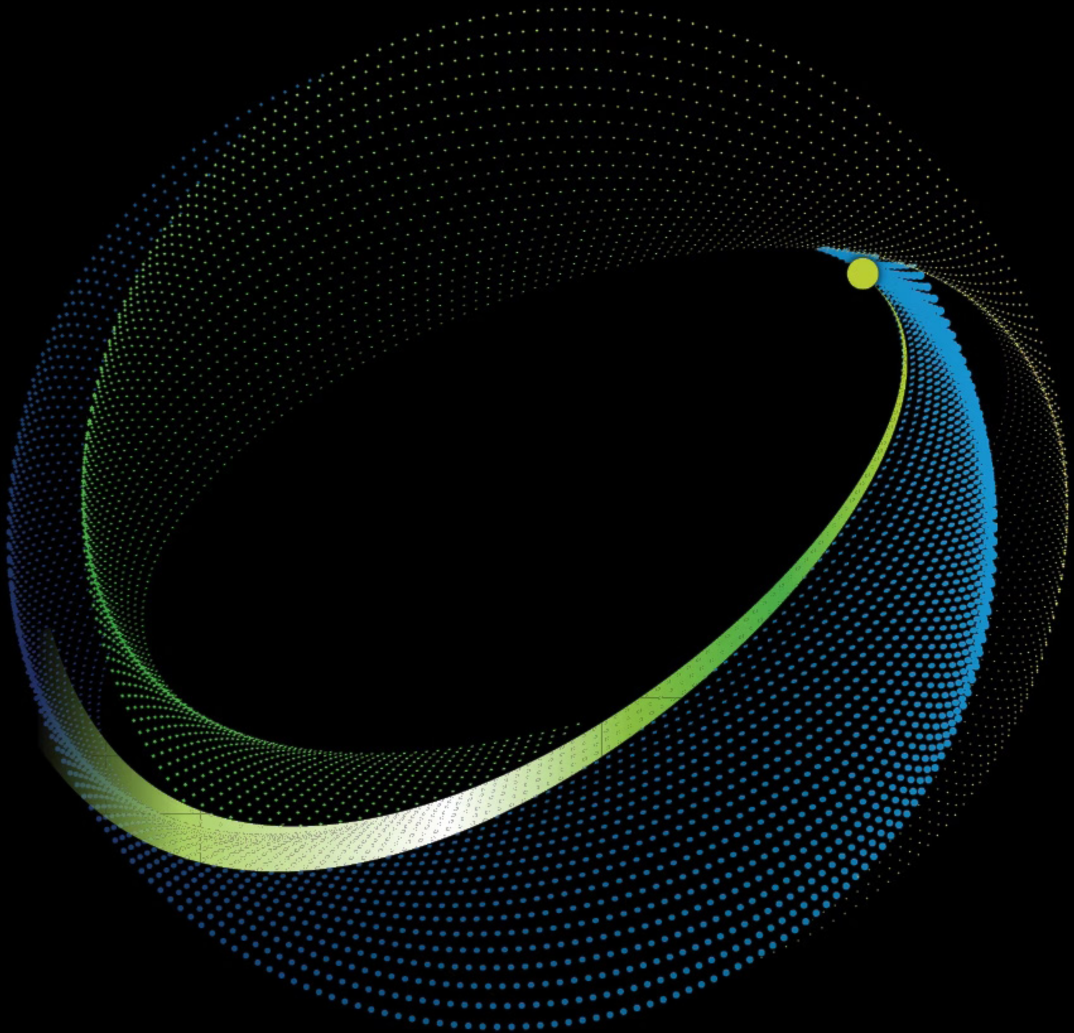
Deloitte.



Corporate Tax in the Congolese Tax System : What to remember?

June 2025

MAKING AN IMPACT THAT MATTERS since 1845

Authors



Yves Madre
Partner - Tax & Legal
Mail : ymadre@deloitte.fr

Jacques Nduu
Manager - Tax & Legal
Mail : jnduu@deloitte.fr

Jerry Tshinanga
Director - Tax & Legal
Mail : jtshinanga@deloitte.fr

Presentation

The evolution of the Congolese tax system has led to significant reforms of Law No. 004/2003 of 13 March 2003 on the reform of tax procedures and Ordinance-Law No. 69/009 of 10 February 1969 on scheduled income taxes.

These reforms were introduced by Law No. 23/052 of 30 November 2023 amending and supplementing Law No. 004/2003 of 13 March 2003 on the reform of tax procedures and Law No. 23/053 of 30 November 2023 on Corporate Income Tax and Personal Income Tax.

These two laws, namely Law No. 23/052 and Law No. 23/053, were published in the Official Journal of the Democratic Republic of Congo on December 29, 2023 and will enter into force after 24 months from December 31, 2023, i.e. January 1, 2026.

