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TAX

Democratic Republic of Congo Fiscal Guide 2013/14

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INTRODUCTION

Democratic Republic of Congo Fiscal Guide

2013/2014

Income tax

General

The DRC tax system is source based. Taxable income includes all types of income realised or deemed to be realised in the DRC. DRC-source income is generally defined as income relating to activities carried out in the DRC, even if the actual payment takes place outside the DRC. Income realised outside the DRC by a DRC non-resident is not subject to tax in the DRC, unless the income is sourced or deemed to be sourced in the DRC. Certain income is subject to withholding tax.

Business income

A company is resident in the DRC if it is incorporated in the DRC or has its head office and principal place of business in the DRC.

With respect to the taxation of business income, the DRC tax system does not distinguish between individuals and companies. Tax on business income is imposed on all entities conducting business in the DRC (i.e. source based). Corporate tax is levied on the net income realised during the taxable period. There are special rules for income which is taxed separately under specific rules, such as real estate and rental income.

Non-resident companies which carry on business activities in the DRC are subject to tax in the DRC on the profits realised through their permanent establishments or when they operate for more than six months in the DRC.

Tax calculated on taxable profits includes donations, provisions, unrealised exchange losses and special tax on expatriate salaries, but excludes, dividends, royalties and rental revenue, which are taxed at a different rate. The income tax threshold is 1% of the turnover with a minimum of CDF2.5 million for large enterprises and CDF750 000 for medium-sized enterprises.

Trading losses

In case of a loss, the company is subject to a minimum tax on earnings equivalent to 1% of its turnover with a minimum of CDF2.5 million for large enterprises and CDF750 000 for medium-sized enterprises.

Losses may be carried forward for five years. Losses carried forward are subject to prior approval of the tax authorities. No carry back of losses is allowed. The time limitation does not apply to deficits from amortisation recognised during the mine exploration and development period.

Rates

Resident companies	
Corporation tax	
Corporation tax:	
» Resident companies	35%
» Mining companies	30%
Capital gains	35%
Dividends (local)	20% (withholding tax)
Dividends (foreign)	Exempt

Resident companies (continued)

Resident companies	
Dividends distributed by mining companies and their subcontractors	10% (withholding tax)
Interest	20% (withholding tax)
Royalties	20% (withholding tax)
Rental revenue	22% (withholding tax of 20%; 2% tax on landlord)
Remuneration for services provided by foreign companies	14% (withholding tax)

Resident individuals	
Individual salary tax	Max 30%
Dividends (local - WHT deducted at source)	20%
Dividends (foreign)	Exempt
Dividends distributed by mining companies and their subcontractors	10% (withholding tax)
Rental revenue	22% (withholding tax of 20%; 2% tax on landlord)

Non-residents (taxed on income sourced in the DRC; subject to treaty relief)	
Individual salary tax	Max 30%
Corporation tax	35%
» Non-resident companies	35%
» Non-resident mining companies	30%
Capital gains	35%
Dividends (local)	20% (withholding tax)
Dividends distributed by mining companies and their subcontractors	10% (withholding tax)
Interest	20% (withholding tax)
Royalties	20% (withholding tax)
Rental revenue	22% (withholding tax of 20%; 2% tax on landlord)

- * Provisional tax is withheld at source and credited against the final liability.
 ** Final tax withheld at source (rate may be varied by applicable tax treaty).

Resident individuals income tax table (CDF)		
Up to	524 160	0%
524 161	1.428 million	15%
1.428 million	2.7 million	20%
2 700 001	4.62 million	22.50%
4 620 001	7.26 million	25%

Resident individuals income tax (continued)

Resident individuals income tax table (CDF)		
7 260 001	10.26 million	30%
10 260 001	13.908 million	32.50%
13.908 million	16.824 million	35%
16.824 million	22.956 million	37.50%
Over 16.824 million	22 956 001	40.00%

Non-resident individuals income tax table (CDF)		
Up to	524 160	0%
524 161	1.428 million	15%
1.428 million	2.7 million	20%
2 700 001	4.620 million	22.50%
4 620 001	7.260 million	25%
7 260 001	10.260 million	30%
10 260 001	13.908 million	32.50%
13.908 million	16.824 million	35%
16.824 million	22.956 million	37.50%
Over 16.824 million	22 956 001	40.00%

Tax on salaries

Personal tax on salary

Salaries and all benefits in cash or in kind paid to local and expatriate employees are taxable at a maximum rate of 30% after deduction of the employee's social security contribution. The tax is withheld by the employer who is liable for the payment of the tax.

