

British Virgin Islands

Michael J. Burns and James McConvill

Appleby, British Virgin Islands

Key Facts

Main Tax rates

- Corporate tax rate: 0 percent. Companies are exempt from tax in the British Virgin Islands ("BVI") on all sources of income, including capital gains, dividends, royalties and interest.
- VAT/GST standard rate: 0 percent. There is no VAT/GST in the BVI.
- Personal income tax top rate: 0 percent. However, payroll tax and social security is levied.

Population/GDP

Population: Approx. 27,000 (according to the UK Foreign & Commonwealth Office)

GDP (2009): US\$1.095bn (2008 est.); US\$51,273 per capita (2007 est.)

Currency

US Dollar

Membership of economic groups

Caricom (associate), CDB, Interpol (sub-bureau), IOC, OECS, UNESCO (associate), UPU, WFTU

Major Industries

The main industries are tourism and financial services (mainly through registration fees for offshore companies domiciled in the BVI). Financial services contribute more than 70 percent of GDP. There is also some fishing and agriculture.

Website of tax/finance authority

Ministry of Finance <http://www.finance.gov.vg>

BVI Social Security Board <http://www.bvissb.vg>

BVI Government <http://www.bvi.gov.vg>

Introduction

The BVI, located in the Caribbean approximately 90 miles east of Puerto Rico, is a British Overseas Territory and recognised as a leading international offshore financial centre. The BVI is comprised of approximately 40 islands and inlets, with around 10 of these islands being inhabited.

The laws of the BVI are heavily based on English law, involving both common law and statutory law. Some areas of law (e.g. international law) are regulated externally through Order-in-Council by the Foreign and Commonwealth Office in London.

It has been said that the taxation laws in the BVI stand out for what is not subject to taxation, rather than what is taxed. For example, the BVI has no sales tax/value added tax; no capital gains tax; no corporations law; no inheritance tax or estate duty.

Recent developments

The major tax-related development in the BVI recently is the Territory's entry into a number of international tax information exchange agreements, or "TIEA's", to reinforce the BVI's commitment to the Organisation for Economic Cooperation and Development ("OECD")'s objective of eliminating harmful international tax avoidance and evasion practices by way of international co-operation in tax matters through the exchange of information.

In August 2009, the BVI was upgraded to the OECD's "White List" of jurisdictions that have substantially implemented the internationally agreed standard in relation to the effective exchange of information in tax matters. At the time of writing (June 2010), the BVI had entered into 17 TIEAs.

Another development is the announcement in March 2010 by BVI Premier, Ralph O'Neal OBE, in his 2010 Budget Address that the BVI Government is intending to engage in a comprehensive review of indirect taxes and fees on financial services, and would appoint a Fiscal Review Committee for this exercise. As part of the review of indirect taxes, Premier O'Neal said that the Territory's payroll tax system will be revised to implement a progressive tax structure.

Corporate Taxes

General outline

The BVI Business Companies Act 2004 provides a general exemption from the BVI's Income Tax Ordinance (Cap. 206) for:

- All BVI companies;
- All dividends, interest, rent, royalties, compensation and other amounts paid by a company; and
- All capital gains realised with respect to any shares, debt obligations, or other securities of a company.

The Business Companies Act also provides that no estate, inheritance, succession or gift tax is payable with respect to any shares, debt obligations, or other securities of a BVI company, and that a company is exempt from stamp duty (except where the instrument relates to the transfer of an interest of land in the BVI, or the transfer of securities of a land owning company (with the land being owned in the BVI)).

Companies must, however, pay an initial application fee and then an ongoing annual maintenance fee to the Registry of Corporate Affairs in the BVI. The current application fee is US\$350 (or US\$1,100 if the company is authorised to issue more than 50,000 shares), and then the annual maintenance fee is US\$350, or US\$1,100 if the company is authorised to issue more than 50,000 shares.

The incorporation fee, and then ongoing annual maintenance fee, for a "restricted purpose company" is US\$5,000.

Corporate tax rates

There are no corporate taxes in the BVI.

Capital gains taxes

There is no capital gains tax in the BVI.

Position of losses

Not applicable.

Group treatment

Not applicable

Withholding taxes

Position of resident companies

There is no withholding tax applied to resident companies in the BVI.

Position of non-resident companies

There is no withholding tax in the BVI on non-resident companies.