The preamble to two new laws clearly sets out the reasons behind the reforms. The objective is to bring the Congolese tax system into line with international standards, which will facilitate the negotiation of tax treaties aimed at avoiding double taxation and preventing tax evasion in the area of income taxes between States.

This article aims to understand the substantive and procedural rules of Corporate Income Tax (CIT). It will also present; whenever necessary, a parallelism between these same rules applicable to companies under the ordinary law regime and mining law.

Substantive rules applicable to corporate income tax

The substantive rules will essentially focus on the determination of taxable income, tax rates and the terms and conditions for the assessment of Corporate Income Tax (CIT).

The legislator wished to reaffirm its willingness to comply with the OHADA Uniform Act on Accounting Law and Financial Reporting & Accounting System. In this spirit, it specifies that taxpayers who create their companies after 30 June are authorised to close their first accounting year on 31 December of the following year.

Similarly, in the event of the dissolution of the company followed by liquidation, the legislator innovates by creating a separate special contribution, paid on the basis of the results of the liquidation balance sheet.

Redevable de l'impôt sur les sociétés de l'IS.

The new Law identifies those liable for Corporate Income Tax (CIT) according to their form and activities, while considering the possibility of also being subject to it on option.

The following are liable for corporate income tax by virtue of their form, regardless of their purpose:

- **Multi-person or single-member public limited companies (SA); Multi-person or single member limited liability companies (SARLs); Multi-member or single-member simplified joint stock companies (SAS).**

The following are also liable for their activities:

- Cooperative societies and their unions;
- Legal persons governed by public law that do not have the form of a commercial company that engage in profit-making operations or operations;
- De facto companies and those created de facto;
- Momentary associations;
- Companies other than commercial and cooperative companies that carry out commercial, industrial, artisanal, agricultural or real estate activities;
- Companies other than commercial and cooperative companies that include one or more joint-stock companies among their members;
- Any other legal persons engaged in profit-making operations or operations, or which would not be subject to any other income tax.

Finally, the following are liable on option[1] only:

- General partnerships;
- Limited partnerships;
- Joint ventures.

[1] The option exercised is irrevocable and cannot apply to the above-mentioned taxpayers since they are the result of the previous conversion of a joint-stock company. The validity of the option is subject to the notification by the Manager to the Tax Administration of the minutes that ruled on the said option. This notification is made within 3 months of the beginning of the fiscal year.

Income taxable for corporate income tax

With regard to the general rules for determining taxable income, the new system defines an approach similar to that of Ordinance-Law 69/009, which consists of indicating taxable income as well as deductible expenses.

Taxable income

As in Ordinance-Law No. 69/009 of 10 February 1969, the new Law lists in a non-exhaustive manner the products to be taken into account in the calculation of taxable amounts.

Among these, the following taxable income should be noted:

Sales and revenues:

In this respect, the new Act is distinguished by the clarity of the criteria for product recognition for a given fiscal year. Thus, it is specified that, in principle, the actual delivery of an asset during a financial year constitutes the starting point for the recognition of products (trade receivables); Regarding the provision of services, it is the performance of the service that constitutes the starting point for the recognition of customer receivables.

In addition to this principle, certain specific criteria must also be taken into account, including:

- As far as sales are concerned, it is necessary to consider those made during the period, whether they are made under a resolutory condition or with a retention of title clause. Sales under a suspensive condition are not considered to generate revenue.
- As far as services are concerned, the criterion of recognition of products is related to the level of performance of the service in question; whether or not payment is made.
- In the case of works carried out, the date of completion or total or partial acceptance shall be the starting point for the recognition of the products. This date will have to occur during the fiscal year.

- **Financial income**
- **Gross income from movable capital**
- **Income from the rental of built and unbuilt buildings, including ancillary income**
- **Bonuses on trade-ins and disposals of packaging**
- **Work done by the company for itself**
- **Operating and balancing subsidies**
- **Work in progress**
- **Expense write-backs and transfers**
- **Tax relief obtained from the tax authorities in respect of deductible taxes**
- **Income from the sale of fixed assets**
- **Realized foreign exchange gains**

Unrealised capital gains indicated in the accounts of the taxpayer are not taxed provided that the taxpayer keeps regular accounts, complies with the tax reporting obligations and is not in a situation of automatic taxation.

Deductible expenses

The deductibility of expenses is assessed according to the general conditions and special conditions.

As regards the general conditions for deductibility, only expenses incurred in the direct interest of the company, justified by documentary and documentary evidence, which result in a decrease in the company's net assets and are related to the taxable period, can be deductible.

