

Monaco

Corporate Taxation

Introduction

Monaco is a sovereign principality. France is a guarantor of the sovereignty and territorial integrity of Monaco, while Monaco is to conform to French interests. Although the Prince is the representative of Monaco in its relations with foreign powers, foreign policies must be approved by the French government.

Companies are subject to a profits tax levied under the territoriality principle. No net worth tax is imposed. Employers must pay social security premiums on behalf of their employees. France and Monaco form a customs union. The VAT system of Monaco conforms with the French VAT with minor variations.

The currency is the euro (EUR).

1. Corporate Income Tax

1.1. Type of tax system

Monaco does not have a general corporate income tax but, under the terms of its tax treaty with France, it levies a tax on the profits of enterprises engaged in certain business activities.

1.2. Taxable persons

Taxable persons for the profits tax are:

- enterprises, irrespective of their legal form, which carry on industrial or commercial activities in Monaco if at least 25% of their turnover results from operations which are conducted directly or indirectly outside Monaco; and
- companies (*sociétés*) whose activity in Monaco consists of collecting the proceeds of:
 - the sale or licensing of patent rights, trademarks, manufacturing processes and formulas; or
 - literary or artistic copyrights.

In determining the foreign turnover the following activities are taken into account:

- sale of goods provided that the sale takes place outside Monaco territory or that the goods are destined to be exported (it is immaterial whether the goods are delivered in Monaco or abroad). Note, however, that retail sales for cash and, generally, the sale of immovable property located in Monaco are not taken into account;
- rendering of services provided that the services rendered, the rights sold or the goods rented are used or exploited outside Monaco.

Operations conducted in France and other foreign countries through a permanent establishment, and in foreign countries other than France through a dependent representative or from business operations which constitute a “complete commercial cycle”, although not subject to tax in Monaco because of the territoriality principle (*see* section 1.3.1.), are taken into account in determining the share of turnover realized abroad.

Headquarters of international groups (*bureaux administratifs*), i.e. management or service offices of foreign corporations and groups of corporations, although not conducting an industrial or commercial activity in Monaco, may be subject to the profits tax in respect of their contribution to the overall turnover of the foreign group. Where the contribution to the overall result cannot be determined, the tax is based on the running expenses of the headquarters. In such case the tax is generally levied at the normal rate (33.33%) on 8% of the headquarters’ running expenses, i.e. the effective rate is 2.66% of the running expenses. The tax administration may increase the taxable base to as high as 30% of running expenses, and also limit the application of this method to 3 years.

1.2.1. Residence

Not applicable.

1.3. Taxable income

1.3.1. General

If an entity is subject to the profits tax under the conditions outlined above, the tax base is its annual worldwide income earned or deemed to be earned through a business in Monaco. This territoriality principle means that foreign-source business income, i.e. income derived through a permanent establishment, a “complete commercial cycle” or a dependent representative abroad, is exempt. The taxable profit is computed by the net worth comparison method. Special rules apply to the headquarters of foreign companies (*see* section 1.2.).

1.3.2. Exempt income

Income accruing to non-profit organizations is exempt provided that the activities generating the income are exempt from VAT. It also follows from the wording of the law that Monaco resident enterprises engaged only in non-industrial or non-commercial operations in Monaco and enterprises whose all activities are conducted abroad are exempt from the profits tax.

1.3.3. Deductions

Business expenses are normally deductible unless connected with exempt foreign income. However, note that:

- remunerations paid to associates and managers are only partially deductible;
- fees, royalties, brokerage and commission fees paid to residents are deductible on the condition that the recipient and the payer are not related and the payer is able to prove that the payments are not disguised profit distributions or an attempt to shift profits;
- lavish expenses are not deductible.

Interest paid is generally deductible provided the interest rate charged does not exceed the annual average rate of interest charged by financial institutions on variable interest rate loans to enterprises with a duration exceeding 2 years (TMP). Moreover, interest paid to associates who “in law or in fact” direct the company is deductible under certain restrictive conditions (*see* section 7.).

With effect from 1 January 2014, only 75% of the net interest expenses are deductible (85% in 2013). The limitation applies to interest on loans to both related and unrelated parties. A safe harbour rule applies under which the first EUR 3 million of net interest expenses are always deductible. If, however, these expenses exceed EUR 3 million, the restriction applies to the entire amount of the net interest expenses.

Taxes, with the exception of the profits tax itself, are deductible.

Distributed dividends are not deductible.

