Tax laws

Until 2009, Djibouti's tax system was based on separate codes that dealt with direct and indirect taxation. In that year, however, value-added tax (VAT) was introduced, and these different codes were bundled in one single document, known as the General Tax Code (GTC). Unfortunately, due to changes to financial legislation, the GTC has not been updated since 2011. The bundling of different texts into a single code had several objectives, the most important of which was to facilitate access to applicable tax provisions. This modernisation process in regards to the country's tax code was preceded, some years earlier, by institutional reforms that resulted in the creation of the Tax Management Office. In addition to this, through subsequent reforms the Organisation for Tax Administration, which was previously focused solely on tax to be collected, has taken on a new organisation based on functions.

Making Changes

Recent reforms have also seen the introduction of a Personal Tax Identification (PTI) number, which the taxpayer may obtain at the time of registration. Taxes and charges due in Djibouti are based on income or profits. The taxpayer pays his or her tax based on the category or nature of their received income.

Taxpayers who are not residents in the territory of Djibouti are obliged to present a personal representative to the Tax Directorate within 30 days of their arrival in the country. This representative must be legally authorised to receive communications regarding the taxable base, tax recovery and tax litigation. These representatives are also held jointly responsible for the payment of general solidarity tax on income and profits.

Companies and non-trading persons are required to pay any taxes due that exceed DJF50,000 ($280) by crossed check, bank transfer or card. Violations of these rules are punishable by a fine of DJF1m ($5600). Responsibility for this fine is divided between debtor and creditor, although both are jointly bound to ensure full settlement. A general solidarity tax on income and profits applies to any income received by the taxpayer (both physical and legal), including the following.

Tax on Salaries & Wages

This tax impacts all remunerations paid to natural persons in cases of professional activity carried out under the authority or direction of another physical or legal person, public or private. Some income may be exempted from this tax. In order to calculate the tax, the value of benefits in kind needs to be taken into account. Benefits in kind are incorporated based on actual expenditure or fixed packages set by the GTC. The tax is deducted at the source by the employer, who is obliged to revert it by the 15th of the next month at the latest. The tax rate is set at a rate of between 2% and 30% of taxable income. Taxable income of less than DJF50,000 ($280) is exempted from this tax.

Tax on Professional Profits

This is an annual tax on all profits made by legal or natural persons who exercise habitually self-employed professional activity. This also includes profits made by the physical or legal persons from a commercial profession, business or craft. The following activities are exempted from this tax:

- Those companies that provide cinematographic projection rooms;
- Agricultural organisations and their unions;
- Those companies that engage in securities trading as their sole activity; and
- Revenues that are re-invested under the conditions laid out in Articles 25-29 of Djibouti's Investment Code.

Concerning territoriality, only those who are physical or legal individuals that carry out an activity within the territory of the Republic of Djibouti can be taxed. The tax on professional revenue affects only revenues earned within the Republic of Djibouti. The annual tax declaration is based on the calendar year.

Taxable income is also defined as the net revenue of a company, which is determined based on the total income of all operations carried out by a business and includes economic activities that are currently ongoing or have already been completed. Thus, there is no specific tax on capital gains made by companies through the disposal of items of fixed assets.

Income from Securities

Income from securities is not included in the income that is subject to tax on business profits. However, dividends paid by companies are subject to the tax on profits, including companies enjoying the benefits of the Investment Code and free zone firms governed by the Law on Free Trade Zones. Similarly, under the GTC, attendance fees are paid to the partners or shareholders of a company on the occasion of a general assembly. The tax rate is 5%.

Rental Income

Rental income is not included in the profits that are subject to the tax on business profits when they are related to a land tax on built properties.

Deductions

In regards to the deductibility of expenses, net profit is defined as any profits that remain after the deduction of all expenses related to the activity, including the following:

- General expenses of any nature that are documented with invoices on which the supplier's valid PTI number is clearly stated;
- Staff and labour costs; and
- The rent costs for any buildings in which the company is a tenant.

Special rules also exist for the deductibility of wages, depreciation, interest paid in consideration for common shareholders, and associated excess contributions, taxes and provisions. In the cases listed above, financial remuneration is allowed as a deduction if the following conditions are met:

- The amount corresponds to actual work and is not excessive in relation to the importance of the services rendered;
- The amount has regularly been included in statements for the payment of retained the income tax on salaries; and
- The amount has been regularly included in submissions to the National Social Security Fund.

Depreciation

Only depreciation that is calculated based on the duration of use of an asset from the date of purchase using the straight-line method is allowed as a deduction. The duration of use for various assets and their corresponding depreciation rates are provided by the GTC. A company may waive the statutory rates provided in cases of exceptional conditions of use, In which case the depreciation rates used will not vary more than 20% from that decreed by the GTC. In general, depreciation rates range between 5% and 100%.

