

Legal alert: Law of Mongolia on Corporate income tax

Background

The Parliament of Mongolia adopted tax reform package including the General Tax Law, Law on Corporate income tax, Law on Value added tax and Law on Personal income tax which shall take effect on 1 January 2020.

We have analyzed amendments and new articles of the revised corporate income tax law. The new articles included detailed definition and regulation of the earned income in or from Mongolia, foreign corporate entity with its head office in Mongolia, deductible expenses, representative office, mining license, ultimate owner, country by the country report on transfer pricing and simplified mode etc.

Amendments under revised law (effective from 01 January 2020)

Description	Amendments
Taxable income	Other revenue is added as a new category of taxable income. Income from interest, penalty, and damages compensated for breach of contractual duties, income from foreign currency exchange, remitted profit from a representative office to head office etc.
Operations income	Detailed definition of technical, management, consulting and other services are adopted under category of operations income.
Loss and carry-forward	Carry-forward duration is 4 years.
Depreciation and amortization rates	Computer, computer parts, and software shall be used 2 years.
Corporate income tax rate	<ul style="list-style-type: none"> • Taxable income up to MNT 6 billion / via Mongol bank USD exchange rate, app USD 2,255,000 /– 10% • If annual taxable income exceeds MNT 6.0 billion/ app USD 2,255,000/, it shall be MNT600.0 million /app USD 225,560/ plus 25 (twenty five) percent of income exceeding MNT6.0 billion. • 1% for business entities with annual turnover under MNT300 million /app USD 112,780/ on basis of defined criteria.

New articles of revised law (effective from 01 January 2020)

Description	New articles
Sourced income from Mongolia	<ul style="list-style-type: none"> • Income from work performed and service rendered by non-resident taxpayer in Mongolia directly or indirectly, income from the taxpayer and representative office located in Mongolia for sale of goods in the territory of Mongolia; • Income from art, culture, sport and other activities organization in Mongolia by foreign entity except via its representative office; • Dividend income from a taxpayer residing in Mongolia to a taxpayer non-resident in Mongolia;

	<ul style="list-style-type: none"> • Interest income paid to the non-resident taxpayer in Mongolia from state and local administrative organizations, taxpayer residing in Mongolia and representative office etc.
A foreign corporate entity with its head office located in Mongolia	<p>In order to be considered as a foreign corporate entity with its head office located in Mongolia shall be considered if foreign entity shall satisfy three and more of the following criteria;</p> <ul style="list-style-type: none"> • At least 50 percent member of shareholders and their representation who directly and indirectly exercise the rights and duties reside in Mongolia; • Over 50 percent of a shareholders' meeting in the consecutive 4 years prior to the current tax year has been held in Mongolia; • Saves accounting and financial documents in Mongolia; • At least 60 percent of total sales revenue is earned in or sourced from Mongolia; • At least 25 percent member of Board of Director and their representation who directly and indirectly exercise the rights and duties reside in Mongolia etc.
Deductible expense	<p>The new law recognizes any expense as a deductible expense for tax purposes if the following pre-determined criteria have been met.</p> <ul style="list-style-type: none"> • Incurred for the reporting period; • Incurred for income generating purpose; • Recognized according to accounting laws with supporting documents; • Recorded in VAT system or customs clearance with some exceptions, if applicable; • The expense is paid or expected to be paid by the taxpayer.
Tax exemption	<ul style="list-style-type: none"> • Dividends distributable to the state owned shares of legal entities with state ownership participation or state owned enterprises in possession of mining licenses for mineral deposits of strategic significance, and proceeds of sales of such shares; • Allocated revenues to future heritage fund from the budget and investment income of the fund; • Revenue of deposit insurance fund etc.
Tax credit	<p>A 90% tax credit is available to all entities with annual turnover under MNT1.5 billion excluding the entities operating in the following sectors:</p> <ul style="list-style-type: none"> • exploration, mining, using and transportation sale of mineral and radioactive minerals; • Importing alcoholic beverages and tobacco, planning and manufacturing tobacco; • Manufacturing petroleum products, import, wholesale and retail of all types of fuel, exploration, extracting and sale of mining and sales of petroleum.
Representative office	
<p>A new form of representative office have been added:</p> <ol style="list-style-type: none"> 1. Place of conducting business; 2. Place of running training, seminar, and exhibition. 	

A technical, management, supervision, and other services have been rendered by its employees and hired staff for 183 or more days to a taxpayer located in Mongolia during 12 months shall be deemed by the representative office.

An unit which conducting activities of construction site, installation or assembling and related construction and inspection works for 90 or more days during 12 months shall be deemed by the representative office.