In addition to these general rules, certain specific deductibility conditions apply for withholding taxes and deductions; personnel and other remuneration, rental expenses, transport, insurance, brokerage, maintenance and commission costs, insurance premiums, depreciation, financial charges, royalties, gifts, and subsidies, taxes, duties and duties, sums paid to non-residents and other expenses.

- **Withholding taxes and sums giving rise to a deduction are allowed as deductions provided that they can be declared and paid.** [2]

- **Personnel expenses and other remuneration:** According to Ordinance-Law No. 69/009, personnel expenses and other remuneration are in principle deductible, it being recalled that there is a specificity in terms of benefits in kind, the deductibility of which is conditional on the addition of these benefits to remuneration. The new Law, on the other hand, makes the deductibility of personnel expenses and other remuneration conditional on the imposition of personal income tax. Consequently, in the event of a tax audit, the company will have to justify the taxation of personnel expenses and other remuneration to the IRPP in order to claim to consider them as expenses deductible for corporate income tax.

Regarding the remuneration paid to corporate officers, it is deductible provided that it is not exaggerated. In the event of exaggeration or fictitious remuneration, all remuneration is then considered as distributed profits subject to tax on income from movable capital.

- **Rental expenses:** Under Ordinance-Law No. 69/009, rental expenses are deductible, including maintenance and/or lighting expenses, provided that these expenses relate to the professional activity. Concerning rental expenses for buildings or parts of buildings owned by the taxpayer; They are only deductible if a lease contract is signed between the owner and the company and it is justified that the rent payments are effective.

- **Transportation, insurance, brokerage, maintenance and commission costs:** As with Ordinance-Law No. 69/009, the new legislation requires that, in order to be deductible, commission, brokerage, rebate or other expenses, vacations, fees and other remuneration must be accompanied by the following mandatory information for each beneficiary: his or her exact name, address, date of payments and amounts allocated.
It should be noted that the Congolese tax administration has developed an Adhoc model of the list of beneficiaries to be downloaded from its website **https://i-impots.dgirdc.cd/.**

- **Insurance premiums:** As a reminder, there is no requirement to deduct insurance premiums according to Ordinance-Law No. 69/009. The new law stipulates that insurance premiums can be deducted provided that the realization of the risk they cover leads to a decrease in net assets.

- **Depreciation:** The treatment of depreciation and amortization has not undergone any substantial changes with the new Act.

- **Financial charges:** Interest on capital contributed by a partner in a single-member company as well as remuneration on equity paid by the company are not deductible from taxable profits, unless (i) the subscribed capital has been fully paid up and (ii) the principal is repaid within five years of the making available. Interest on the sums made available to the company by the partners, in addition to their capital shares, is deductible subject to:

- The existence of a duly registered written loan agreement.

- Total payment of the subscribed share capital.
Interest paid to partners or shareholders who own, in fact or in law, the management of the company is deductible only when the sums left or made available to the company do not exceed, for all the said partners or shareholders, the amount of the paid-up share capital.
Interest on capital borrowed from third parties and invested in the operation is deductible if such borrowing is justified. Partners in non-joint stock

companies are not considered third parties.
Interest on mortgages on leased property is not deductible.
Interest paid to a related entity is deductible if:

- The principal is repaid within five years.The interest rate does not exceed the average of the rates charged by credit institutions in the country of the lending company.
Loan interest does not exceed 15% of the borrowing entity's restated income.

- **Royalties:** The novelty of the law is that the limit of the royalties to be deducted cannot exceed 3.5% of the turnover before tax. In addition, it will be necessary to demonstrate that the fees paid are not exaggerated and that they are actually paid, at the end of the operations actually carried out.

Compliance with the 3.5% limit does not protect the taxpayer from having this fee reintegrated into the corporate income tax base when the tax authorities consider that the sums paid are exaggerated or that proof of the reality of the transactions has not been provided. One point, however, is that the criterion of exaggerated royalties is not clear and could, in our opinion, open the way to interpretation.

- **Gifts, donations and subsidies:** In addition to the fact that these payments must be made to public interest organizations with a philanthropic, scientific or social vocation and to sports associations within the limit of 0.5% of turnover, the new Law adds two cumulative conditions for the deductibility of these expenses, namely: (i) the production of a statement as an appendix to the declaration of results indicating the amounts, the date of the payments and the identity of the beneficiaries, (ii) and the fact that the net taxable result before deduction of these payments must be positive.

- **Taxes and duties:** Like Ordinance-Law No. 69/009, the new Law states that taxes, duties and charges paid within the deadline and not automatically assessed are deductible from taxable profits. However, the new Act breaks new ground by clarifying the tax treatment of deductible tax rebates that are considered revenue and therefore taxable.