Interest

Interest paid on bank loans is deductible. In contrast, interest paid to members and/ or shareholders of a company on excess contributions made, in addition to their share of capital, irrespective of the form of the company, are deductible within the limits of those calculated to a rate equal to the average annual rate of foreign investments of the Central Bank of Djibouti plus one percentage point.

However, for shareholding companies and limited liability companies, deduction shall be allowed for any partners or shareholders that hold, whether de jure or de facto, the management of the company, to the extent that these amounts do not exceed, for all said partners or shareholders, the amount of social capital. In addition, deductibility is only possible if the capital is fully paid.

Taxes & Charges

Under current tax law, taxes and charges are considered deductible if they are charges are borne by the company and will be assessed during the calendar year. Income tax and land taxes on developed and undeveloped property are not deductible when the related revenues were excluded from operating revenues. Transactions, fines, confiscations and penalties of any kind are charged to violators of the legal provisions governing the price, supply and tax base. Contributions and taxes are not allowed as a deduction from profits subject to the tax.

Provisions

Deductibility is conditional on respect for legal substance and formal requirements. To be considered deductible, a provision must be made for clearly identified losses or charges, as well as for ongoing events that are relevant. In addition, the provision must actually be found in documentation from the period in question and must be included in statements regarding such provisions. The provision for impairment of securities is not legally allowed as a deduction.

Deficit Report

Djibouti's tax administration includes regulations for deficit reporting. Deficits are carried forward on the following condition: a deficit incurred during economic activity is considered an expense for the following year and is deducted from the profits made during the fiscal year. If this income is not sufficient for the deduction to be made in full, the excess of the deficit will be successively carried on to subsequent years until the third year following the year in deficit.

Transfer Prices

In order to determine the tax on professional earnings for individuals or corporations, profits indirectly transferred to undertakings benefitting from a derogation of common law under the exemption system – either by increasing or decreasing purchase or selling prices or by any other means (excessive royalties, lending interest-free or at reduced rates, write-offs, etc) – are reported under the entity's taxable income, subject to ordinary tax.

Tax Regime

Taxation of business profits is done through two tax regimes: simple taxation and normal taxation. Simple taxation applies to persons or entities that have not opted for taxation based on their actual profits and which have an annual turnover that is less than the following limits:

- DJF20m ($112,000) for companies that carry out activities related to supply goods, sales for consumption on-site (with or without hotel services), and building companies that, in addition to labour, supply materials worth less than DJF20m ($112,000); and
- DJF10m ($56,000) for other activities, including service delivery, non-commercial professions and hotel operations that do not offer food and beverage products or services.

Under the simple taxation regime, a declaration for year N must be filed by February 1 of N+1. Specific provisions are expected to be set out in the near future as regards the accounting documents to be produced (simplified accounting).

The normal taxation regime applies to taxpayers whose annual turnover exceeds the threshold of the simplified scheme. It is also applicable should a company choose this option. The exercise of the option must be made before February 1 of the year in which the option is established. The accounts must be held in accordance with the principles and rules of the General Accounting Plan of Djibouti established by Decree 2012-010/PR/MEF of January 10, 2012. The declaration for year N must be filed no later than March 31 of year N+1. The tax rate on business profits is 25%.

Low Flat Tax

The minimum tax lump is due by companies that are in deficit, or if the amount of tax calculated at the rate of 25% is lower than the minimum corporate tax. It is payable by enterprises approved under the Investment Code for the portion of products manufactured by companies under contracts with foreign entities, and for firms that are exempt from the tax on business profits. The basis for calculating the minimum corporate tax is sales tax (excluding VAT). The rate is 1%, with a minimum charge of DJF120,000 ($672).

Income Tax On Capital Gain

Capital gains may be subject to income tax, including capital gains realised on property transactions related to buildings or property rights and securities. The law provides a number of exemptions related to the nature of the property, the status of the property and the grounds of the transfer.

Taxation on capital gain consists of the selling price, minus costs related to the sale and the purchase price paid by the seller. In cases where the purchase price is not known or if the property was acquired free of charge, the capital gain is calculated as the difference between the selling price and the market value registered on the land title. The tax rate is 5%. The seller is required to report the sale within one month of the transaction. Capital gains realised on the sale of shares listed on the balance sheet of a company are taxable and fall under the tax on business profits.

