stabilize the tax regime at the time of its subscription. There is a free disposition of dividends and profits.

The main taxes in Peru are the Income Tax and the Value Added Tax. Income Tax is levied on income derived from capital or work, capital gains and patrimonial increases as established in law. Resident companies are subject to tax on their worldwide income, while non-resident companies are subject to tax only on their Peruvian-sourced income.

Structuring & Tax

Foreign investment enjoys the same benefits as domestic investment, except for specific exceptions regarding concessions. Foreign investment may be direct or through subsidiaries or affiliates. There is the possibility of signing legal stability agreements which stabilize the tax regime at the time of its subscription. There is a free disposition of dividends and profits.

The main taxes in Peru are the Income Tax and the Value Added Tax. Income Tax is levied on income derived from capital or work, capital gains and patrimonial increases as established in law. Resident companies are subject to tax on their worldwide income, while non-resident companies are subject to tax only on their Peruvian-sourced income.

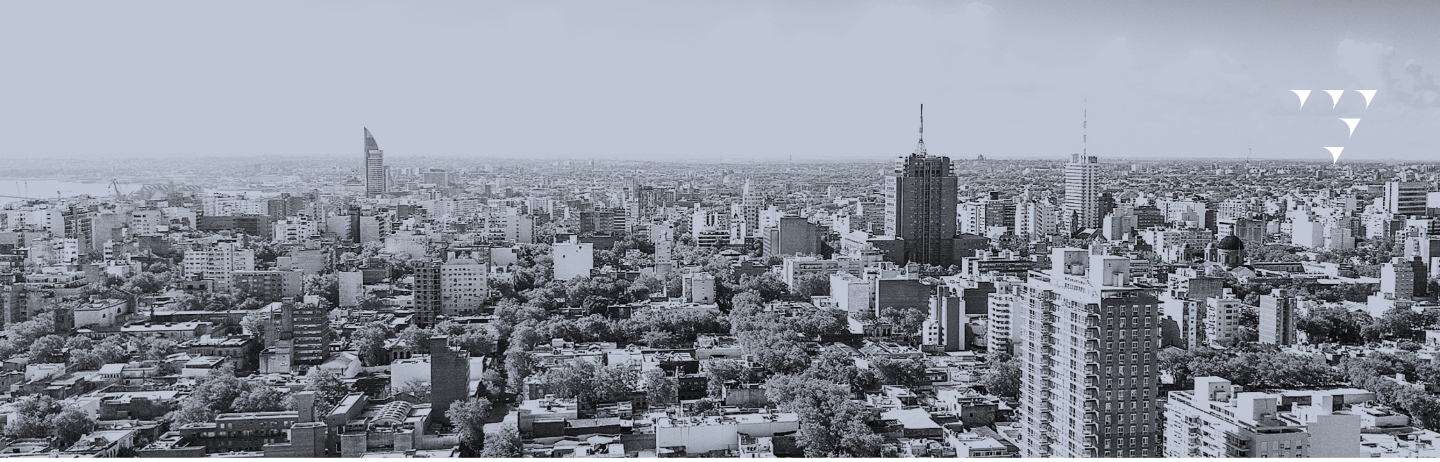
Reforms

In 2021, new legislation came into force that modified the merger control regime, which was previously limited to the electricity sector. In 2022, prior merger control applies to all areas of the economy that reach certain ranges and characteristics, regardless of whether they involve domestic or foreign investments.

Incentives

The Peruvian tax system foresees several tax incentives, most notably a Value Added Tax Anticipated Recovery System, which consists in the refund of the VAT levied on the acquisition of new capital goods or intermediate goods, as well as services or construction contracts carried out during the pre-production stage of a large project.

Investors can benefit from a Value Added Tax Anticipated Recovery System, which consists in the refund of the VAT levied on the acquisition of new capital goods.



URUGUAY

The Market

Uruguay stands out in Latin America for its longstanding tradition of respecting the rule of law, its democratic values, and its remarkable social and macroeconomic stability. Historically, Uruguay's economy has been dominated by the agribusiness sector, mainly centering in the production and export of beef and a variety of crops, such as soybeans. Active sectors for foreign investment now include forestry, cannabis production, renewable energy, tech and tourism.

Legal System

There are no laws specifically governing foreign investment. Pursuant to Uruguayan Law, foreign investments are subject to the same treatment as local investments with some few exceptions where foreign investment is restricted or banned (i.e., radio and television licenses).

Uruguay also holds trade, investment and cooperation agreements with other countries and is a member of the United Nations (UN) and Organization of American States (OAS).

Individual Investors

As a general rule, foreign individuals are not required to obtain a visa and can freely enter the country for business purposes. Only citizens from a limited list of countries are required to apply for a business visa in order to enter the country.

Uruguay favours a territorial system for the taxation of individuals and corporations. Foreign individuals and corporations must pay income tax in Uruguay for all their sources of income produced in Uruguay, regardless of the place of their tax residence.

An individual will be deemed a Uruguayan tax resident when:

- The individual spends more than 183 days in Uruguayan territory in a given calendar year.
- The individual establishes the principal centre of its vital or economic interests in the country.
- The individual spends 60 days in Uruguayan Territory and acquires the equivalent to USD 400,000 in real estate.

Individuals deemed Uruguayan tax residents will be taxed on their income produced and received in Uruguay, but also on their income produced abroad and received from non-resident entities, such as interests on loans and dividends.

In all cases, taxation in Uruguay might vary depending on the application of International Treaties for the Avoidance of Double Taxation.

Contributing firm

Bado Kuster Zerbino & Rachetti

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- *Alvaro Carrao Lussich, Partner*
- *Pedro González, Attorney*

URUGUAY

Restrictions

Foreign ownership of licenses for radio and television services is forbidden.

The government holds monopolies over some public services and sectors of the economy. These monopolies are:

- Import and distillation of petroleum and its derivatives.
- Import and distribution of natural gas.
- Distribution and supply of electric power for domestic and industrial purposes.
- Distribution and supply of water for domestic and industrial purposes.
- Telephone services with the exception of cellular phone services.
- Internet connection services.
- Railway transportation.

Imports

Though there is no general rule restricting the importation of commercial goods, some specific categories of goods are banned from importation. For example, the importation of used cars is forbidden. Also, the importation of vapes and electronic cigarettes is banned.

The maximum applicable rate for the import of commercial goods is 35%. However, this rate is exceptionally applied to some specially protected goods. Commercial goods are also taxed on import by VAT (22%) and, in some cases, an Excise tax. The rate of the Excise tax varies depending on the category of goods.

Structuring & Tax

Foreign investments are typically structured through corporations, trusts established pursuant to Uruguayan Law. Also, foreign investment can be structured by the establishment of a branch of a foreign corporation. There is a range of types of corporations that a foreign investor can choose from depending on its needs. The most common form of corporation is a Limited Liability Corporation.

Foreign individuals and businesses must pay income tax in Uruguay for all their sources of income produced in Uruguay, regardless of the place of their tax residence. However, the rate of the taxation will vary depending on the tax residence of the corporation.

Businesses deemed Uruguayan tax residents or with a permanent establishment in the country are taxed at a 25% rate on their net income. Foreign businesses deemed not Uruguayan tax residents will be taxed at a 12% rate on their gross income for their sources of income produced in Uruguay.

Reforms

Legislation has recently been introduced in order to establish a ten-year tax holiday for individuals who establish their tax residence in Uruguay. This tax holiday exonerates all new tax residents from being taxed on their capital sources of income produced abroad and paid by non-resident entities.

Incentives

Uruguay has a system in place for the promotion of investments which can allow businesses to access a lower taxation of their income when the investment meets certain goals previously established in an investment plan approved by the Uruguayan Government. Some of the goals an investment plan can meet are incorporation of technical advancements that allow to strengthen the competitiveness of the country, to allow for the direct or indirect creation of jobs, incorporate added value to the production chain, and contribute to the geographical decentralization of the industrial activity in the country.

Also, businesses can get tax incentives on the import of certain goods, such as machinery, vehicles and special equipment, when these are to be introduced in the productive cycle of an investment. In these cases, businesses will not be charged with VAT and the Excise Tax that burden these goods.

Another incentive of foreign investment is the Trade Free Zone system implemented by the country.

Businesses can get tax incentives on the import of certain goods.

UNITED STATES

The Market

In 2020, the US was the largest host economy, with inflow valuing approximately $156B. The most active sectors for FDI in the US are manufacturing, finance and insurance, wholesale trade, banking, information technology, professional services, retail trade and real estate. In recent years, foreign investment has also increased in the alternative energy, climate change mitigation, telecommunications and transport.

In November 2021, the Biden Administration's $1.2 trillion Bipartisan Infrastructure Law was signed and is being described as the largest single investment in U.S. public works projects in history. The infrastructure funding will begin to flow to specific projects during 2022.

Legal System

The key laws governing foreign direct investment in the US are

- Foreign Investment and National Security Act of 2007 (FINSA);
- Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA); and
- Section 721 of the Defense Production Act of 1950.

The regulatory authority for these laws is the Committee on Foreign Investment in the US (CFIUS), composed of nine voting members: Department of Treasury (chair), Department of Justice, Department of Homeland Security, Department of Commerce, Department of Defense, Department of State, Department of Energy, US Trade Representative, and the Office of Science & Technology Policy.

The US is a member of numerous international organisations, including (but not limited to)
The WTO, the North American Free Trade Agreement (NAFTA), the Asia-Pacific Economic Cooperation (APEC) and the Euro-Atlantic Partnership Council (EAPC).

Furthermore, the US has entered into many bilateral investment treaties (BITs) and free-trade agreements (FTAs), which are collectively referred to as 'international investment agreements'; the US was a party to over 500 international investment agreements as of 2011.

Individual Investors

A person who is not a US citizen or permanent resident must obtain either a temporary work visa (H-1B and H-1B1), an Inter-company Transferee visas (L) or a Treaty Trader and Investor visas (E-1 and E-2). A foreign person who is in the US for business purposes but is not seeking employment can apply for a temporary business visa (B-1).

Investor visas, commonly known as Treaty Trader (E-1) and Treaty Investor (E-2), are available to citizens of foreign countries that have signed a treaty of commerce and navigation, or a bilateral investment treaty (BIT) providing for non-immigrant entries, with the US. Both E-1 and E-2 visa holders are initially allowed a maximum stay of two years. Requests for extension of stay may be allowed for periods of up to two years for each request.

Contributing firm

Steptoe & Johnson PLLC

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- *Tom Vorbach, Member*
- *Mark Hanshaw, Of Counsel*

UNITED STATES

The E-1 visa is specifically designed for foreign business owners and employees who are required to stay in the US for prolonged periods of time to oversee or work for an enterprise that is engaged in trade between the US and the relevant foreign treaty country.

The E-2 visa is available to a foreign person who is a citizen or national of a treaty country and who wishes to enter the US solely to develop and direct the operation of an enterprise in which they have invested, or is in the process of investing, a substantial amount of capital.

Individuals can be subject to tax at the federal, state and local (that is, county or city) levels. Each of these jurisdictions has different rules for determining tax liability. The US has two different taxation systems for US persons and non-US persons. US persons are subject to taxation on their worldwide income (including all foreign-sourced income), although they are allowed to credit some or all of foreign taxes paid in many circumstances. Non-US persons are only subject to US income tax on income deemed to be sourced in the US.

Restrictions

There are limits on foreign investment in certain industries believed to affect national security, including:

- Shipping
- Aircraft.
- Banking.
- Energy.
- Communications and media.
- Government contracting.

In addition, federal law prohibits or limits foreign ownership or investment in hydroelectric power companies, various nuclear products and air transit companies.

There are generally no restrictions on foreign ownership or occupation of real estate. However, there are certain tax withholding requirements for dispositions of US real property by a foreign person. Foreign investors are initially subject to a 15% withholding tax on the gross amount realised on the sale of a US real property interest. A foreign corporation that distributes a US real property interest must withhold a 21% tax on the gain it realises on distribution to its shareholders.

There are no minimum capital requirements for foreign investment in the US and Texas. However, bilateral investment treaties and certain investor visas usually require a 'significant' investment in order to apply.

Imports

Like most other countries, the US governs the importation of goods through tariffs, quotas, duties and other similar taxes. Generally, the importation of commercial goods and imports into the US is governed by a complex network of treaties, laws and regulations. For example, The US Customs and Border Protection (CBP) enforces the regulation, control and facilitation on the importation of carriers, people and commodities. The scope of the CBP includes:

- Protecting US consumers from toxic or hazardous products.
- Monitoring foreign competition within certain industries and labour associated with such industries.
- Investigating the introduction of drugs and other illegal substances.

Furthermore, the previous presidential administration imposed significant tariffs on a wide range of goods. The majority of these tariffs have been placed on Chinese imports. However, there have also been broad ranging tariffs on goods, such as steel, that have affected several trade partners.

The US uses the Harmonized Tariff System (HTS) to determine the duty rate for nearly all imports. Specific tariff rates for products can be accessed through the US International Trade Commission-Tariff Database.

The regulation of professions in the US is a state government issue and is largely affected by occupational licenses and the regulation of specific industries.

UNITED STATES

Structuring & Tax

Foreign investment in the US is generally structured as:

- Direct investment: simple ownership structure and is subject to only one level of tax on the disposition. However, there are a number of disadvantages related to direct investments – they offer no privacy and no liability protection, the foreign national or non-resident alien (NRA) will be obliged to file US income tax returns, and if owned at death, the US asset is subject to US estate taxes.

- Foreign corporation ownership: The ownership remains abroad. It has several advantages including: liability protection; no US income tax or filing requirement for the foreign shareholder; shares in a foreign corporation are non-US assets not included in the US estate; dividends are not subject to US withholding; no tax or filing requirement are placed on the disposition of the stock; and no gift tax is applicable to the transfer of shares of stock.

- Foreign corporation-US corporation structure: the NRA owns a foreign corporation, which in turn owns a US LLC taxed as a corporation. This structure affords privacy and liability protection, escapes US income tax filing requirements, avoids US estate taxes, allows for gift tax free lifetime transfers and avoids the branch profits tax. Distributions from the US subsidiary to the foreign parent are subject to the 30 percent Fixed, Determinable, Annual, or Periodical (FDAP) withholding, but the timing and the amount of such dividend is within the NRA's control.

Federal Corporate Income Tax (CIT) is 21%. State CITs range from 1% to 12% (although some states impose no CIT) and are deductible expenses for federal CIT purposes.

Income tax rules applicable to NRAs can be quite complex. As a general rule, an NRA pays a flat 30 percent tax on US source fixed or determinable, annual or periodical (FDAP) income that is not effectively connected to a US trade or business, and which is subject to tax withholding by the payor.

A resident alien is taxed on all worldwide income. The rate of tax may be reduced by an applicable treaty to anywhere between 0-15%.

Reforms

Under 86 FR 70045-01, the Department of Commerce (Commerce) is issuing this interim final rule to amend its regulations pertaining to the procedures and rules related to Article 1904 of the North American Free Trade Agreement (NAFTA) for the purposes of reviewing antidumping and countervailing duty determinations issued by the United States, Canada, and Mexico.

Under 86 FR 52300-01, Commerce is modifying its regulation concerning the time for submission of comments pertaining to industry support in AD and CVD proceedings; modifying its regulation regarding new shipper reviews; modifying its regulation concerning scope matters in AD and CVD proceedings.