Family allowances, pensions, annuities, housing, transport allowance and medical expenses are exempted up to the proportion fixed by the administration.

Casual labour

Casual and consultant salaries are taxable at the rate of 15%. The employer is liable for the payment of the tax.

Special tax on expatriate salaries

Employers employing expatriates are subject to the payment of a special tax applied on the basic salary of these employees. The rate is 10% for mining companies (and their sub-contractors) and 25% in all other cases.

Capital gains tax

There is no special tax on capital gains in the DRC. Capital gains are treated as ordinary income and subject to corporate tax. It should be noted that latent capital gains on business assets are exempted in so far as they are not realised by the taxpayer. The rate is 35% in common law and 30% for mining companies.

Allowed depreciation rate for fixed assets

Buildings	2.5 – 5%
Plant and equipment	10 – 15%
Furniture and fittings equipment	10 – 15%
Vehicles	20%
Computers and IT equipment	33%

Transfer pricing and thin capitalisation rules

The DRC has no rules regarding transfer pricing and thin capitalisation. Nevertheless, transactions between related parties must be at arm's length.

Inheritances and donations

There is no estate duty or gift tax in the DRC.

Transaction taxes

Value-Added Tax (VAT)

VAT has been levied since 1 January 2012, replacing the local turnover tax. Imports and transactions within the DRC are taxed at 16%, while exports are zero rated.

Individuals and companies are subject to VAT. Only when the companies' annual turnover is greater than or equal to CDF80 million (approximately US\$90 000), can they be allowed to collect VAT. Service providers are, however, VAT Collectors regardless of their turnover.

The following steps, inter alia, have been taken for the implementation of VAT:

- » The election as VAT Collector status is subject to the agreement of the administration, if the taxpayer's turnover is greater than or equal to CDF80 million;
- » Companies based outside the DRC, but rendering services to DRC companies, are not liable for VAT. However, their DRC clients or Tax Representatives are required to declare VAT on those invoices issued without VAT;
- » Specifically listed agricultural equipment is exempt from VAT;
- » Specifically listed pharmaceutical inputs are exempt from VAT; and
- » VAT on the importation of wheat and wheat flour as on local sale of wheat, bread and wheat flour is suspended until further notice.

The law exempts the import and purchase of equipment, materials, reagents and other chemical products intended for prospecting, exploration, research and development and construction of mining and petroleum projects, before exploitation.

VAT refunds are granted to exporters, to companies which have ceased trading, to those that lose the Collector status, as well as to those that have made large investments (tangible assets acquired in new condition and necessary for the company's operations and whose project value is at least equal to CDF1 billion).

Stamp, registration fees and transfer duty

No stamp duty is levied in the DRC. Inter-ministerial Order No. 243/CAB/MIN/J & DH/2010 and No. 043/CAB/MIN/FINANCES/2010 of 4 May 2010, however, provides registration fees at a fixed rate of 1% of capital for any capital increase operation of corporations with limited liability, credit agencies and microfinance institutions.

The transfer of assets is subject to registration duty at variable rates ranging from 5% to 10% of the price, depending on the type of property (i.e. developed or undeveloped), its use (business premises or dwellings) and its location.

Vehicles tax

A toll tax on traffic is imposed by law on vehicle owners. The special fee for traffic is applicable to all vehicles permitted to operate on public roads, regardless of the status of the owner.

The state, NGOs and embassies are exempt from the payment of toll fees. Public transport companies pay half the tax rate for vehicles used for public passenger transport.

The current rate for Vehicles tax is as follows:

- » Motorcycles 6Ff
- » Utility vehicles
 - › < 2 500 kg 20Ff
 - › 2 500 to 10 000 kg 25Ff
 - › > 10 000 kg 45Ff
- » Passenger vehicles
 - › Belonging to an individual
 - 01 – 10 HP 6 Ff
 - 11 – 15 HP 11Ff
 - Over 15 HP 37Ff
 - › Belonging to companies
 - 01 – 10 HP 12Ff
 - 11 – 15 HP 25Ff
 - Over 15 HP 37Ff

Property tax

Land (real estate) and buildings owned in the DRC are subject to property tax (*taxe foncière*), which is payable by the landlord. Embassies, churches, NGOs and owners over 55 years of age, living in their properties, are exempt from property tax.

The administration has fixed a scale of property tax rates per location category. Depending on the location of the property, the rate is often insignificant.

