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About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

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Family ownership, professional management and the will to thrive through generations is the essence of many family businesses. This unique niche offers competitive advantages, but also harbors potential risks. Managing this complexity is a balancing act between the strategic issues related to the family and those connected with the business, along with steering the company successfully between the changes in the marketplace and within the family.

Two to three years ago, as a result of feedback we received from our clients, the family business network, legislators and academics identified a significant need for a detailed reference guide.

EY is proud to launch the *Worldwide Family Business Tax Guide* (the Guide), rendering our services at both the individual level as well as the corporate level. The Guide brings together detailed information on family businesses from 41 countries worldwide. The Guide is a detailed source of information for practitioners, family business owners, tax advisors, tax legislators and tax academics. In trying to distil leading practices and help promote sound tax policy for family businesses, we have focused on income, corporate income tax, capital gains tax, wealth transfer tax and more.

**Background research**

Having established the need for this type of publication after consulting with professionals from the Global Tax Policy and Controversy network, the Global Family Business Network and the Global Private Client Services network, we created a questionnaire based on the following criteria across 41 different countries:

1. Accumulative tax burden of family business (corporate income tax, individual income tax, value added tax (VAT), property tax, capital gains tax, tax on dividends from ordinary and preferential shares, wealth tax, inheritance tax/estate tax, gift tax, real estate transfer tax, endowment tax, social security)

2. Tax treatment of:
   a. Interest on a loan from the shareholders
   b. Losses
   c. Interest to related and non-related parties, etc.

3. Sample tax calculations for two typical family businesses

4. Tax treatment of family businesses and other issues
5. Succession planning
6. Tax policy environment
7. Tax administration and enforcement issues

Looking to the future

With the global economy still on the road to recovery from the Great Recession, now more than ever before, entrepreneurship and family business is pivotal for success and economic rebound. Now is the right time to stimulate the right tax policy for family business so that companies can survive the current recession due to their strong values and agility to adapt to change, and also innovate and continue to flourish.

This tax guide for family businesses showcases EY’s strong commitment and thought leadership to this market segment. We continue to have the ambition to contribute as a global thought leader in better functioning tax legislation and tax policy for family businesses.
EY Global Family Business Center of Excellence

“For more than 100 years we have been expanding our knowledge and understanding of family businesses”

Family businesses are characterized by their unique combination of dynastic will, family ownership and professional management. This combination produces a dynamic that offers competitive advantages, but it also harbors potential risks. Managing this complexity is a balancing act between the strategic issues related to the family and those connected to the business. It also means steering the business successfully between the forces at work in the marketplace and within the family. Today, 80% of the world’s top 250 family businesses rely on our know-how and experience to help them chart the right course to deal effectively with the challenges and opportunities presented as their business moves forward into the future and on to the next generation.

Succeeding for generations

For more than 100 years we have been expanding our knowledge and understanding of family businesses and appreciate that even though each family business is unique, each successful family business has much in common, and taking advantage of this knowledge we have developed what we call the “growth DNA of family business.” There are eight influential determining factors that we describe as a family business’s “growth DNA,” and these constitute the fundamental basis of our whole approach when providing our bespoke services for both the personal and company performance agenda for family business leaders. The practical assistance and professional advice we offer can involve sector-specific issues, the latest regulatory provisions or personalized information from our key areas of specialization — assurance, tax, legal, transaction and advisory services. We are also able to leverage our experience of working on complex cross-border issues, providing an integrated team to address a family business’ agenda. We understand local customs, laws, languages and cultures — our global professionals can provide guidance wherever business is undertaken.

Harnessing the power of our Global Family Business Center of Excellence

The EY Global Family Business Center of Excellence builds on our history of working with family businesses and is designed to support family businesses and their owners wherever they operate in the world. The Center brings together advisors from across the EY global network to share knowledge and insights that will address family business challenges and provide a seamless service for globally based family-led businesses.

The Center provides the latest thinking on family business with the regular publication of proprietary reports and thought leadership, as well as surveys compiled in collaboration with other internationally renowned organizations in the family business arena.

EY Junior Academy: fostering entrepreneurship across generations

Family businesses need an entrepreneurial spirit that not only ensures that the pioneering mindset and values that established the business continue to flourish, but also creates future opportunities to deliver innovation and financial and social value. However, when planning for business succession, potential business leaders may benefit from a little encouragement. We have therefore created the EY Junior Academy Program, which offers a range of unique and exclusive one-week training events that help the next generation to explore their individual potential and introduce them to the challenges of running a family business. The EY Junior Academy Program aims to inspire, motivate and encourage self-exploration by combining teaching from leading international executive business schools with practical experience and advice from EY, thereby creating a targeted offering aimed at the next generation of entrepreneurs and family business leaders.
In addition, the EY Junior Academy builds the framework for a unique network of young potential entrepreneurs from around the globe, where all those who have attended the EY Junior Academy are invited to join the EY NextGen Club and are given access to an online community and to stay connected to their peers and EY professionals, wherever they are around the world. This provides these potential entrepreneurs with valuable networking opportunities and interesting insights to support them on their journey to succeed for generations.

Online resources

You can visit our Global Family Business Center of Excellence online at www.ey.com/familybusiness for the latest news from the Center, to download our latest thought leadership and to find out who in our global network of experienced family business practitioners is nearer to you!

Also to find out what is the latest thinking around the hottest issues affecting family businesses today, please visit our Family Business blog, a unique resource featuring entries from our practitioners, family business leaders and top academics, familybusinessblog.ey.com

EY’s Growth DNA model of Family Businesses highlights the interlinked nature of the eight characteristics of successful family businesses.
## Australia

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### Section 1: The accumulative tax burden on family business

#### 2013 tax rates

<table>
<thead>
<tr>
<th>1.1</th>
<th>Corporate income tax (national and sub-national combined)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2013</td>
<td>Change in rate in the last three years (up or down).</td>
</tr>
<tr>
<td>•</td>
<td>Highest marginal rate</td>
<td>No change.</td>
</tr>
<tr>
<td></td>
<td>The current rate is 30%.</td>
<td></td>
</tr>
<tr>
<td>•</td>
<td>Highest rate for small and medium enterprises (SMEs)/small business</td>
<td>No change.</td>
</tr>
<tr>
<td></td>
<td>The current rate is 30%.</td>
<td></td>
</tr>
</tbody>
</table>
### 1.1 Corporate income tax (national and sub-national combined)

- **Special treatment of SMEs/small business (other reliefs, etc.)**
  
  Special treatment is given to small businesses (generally turnover of less than AU$2 million). Examples include immediate deductions and write off allowances available for small capital purchases, capital gains tax exemptions/reductions on disposal of businesses.

  N/A.

### 1.2 Individual income tax

#### 2013

- **Personal allowance**
  
  No personal allowance; however, progressive tax rates apply.
  
  The 2012-13 nil rate applies from AU$0 to AU$18,200; however, other allowances may increase this.

#### Change in rate in the last three years (up or down)

- **Minimum rate of personal income tax (PIT)**
  
  There is no minimum rate; progressive rates apply.

#### Change in rate in the last three years (up or down)

- **Highest marginal rate of PIT**
  
  The rate is 45% for incomes more than AU$180,000.

- **Any special surtaxes**
  
  Permanent Medicare levy (government health insurance) of 1.5%.
  
  Surcharge of 1% to 1.5% may apply if private health insurance is not held and adjusted income thresholds are breached.

  Thresholds for 30 June 2013:
  
  - Singles – AU$84,001 to AU$97,000: 1%; AU$ 97,001 to AU$130,000: 1.25%; AU$130,001 or more: 1.5%.
  - Families – AU$168,001 to AU$194,000: 1%; AU$194,001 to AU$260,000: 1.25%; AU$ 260,001 or more: 1.5%.
  - Additional – AU$1,500 threshold applies for families for each dependent child after the first)

#### Change in rate in the last three years (up or down)

- **Any special legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?**
  
  No.

- **Any special legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?**
  
  No changes have been made.
1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Standard rate</td>
<td>The current rate is 10%. Certain food, education, child care and health services and some exports are GST-free. Some organizations are exempt or modifications apply.</td>
</tr>
<tr>
<td>• Are there any special reliefs or exemptions for a family business?</td>
<td>Standard registration threshold is AUS$75,000 turnover; however, the business can voluntarily elect in.</td>
</tr>
</tbody>
</table>

1.4 Property taxes

• Does a family business receive any relief on property taxes not granted to other types of corporation? No.

1.5 Capital gains tax (CGT)

<table>
<thead>
<tr>
<th>2013 rate – companies</th>
<th>The current rate is 30% (on net gains after applying capital losses - forming part of taxable income).</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013 rate – individuals</td>
<td>Gains on CGT assets acquired post-19 September 1985 are taxed at marginal tax rates; however, a 50% discount may apply to Australian residents for assets held more than 12 months by an individual.</td>
</tr>
<tr>
<td>Reliefs/exemptions</td>
<td>Principle place of residence and some personal property are exempt. There are a series of small business CGT reductions and exemptions where turnover less than AUS$2 million or assets less than AUS$6 million. Exceptions apply for certain transfers of assets upon death (to a charity, super fund or nonresident).</td>
</tr>
</tbody>
</table>

1.6 Tax on dividends from ordinary shares

A. For the business: No deduction for dividends paid. Dividends are taxed at ordinary rates for dividends received; however, this tax may be offset for franked dividends (free from dividend withholding tax-free from dividend withholding tax).

B. For the owners of the business: Taxed at ordinary rates with a refundable tax offset for franked dividends.

1.7 Tax on dividends from preferential shares

A. For the business: No deduction for dividends paid. Taxed at ordinary rates for dividends received; however, this may be tax offset for franked dividends.

B. For the owners of the business: Taxed at ordinary rates; however, this may be refundable tax offset for franked dividends.

1.8 Tax treatment of interest on a loan from the shareholders

A. For the business: Generally deductible where nexus with income.

B. For the owners of the business: Forms part of assessable income.

1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

A. For the business: Generally deductible where nexus with income.

B. For the owners of the business: Forms part of assessable income.
1.10  Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

A. For the business: Generally, this cost is deductible where nexus with income.

B. For the owners of the business: This income forms part of assessable income.

1.11  Tax treatment of interest paid on bank debt by a family business

Generally, this is deductible where nexus with income.

Thin capitalization restrictions may apply (where outbound or inbound investor, subject to de minimis rules).

1.12  Tax treatment of payments made by a family business to third parties for the use of their intellectual property

Generally, this is deductible where nexus with income.

1.13  Tax treatment of rental payments made by a family business to third parties for real estate

Generally, this is deductible where nexus with income.

1.14  Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group

Generally, this is deductible where nexus with income - and assessable to recipient.

Thin capitalization restrictions may apply (where outbound or inbound investor, subject to de minimis rules).

1.15  Does your country provide for a deemed deduction on equity and/or debt?

No changes have been made.

1.16  Is the retention of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

Earnings may be retained indefinitely; however, there are integrity rules preventing the use of those retained earnings for private purposes (discussed further below).

1.17  Wealth tax

- 2013 characteristics and rate
  - N/A.

- Is there an exemption for shares owned by a family that owns a business?
  - N/A.

1.18  Inheritance tax/estate tax

There is no inheritance/estate tax in Australia.

The pre-CGT status (pre-20 September 1985) of assets is lost on death and the beneficiaries inherit a cost base equal to the market value of the asset as of the date of the deceased's death.

1.19  Gift tax

There is no gift tax in Australia.

- N/A.
1.20 Real estate transfer tax
There is no federal real estate transfer tax in Australia; however, state-based duty on the transfer of property and some other assets applies (various exemptions may apply).

1.21 Endowment tax
There is no endowment tax in Australia.

1.22 Social security

<table>
<thead>
<tr>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>National/social insurance contributions on employee income</td>
<td>State-based compulsory workers’ compensation schemes apply (paid by employer).</td>
</tr>
<tr>
<td>Health/medical/dental care</td>
<td>A Medicare levy of 1.5% of taxable income applies to individuals (low income reductions and exemptions may apply) increasing to 2% from 1 July 2014 (to fund a national disability scheme). An additional 1% to 1.5% surcharge applies where appropriate private patient hospital cover is not held and individual or family income exceeds certain thresholds. For 2012-13, the thresholds (adjusted income) for the 1% surcharge were:</td>
</tr>
<tr>
<td>• Singles – AU$84,001 to AU$97,000: 1%; AU$97,001 to AU$130,000: 1.25%; AU$130,001 or more: 1.5%.</td>
<td></td>
</tr>
<tr>
<td>• Families – U$168,001 to AU$194,000: 1%; AU$194,001 to AU$260,000: 1.25%; AU$260,001 or more: 1.5%.</td>
<td></td>
</tr>
<tr>
<td>• Additional – AU$1,500 threshold applies for families for each dependent child after the first.</td>
<td></td>
</tr>
<tr>
<td>Retirement plans/pensions for employees</td>
<td>There is a 9.25% compulsory superannuation levy on employee income from 1 July 2013, proposed to increase to 12% over time.</td>
</tr>
</tbody>
</table>

1.23 Pensions and tax-efficient savings

<table>
<thead>
<tr>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax relief on pension contributions – standard</td>
<td>Contributions by business and certain self-employed persons are deductible and concessional taxed in the fund subject to maximum contributions caps – AU$25,000 per person per annum (p.a.) indexed from 1 July 2013 or AU$35,000 where aged over 60 and from 1 July 2014 AU$35,000 where aged over 50. Non-concessional contributions may be made of up to AU$150,000 p.a. From 1 July 2013 where cap is exceeded the individual will be taxed on excess contributions at their marginal tax rate plus an interest charge (previously fund was taxed at additional 31.5 %). Superannuation funds concessional contributions and earnings are taxed at 15% in fund and eligible capital gains at 10%. Additional 15% contributions tax is applied to persons who earn AU$300,000 or more. Integrity rules may apply 46.5% rate to some non-arm’s-length income. When the fund is in the pension phase, income is exempt in respect of assets applied to pension phase. The pension paid is also nontaxable to the recipient.</td>
</tr>
<tr>
<td>Tax relief on pension contributions – any specific relief to family business?</td>
<td>No.</td>
</tr>
</tbody>
</table>
1.24 Taxation of flow-through entities/partnerships/trust funds

Trusts are generally flow-through entities. Beneficiaries taxed where “presently entitled” to income. Any remaining income taxed to trustee – at 46.5%; however, this may reduce in certain circumstances. Losses are trapped in the trust.