Incentives

The federal government does not offer any formal tax incentive schemes for foreign investors. However, states and local municipalities often offer tax incentives for businesses to locate in their jurisdiction on a case-by-case basis.

The rate of tax may be reduced by an applicable treaty to anywhere between 0-15%.

Chapter III.

APAC

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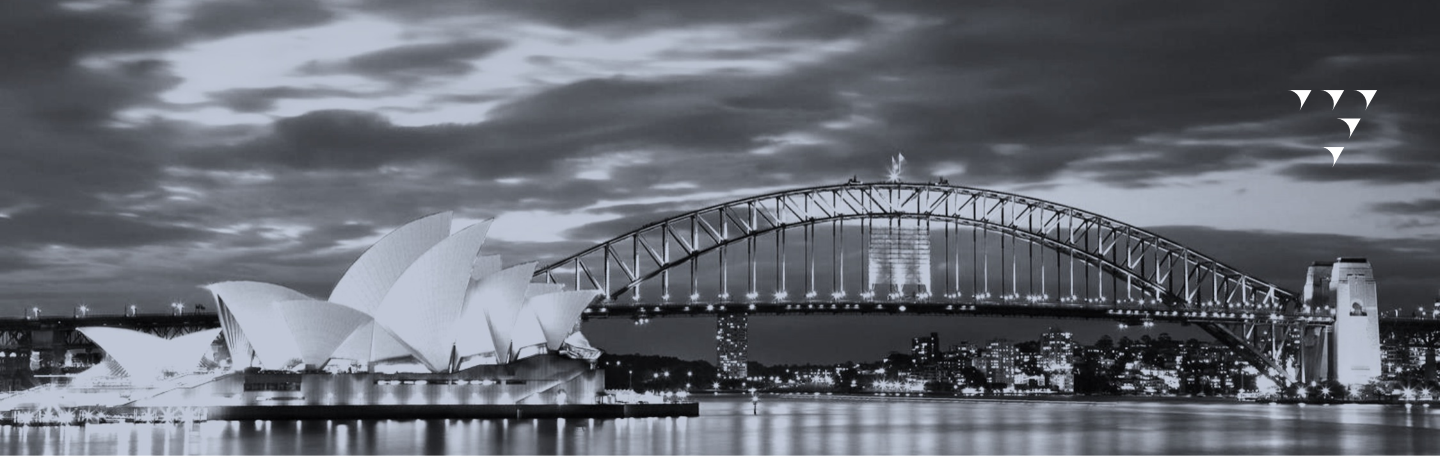
Australia	Colin Biggers & Paisley
Indonesia	AYMP
Japan	Midosuji LPC
Philippines	Villaraza & Angangco
Singapore	Fervent Chambers
Taiwan	Lin & Partners



AUSTRALIA

The Market

Australia is very open to foreign investment – in light of previous economic downturn, the Australian Government and the Reserve Bank of Australia have taken significant measures to promote the economy. Mining and quarrying, construction and real estate activities account for approximately 60% of foreign direct investment (FDI); investment in these sectors is forecasted to grow significantly over the next 5 years. Recently there has been a focus on technology, with a number of Australian technology companies receiving significant foreign investment funding. Furthermore, the Reserve Bank's policy of keeping the cash rate at record low levels will stimulate domestic investment in all sectors of the Australian market.

Legal System

Foreign investment is primarily regulated by the Foreign Acquisitions and Takeovers Act (FATA), the Commonwealth Government's foreign investment policy, and the Foreign Investment Review Board (FIRB). The Australian Taxation Office plays a role alongside FIRB to govern foreign investment in Australia.

As well as being a member of the World Trade Organization (WTO), Group of Twenty (G20), the Organisation for Economic Co-operation and Development (OECD) and Asia-Pacific Economic Cooperation (APEC), Australia has signed multiple bilateral and multilateral free-trade agreements.

Individual Investors

Individuals seeking to own and manage new or existing businesses in Australia, or invest in Australian assets, may be eligible for a Business Innovation and Investment (Provisional) Visa. There are five streams available under this visa:

- Business innovation stream: establishing and managing a new or existing business.
- Investor stream: making a designated investment of at least AUD1.5 million and maintaining business and investment activity in Australia.
- Significant investor stream (SIV): investing at least AUD5 million into complying investments in Australia and maintaining business and investment activity in Australia.
- Premium investor stream (PIV): investing at least AUD15 million into complying premium investments in Australia and maintaining business and investment activity in Australia.
- Entrepreneur stream: This provisional visa lets you carry out entrepreneurial activities in Australia. You must have a funding agreement with a third party in place in order to access this stream.

Australian residents pay tax on income derived during the income year from all sources, including net capital gains. Some types of foreign-sourced income and gains are exempt for some types of taxpayers, and tax offsets are generally available for foreign tax paid on non-exempt foreign income. Temporary residents and non-residents are exempt from Australian tax.

COLIN BIGGERS & PAISLEY LAWYERS

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- *Amar Singh, Solicitor*

AUSTRALIA

Restrictions

Generally, there are no minimum capital requirements for foreign investment in Australia and no restrictions on the transfer of funds from Australia.

The government facilitates the operation of a relatively free market and will intervene to correct market inefficiencies or to further particular social or economic policy.

The FIRB assesses foreign investment proposals above prescribed thresholds. Foreign acquisitions and investment in national security businesses, agribusiness, agricultural land and media are subject to particular scrutiny under the government's foreign investment policy. There are also specific policies in place for foreign investment in residential and commercial land, national security land and mining tenements.

Imports

The government can prohibit and restrict the importation of certain goods. The Australian Trade and Investment Commission (Austrade) and Australian Border Force (ABF) regulate the importation of goods into Australia; regulation exists to protect domestic industries, consumers and the environment from harmful and dangerous imported goods.

Duties are imposed on commercial goods imported to Australia by the ABF. Most imported goods are also assessed for goods and services tax (GST), although exceptions to GST apply for certain goods including food items and certain medical aids. In calculating the GST payable, the value of the taxable importation is broadly calculated as the aggregate of the following:

- Customs value of the imported goods.
- Customs duty payable.
- Amount paid or payable to transport the goods to Australia and insure the goods during transportation.
- Wine equalisation tax payable.

Structuring & Tax

Foreign investment typically takes the form of direct investment or portfolio investment.

Foreign direct investment is where a foreign entity or establishes a new business or acquires 10% or more or an Australian enterprise. This will generally involve the establishment or acquisition of an Australian company. There is also an ability to undertake business in Australia through a foreign company structure, however that will require registration with the Australian Securities and Investments Commission (ASIC) as a foreign company.

Portfolio investment refers to the purchase of securities (whether debt or equity) that grant the investor exposure to the underlying asset but does not give them control. Direct investment is generally subject to more stringent regulation.

Businesses are liable to pay company tax – 26% for small businesses and 30% for all other businesses – for all income derived from an Australian source. In addition, they are required to pay capital gains tax on the disposal of any asset, collect the goods and services tax on behalf of the government and pay payroll tax on wages paid to employee.

Reforms

The Australian Government's pro-foreign investment policy requires that the nation is continually in dialogue with its trading partners and other relevant entities to ensure an effective, open and secure foreign investment environment.

AUSTRALIA

Incentives

Austrade provides guidance and information to foreign investors on setting up businesses in Australia, as well as advice on government programmes and investment opportunities. Each individual state and territory offers different investment assistance programmes and grants.

The Australian research and development (R&D) tax incentive is available for selected companies, providing a refundable tax offset equal to 43.5% for the first AUD100 million of eligible expenditure for companies with an aggregated turnover of less than AUD20 million per annum.

Furthermore, the following tax incentives are available for investors in early-stage innovation companies (ESIC):

- A 20% non-refundable carry forward tax offset for qualifying investments, capped at AUD200,000 for each investor and their affiliates per income year.
- Modified capital gains tax treatment for qualifying investments held for more than one year but less than ten years.

Tax incentives are available for investors in early-stage innovation companies (ESIC).

INDONESIA

The Market

Indonesia intends to improve its position on the list of countries attracting foreign investment. The government is currently targeting foreign investment for its infrastructure projects, such as ports, railways, mass rapid transit, toll roads, power generation, construction and telecommunications. Foreign investment is also focused on the needs of private individuals, for example, in relation to consumer goods, pharmaceuticals, food, consultancy services, as well as banking, insurance, the finance sector, start-ups, e-commerce and financial technology. Though there has been a decline in investment in Indonesia's natural resources due to the current situation with the commodities market, renewable energy is still a big focus of investment.

Legal System

The key laws governing foreign investment in Indonesia are:

- Law No. 25 of 2007 concerning Investment, as lastly amended by the Job Creation Law (Investment Law);
- Law No. 40 of 2007 concerning Limited Liability Company, as lastly amended by the Job Creation Law;
- Government Regulation No. 5 of 2021 concerning Implementation of Risk-Based Business Licenses;
- Presidential Regulation No. 10 of 2021 as lastly amended by Presidential Regulation No. 40 of 2021 concerning Investment Business Fields ("PR No. 10/2021"); and
- Investment Coordinating Board Regulation No. 4 of 2021 concerning Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities ("BKPM Regulation No. 4/2021").

Restrictions on foreign investment are regulated by the PR No. 10/2021 – or the so-called Positive Investment List. Rather than a list of businesses that are closed to foreign investments, PR No. 10/2021 outlines that all business activities are now opened for foreign investment, unless regulated otherwise or are activities that can only be implemented by the central government. Indonesia is also a member of the Association of Southeast Asian Nations (ASEAN) and holds various free trade agreements (FTAs) with countries.

Individual Investors

Foreign individuals need a business visa to enter Indonesia for business purposes. Indonesian business visas can be issued either at an Indonesian embassy, or for specific countries such as the US, can be processed on arrival.

Under Indonesia's tax regulations, there are domestic taxpayers and foreign taxpayers. Foreign individuals who reside or are present in Indonesia for more than 183 days in a year period, or who are present in Indonesia and have the intention to live in Indonesia, are deemed domestic taxpayers.

The Indonesian personal taxation system is based on worldwide income.

AYMP ATELIER OF LAW
Armand Yapsunto Muharamsyah & Partners

Contributing firm

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INDONESIA

Restrictions

Each respective business sector is controlled by the relevant ministry. For instance, the manufacturing sector is controlled by the Ministry of Industry, the trading sector is controlled by the Ministry of Trade. Before conducting business, approval must be obtained from:

- The government through the Online Single Submission (OSS).
- The Capital Investment Coordinating Board (for certain licences).
- Any other relevant agency for the business sector.

Certain strategic industries, such as weapons and firearms, are exclusively controlled by the Government.

The minimum capital requirements for foreign investment differ from one industry to another. In general, a Foreign Investment Company (PMA Company) must have a total investment of more than IDR10 billion, excluding land and buildings, for each line of business as determined by the five digits of its Indonesian Standard Business Classification (KBLI) number.

Imports

There are certain restrictions on the importation of commercial goods, depending on the particular goods/products, for example, the importation of sugar, certain species of shrimp and hazardous waste. Import duties are payable at rates from 0% to 150% of customs value of imported goods, although currently the highest rate is 40%. There are no similar or equivalent restrictions on providing services into another jurisdiction.

Structuring & Tax

Typically, foreign investors become shareholders in a PMA Company. There should be paid-up capital made by the foreign investor depending on their shareholding. Dividend distribution (if any) is payable to the shareholders and subject to withholding tax at the rate of 20%, except when reduced by the relevant tax treaties.

A business becomes liable to pay tax in Indonesia when it qualifies as a domestic taxpayer. This would be applicable when the business operates in Indonesia under the framework of a permanent establishment, a PMA or a representative office.

The corporate tax rate is 25%. Corporate domestic taxpayers must file an annual tax return by the end of April each year. There is 10% VAT due on events involving the transfer of taxable goods or provision of taxable services in the Indonesian Customs Area. A stamp duty of IDR6,000 is affixed to documents valued at more than IDR1 million.

Reforms

Due to the issuance of Job Creation Law, it has significantly changed the licensing procedures in Indonesia. The Online Submission System (OSS) has launched its new system and has established a new licensing procedure (the Risk Based Licensing), where there will be four risk levels which will be determined based on the potential impact of each business activity.

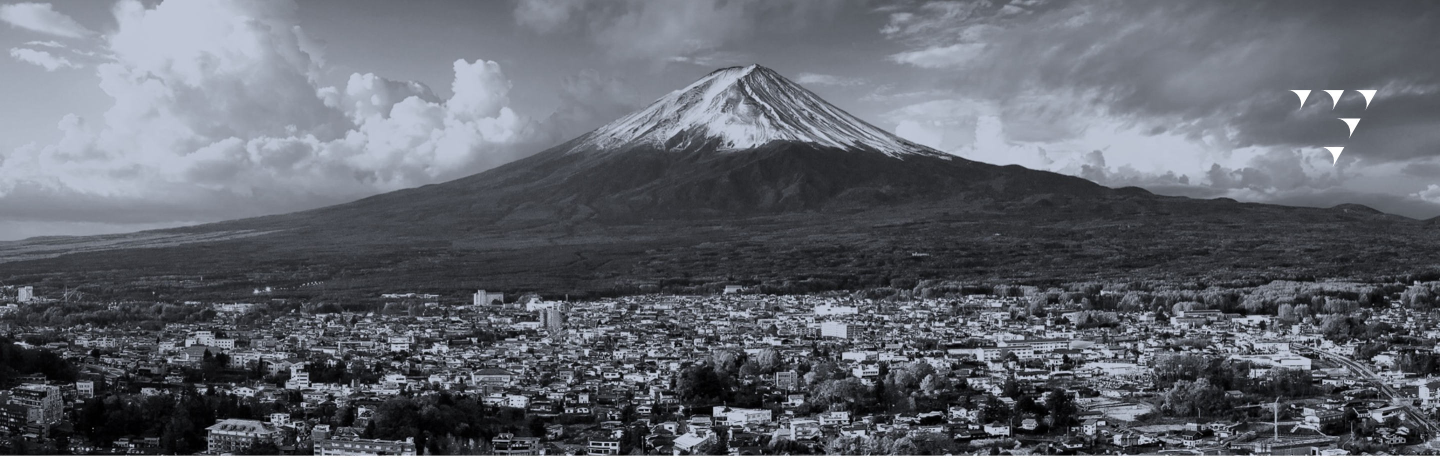
Incentives

There are two types of tax incentive, a tax holiday and tax allowance, which can be granted to a business vehicle that fulfils certain criteria and requirements. Tax holidays and tax allowances are mutually exclusive – a party obtaining a tax holiday cannot also apply for a tax allowance. Tax holidays are available to pioneer industries with a capital investment plan of more than IDR100 billion, to be granted at a flat rate of 100% of the total amount of income tax payable by relevant corporate taxpayers with a minimum investment value of IDR500 billion. These can be given over five to 20 years. After the abovementioned tax-holiday periods have elapsed, taxpayers can be granted a 50% tax holiday for the following two-year period.

PMA companies that are not eligible to be granted a tax holiday can apply for a tax allowance. To be granted a tax allowance, the corporate taxpayer must:

- Possess a high investment value or be geared for export.
- Employ a larger number of workers.
- Possess high local content.

Tax holidays are available to pioneer industries with a capital investment plan of more than IDR100 billion.