Non-Resident Remuneration

Remuneration paid to persons who are not domiciled in Djibouti is considered subject to a withholding tax. A debtor based in Djibouti is obligated to withhold at source on payment. The tax rate is set at 10%. Taxable remuneration shall consist of the following:

- Amounts paid as remuneration for services of any kind provided or used in Djibouti;
- Amounts collected as copyright or as revenues from industrial, commercial or assimilated activities;
- Head office costs paid by subsidiaries to their headquarters located abroad;
- Amounts paid in consideration for the exercise in Djibouti of a non-commercial activity; and
- Miscellaneous expenses for studies, technical and business development assistance. The following activities or transactions may or may not be taxable under Djibouti law:
- Transport operations to and from foreign destinations, and the various services which are directly related thereto;
- Rentals and repairs for ships, aircraft or other equipment used in carrying out international transport; and
- Costs for the installation of new equipment if these are included in the sale price. The following are exempted from tax:
- Remuneration corresponding to training costs; and
- Remuneration paid by public companies in a free zone and by businesses benefitting from certain provisions of the Investment Code.

Contribution of Patents

Individuals or legal persons wishing to engage in a trade, business or profession and who hold patents have the obligation to purchase a licence. Even temporary firms in Djibouti must pay for a licence on a quarterly period, at the very least.

The patent is individual, annual and must be valid when starting a business from the first day of the activity. The subscription date is taken into account in the case of an ongoing subscription calendar year. Certain activities defined by law are exempt from the licence fee. Patent costs consist of a fixed fee and a pro-rated fee.

The fixed fee is set by the tax administration, and there is a "specified right". This calculation takes into account the nature of the economic activity, as well as the location where the activity will be performed. Activities are grouped into 10 categories. Regarding the location of practice, the law distinguishes between Greater Djibouti and the remaining territory.

The proportional fee for patents in categories 1-6 is 20%. There are no proportional fees for categories 7-10. Following a recent legislative reform, the patent proportion is no longer calculated based on the rental value of the premises occupied, and importer licences are subject to a rate of 0.7%, compared to 1% previously. For industrial and commercial activities an additional contribution of 7% is levied to help finance the Chamber of Commerce of Djibouti.

Land Contribution & Built Properties

There is an annual contribution on buildings or properties built in masonry, iron or wood – such as houses, factories, shops and warehouses – and permanently fixed to the ground and located in urban centres. Exceptions to this rule are established by law. New buildings are exempt from taxation for a period of six years. The contribution is payable by the owner, who is required to take out an annual return between January 1 and January 31 of the year N + 1 in respect of year N. The tax base for property tax on built property consists of the perceived rent or rental value determined by a commission, the composition of which is defined by law. In addition to this, a discount of 20% of the tax base is applied, taking into account management fees, insurance, depreciation, maintenance and repair. The tax is generally calculated for all land titles held by the taxpayer. The amount of tax is calculated by applying the following rates depending on the taxable base:

- 10% for DJF0-1.1m ($0-6160);
- 18% for DJF1.1m-3.8m ($6160-21,200); and
- 25% for anything above DJF3.8m ($21,200).

Unconstructed Properties

The annual tax on undeveloped property concerns all undeveloped land, except for properties that are specifically exempt by law. Taxation is established on behalf of the owner or dealer on January 1 of the tax year. The tax on undeveloped properties shall be applied to the tax base at a rate of 25%.

VAT

VAT was introduced in Djibouti in 2009 and covers all operations, except those specified by law, that take place in Djibouti and are carried out by physical and/or legal persons. VAT is relevant for those carrying out any economic activity, except for employees.

All who carrying out such economic activities are subject to VAT, both physical and legal persons, and this includes free zone companies, firms that benefit from certain provisions under the Investment Code, public agencies, and bodies governed by public law which habitually or occasionally carry out a taxable operation in an independent manner and which accomplish this via an economic activity that is conducted in return for payment.

Exemptions

The exemption from VAT for physical and legal persons mentioned above is determined by calculating an annual sales superior or equal to DJF50m ($280,000). Firms that do not satisfy the conditions in question can opt for exemption from VAT, provided that they comply with the principles set out under the General Accounting Plan, specifically those related to the retention of documents. There are two types of VAT for exports that are set at 0%: those covering transit and international transport. VAT set at 10% is applied to the following:

- Supply goods;
- Dumped imports and services;
- Self-supply of goods and/or services;
- Subsidies of commercial character, regardless of their nature, collectable by persons subjected to VAT on their activities;
- Write-offs on loans of a commercial character;
- Petroleum products that are released for consumption and distribution which are not governed by an exemption, except for petroleum products for resale at gas stations; and
- Generally speaking, all operations which are not excluded from the present Investment Code. The following are not subject to VAT:
- Sales made directly to consumers by farmers, livestock breeders or fishers of unprocessed products from aquaculture, livestock or fisheries;
- Bank operations;
- Operations related to insurance contracts and reinsurance delivered by insurance and reinsurance companies during normal operations, as well as services related to those operations realised by the carriers or other intermediaries;
- Operations that are designed for the transmission of movable and immovable intangible goods, except for sales carried out by dealers in goods or those related to a lease, as well as sale operations for a building by the construction company that built it; and
- Various other operations with an economic or social element as defined by law.