Partnerships are not a taxable entity and are therefore flow through. However, limited liability partnerships are taxed as companies in Australia.

1.25 Exemptions in the law that specifically relate to family businesses

No.

1.26 Are there any business incentives in your country that are specific to

- SMEs
  Research and development (R&D) tax incentive provides a 45% refundable tax offset on expenditure on eligible R&D activities and for the decline in value of depreciable assets used for eligible R&D activities for eligible entities with a turnover of less than AU$20 million (otherwise it is a non-refundable 40% offset).

- Family businesses
  No.

1.27 Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses?
  No (company and trust losses must satisfy a series of recoupment tests to be deductible).

- Are there any available loss reliefs that are specific to SMEs?
  Non-revocable family trust election provides more favorable rules for recouping losses of trusts.

Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- Calculation 1: The business makes a profit before tax of AU$2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

<table>
<thead>
<tr>
<th>Company</th>
<th>000’s (AU$)</th>
<th>Shareholder treatment</th>
<th>000’s (AU$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profit</td>
<td>2,000</td>
<td>Dividend</td>
<td>1,400</td>
</tr>
<tr>
<td>Tax at 30%</td>
<td>-600</td>
<td>Gross up for franking credit*</td>
<td>600</td>
</tr>
<tr>
<td>Net distribution</td>
<td>1,400</td>
<td>Total income</td>
<td>2,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Tax at marginal tax rate, say 45% (before Medicare levy)</td>
<td>900</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Less tax offset for franking credit</td>
<td>-600</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Tax payable by individual</td>
<td>300</td>
</tr>
</tbody>
</table>

Total tax payable by company and individual = 600 + 300 = 900 = 45%

*Note: This assumes the company has sufficient franking credits from previous tax payments to fully frank the dividend. If not, the dividend would be unfranked and no shareholder offset for the tax paid by the company would arise.
**Calculation 2:** The business makes a profit before tax of AU$500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

<table>
<thead>
<tr>
<th>Company</th>
<th>000's (AU$)</th>
<th>Shareholder treatment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profit</td>
<td>500</td>
<td>Dividend</td>
</tr>
<tr>
<td>Tax at 30%</td>
<td>-150</td>
<td>Gross up for franking credit*</td>
</tr>
<tr>
<td>Net distribution</td>
<td>350</td>
<td>Total income</td>
</tr>
</tbody>
</table>

Total tax payable by company and individual = 150 + 75 = 45%

*Note: This assumes the company has sufficient franking credits from previous tax payments to fully frank the dividend. If not, the dividend would be unfranked and no shareholder offset for the tax paid by the company would arise.

**Has this effective tax rate increased, decreased or stayed the same in the last three years?**

The rate has stayed the same.

---

**Section 3: Tax treatment of family businesses and other issues**

### 3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

Certain tax concessions are only available to companies including:

- Research and development tax incentives
- Loss carry back (one year for 2013 year losses – expected to be repealed from 1 July 2014)

Integrity rules may apply where a company (or a partnership or trust) is used and more than 50% of the income it receives is in respect of the skills, knowledge, expertise or efforts of the individuals who performed the services. These personal services income rules may deny certain deductions to the company and attribute the income of the company to the individual instead.

In order for a trust to claim losses or pass-through franking credits it must pass certain tests. However, a trust that makes a family trust election may be able to satisfy modified loss tests and it will not need to meet the tests for pass-through franking credits.

### 3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

In general terms, on the basis that any capital gains will be made on shares held for greater than 12 months, there is little difference between the tax rate applicable to dividends paid out of taxed profits (effective rate of 23.6% and capital gains from the sale of those shares (23.25%). However, in the case of small businesses (turnover of less than AU$2 million), additional small business CGT concessions may be available in respect of the sale of shares that can eliminate completely or significantly reduce any CGT liability.

All income is taxed at the appropriate tax rate or marginal tax rate. A resident individual may receive 50% CGT discount on direct capital gains. Further reductions and exemptions may apply under the small business CGT concessions but are not considered here. Individuals may only receive refundable tax offset on the receipt of a franked dividend from the company.
3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder. For example:

<table>
<thead>
<tr>
<th>Gain made by company</th>
<th>Shareholder treatment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital gain</td>
<td>Dividend</td>
</tr>
<tr>
<td></td>
<td>Gross up for franking credit</td>
</tr>
<tr>
<td>Tax at 30%</td>
<td>Total income</td>
</tr>
<tr>
<td></td>
<td>Tax at marginal tax rate, say 45% (before Medicare levy)</td>
</tr>
<tr>
<td>Net distribution</td>
<td>Less tax offset for franking credit</td>
</tr>
<tr>
<td></td>
<td>Tax payable by individual</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Gain made by resident individual</th>
<th>Shareholder treatment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital gain</td>
<td>Dividend</td>
</tr>
<tr>
<td>Less 50% CGT discount where held more than 12 months</td>
<td>Gross up for franking credit</td>
</tr>
<tr>
<td>Total income</td>
<td>Total income</td>
</tr>
<tr>
<td>Tax at marginal tax rate, say 45% (before Medicare levy)</td>
<td>Tax at marginal tax rate, say 45% (before Medicare levy)</td>
</tr>
</tbody>
</table>

Total tax payable by company and individual = 30 + 15 = 45%

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

Integrity rules can treat private company loans made, debt forgiveness, use of private assets and payments as unfranked dividends to shareholders and associates of shareholders in certain circumstances.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

A. Fully publicly listed? If a public company is as defined in Section 3.3, it does not apply.

B. Partly publicly listed? If a public company is as defined in Section 3.3, it does not apply.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

Generally, no changes have been made. However, in order to claim the CGT concessions applicable to small businesses (turnover less than AU$2 million), a shareholder would generally need at least a 20% interest in the entity.
Section 4: Succession planning

4.1 Life insurance
Life insurance payouts are exempt from tax when received by the individual nominated beneficiary and premiums paid nondeductible.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?
While shareholders and buy/sell agreements are recommended from a commercial perspective they have no special tax treatment. The taxation implications of any transactions that result under such agreements are dealt with under normal tax laws.

4.3 Estate tax
As Australia has no inheritance or estate taxes, this is not an issue and planning is more around achieving an effective tax structure from an ongoing income tax and capital gains tax perspective. This is important as the estate and/or its beneficiaries inherit the capital gains tax base of the deceased in relation to a subsequent disposal of assets. The pre-capital gains tax status of any assets held by the deceased at the date of death is lost, and any pre-capital gains tax assets are deemed to be acquired at their market value at the date of death.

Testamentary trusts (trust created by will) are often used to provide income for the immediate generation while protecting the capital for a future generation. In addition to asset protection and family law benefits, testamentary trusts allow income to be distributed to minors (children under 18) without them being subject to the penal excepted income rates normally attributable to minors.

4.4 Pension plans
Self-managed superannuation funds allow individuals to manage their own superannuation wealth and to achieve the significant taxation advantages (detailed earlier) applicable to superannuation funds, e.g., 15% tax rate on income, 10% on capital gains in respect of the accumulation component of the fund and 0% on the income and capital gains of the pension component of the fund.

As detailed earlier, restrictions exist on how much can be contributed to a fund. Ignoring transfers from other funds and rollovers under the small business capital gains tax retirement exemptions (AUS$500,000 per person lifetime limit) contributions are limited to deductible contributions of AU$25,000 and nondeductible contributions of AU$150,000 per annum per member.

4.5 Trusts, foundations and private purpose funds

Family discretionary trusts are formed during a person’s lifetime and allow flexible distribution of income and capital gains between the members of a family group consisting of relatives of the family member and entities controlled by the individual and the family group.

Testamentary trusts are created on death by will and allow the same flexibility as discretionary trusts but have the other advantages detailed above.

Private and public ancillary funds (PAFs) are foundations formed to undertake charitable activities. Contributions to the funds are tax deductible; however, the funds can only distribute to non-PAF tax-deductible charities and organizations and must distribute a percentage of the balance of the fund (5% for private funds and 4% for public funds) annually to such charities and organizations.

Charitable foundations and organizations must be properly structured to achieve tax exemption and tax-deductible donation status. These trusts must meet strict tests and be registered and approved as such by the Australian Tax Office (ATO).
4.6 Wills/intestacy/family charters

If a person dies without a will, his or her assets will be dealt with in accordance with the laws of intestacy of the relevant state or territory in which he or she resides. The assets are split based on the ordering rules applicable in each state or territory. One of the relevant factors is whether the deceased has a spouse and/or children. For example, in Victoria, if you had a spouse and children your personal chattels, plus the first AU$100,000 and 33% of the balance would generally go to your wife with the remaining being split equally between your children.

Assets of a family discretionary trust established during a deceased lifetime cannot be bequeathed under a will but should as a minimum be the subject of a letter of wishes. As the trustee and the appointor of a trust effectively control a family trust, careful consideration must be given to the passing of these roles in any will or estate plan. If these roles reside with a company ownership and transfer of the company's shares is paramount.

Family agreements and/or charters can be an effective tool for dealing with succession especially where discretionary trusts and family businesses are involved as agreement is reached with family members as to their entitlements and the operation of the business and any entities in advance, thereby minimizing future disputes.

Monies held in a superannuation fund are primarily dealt with outside of a person's will (although the will can assist in ensuring the benefit is taxed in the most efficient manner where the fund pays the death benefit to the estate of the individual). Where a binding nomination has not been made by the individual, the distribution of the individual's entitlement is at the discretion of the trustee. Control of the corporate trustee in the context of a private self-managed superannuation fund is important in any estate plan. When the benefit is paid to a spouse or eligible dependant (generally children under 18) it is tax free to the recipient, otherwise it is taxable based on the makeup of the balance within the fund.

4.7 Passing on a business

A succession plan is essential in supporting the ongoing growth and maximization of the value of a family business. It requires careful evaluation, consideration and implementation in order to ensure the smooth realization or transition of a family business and/or of a family's wealth between generations. At the same time, it must provide for the individual lifestyle and retirement of the principals. Given the complex issues and significant tax imposts which arise on the transfer of assets, it is important that succession planning be considered early in the lifecycle of a family business and that the plan is continually reviewed and updated.

4.8 Private equity

Specific legislation/tax treatment of income derived from private equity (PE) activity

Distributions to and disposals of “carried interests” held in a PE fund are specifically treated as being on revenue account (i.e., the CGT concessions referred to above would not be available).

PE funds arranged as trusts will be taxable under the general trust rules. Gains in respect to such funds are generally treated on revenue account.

Collective-investment trusts including PE funds that are listed, widely held or held by certain collective-investment entities may qualify for managed investment trust (MIT) concessions:

- Reduced withholding taxes apply to distributions to certain nonresident investors (15% rate on non-dividend/interest/royalties; however, may reduce to 10% in some circumstances).
- MITs can elect to adopt capital treatment for gains and losses on the disposal of many investment assets.

Foreign PE funds and their investors have been subject to close scrutiny, public guidance and litigation by the ATO on treaty shopping, source of gains, capital-revenue classification and the treatment of certain fiscally transparent entities.
Section 5: Tax policy environment

5.1 Policy environment relating to family business

Family business is a regularly discussed topic and has some moderate influence on policy discussions - most of the legislative concessions apply to small business (i.e., turnover of less than AU$2 million). Large family businesses are treated in similar fashion to public entities, but small family business are covered by the small business concessions.

5.2 Specify change in the direction of tax policy in the last three years

No.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners

No.

5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions

Private company integrity rules; company and trust loss rules; general trust taxation law; general anti-avoidance rules; and other are seen to impair family business and their growth because of their complexity. There is no momentum to changes these provisions.

Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with

- High net worth individuals (HNWIs)
  ATO runs highly wealthy individuals (HWIs) (net wealth AU$30 million or more) and wealthy Australians (net wealth more than AU$5 million) compliance programs.

- SMEs
  Yes.