- **Sums paid to non-resident persons:** In addition to the threefold condition specified in Ordinance-Law No. 69/009, the new Law innovates by adding a reference to the concept of "State with a privileged tax regime" and that of determine the arm's length price of controlled transaction.[3]

The new Act does not clarify the condition that the recipient must demonstrate the reality of the service. Similarly, the new Act does not define the methods to be used to determine the arm's length price of controlled transactions. 3 This could leave too much latitude to the administration in the event of a tax audit.

- **Other deductible expenses:** Expenses related to this category are deductible provided that the general conditions of deductibility are met. However, specific conditions are imposed on certain charges, including:

Expenses related to gifts and objects specially designed for advertising, which are now deductible up to a limit of 2 ‰ of turnover before tax;

Representation expenses are deductible up to a limit of 60% of their amount;
Applied research and development expenditure for clearly individualised projects. They are amortized during the four financial years following the one in which the expenses were incurred at a rate of 25% per year.

Communication costs justified by invoices up to a limit of 50% of their amount. However, internet costs are 100% deductible as long as the internet is used exclusively for professional purposes.

Non-deductible expenses

It is possible that certain expenses incurred by a company and duly recorded in its accounts are considered non-deductible. These are:

- Expenses of a personal nature and any other expenses not necessary for the company's activity;
- Income taxes and other taxes that do not constitute an operating expense, on the one hand, and the exceptional levy on companies employing expatriate staff, on the other hand;
- Fines, including transactional fines, forfeitures and penalties of any kind as well as fees and expenses paid for this purpose;
- Expenses relating to the leased property, including depreciation of such property, except when the latter are leased by a leasing institution duly approved by the Central Bank of Congo;
- Provisions made to meet losses, charges or impairment of assets, with the exception of certain provisions;
- Expenses of any kind relating to the exercise of sport hunting and fishing, the use of pleasure boats,tourist aircraft or pleasure residences and any other expenses of a lavish nature, whether in the form of flat-rate allowances or reimbursement of expenses, are not deductible from taxable profits;
- Expenses of permanent establishments relating to the general and administrative costs of the registered office, principal place of business or the Directorate-General abroad and to costs incurred abroad by the non-resident company.

Rate and calculation of corporate income tax

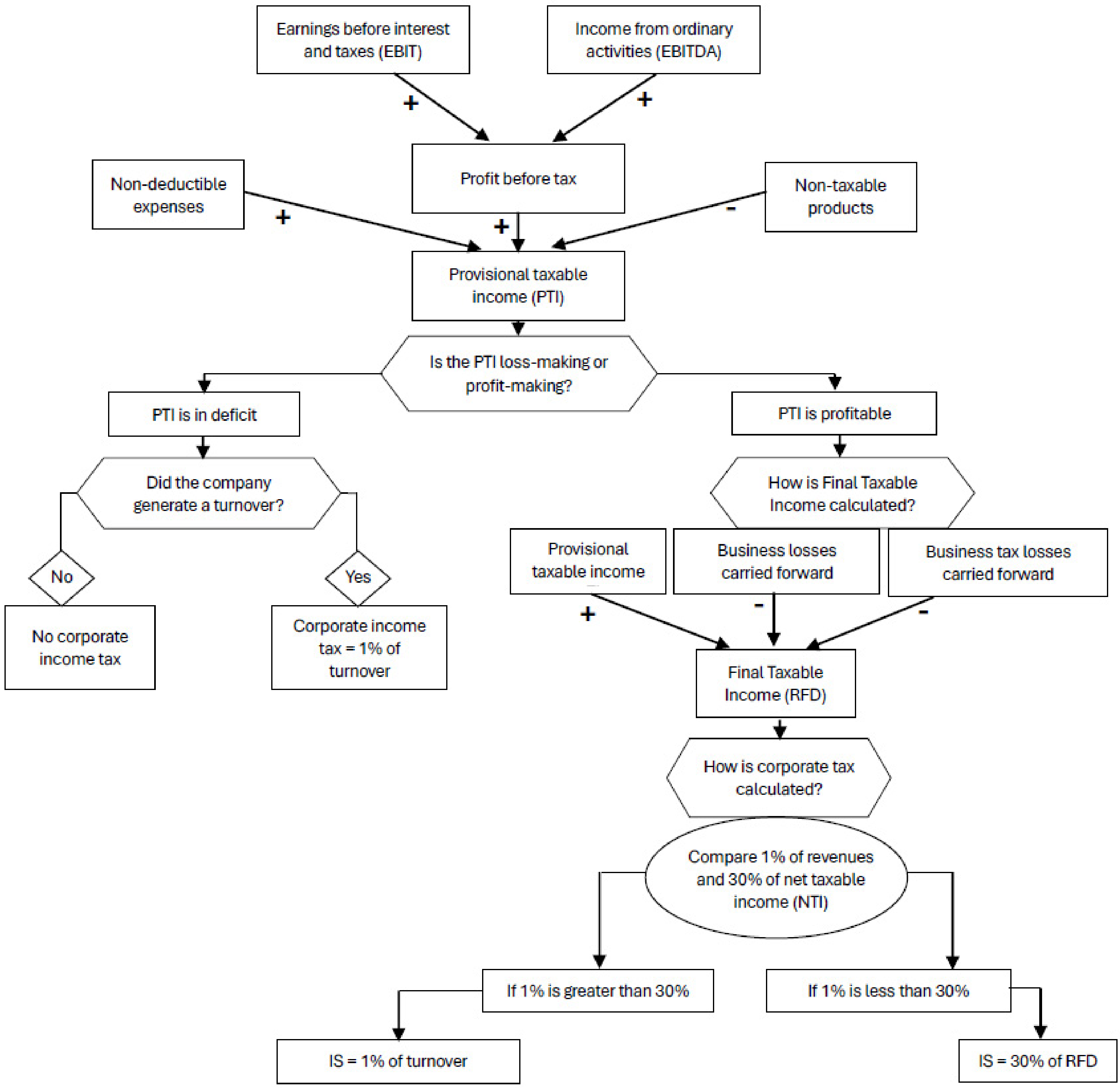
Corporate income tax (CIT) represents 30% of net taxable profits. If the results show a deficit or a profit, but which could result in a tax rate of less than 30% of the net taxable profits, the applicable rate will be 1% of the declared turnover.