1.3.4. Depreciation and amortization

Depreciation may generally be taken on fixed business assets but is not compulsory. The law merely states that the amount of depreciation which may be taken is governed by the customs in the branch of industry or commerce concerned. However, the depreciable base for motor vehicles is limited to amounts depending on the date of acquisition. In principle, only straight-line depreciation is permitted. However, the law permits declining-balance depreciation in respect of certain listed assets.

The rate of declining-balance depreciation is computed by multiplying the rate of straight-line depreciation by:

- 1.5 if the life of the asset is 3 or 4 years;
- 2 if the life of the asset is 5 or 6 years;
- 2.5 if the life of the asset exceeds 6 years.

An exceptional depreciation (50% the first year) is under certain conditions permitted for shares (issued against cash) of companies engaged exclusively in the financing of cinematographic and audiovisual works.

In loss years, depreciation may be carried forward indefinitely. However, since no minimum depreciation is compulsory, depreciation may be carried forward even if there is no loss, in which case the deduction is only possible at the end of the normal depreciation period or upon the disposal of the asset concerned.

1.3.5. Reserves and provisions

Reserves or provisions are permitted provided that the expense or loss for which they are created is probable and clearly identifiable.

The law specifically provides for the following provisions:

- a reserve set up for paid annual leaves;
- provisions for doubtful debts set up by financial and banking institutions extending medium or long-term loans and loans connected to immovable property, provided such provisions do not exceed annually 0.5% of their long and medium-term lending. A reserve is also possible in respect of medium-term credits to export or foreign construction operations.

1.4. Capital gains

Capital gains are subject to the profits tax at the standard rate as ordinary business income. However, a number of exceptions are applicable:

- gains from the disposal of depreciable assets are not included in the taxable base if the company undertakes to reinvest, within 3 years, the amount of the capital gain, increased by the cost price of the asset, in certain qualifying business assets (not necessarily similar to those which were alienated). The capital gain so reinvested is deducted from the cost price of the new asset for purposes of computing its depreciation and possible capital gains from its subsequent disposal;
- gains from the winding-up or the disposal of a business are only partially subject to tax at the standard rate: only one half of the capital gain is taxable if the winding-up or disposal of the business takes place less than 5 years after its establishment or acquisition; the taxable portion is reduced to one fifth if the winding-up or disposal takes place more than 5 years after the establishment or acquisition of the business. In practice, the tax authorities levy the tax at reduced rates of 16.665% and 6.666%, respectively, on the total capital gain, instead of applying the standard 33.33% rate to the taxable portion only;
- gains from certain mergers are, under certain conditions, exempt;
- gains from the disposal of precious metals are subject to a 10% (7.5% before 1 January 2014) tax (such gains are exempt from tax for non-resident sellers); and
- gains from the sale of jewellery, antiques and collectors' items are subject to a 6% (4.5% before 1 January 2014) tax (such gains are exempt from tax for non-resident sellers).

1.5. Losses

Losses may be carried forward indefinitely. However, for fiscal years ending on or after 31 December 2012, only 50% of the profit above EUR 1 million may be set off against any available losses. Correspondingly, there is a minimum taxable profit for each financial year insofar as the profit realized during that year (i.e. before any carry-

forward of losses) exceeds EUR 1 million. Any unused losses may be carried forward indefinitely.

Corporate taxpayers also have the option, with certain limitations, to carry losses back for 1 year, in which case they are entitled to a tax credit. The tax credit may either be used during the following 5 years, or will be refunded after that period. The carry-back of losses is limited to EUR 1 million.

1.5.1. Ordinary losses

Not applicable.

1.5.2. Capital losses

Not applicable.

1.6. Rates

1.6.1. Income and capital gains

The rate is 33.33%. For exemptions, *see* section 1.7.2.

1.6.2. Withholding taxes on domestic payments

There are no withholding taxes on payments to resident companies.

1.7. Incentives

1.7.1. Tax credit for research and development

A tax credit for research and development (R&D) expenditure is available. The credit, which takes into account the annual volume of expenditure, amounts to 30% of the expenses related to operations of research and development up to EUR 100 million, and 5% for the excess. Where the taxpayer has not benefited from this regime for a 5-year period, the tax credit is increased to 40% and 35% of the R&D expenses in the first and second year, respectively.

1.7.2. Newly created companies

Every Monaco company held, directly or indirectly, for less than 50% by other companies and falling under the scope of the profits tax is exempt from that tax for the initial 2 years. Furthermore, the profits tax is computed on 25% of the taxable base during the third year, on 50% of the taxable base during the fourth year and on 75% of the taxable base during the fifth year. To qualify for the relief, certain conditions concerning the type of the activity must be satisfied.