- Family businesses
  No, family businesses are classified as either SME or large corporate entities.

- Large corporate taxpayers
  Yes.

- Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses
  Yes.
6.2 Specify enforcement focus areas or defined programs that might touch a family business

The ATO annual compliance program (2013-14) targets include:

- Shareholders accessing tax-free company funds through inappropriate shareholder loans
- Individuals using business funds for personal expenses/shareholders using the business’ lifestyle assets for private purposes
- Private company schemes
- Misuse of trusts (the ATO will utilize its new Trusts Taskforce) and omitted income
- Capital gains tax non-disclosure and under reporting
- Fraudulent phoenix behavior

The ATO will also focus on employers and:

- Reporting of pay-as-you-go (PAYG) withholding
- Identifying and correctly reporting fringe benefits provided to employees
- Workers incorrectly treated as contractors
- Payment of superannuation guarantee

6.3 Specify tax enforcement focus on any particular industry or profession

The ATO annual compliance program (2013-14) targets claims for work-related expenses by building and construction laborers, construction supervisors and project managers, sales and marketing managers.

6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners

Yes, significant transactions are identified through data mining or the press, data matching and industry benchmarking discrepancies. Also, there is a particular focus on assets held offshore.

6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

There is a general voluntary disclosure program that may reduce subsequent penalties.

6.6 Are there any specific pre-filing processes that can be leveraged by:

- HNWIs: No.
- Family businesses: No.

6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

Australia has expanded its use of tax information exchange agreements over recent years and now has agreements with 60 countries including most countries that have entered into double tax treaties with Australia.
Section 1: The accumulative tax burden on family business

2013 tax rates

<table>
<thead>
<tr>
<th>Corporate income tax (national and sub-national combined)</th>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highest marginal rate</td>
<td>The current rate is 25%.</td>
<td>N/A.</td>
</tr>
<tr>
<td>Highest rate for small and medium enterprises (SMEs)/small business</td>
<td>The current rate is 25%.</td>
<td>N/A.</td>
</tr>
<tr>
<td>Small enterprises are not allowed to exceed two of the three characteristics:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. €4.84 million balance sheet total</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. €9.68 million sales revenue in the 12 months before reporting date</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Annual average of 50 employees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medium-sized enterprises have to exceed two of the three characteristics of small enterprises and are not allowed exceed two of the three following characteristics:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. €19.25 million balance sheet total</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. €38.5 million sales revenue in the 12 months before reporting date</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Annual average of 250 employees</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
1.1 Corporate income tax (national and sub-national combined)

- Special treatment of SMEs/small business (other reliefs, etc.)
  
  **Small enterprises:**
  - No statement of affairs necessary
  - Income statement is not mandatory
  - Balance sheet and appendices have to be submitted

  **Medium enterprises:**
  - Reduced balance sheet
  - Reduced income statement
  - Reduced appendices

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

No.

1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal allowance</td>
<td>Basic tax-free allowance (max. €3,900)</td>
</tr>
<tr>
<td></td>
<td>Voluntary reinstatement (e.g., health insurance, compensation insurance)</td>
</tr>
<tr>
<td></td>
<td>Church tax</td>
</tr>
<tr>
<td></td>
<td>Alimony</td>
</tr>
<tr>
<td></td>
<td>Catastrophic loss</td>
</tr>
<tr>
<td>Minimum rate of personal income tax (PIT)</td>
<td>0% (up to €11,000)</td>
</tr>
<tr>
<td>Highest marginal rate of PIT</td>
<td>50% (above €60,000)</td>
</tr>
</tbody>
</table>
1.2 Individual income tax

- Any special surtaxes
  - There is a 25% withholding tax on income from capital investments (for introduction see below).
  - N/A.

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

The new Austrian withholding tax and capital gains tax regime (which has a major impact on Austrian investors' income from capital assets) came into effect on 1 April 2012. Generally speaking, capital gains and income from derivatives are now also subject to taxation for private investors, irrespective of their various holding periods.

In general, the taxation became effective for any profits derived from the sale of shares/investment fund units purchased as of 1 January 2011 and for the sale of bonds and derivatives purchased as of 1 April 2012.

Only realized income from securitized derivatives will be subject to the special tax rate of 25% and withholding deduction.

1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Standard rate</td>
<td>The current rate is 20%/10% (reduced rate).</td>
</tr>
<tr>
<td>• Are there any special reliefs or exemptions for a family business?</td>
<td>No changes have been made.</td>
</tr>
</tbody>
</table>

1.4 Property taxes

- Does a family business receive any relief on property taxes not granted to other types of corporation?
  - N/A.

1.5 Capital gains tax (CGT)

- 2013 rate – companies
  - N/A.

- 2013 rate – individuals
  - Capital gains derived from sales of shares in Austrian companies are treated as income from capital taxed at 25% tax rate.

- Reliefs/exemptions
  - N/A.

1.6 Tax on dividends from ordinary shares

A. For the business: 25%
B. For the owners of the business: 25%

1.7 Tax on dividends from preferential shares

A. For the business: 25%
B. For the owners of the business: 25%

1.8 Tax treatment of interest on a loan from the shareholders

A. For the business:
B. For the owners of the business:

Interest paid on private loans (e.g., intercompany loans) is not subject to withholding tax in Austria. Progressive income tax rate up to 50% tax rate will apply.
### 1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

**A. For the business:**

**B. For the owners of the business:**

Rental income from properties located in Austria will be taxed at progressive income rates. Rental income from foreign countries may be considered as (progression) income depending on the respective double tax treaty.

### 1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

**A. For the business:**

**B. For the owners of the business:**

Income generated from the use of intellectual property is taxed at progressive income rates; it is half the progressive rate under certain circumstances.

### 1.11 Tax treatment of interest paid on bank debt by a family business

Interests paid on bank debts are deductible.

### 1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

These payments are operating costs; they are deductible and reduce the profit before tax.

### 1.13 Tax treatment of rental payments made by a family business to third parties for real estate

Rental payments are operating costs; they are deductible and reduce the profit before tax.

### 1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group

This is deductible if loans are given at fair market value.

### 1.15 Does your country provide for a deemed deduction on equity and/or debt?

No, the deemed deductions apply on equity. Limited imputed interest expenses apply on debt, which is not at arm’s length.

### 1.16 Is the retention of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

The retention of earnings is not limited or restricted.

### 1.17 Wealth tax

- 2013 characteristics and rate: N/A.
- Is there an exemption for shares owned by a family that owns a business? N/A.

### 1.18 Inheritance tax/estate tax

The Austrian Supreme Constitutional Court abolished the basic provision of the inheritance tax in 2008. A Gift Registration Act was introduced, and is used as an instrument to monitor asset transfers, but without taxing asset transfers.

### 1.19 Gift tax

A Gift Registration Act was introduced, and is used as an instrument to monitor asset transfers, but without taxing asset transfers.
Austria

1.2 Social security

• National/social insurance contributions on employee income
  Employees need to have Social Security when working in Austria. Austrian Social Security covers health insurance, accident insurance, unemployment benefits and public pension payments. Generally, both employer and employee are mandated to pay into Social Security. If payments fall below a certain minimum limit, there is only a partial insurance mandate.

  For the whole Social Security:
  Employer’s contribution: 21.83% for employees and 21.70% for workers; employee’s contribution: 18.07% for employees and 18.20% for workers. In total, 39.9% on employees and on workers’ income.

• Health/medical/dental care
  Employer’s contribution: 3.83% for employees and 3.70% for workers; employee’s contribution: 3.82% for employees and 3.95% for workers.

• Retirement plans/pensions for employees
  Employer’s contribution: 12.55% for employees and for workers; employer’s contribution: 10.25% for employees and for workers.

1.23 Pensions and tax-efficient savings

• Tax relief on pension contributions – standard
  Contributions on pension plans can be deductible under certain conditions.

• Tax relief on pension contributions – any specific relief to family business?
  N/A.

1.24 Taxation of flow-through entities/partnerships/trust funds

None.

1.25 Exemptions in the law that specifically relate to family businesses

None.
1.26 Are there any business incentives in your country that are specific to

- SMEs
  There are business incentives for R&D.

- Family businesses
  There are business incentives for culture and responsibility; developing new products (without external pressure for short-term goals from stakeholders); next generation planning (succession); and preserving wealth through generations.

1.27 Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses?
  There is no specific regulation to family business or SMEs.

- Are there any available loss reliefs that are specific to SMEs?
  Austrian tax law provides for the possibility to carryforward losses if the losses result from business activity (including income from agriculture, forestry, self-employed activity, and trade and business; losses must be set off against future profits as soon as possible.

Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- Calculation 1: The business makes a profit before tax of €2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

<table>
<thead>
<tr>
<th></th>
<th>(€)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profit before tax</td>
<td>2,000,000</td>
</tr>
<tr>
<td>Corporate tax (25%)</td>
<td>500,000</td>
</tr>
<tr>
<td>Profit after tax</td>
<td>1,500,000</td>
</tr>
<tr>
<td>Withholding tax (25%)</td>
<td>375,000</td>
</tr>
<tr>
<td>Income</td>
<td>1,125,000</td>
</tr>
<tr>
<td>Effective tax rate</td>
<td>43.75%</td>
</tr>
</tbody>
</table>

- Calculation 2: The business makes a profit before tax of €500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

<table>
<thead>
<tr>
<th></th>
<th>(€)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profit before tax</td>
<td>500,000</td>
</tr>
<tr>
<td>Corporate tax (25%)</td>
<td>125,000</td>
</tr>
<tr>
<td>Profit after tax</td>
<td>375,000</td>
</tr>
<tr>
<td>Withholding tax (25%)</td>
<td>93,750</td>
</tr>
<tr>
<td>Income</td>
<td>281,250</td>
</tr>
<tr>
<td>Effective tax rate</td>
<td>43.75%</td>
</tr>
</tbody>
</table>

Has this effective tax rate increased, decreased or stayed the same in the last three years?

The effective tax rate remained unchanged.
Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

Yes.

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

Both are taxed at 25%.

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

Yes, payments from corporations are restricted to dividend payments or repayments of capital. Any other payments are characterized as hidden distribution, i.e., nondeductible and subject to 25% tax.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

A. Fully publicly listed? N/A.
B. Partly publicly listed? N/A.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

The ownership percentage is a controlling share and can typically be 50% ownership. Related parties are defined very broadly and can also result from other relations to the company. Therefore, lower ownerships and accumulated voting power can be sufficient to require arm's-length treatment.

Section 4: Succession planning

4.1 Life insurance

In general, contributions on voluntary life insurance are expenses of private lifestyle and are not deductible, but can under certain circumstances they can lower the individual income tax. In many cases the payments are individual income tax relieved. It is a measure to encourage private pension plans.

Exemptions: N/A.

Endowment assurance: The difference between contributions and payments is taxed at normal rates. If the contract is an endowment assurance, the insurance premium is a single payment and the duration is less than 15 years. If it is more than 15 years it is not taxable.

Lifelong annuity: The taxation begins when the payments exceed the paid insurance premiums. Life insurance is generally not subject to withholding tax.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?

There is a 25% capital gains tax.

4.3 Estate tax

The gift and inheritance tax was abolished.

4.4 Pension plans

In Austria, there is a three-column model for pension plans: a governmental, a private and a company column. The pension plans can enormously differ among several persons, especially the young population, which considers private pension insurances besides the governmental offering.
4.5 Trusts, foundations and private purpose funds

When inheritance and gift taxes were abolished, an endowment tax was introduced that applies to non-paid transfers and inheritances to trusts and foundations. The endowment tax can apply to the transfer of assets by an Austrian resident to a trust (regardless of whether the trust is Austrian and the property being transferred is an Austrian property) and by a non-Austrian resident to an Austrian foundation. The applicable rates are either 2.5% (reduced rate) or 25%.

Austrian foundations: In general, the reduced rate of 2.5% applies for endowments to Austrian foundations (Privatstiftungen) regardless of who is contributing; for example, the founder or any third party (e.g., another person or legal entity). However, the reduced tax rate of 2.5% is only granted on transfers if all required documents (foundation constitution) are filled with tax authorities at the time when the endowment of tax becomes due. Otherwise, it is not the reduced rate but the general rate of 25% that applies. For the endowment of Austrian real estate, a real estate transfer tax of 3.5% applies. Additionally, an endowment tax of 2.5% of three times of assessed value and a tabulation fee of 1.1% of the fair market value apply.

Donations to non-transparent international trusts, foundations and comparable legal estates by Austrian residents might be subject to endowment tax at either the reduced rate of 2.5% or at the general rate of 25%. The reduced rate of 2.5% applies on endowments to international trusts and other legal estates, provided they are comparable to Austrian private foundations.

4.6 Wills/intestacy/family charters

In order to draw up a valid will, testators in general must be at least 18 years old and be contractually capable. Although it is possible to declare a will orally in certain circumstances, wills almost always are made in writing. When declaring in writing, a testator may do so in handwriting and sign the will, or sign a document that has been written by a third person. When signing a will that is not in the testator’s own handwriting, the involvement of three capable witnesses is essential in order to draw up a valid will.