2

2 By way of illustration, in order to be deductible, the deductions of 1.2% of the ARSP made by the main company are only allowed as a deduction from the taxable income of the subcontractor when the said deductions are proven by a declaration and a payment made by the main company. The same applies in particular to the Rental Income Tax where the landlord will now have to justify that the rental deduction has been declared and paid by the tenant.

3

The Finance Law for the 2025 financial year establishes the methods for determining the arm's length price. These methods are the same as those used by the OECD. We dare to think that implementation and support measures will be developed to allow a good implementation on the part of the Tax Administration and the companies concerned.


Earnings before interest and taxes (EBIT)
Income from ordinary activities (EBITDA)
+
+
Profit before tax
Non-deductible expenses
+
+
Non-taxable products
-
Provisional taxable income (PTI)
Is the PTI loss-making or profit-making?
PTI is in deficit
PTI is profitable
Did the company generate a turnover?
No
Yes
No corporate income tax
Corporate income tax = 1% of turnover
How is Final Taxable Income calculated?
Provisional taxable income
Business losses carried forward
Business tax losses carried forward
+
-
-
Final Taxable Income (RFD)
How is corporate tax calculated?
Compare 1% of revenues and 30% of net taxable income (NTI)
If 1% is greater than 30%
If 1% is less than 30%
IS = 1% of turnover
IS = 30% of RFD

Rules of procedure applicable to corporate income tax

With regard to the rules of procedure, this article will address the reporting and payment obligations as well as some particularities in terms of control relating to corporate tax.

Reporting and payment obligations

The corporate income tax reporting and payment obligations are fulfilled by 30 April of the year following the year in which the income was realised. The declaration to be submitted to the competent departments of the Tax Administration shall be countersigned by the taxpayer's counsel or his accountant and shall be supported by the following annexes:

- The Balance Sheet;
- The income statement;
- The cash flow statement;
- The table of changes in equity;
- The annexes in accordance with the OHADA Uniform Act of 26 January 2017 on Accounting Law and Financial Reporting;
- Any other supporting documentation that the taxpayer deems necessary.

In practice, it will be a question of submitting the financial statements to the model published by the Permanent Council of Accounting in Congo (CPCC), as annexes in support of the CIT declaration.
It is important to note that Finance Law No. 24/011 of December 20, 2024 for the financial year 2025 promulgated on the same date, adds two (2) annexes to the number listed in the above annexes. These are:

- The six-column scale;
- Statement of disposals of the items on the assets side of the balance sheet, detailing the acquisition amount, the depreciation made, the sale price, the name of the buyer, the nature of the property and the value added tax deducted.

To be accepted by the Tax Administration, the financial statements must be certified by a chartered accountant registered with the National Order of Chartered Accountants (ONEC).