JAPAN

The Market

Japan is one of the world's largest economies, attracting foreign investment by having a well-developed legal and business environment, a stable infrastructure and a high level of urban safety. The most active sectors for foreign investment are non-manufacturing, finance and insurance being the most prevalent. In June 2021, the Council for the Promotion of Foreign Direct Investment in Japan publicly announced the 'Strategy for Promotion Foreign Direct investment in Japan' and set a new target of 'aiming to increase the balance of foreign direct investment in Japan to 80 trillion JPY, equivalent to 12% of GDP by 2030'.

Legal System

The Foreign Exchange and Foreign Trade Act (FEFTA) governs foreign investment into Japan. The Ministry of Finance and the Ministry of Economy, Trade and Industry are the primary Japanese authorities charged with administering the FEFTA. The Bank of Japan also has jurisdiction over certain administrative matters and other agencies have jurisdiction over specific industries.

Japan is a member of the World Trade Organization (WTO), the Trans-Pacific Strategic Economic Partnership (TPPI) and the Comprehensive and Progressive Agreement for the Trans-Pacific Partnership (TTPII).

The Regional Comprehensive Economic Partnership signed by 10 ASEAN countries and five non-ASEAN countries including Japan, China and South Korea is one of the largest regional free trade agreement, which became effective in January 2022.

Individual Investors

Japan waives visa requirements for foreign nationals from 68 countries for short-term stays of up to 90 days, for the purposes of tourism, commerce, conferences or personal visits. Foreign nationals coming to Japan through the visa waiver programme are prohibited from working but can engage in market research and other activities in preparation for future investment.

The liability of an individual to pay personal income tax and local inhabitants' tax to the Japanese government is determined based on the residency status of the individual. A permanent resident is any foreign national resident who is domiciled or had a residence in Japan for more than five years in total over the last ten years. A non-resident foreign national is any person who stays in Japan for less than a year, including temporary visitors.

Permanent residents are taxed on their worldwide income. Non-permanent residents are taxed on all income, but foreign-sourced income that is not remitted into Japan.

Restrictions

The FEFTA, requires a prior notification to the government and is subject to review of inward investment in:

I. Industries related to national security, e.g., arms, aircraft, and nuclear power;

II. Industries related to public order, e.g., electricity and gas;

III. Industries related to public safety, e.g., pharmaceuticals; and

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Contributing firm

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- *Naoki Okamoto, Partner*

JAPAN

III. Industries that contribute to the smooth operation of the economy, e.g., petroleum, agriculture, and fisheries.

Foreign investment in the banking, insurance, energy, electricity, security and pharmaceutical sectors is subject to licensing by the government authorities.

Imports

The following statues prohibit and restrict the importation of certain goods:

- Customs Act.
- Plant Protection Act
- Act on Domestic Animal Infectious Diseases Control
- Act on Ensuring Quality, Effectiveness and Safety of Medical and Pharmaceutical Products and Medical Equipment.
- FEFTA

Customs duties, national and local consumption taxes are payable on imported commercial goods. General consumption taxes applicable to goods are calculated based on their value. Certain goods such as liquor, tobacco, volatile oils, petroleum, gas, and petroleum coal attract additional duties.

Certain business regulations on providing services also apply to service providers in Japan regardless of whether their customers are based in Japan or in foreign countries. Service providers must have relevant licenses and are subject to various conduct rules for the purposes of customer protection.

Structuring & Tax

A representative office is the simplest structure for establishing a presence in Japan. It can be used to perform market research, advertisement or other preparatory activities prior to the full launch of a business in Japan. Business beyond these preparatory activities is not permitted.

The most common corporate structure in Japan is the kabushiki kaisha (KK), a limited liability stock company, with internal organisation and operation set out under the Companies Act. When a foreign investor establishes a KK as its Japanese subsidiary, corporation tax is payable on the income of the KK in Japan. Dividends to shareholders are also taxable.

A godo kaisha (GK) is also established under the Companies Act, and like a KK is a limited liability company in which the members are liable only to the extent of their investment into the GK's capital. A GK has more flexible internal control under its articles of incorporation. A GK is often used with a profit-sharing agreement investment scheme (tokumei kumiai) (TK). By entering into a TK agreement, the profits to be distributed to applicable members can be deducted from the taxable income of the GK, acting as a pass-through to its members.

Income generated from a corporation's business activities are liable to:

- Corporate tax.
- Corporate inhabitant tax.
- Business tax.
- Special local corporation tax.

Reforms

The Tokyo Stock Exchange (TSE) is reforming the structure by reclassifying the market into three sections: 'Prime Market', 'Standard Market' and 'Growth Market'. This reform will be effective from April 2022.

Incentives

There are a number of tax incentives on both the national and local levels that are available to foreign investors into Japan. These incentives include the following:

- Tax incentives for comprehensive special zones. The Japanese government has designated special zones throughout Japan, investment in these zones offers tax benefits in the form of special depreciation rules and other deductions relating to investments in equipment and facilities.

- Tax incentives for strengthening local business. Tax incentives are available to both national and local taxes for establishing, expanding or relocating corporate headquarters outside of the Tokyo Metropolitan area.

In addition to tax incentives, the government has adopted a proposal to reduce the cost to businesses of complying with administrative procedures by 20%.

Japan waives visa requirements for foreign nationals from 68 countries for short-term stays of up to 90 days.

PHILIPPINES

The Market

Recently, several legislations have been passed in the Philippines governing the tax implications for foreign investments, the incentives of foreign investments, the limitations of foreign investments, and the corporate vehicles that may be used for foreign investments. With the total approved foreign investments reaching PhP 36.5 billion in the fourth quarter of 2020, the industries attracting foreign investments the most in the Philippines are information and communication, electricity, gas, steam, and air conditioning supply, manufacturing, and administrative and support service activities.

Legal System

The key laws governing foreign investment in the Philippians are:

- FIA and its Implementing Rules and Regulations (FIA IRR) – The FIA regulates the extent of equity held by foreigners in various business activities. Generally, there are no restrictions on the extent of foreign ownership of export enterprises. In domestic market enterprises, foreigners can invest as much as 100% equity except in areas included in the negative list.
- Revised Corporation Code (RCC) – Governs the establishment, monitoring, and general guidelines for corporate vehicles in the Philippines.
- Public Service Act (PSA) – Signed into law in 2022, the PSA regulates the public services in the Philippines by setting limitations of foreign ownership of public utilities.

The Philippines is a member of the World Trade Organization (WTO), the Japan-Philippine Economic Partnership Agreement (JPEPA) and the Association of Southeast Asian Nations (ASEAN) Free-Trade Area (FTA). The Philippines is also party to around 43 international tax agreements and 32 agreements for the promotion or protection of investments.

Individual Investors

Different visas are required depending on the business purpose. The different visas are:

- Treaty Trader/Investor Visa;
- Special Visa for Employment Generation ("SVEG");
- 47(a)(2) Visa.

A foreigner who is going to be employed in the Philippines must also secure an Alien Employment Permit (AEP).

Foreign individuals may apply for a Special Investor's Resident Visa (SIRV). The SIRV entitles the holder to reside in the Philippines for an indefinite period as long as the required qualifications and investments are maintained.

VILLARAZA & ANGANGCO THE FIRM · EST. 1980

Contributing firm

Villaraza & Angangco

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- *Carlo Augustine, Senior Associate*

PHILIPPINES

Generally, individuals become liable to pay income tax in the Philippines if they are earning income from sources within the Philippines. A resident Philippine citizen is liable to pay tax on worldwide income. Non-resident Philippine citizens are liable to pay income tax in the Philippines only on income derived from sources within the Philippines.

Restrictions

The FIA categorizes industries depending on the level of restrictions on foreign ownership. There are those that are: reserved to Philippine national only (referred to in FIA under List A), and partially-nationalized and subject to limited participation by foreign investors (List B). By virtue of the PSA though, foreign equity restrictions applicable to certain industries, including telecommunications and airlines, have already been liberalised.

The 1987 Constitution provides that natural resources are generally owned by the State. The exploration, development, and utilization of such natural resources shall be under the full control and supervision of the State.

Under the Investors' Lease Act, foreign investors may lease private lands as long as the lease contract does not exceed 50 years.

The following minimum capital requirements for foreign investment also apply:

- Export enterprises can be established with a minimum paid-in capital of PHP 5,000.
- Small and medium-sized domestic market enterprises and domestic corporations with more than 40% foreign equity are required to have a paid-in equity capital of at least USD 200,000.
- 100% foreign equity ownership is allowed for retail trade enterprises that have a paid-up capital of USD2.5 million or more, provided investments for establishing a store are not less than USD 830,000.

Except for specific industries where a different amount is fixed by law, domestic corporations with at least 60% Filipino equity are allowed to have a paid-in capital of PHP 5,000.

Imports

Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act (CMTA), provides a list of prohibited or banned imported goods and services. These include goods and services such as munitions and explosives, gambling equipment and harmful drugs.

The applicable rates of customs duty vary depending on the type of goods imported and range from 0-100%.

Structuring & Tax

There are several modes of infusing a foreign investment in the Philippines, such as through:

- Investing through a subsidiary in the Philippines;
- Opening a branch in the Philippines;
- Opening a representative office in the Philippines.

VAT is payable on the sale of goods/properties or services, and on the importation of goods into the Philippines. The rate is generally 12% of the gross receipts, but certain transactions may be exempt from VAT or subject to a 0% rate.

Reforms

One of the most significant recent legal developments affecting investors in the Philippines is the passage of the Corporate Recovery and Tax Incentives for Enterprises Act, which took effect in April 2021. This law essentially lowered corporate income tax rates and provided fiscal incentives to better attract investments in the Philippines, both locally and abroad.

PHILIPPINES

Incentives

The Investments Code provides incentives through registration with the Board of Investments (BOI). Pioneer enterprises are entitled to an income tax holiday for six years from commercial operations. The income tax holiday for non-pioneer enterprises is four years from the commencement of commercial activities.

Other incentives that may be granted to a BOI-registered enterprise include:

- Exemption from taxes and duties on imported spare parts.
- Exemption from wharfage dues and export tax, duty, impost and fees.
- Reduction of the rates of duty on capital equipment, spare parts and accessories.
- Tax exemption on breeding stock and genetic materials.

Enterprises situated in special economic zones can also file an application to register with the government agency managing the economic zone, in order to avail themselves of specific incentives. The tax incentives that may be granted to Philippine Economic Zone Authority (PEZA) registered enterprises include an income tax holiday and a 5% special tax on gross income in lieu of all national and local taxes on expiry of the income tax holiday.

Pioneer enterprises are entitled to an income tax holiday for six years from commercial operations.

SINGAPORE

The Market

Singapore is an attractive destination for inward investment due to its stable political and legal systems, its low tax regime and its reputation for incorruptibility and efficiency. Historically, the sectors in Singapore with the highest amount of foreign investment have been financial and insurance services, wholesale and retail trade, manufacturing, and professional, scientific and technical administrative and support services.

However, new investment opportunities are now arising in clean energy, urban management solutions and artificial intelligence.

As the financial hub of Asia, the highest concentration of foreign investment is in the financial and insurance services sector. This draws foreign investment to sectors such as banking and finance, asset management, capital markets, insurance and FinTech.

Legal System

As Singapore does not generally restrict or regulate foreign investment, there is no legislation or authorities addressing foreign investment specifically. However, certain sectors and strategic industries are restricted to some extent. Some of the legislation that imposes restrictions on foreign investment includes the:

- Broadcasting Act.
- Newspaper and Printing Presses Act.
- Banking Act.
- Securities Futures Act.
- Financial Advisers Act.
- Residential Property Act.
- Competition Act.

Singapore is a member of the UN, the WTO, the Association of Southeast Asian Nations (ASEAN) and the Asia-Pacific Economic Cooperation (APEC). Singapore also holds Bilateral Investment Treaties (BITs) with 35 countries – including the UK, Switzerland and China – and Double Taxation Agreements (DTAs) with 85 tax jurisdictions, including Japan, the Russian Federation and the United Arab Emirates.

Individual Investors

All foreigners intending to work in Singapore must have a valid work pass before commencing work. There are three general categories of passes for the following groups:

- Professionals.
- Skilled and semi-skilled workers.
- Trainees.

The different employment passes for professionals are the:

- Employment Pass (EP). This is for managerial, executive or specialised jobs with a minimum monthly salary of SGD3,600. The duration is for up to two years, renewable for up to three years.

- EntrePass. This is for individuals who have started, or intend to start, a private limited company registered with the Accounting and Corporate Regulatory Authority and meet MOM's criteria of being an entrepreneur, innovator or investor. The company must have at least SGD50,000 paid-up-capital, and the applicant must hold at least 30% of shares in the company.

FERVENT CHAMBERS

Contributing firm

Fervent Chambers

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- *Clarence Tan, Counsel*
- *Lim Zheng Feng, Director*

SINGAPORE

- Personalised Employment Pass (PEP). This is for EP holders earning at least SGD12,000 a month or overseas foreign professionals earning at least SGD18,000 a month. The duration is for up to three years and is non-renewable.

Individuals are regarded as a tax resident if they either:

- Stay or work in Singapore for either at least 183 days in a calendar year, or continuously for three consecutive years; or

- Are employed for at least 183 days for a continuous period over two years (unless they are a director, public entertainer or professional).

A tax resident's foreign-sourced income brought into Singapore is generally tax exempt, with a few exceptions. Tax resident individuals are entitled to tax reliefs and their income is taxed at progressive rates. The highest personal income tax rate is 22%.

Restrictions

Singapore maintains an open investment regime. There are generally no requirements for foreign investors to surrender ownership or management control to locals or to enter into joint ventures, with the exception of certain controls and restrictions placed over the financial services, professional services, telecommunications, media and real estate sectors.

Singapore's central bank, MAS, regulates all banking activities. An approval from the Minister in charge of MAS is required for any merger or takeover of a local bank or financial holding company, or any other acquisition of voting shares in these financial institutions above specific thresholds of 5%, 12% or 20%.

All local and foreign law firms require licences issued by the Legal Services Regulatory Authority under the Ministry of Law to practise in Singapore. Although a Qualifying Foreign Law Practice (QFLP) licence enables a foreign law firm to practise Singapore law, there are still restrictions over certain areas of practise, including conveyancing, family law, criminal law and domestic litigation.

The government controls the distribution, importation and sale of foreign newspapers through regulations and licensing overseen by IMDA. Sites that publish one article relating to issues in Singapore per week on average over a two-month period and which receive a two-month average of minimally 50,000 monthly visits from unique addresses of Singapore-based internet providers must:

- Submit a bond of SGD50,000.
- Remove prohibited content within 24 hours of notification from the IMDA.

In the cases of the telecommunications and energy sectors, the market is presently dominated by Singaporean firms, making it challenging for foreign companies to enter the business.

There are no minimum capital requirements for foreign investments. A company need only have a paid-up capital of SGD1 to be registered. However, individuals seeking Singapore Permanent Resident status under the Global Investor Programme must invest at least SGD2.5 million. Similarly, if an individual is applying for an EntrePass to work and start a company in Singapore, the company must have a minimum paid-up capital of SGD50,000.

Imports

Despite Singapore being a relatively open market for foreign investment, the government maintains a more cautious stance when it comes to introducing certain goods and services to society. Some goods are banned outright from import into Singapore, such as dangerous non-medical drugs, tobacco products and chewing gum, while others require authorisation by way of advance notification, licence or certification.