If the deceased is intestate, the order of precedence of the succession is as follows. The children (or the grandchildren, respectively) inherit two-thirds and the spouse is entitled to one-third of the entire estate. In the absence of descendants, the spouse inherits two-thirds and the parents (or the parents’ children respectively) inherit one-third. If there are no relatives, up to the great grandparents, the estate is transferred to the Republic of Austria.

4.7 Passing on a business

The very essence of the family business is, of course, that it has been passed from one generation to the next, but the moment of transition can make or break the firm’s future success. Normally the transition is planned for the long term and the responsibility is transferred step by step at an early stage. Furthermore, the slow exit of the former owner securitizes the next generation and integrates them in the business.

About four out of five family businesses in Austria transfer their enterprise to a heir.

4.8 Private equity

<table>
<thead>
<tr>
<th>Specific legislation/tax treatment of income derived from private equity (PE) activity</th>
<th>No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equivalent PE ratio</td>
<td>No.</td>
</tr>
<tr>
<td>Others</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Section 5: Tax policy environment

5.1 Policy environment relating to family business

Austrian family businesses are in general satisfied with the policy. In their opinion, the government stays abreast of the importance of family business in Austria. Nevertheless, family businesses want to see a reduction in bureaucracy and taxes, better framework conditions for small and middle-sized family businesses, and further incentives for employment and training.

5.2 Specify change in the direction of tax policy in the last three years

The inheritance tax was abolished, which served as a relief for family business.
Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with:

- High net worth individuals (HNWIs): No special unit.
- SMEs: No special unit.
- Family businesses: No special unit.
- Large corporate taxpayers: No special unit.
- Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses: No special unit.

6.2 Specify enforcement focus areas or defined programs that might touch a family business

No.

6.3 Specify tax enforcement focus on any particular industry or profession

No.

6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners

No.

6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

Tax agreements have been reached with Switzerland and Liechtenstein.

6.6 Are there any specific pre-filing processes that can be leveraged by:

- HNWIs: No.
- Family businesses: No.

6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

Tax agreements have been reached with Switzerland and Liechtenstein. (The broad scope: taxation of previously untaxed assets, taxation of investment income and capital gains.)

The WEITG (the Guide) summarizes the estate tax planning systems and describes wealth transfer planning considerations in 39 jurisdictions, up from 37 in 2013. It is relevant to you as owners of family businesses and private companies, managers of private capital enterprises, executives of multinational companies and other entrepreneurial and internationally mobile high net worth individuals (HNWIs):

- The Guide will enable you to quickly identify the estate and inheritance tax rules, practices and approaches that have been adopted by 39 jurisdictions.

- Knowledge of these various approaches can assist you with your estate and inheritance tax planning, investment planning and tax compliance and reporting needs.

The Guide contains information that is current as of 1 February 2014. The chapters provide details on the types of estate planning in each jurisdiction, such as inheritance and gift taxes, trusts and transfers as well as at-a-glance information, such as rates, payment dates and filing procedures, and exceptions and reliefs and more.

Access the guide on your EY Global Tax Guide app via the App Store (ey.com/TaxGuidesApp) or through the link below:

http://tinyurl.com/lh33qcx
Section 1: The accumulative tax burden on family business

2013 tax rates

1.1 Corporate income tax (national and sub-national combined)

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Highest marginal rate</td>
<td>The current rate is 33.99% (33%, increased with a 3% crisis surcharge).</td>
<td>N/A.</td>
</tr>
<tr>
<td>• Highest rate for small and medium enterprises (SMEs)/small business</td>
<td>The current rate is 35.54% (34.50%, increased with a 3% crisis surcharge).</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

An SME for the application of the so-called reduced progressive corporate income tax rates is a company with a taxable result not exceeding €322,500. In certain cases, companies are excluded from this rate and subject to the normal 33.99% corporate tax rate (e.g., holding companies).
Belgium

1.1 Corporate income tax (national and sub-national combined)

- Special treatment of SMEs/small business (other reliefs, etc.)

Income below €322,500 taxed at progressive rates ranging from 24.25% to 34.5%, to be increased with a 3% crisis surcharge (subject to conditions and not applicable to holding companies).

N/A.

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

In 2013, Belgium introduced the “fairness tax,” which applies from tax year 2014 to all Belgian companies that do not qualify as a small company under the Belgian company code and to permanent establishments of nonresident companies. The fairness tax is a separate corporate tax assessment of 5.15% to be levied on the occasion of a dividend distribution when (part of the) distributed profits have not been effectively taxed at the 33.99% Belgian corporate income tax rate. The fairness tax is triggered when dividends are declared and the taxable basis is reduced by the application of the notional interest deduction or tax losses carried forward. The taxable basis for this tax is determined based on a formula where the “untaxed” part of distributed profits is multiplied by a proportionality factor. The magnitude against the total tax base can at this time not be estimated: the tax only applies when the company decides to distribute a dividend in cases in which notional interest deduction and/or carried forward losses are imputed. In other words, the impact depends from the dividend distribution policy/decision of the company.

The thin cap restrictions for the deductibility of interest payments have been expanded in two ways:

1. The debt/equity ratio has been changed from 7:1 to 5:1.
2. The thin cap rules no longer only apply to interest payments to countries considered as tax havens, but now also apply to intra-group interest payments, irrespective of the location of the beneficiary.

The notional interest deduction rate and calculation basis have gradually been reduced over the years (see Section 1.14).
1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Personal allowance</td>
<td>First bracket of €6,990 is not subject to tax (amount to be increased based on number of dependent persons in some specific cases). Indexed yearly.</td>
</tr>
<tr>
<td>• Minimum rate of personal income tax (PIT)</td>
<td>The current rate is 25%. N/A.</td>
</tr>
<tr>
<td>• Highest marginal rate of PIT</td>
<td>The current rate is 50%. N/A.</td>
</tr>
<tr>
<td>• Any special surtaxes</td>
<td>The municipal tax surcharge ranges from 0% to 9% depending of the municipality. N/A.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

The taxation of movable income has increased from 15% to 25% in 2012.

The liquidation tax on the liquidation of a company will increase from 10% to 25% beginning on 1 October 2014.

There has been an increase of the valuation of different benefits in kind such as company cars, free housing, electricity and heating.

Most tax deductions have been converted into tax reductions, which means the tax benefit for most payments has decreased for high earners from 50% of the payments to 30%.

1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Standard rate</td>
<td>The rate is 21%. N/A.</td>
</tr>
<tr>
<td>• Are there any special reliefs or exemptions for a family business?</td>
<td>No. N/A.</td>
</tr>
</tbody>
</table>

1.4 Property taxes

• Does a family business receive any relief on property taxes not granted to other types of corporation? No.

1.5 Capital gains tax (CGT)

• 2013 rate – companies
  Capital gains on shares which are held for an uninterrupted holding period of one year in full property, are subject to a 0.412% tax, i.e., 0.4% to increase with 3% additional crisis surcharge. This rule is only applicable to large companies (and not to SMEs). If the one year holding period is not reached, the capital gain will be taxed at the rate of 25.75%.

• 2013 rate – individuals
  There is no capital gains tax on movable assets. Capital gain on real estate is taxed as follows:
  
  **Buildings:** There is a 16.5% tax on capital gain when sold within a five-year waiting period as from the acquisition.
  
  **Land:** There is a 33% tax on capital gain when sold within the five-year waiting period. There is a 16.5% tax on capital gain when sold after five years but within an eight-year waiting period.

• Reliefs/exemptions
  In principle, capital gains on shares are not taxable (see Section 3.2).
1.6 Tax on dividends from ordinary shares

A. For the business: Dividends received are taxed at 33.99%. However, according to EU Parent-Subsidiary Directive, the participation exemption provides for a deduction of 95% of qualifying dividends from the taxable basis in certain circumstances.

B. For the owners of the business: The standard withholding tax rate for dividends paid by Belgian companies is 25%. A reduced rate applies for dividends paid by small companies on nominative shares that are issued as of 1 July 2013 provided these shares are received in exchange of a contribution of cash into the company and an ownership requirement and holding period requirement are met. The rate amounts to 20% for dividends distributed during the third year following the contribution, and to 15% for dividends paid as from the fourth year following the contribution.

1.7 Tax on dividends from preferential shares

A. For the business: The rate is 33.99%. However, according to the EU Parent-Subsidiary Directive, a relief of 95% on the taxable basis is given in certain circumstances to qualifying dividends received.

B. For the owners of the business: The rate is 25%.

1.8 Tax treatment of interest on a loan from the shareholders

A. For the business: In principle, interest paid is tax deductible provided the loan has a business purpose. Interest paid to shareholders is reclassified into dividends (and, hence, not tax deductible) to the extent the interest rate exceeds the market rate or the total amount of the qualifying loans is higher than the sum of the amount of the taxed reserves at the beginning of the taxable period and the amount of the paid-in capital at the end of the taxable period.

B. For the owners of the business: Interest is taxed at 25%. Interest paid to shareholders is reclassified into dividends to the extent the interest rate exceeds the market rate or the total amount of the qualifying loans is higher than the sum of the amount of the taxed reserves at the beginning of the taxable period and the amount of the paid-in capital at the end of the taxable period. To the extent of this reclassification, the payment is treated as a dividend for income tax and withholding tax purposes (taxed at 25%).

1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

A. For the business: The rental income is tax deductible, provided the rent has a business purpose and the general deductibility conditions are met.

B. For the owners of the business: Rental income is taxed at the progressive personal income tax rates. It should be noted that there may be a reclassification of the rental income into professional income when it is paid to a director of the company, which is relevant when shareholders of the company also play that role in the company. The rental income paid to directors is reclassified to the extent it is higher than 5:3 of the revalorized notional income of the real estate. Payroll taxes must be withheld on the part of the income that is reclassified into professional income.

1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

A. For the business: Royalties paid by the business constitute deductible business expenses, provided the general deductibility conditions are fulfilled.

B. For the owners of the business: Royalties are taxed as professional income at the progressive income tax rates if it concerns professional income. If it concerns speculative income, they are taxed at a flat rate of 33%. If it does not constitute professional income or speculative income, the royalty income is taxable at 25%.

1.11 Tax treatment of interest paid on bank debt by a family business

The interest paid is tax deductible, provided the general deductibility conditions are fulfilled.

1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

Royalties paid by the business constitute deductible business expenses, provided the general deductibility conditions are fulfilled.

1.13 Tax treatment of rental payments made by a family business to third parties for real estate

The rental payments are tax deductible, provided the general deductibility conditions are fulfilled.
1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group

In principle, for both options the interest paid is tax deductible provided the loan has a business purpose. The conditions of the loan must be at arm’s length. The deduction of interest payments may also be limited by the 5:1 thin cap rule, which also applies to intra-group loans.

- Inter-group loans: The interest received by a Belgian group company is taxable at the level of that company. Withholding tax exemptions apply on interest payments under certain conditions (based on legislation implementing the Interest-Royalty Directive).
- Financing company: The interest received by a Belgian group company is taxable at the level of that company. Withholding tax exemptions apply on interest payments to qualifying financing companies under certain conditions.

1.15 Does your country provide for a deemed deduction on equity and/or debt?

Belgian companies and foreign companies with a Belgian permanent establishment or real estate in Belgium may benefit from a tax deduction equal to a percentage of the “risk capital” (this is the so-called notional interest deduction). This deduction is not reflected in the financial accounts. The risk capital equals the total equity, including retained earnings, as reported in the nonconsolidated closing balance sheet of the financial year preceding the tax year (upward or downward adjustments of the risk capital are taken into account on a pro rata basis), excluding, among others, the following items:

- If the net tax-value of the company’s own shares and shares held in other companies that qualify for the participation exemption.
- If the net book value of assets allocable to foreign permanent establishments and foreign immovable property and property rights, the income of which is exempt from tax in Belgium based on double tax treaties. It should be noted that the exclusion of the net book value of permanent establishments located in other member states of the European Economic Area was found to be incompatible with the EU freedom of establishment by the Court of Justice of the European Union in the Argenta case.
- If there have been capital grants (subsidies).
- If there is a tax credit for research and development (R&D).

The tax deduction is computed by multiplying the risk capital by the average interest rate applicable for a long-term Belgian government bond (the 10-year Obligations linéaires (lineaire obligaties or OLO) for the third quarter of the penultimate year before the tax year). The average OLO rate in the third quarter of 2012 was 2.742%. Effective from the 2013 tax year, the notional interest deduction rate is capped at 3% (3.5% for small companies) in case the above calculation method would result in a higher percentage. In addition, the deduction may not be carried forward in the event of a loss. Until 2011, the excess deduction could be carried forward for up to seven years.

1.16 Is the retention of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

Earnings may be retained indefinitely.

1.17 Wealth tax

- 2013 characteristics and rate Belgium has no wealth tax.
- Is there an exemption for shares owned by a family that owns a business? N/A.
1.18 Inheritance tax/estate tax

Tax rates vary from 0% to 80%, depending on region and relationship with beneficiary.

Inheritance tax

Brussels-Capital Region

For the Brussels-Capital Region, the first €15,000.00 received by a direct descendant or ascendant or by a spouse is exempted. For a child of the deceased, this exemption is increased by €2,500.00 for each full year remaining before the child reaches the age of 21. A surviving spouse with children who are younger than 21 is allowed an additional exemption equal to half the exemption that is granted to the children who are younger than 21. In computing the taxable amount, these exemptions are deducted from the first bracket rather than the last.