Dividends, interest and royalties

Dividends

Nil

Interest

Nil, with one exception. The BVI (like with other British dependent territories) has applied the European Union's Savings Directive since July 1, 2005. What this means is that a withholding tax (which was initially 15 percent, rising to 20 percent from July 1, 2008) has been applied to interest payments paid to natural persons resident within the EU.

The withholding tax does not apply to interest payments made to corporations domiciled within the EU. Further, the withholding tax is not compulsory, in that a depositor can avoid paying the tax by instead providing full information about their account to the relevant authority/authorities within their country of residence. Payment of this withholding tax does not exempt the depositor from any applicable taxes in their country of residence on the relevant income.

The amount raised from this withholding tax in the BVI has been negligible as the banking industry in the BVI is very small compared to other offshore financial centres, notably the Cayman Islands.

Royalties

Nil

Indirect taxes

VAT/GST: main and reduced rates, exemptions

There are no VAT/ GST taxes in the BVI.

Other indirect taxes

The BVI imposes customs duties on most imports into the Territory. Customs duty ranges from 5 percent to 20 percent. Certain goods which are considered to be of special value to the BVI are exempt from duty.

The relevant legislation imposing customs duty is the Customs Duties Act (Cap. 105).

Personal taxes

Domicile and residency requirements

An individual who is domiciled in the BVI is deemed to be resident.

Main rates and bands

Since 2005, income tax has been set at zero percent pursuant to the Income Tax Act (Cap. 206). Instead, as discussed below, up to 8 percent of an individual's income is deducted by the employer for payroll tax. Individuals are also required to pay a 4 percent social security levy (up to a cap), which is deducted from their income.

Prior to 2005, individuals resident in the BVI paid income tax on their worldwide earnings of up to 20 percent. Non-resident individuals paid income tax on income either arising in, or remitted to, the BVI.

Dividends

There is no tax on dividends in the BVI.

Social security/national insurance payments

Businesses in the BVI must arrange for their employees between the ages of 15 and 65 years to register with the BVI's Social Security Board and obtain a social security card. This is a requirement regardless of whether the employee is a "Belonger",¹ an expatriate, or whether the person is under a contract of service or is self-employed.

¹ Under Section 2(2) of the BVI Constitution Order 2007, a person belongs to the BVI if that person

(a) Is born in the BVI and at the time of the birth his or her father or mother is or was:

(i) A British overseas territories citizen (or a British Dependent Territories citizen) by virtue of birth, registration or naturalisation in the BVI or by virtue of descent from a father or mother who was born in the BVI; or

(ii) Settled in the BVI; and for this purpose "settled" means ordinarily resident in the BVI without being subject under the law in force in the BVI to any restriction on the period for which he or she may remain, but does not include persons on contract with the Government of the BVI or any statutory body or Crown corporation;

(b) Is born in the BVI of a father or mother who belongs to the BVI by birth or descent or who, if deceased, would, if alive, so belong to the BVI;

(c) Is a child adopted in the BVI by a person who belongs to the BVI by birth or descent;

(d) Is born outside the BVI of a father or mother who is a British overseas territories citizen by virtue of birth in the BVI or descent from a father or mother who was born in the BVI or who belongs to the BVI by virtue of birth in the BVI or descent from a father or mother who was born in the BVI;

e) Is a British overseas territories citizen by virtue of registration in the BVI;

(f) Is a person to whom a certificate has been granted under Section 16 of the Immigration and Passport Act 1977 of the BVI (basically meaning someone who has resided in the BVI continuously for at least the last seven years) and has not been revoked under section 17 of the Act; and (without prejudice to the right of any person to apply for the grant of such a certificate under the Act) a British overseas territories citizen by virtue of naturalisation in the BVI has a right by virtue of this Constitution to apply for the grant of such a certificate;

(g) Is the spouse of a person who belongs to the BVI and has been granted a certificate under Section 16 of the Act; or

The main piece of legislation regulating social security payments and benefits in the BVI is the Social Security Ordinance, although there are a number of associated regulations as well.

Social Security is a compulsory insurance scheme in the BVI in which employers, employees and self-employed individuals must contribute. It is designed to protect insured persons from financial distress by providing partial income replacement when particular contingencies arise. Qualified persons are able to obtain sickness, maternity, invalidity, age, funeral grant, survivor and employment injury benefits. If an employee receives social security benefits because of an illness or due to some other physical incapacitation, these payments may subsequently be deducted from the wages paid by the employer to the employee.