Imported goods are generally subject to goods and services tax (GST) and customs duty and/or excise duty, unless they qualify for preferential tariff treatment under a relevant FTA or are otherwise exempted. GST is a flat rate of 7%. Customs duty and excise duty are imposed on goods at varying rates.

The four categories of dutiable goods are:

- Intoxicating liquors.

- Tobacco products.

- Petroleum products and biodiesel blends.

- Motor vehicles.

SINGAPORE

Structuring & Tax

The main forms of business vehicles are companies, partnerships, limited liability partnerships (LLPS), business trusts and co-operative societies (co-ops).

Most foreign investments and businesses use private companies limited by shares. Companies are separate legal personalities from their members/shareholders and the persons who manage them. They can own property, sue or be sued in their own name, and are recognised as taxable entities in their own right. A foreign company can enter the Singapore market by incorporating a subsidiary company or setting up a branch office in Singapore. As Singapore allows 100% foreign ownership of locally-incorporated companies, no control is lost in setting up a subsidiary and the foreign parent company can enjoy the numerous tax benefits applicable to local resident companies. Incorporating a subsidiary is often the preferred option for small to mid-sized foreign companies.

Partnerships are not separate legal entities, and the partners generally have unlimited liability, except for in limited partnerships. In limited partnerships, there are general partners and limited partners, the latter of which are liable for the debts or obligations of the firm up to the amount of their agreed contribution. While partnerships cannot own property, they can sue or be sued in their own name. The partners in a partnership are taxed at their personal income tax rates.

LLPs have separate legal personalities from their partners. They can own property, and can sue or be sued in their own name. However, partners of LLPs are taxed at their personal income tax rates on their respective shares of the profits in the LLP.

In business trusts, the trustees are the legal owners of the assets in the trusts. Under the general law of trust, the beneficiaries are liable for the legal obligations of the trusts. Depending on the circumstances and the structure of the trust, tax may be payable either on profits made by the trust or by the beneficiaries on their respective shares in the profit under the trust.

Co-ops are associations of persons aimed at achieving a common social or economic goal by forming a jointly-owned business organisation. A co-op must have a minimum of five persons or two institutional members. To qualify for membership of a co-op, an individual must be a citizen or be resident in Singapore, while an institution must be a co-op or trade union. A co-op is exempt from income tax. Some of the biggest consumer-oriented businesses in Singapore are co-operatives.

Singapore's corporate tax rate (CIT) is considered one of the lowest rates internationally at 17%. The unincorporated business tax rate follows the progressive personal income tax rate.

Reforms

The Payment Service Act was recently amended. It is an example of balancing innovation for service providers and regulation for consumer protection which is symptomatic of Singapore's FinTech ecosystem. Targeted at managing four types of risks – loss of customer monies; ML/TF risks; fragmentation and lack of interoperability across payment solutions; and technology risks including cyber risks. Ensures innovation by providing for three types of licenses on the basis of the operations of the service provider.

The proposed Financial Omnibus Act extends MAS oversight to virtual asset service providers (VASPs) operating overseas.

Incentives

Several Tax incentives are provided for in the Income Tax Act and governed by the Economic Development Board (EDB), Enterprise Singapore, IRAS, and MAS.

Double taxation relief (DTR) is available to Singapore tax-resident companies that have paid foreign tax on foreign income from a jurisdiction with which Singapore has a DTA. The relief comes in the form of a tax credit of an amount that is the lower of the foreign tax paid and Singapore tax payable on the same income. Non-Singapore incorporated companies, Singapore branches of foreign companies and foreign-owned investment-holding companies with purely passive sources of income are generally not eligible. Unilateral tax credit (UTC) works the same way as double taxation relief, only that it is available on foreign income from jurisdictions with which Singapore does not have a DTA.

SINGAPORE

To claim the tax credit, the company must satisfy the following conditions:

- The company is tax-resident in Singapore for the relevant basis year.
- Tax has been paid or is payable on the same income in the foreign jurisdiction.
- The income is subject to taxation in Singapore.

The pooling system allows companies to elect to aggregate foreign taxes paid so that the tax credit given is the lower of the amount of tax payable or paid in Singapore and the foreign jurisdiction on the same pool of foreign income. This option is available to companies that are already entitled to claim DTR or UTC, where the highest corporate tax rate of the foreign jurisdiction is at least 15% at the time the foreign income is received in Singapore.

Singapore tax-resident companies are also eligible for tax exemptions on three specific categories of foreign income:

- Foreign-sourced dividends.
- Foreign branch profits.
- Foreign-sourced service income.

Additionally, to encourage new start-up companies, Singapore tax-resident companies are eligible to a staggered rate of tax exemption on the first SGD 300,000 of taxable income for the first three years of assessment. Start-up companies may also be eligible for the Startup SG Tech Grant, which offers start-up companies up to SGD 500,000 to fast-track the development of proprietary technology solutions and to catalyse the growth of the company based on proprietary technology. Alternatively, the Enterprise Development Grant offers 50-70% of qualifying costs as assistance.

To encourage new start-up companies, Singapore tax-resident companies are eligible to a staggered rate of tax exemption on the first SGD 300,000 of taxable income.

TAIWAN

The Market

Foreign investors looking to invest in Taiwan have a plethora of options, ranging from traditional investments in financial and insurance services to new technological firms in various industries. Taiwan's current energy policy has recently pivoted towards 'green' and renewable energy; many tax and other government policies have been tailored to attract foreign renewable energy companies to invest in Taiwan. The country's most active sectors are the financial and insurance, real estate, information and communications and electronic parts manufacturing.

Legal System

The main legislation governing foreign investment is the Statute for Investment by Foreign Nationals.

The supervising agency in charge of governing foreign investment is the Investment Commission of the Ministry of Economic Affairs. Depending on the specific industry the foreigner intends to invest in (e.g., telecommunications), other agencies may also be involved.

Taiwan also holds trade, investment and cooperation agreements with other countries and is a member of the World Trade Organization (WTO) and Asia-Pacific Economic Cooperation (APEC).

Individual Investors

A visa is required for individuals travelling to Taiwan for business a period of less than six months and a period exceeding six months. Taiwan has agreements with 66 countries allowing visa-free access to enter Taiwan (including business activities) for periods of 14, 21, 30 or 90 days. Fast-track entrance to Taiwan is available for foreign investors upon application, provided that the investor has at least three entrances into Taiwan within the previous twelve months.

Residents in Taiwan are defined as having substantial economic ties in Taiwan and living in the country for at least 183 days within a tax year. Residents must file tax return on Taiwan-sourced income and pay 5-40% income tax depending on level of income.

Individuals not living in Taiwan but having Taiwan-sourced income must have tax deducted from such income at the source (15-21%).

Restrictions

Foreign investment is restricted in various industry, including weapons, restricted chemicals, forestry, fishery, transportation infrastructure, electricity/water infrastructure, telecommunications, etc.

The Government retains control in certain industries such as forestry, fishery, construction, transportation, telecommunications, finance, insurance, real estate, professional services, science and cultural.

Contributing firm

Lin & Partners

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- *Joi Chang, Senior Associate*

TAIWAN

Foreigners are not allowed to own real property in Taiwan if such property is located on sensitive areas, such as places marked for defence or military purposes.

Imports

The Ministry of Economic Affairs has a list of restricted goods, including marijuana, endangered animals, foreign plants, flares, etc. They are categorized as:

- Restricted – Importation not permitted unless prior exclusive approval obtained.
- Conditional Importation – Importation conditionally permitted if the goods meet the listed specifications and an import approval is obtained.

Customs are levied per the Customs Act in relation to the price and volume of the import. Further taxes that exist for imports are:

- Commodity Tax: Per the Commodity Tax Act, applied after the levying of customs.
- Tobacco and Alcohol Tax: Per the Tobacco and Alcohol Tax Act, the importation of alcohol/tobacco will be taxed per amount imported.
- VAT/Non-VAT: Per the Value-added and Non-value Added Business Tax Act, the customs will levy a business tax on importation of goods, which is 5% of the price after the above three has been applied.
- Luxury Tax: per the Specifically Selected Goods and Services Tax Act, if the price of the imported goods, after applying the above four taxes, reach a specific price, a further 10% tax will be levied.

Structuring & Tax

Foreign investors most commonly structure their investment in Taiwan by establishing:

- a Taiwan company, or subscribing to or purchasing shares of a Taiwan company.
- a Taiwan branch office.
- a Taiwan representative office that may sign contracts, conduct bidding, etc. but may not have actual business operations.

If the headquarters of a business is in Taiwan, all incomes, both domestic and offshore, will be taxable; if the headquarters is outside Taiwan, only domestic income will be taxed.

The tax rate for a profit seeking enterprise is 20% per Article 5 of the Income Tax Act; however, the income tax payable shall not exceed one half of the portion of taxable income more than NT$120,000. If the total taxable income is NT$120,000 or less, the entity is tax-exempt.

Reforms

The Enforcement Rules for Investment in Taiwan by People's Republic of China (PRC) individuals were amended in December 2020. The three major areas of amendments relate to: amended definition of what constitutes 'controlling power' in determining if a PRC investor constitutes 30% of the inbound investment; expanded definition of 'investment'; enhanced scrutiny of political investments.

Incentives

Import, commodity and business taxes are exempt for businesses located in science industrial parks, export processing zones, and agricultural biotechnology parks that are importing raw materials, machinery and equipment; export taxes are also exempted for the foregoing businesses.

Depending on the specific regulations of each industrial park, there may be certain land tax benefits and low-interest government loans available as well.

Import, commodity and business taxes are exempt for businesses located in specific sectors.

Chapter IV.

EUROPE

CONTRIBUTING FIRMS

Bulgaria	Penkov Markov & Partner
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Czech Republic	Havel & Partners
France	Lamy Lexel
Germany	SKW Schwarz
Italy	Mondini Bonora Ginevra
Poland	Maruta Wachta
Romania	MPR Partners
Slovakia	Skubla & Partneri
Spain	Ceca Magan Abogados
Turkey	Durakan+Partners
United Kingdom	Irwin Mitchell LLP

BULGARIA

The Market

Bulgaria has seen a positive trend in foreign investment, offering attractive production facilities, as well as the most competitive price of land and labour force and the lowest corporate and personal taxes in the EU. Active sectors for investment in Bulgaria are the energy sector, real estate, manufacturing industry and IT services. However, potential market growth depends on the eventual stabilization of the political environment, which has been subject to changes in 2021.

Legal System

The main laws that govern foreign investments in Bulgaria are the Investment Promotion Act (IPA), the Regulations for Application of the Investment Promotion Act and the Structural Rules of the Bulgarian Investment Agency.

The Constitution of the Republic of Bulgaria also contains several provisions, which are applicable to the investments and the economic activities of foreign persons.

The main regulatory authority in the sphere is the Bulgarian Investment Agency (BIA), which assists the Minister of Economy in the implementation of State policy in the field of investment promotion. Some of the key responsibilities of the Agency in promoting investments are:

- Providing information services to investors.
- Providing individualized administrative services to investors according to the procedure established by the IPA.
- Issuing investment certificates which provide for the possibility of transfer by ease (without holding a tender) of property rights or the establishment of limited real rights over real estate (private state or municipal property).

Individual Investors

Nationals of the EU, the EEA and the Swiss Confederation are free to enter, to reside without residence permit and to work in Bulgaria for up to three months. Third-country nationals (foreigners) may enter and reside in Bulgaria on a short-term basis, using Visa type 'C' for entry and stay in Bulgaria up to 90 days within a six-month period or Visa type D for a stay in Bulgaria up to 180 days within a six-month period.

A person will be classed as a tax-paying resident in Bulgaria when:

- They have a permanent address in Bulgaria;
- They are present within the territory of Bulgaria for a period exceeding 183 days in any twelve-month period;
- They are sent abroad by the Bulgarian State;
- Their centre of vital interests is situated in Bulgaria.

Bulgarian residents are taxed on their worldwide earnings. Non-residents are taxed only on their Bulgarian-sourced income.

PM&P

Penkov, Markov & Partners

Contributing firm

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BULGARIA

Restrictions

The Bulgarian government exercises control over certain industry sectors through the various state authorities – the banking sector, the energy sector, the mining sector and the sector of defence (arms production and their distribution) are strictly regulated and supervised by the respective authorities.

As agricultural lands are defined by the Bulgarian Constitution as a national treasure, their acquisition by foreign citizens or legal entities is strictly restricted. However, there is still a mechanism for their acquisition from foreign citizens/legal entities, i.e., by the incorporation of a legal entity in Bulgaria.

Imports

As part of the European Union (EU), Bulgaria promotes the free movement of goods, services and capital, and has the obligation:

- Not to import certain types of commercial goods which are restricted to import by the competent European authorities or are defined in Regulations of the Union.
- Not levy duties on the import of commercial goods originating from another EU State.

The duty rates that are applicable to non-EU states in 2022 vary depending on the nature of commercial goods, subject to import. The applicable duty rates are envisaged in Implementing Regulation (EU) 2021/1832.

Structuring & Tax

Bulgarian legislation and procedures do not differentiate or discriminate investors when choosing between establishing a new company, acquiring an existing one or establishing a branch of a foreign entity. Corporate tax is levied on profit accruing to resident legal persons and the profit accruing to non-resident legal persons from a permanent establishment/place of business activity in the Republic of Bulgaria. The basic rate of corporate tax in Bulgaria is 10%. There is also a VAT at fixed at rate of 20%. There are more than sixty double taxation avoidance treaties in force, to which Bulgaria is party. These treaties provide for a tax relief or a reduced tax rate.

Reforms

The main act that regulates the investments in Bulgaria, the IPA, has been subject to continuous amendments and supplementations.

In January 2022, the Bulgarian government is actively fighting for the removal of the 'golden passport'. With the removal of the 'golden passports', Bulgaria will cease to be referred to by the European Commission as one of the countries with problematic citizenship regulations.

Incentives

The Investment Promotion Act (IPA) envisages schemes for encouraging foreign investments, including:

- Provision of short-term administrative services and individual administrative services from the state and municipal authorities.
- Provision of financial support for the construction of elements of the technical infrastructure (for example roads etc.).
- Provision of financial support for training and acquiring professional qualification of the employees of the respective investor.
- Possibility for acquisition or remunerative establishment of a limited real right over properties (or land plots with built leading technical infrastructure, which is public property) from the Bulgarian state or the respective municipality on market prices or lower without conducting a tender procedure.
- Provision of financial support for partial reimbursement of the compulsory insurance contributions made by the investor at his expense, in his capacity as employer, for the state social insurance, for the supplementary compulsory pension insurance and for the compulsory health insurance for the newly appointed employees, depending on the respective acquired investment certificate.

There are more than sixty double taxation avoidance treaties in force with Bulgaria.

CYPRUS

The Market

Since Cyprus exited its Economic Adjustment Programme and lifted capital controls, the country has enjoyed a period of increasing stability and economic growth, with a real GDP growth of over 3% since 2016. Discoveries of hydrocarbon deposits have brought new opportunities for Cyprus to become a new energy hub in the production of oil and gas. Other significant sectors for investment include energy, shipping, tourism, construction, transport, banking, financial technology and food and drink.