For beneficiaries other than those mentioned above, a full exemption is granted if the net amount of the inheritance does not exceed €1,250.00.

Flemish Region

For the Flemish Region, the part of the estate passing on to a direct ascendant is split up into movable property and real estate (both are taxed separately). Several small general reliefs exist in the Flemish Region, depending on the relationship between the beneficiary and the testator. Aside from those relatively small tax reliefs, the Flemish Region also foresees a more substantial inheritance tax relief for severely handicapped beneficiaries and even inheritance tax exemptions for the inheritance of unbuilt immovable property situated within the Flemish Ecological Network, the inheritance of woodland and the inheritance by a spouse of the family dwelling. The exemption of inheritance tax on the transfer of family owned businesses is discussed below.

In the Flemish Region, family dwellings are exempt from succession tax if the beneficiary is the surviving spouse.

Walloon Region

Several reliefs exist in the Walloon Region, depending on the relationship between the beneficiary and the testator and/or the value of the assets transferred.

Among other reliefs, the Walloon Region foresees an exemption of the first €12,500.00 received by a direct descendant or ascendant or by a spouse. This exemption is increased by €12,500.00 if the net value of the beneficiary’s share in the estate does not exceed €125,000.00. Furthermore, for a child of the deceased, the exemption is increased by €2,500.00 for each full year remaining before the child reaches 21 years of age. A surviving spouse with children who are younger than 21 is entitled to an additional exemption, equal to half the exemption that is granted to the children who are younger than 21. In computing the taxable amount, these exemptions are deducted from the first bracket rather than the last.

For beneficiaries other than those mentioned above, a full exemption is granted if the net amount of the inheritance does not exceed €620.00.

Estate tax

Belgium has entered into a treaty regarding succession tax with France and Sweden. Negotiations have started with the US regarding an estate tax treaty.

Belgium has not entered into any international agreements regarding gift tax.

1.19 Gift tax

Gift tax (schenkingsrecht or droit de donation) is levied in the form of registration duties (registratierecht or droit d’enregistrement) on the donation of movable or immovable property during the lifetime of the donor.

Registration is only required for donations made by virtue of a Belgian notary deed. Unlike the donation of movable property, the donation of a Belgian immovable property inevitably needs to be established in a notary deed.

Registration for tax purposes is not required for the donation of real estate located outside Belgian territory or the donation of movable property if the donation is not made by virtue of a Belgian notary deed. In such a case, the gift tax will only be due if the gift is voluntarily submitted to registration for tax purposes.

It is important to note, however, that donations that took place within a three-year period prior to the decease of the donor will be subject to a higher inheritance tax if the donations have not been registered in Belgium, as long as the donor is a Belgian resident for tax purposes at the time of his or her death.
1.20 Real estate transfer tax

In case of transfer of Belgian real estate by donation or decease, no real estate transfer duty is levied above the gift or inheritance tax due.

The transfer of Belgian real estate in return for payment as well as the transfer of most of the real estate rights in return for payment is, in principle, subject to a real estate transfer duty.

The transfer of real estate located abroad by or to a Belgian resident, by donation or in return for payment is not taxed in Belgium.

The transfer tax rates vary from 10% to 12.5%, depending on region. In some cases, a reduced tax rate (5% or 6%, depending on the region) may apply.

The tax is in principle computed at the fair market value of the real estate rights transferred. If the transfer is limited to the bare ownership and the usufruct is kept by the owner, the real estate transfer tax due will be computed at the fair market value of the full ownership.

Note that other rules can apply in case of transfer of Belgian real estate rights between joint-owners.

1.21 Endowment tax

There is no endowment tax in Belgium.

1.22 Social security

- National/social insurance contributions on employee income

  The payment of social security contributions is an obligation of the employer, both for the employer’s part and for the employee’s part. The contributions are calculated on the basis of the gross employment income of the employee.

  In general, the employer’s part amounts to 24.77%, consisting of:

  - 8.86% for pension coverage
  - 3.8% for health care
  - 2.35% for sickness compensation
  - 1.46% for unemployment coverage
  - 7% for child benefits
  - 0.3% for coverage for labor accidents
  - 1% for coverage for work-related diseases

  Moreover, the employer has to pay additional social security contributions: a wage restraint contribution (7.48%); a contribution for the closure of enterprises (0.2% or 0.23% depending on the number of employees); a contribution of 0.05% for child care; a contribution of 0.1% for groups of vulnerable people; and an additional contribution of 1.69% for enterprises employing at least 10 people.

  The part of the employee amounts to 13.07%, consisting of:

  - 7.5% for pension coverage
  - 3.55% for health care
  - 1.15% for sickness compensation
  - 0.87% for unemployment coverage

- Health/medical/dental care

  See Section 1.22.

- Retirement plans/pensions for employees

  See Section 1.22.
1.23 Pensions and tax-efficient savings

- Tax relief on pension contributions – standard: There is a tax deduction if some conditions are met.
- Tax relief on pension contributions – any specific relief to family business?: There is no specific relief.

1.24 Taxation of flow-through entities/partnerships/trust funds

The tax treatment of partnerships and other vehicles depends on whether or not they have legal counsel. Partnerships with legal counsel are subject to taxation themselves, whereas partnerships without legal counsel are treated as pass-through entities (tax transparency).

1.25 Exemptions in the law that specifically relate to family businesses

Transfer of family business by means of inheritance or donation.

Transfer of businesses and companies upon succession.

In the Walloon Region, the transfer of family businesses and companies upon succession is exempted from succession tax if certain conditions are met. In the Brussels-Capital Region, the transfer of family businesses and companies upon succession can benefit from the application of succession tax with a fixed tax rate of 3%. The Flemish Region foresees an applicable inheritance tax rate of 3% or a gift tax exemption if certain identical conditions are met.

The conditions that need to be fulfilled differ depending on the region (Flanders, Brussels, Wallonia) whose legislation applies

The Flemish Region

The Flemish Parliament has introduced a new legislation which includes an important reform of the registration and inheritance tax duties on the transfer of family owned businesses.

The new tax measures (article 140b is Registration Tax Code and article 60/1 and further of the Inheritance Tax Code) provide in an exemption of registration tax on the donation of shares of a family businesses if certain conditions are met. The inheritance tax exemption has been abolished and replaced by a reduced inheritance tax rate of 3% (for the spouse, legal cohabitant and direct descendant or descendant of the deceased) and 7% (in all other cases) instead of the normal progressive inheritance tax rates that can go up to 65%. Both the exemption of registration tax as the beneficial inheritance tax rates are subject to the same conditions.

The conditions for the application of the exemption on registration tax or the beneficial inheritance tax rates are briefly the following:

A “family company” is a company that has his actual management inside the European Economic Area (EEA) and whose purpose is to exercise an "industrial, commercial, craft or agricultural" activity or a "liberal profession." To determine the presence of the required activity, the first important parameter is the statutory objective of the company. Secondly, it will be important to demonstrate that this statutory objective is effectively exercised by the company. In most of cases this parameter will be proven by the yearly accounts of the company, in which the personnel costs and revenues are included.

A company qualifies as a “family company” if the donor (and his family) holds at least the full ownership of 50% of the shares in the company. An exception to the participation condition is made for companies held by two or three different families. In those cases, the donor or deceased (himself or together with his family) needs to hold the full ownership of at least 30% of the shares. This exception is only applicable if 70% of the shares (if two entrepreneurial families hold the majority of the shares) or 90% of the shares (if three entrepreneurial families hold the majority of the shares) is owned by the entrepreneurial families together.

The Flemish Government explicitly wanted to limit the application of the registration tax exemption or beneficial inheritance tax rate for companies that provide an added value to the Flemish economy. To avoid that companies that merely possess private property could qualify, the legislator foresaw a double standard that disqualifies companies from the new rule.

As such, companies that meet both the following two standards are disqualified from the new rule:

- The amount of money that is annually spent on wages, social charges and pensions is lower or equal to 1.5% of the total assets of the company.
- The value of the buildings and land, owned by the company exceeds 50% of the total assets of the company.

However, even if both standards are met, the tax payer has the possibility to prove that it really concerns a family company that performs a business which provides an added value to the economy.

Given that holding companies may often not meet to the activity condition as set out above, the legislator foresaw a specific exception for holding structures. When working with a holding company, the new rule only applies when the holding company directly holds at least 30% of the shares of at least one subsidiary which is situated within the EEA and which performs a real economic activity.
1.25 Exemptions in the law that specifically relate to family businesses?

When it concerns a passive holding company that meets the exception and qualifies, the value on which the registration tax exemption or beneficial inheritance tax rate is applicable is limited to the value of the shares of all the active (grand)daughter companies situated within the EEA. As such, the value of the reserves or any other assets present in the top placed passive holding company will not benefit from the new rule. However, if it is possible to prove that the holding company performs an economic activity (e.g., management activities or intra-group activities such as bookkeeping, IT, IP, etc.) and doesn't meet the two above-mentioned disqualifying standards, it will be the total value of this holding company that will be taken into account for the application of the new rules, without analyzing the underlying companies.

Only the shares that represent a part of the capital and which have voting rights will qualify for the exemption of registration tax or the reduced inheritance tax rates.

Contrary to the former legislation the new rule will no longer be applicable on debt-claims by the family on their family company.

After the acquisition (by donation or by decease) of the shares of the family company, some conditions should be met to be able to keep the advantages of the new rule. The family business or company must continue its activity without interruption for a period of at least three years after the donation or the decease. It’s not obliged to keep the same activity, but there is only an obligation to have an uninterrupted activity within the company for three years. This does not mean that the company cannot be sold during this three-year period. As long as the activity is continued (even by a third person), no harm is done. During this period of three years, any capital decrease that is performed will also be taxed at the registration or inheritance tax rates that would have applied if the new rule wouldn't have applied.

Please note that in the past, registration tax on the donation of shares in a company was often avoided by performing the donation in front of a foreign (e.g., Dutch) notary public. The only risk that had to be taken into account was that the donation would still be subject to inheritance tax if the donor would die within a “suspicious” period of three years. Given that the risk of death within three years could in most cases easily be covered with a life insurance policy, this seemed like a valid solution. The new legislation changed this so-called suspicious period. As from 1 January 2012, the transfer of family businesses and companies is subject to a seven-year suspicious period for the levying of inheritance tax, which makes it a lot more expensive to cover the risk with a life insurance policy.

For donations that have been done before 1 January 2012, the suspicious period remains three years.

Walloon Region

In the Walloon Region, the net value of a family business can also be exempted from inheritance tax. However, please note that different rules apply than in the Flemish Region.

With respect to the family companies (of which the registered office has to be located in any country that is part of the EEA) the following conditions need to be met:

- Economical condition: the company and its subsidiaries must conduct their main business in industrial, commercial or agricultural activity, a craft industry, forestry or a liberal profession, on a consolidated basis for the current financial year of the company at the time of the decease, as well as for each of the last two financial years of the company prior to the financial year of the decease.

- Participation condition: the deceased and his or her spouse should own at least 10% of the voting rights of the company's shares. If their voting rights do not reach 50% of the totality of all voting rights, in addition to the 10% condition, there will have to be a shareholders' agreement in which at least 50% of the totality of all voting rights participates, which ensures the continuation of the business for at least five years after the decease.

- Employment condition: the company must have employees, but only one employee is sufficient, regardless of the amount of salary that has been paid out.

In order to fully maintain the exemption, the following conditions should be met during a period of five years after the decease:

- Employment condition: the amount of employees should never be less than 75% of the amount at the time of death.

- The equity of the business or the capital of the company should be maintained.
1.25 Exemptions in the law that specifically relate to family businesses?

Brussels-Capital Region

In the Brussels-Capital Region, a favorable inheritance tax rate of 3% applies to small or medium-size enterprises employing no more than 250 employees, with revenue of less than €40 million a year or a total balance that does not exceed €27 million a year. On top of these two conditions, the special tax regime does not apply if 25% or more of the capital or voting rights are owned by a large company that would not meet these conditions.

With respect to these family companies (the registered office of which must be located in any country that is part of the EEA), the following conditions need to be met:

- Economical condition: the company must conduct its main business in industrial, commercial or agricultural activity, a craft industry or a liberal profession at the time of the decease.
- Participation condition: the deceased should own at least 25% of the voting rights of the company's shares. If their voting rights do not reach 50% of the totality of all voting rights, in addition to the 25% condition, there will have to be a shareholders’ agreement in which at least 50% of the totality of all voting rights participate, which ensures the continuation of the business for at least five years after the decease.
- Employment condition: in the Brussels-Capital Region, no minimum employment applies.

In order to fully maintain the exemption, the following conditions should be met during a period of five years after the decease:

- Employment condition: the level of employment must never be less than 75% of the level at the time of death. This condition is checked year after year. If the employment level falls below 75%, the company will be fully subject to inheritance tax.
- The equity of the business or the capital of the company should be maintained.