Other taxes

Mineral rights tax	Exploration permit	US\$2 55/square for the first 2 years US\$26 34/square for the 2 following years US\$43 33/square for 2 renewal years US\$124 03/square for 2 extra renewal years
	Operating license	US\$424 78/square per year
	Operating license for discharges	US\$679 64/square per year
	Operating license for small mine	US\$195 40/square per year
	Research authorization of quarry products	US\$4 25/square per year
	Permanent operating license for quarry	US\$169 91/square per year
	* Square = a square km space	
Mining royalties	<ul style="list-style-type: none"> » 0.5% for iron or ferrous metal » 2% for non-ferrous metal » 2.5% for precious metal » 4% for precious stones » 1% for industrial metal, solid hydrocarbons and other substances 	
Prospecting licence fees	From US\$3 36 up to US\$163 (per mining square) depending on the number the years	
Mining licence or mineral permit fees	US\$560 11 per (mining square)	
Export duty	US\$60 per ton	

Double tax treaties and reduced rates

Treaties (not yet in force in the DRC)

Country	Dividends Qualifying Companies	Interest	Technical/ Management & Consultancy fees	Royalties
Belgium	15%/10% *	10%	N/A	10%
South Africa	15%/5% *	10%	N/A	10%

* Lower rate of tax applicable (as agreed with other countries), where beneficial owner is a company with a least 25% shareholding.

Investment incentives

Law No. 004/2002 of 21 February 2002 introduced a new investment code. The code introduced a preferential tax regime in certain regions and investments in certain sectors of activities (i.e. special provision for small and medium enterprises).

This preferential regime allows exemptions in the following regions and is granted for a limited period according to the economic area.

- » 3 years for economic area A (city of Kinshasa);
- » 4 years for economic area B (Bas-Congo, Lubumbashi, Likisa and Kolwezi); and
- » 5 years for economic area C (Bandundu, Equateur, Kasai-Occidental, Maniema, Nord-Kivu, Sud-Kivu, Province Orientale en Katanga).

Provision for small and medium enterprises (SME) and small and medium industries (SMI)

SMEs and SMIs will receive the following benefits:

- » With the exception of the administrative fee, SMEs and SMIs carrying on an investment program receive a total exemption from duties and import taxes for machinery and equipment, second-hand machinery and spare parts for first allocation not exceeding 10% of the CIF value of such equipment, as well as industrial inputs necessary to achieve the approved investment.
- » Deduction from their taxable income of amounts spent for training, development of the entrepreneur or his personal protection and nature conservation.
- » Calculation of their depreciation on a declining balance method.
- » Exemption from registration fees in New Trade Register and the acts of cooperatives or company.

Tax regime for oil companies

Transactions	Obligations	Base	Tax rate or amount
Inception of company	Congolese State Partnership	Petrol agreement with Congolese State	-
Research and exploration	Exploration licence	Surface of the exploration licence	US\$0.02 per ha
Exploitation (operation)	Operation licence	Surface of the operation licence	US\$0.04 per ha
Exportation of crude	Import tax	1% FOB of crude	-
Corporate tax	Taxable benefit	Part of taxable income of private companies	35%
Withholding tax	Dividends	Private companies	20%

Tax regime for forestry companies

Tax is payable depending on concession contracts signed by the company with the DRC state. Forestry companies are generally required to pay for operating permits and for special reforestation fees.

Law 011/2002 of 29th introduced a Forestry Code which regulates the forest sector in the DRC. Articles 120 to 125 of this code define the tax regulations in the forestry sector in the DRC.

Tax regime for mining companies

Effective in 2002, the DRC Mining Code envisages a preferential tax and customs system for mining companies. This system applies to any holder of a mining title or quarry and their subcontractors.

Tax	Notes	Tax rate or amount	
Surface mining fees	Square	» PR: Year 1	3.068
		» Year 2	3.068
		» Year 3	31.692
		» Year 4	31.692
		» Year 5	31.692
		» Year 6-10	52.100
		» Year 11-15	149.223
		» PE: per year	235.106
		» PEPM: per year	511.096
		» PER: per year	817.744