Legal System

The main laws governing foreign investment in Cyprus are the:

- Cyprus Securities and Exchange Commission Laws, which regulate the structure, responsibilities, powers, organisation of the securities and exchange commission and other related issues.
- Immovable Property Acquisition (Aliens) Law Cap, which outlines the rules and procedures of immovable property acquisition by foreign nationals.
- Civil Registry Laws, which provides the legal basis for the immigration framework and related schemes of Cyprus.
- Stamp Duty Law of Cyprus, which outlines the relevant provisions for stamp duty payment.

Cyprus also has a network of over 60 Double Tax Treaties and has entered into numerous bilateral investment treaties worldwide.

Individual Investors

EU nationals and holders of certain diplomatic passports do not require an entry visa. All other foreign nationals must apply for either a short-stay visa (for a maximum of 90 days), a multiple entry visa, a border issued visa, or a long-stay visa (for a period of up to a year). International investors who apply through the Cyprus Investment Programme are eligible for fast-track citizenship in Cyprus.

A new strategy entered into force in January 2022, by which the existing Fast Track Business Activation Mechanism was transformed into the Business Facilitation Unit (the 'BFU'), which provides the following services:

- Assisting companies to obtain all necessary registrations for their establishment (e.g., company registration and name approval, registration to the Social Insurance Registry and the Employers' Registry, registration to VAT Registry and Income Tax etc.);
- Provision of information for all the necessary permits that may be required.

A foreign individual is deemed to be tax resident in Cyprus for income tax purposes if they reside in Cyprus for over 183 days in the relevant tax year. If so, both foreign source and Cyprus income are subject to tax in Cyprus.

Contributing firm

Kaimakliotis LLC

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- *Alexandros Apostolatos, Senior Associate*

CYPRUS

Restrictions

The Cypriot Government has fully liberalised direct investment by foreign nationals, with the only exception being certain regulated and/or strategic areas or industries such as:

- Banking;
- Real estate;
- Tertiary education;
- Defence;
- Airlines;
- Public utility companies;
- Radio and television stations;
- Newspapers and magazines.

Other than these restrictions, EU nationals and foreign nationals from outside the EU are equally free to invest and acquire up to 100% of the share capital in Cypriot companies. There is no governmental control over industry sectors other than defence and public utilities/services. There are also no minimum capital requirements for foreign investment.

Imports

Cyprus currently has certain restrictions and prohibitions in relation to the import of commercial goods, and a permit and/or inspection is usually required by the appropriate Cypriot governmental authority. Prohibitions include goods shipped or originating from countries under an embargo from the UN Security Council and the EU.

Products imported to Cyprus from within the EU enjoy zero tariff rates. VAT is chargeable on any import of commercial goods by a legal person, whether the goods come from inside or outside the EU, subject to applicable thresholds.

Structuring & Tax

Foreign investment in Cyprus is usually structured either:

- Directly, by a foreign investor.
- Through a Cypriot company limited by shares.
- Through funds established in Cyprus or abroad.

The most widely used vehicle is the limited company, which enjoys 12.5% flat corporation tax and can lower that headline percentage through the use of various tax incentive schemes, such as notional interest deduction. Investors can invest in the equity and capital of investing vehicles and/or use debt finance for their investments.

Reforms

A recent legal development positively affecting investors is the evolution and advance of the funds industry, underpinned by new legislation. The changes afford the creation and administration of cheaper, faster and more efficient funds, including a new form of fund that does not require a licence from the regulator.

Incentives

Substantial incentives are currently in place, which have been introduced by Cyprus to boost foreign investment and the development of innovative start-up companies. These include:

- Non-domicile rules for individuals; a non-domiciled Cyprus tax resident individual is not subject to Special Defence Contribution Tax on rental income, dividends income and passive interest income.
- The IP Box allows for an 80% notional interest deduction on IP income (for IPs generated in Cyprus) and capital gains from the disposal of IP rights.
- Notional interest deduction; deducts against taxable profit based on the application of a reference interest rate to new equity in a company, which effectively decreases corporation tax by up to 80% to as little as 2.5%.
- Foreign nationals working in Cyprus and receiving a salary of or over EUR100,000 per annum are eligible for a 50% deduction of gross income received (for a period of five years) from taxable income.
- Start-ups and qualifying innovative businesses can receive a tax exemption of up to 50% for foreign investments.

The most widely used legal structure is the limited company, which enjoys 12.5% flat corporation tax.

CZECH REPUBLIC

The Market

The Czech Republic is a rather successful destination for inward investment because of its attractive location in the centre of Europe, developed infrastructure, favourable labour costs, highly educated population, and quite liberal business regulation. Major sectors receiving foreign investment are the automotive-industry and high-technology such as software, IT and financial services, as well as engineering, chemical and manufacturing sectors. The most important factor affecting the market is the state of the European Union (EU) economy, especially Germany; 85% of Czech exports go to the EU, out of which 33% go to Germany.

Legal System

Foreign investments in the Czech Republic are generally subject to the same conditions as investments provided within the Czech Republic and other EU countries, with exceptions provided by the recently adopted Act on the Control of Foreign Investments (FDI Act). In principle, the FDI Act is based on EU regulation and lays down a framework for investments provided by (natural/legal persons) from outside the EU.

Individual Investors

Generally, a citizen from outside the EU must obtain an employee card if the purpose of the foreign person’s stay is employment and such employee card replaces the visa for a stay of over 90 days for the purpose of employment. Based on the employee card, a foreign individual is entitled to reside in the country and have a job for which the employee card was issued.

There is a fast-track regime for employers who are involved in the supportive programs of the Ministry of Industry and Trade in relation to their new employees and respective employee cards.

Investors can also obtain an investor visa, however, such investor needs to:

- Create at least 20 full-time jobs (for EU citizens);
- Make an investment of at least CZK 75,000,000 (approximately EUR 2,850);
- Propose a business plan regarding such investment or obtain a business visa for mid-size and small-size entrepreneurs.
- Obtaining this type of visa is considered quite demanding and is not widely used.
- An individual is a tax resident in the Czech Republic if their place of residence is in the Czech Republic for more than 183 days in the calendar year.

Restriction

In the case of some foreign investment coming from outside the EU, an FDI filing would be mandatory if:

- The target carries out the production, research, development, innovation or life cycle provision of military material;
- The target operates the critical infrastructure element designated by the relevant central administrative body;

HAVEL & PARTNERS
CONNECTED THROUGH SUCCESS

Contributing firm

Havel & Partners

- *Marek Lošan, Partner*
- *Natalija Traurigová, Counsel*
- *Jan Krejčí, Junior Associate*

CZECH REPUBLIC

- The target operates a critical information infrastructure system, critical information infrastructure communication system, information system of essential service, or an essential service (within the meaning of Act on Cyber Security);
- The person of destination who develops or manufactures the items listed in Annex IV to Council Regulation (EC) No 428/2009 (dual-use items).

The FDI Act also allows foreign investors to file a request for a consultation with the Ministry of Industry and Trade to avoid a retroactive ban on investment due to a later discovery of a security threat.

Imports

All shipments shipped to the Czech Republic from non-EU countries/territories must be cleared through Customs in the Czech Republic prior to being delivered to the recipient.

Charges apply depending on the value of the goods:

- Packages under EUR 22 are exempt from VAT and duty fees.
- Packages between EUR 22 and EUR 150 will be subject to VAT charges (typically 21%).
- Packages over 150 EUR are subject to VAT and customs (duty) fees which vary according to the types of goods.

Certain items such as alcohol, tobacco products, and perfumes are subject to customs fees regardless of cost.

Structuring & Tax

The most typical investments are represented by direct acquisitions of shares in companies or by acquisitions via local SPVs established or purchased in connection with the investment.

Czech resident companies are liable to pay tax, as well as companies managed and controlled from a place within the Czech Republic.

The standard corporate income tax rate of 19% applies to all business profits generated by all Czech resident companies, including branches of foreign companies. A reduced corporate income tax rate of 5% applies to basic investment funds pursuant to the Czech Act regulating investment companies and investment funds.

Reforms

The Czech Republic recently adopted the FDI Act that introduces a foreign investment screening regime, however, relevant case law is yet to be developed.

Incentives

Investment incentives are regulated by the Act on Investment Incentives and can be provided to the investors especially in the remote regions and for technology centres, business support services centres, the manufacturing industry, and manufacturers of special medical products.

A reduced corporate income tax rate of 5% applies to basic investment funds pursuant to the Czech Act.

FRANCE

The Market

France has a secure business and political climate that attracts foreign investors from around the world. The most attractive sectors for foreign investment in France are healthcare, food, financial services and logistics. France is also an extremely innovative country, specialising in growth areas such as biotechnology and environmental technologies, as well as attracting investment in five main research and development (R&D) sectors: automotive, aviation and spacecraft manufacturing, pharmaceuticals, scientific and technical activities, and IT and information services.

Legal System

The French government maintains legal monopolies through public service companies in sectors such as:

- Rail (RFF).
- Public transport in Paris (RATP).
- Tobacco manufacturing and distribution (Altaldis).
- Nuclear plants (EDF).
- Defence.
- Aerospace.

Investments in French companies are unrestricted other than in these legal monopolies and in certain sectors where authorisation is required.

There are two national authorities for foreign investment: the French Central Bank, which requires a notification for all transactions exceeding EUR15 million, and the Minister of Economy, which requires investors to submit a request if the target company is involved in the exercise of official authority or operating in specific business areas.

Both EU/EEA and non-EU/EEA investors require prior authorisation from the French government for investment in sectors that are a concern to private or public security, or deal in the production of weapons or toxic agents.

Individual Investors

Non-EU nationals intending to work in France must obtain a work permit, a visa authorising them to work or a residence permit. Investors can benefit from a specific permit known as the Talent Passport for Economic Investors. To obtain this permit the investor must:

- Make a direct economic investment personally or through a company they manage or in which they hold at least 30% of the capital.
- Create or safeguard, or undertake to create or safeguard, employment within four years of making the investment in France.
- Make or undertake to make an investment of at least EUR30,000 in tangible or intangible fixed assets in France.

Individuals are considered residents for French tax purposes if they:

- Live with their family in France.
- Spend most of their time in France.
- Carry on their main profession, occupation or employment in France.

Contributing firm

Lamy Lexel

- *Jérôme Saleur, Partner*

FRANCE

- Have the centre of their economic interests in France.

Unless otherwise provided by an international tax treaty, French resident individuals are taxed on their total global income and non-residents are taxed only on their French income.

Restrictions

The government maintains control over sectors considered to be public services or relevant to national sovereignty such as national defence, justice, civil protection, social security, public hospital services and education. However, there are no specific minimum capital requirements for foreign investments and there are no restrictions on foreign companies owning real estate in France, aside from meeting some tax obligations.

Imports

Imports are not subject to customs or import duties within the EU. However, commercial goods acquired from another EU member are subject to Value Added Tax (VAT). Imports from outside the EU are subject to VAT and are payable in accordance with the Common Customs Tariff in force in the EU, decided at the EU level.

There are no restrictions on providing services into another EU country. However, for certain professional services, such as legal, medical, or financial/banking services, individuals must demonstrate that they have the same level of qualification in their home country before pursuing their profession in another EU member state.

Structuring & Tax

Foreign companies commonly use a representative office as a first step in establishing a presence in France. The foreign company may then wish to establish a branch in France before incorporating a subsidiary. There are numerous company structures under French law, but trading companies generally take one of the following forms:

- Simplified joint stock company (SAS), which offers flexible corporate and governance structures allowing the partners to freely set specific rules in the company by-laws.
- Limited liability company (SARL), which can be used as a cheaper alternative to the SAS. However, due to its strict legal framework limiting flexibility, a SARL is generally unsuitable for businesses with an external growth strategy.
- Joint stock company (SA), which is used for larger companies as its governance is strictly governed by law. This is the only one of these company forms that can be publicly listed.

A corporation is considered to be a French tax resident if its headquarters, as set out in its articles of incorporation, are in France, or its place of effective management is in France. A corporation is considered to operate a business in France if it has any of the following:

- An autonomous establishment in France.
- A dependent agent empowered to act on behalf of the non-resident business in France.
- A complete cycle of activity in France (for example, manufacture and sale of a product).

The main business taxes are corporate income tax of 28% for the part of net income under EUR500,000 and 31% for the part of the net income over EUR500,000, territorial economic contribution (CET) which is capped at 3%, and the supply of all goods and services are subject to VAT at a rate of 20%.

Reforms

The 2019 "Loi Pacte" law and Action Plan for Business Growth and Transformation (PACTE) aims to remove obligations that complicate companies' development, facilitate access to diversified funding, provide companies with the resources they need to innovate and ensure that employees' work is better rewarded.

FRANCE

Incentives

The R&D tax credit is a corporate tax incentive for R&D expenses incurred by trading companies located in France, regardless of sector or size. This mechanism allows companies to benefit from:

- 30% partial refund (either by way of tax reduction or tax reimbursement) of expenses under EUR100 million.
- 5% partial refund (either by way of tax reduction or tax reimbursement) of expenses exceeding EUR100 million.

The R&D tax credit allows companies to benefit from a potential 30% partial refund.

GERMANY

The Market

As the largest economy in the EU, Germany welcomes investors from all over the world. Strong interest among foreign investors has been detected particularly in the services sector, including the advisory and financial services. Germany has also become attractive for investments in real estate due to its combination of solid protection for private property, steady demand for housing, commercial and office space, and competitive land prices. Renewable and decentralised energy production is also being promoted as a key sector to invest in. The automotive, chemical and pharmaceutical industries are also still strong and internationally competitive. Both digitalisation and demographic change are expected to shape the German economy in the future.

Germany also holds trade, investment and cooperation agreements with other countries and is a member of the European Union (EU), the World Trade Organization (WTO) and the International Monetary Fund (IMF).

Legal System

The key laws governing foreign investment in Germany are the Foreign Trade and Payments Act (AWG) and the Foreign Trade and Payments Ordinance (AWV). The Federal Ministry for Economic Affairs and Energy (BMWi) is the chief federal authority controlling foreign investment.

Though regulated industries (such as pharmaceuticals, military products, radioactive substances and so on) are subject to special controls, all other products, services and financial investments enjoy freedom of trade. A foreign individual or company can establish a legal entity (or affiliate or subsidiary) in Germany without any restriction.

Individual Investors

In general, citizens of the EU, the European Economic Area (EEA) and Switzerland can enter, stay, and work in Germany without any visa requirements. Individuals need only register at the local registration office on taking up permanent residency in Germany.

Immigrants from non-EU countries generally require a visa to enter, stay and work in Germany. A Schengen visa is generally sufficient for most of the steps required to establish a business in Germany. If the duration of the stay exceeds 90 days (per six-month period), all non-EU citizens require a residence permit or settlement permit.

German tax law requires that all natural persons (regardless of their nationality) residing in Germany are taxed on their worldwide income. Domestic law deems a person to be resident if they have a home in Germany. Most foreign residents are taxed (usually by withholding tax) based only on their income obtained in Germany alone, due to double taxation treaties.

Restrictions

EU and German merger control may restrict large transactions that might lead to monopolies or a dominant position for the relevant company or joint venture.

Contributing firm

SKW Schwarz

- *Dr. Klaus Jankowski, Partner*
- *Fiona Molloy, Legal Assistant*

GERMANY

On setting up a business, every person must register with the local trade office of the town or municipality in which the business operation is located. This applies to every person or company regardless of its company form, except for certain professionals.

