TAXES IN AFRICA

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24, Rue de Londres - 75009 Paris - France
Tel: +33 (0) 1 44 15 95 23 - www.eaiinternational.org

Congo

Capital city :
Brazzaville

Language :
French, Lingala, Kituba

GDP/capita 2019 :
USD 2,148

Telephone code :
+242

Area :
342,000 km^2

Political system :
Republic

Currency :
Franc CFA (XOF)

National day :
15 August

Population :
5,062,021

ISO Code :
COG

Congo

Important note:

The 2020 Budget Act of the Republic of the Congo (Brazzaville) will only become available in February. An update of the digitised version of this section is scheduled and will be available on our website in the course of the first half of 2020.

1. Corporation tax

1.1 Tax base

The tax applies to all the profit or income made or earned by companies and other legal entities.

1.2 Residence and non-residence

Subject to the application of international agreements, taxable profit is profit that is made through the activities of companies located in the Congo.

The tax is based on a single number in the name of the legal entity at the office of the management of the company, or failing that in its principal establishment for all its activities taxable in the Congo.

For their tax, foreign companies fall under the jurisdiction of the country for which they carry out their business.

1.3 Frequency and declaration

Corporation tax is based on the profit made over a period of twelve months corresponding to the accounting year. The accounting year is the same as the calendar year.

However, companies that start their operations in the course of the 6 months previous to the mandatory closing date may close their first balance sheet at the end of the accounting year following that in which the operations began.

The profit or loss is declared within 4 months of the closing of the financial year.

All companies or legal entities that are liable for corporation tax are required to pay the tax without the prior issue of a roll.

Payers of corporation tax are required to do the following on their own initiative:

- pay the instalments during each taxation period;
- as soon as the profit is declared, pay the balance of the tax owing based on the profit in the period covered by the declaration.

Instalments are calculated by the company and paid by it. They must be paid within the first 15th days of the months of February, May, August and November.

1.4 Taxable income

The profit made by a company attracts corporation tax determined on the basis of the profit made by the companies operated or the operations carried out in the Congo (subject to the application of the provisions of international agreements).

Taxable profit is the net profit determined on the basis of the overall results of all transactions of all types carried out by companies during the period used as the basis for the tax, particularly including transfers of any assets, either during or at the end of operations.

Taxable net profit is equal to the difference between the revenue of the company and its expenses.

Net profit is equal to the difference between the net asset values at the time of closing and the opening of the period of the profit used as the basis for tax, less contributions made and plus withdrawals during this period by the partners.

Net assets means the surplus net value of assets over the total liabilities, including claims of third parties, depreciation and justified provisions.

Gains are supplemented with all non-tax deductible expenses.

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1.5 Group income or group agreements

When a joint stock company or limited liability company has registered shares of a joint stock company or limited liability company, the net revenue from the shares of the second company collected by the first in the course of the financial year is subtracted from its total net profit, after deducting a share of expenses and costs. That share is set to 10% of the value of said revenue.

However, this provision is only applicable if:

- the shares held by the parent account for at least 25% of the capital of the subsidiary;
- the parents and subsidiaries have their registered offices in the CEMAC;
- the shares allocated at the time of the issue are still registered in the name of the shareholding company or, if the securities have not been subscribed at the time of issue, the company agrees to hold them for at least two consecutive years in the registered form. Any breach of this agreement leads to the taxation of income that has been wrongly exempted, without prejudice to penalties for inadequate declaration.

The deduction above does not include any arrears, interest or other income exempted from tax on income from securities (IRVM), as regards credit institutions and investment or securities management companies.

Subsidies and debt remission between parents and subsidiaries are subject to the following particular regime:

a. The loss resulting from a subsidy or debt remission is deductible from the taxable profit of the company granting the aid. Correlatively, profit is taxable for the company that benefits from the aid:

- If the debt remission is commercial in nature, the aid provided is a charge that is deductible for the parent company, regardless of the net position of the subsidiary receiving the aid.

- If the debt remission is financial in nature, the aid provided may be deducted as a loss by the parent company:

  - subject to the limit of the amount of the negative net position of the subsidiary;
  - and up to the amount of the positive net position after the debt remission, in proportion with the capital of the subsidiary held by the other shareholders.