1.26 Are there any business incentives in your country that are specific to

SMEs

Small companies (as defined by company law) benefit from some additional incentives compared to large companies:

- Additional expenses relating to the acquisition of assets may be fully imputed in the year of acquisition and must not be spread in the same rhythm as the amortizations of the assets.
- The first amortization of assets in the year of acquisition may be imputed in full and not only pro rata the remaining days of the year.
- The rate of the notional interest deduction is increased with 0.5%.
- Small companies benefit from a 120% deduction for investments in security.
- Small companies benefit from the investment deduction for investments in security.
- Small companies may create a tax-free investment reserve.
- Capital gains realized on shares are tax exempt for small companies provided certain conditions are fulfilled (large companies are subject to a tax of 0.412% on capital gains on shares in the same circumstances).
- Small companies are not subject to tax increases in the first three years in case of insufficient prepayments.
- The general requirement for the patent income deduction that the R&D is performed by a research center of the company that forms a branch of activity does not apply to small companies.
1.26 Are there any business incentives in your country that are specific to family businesses?  
- Yes. No.

1.27 Tax treatment of losses made by a family business  
- Are there any available loss reliefs that are specific to family businesses?  
  - Yes. No.
- Are there any available loss reliefs that are specific to SMEs?  
  - Yes. No.

Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- **Calculation 1:** The business makes a profit before tax of €2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

<table>
<thead>
<tr>
<th>(£)</th>
<th>(£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate tax</td>
<td>2,000,000 @ 33.99% = 679,800</td>
</tr>
<tr>
<td>Withholding tax on dividend</td>
<td>1,320,200 @ 25% = 330,050</td>
</tr>
<tr>
<td>Total Tax</td>
<td>679,800 + 330,050 = 1,009,850</td>
</tr>
<tr>
<td>Effective tax rate</td>
<td>1,009,850/2,000,000 = 50.49%</td>
</tr>
</tbody>
</table>

Note: Under certain conditions the withholding tax rate on dividends is 15%.

- **Calculation 2:** The business makes a profit before tax of €500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

<table>
<thead>
<tr>
<th>(£)</th>
<th>(£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate tax</td>
<td>500,000 @ 33.99% = 169,950</td>
</tr>
<tr>
<td>Withholding tax on dividend</td>
<td>330,050 @ 25% = 82,512.50</td>
</tr>
<tr>
<td>Total Tax</td>
<td>169,950 + €82,512.50 = 252,462.50</td>
</tr>
<tr>
<td>Effective tax rate</td>
<td>252,462.50/€ 500,000 = 50.49%</td>
</tr>
</tbody>
</table>

Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

The profits of a family business run as a corporation are generally taxed in the corporate income tax system at a rate of 33.99%.

Profits made without using a corporate veil are taxed in the personal income tax system at progressive rates, the highest of which amounts to 50% (to be increased with the additional municipality tax).

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

Capital gains on shares realized by an individual are in general not taxable (unless the capital gain constitutes speculative income, in which case the capital gain is taxed at a flat rate of 33%). However, if the shares in the Belgian company are transferred to a nonresident legal entity which is located outside of the EEA, the capital gain is taxed at 16.5%. Dividends paid to the shareholder are in principle taxed at 25%. Under certain conditions a reduced rate of 15% may apply.
Section 4: Succession planning

4.1 Life insurance

Inheritance tax can be levied on the benefit paid by an insurance company under a life insurance policy held by a deceased if the deceased is still Belgian resident at the time of death and the benefit is paid to the beneficiary at the time of the deceased, after the decease or within the three-year period prior to the decease.

Note however that some exemptions or reductions can apply, among others for group insurance entered into by the deceased’s employer if some specific conditions are met.

4.2 Are there any tax consequences for dealing with shares, such as shareholder agreements or buy/sell agreements?

A specific legislation does exist for the transfer of a family business by means of inheritance or gift.

4.3 Estate tax

Belgium has several interesting estate planning opportunities, such as:

Donations

In the three regions of the country, it is possible to donate movable property without any gift tax by means of:

- Donations by manual delivery or informal donations (only advisable if the full ownership is donated, not in cases where the donation is limited to the bare ownership or the usufruct).
- Donations before a foreign notary (e.g., a Dutch or Swiss notary).

An important disadvantage of informal gifts or gifts before a foreign notary is that the transferred ownership will be subject to succession tax if (1) the donor dies within a period of three years following the date of the gift and (2) the gift has not been registered in Belgium for tax purposes.

However, it is possible to limit this risk by means of insurance or a specific “in-extremis” backup plan allowing for these donations to be registered in time, should the donor’s life come to an end within the three-year period following the donation.

Please note that it is possible to make a donation subject to different conditions and burdens.
4.4 Pension plans
No specific legislation exists.

4.5 Trusts, foundations and private purpose funds
Belgian law does not acknowledge the concept of trusts. Foreign trusts are recognized in the Belgian international private law code under strict conditions. On no account is a trust applicable to Belgian immovable property.

Several legal authors have tried to analyze the tax consequences from a Belgian perspective, but their conclusions are still ambiguous.

In different decisions, the Belgian tax authorities have confirmed being of the opinion that gift tax or inheritance tax are eventually chargeable on distributions made by a foreign trust set up by a Belgian resident to Belgian residents after the decease of the settler.

Belgian foundations are often used for philanthropic purposes or to keep a family collection (i.e., art) together.

4.6 Wills/intestacy/family charters
A will is a written unilateral legal document that regulates the attribution of the different elements of an individual's estate after his or her death. Belgium will normally accept the formal validity of a will drawn under one of the following laws of the deceased at the time of the draft of the will or at the time of death:

- Domicile
- Nationality
- Place of residence
- For immovable property, the place where the immovable property is situated
- The place where the deceased made his or her will

Whether an individual has the legal capacity to make the dispositions in the will is generally governed by the law of the deceased's citizenship.

Belgian civil law recognizes three different forms of a will:

- A holographic will (handwritten)
- An authentic will (before a notary public)
- An international will

Each type of will has its own legal form of wordings, advantages and disadvantages. If there is no valid will at the time of death, the deceased's estate shall pass on according to predetermined rules known as the intestate succession. The intestate succession should not be confused with the forced heirship rules; the intestate succession governs the division and the settlement of the estate between legal heirs in the absence of a will, while the forced heirship rules aim at the protection of some of these legal heirs (see above). In other words, not all legal heirs are forced heirs.

The intestate succession is governed by a system that divides the possible intestate heirs into different orders depending on how they relate to the deceased. The closest applicable order excludes the more distant orders.

<table>
<thead>
<tr>
<th>Order</th>
<th>Heirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>First order</td>
<td>Children and other descendants</td>
</tr>
<tr>
<td>Second order</td>
<td>Parents (together with brothers and sisters)</td>
</tr>
<tr>
<td>Third order</td>
<td>All other ascendants (grandparents, great-grandparents)</td>
</tr>
<tr>
<td>Fourth order</td>
<td>All other collateral heirs (uncles, aunts and their descendants)</td>
</tr>
<tr>
<td>Further heirs</td>
<td>More remote relatives and descendants</td>
</tr>
<tr>
<td>No heirs</td>
<td>The Belgian state</td>
</tr>
</tbody>
</table>
4.6 Wills/intestacy/family charters

Within the same order, the closest heir in principle excludes the rest of the heirs (for example, the children exclude the grandchildren). However, the Civil Code contains several exceptions to this rule.

In Belgium, the surviving spouse is a legally recognized heir, notwithstanding that the surviving spouse is not included in one of the above orders; special rules govern his or her position.

The succession rights of the surviving spouse will depend on the other heirs of the deceased.

<table>
<thead>
<tr>
<th></th>
<th>The usufruct of the total estate</th>
<th>The other heirs receive</th>
</tr>
</thead>
<tbody>
<tr>
<td>If there are descendants</td>
<td>The usufruct of the total estate</td>
<td>The bare ownership of the total estate</td>
</tr>
<tr>
<td>If there are other heirs than descendants</td>
<td>The full ownership of the deceased's part in the communal estate of the spouses (if any) and the usufruct of the deceased's estate</td>
<td>The bare ownership of the total estate</td>
</tr>
<tr>
<td>If there are no heirs</td>
<td>The full ownership of the total estate</td>
<td>The bare ownership of the estate of the deceased</td>
</tr>
</tbody>
</table>

Family charters are becoming more and more popular in Belgium; however, no specific legislation exists. The content of a family charter is not legally binding for the family members.

4.7 Passing on a business

In the Walloon region, upon succession the transfer of family businesses and companies is exempted from succession tax when certain conditions are met. In the Brussels-Capital Region, the transfer of family businesses and companies upon succession can benefit from the application of succession tax with a fixed tax rate of 3%. The Flemish Region foresees an applicable inheritance tax rate of 3% or a gift tax exemption if certain identical conditions are met.

The conditions that need to be fulfilled differ depending on the region (Flanders, Brussels, Wallonia) whose legislation applies. The rules are also applicable if shares of companies in the EU are gifted or inherited.

4.8 Private equity

Specific legislation/tax treatment of income derived from private equity (PE) activity

<table>
<thead>
<tr>
<th></th>
<th>N/A.</th>
</tr>
</thead>
</table>

Equivalent PE ratio

<table>
<thead>
<tr>
<th></th>
<th>N/A.</th>
</tr>
</thead>
</table>

Others

<table>
<thead>
<tr>
<th></th>
<th>N/A.</th>
</tr>
</thead>
</table>

Section 5: Tax policy environment

5.1 Policy environment relating to family business

The policy decision makers in general aim to stimulate the environment for family businesses and their continuity.

5.2 Specify change in the direction of tax policy in the last three years

In the framework of the continuity of these businesses, there is a tendency to privilege (for transfer tax purposes) the transfer during the life of the owner over the transfer of the business upon the death of the owner. In the past, the transfer upon death was treated more favorably than the transfer during the life of the owner. The reasoning behind the switch is the aim to stimulate a timely transfer in view of the continuity in the management of the company.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners

For transfer tax and inheritance tax purposes, the transfer of family businesses is treated favorably.
### Section 6: Tax administration and enforcement issues

#### 6.1 Is there a specific unit within your tax administration that deals specifically with:

<table>
<thead>
<tr>
<th>Area</th>
<th>Yes/No</th>
</tr>
</thead>
<tbody>
<tr>
<td>High net worth individuals (HNWIs)</td>
<td>No.</td>
</tr>
<tr>
<td>SMEs</td>
<td>No.</td>
</tr>
<tr>
<td>Family businesses</td>
<td>No.</td>
</tr>
<tr>
<td>Large corporate taxpayers</td>
<td>No.</td>
</tr>
<tr>
<td>Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses</td>
<td>No.</td>
</tr>
</tbody>
</table>

#### 6.2 Specify enforcement focus areas or defined programs that might touch a family business

No.

#### 6.3 Specify tax enforcement focus on any particular industry or profession

The tax authorities have announced to target company directors and employees who deduct their actual expenses (instead of applying the lump sum deduction) and professional traders who trade via the internet (and pose as occasional/non-professional traders).

Other targets of the tax authorities aim to combat certain abuses of tax benefits, without being linked to a specific profession.

#### 6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners

No.

#### 6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

A voluntary disclosure system (tax amnesty) exists in Belgium, called the regularization procedure. Please note that in Belgium, this procedure has existed since 2005. The Belgian legislator has adapted the old procedure since 15 July 2013. Since this date, the procedure became much stricter and the legislator reported that this new procedure would be the last possibility to voluntary disclose in Belgium. The end date of this procedure is 31 December 2013. After this date, the Belgian legislator will no longer accept a voluntary disclosure. For that reason we will not go into more technical detail since the rules are very complex.

The voluntary disclosure system was very successful. Based on the information provided by the tax authorities it has resulted in 2013 (until the beginning of September 2013) in €830 million of extra revenues for the Belgian state.

#### 6.6 Are there any specific pre-filing processes that can be leveraged by:

- HNWIs: No.
- Family businesses: No.

#### 6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

In reaction to the Organisation of Economic Co-operation and Development’s (OECD) position regarding the application of Article 26 (exchange of information) of the model convention in treaties entered into by Belgium, Belgium began renegotiating all treaties in 2009. This has resulted in more than 40 new signed treaties (the vast majority of which have not yet become effective). It is expected that most of these treaties will enter into effect in the upcoming years.
### Country name

<table>
<thead>
<tr>
<th>Brazil</th>
</tr>
</thead>
</table>

### Brazil

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### Section 1: The accumulative tax burden on family business

#### 2013 tax rates

<table>
<thead>
<tr>
<th>1.1 Corporate income tax (national and sub-national combined)</th>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Highest marginal rate</td>
<td>The current rate is 34% (15% income tax, 10% surtax of 10% on annual taxable profits exceeding BRL240,000 and 9% social contribution on net income).</td>
<td>No.</td>
</tr>
</tbody>
</table>
1.1 Corporate income tax (national and sub-national combined)

- **Highest rate for small and medium enterprises (SMEs) / small business**
  - Presume Profit System – Taxpayer can determine corporate taxes based on a deemed profit based on fixed percentages of gross sales and service receipts (8% to 32% depending on the type of activity), since the annual amount is less than BRL78m. This system can present income tax and social contribution from 3.08% to 10.88% of the annual revenue. Passive income and capital gain are not included in the presumed taxable income.