Special features in terms of control

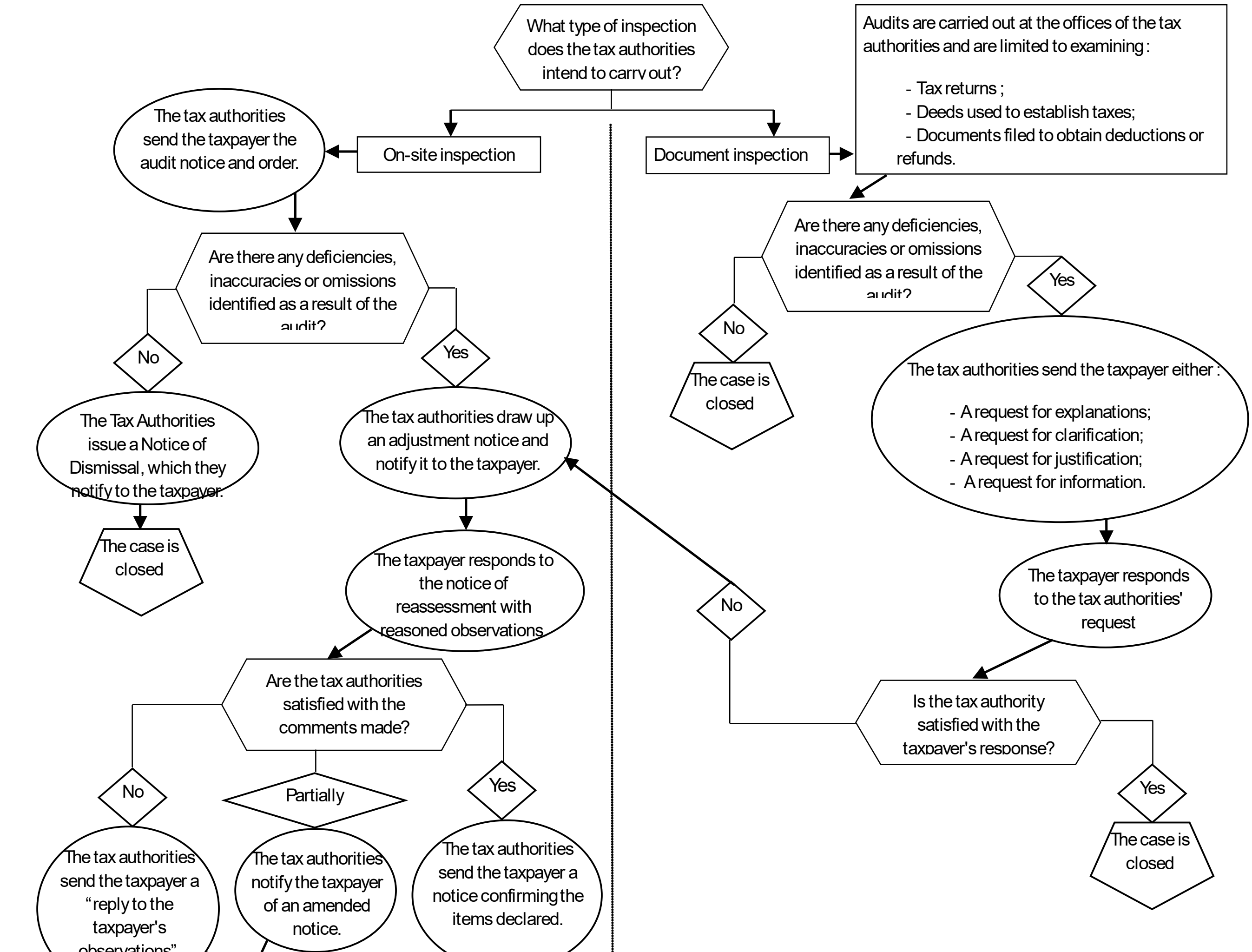
The tax provisions on audits, as enshrined in Law No. 004/2003 of 13 March 2003 on the reform of tax procedures, remain applicable for the audit of Corporate Tax.

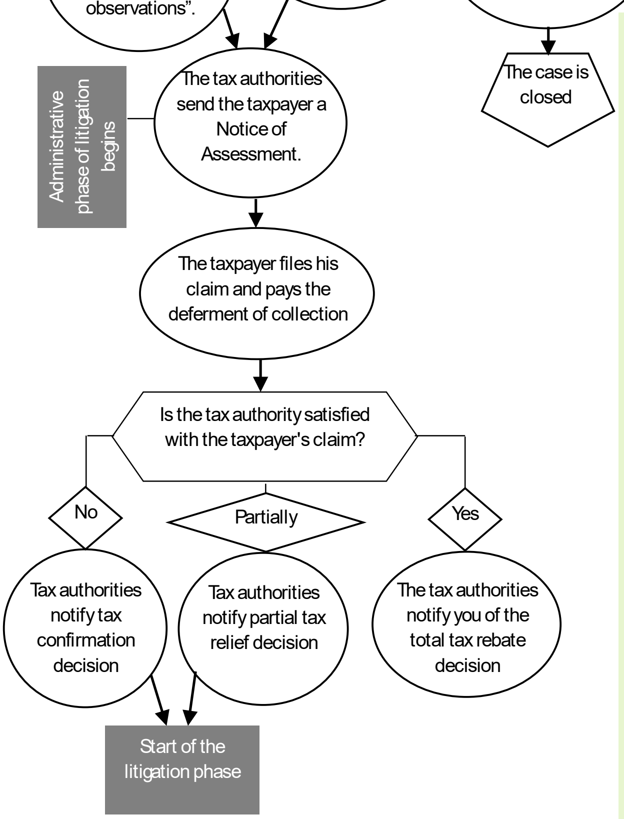
It is crucial to highlight the provisions applicable to accounting auditing, which is a general control requiring the prior sending of an audit notice commonly known as a "Mission Order or Audit Order". This method of exercising relative control (the prior sending of an audit order) is required even in the case of a cross-check of accounts, which is always of a general nature.