On the other hand, the non-deductible complement of the debt remission is to be considered as a cost price supplement of the shareholding of the parent company.

Debt remission or forgiveness under a legal ruling is taxable.

b. The benefit of the debt remission tax regime is however subject to certain conditions that are to be met by the parent and subsidiary:

- The debt remission must be granted by a parent company to a subsidiary based in the Congo, in which it holds at least 10% of the stake.

  The parent must demonstrate that the claims concerned have not been taken into account while determining its taxable profit.

- The subsidiary must commit to an increase in capital for the benefit of the parent in an amount at least equal to the amount of the remission. It must enclose the commitment to increase the capital with the declaration of results for the period during which the remission was granted. The increase must be effective within two years of the remission and be carried out either in cash or by converting a claim.

If the commitment is not fulfilled, the amount of the claim must be applied by the subsidiary to the results of the year during which the claim was waived.

The same obligations apply to subsidies granted by the parent to its subsidiaries.

1.6 Capital gains

As an exception to paragraph 1 of article 109A, capital gains made from the transfer of fixed assets in the course of operations are not included in the taxable profit for the year during which they are made, if the taxpayer puts them in a special account for re-appropriating capital gains and agrees to reinvest an amount equal to the capital gains plus the price of the transferred assets in new fixed assets of its company no more than three years after the closing of the financial year.

That commitment must be attached to the declaration of the results of the financial year during which the capital gains have been made.

However, the re-appropriation provided in this way may not be made for the purchase or subscription of shares of companies or participating securities.

For the application of paragraph 1, the securities making up the portfolio are only considered to form part of the fixed assets if they have been included in the

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assets of the company for at least 3 years before the transfer date.

If the re-appropriation takes place within the provided time, the capital gains subtracted from the taxable profit are allocated to the depreciation of new assets and are deducted from the cost price for the calculation of depreciation and subsequent capital gains.

Otherwise, they are added to the taxable profit of the year of the transfer or the cessation of business.

In order to benefit from the capital gains/losses régime, the securities must be such that they may be considered to form part of the fixed assets.

Otherwise, the gains or losses made at the time of their disposal are included in the taxable profit, regardless of the holding duration.

In the event of a total or partial disposal, transfer or cessation of business, net capital gains are taxed as follows:

- in half their amount when the disposal, transfer or cessation occur less than five years after the creation and in a third of their amount regarding the purchase of goodwill or customer base.

Capital gains other than those made on goods resulting from the free allocation of shares, shares in profit or bonds following mergers, splits or partial transfers of assets are exempted from corporation tax when they are made, providing the operations are for the benefit of legal entities liable for corporation tax having their registered office in the Congo.

In particular, that includes:

- capital gains or losses on depreciable assets.
  Capital gains or losses made on depreciable fixed assets must be gradually reinstated into the profits of the absorbing company for a period of five years. The annual amount to reinstate is equal to a fifth of the capital gains made;

- capital gains or losses on non-depreciable assets. The inclusion of capital gains or losses observed with non-depreciable assets is deferred, providing the absorbing company agrees to calculate the capital gains or losses that would be made in the event of the subsequent disposal of the assets based on their values in the books of the absorbed company. Companies are required to keep special registers to monitor the assets that benefit from such deferred taxation;

- capital gains or losses from non-fixed assets. Capital gains or losses observed with the transfer of non-fixed assets are taxable for the year of the merger in the name of the absorbing company;

- capital gains or losses with stayed taxation. Capital gains made before the merger, where taxation has been deferred, continue to benefit from deferred or staggered taxation providing the absorbing company agrees to take over the tax obligations of the absorbed company;

- capital gains and losses resulting from the total transfer of the assets of a company to two or more joint stock companies;

- capital gains or losses resulting from the partial transfer of assets making up a complete branch of business from one company to another on the conditions provided in article 361 of the general tax code, volume 2 book 1.

The application of the provisions of points 5 and 6 is contingent upon the obligation provided in the deed of merger, split or partial transfer of assets to calculate, in respect of items other than goods included in the transfer, the annual depreciation to be taken from the profit and subsequent capital gains made from the realisation of these items based on their cost price for the merged companies or the transferring company, after deducting the depreciation already applied by them.