The minimum capital requirements do not differ between German and foreign investors who decide to start a business. Capital requirements instead depend on the corporate model of the intended business. A stock corporation must have a minimum share capital of EUR 50,000, divided into ordinary shares of an equal nominal value of at least EUR 1. A limited liability company (GmbH) must have a minimum share capital of EUR 25,000.

Imports

The only import restrictions of general application are those imposed in accordance with United Nation sanctions. Besides that, there is a special licensing procedure for certain specific types of goods, mostly military equipment and drugs.

There are no restrictions or any customs duties applicable within the EU. Import and export duties apply in relation to non-EU countries (third countries) according to international tax treaties, mainly under the World Trade Organization (WTO) framework. German customs duties are all based on value and are levied at rates dependent on the type of goods and on the country of origin.

There are no restrictions on providing services into another EU country (or a country deemed to be equivalent). Generally, there are also no restrictions on providers from other EU countries who enter the German market.

Structuring & Tax

Usually, foreign companies establish their domestic presence in the form of a GmbH, which provides relative flexibility, allows the shareholders to exercise close control over the management, and creates a corporate veil to protect the shareholders extensively from personal liability exposure.

Germany does not have a nationally consistent total corporate income tax rate, but the German corporate tax average is 29.83%. Taxation of corporations consists of the following components:

- Corporate income tax. All corporations are liable to pay corporate income tax. The rate is 15% on the nationwide taxable profits of the company. The tax is payable on undistributed as well as distributed profits.
- Solidarity surcharge. The solidarity surcharge is added to the corporate income tax. This totals 5.5% of the 15% rate of corporate income tax, or 0.825%. Taken together, the corporate income tax and solidarity surcharge amount to a total tax rate of 15.825%.
- Trade tax. All commercial business operations in Germany are liable to pay trade tax irrespective of their legal form. Narrow exceptions apply to certain industries or professions. The applicable trade tax depends on two components – the tax base rate (3.5% throughout Germany) and the multiplier (Hebesatz) stipulated individually by every municipality.

The usual 19% VAT rate in Germany is below the European average.

The usual 19% VAT rate in Germany is below the European average.

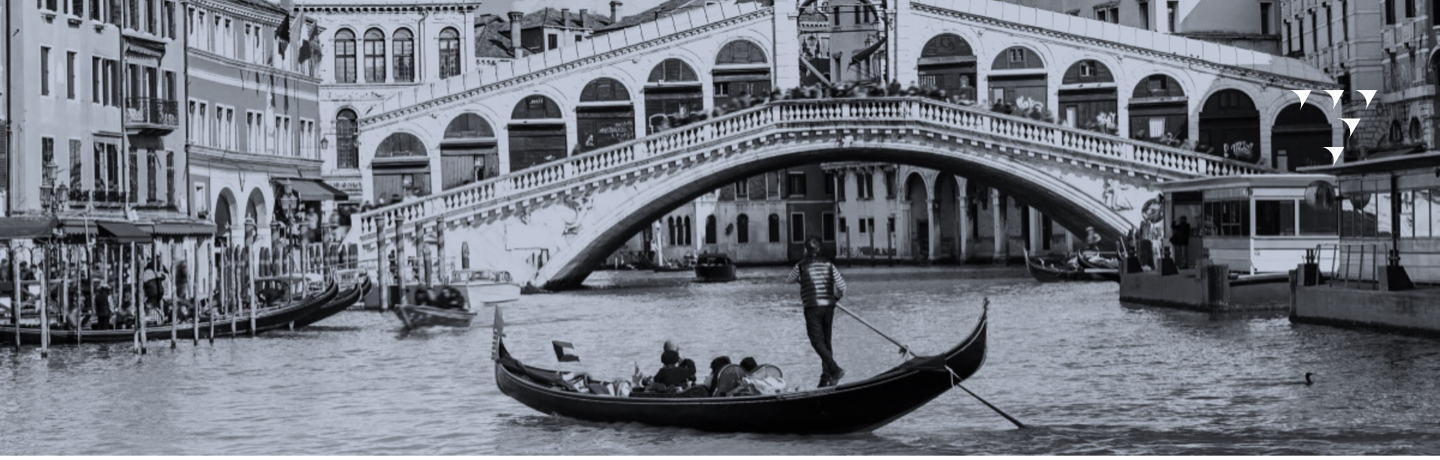
Incentives

Incentive programmes are often designed for and limited to certain key industries or regions in need of investment. There are no specific programmes designated to attract investors from abroad. Incentive packages may be structured as:

- Tax incentives.
- Cash incentives (subsidies paid out in connection to proven investments).
- Loans with preferred conditions or guarantees.
- Capital/shareholding investments by state authorities, in exceptional cases.

State aid is additionally granted throughout Germany for creating long-term employment, regardless of the size of the company or the industry it belongs to.

Furthermore, up to 30% of the investment in environmental protection technologies can be covered by state aid/public funding.



ITALY

The Market

Some of the elements that make Italy a desirable destination for long-term profitable investment include its great capacity for adaptation and its qualified work force. Italy is also the European leader in pharmaceutical production, a superpower in the circular economy, (with the highest percentage of recycling on the total amount of waste: 79%, higher than the European average) and has the most capitalised private electricity company on European stock markets. The country's most active sectors for foreign investment include technology, telecommunications, energy, real estate and fashion and luxury. In 2021, Italy's GDP grew by 6.5%, recovering most of the fall of 2020. The EU has estimated Italian GDP to grow by 4.1% in 2022.

Legal System

Foreign investments are not regulated by a specific law and foreign investors can fully rely on the same provisions applicable to national investors, subject to conditions of treatment reciprocity. Foreign investors can freely choose from the various types of business entities provided for under Italian law according to their specific needs in relation to the kind of activity they intend to carry on in Italy.

Italy holds trade and investment agreements with other countries and is a member of the European Union (EU), the World Trade Organization (WTO), the General Agreement on Tariffs and Trade 1994 (GATT 1994) and the European Economic Area (EEA).

Individual Investors

Citizens of EU member states are not required to obtain a prior visa or special permits to enter, stay and carry on business activities or simply work in Italy.

The two main visas available under Italian law for non-EU nationals intending to enter Italy for business purposes are the:

- Schengen Short-Term Business Visa, which grants foreign nationals the right to enter and stay in Italy for business purposes and to travel within the Schengen area for a maximum period of 90 days in any six-month period.
- National Long-Term Business Visa (also known as the Self-Employment Visa), which are available for investors interested in carrying on industrial, professional or commercial activity in Italy, or investors who intend to set up a corporation and/or hold a corporate office in an Italian company and live in Italy for more than 90 days in any six-month period.

'Investment Visas' are also available, allowing a stay for periods longer than three months if the investor's business meets certain requirements.

An individual who is considered a resident is taxed on their worldwide income. An individual is regarded as resident in Italy if they have resided in the county for over 182 days in a fiscal year. Non-residents are taxable on their Italian-sourced income only.

MONDINI BONORA GINEVRA

Contributing firm

Mondini Bonora Ginevra

- *Luca Tiberi, Partner*
- *Attilio Picolli, Partner*

ITALY

Restrictions

There are a number of economic sectors which, due to the particular nature of the economic interests involved, are subject to specific access formalities and supervision by national and EU authorities, for example, banks, financial intermediaries and insurance companies.

Though the remittance of profits abroad is not subject to limitation, Italian regulations monitor money transfers to and from foreign countries for statistical purposes and to prevent money laundering. In this regard, there are restrictions on cash movements: anyone crossing Italian borders with cash of EUR10,000 or more must inform the Customs Agency, by filling in a specific form before crossing the border.

Imports

As Italy is a member of the WTO and a member of the EU, most goods can be freely imported. Furthermore, the importation of goods and services between Italy and any other EU member state is no longer subject to any tax, restrictions or customs formality. However, the free movement regime does not apply to certain categories of products.

Commercial goods and services from non-EU member states are subject to the Integrated Tariff of the Community (TARIC). TARIC is designed to integrate all the various tariffs and duties that apply to specific products being imported in, or sometimes exported from, the EU customs territory.

VAT also applies on imported goods introduced in the Italian territory at 22%.

Structuring & Tax

Enterprises usually establish Italian limited liability companies, joint-stock companies or Italian branches of foreign companies.

A number of tax exemptions and credits have been issued by the EU and the Italian government to entice foreign investment. Firstly, under EU directives, dividend, interest and royalties which flow between an Italian subsidiary and its EU parent company can benefit from the Italian withholding tax exemption.

Secondly, capital gains resulting from the sale of participations are subject to a 95% tax exemption if all of the following apply:

- A twelve-month continuous holding period of the participation is completed before the transfer.
- The participation is entered as a 'financial asset' in the first balance sheet submitted during the ownership period.
- The subsidiary has been carrying on an actual business activity during the three financial years preceding the year of transfer.
- The subsidiary is not resident in a low-tax country.

Furthermore, Italian groups can choose to fully consolidate each participating company tax result (that is, taxable incomes against tax losses) for Italian corporation income tax purposes only.

Companies are deemed 'resident' and therefore taxable in Italy if they have their main business activity in the Italian territory. Non-resident companies are only subject to corporation income tax (IRES) at a rate of 24%, and to regional tax on productive activities (IRAP) at a rate of 3.9% on income that was sourced in Italy.

Reforms

Several tax credits were introduced through the 2020 Budget Law, including a tax credit for expenditure incurred as investment in new capital goods, a tax credit for research, development, innovation and design, and tax credit for training in new technologies.

ITALY

Incentives

Tax incentives are available for:

- innovative start-ups;
- R&D expense;
- investments in the south of Italy;
- investments in new capital goods;
- IP income; and
- people who move their residence to Italy to work or live.

Investment capital or capital grants are also available for:

- venture capital firms;
- companies investing outside the EU;
- SMEs developing IP and innovative products and services;
- SMEs developing industrial designs; and
- companies producing thermal energy from renewable sources.

Capital gains resulting from the sale of participations are subject to a 95% tax exemption if certain conditions are met.

POLAND

The Market

Poland is a very attractive place for investors – the economy is relatively open, with low barriers to entry and a relatively favourable regulatory environment. The most active sectors are financial and technology; companies are establishing shared service centres in Poland and continue to relocate more complex operations to the country. Significant foreign investments are also clustered in the energy sector, especially renewable energy installations which are usually foreign-owned.

Legal System

During the COVID-19 pandemic, Poland introduced a new investment screening law. Under the law enacted in 2020, the Office for Competition and Consumer Protection (OECD) has become responsible for assessing investments in broadly defined strategic sectors, including IT, energy, and utilities. Investments conducted by entities from countries outside of the OECD are additionally screened for any risks associated with public health and national security.

There is no authority dedicated to control of foreign investments and, aside from security investment screening, non-OECD actors are subject to the same restrictions as Polish investors.

Individual Investors

Poland being is open to all citizens from the European Union (EU), the European Economic Area (EEA), Switzerland and the US. Entrepreneurs from these regions can form their own sole proprietorship or any commercial company without registering their business in Poland or establishing a branch or representative office in Poland. Foreign individuals from these regions who intend to stay in Poland for up to 90 days within 180 days may apply for a 'Schengen visa'.

Citizens of countries that do not belong to the EU may also conduct business in Poland but are limited to conducting a business in a specific company type or they are under obligation to obtain a residency card.

Foreign citizens from non-EU countries are required to obtain a 'national visa', which entitles the holder to enter and permanently stay in Poland. The validity period of a national visa cannot exceed one year. A 'work permit' is also required for foreign workers.

Restrictions

Foreign investors are subject to the same conditions as Polish investors. There are no specific restrictions concerning foreign investors. However, EU and Poland merger control may restrict large transactions that might lead to monopolies or a dominant position for the relevant company.

On setting up a business, all persons have to register with the local city administration or online via a government platform. Every company must be registered in the National Court Register.

There is no difference between Polish and foreign investors concerning the minimum share capital, which depends on the corporate model chosen:

MARUTA

Contributing firm

Maruta Wachta

- *Hubert Binkiewicz, Senior Associate*
- *Grzegorz Policht, Associate*

POLAND

- The minimum capital of a limited liability company is PLN 5,000.00 divided into shares with a minimum value of PLN 50.00 each.
- A joint-stock company must have a minimum share capital of PLN 100,000.00 divided into stocks with a minimum value of PLN 0.01 each.
- A limited joint-stock partnership must have a minimum share capital of PLN 50,000.00 divided into stocks with a minimum value of PLN 0.01 each.
- Other corporate forms do not require minimum share capital.

Imports

Imports from the EU are characterised by the absence of customs borders and controls and less complex procedures. However, a significant issue regarding the import of goods into Poland is the settlement of Value Added Tax (VAT). Prior to the first import, it is necessary to register the company as an EU VAT payer, however intra-community acquisition of goods are generally tax-neutral for the Polish purchaser. Traders should also make Intrastat declarations if the turnover of goods imported from the member states of the European Union exceeded the value of the threshold established in a given year.

Imports outside of the EU are associated with a few more formalities: for each transaction it is necessary to register the company on the Electronic Platform for Fiscal and Customs Services (PUESC), through which the formalities related to customs clearance of goods are carried out.

Structuring & Tax

Foreign investors operating in Poland usually incorporate as a limited liability company. This corporate form gives flexibility and is easy to establish and operate, especially as a single shareholder entity. Foreign investors sometimes choose to operate as a branch. A branch is registered in the Polish Commercial Register but does not have any separate legal personality. Foreign investors may incorporate as a professional partnership, which is not subject to Corporate Income Tax (CIT). However, professional partnership requires at least two shareholders and is often subjected to withholding tax on distributed profits.

The general global rate of CIT in Poland is 19% on all incomes. A preferential rate of 9% applies to smaller and new companies. Companies are obliged to file CIT tax returns every month and pay advances on CIT every month or every quarter.

Reforms

Since 2016, the system of appointing judges was changed – it must be emphasised that the controversies surrounding the judicial reforms have had no adverse impact on foreign investors.

Incentives

Investors can take advantage of tax holidays (income tax relief in Special Economic Zones; property tax holidays), as well as instruments co-financed by European funds.

The Polish Act on Support for New Investments provides tax exemptions for new investments starting their activities in Poland. The program may differ according to the size of the enterprise, or the part of Poland where the business activity is located – for example, support for medium and small enterprises is increased by 10% and 20% respectively.
Other tax relief programs include:

- R&D i.e., tax relief for research and development which can entitle enterprises to a reduction of their tax base based on their R&D activities;
- Deductible expenses tax relief or IP BOX relief – targeted at developers, programmers etc., which can benefit from 50% tax deductible expenses, or a preferential 5% tax rate with respect to income derived from qualified intellectual property rights.

Additionally, Poland offers incentives in the form of governmental grants to encourage entrepreneurs in creating new jobs and deductible costs of investments or Special Economic Zones, Patent BOX and Industrial and Technology Parks.

Investors can take advantage of tax holidays, as well as instruments co-financed by European funds.

ROMANIA

The Market

Romania is an attractive target for foreign investment, standing at the crossroads of three very large markets: the EU, the Commonwealth of Independent States (CIS) and the Middle East. According to data from the National Bank of Romania, the main sectors attracting FDI are manufacturing, construction and real estate transactions, trade, financial intermediation and insurance.