The Tax Administration exercises its right of recall for the current financial year and four previous financial years; except for the verification of the credit of Value Added Tax (VAT) or losses carried forward that originate from an already prescribed financial year. The new audit (cross-check) of the accounts of the same tax in respect of a tax year already audited is only possible in the event of fraudulent acts that the judge will establish by a judicial decision or by an investigation carried out to establish the reality of the facts denounced.

The new audit of accounts for a financial year already audited is also possible in the event of the discovery of documents attesting to tax fraud in the context of a pre-judicial investigation following a complaint filed with the Public Prosecutor's Office by the Tax Administration.

In order to better understand the different stages of a tax audit, we present the diagram below:





Compliance with legal deadlines for the notification of proceedings, as well as the time limits for the taxpayer's response, remain essential elements that must be emphasized:

- The execution of an audit order for an on-site inspection may not exceed (i) **30 days** for small companies; (ii) **6 months** for medium-sized companies and (iii) **9 months** for large companies. These time limits apply to a general tax audit, i.e. one that concerns all taxes for the period not barred by the statute of limitations.
- When the audit concerns a single tax for a period of **less than one financial year**, it is referred to as a one-off audit. In this case, the period of on-site intervention may not exceed one month.
- When the tax authorities send a request for explanations, clarifications, justifications or information to a taxpayer, the latter has **20 days** in which to submit a response.
- In the event of notification of a tax reassessment by the tax authorities, the taxpayer has **20 days** in which to formulate his or her reasoned observations.
- The Tax Authorities respond to the reasoned observations within (i) **30 days** when the reassessment is totally or partially withdrawn; (ii) **No time limit** is set when the Tax Authorities intend to maintain the initial reassessments.
- The taxpayer has **15 days** to pay the Avis de Mise en Recouvrement (AMR). If the taxpayer intends to lodge a contentious claim, he/she pays 10% of the principal and sends the tax authorities a request for deferment of collection.
- The taxpayer has **3 months** in which to lodge his claim. In the **month following acknowledgement of receipt** of the claim, the taxpayer may lodge a supplementary claim.
- The tax authorities have **3 months** to notify their decision.
- If the tax authorities' decision does not satisfy the taxpayer, the latter has **3 months** in which to lodge an appeal with the Court of Appeal.

Specific aspects of corporate tax

Carry-forward of deficits

Unlike Ordinance-Law No. 69/009, under which, as a reminder, tax deficits are charged at the rate of 60% without limitation of financial years[4]; the new Law limits the carry-forward of deficits to three (3 financial years with no percentage limit.

In addition, under Ordinance-Law No. 69/009, the mere fact of not filing the IBP declaration or submitting it late constitutes a valid reason for not having the deduction of losses allowed at a later date; the new Law, for its part, makes the subsequent non-admission of the deduction of deficits conditional on the sole fact of not regularizing one's situation within five (5) days of receipt of the formal notice to declare.

The carry-forward of losses is not applicable when:

- A new operator buys a loss-making company;
- A company completely changes its activity.
- A company undergoes substantial structural transformations (composition and activity) making it in reality another company although retaining its legal personality.

4 On the date of entry into force of the new Law, entities subject to the preferential tax regime of the Mining Code will have two options for the carry-forward of losses:
Option 1: the exclusive application of the provisions of the Mining Code which underlies the allocation of losses within the limits of five (5) financial years following the loss-making financial year (Cf. Article 251 of the Mining Code). On the other hand, the methods of imputation are those of ordinary law, in particular imputation without percentage limit.
It is important to note that entities subject to the preferential tax regime of the Mining Code may fully apply the provisions of the common law in force.
Option 2: the full application of the provisions of ordinary law which limits the period of imputation to three (3) financial years following the loss-making financial year without limitation of the percentage of imputation.