This obligation applies in the case in point 5 above to the absorbing or new company and in other cases either to the beneficiary companies of the transfers in proportion with the value of the assets allocated to them or to the beneficiary company of the partial transfer respectively.

In the event of a transfer or the cessation of business, the benefits of the last year and the provisions that are no longer applicable and the capital gains made become immediately taxable.

In respect of cooperative consumer companies, gains made from operations with members and distributed to such members in proportion with the order of each of them may be deducted from the profit

1.7 Losses

Losses made during a financial year are considered to be a charge deductible from the taxable profit of the following year.
If the profit is not sufficient for the deduction to be applied fully, the surplus loss is carried forward successively in the same conditions to the following years, up to the third year following the year of the loss.

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1.8 Exemptions

Profit from a new farming, mixed farming, fish farming or fishing operation generated up to the close of the fifth financial year is exempted from corporation tax.

1.9 Rates

The corporation tax rate is fixed at 34%.

As an exception to the provisions of article 122, the rate of corporation tax is fixed at:

- 25% for companies engaging in:
    - farming or mixed farming;
    - microfinance;
    - private teaching organised in a company.
- 30% for companies engaging in:
    - mining and quarrying;
    - immovable property operations.
- 35% for foreign legal entities under article 126 3 et sequentes.

For companies that engage in the exploration, exploitation, storage and transport of crude hydrocarbons, corporation tax is calculated on the basis of the income of the year at the rate defined in the petroleum agreement, but the rate may not be below the corporation tax for ordinary companies.

1.10 Relief for double taxation

Tax agreements signed by the Republic of the Congo provide for the avoidance of double taxation.

2. Tax on the income of natural persons (TINP)

2.1 Tax base

Natural persons are liable for tax on income derived from the Congo or other countries.

However, tax agreements with other countries limit double taxation of income derived from outside the Republic of the Congo.

2.2 Residence and non-residence

Subject to the provisions of international agreements, the following are taxable:

a. Congolese or foreign natural persons having their tax domicile in the Congo or those who usually reside in that country.

The following are considered to usually reside in the Congo:

- Individuals who have a dwelling at their disposal as owners, usufructuaries or tenants when, in the last case, the lease is agreed either once or in successive leases for a continuous period of at least one year;
- Individuals who do not have a dwelling in the conditions defined in the previous paragraph, but nevertheless have their main place of residence in the country;
- Individuals who were outside the Congo on 1 January of the year of taxation who, on that date, continued to be paid by the governments or companies to which they belonged before leaving for the Congo;
- Congolese or foreign civil servants paid from a budget other than one of the budgets of the Congo during the total duration of the period during which they remain seconded in the Congo. That period, which is not interrupted by the leave of the civil servants in question, starts on the day of their appointment in the Congo and ends on the day before the day when the individual is appointed outside the Congo;
- Those who have left the Congo by 31 December of the year of taxation, who retain interests in that country and have not reported that their departure was final.

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In any case, continuous absence over a period above 24 months leads to the loss of the resident status of the taxpayer in the Congo.

b. Natural persons who are Congolese or other nationals who do not have a home or residence in the Congo, providing they receive income from the state of the Congo or from another state, for said income.

Civil servants or employees of the state carrying out duties or tasks in a foreign country are liable for income tax on natural persons in the Congo for their income from Congolese sources.

If they are exempted from income tax in the country in question for all their income, they are liable for income tax on natural persons in the Congo for all their income, including if they do not usually reside in the Congo.

2.3 Frequency and declaration

Declarations are to be filed with the divisional inspector for direct and indirect contributions before 1 March of the year following the earning of the income. However, the time limit is extended up to 30 April for traders, manufacturers and farmers.

As an exception to the provisions of the previous paragraph, taxpayers who are on leave outside the Congo on 31 December of the year of taxation must file their declaration on the request sent to them for that purpose by the employee of direct and indirect contributions, within the period stated by that civil servant. Failing a notice, the relevant taxpayers may validly file their declaration in the month following their return to the Congo.