Legal System

Various enactments, methodologies and enforceability norms apply to foreign investment in different sectors of economy, including, for example:

- The banking system;
- Foreign credit institutions;
- Currency operations;
- Imports and exports;
- Corporate immigration;
- Capital markets;
- Copyright;
- State aid;
- Taxation;
- Transfer pricing.

Romania holds EU, NATO and WTO membership, as well as free trade agreements with EFTA and CEFTA countries.

Individual Investors

For traveling to or visiting Romania, EU, EEA or Swiss Confederation most citizens do not need a visa.

However, EU, EEA or Swiss Confederation citizens who are to stay in Romania more than three months need to register their residency with the territorial unit of the General Inspectorate for Immigration from the county where they are living. The procedure in their case is swift and usually does not require much documentation.

The income derived by non-resident individuals from Romanian sources is subject to withholding tax in Romania. In addition, subject to fulfilment of certain conditions, non-resident individuals may become tax residents in Romania, in which case all the income obtained by these individuals, irrespective of the source, will be taxed in Romania.

Restrictions

There are generally no quotas or restrictions on foreign ownership or investment. However, there are some state-monopolised businesses in specific strategic sectors, either for reasons of national security or merely because they have not yet been privatised.

There are no restrictions on foreign ownership rights over Romanian residential houses or apartments, or commercial or industrial buildings. However, the land itself cannot be acquired by a foreign citizen. A foreign citizen intending to make a Romanian real estate investment can acquire the right to use the land, but not the land itself.

There are no minimum capital requirements specifically aimed at foreign investment. However, Romanian law provides minimum capital requirements for any company that is

Contributing firm

MPR Partners

- *Gelu Maravela, Founding Partner*
- *Alina Badea, Founding Partner*
- *Dana Rădulescu, Partner*
- *Alexandra Rîmbu, Partner*
- *Daniel Alexie, Partner*
- *Felix Tapai, Partner*
- *Ramona Tudor, Senior Tax Consultant*
- *Ioana Ivașcu, Managing Associate*
- *Diana Borcean, Senior Associate*
- *Flavia Ștefura, Senior Associate*
- *Oana Săvulescu, Associate*
- *Alexandra Mihailov, Associate*

founded in Romania. Under these rules, for joint stock companies and limited stock partnerships, the minimum capital requirement is of RON 90,000. Furthermore, the minimum capital required for a limited liability company is RON 200.

Imports

The EU imposes quantitative quotas on imports of certain goods from non-EU countries. It is highly recommended to obtain an import licence before importing such products. Import/export licences are also mandatory for goods considered to be potentially hazardous to human health or to the environment.

Romania has applied the common EU tariff system since becoming a member state in 2007.

Structuring & Tax

Companies incorporated in Romania have Romanian nationality, irrespective of the nationality of their shareholders. Companies seated abroad but with secondary offices in Romania are regarded as having foreign nationality. The most frequent forms of business in Romania are joint stock companies and limited liability companies.

Foreign companies can carry out activities in Romania through:

- Subsidiaries. Foreign companies can set up Romanian subsidiaries (that is, Romanian companies) in one of the forms provided by the law. The Romanian subsidiaries of foreign companies are deemed to be Romanian legal persons and have the same status as Romanian companies.
- Branches. Branches are corporate entities with no legal personality of their own, set up by Romanian or foreign companies.
- Representative offices. Foreign companies and economic entities can open representative offices in Romania. Representative offices are not authorised to perform independent business operations and can only undertake transactions on behalf of their parent companies that are consistent with the parent's objects.

Resident entities are subject to the standard profit tax rate for Romanian companies of 16% on their worldwide income. Taxable profit is calculated as the difference between taxable income obtained from any source within a fiscal year, and deductible expenses incurred in obtaining that income.

Reforms

Recent Law no. 259/2021 sets up a scheme to compensate consumers for high energy prices, and it also introduced a tax of 80% on additional income generated by electricity producers. However, the tax applies only to green energy producers generating revenues during the period November 2021 – March 2022, regardless of the date when they became operational.

Incentives

State aid may be offered to some businesses under EU legislation. State aid is defined as an economic advantage in any form conferred on a selective basis by national public authorities on undertakings. Romania has updated the following regional state aid schemes for businesses to access:

- Government Decision No 807/2014 on state aid schemes stimulating investments with major impact in the economy. This scheme allows for the co-financing of assets acquisitions, to be awarded up to an average annual budget of EUR 145 million .
- Government Decision No 332/2014 on a state aid scheme supporting investments that promote regional development by creating employment. Under this scheme, the state provides grants for salary costs incurred for two consecutive years for at least ten new employments directly created in the first three years of a new investment.
- Order No 2980/2013 of the Ministry of Regional Development and Public Administration on aid for investments in industrial parks, which provides for exemptions from various taxes and levies, such as tax on land and buildings.

Resident entities are subject to the standard profit tax rate for Romanian companies of 16% on their worldwide income.

SLOVAKIA

The Market

International investors are drawn to Slovakia's strategic location, safety and stability, qualified workforce and well-developed infrastructure. Slovakia is renowned for its active automotive sector, as well as its start-ups and investment by existing foreign companies which have their operations and branches already in Slovakia.

Legal System

There are various enactments, methodologies and enforceability norms applicable to foreign investment depending on the sectors of economy. However, the main principle is that the foreign investment enjoys an equal level of protection and treatment as national (local) investment.

The main laws governing foreign investment include:

- Commercial Code;
- Civil Code;
- Act on Income Tax;
- Labor Act.

The main authorities that handle foreign investment are:

- National Bank of Slovakia;
- Ministry of Economy;
- European Commission and Competition Authorities in certain state aid scenarios.

Slovakia holds a number of trade, investment and cooperation agreements with other countries and is a member of the European Union (EU) and member of the Eurozone.

Individual Investors

For entering Slovakia for business purposes, the Slovakian Schengen Visa will be required.

For foreign (non-EU nationals), extensive documentation is required to obtain Slovak Visa for business purposes, including a business bank statement of the last six months and an invitation letter from the Slovakian company you will be visiting.

The Slovak Act on Income Tax defines a tax resident is a natural person with a permanent address in the Slovak Republic or a person that habitually stays in the Slovak Republic (183 days in the calendar year).

Slovaks and foreign natural persons who have their tax residence in Slovakia, must declare and pay tax in Slovakia for income earned from abroad. There is an exception for income from salaries paid abroad by non-residents.

Restrictions

In principle, there are no restriction of foreign ownership. Foreign investors can set up branches and companies with legal capacity which are then entitled to acquire ownership in Slovakia. However, there are certain limitations. Foreigners (natural or legal persons) of countries which prohibit acquisition of agricultural land to Slovak nationals are prohibited to acquire agricultural land in Slovakia (principal of reciprocity).

ŠKUBLA PARTNERI
ADVOKÁTSKA KANCELÁRIA | LAW FIRM

Contributing firm

Skubla & Partneri

- *Marián Šulík, Partner*
- *Erika Galgociova, Partner*

SLOVAKIA

For certain strategic sectors (energy and industry) that may pose a threat to national security, stricter measures apply and in such cases consent of the Ministry of Economy is required. If the Ministry of Economy does not grant its consent, then the entity cannot proceed with the acquisition.

Furthermore, if a foreigner intends to set up a limited liability company or a joint stock company, these required minimal capital contribution. For limited liability companies a registered capital of EUR 5,000 is required and for joint stock companies registered capital of EUR 25,000 is required.

Imports

As Slovakia is a member of the EU, the Union Customs Code governs imports and customs. The EU imposes quantitative quotas on imports of certain goods from non-EU countries. It is highly recommended to obtain an import license before importing such products. Import/export licenses are also mandatory for goods considered to be potentially hazardous to human health or to the environment. Specific measures apply to agricultural products.

When products enter the EU, they need to be declared to customs authorities according to their classification in the Combined Nomenclature. All products entering the EU are classified under a tariff code that carries information on duty rates and other levies on imports and exports.

Structuring & Tax

The structure of the investment typically reflects investor's needs or its investment strategy. However, most often investors set up the own companies (most preferably with limited liability, therefore either limited liability companies or joint stock companies), or branches of foreign entities.

Generally, a person who is a tax resident of Slovakia is taxed on worldwide income. Non-residents are generally taxable on income derived from sources in Slovakia. The standard corporate income tax rate is 21%. Starting from the tax period beginning on January 2021, the tax rate for legal entities and individual entrepreneurs, whose income (revenues) does not exceed EUR 49,790 per year, was reduced to 15%.

Reforms

In effect from March 2021, the Slovak Republic implemented a new foreign direct investment screening mechanism. Under the new regime, acquisition of shares or businesses (as a going concern) within specified critical infrastructure entities must be notified to the Slovak Ministry of Economy.

For share acquisitions, the threshold is set at 10% (10% of voting rights, 10% in registered capital or exerting an influence over the management of the company comparable to the 10% share). It does not matter whether the investor acquires the 10% share directly or indirectly.

Incentives

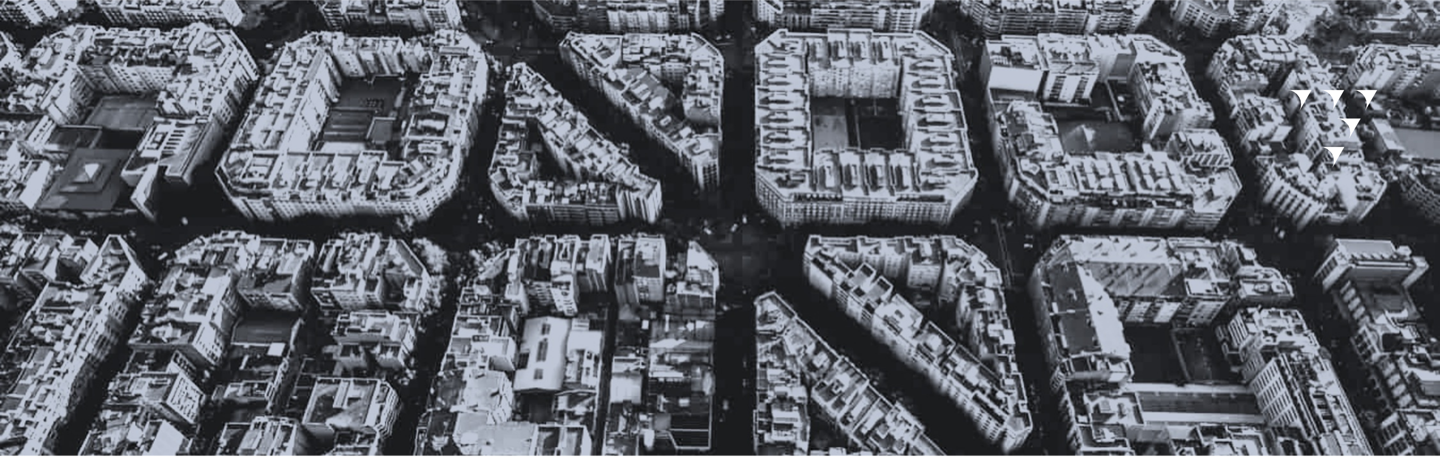
Investment aid is normally provided in the form of:

- Grants for long-term tangible assets and intangible fixed assets;
- Income tax relief;
- Contribution to create new jobs;
- Transfer of immovable property or the letting of immovable property at a value lower than the value of the immovable property or the value of the rental of immovable property determined by expert opinion.

Investment incentives are available to foreign and domestic investors for projects in sectors including industrial production, technology, and shared service centers. The incentives are provided as tax relief, cash grants, contributions for newly created jobs, and transfers of state or municipal property at a discounted price. Eligible costs include acquisition of land, acquisition and construction of buildings, acquisition of technology equipment and machinery, as well as intangible assets (e.g., licenses, patents, etc.) and the wages of new employees for a period of two years.

Apart from investment aid, the Economy Ministry offers innovation vouchers and special loans through its Investment Fund. Individual ministries run EU-supported projects in their respective areas of responsibility. The state aid granted by the Slovak government must comply with valid EU regulations.

In principle, there are no restrictions of foreign ownership.



SPAIN

The Market

Spain is an attractive destination for foreign investment due to both the possibilities offered by the domestic market and the ease of using it as a base from which to approach international markets. Its most active sectors for foreign investment are real estate, technology and the financial and insurance services industry.

Legal System

The following Spanish laws are applicable to foreign investment:

- Spanish Law 10/2010, on the prevention of money laundering and terrorism financing: under this Law, foreign companies investing in Spain must declare the identity of the ultimate beneficial owners of these companies to the public authorities. The ultimate beneficial owner is the individual who ultimately owned or controlled, more than 25% of the capital or voting rights of a legal entity in the management of a legal entity.

- Bank of Spain legislation (Circular 4/2012): this Law establishes the obligation to submit monthly, quarterly and annual notifications of investment transactions (for example, payments and movements of funds in order to execute a purchase of shares or any other asset, acquisitions and loans) carried out between Spanish residents and non-residents during the previous year to the Bank of Spain, if these exceed certain amounts.

Spain also holds trade, investment and cooperation agreements with other countries and is a member of the European Union (EU) and the World Trade Organization (WTO).

Individual Investors

Foreign nationals interested in investing in Spain shall obtain a Non-Resident Spanish Identification Number (NIE). This can be obtained from the Spanish police authorities, as well as from diplomatic and consular offices. A NIE provides all foreign individuals with an ID number allowing them to undertake economic activities in Spain. This obligation also extends to foreign partners or foreign managers of Spanish companies.

To support entrepreneurs and international trade, Spanish Law 14/2013 introduced a new incentive to attract foreign investment into Spain. This included the introduction of a specific residence visa for investors, entrepreneurs, highly qualified professionals, researchers and employees ('Golden Visa'), available for investors who make a 'significant capital investment' in Spain.

A 'staying situation' means residing in Spain for less than a 90-day period (short-stay visas); a 'residence situation' means staying in Spain above a 90-day period (long-term visas).

An individual becomes a Spanish tax resident if they spend more than 183 days during the calendar year in Spain. An individual can be subject to Spanish Non-Resident Income Tax or Net Wealth tax for their Spanish-sourced income (e.g., dividends from Spanish companies) or Spanish located assets.

CECA MAGÁN
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Contributing firm

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SPAIN

Restrictions

The participation of regional or state governments in companies is quite limited. The Spanish government only retains control over a very limited number of companies within the energy, finance, food, communications and transport sectors.

As a general rule, there are no specific restrictions on the acquisition of real estate by a foreign individual or legal entity. Foreign investors shall therefore comply with the same requirements as any Spanish individual or legal entity.

Imports

The rules for the importation of goods are the same throughout the EU. In general, foreign trade within the EU is governed by the principle of free trade, and prior statistical surveillance is only applied for certain goods (mainly agricultural).

Within the EU, imports are not subject to customs duties. However, commercial goods acquired from another EU member are subject to Value Added Tax (VAT). Imports from outside the EU are subject to VAT and are payable in accordance with the Common Customs Tariff in force in the EU.

Structuring & Tax

Corporate enterprises are the main vehicles for structuring investment in Spain. Private and public limited liability companies are generally used, as these are commercial entities with their own legal and tax status. Foreign companies may also set up a branch in Spain.