Transfer pricing

The concepts of transfer pricing enshrined under Ordinance-Law No. 69/009 of 10 February 1969 remain applicable under the new Law.

However, the new Act strengthens the elements that may characterize a relationship of arm's length or control. **This is because two entities will be deemed to be related or controlled when:**

- One of them holds, directly or indirectly, the relative majority of the share capital of the other;
- One of them actually exercises decision-making power;
- An entity holds sufficient voting rights to exercise effective control in the other entity;
- The two entities have a common director or the directors of the two entities are bound by a community of interest;
- The two entities are linked, in their contractual, commercial or financial relations, by conditions which differ from those which would be agreed between independent entities and which lead to one of these entities being placed under the economic dependence of the other;
- The two related entities are under the control of the same third-party entity.

Finance Law No. 24/011 of 20 December 2024 for the financial year 2025, promulgated on the same date, transposes the domestic legal arsenal into the OECD methods applicable to transfer pricing. Prior agreements on the method of determining the prices of intra-group transactions for a period of not more than four financial years remain an applicable concept.

Mergers of companies and partial contributions of assets

The new Law exempts capital gains other than those realized on goods, resulting from the allocation of shares following mergers of public limited companies, simplified shares or limited liability companies.

In addition, the new Law exempts capital gains other than those realized on goods resulting from the free allocation of shares or company shares, following the contribution by a public limited company, by simplified shares or limited liability to another company constituted in one of these forms, of part of its assets, provided that:

- The company receiving the contribution has its registered office in the Democratic Republic of Congo;
- The contribution takes the form of a merger, a partial contribution or a division of the company.

The benefit of the exemption is subject to the fulfilment of certain obligations, in particular of an accounting nature.

Conclusion

This article provides a general overview of the innovations introduced by Laws No. 23/052 and No. 23/053 of November 30, 2023 in the field of Corporate Tax. Clear rules relating to the recognition of income and its taxability have been defined on the one hand; and on the other hand, the conditions for the deductibility of charges have been strengthened.

The harmonization of the taxable period with the OHADA requirements is one of the proofs that clearly emerges the legislator's motivations to align the Congolese tax system with international standards. This motivation is also reflected in the transposition into the domestic legal arsenal of the OECD's traditional transfer pricing methods.

The allocation of carry-forward losses has been reduced from an unlimited period to 3 years with the possibility of allocating 100% of the losses.
The new tax system has the advantage of differentiating between taxation for companies and individuals, which makes it possible to dispel the vagueness maintained by the old system in force, namely Ordinance-Law No. 69/009 of 10 February 1969 on scheduled income taxes.

The next article will be mainly devoted to the Personal Income Tax which is the result of the innovations introduced by the new Laws.

Bibliography

Law No. 23/052 of 30 November 2023 amending and supplementing Law No. 004/2003 of 13 March 2003 on the reform of tax procedures

Law No. 23/053 of 30 November 2023 on Corporate Income Tax and Personal Income Tax

Law No. 006/03 of 13 March 2003 on the Procedures for the Calculation and Collection of Advance Payments of Income and Profit Tax

Law No. 007/2002 on the Mining Code as amended and supplemented by Law No. 18/001 of 9 March 2018

Ordinance-Law No. 69/009 of 10 February 1969 on Schedule Taxes on Income

Ordinance-Law No. 69/007 of 10 February 1969 on the exceptional tax on the remuneration of expatriate staff

Ordinance-Law No. 89/017 of 18 February 1989 Authorizing the Revaluation of Fixed Assets of Enterprises

Ordinance-Law No. 13/006 of 23 February 2013 on the Tax Regime Applicable to Small Enterprises

Decree No. 038/2003 of 26 March 2003 on the Mining Regulations as amended and supplemented by Decree No. 18/024

Ministerial Order No. CAB/MIN/FINANCES/2020/091 of December 03, 2020 laying down the procedures for calculating, declaring and paying the Special Tax on Capital Gains on the Sale of Shares or Shares

Ministerial Order No. 014 of 16 May 2023 on measures for the implementation of Law No. 004/2003 of 13 March 2003 on the reform of tax procedures, as amended to date on the certification of annual summary financial statements accompanying the tax return of the Profit and Profit Tax (IBP)

Uniform Act on Accounting Law and Financial Reporting & OHADA Accounting System

Contacts

Yves Madre
Partner - Tax & Legal
Mail : ymadre@deloitte.fr
Tel : +243 85 999 80 44

Jacques Nduu
Manager - Tax & Legal
Mail : jnduu@deloitte.fr

Jerry Tshinanga
Director - Tax & Legal
Mail : jtshinanga@deloitte.fr

www.deloitte.com/cd

Deloitte.

About Deloitte