2.4 Taxable income

The net overall income is made up of the total net income of the following categories:

- income from land;
- profit from industrial, commercial and craft trade activities;
- salaries, allowances, earnings, pensions and life annuities;
- profit from non-commercial professions and assimilated income;
- income from securities;
- capital gains by natural persons and assimilated gains;
- profits from farming.

2.5 Capital gains

Any capital gains made by natural persons and assimilated gains attract TINP.

2.6 Losses

Losses made during a financial year are considered to be a charge deductible from the taxable profit of the following year.
If the profit is not sufficient for the deduction to be applied fully, the surplus loss is carried forward successively in the same conditions to the following years, up to the third year following the year of the loss.

2.7 Exemption

N/A

2.8 Reductions and rates

Any natural person or legal entity that pays taxable amounts in accordance with the provisions of articles 36, 37 or 185 3 (new) of this code, is required to apply the withholding of the tax on the income of natural persons or the withholding tax under articles 183 and 185 3 (new) on behalf of the treasury.

The taxable income for one unit is liable to tax on the income of natural persons by applying the following rates:

- 1% on the fraction of the income below XOF 200,000;
- 10% on the fraction of between XOF 200,001 and XOF 800,000;
- 25% on the fraction of between XOF 800,001 and XOF 2,500,000;
- 40% on the fraction of between XOF 2,500,001 and XOF 8,000,000;
- 45% on the fraction above XOF 8,000,000;

The TINP or legal entities that are nationals of the Congo or other countries who have no domicile or tax residence in the Congo is withheld at source in the rate of 20%, providing they have income made in or derived from the Congo.

The withholding is applied by the party paying the taxable amounts.

2.9 Social security

Social security includes the benefits of the following branches:

- pensions for old age, incapacity, death: 12%, of which 8% paid by the

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employer and 4% by workers;
- family allowance: 10.30% to be paid by the employer;
- workplace injuries and occupational diseases: 2.25% to be paid by the employer.

Out of a total of 24.55%, employees contribute 4% of their salary, which is withheld at source by their employers. The 20.55% difference of contributions is paid to social security by employers, for the benefit of employees.

2.10 Expatriates

Regarding the tax on the income of natural persons, there is no difference between Congolese and foreign natural persons. They are liable for the same tax.

2.11 Stock options

All types of remuneration attract on the TINP, and social security contributions.

2.12 Partnerships

The profits of companies and partnerships under article 6 of the general tax code are determined in any event as provided for self-employed workers who are taxable on the basis of their actual profit.
Regularly founded non-profit organisations are not taxed.

2.13 Pensions

Pensions and annuities are liable for tax on the income of natural persons like all other remuneration and salaries.

3. Taxes on successions and gifts

There is no specific taxation in the area under the law.

4. Wealth tax

Not applicable.

5. Value-added tax

Value-added tax or VAT applies to economic activities carried out in the Republic of the Congo.

Operations carried out for a consideration by natural persons or legal entities as part of economic activity are liable for VAT.

5.1 Rates

An 18% rate applies to all taxable operations, to the exclusion of those identified below:

- reduced rate of 5% applicable to some ordinary consumer goods such as diesel and lubricants imported from Cameroon by forestry companies based in the Congo;
- 0% rate applicable to exports that are declared and approved by the customs department and the local sale of sawn timber, international transport and their accessories.

VAT rates apply to both locally produced goods and services and imported goods.

6. Other taxes

There is a large number of taxes paid by companies and natural persons. This mainly includes the single tax on salaries (TUS).

TUS is collected by the treasury and applies to the gross salary made up of the salary in the strict sense, earnings, bonuses, allowances, gratifications and benefits in kind.

The taxable base of the TUS includes all amounts liable for tax on the income of natural persons in the name of the beneficiaries under articles 37 to 39 of the general tax code, volume 1.

Legal entities under public or private law employing one or more workers are liable for TUS.

The following are exempted from the tax:

- the state:

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- foreign governments with which the state has entered into agreements for
- cooperation with civilian or military technical assistance personnel;
- diplomatic and consular missions;
- international governmental organisations.

The TUS rate is 7.5% of the gross salary.

7. Foreign income

N/A

Contact

Mialounguila Théodore
comptaexpert@gmail.com

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