A company is considered Spanish tax resident if it has been incorporated under Spanish company law, as well as if its registered address or place of effective management is located in Spain. As a Spanish tax resident, the company shall pay Corporate Income Tax (CIT) (at a top rate of 51.5%) on its worldwide income. Double taxation relief applies for both taxes paid abroad by the Spanish company (e.g., withholding tax suffered abroad) or, in case of dividends, for the underlying Corporate Income Tax paid abroad by the foreign subsidiaries.

The default non-resident income tax (NRIT) rate is 24% for income other than savings income.

Reforms

The Spanish government is currently legislating on foreign investment and therefore it will be necessary to wait for legislative developments.

Incentives

NRIT is exempt in for individuals in certain cases, including:

- Non-resident shareholders of special Spanish international holding companies;
- Dividends and/or gains from Spanish venture companies or funds;
- Interest paid by a Spanish company or individual to an EU resident lender;
- Interest paid for the so-called Non-Resident Bank Accounts'
- Dividends and profit participations obtained by EU pension funds or collective investment institutions.

The default non-resident income tax is exempt in for individuals in certain cases.

TURKEY

The Market

Turkey's economy is expected to become one of the fastest-growing economies among the Organisation for Economic Co-operation and Development (OECD) members. Its most active sectors are financial services, infrastructure, energy, automotive, real estate, manufacturing, ICT and public-private partnerships (PPP) especially in the health sector. In particular, to meet its energy needs, Turkey offers a very competitive investment environment to domestic and foreign investors through favourable incentives, such as feed-in-tariffs, purchase guarantees, connection priorities and licence exemptions.

Turkey recently developed 'Turkey's Foreign Direct Investment (FDI) Strategy (2021–2023)' under the coordination of the Investment Office of the Presidency of the Republic of Turkey. The main target of the strategy is to increase Turkey's FDI quantity and quality especially increasing knowledge-intensive, high value-added investments that generates high-quality employment. Investments increased and reached almost $1.9 billion in the last quarter of 2020 in Turkey (World Investment Report 2021). The policy interventions with regards to FDI appear to be effective and trajectory of the market development can benefit from these new strategies.

Legal System

The main legislation applicable to foreign direct investment is:

- The Law on Foreign Direct Investment No. 4875 (FDI Law).
- The Regulation on Implementation of the Law on Foreign Direct Investments (FDI Regulation) and any other secondary legislation enacted on the basis of the FDI Law.

Turkey is a member of the WTO, the European Free Trade Association (EFTA), and the OECD. Turkey has also signed double tax treaties with more than 80 countries and free trade agreements with many others.

Individual Investors

A foreign individual entering Turkey for business purposes is principally subject to work permit requirements. Residency permit requirements are also applicable. To obtain a work visa, foreign individuals must be employed by a Turkish employer. There are also certain detailed requirements that the Turkish employer must satisfy. Work permit application procedures vary depending on:

- Amount of the investment;
- Investment sector;
- Foreign individual's country of nationality;
- Depending on the position of the foreign person, certain exemptions from the general requirement to obtain residency and work permits may apply.

There are no specific fast-track procedures for visas, however 'key personnel' of companies qualifying as 'special foreign direct investment' can obtain work permits relatively faster.

DURUKAN+PARTNERS

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- *Bilge Kahraman, Legal Intern*
- *Oguzhan Onur, Trainee Lawyer*

TURKEY

Under the Income Tax Law, an individual resident in Turkey is considered to be fully liable to tax and is taxed on all the income they have generated in and/or outside of Turkey. Being a resident in Turkey requires a person to either:

- Have a permanent residence (or in other words a domicile) in Turkey.
- Reside in Turkey continuously for a period of more than six months in a calendar year.

Individuals who are not resident in Turkey but who have earnings in Turkey qualify as limited taxpayers. These individuals are only taxed for their income generated in Turkey.

Restrictions

Article 3 of the FDI Law sets out the basic principles regarding foreign investment. Unless an international treaty or a special provision of law states otherwise, foreign investors can invest in Turkey directly and are subject to equal treatment with domestic investors.

There are sectors that are closed to foreign investment, due to their public service character. The government is the sole player in such sectors through the government business enterprise. These sectors include the electric power transmission sector and the railways sector. The government is also a shareholder in certain sectors that are accessible to private investors. These include the petroleum sector, mining sector, and the banking sector.

While the Turkish legislative framework had established strict restrictions on foreign ownership or occupation of real estate, mostly due to security, political environment and public interest concerns, recent amendments to the Land Registry Law have eased these restrictions to attract foreign investment and boost FDI.

While in principle there are no minimum capital requirements for foreign investment, there may be certain minimum capital requirements in certain regulated sectors.

In addition, if the investment is to be realised through a company incorporated in Turkey, the investor must consider the minimum capital requirements for incorporating different types of companies. Foreign investors mostly prefer incorporating either:

- Joint stock company, for which the capital requirement is TRY 50,000.
- Limited company, for which the capital requirement is TRY 10,000.

Imports

The Ministry of Trade can determine the goods which are restricted from entering the customs territory of Turkey. To protect the environment, importing certain waste, chemicals and scrap metal is prohibited.

Some products can only be imported by specific institutions or persons due to their specifications. For example:

- Unprocessed precious metals, which can only be imported by the members of the precious metals exchange.
- Fuel and mineral oil, which can only be imported by institutions that have obtained a licence from the Energy Market Regulatory Authority.

The common duties which are generally levied on imported goods are customs duties, VAT, special consumption tax (SCT) and motorised vehicle tax (MVT).

VAT is levied on all imported goods and services, depending on their value and type, at a standard rate of 18%.

Structuring & Tax

Foreign investment into Turkey may take the following forms:

- A limited liability company (limited company or joint stock company).
- A branch of a foreign company.
- A representative office in Turkey of a foreign company. Please note that, in this option, there is no commercial activity permitted.

A limited liability company and a branch are subject to the same treatment from a tax perspective.

The main business taxes are corporate income tax at 22% and individual income tax varied at a rate of between 15% and 35%.

TURKEY

Reforms

Various economic regulations are made in order to encourage investments, increase production and employment in accordance with the program announced by the government as the 2023 vision. President Erdoğan of Turkey previously has pledged to build a new generation of special free zones, mostly for software, IT, health and education, and target Chinese, Mexican, Russian and Indian markets for Turkish exports.

Incentives

Turkey's investment incentives system is comprised of five schemes:

- The General Investment Incentives Scheme.
- The Regional Investment Incentives Scheme.
- The Priority Investment Incentive Scheme.
- The Large-Scale Investment Incentives Scheme.
- The Strategic Investment Incentives Scheme.

The General Investment Incentives Scheme is available for all investment projects if both:

- The investment subject is not excluded from the investment incentives programmes.
- The requirement of minimum fixed investment amount is met.

The investment projects that are supported by this scheme will benefit only from customs duty and VAT exemptions on their machinery and equipment expenditures.

The Regional Investment Incentives Scheme aims to eliminate inter-regional imbalances by encouraging pre-determined sectors. Minimum investment amounts are determined for certain investment subjects in each region separately. Regional investment incentives cover the following support measures, at different rates and extents depending on the relevant region:

- VAT exemption;
- Tax deduction;
- Customs duty exemption;
- Social security premium support (employer's share);
- Interest support;
- Land allocation.

The Priority Investment Incentive Scheme ensures investments that have been determined in industries in certain regions receive the same incentives extended to other regions. Investments in Organized Industrial Zones, manufacturing investments in specialised industrial zones, and joint investments by multiple companies operating in the same sector and integrating their activities will benefit from tax deduction and social security premium support (employee's share) in any region.

The Large-scale Investment Incentives Scheme aims to improve technology, research and development capacity and to provide a competitive advantage in the international arena. Incentive measures available for large-scale investments include:

- VAT exemption;
- Tax deduction;
- Customs duty exemption;
- Social security premium support (employer's share);
- Interest support;
- Land allocation.

Finally, the Strategic Investment Incentives Scheme supports investments which satisfy the following criteria with VAT exemption and tax deduction:

- Production of intermediate and final goods, which have a high import dependence and more than 50% of which are supplied by imports, of which domestic production capacity is less than the imports.
- Minimum fixed investment amount of TRY 50 million.
- Generation of a minimum 40% added value, unless the investment is in refined petroleum or petrochemicals production.
- The total import value of goods to be at least USD 50 million in the previous one-year period (this condition is not applicable to goods with no domestic production).

Strategic Investment Incentives Scheme supports investments with VAT exemption and tax deduction.

UNITED KINGDOM

The Market

The UK is attractive for inward investment due to its speed of doing business, position as a world leader in the financial services and banking sector and its robust legal framework. Some key sectors for foreign investment include business and consumer services, automotive, electronics and communications, environment, infrastructure and transportation, financial services, food and drink, software and computer services and wholesale. London's performance is also particularly strong in non-manufacturing inward foreign investment, accounting for a large proportion of all new foreign investment projects. However, after Brexit, higher trade costs with the EU are likely to depress FDI, slowing both consumption growth and business investment.

Legal System

There is little domestic legislation that governs FDI in the UK, however recent legislation has introduced measures imposing closer scrutiny of foreign takeovers of UK entities and foreign ownership of UK property. As the UK has left the European Union (the EU), it no longer benefits from the free trade arrangements that come with being a member state. The UK currently participates in the European Free Trade Association, having signed a free trade agreement in July 2021, and is a member of the World Trade Organization. Additionally, the UK also has a large network of tax treaties with over 100 countries which prevent double taxation of income or gains.

Individual Investors

The visa requirements and restrictions for foreign individuals entering the UK for business purposes depend on the activity the individual intends to carry out. If an individual wishes to come to the UK for a short period of time to undertake, for example, business meetings, they may be able to enter the UK with a standard visitor visa.

Entrepreneurs or entrepreneurial teams can apply to enter the UK under the Tier 1 (Entrepreneur) category. Entrepreneurs are defined as individuals who set up their own business or take over an existing UK business, and invest the money in one or more UK businesses, as well as creating jobs for settled workers.

Regardless of the application, the UK Visas and Immigration department of the Home Office requirements are complicated and stringent, and it is recommended that applicants seek professional advice to ensure the correct approach is taken from the first instance.

A statutory test for residence (Statutory Residence Test) applies to determine whether a person is resident in the UK for tax purposes in a given tax year. The amount on which a person is taxed depends on where the person is resident. UK residents are subject to UK income tax on their worldwide income. However, persons that are not domiciled in the UK can be taxed on the remittance basis on their foreign-sourced income.

IM irwinmitchell

Contributing firm

Irwin Mitchell LLP

- *Bryan Bletso, Partner & Head of International*

UNITED KINGDOM

Restrictions

Some industries are partially government owned or controlled, for example the transport, energy, healthcare, defence and media sectors. Similarly, banking and insurance enterprises must obtain Financial Services Authority and government authorisation before operating in the UK.

The National Security and Investment Act 2021 (NSIA) came into full effect on 4 January 2022, overhauling the national security regime in the UK. The new regime allows the government to scrutinise and intervene in certain investments on the grounds of national security. The term "national security" has been left undefined in the NSIA in order to preserve flexibility in the future. There is no distinction between domestic and foreign investors for the purposes of the legislation and no de minimis exemptions.

The NSIA will only apply to qualifying acquisitions. A qualifying acquisition is an acquisition of the requisite level of control over a qualifying asset or qualifying entity that is located in or has a connection to the UK. An acquisition of an entity established outside of the UK may be caught if the entity carries on activities in the UK or supplies goods or services to persons in the UK. This means that the NSIA may be relevant to M&A transactions even where the target is not a UK entity.

The national security regime operates separately to the general merger control rules, under which the Competition and Markets Authority (CMA) may review transactions from a competition perspective.

There are no restrictions on foreign ownership or occupation of real estate in the UK. However, certain formalities apply when an overseas company applies to register a legal title to a property with HM Land Registry.

The Economic Crime (Transparency and Enforcement) Act 2022 (ECA) received Royal Assent on 15 March 2022, introducing a public register of beneficial ownership of UK property held by non-UK companies and similar entities.

The ECA is not fully in force at the time of writing but will be relevant to overseas entities acquiring UK real property, requiring them to provide details of their beneficial owners to Companies House. In England and Wales, the requirement to register will apply where the interest is in a freehold estate, or a leasehold estate granted for a term of more than seven years. The regime will also apply retrospectively to overseas entities that have been registered as the proprietor of a qualifying estate on or after 1 January 1999.

Imports

To move goods across the new UK-EU border, as well as from countries outside the EU, a customs declaration for imports or exports has to be submitted to HM Revenue & Customs, who require a declaration of the reason for importing the goods and the relevant commodity code.

The EU-UK Trade and Cooperation Agreement concluded between the EU and the UK sets out preferential arrangements in areas such as trade in goods and in services. This provides for zero tariffs and zero quotas on all trade in goods originating in the EU or the UK. The zero tariff and zero quota provisions apply to all goods that comply with the appropriate rules of origin.

Structuring & Tax

The most common type of company is a private company limited by shares, as the liability of the shareholders of the company if the company becomes unable to pay its debts and goes into liquidation is limited to the nominal value of the shares issued to the shareholders.

Public companies limited by shares can offer securities to the public, while a private company cannot. Public companies must have a minimum share capital requirement of GBP 50,000, of which 25% must be paid upfront in full.

A company resident in the UK is generally chargeable to corporation tax on all its sources of income and capital gains, wherever arising. A non-UK resident company carrying on a trade in the UK through a permanent establishment located in the UK is liable to corporation tax on all income and gains attributable to that permanent establishment. The definition of "permanent establishment" in UK domestic law is based on the Organisation for Economic Co-operation and Development model treaty.

The main business taxes include corporation tax at a standard rate of 19%, an

UNITED KINGDOM

apprenticeship levy at a rate of 0.5%, VAT at a standard rate of 20%, national insurance, insurance premium tax at a standard rate of 12% and stamp duty at a rate of 0.5%..

Reforms

FDI has been impacted by the UK leaving the European Union. However, reports show London as continuing to be Europe's leading FDI destination and investments into the UK was recorded to be up by almost 2% at 993 projects in 2021.

Incentives

Certain expenditure incurred in respect of qualifying research and development activities carried on by companies qualifies for enhanced tax relief. If the qualifying expenditure is incurred by small and medium sized companies, the relief is generally an additional deduction of 130%.

Large companies can claim a taxable credit equal to 13% of the qualifying expenditure. In some circumstances, a small or medium sized company may be required to claim relief at the large company rates. 100% capital allowances are available to companies, which incur capital expenditure on facilities or equipment for the carrying out of research and development.

The Patent Box relief allows companies with qualifying patent income to be taxed on that income at an effective rate of 10% through a deduction against profits.

Business rate relief is available to businesses that move into an enterprise zone (up to GBP 55,000 a year over five years). In addition, 100% first year capital allowances are available in respect of certain types of expenditure by businesses and companies based in some enterprise zones.

The only minimum capital requirement that exists in the UK is for public limited companies to have a minimum share capital requirement of GBP 50,000, of which 25% must be paid up in full.

Guide for Evaluating Country Risk for Global Investments

2022

With 38 local counsel from 31 law firms participating in our country-by-country overview, legal specialists from each particular jurisdiction have contributed their time and insights to this guide.

Their contributions make this a very comprehensive, high-level overview of the key factors affecting inward investment and what organizations must be aware of when selecting their investment destination.

First Law International would like to thank all of our members participating in this year's guide for their time, invaluable efforts and expertise.

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