1.8. Administration

The profits tax is levied on the income of the relevant accounting year. Taxable enterprises must complete and file a tax return within 3 months of the end of the accounting year. The self-assessment method is used.

Companies are required to make advance payments of tax in February, May, August and November, each equal to one fifth of the tax due for the latest accounting period. Any excess advance payments over final tax due may be used to pay future tax liabilities and is refunded if the enterprise is wound up or suffers a loss during 2 consecutive years.

1.8.1. Taxable period

Not applicable.

1.8.2. Tax returns and assessment

Not applicable.

1.8.3. Payment of tax

Not applicable.

1.8.4. Rulings

Not applicable.

2. Transactions between Resident Companies

2.1. Group treatment

The law does not provide for group treatment. The law explicitly forbids the formation of holding companies.

2.2. Intercompany dividends

Distributed dividends are not deductible in computing the profits tax.

Dividends received from resident or non-resident enterprises are only partially subject to the profits tax. This affiliation privilege is available to Monaco (stock) companies owning at least 20% of the capital of the distributing companies provided that the participation takes the form of *parts d'intérêts* of a limited company or nominative shares acquired at issue or held for at least 2 consecutive years at the date of distribution. The taxable portion is:

- 20% if the participation in the capital of the distributing company is lower than 35%;
- 10% if the participation is 35% or more but less than 50%;
- 5% if the participation is 50% or more.

However, the taxable portion may not exceed the aggregate sum of business expenses incurred by the parent-company during the relevant accounting year. Foreign income or withholding taxes levied against income exempt under the affiliation privilege regime may not be credited against Monaco taxes.

3. Other Taxes on Income

There are no other income taxes.

4. Taxes on Payroll

4.1. Payroll tax

There are no payroll taxes.

4.2. Social security contributions

Employers must pay the following social security contributions based on gross salaries paid to their employees (from 1 October 2014):

- for sickness benefits, family allowances and the salary guarantee fund (CCSS): 15.4% on the monthly salary limited to EUR 8,150 (EUR 8,050 before 1 October 2014);
- for pension benefits (CAR): 7.96% (7.88% before 1 October 2014) on the monthly salary limited to EUR 4,556 (EUR 4,482 before 1 October 2014);
- for unemployment benefits: 4% on the monthly salary limited to EUR 12,516. (The French unemployment benefits system is extended to Monaco and the payment has to be made to the pertinent French funds; *see* France – Corporate Taxation – Country Surveys section 4.2.)

Moreover, employers must insure their employees against the risks of vocational hazards. An additional contribution, aimed at financing the additional vocational hazards compensation fund, is due by employers at the rate of 40% of the vocational hazards insurance premiums paid.

For the social security contributions payable by employees and the self-employed, *see* Individual Taxation section 3.

5. Taxes on Capital

Companies are not subject to a tax on their net worth.

5.1. Net worth tax

Not applicable.

5.2. Real estate tax

Not applicable.

6. International Aspects

6.1. Resident companies

The absence of a treaty subjects income accruing to residents of Monaco to full taxation in the source country. However, foreign-source business income is generally exempt in Monaco under the territoriality principle outlined in section 1.3.1.

As far as foreign-source investment income is concerned, where a Monaco enterprise receives such income, e.g. interest, dividends or royalties, which is subject to withholding tax or income tax in the source country, the foreign tax may be credited against the profits tax of

Monaco. No credit is allowed in respect of intercompany dividends exempt in Monaco under the affiliation privilege regime (*see* section 2.2.).

Until 2009, Monaco's only tax treaty was that of 18 May 1963 with France, which is still in force. This treaty allows France to tax, according to its internal legislation, French-source income accruing to residents of Monaco.

Monaco recently concluded tax treaties with Guernsey (ratified but not yet in force), Luxembourg, Mali (not yet in force), Mauritius, Qatar, St. Kitts and Nevis and Seychelles.

6.1.1. Foreign income and capital gains

Not applicable.

6.1.2. Foreign losses

Not applicable.

6.1.3. Foreign capital

Not applicable.

6.1.4. Double taxation relief

Not applicable.

6.2. Non-resident companies

Foreign companies are not subject to the profits tax, unless they carry out business activities in Monaco through a permanent establishment, through a dependent representative or from business constituting a "complete commercial circle", and unless at least 25% of the turnover is derived from outside Monaco or consists of royalties (*see* section 1.2.).