- **Special treatment of SMEs / small business (other reliefs, etc.)**
  - Simple system – 4% to 17.42% of total tax burden, depending on the type of activity (companies under this regime – those with annual gross revenues of up to BRL3,600,000 – to pay a single tax in place of the following federal, state and municipal taxes).
  - Exemption from federal taxes for startup IT companies with four employees and quarterly gross revenue of BRL30,000.

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

Yes. Brazil has enacted corporate tax reform, Law 12.973 of 13 May 2014 (the Law), which is the broadest and deepest reform to Brazil’s corporate income tax system since the enactment of Decree-Law 1.598 of 26 December 1977. The Law was a conversion of Provisional Measure (PM 627) introduced in November 2013.

Law 12.973 contains a long expected set of rules that not only revoked the Transitional Tax Regime (TTR), but also added new rules aimed at permanently aligning the Brazilian tax system to the accounting model set forth by Law 11,638/2007. This new rule disciplines the adjustments arising from the adoption of new accounting methods and criteria due to the convergence of Brazilian GAAP (Generally Accepted Accounting Principles) to IFRS (International Financial Reporting Standards).

In addition, it established new tax rules on the treatment of foreign profits accrued abroad by legal entities, resident or domiciled in Brazil, as an attempt to reduce litigation on the matter and add increased legal security for Brazilian investors doing business abroad.

The new rules are subject to election for 2014 but are mandatory for 2015. It has relevant impacts relating to dividends, interest on net equity calculation, goodwill deductibility, leasing treatment etc. As mentioned, the changes are broad and deeply affect relevant topics.

* All rates and regulations listed in Brazil are valid for years 2013 and 2014, unless otherwise noted.
### 1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal allowance</td>
<td>According to Article 39 of Decree 3.000/1999 (Income Tax Code), there are some allowances that can be considered as tax exempt: temporary lodging; meal; transport; uniform or special clothes for work; private pension; retirement plan; and medical expenses. This may occur if supported by the employer.</td>
</tr>
<tr>
<td>Minimum rate of personal income tax (PIT)</td>
<td>The current rate is 7.5%.</td>
</tr>
<tr>
<td>Highest marginal rate of PIT</td>
<td>The current rate is 27.5%.</td>
</tr>
<tr>
<td>Any special surtaxes</td>
<td>No.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

No.

### 1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
</table>
| Standard rate | Federal VAT (IPI) – Noncumulative – based on international harmonized tariff classification code. Average rate: 10% (no ceiling, no floor and focus on essentiality).  
State VAT (ICMS) – Noncumulative – 18% or 17% (intra-state ops); 12% or 7% (interstate ops).  
Import duty (II) – Based on international harmonized tariff classification code. The average is 15%.  
Municipal service tax (ISS) – The current rate is 2% to 5%.  
PIS and COFINS social contributions – Cumulative and noncumulative rates: 3.65% or 9.25%, respectively. | N/A. |
| Are there any special reliefs or exemptions for a family business? | No. | N/A. |

### 1.4 Property taxes

| | |
| Does a family business receive any relief on property taxes not granted to other types of corporation? | No. |
1.5 Capital gains tax (CGT)

- 2013 rate – companies: N/A.

- 2013 rate – individuals: Gains realized on the sale of capital assets should be taxed at 15% flat, regardless of whether the underlying assets are used in a trade or business. Transactions performed out of the Brazilian Stock Market (BOVESPA) limited to BRL35,000 within the same month is exempted from capital gains taxation. The ceiling is capped at BRL20,000 for transactions with the BOVESPA.

- Reliefs/exemptions: A special exemption is granted to individuals selling their only residence if they have owned it for at least five years and if the sale price does not exceed BRL440,000. Gains derived from sales of residential real properties are exempt from tax if the seller uses the proceeds from the sale to buy other residential real properties in Brazil within 180 days from the first contract execution date.

1.6 Tax on dividends from ordinary shares

A. For the business: There is a tax exemption on the distribution.

B. For the owners of the business: Dividends distributed are tax exempted at the shareholder level if net income is calculated based on 2007 Brazilian GAAP. There has been controversy on whether this exemption should also apply where net income is determined with reference to the IFRS rules Brazil adopted in 2008.

1.7 Tax on dividends from preferential shares

A. For the business: See Section 1.6 A.

B. For the owners of the business: See Section 1.6 B.

1.8 Tax treatment of interest on a loan from the shareholders

A. For the business: The payer business may obtain a tax deduction assuming the expense is necessary, ordinary and properly supported by documents. Transfer pricing rules and thin capitalization caps are also applied when the shareholders are nonresidents.

B. For the owners of the business: Interest is subject to a 15% withholding tax (WHT) assuming the case of a nonresident. The rate is 25% if the recipient is a resident in a LTJ for Brazilian tax purposes. If the beneficiary is a resident, local progressive rates for fixed income will apply.

1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

A. For the business: See Section 1.8 A.

B. For the owners of the business: The tax treatment is subject to ordinary income taxation at rates ranging from 0% to 27.5% for resident taxpayers. Nonresident taxpayers will be subject to 15% WHT or 25% WHT when the residence is a LTJ under Brazilian tax law.
1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

A. For the business: Assuming intellectual property (IP) of industrial property nature, payer will be subject to a tax deduction limit that ranges between 1% to 5% of net sales (less certain items and sales taxes) and remittance cannot exceed this limit. Registration of IP agreement with National Institute of Industrial Property ensures both deduction and remittance to be made. If IP is of a copyright nature then transfer pricing will apply (assuming an intercompany) and deduction will be subject to this and evidences that the expense is necessary, ordinary and supported by documents.

B. For the owners of the business: IP income should be subject to ordinary income taxation at rates ranging from 0% to 27.5% for resident taxpayers. For nonresidents, the WHT is 15% (25% if nonresident is in a LTJ). Additional taxation on the outbound payment takes place and requires analysis according to the particular details of the transaction.

1.11 Tax treatment of interest paid on bank debt by a family business

See Section 1.8.

1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

See Section 1.10.

1.13 Tax treatment of rental payments made by a family business to third parties for real estate

See Section 1.9.

1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group

Tax treatment remains the same as discussed above but needs to observe fair market value (FMV) of the transaction (rules for domestic transactions and transfer pricing for cross-border).

1.15 Does your country provide for a deemed deduction on equity and/or debt?

Yes, provided that the concept of necessary expenses, transfer pricing rules and thin capitalization rules are observed.

1.16 Is the retention of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

No.

1.17 Wealth tax

- 2013 characteristics and rate N/A.
- Is there an exemption for shares owned by a family that owns a business? No.
1.18 Inheritance tax/estate tax

State tax on causa mortis wealth transfer and donation (referred to as ITCMD)

Heritage rights should be exempted from income taxation in the country of residence. However, state tax on causa mortis wealth transfer (referred to as ITCMD) should be enforceable to surviving family members residing in Brazil or to donees (in case of donations). The ITCMD is a state tax on transfers of goods on death-related inventories or donations (in case of living individuals), which is payable on movable and immovable property (e.g., real estate or cash lump sums). Nevertheless, it is important to mention that the maximum applicable rate is capped at 8%.

Tax assessment

The procedures, deadlines and rates vary between the Brazilian states and cities. For a general overview, we have listed below information about São Paulo and Rio de Janeiro.

In São Paulo, ITCMD should levy:

- ‘Causa mortis’ transfers: Tax should be paid within 30 days after the decision that ratifies the calculation or after the order that determines its payment, since this term does not exceed 180 days from the start of the succession process.
- Gift transfers: Tax should be collected before the conclusion of the act or contract. In the case of sharing or division of common property, when due, the tax is paid within 15 days of decision res judicata or prior to the issuance of the notary registration.
- Transfers made in accordance to judicial order, due to court decision or outside the state: Tax should be paid within 30 days from the term signature date, the decision res judicata or the conclusion of the act or contract.

In Rio de Janeiro, ITCMD should levy:

- ‘Causa mortis’ transfers: Tax should be paid within 60 days after the decision that ratifies the calculation.
- Temporary succession: Tax should be paid within six months after the sentence has been handed down to determine their openness.
- In the donation of property or rights relating to it: If its donation instrument is drawn up in another state, the ITCMD must be paid before the presentation to the public registry jurisdiction within the territory of Rio de Janeiro.

Determination of the tax basis

The tax legislation of the 27 federal states (including the Federal District) contains specific provisions on the valuation of assets transferred as well as on tax rates to apply. Reference needs to be made to the local cantonal rules in any particular case.

1.19 Gift tax

See inheritance topic in Section 1.18.

1.20 Real estate transfer tax

Municipal tax on real estate transfer (referred to as ITBI)

While alive, the owner may freely transfer his or her Brazilian property to anyone. The transfer of real estate (property) between people is subject to the Imposto de Transmissão de Bens Imóveis por Ato Oneroso Inter Vivos (referred as to ITBI), which is a municipal tax levied on transfers of real estate and rights to real estate. The rates that should apply on such taxation vary from city to city in Brazil and the ITBI should be calculated based on the good’s value. However, the rates must respect the principle of non-coniscation, stipulating non-abusive rates (e.g., the rate in Rio de Janeiro is from 0.5% to 2% of the real estate value and in São Paulo the rate is 2% of the real state value plus an additional of 0.5% over the real state value, limited to BRL68,843.97, when the real state is financed in the SFH, PAR or HIS systems).

In this sense, the property may be given freely by the owner to anyone, prior to his or her death, provided that it fulfills the following assumptions:

- All taxes involved are duly paid.
- The transfer is made by a notary public if it involves real estate (under Brazilian law, ownership of real estate is only obtained after registration of the deed with the Real Estate Registry).
- The gift made between ascendants and descendants or spouses is construed as an advance payment of inheritance.
- The person who made the gift has separated some properties or income sufficient for his or her subsistence.
1.20 Real estate transfer tax

Tax assessment

The procedures, deadlines and rates vary between the Brazilian states and cities. For a general overview, we have listed below information about São Paulo and Rio de Janeiro.

In São Paulo, ITBI should be levied:
- Before the conclusion of the act or contract, if it is a public instrument.
- Within 10 days if the act or contract is affected by a private instrument or in the transmission made by a court decision, as of the res judicata of this decision, or as of the date of the calculation homologation, whichever happens first.

In Rio de Janeiro, ITBI should be levied:
- Within 30 days from the date specified in the instrument for the actual payment of the total price of the asset, under penalty of fines and other penalties.

Determination of the tax basis

The tax legislation for all the municipalities (including the Federal District) contains specific provisions on the valuation of assets transferred as well as on tax rates to apply. Reference needs to be made to the local cantonal rules in any particular case.

1.21 Endowment tax

There is no endowment tax in Brazil.

1.22 Social security

- National/social insurance contributions on employee income

Individuals earning remuneration from a Brazilian source are subject to local social security tax, which is withheld by the payer. Contributions are levied on employees at rates ranging from 8% to 11%, depending on the level of remuneration, with a maximum required monthly contribution of BRL482.9. Employers’ contributions are calculated at approximately 26.8% to 28.8% on the monthly payroll, without limit.

Self-employed individuals’ contributions are calculated at a rate of 20% of base salary. The base salary is fixed by the government, and its value depends on when the self-employed individual joined the social security system. The maximum monthly contribution for a self-employed person is BRL878.05.

<table>
<thead>
<tr>
<th>Regular social security contribution - 2014</th>
<th>Rate %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary income (BRL)</td>
<td></td>
</tr>
<tr>
<td>Up to 1,317.07</td>
<td>8</td>
</tr>
<tr>
<td>From 1,317.08 to 2,195.12</td>
<td>9</td>
</tr>
<tr>
<td>From 2,195.13 to 4,390.24</td>
<td>11</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Additional social security contribution - 2014</th>
<th>Rate %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary income (BRL)</td>
<td></td>
</tr>
<tr>
<td>724.00</td>
<td>5*</td>
</tr>
<tr>
<td>724.00</td>
<td>11</td>
</tr>
<tr>
<td>724.00 to 4,390.24</td>
<td>20</td>
</tr>
</tbody>
</table>

* Rate exclusive of individual micro entrepreneurs and optional insured devoted exclusively to domestic work within their residence.
1.22 Social security

<table>
<thead>
<tr>
<th>Category</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Health/medical/dental care</td>
<td>Those benefits may be granted to employees as part of the employer’s total compensation package strategy. The benefits should be exempted from income taxation provided the pertinent requirements set forth by the income tax code (Article 39, Decree 3000/99) are duly met.</td>
</tr>
<tr>
<td>Retirement plans/pensions for employees</td>
<td>Corporate pension schemes may be granted to employees as part of the employer’s total compensation package strategy. Pension benefits should be subjected to deferred income taxation upon withdrawal at rates ranging from 7.5% to 27.5%.</td>
</tr>
</tbody>
</table>

1.23 Pensions and tax-efficient savings

<table>
<thead>
<tr>
<th>Category</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax relief on pension contributions – standard</td>
<td>There is a tax savings of up to 12% on the total taxable income.</td>
</tr>
<tr>
<td>Tax relief on pension contributions – any specific relief to family business?</td>
<td>No.</td>
</tr>
</tbody>
</table>

1.24 Taxation of flow-through entities/partnerships/trust funds

As a general rule, the owners of these entities are subject to regular taxation.