Continued

Tax	Notes	Tax rate or amount
Tax on mining surface and hydrocarbon	Hectare	<ul style="list-style-type: none"> » PR: Year 1 0.0241 » Year 2 0.0361 » Year 3 0.0421 » Year 4 0.0481 » PE: year a 0.0481 » PEPM year 2 0.0772 » PER: year 3 0.0842 » Year 4 0.0963
Importation duties	The exemption should be requested by the company	<ul style="list-style-type: none"> » 2% during exploration period » 5% during the production (exploration) period » 3% for fuel, lubricants, reagents and consumer goods for mining activities
Mining royalties	Tax based on sales less cost of sales (commercial cost)	<ul style="list-style-type: none"> » 0.5% for iron or ferrous metal » 2% for non-ferrous metal » 2.5% for precious metal » 4% for precious stones » 1% for industrial metal, solid hydrocarbons and other substances
VAT		<ul style="list-style-type: none"> » Preferential treatment of turnover tax is replaced by a single rate of 16% VAT on domestic foods and import » Exports are taxed at 0% » VAT on investment of over one billion Congolese francs is subject to reimbursement scheme » Exploration period is exempted from VAT
Tax on salary	All salaries and benefits in cash or in kind paid to local and expatriate for their employment in DRC are taxable	<ul style="list-style-type: none"> » Scaled salary tax not exceeding 30% of the basic salary, deductible on salary; » 15% on casual labour salaries » 10% special tax on expatriate basic salary; tax supported by the employer, not the employee
Corporate tax	Taxable benefit	» 30%
Withholding tax	<ul style="list-style-type: none"> » Dividends, interest and royalties » Services provided by foreign companies established abroad 	<ul style="list-style-type: none"> » 10% » 14%

Tax regime for telecom companies

Law No. 011/32 of 29 June 2011 removes any tax on the import of telecommunications equipment. The licence cost to operate in telecommunications is US\$60 million.

Exchange controls

There are no restrictions on fund transfers. In particular, there is no exchange control restriction on the repatriation of profit for a foreign company after paying dividends tax.

The Central Bank of Congo reserves an exchange control fee of 0.2% on all money transfers from or towards the DRC, regardless of the status of the customer or beneficiary. A minimum fee of US\$1 is requested.

Detention of foreign currency

In the DRC, travellers (residents and non-residents) can freely make use of foreign currency when travelling. Travellers are, however, required to declare any amount exceeding US\$10 000 or the equivalent in other currencies.

Over and above the US\$10 000 limit, transactions in foreign currencies must be realised via a bank transfer.

Transactions and services in foreign currency

Transactions and services within the national territory can be performed both in local and foreign currency.

Transfers of income

All transactions relating to transfers of income, current transfers and capital movements with a value exceeding US\$10 000 require the purchase of a licence (Model "RC") at an approved commercial bank.

Capital movements

The entry of capital under direct investment of export pre-financing is permitted subject to subscription of a declaration RC model. The capital must come from transactions with a legitimate economic origin.

For an external loan, repayment of the principal debt and interest is made through voluntary subscription to the "Model LR".

Residence and work permits

There are no discriminatory or excessively onerous visa, residence or work permit requirements designed to prevent or discourage foreigners from investing in the DRC. Application for a work permit must be made on arrival in the DRC. The Ministry of Labour and Immigration Administration Officers may, however, control expatriate residence and work permits.

Annual budget announcement

The Ministry of Finance generally announces the annual budget and taxation proposals in December of the previous year or January of the new financial year.

Trade and bilateral agreements

The DRC is party to two treaties: with Belgium and South Africa. These treaties are, however, not yet being applied by the Congolese Government.

Entry of DRC into OHADA

The DRC has officially become the 17th member state of the L'Organisation pour l'Harmonisation en Afrique du Droit des Affaires (OHADA) in September 2012.

Economic statistics

Prime interest rate (last estimated in December 2012)	28.45%
US\$ Exchange Rate (February 2014)	FC 925.9053
Inflation (January 2014)	1.82%
GDP (December 2013)	8.10%

Travel Information

Visa requirements	An entry visa is required by all foreign citizens. Visa requirements are generally on a reciprocal basis.
Flights	No restriction of approved airlines. The DRC does not have a public airline company operating by the moment.
Inoculations	Compulsory for Yellow Fever and Cholera. Recommended for Typhoid, Tetanus, Polio, Meningitis and Hepatitis A

Currency

The currency used is the Congolese Franc (CDF), which is equal to 100 centimes.

Languages

The official language is French, and four national languages are also spoken: Kiswahili, Tshiluba, Kikongo and Lingala.

Official holidays

- » 1 January (New Year's Day)
- » 4 January (Martyr's Day)
- » 16 January (M'zee Laurent Désiré Kabila's Day)
- » 17 January (Lumumba's Day)
- » 1 May (Labour Day)
- » 17 May (Liberation Day)
- » 30 June (Independence Day)
- » 1 August (Parents' Day)
- » 25 December (Christmas Day)

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