6.2.1. Taxes on income and capital gains

Not applicable.

6.2.2. Taxes on capital

Not applicable.

6.2.3. Administration

Not applicable.

6.3. Withholding taxes on payments to non-resident companies

6.3.1. Dividends

There is no withholding tax on dividends.

6.3.2. Interest

There is no withholding tax on interest.

6.3.3. Royalties

There is no withholding tax on royalties.

6.3.4. Other

No other withholding taxes apply.

6.3.5. Withholding tax rates chart

The following chart contains the withholding tax rates that are applicable to dividend, interest and royalty payments by resident companies to non-residents under the tax treaties in force as at the date of review. Where, in a particular case, a treaty rate is higher than the domestic rate, the latter is applicable.

	Dividends		Interest ¹	Royalties
	Individuals, companies	Qualifying companies ²		
	(%)	(%)	(%)	(%)
Domestic Rates				
<i>Companies:</i>	0	0	0	0
<i>Individuals:</i>	0	n/a	0	0
Treaty Rates				
<i>Treaty With:</i>				
France	0	0	0	0
Luxembourg	15	5	0	0
Mauritius	0	0	0	0
Qatar	0	0	0	5
St. Kitts and Nevis	5	0 ³	0	0
Seychelles	7.5	7.5	5	10

1. Many treaties provide for an exemption for certain types of interest, e.g. interest paid to the state, local authorities, the central bank, export credit institutions or in relation to sales on credit. Such exemptions are not considered in this column.
2. Unless stated otherwise, the reduced treaty rates given in this column generally apply if the recipient company holds directly or indirectly at least 10% of the capital or the voting power, as the case may be, of the company distributing dividends.
3. This rate applies if the beneficial owner is an individual or a partnership held by individuals.

7. Anti-Avoidance

The deduction of interest paid to associates who “in law or in fact” direct the company is not permitted to the extent that the aggregate sum of the associates’ loans exceeds half the share capital of the payer.

In general, all transactions between related companies must be carried out in accordance with the arm’s length principle.

7.1. General

Not applicable.

7.2. Transfer pricing

Not applicable.

7.3. Thin capitalization

Not applicable.

7.4. Controlled foreign company

Not applicable.

8. Value Added Tax

Monaco and France form a customs union and Monaco has adopted the French VAT regime with minor amendments (*see* France – Corporate Taxation – Country Surveys section 8.). The revenue of the tax is divided between France and Monaco. The tax is levied on all sales and services, unless specifically exempt. Importation of goods is also taxable.

The taxable base is the consideration received for taxable sales and services excluding the VAT itself, and the value at importation including import duties. In computing the entrepreneur’s final tax liability, the tax paid on his purchases and imports may be deducted so that, in effect, only the value added is taxed.

The standard rate is 20%. The reduced rate is 10%, and a 5.5% rate applies to essential goods. A reduced rate of 2.1% applies to daily newspapers, certain theatre performances and approved medicines.

8.1. General

See section 8.

8.2. Taxable persons

See section 8.

8.3. Taxable events

See section 8.

8.4. Taxable amount

See section 8.

8.5. Rates

See section 8.

8.6. Exemptions

See section 8.

8.7. Non-residents

See section 8.

9. Miscellaneous Taxes

9.1. Capital duty

A registration duty of 1% is levied upon the constitution of a Monaco company and on any subsequent capital contributions. A 0.5% duty applies to the issuance of corporate bonds.

9.2. Transfer tax

9.2.1. Immovable property

In general, the transfer of land and buildings located in Monaco is subject to registration duty at a rate of 4.5% on the transfer price, including expenses. The duty is also applicable to offshore companies that transfer real estate located in Monaco.

Legal entities or companies that are the registered owners of real estate in Monaco must appoint an authorized tax representative.

9.2.2. Shares, bonds and other securities

The transfer of shares held in companies whose assets mainly consist of land and buildings located in Monaco is subject to a registration duty at a rate of 6.5%.

9.2.3. Transfer of enterprise

The transfer of an enterprise (including goodwill, leaseholds and trademarks) is subject to a registration duty at a rate of 7.5%.

A 1% registration duty is levied on the transfer of registered shares in Monaco companies.

9.3. Stamp duty

Specific stamp duties apply, amongst others, to administrative formalities.

9.4. Customs duty

Although Monaco is not a member of the European Union, it is part of the EU customs territory through an agreement with France.

9.5. Excise duty

As regards excise duty, Monaco is deemed to be a part of France.