Related Regulations

For individuals subject to tax and registered for VAT, the tax that is levied on the price of a taxable transaction is deductible from the VAT applicable to this operation.

The VAT levied on goods and services related to exempted activities are not eligible for deductions. Economic activities taxed at a rate of 0% are not excluded from deduction. VAT is deductible only if the relevant goods and/or services are necessary to the economic activity in question. However, the following are legally excluded from deductions and the tax:

- Housing expenditures or costs related to travel and accommodation, restoration, receptions and events, car rental, and passenger transport;
- Services related to commodities that are excluded from the right to deduction;
- Goods sold for free or far below the normal price, particularly as commission, salary, bonus or gift, whatever the quality of the beneficiary or the form of distribution;
- Petroleum products, except for fuels procured for resale by importers or bought by the public utility, Electricity of Djibouti;
- Vehicles or gears, of whatever nature, that are designed or equipped for passenger transport or for mixed use or capital property, when they are not to be resold. The same applies to all spare parts, accessories and maintenance costs.

However, this does not apply to road vehicles having, other than the driver's seat, more than eight seats and are used by companies for passenger transport for their employees; and

- Fixed assets used for renting vehicles for public transport of passengers.

Reporting procedures for VAT depend on the nature of the activity. Companies engaging in sale activities and purchases of goods can meet their reporting requirement with the help of their billings department, while firms that offer services can utilise receipts and disbursement documents. VAT credit is repaid by the tax administration under certain conditions. VAT for a given month must be reported before the 20th of the next month.

Recording Tax & Stamp Duty

In general, all legal documents must be stamped and registered. Registration rights are fixed, proportional and gradual, depending on the nature of the activity and variations. Acts that entail contractual obligations, such as transfers or real estate rental, are subject to ad valorem duty for registration at a rate of 2-10%, unless they are subject to VAT.

It should also be noted that contributions by simple title companies during the process of creating or increasing capital are subject to a progressive fee which is based on the amount of the contribution, with a minimum of DJF50,000 ($280) and a maximum of DJF500,000 ($2800). The stamp duty is also applicable to various documents. The amount of the stamp duty varies depending on the nature of the commercial or administrative documents in question, and ranges between DJF200 ($1.12) and DJF1000 ($5.60).

Tax Litigation

The country's GTC provides a set of procedures that help to ensure that taxpayers pay their dues. There are also provisions for cases involving tax disputes. A recent reform requires the Tax Administration to implement changes to the Taxpayer's Charter in order to better inform taxpayers via verification notices.

Moreover, the same reform included recommendations for the establishment of a National Reconciliation Commission for the purpose of dealing with tax litigation. It will serve as a consultative forum and aims to resolve ongoing disputes between taxpayers, users and the administration. Its responsibilities, composition and terms for referral are to be defined by decree.

Investment Code

A company can submit an application to the National Investment Promotion Agency in order to enjoy incentives provided for under the Investment Code. The incentives apply OBG would like to thank *JC Colas-Groupe CHD* for their contribution to THE REPORT Djibouti 2016 if the value of the initial investment is $281,000 or more. The incentives that apply under the Investment Code are as follows:

- Customs duty reduced to 3% of the value of the import for a maximum of seven years, while normally Customs duties range from 5% to 23%;
- Exemption from corporate tax for seven years maximum, while normally the corporate income tax rate is 25%;
- Exemption from property and land tax for a maximum of seven years; and
- Exemption from registration fees for any increment of share capital above $168,800.

The applicant is required to create permanent local jobs (permanent jobs for Djibouti nationals) for the benefits under Investment Code to apply. Under the tax code entities also benefit from Investment Code incentives and are subject to a minimum corporate tax rate of 1% of turnover. Exemption from this minimum tax must be clearly stated in agreement with the government.

Freezone Incentives

The main tax incentives provided under the Free Zone Code are as follows:

- Corporate tax exemption for companies, with the duration of this exemption being 50 years from the creation of the free zone, which was established in 2004;
- Exemption from Customs duties, as business activity and/or equipment in the free zone is considered to be outside of Djibouti;
- Possibility to hire more foreign staff, so long as there is a commitment to train national employees and organise an eventual handover; and
- Foreign staff are not required to pay social security contributions, and the firm does not have to pay social security contributions for such staff.