At present, contributions for employees in the private sector and self-employed persons are 8.5 percent of insurable earnings. Employees must contribute 4 percent of this total, with the other 4.5 percent contributed by the employer. Civil servants contribute 7.5 percent of insurable earnings, with 3.5 percent paid by the employee and 4 percent by the BVI Government. From January 1, 2010, the maximum insurable earnings rate was US\$35,490 (meaning the maximum monthly contribution for an employee in the private sector is US\$118.50).

Voluntary social security contributions can also be made by persons who have worked in the BVI and are living abroad, or by persons who no longer work but have not reached the eligible age of 65 to collect benefits.

Transfer pricing and anti-avoidance rules

Transfer Pricing rules (documentation requirements, APAs etc.)

There are no applicable rules in the BVI.

Anti-avoidance provisions

There are no applicable provisions in the BVI.

Controlled Foreign Company (CFC) rules

There are no applicable rules in the BVI.

Tax treaties

The priority for the BVI has been to enter into Tax Information Exchange Agreements, or TIEAs, rather than double tax treaties. This has particularly been the case since the global financial crisis and subsequent efforts by the OECD and G-20 to promote international cooperation and transparency in the exchange of tax information between nation states.

The BVI only has two double tax treaties, with Japan and Switzerland. With both Japan and Switzerland, the United Kingdom's treaty with these countries has been extended to the BVI. These treaties are, however, not used in practice. Given that double tax treaties are primarily used to reduce or remove taxation on certain transactions which take place between individual residents of both treaty countries, and given that the BVI has no corporate or income taxes, there is very little need for the BVI to be a party to double tax treaties.

As noted above under "Recent Developments", as of June 2010 the BVI had entered into 17 TIEAs and accordingly is on the OECD's "White List", as it meets the OECD's current standard (minimum 12 TIEAs) for transparency in the exchange of information regarding tax matters. The BVI has entered into TIEAs with the following jurisdictions: Aruba, Australia, China, Denmark, Faroe Islands, Finland, France, Greenland, Iceland, Ireland, Netherlands, Netherlands Antilles, New Zealand, Norway, Sweden, United Kingdom and the United States.

It must be noted that the BVI also has a Mutual Legal Tax Treaty with the US, which provides for mutual exchange of information in relation to, inter alia, criminal tax investigations.

Miscellaneous taxes

Taxes on payroll

The payroll tax regime was introduced in the BVI in 2005. It accompanied the decision by the BVI Government to reduce the rate of income tax to zero. Payroll tax is imposed through the Payroll Taxes Act 2004. The first US\$10,000 of remuneration is free from payroll tax.

Every employer carrying on business in the BVI must pay payroll tax in relation to: (i) remuneration paid by them to every employee, along with (ii) "deemed remuneration" which is paid by them to every "deemed employee" for services rendered wholly or mainly in the BVI (this is regardless of whether the remuneration is actually paid in the

(h) Was immediately before the commencement of the Constitution deemed to belong to the BVI by virtue of the Virgin Islands (Constitution) Order 1976()(c)).

BVI). A self-employed person is also liable to payroll tax.

A "deemed employee" includes a partner in a partnership providing services to the partnership and, other than as an employee, participates in income of the partnership, along with a shareholder or director of a company if they render services to a company and receive income of the company otherwise than as an employee.

"Remuneration" is defined to include wages, salary, money paid through a profit-sharing scheme, bonuses, gratuities, severance pay, resident rent, along with other benefits-in-kind.

The rate of payroll tax that is paid depends on whether the employer is a "Class 1 Employer" or "Class 2 Employer".

A "Class 1 Employer" is a small business (including a self-employed person) which satisfies three criteria in a relevant financial year:

- a. Its total payroll costs do not exceed US\$150,000;
- b. Its turnover does not exceed US\$300,000; and
- c. Its total number of employees do not exceed seven.

Class 1 Employers are liable to payroll tax at a rate of 10 percent of an employee's remuneration.

Every employer or self-employed person who does not fall within the category of a Class 1 Employer is automatically a Class 2 Employer. The payroll tax rate for a Class 2 Employer is 14 percent of an employee's remuneration.