Mining and related articles

Deductible expense from taxable income	Expenses related to the possession and transfer of mining license shall be deducted from annual operating expenses in equal amount during license term.
	According to the Law on Minerals, the Law on Petroleum and Law on Nuclear Energy, accumulated fund of the license owner, the environmental rehabilitation of contractor and mine closure cost shall be deducted from annual operating expenses in equal amount during license term.
Depreciation and amortization	The exploration license of the mineral and radioactive mineral exploration costs of the contractor under Law on Petroleum law, with ownership, sale, transfer of the license and related expense accounted as exploration and calculate depreciation and amortization during land and mining site use term.

Simplified mode of tax reporting

If the total amount of the sales revenue by report of prior tax year is less than MNT 50 million, and if taxpayer submits the request within the 3rd quarter of the tax year, taxable income may be determined by the total amount of taxpayer's operating income for the next tax year. Taxable income as defined in above shall be taxed at 1%.

The following taxpayer shall not submit request:	<ol style="list-style-type: none"> 1. the Value – Added taxpayer 2. the taxpayer which carries out the following activities: <ol style="list-style-type: none"> a. Exploration, mining, use, transportation and sale of minerals and radioactive minerals; b. Producing and importing alcohol; c. Producing and importing tobacco; and d. Manufacture of petroleum products, import of all types of fuel, wholesale and retail trade, oil exploration, mining, and sales
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Ultimate holder

Ultimate holder means an individual or legal entity which holds 30 percent or more percent of shares, percentage of participation or voting rights of the company which is a holder of mineral, petroleum, radioactive mineral license or land use and possession title or holds through chain with one or more levels of legal entity, represent the voting right or receives the dividend.

The base of taxable income on royalty shall be deducted by following expenses as per receipt:

1. Service fee, payment which paid to the state organization for obtaining the right as per receipt;
2. Payment receipt which confirms sale and purchase transaction from others.

Foreign corporate entity

Foreign corporate entity carries out operational management in Mongolia means a taxpayer residing in Mongolia and a resident of Mongolia shall have at least 50 percent of the total number of shares of a foreign company or the voting rights are held through a legal entity that is

directly or permanently tied up with one or more of the tax years.
 A foreign business entity carries out operational management in Mongolia shall be a taxpayer officially which is residing in Mongolia.
 A foreign business entity carries out operational management in Mongolia shall be the ultimate owner and if the right owner reported levying on the shares, interests, and voting rights, the tax imposed on foreign countries shall be deducted from the taxes levied.

Country by a country report on transfer pricing

Official definitions of transfer pricing and corporate entity have defined. For example: group, consolidated financial statement, the international taxation agreement, failure of the system, the multi-national enterprise that doesn't obligate to report and fiscal year of the Multi-national enterprise.

<p>Definition</p>	<p>"Group" means to an entity which issue a consolidated financial statements for financial reporting or for sale of its stocks via stock exchanges, or affiliated entities in terms of ownership and management.</p> <p>"Consolidated financial statement" means an aggregated information of assets, debts, income, expenses and cash flows, as well as financial statements as one entity in accordance with accounting standards of the participant of the Multi-national group.</p>
<p>Reporting</p>	<p>Each country of the following taxpayers shall submit the report to the taxation authority within 12 months from the last day of the financial year of the multi-national enterprise.</p> <ul style="list-style-type: none"> • Head office of the Multi-national enterprise located in Mongolia for tax purposes. • Participant of the group that is not head office of the Multi-national enterprise is located in Mongolia. <ul style="list-style-type: none"> i. the tax office has been notified failure of the system to the head of the multi-national enterprise that residing for tax purposes etc. • If two or more participants of the multi-nationals are obliged to make a country by country report, the head office of the multi-national enterprise may select any of the participants as the reporting entity.
<p>Requirement of the transfer pricing report</p>	<ul style="list-style-type: none"> • Integrated information related to income earned, profit/loss before the tax, paid income tax, income tax debt, sum of share capital, accumulated profit, number of employees, movable and immovable property except money or similar items. • Information means taxpayer's number, residing country information for tax purpose, if registered country and residing country for tax purpose are different, information regarding incorporation of each participant of the group and their activities.
<p>Taxpayer duties</p>	<ul style="list-style-type: none"> • Participant of the group residing in Mongolia for tax purpose shall notify to head office of the Multi-national group or appointed reporting entity within deadline of the annual tax report submission. • The taxpayer number and information of residing country or region for tax purpose of the reporting entity shall be notified to the tax office within deadline of the annual tax report submission.

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