Both Class 1 and Class 2 Employers can, and typically do, deduct 8 percent of the remuneration paid to an employee to contribute to their payroll tax liability.

In June 2008, the BVI's Premier, Ralph T. O'Neal, OBE established an ad hoc committee (the Payroll Tax Review Committee) to: review the Territory's Payroll Tax Act 2004; identify inconsistencies within the Act, and make recommendations to amend (or, if necessary, repeal) the Payroll Taxes Act.

As noted under "Recent Developments" above, in his 2010 Budget Address delivered in March 2010, Premier O'Neal confirmed a more wide ranging review of taxes in the BVI, including reform to payroll tax to move towards a progressive system.

Taxes on capital

There is no tax on capital in the BVI.

Taxes on property

The main tax on property is stamp duty. In the BVI, stamp duty is imposed on transfers of real estate, as well as the transfer of shares in BVI companies owning real estate in the BVI.

If the transfer of real estate is not to a "Belonger" then the present rate of stamp duty is 12 percent of the consideration or the market value of the property, whichever is higher. The 12 percent rate applies also to a transfer to a "Non-Belonger Company". Under the Non-Belongers Land Holding Regulation Act (Cap. 122), a non-Belonger Company is defined as a company, whether incorporated in or outside the BVI, in which any one of its directors is a non-Belonger or where any of the company's Non-Belonger shareholders own more than one-third of its shares ("Non-Belonger Company").²

² Section 6 of the Non-Belongers Land Holding Regulation Act goes somewhat further than this, by providing that a company is a "non-belonger company":

- (a) If any of its directors is an unlicensed non-belonger,
- (b) If more than one-third of the votes exercisable at any meeting of the company or which would be exercisable if a meeting of the company was held are vested in unlicensed non-belongers, or
- (c) In the case of a company having a share capital, if more than one-third of the nominal amount of its issued shares are held by unlicensed non-belongers, or
- (d) In the case of a company not having a share capital, if more than one-third in number of its members are unlicensed non-belongers, or
- (e) If the amount paid or payable in any period of twelve months as dividends to those members of the company who are unlicensed non-belongers exceeds one-third of the total amount paid or payable by the company as dividends in the same period, or;

If the transferee is to a "Belonger", then the applicable rate of stamp duty is 4 percent.

In relation to a lease of commercial property, the stamp duty payable for a term of 20 years or more is 1.5 percent of the total of rent payable for 20 years and other money consideration, however described, to be paid under the lease. For a lease with a term of less than 20 years, the stamp duty is 1.5 percent of the total rent payable for the period and other money consideration, however described, to be paid under the lease.

Under the Land and House Tax Act (Cap. 207), "Belongers" pay \$US10 per year on the first acre of land or part-acre, and then US\$3 on each additional acre of land held. For expatriates who own land in the BVI, the rate is US\$150 per year on the first acre or part-acre, and then US\$50 for each additional acre. There is also a "house tax" charged annually on all privately-owned buildings in the BVI. The current rate is 1.5 percent of the notional annual venue (meaning the amount not in excess of the rent which the property might be reasonably expected to yield from year to year).

Other taxes

No estate, inheritance, succession or gift tax is payable in the BVI.

The BVI maintains a cheque duty, pursuant to the Cheque Duty Act (Cap. 201), which is 10 cents (US) for any negotiable instrument (including travellers' cheques) presented for payment in the BVI.

Further, under the Trusts Act, trust instruments (with the exception of charitable trusts) are assessed with a duty of US\$100.

There also a number of relatively minor taxes and levies imposed in the BVI, including:

- A petroleum income tax (pursuant to the Petroleum Income Tax Act (Cap. 209));
- A "permit" assessed on charterers (pursuant to the Cruising Permits Act (Cap. 207));
- A hotel tax (pursuant to the Hotel Accommodation Taxation Act (Cap. 205));
- A car tax (pursuant to the Self-Drive Vehicles (Rentals) (Taxation) Act (Cap.210));
- A passenger tax (pursuant to the Passengers Tax Act (Cap. 208)).

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(f) If more than one-third of the nominal value of the outstanding debentures of the company are held by unlicensed non-belongers, or

(g) If the annual interest on the debentures of the company for the time being held by unlicensed non-belongers exceeds one-third of the annual interest on all the debentures of the company for the time being outstanding.