1.25 Exemptions in the law that specifically relate to family businesses

No.

1.26 Are there any business incentives in your country that are specific to

<table>
<thead>
<tr>
<th>Category</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>SMEs</td>
<td>See Section 1.1.</td>
</tr>
<tr>
<td>Family businesses</td>
<td>No.</td>
</tr>
</tbody>
</table>

1.27 Tax treatment of losses made by a family business

<table>
<thead>
<tr>
<th>Category</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are there any available loss reliefs that are specific to family businesses?</td>
<td>Tax losses may be carried forward indefinitely, but can only offset up to 30% of the company’s taxable income for a tax period. No carryback is allowed. Tax losses may be jeopardized if a company experiences a change in business activity and ownership control between the period in which losses were generated and the period in which losses would otherwise be used to offset taxable income. In general, non-operating tax losses can be offset only against non-operating gains. In a corporate restructuring involving a merger, the tax losses of the merged company must be written off.</td>
</tr>
<tr>
<td>Are there any available loss reliefs that are specific to SMEs?</td>
<td>No.</td>
</tr>
</tbody>
</table>
Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

• Calculation 1: The business makes a profit before tax of BRL250 million and pays taxes on this profit. The after tax amount is then distributed to the same shareholder in the same tax year.

<table>
<thead>
<tr>
<th>Corporate Income Taxation</th>
</tr>
</thead>
<tbody>
<tr>
<td>EBT</td>
</tr>
<tr>
<td>Income tax rate</td>
</tr>
<tr>
<td>Surtax rate (on the annual amount that exceeds BRL240k)</td>
</tr>
<tr>
<td>Social Contribution tax rate</td>
</tr>
<tr>
<td>Income tax due</td>
</tr>
<tr>
<td>Surtax due</td>
</tr>
<tr>
<td>Social Contribution tax due</td>
</tr>
<tr>
<td>Total tax burden at 34%</td>
</tr>
<tr>
<td>Distributable amount of dividends</td>
</tr>
<tr>
<td>WHT Taxation on Dividend Distribution</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Individual Income Taxation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount of dividends received by individual (partner)</td>
</tr>
<tr>
<td>Taxation of dividends at the level of the individual</td>
</tr>
</tbody>
</table>

• Calculation 2: The business makes a profit before tax of BRL5 million and pays taxes on this profit. The after tax amount is then distributed to the same shareholder in the same tax year.

<table>
<thead>
<tr>
<th>Corporate Income Taxation</th>
</tr>
</thead>
<tbody>
<tr>
<td>EBT</td>
</tr>
<tr>
<td>Income tax rate</td>
</tr>
<tr>
<td>Surtax rate (on the annual amount that exceeds BRL240k)</td>
</tr>
<tr>
<td>Social Contribution tax rate</td>
</tr>
<tr>
<td>Income tax due</td>
</tr>
<tr>
<td>Surtax due</td>
</tr>
<tr>
<td>Social Contribution tax due</td>
</tr>
<tr>
<td>Total tax burden at 34%</td>
</tr>
<tr>
<td>Distributable amount of dividends</td>
</tr>
<tr>
<td>WHT Taxation on Dividend Distribution</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Individual Income Taxation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount of dividends received by individual (partner)</td>
</tr>
<tr>
<td>Taxation of dividends at the level of the individual</td>
</tr>
</tbody>
</table>

Has this effective tax rate increased, decreased or stayed the same in the last three years? No.
### Section 3: Tax treatment of family businesses and other issues

<table>
<thead>
<tr>
<th>3.1</th>
<th>Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3.2</th>
<th>Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3.3</th>
<th>Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3.4</th>
<th>Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>Fully publicly listed? There is no difference for tax purposes. Public listed entities are subject to specific rules of the Brazilian Security Commission.</td>
</tr>
<tr>
<td>B.</td>
<td>Partly publicly listed? There is no difference for tax purposes. The Brazilian tax legislation provides for an income tax exemption on capital gains for investments in BOVESPA. This rule applies to a nonresident family business or any other nonresident that observe the requirements of the tax legislation.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3.5</th>
<th>In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td></td>
</tr>
</tbody>
</table>

### Section 4: Succession planning

<table>
<thead>
<tr>
<th>4.1</th>
<th>Life insurance</th>
</tr>
</thead>
<tbody>
<tr>
<td>None.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4.2</th>
<th>Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?</th>
</tr>
</thead>
<tbody>
<tr>
<td>It is possible that in a company’s Articles of Incorporation (Ltda.), Bylaws (S/A) and in the respective shareholders’ agreement provide specific rules in case of transfer or liquidation of the shares (e.g., preemptive rights; continuation of the company by its heirs; prohibition of the entrance of third parties; payment conditions of the liquidated shares).</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4.3</th>
<th>Estate tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Techniques exist for some assets but require analysis on case-by-case basis.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4.4</th>
<th>Pension plans</th>
</tr>
</thead>
<tbody>
<tr>
<td>There is specific legislation for pension plans, with some tax benefits for individuals.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4.5</th>
<th>Trusts, foundations and private purpose funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brazilian law provides a variety of private funds to invest in several assets, such as shares, real estate, in the stock market and others.</td>
<td></td>
</tr>
<tr>
<td>For the purpose of investing in family business, we have the Participation Investment Fund (FIP or Fundo de Investimento em Participações), which may invest only in S.A. (Corporations), having a specific regulation by the Brazilian Securities Commission (CVM). All FIPs must be registered with such authority.</td>
<td></td>
</tr>
</tbody>
</table>
4.6 Wills/intestacy/family charters

- State tax on causa mortis wealth transfer (referred to as ITCMD): heritage rights should be exempted from income taxation in the country. However, the ITCMD should be enforceable to surviving family members residing in Brazil, or by the donee. The ITCMD is a state tax on transfers of goods on death-related inventories or donations, which is payable on movable and immovable property (e.g., real estate or cash lump sums).

- However, while alive, the owner may freely gift his/her Brazilian property to anyone. The transfer of real estate between people or land is subject to the Imposto de Transmissão de Bens Imóveis por Ato Oneroso Inter Vivos (referred to as ITBI), which is a municipal tax levied on transfers of real estate and rights to real estate. The rates that should apply on such taxation vary from city to city in Brazil and the ITBI should be calculated based on the good’s value.

4.7 Passing on a business

Brazilian entities may adopt some strategies for the succession, such as:

- Incorporation of a holding company to control a family business is a succession option. In several cases, creating family holdings prevents a family dispute between its members or its estate from interfering in the family business. Thus, with a family holding the business can be done normally while the dispute is settled.

- Another strategy is structuring of mixed entities in order to organize and facilitate the family business’ resources.

- Donation of assets to the heirs with a lifetime reserve of enjoyment is also an option. For family business it is possible to donate the shares to the heirs, providing a full and lifelong usufruct to the recipient party. This course avoids the event of dispute of corporate participation by the heirs after the death of the original owner, because the distribution was already decided during the deceased's life. For example, a donation agreement may give to the donee with the most general management powers of the company where the shares were donated.

Brazilian law establishes two kinds of heirs: forced heirs, determined by law (i.e., spouse and all ascendants and descendants); and heirs at law, chosen by the testamentary to determined heirs. After the individual’s death, the succession is opened after being determined in court how the legacy will be distributed to the heirs. In a family business, the shares held by the deceased shareholder shall be held by the deceased’s estate until the distribution of the legacy is performed.

It is also important to mention that Brazilian law does not allow for a couple married under the regime of universal community property to incorporate a company together, being possible only for couples under the partial property regime or the separate property ruling.

In view of avoiding the risk of operating companies not being subject to restrictions due to succession clams, we suggest a prior study on the possibility to create family holdings to participate on the operating companies.

Another measure to save time for eventual disputes arising from family business is to previously provide in its constitutive acts the settlement by arbitration. We believe that the arbitration shall spend less time and money than the legal proceeding.

4.8 Private equity

Specific legislation/tax treatment of income derived from private equity (PE) activity

There are concepts of PE in Brazil that the country’s sourcing rules impose WHT on most of the outbound payments with exceptions in the law. There are a few rules that may lead to profit arbitration for the nonresident and they concern operations with a local dependent agent with power to bind nonresidents into contract and who exercises the function on a regular basis and operations of consignation nature. Parties will need to evaluate tax treaties of Brazil, if applicable. The most popular PE fund in the country is the FIP Fund mentioned in Section 4.5; its structure is designed for both residents and nonresidents to do business in the country from a tax and legal standpoint. The main tax benefit associated with FIPs is:

- Subject to special income tax treatment under which Brazilian corporate income taxes at a combined rate of 34% and turnover taxes at a combined rate of 9.25% are not levied on income and capital gains earned by the portfolio of the fund.

- Gains and earnings recognized by FIP investors will only be taxable upon the sale, amortization or redemption (upon liquidation of the FIP) of the corresponding quotas. Gains and earnings will be subject to a 15% WHT. Certain requirements have to be observed.

<table>
<thead>
<tr>
<th>Equivalent PE ratio</th>
<th>No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Others</td>
<td>No.</td>
</tr>
</tbody>
</table>
### Section 5: Tax policy environment

#### 5.1 Policy environment relating to family business

The discussion is regularly related to reduction of tax burden for SMEs/small business what has been well successful.

#### 5.2 Specify change in the direction of tax policy in the last three years

No.

#### 5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners

There are some special tax systems designed for SME and/or small or medium business with the purpose to reduce the taxes collected to the federal authorities. See Section 1.1.

#### 5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions

No.

### Section 6: Tax administration and enforcement issues

#### 6.1 Is there a specific unit within your tax administration that deals specifically with:

- High net worth individuals (HNWIs)  No.
- SMEs  No.
- Family businesses  No.
- Large corporate taxpayers  Yes
- Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses  No.

#### 6.2 Specify enforcement focus areas or defined programs that might touch a family business

This is not applicable in Brazil.

#### 6.3 Specify tax enforcement focus on any particular industry or profession

This is not applicable in Brazil.

#### 6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners

This is not applicable in Brazil.

#### 6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

This is not applicable in Brazil.

#### 6.6 Are there any specific pre-filing processes that can be leveraged by:

- HNWIs: No.
- Family businesses: No.

#### 6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

No.
<table>
<thead>
<tr>
<th>Country name</th>
<th>Canada</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dan Leblanc</td>
<td>Dieppe, New Brunswick</td>
</tr>
<tr>
<td>+1 506 388 7728</td>
<td></td>
</tr>
<tr>
<td><a href="mailto:dan.leblanc@ca.ey.com">dan.leblanc@ca.ey.com</a></td>
<td></td>
</tr>
<tr>
<td>David Steinberg</td>
<td>Toronto, Ontario</td>
</tr>
<tr>
<td>+1 416 932 6206</td>
<td></td>
</tr>
<tr>
<td><a href="mailto:david.a.steinberg@ca.ey.com">david.a.steinberg@ca.ey.com</a></td>
<td></td>
</tr>
<tr>
<td>Ryan Ball</td>
<td>Saskatoon, Saskatchewan</td>
</tr>
<tr>
<td>+1 306 649 8225</td>
<td></td>
</tr>
<tr>
<td><a href="mailto:ryan.ball@ca.ey.com">ryan.ball@ca.ey.com</a></td>
<td></td>
</tr>
</tbody>
</table>

* All rates and regulations listed in the Canada chapter are valid for years 2013 and 2014, unless otherwise noted.
Section 1: The accumulative tax burden of family business

2013 tax rates

1.1 Corporate income tax (national and sub-national combined)

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Highest marginal rate</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Corporate income tax rates* for active business income</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(includes all rate changes announced up to 1 January 2014)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income eligible for small-business deduction (SBD) (%) (generally up to C$500,000)</td>
<td>11.00</td>
<td>15.00</td>
</tr>
<tr>
<td>Manufacturing and processing (M&amp;P) income not eligible for federal SBD (%) (greater than C$500,000)</td>
<td>15.00</td>
<td>20.00</td>
</tr>
<tr>
<td>General income not eligible for SBD (%) (non-M&amp;P income)</td>
<td>15.00</td>
<td>31.00</td>
</tr>
</tbody>
</table>

Federal rates:

<table>
<thead>
<tr>
<th></th>
<th>11.00</th>
<th>15.00</th>
<th>15.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Combined federal and provincial rates:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Newfoundland and Labrador</td>
<td>15.00</td>
<td>20.00</td>
<td>29.00</td>
</tr>
<tr>
<td>Prince Edward Island</td>
<td>15.50</td>
<td>31.00</td>
<td>31.00</td>
</tr>
<tr>
<td>Nova Scotia</td>
<td>14.00 (up to C$350K) / 27.00 (C$350K-C$500K)</td>
<td>31.00</td>
<td>31.00</td>
</tr>
</tbody>
</table>

1. The federal small-business limit is C$500,000. Effective 1 January 2014, the small-business limit for Nova Scotia is reduced from C$400,000 to C$350,000 and the small-business limit for Manitoba is increased from C$400,000 to C$425,000. The small-business limit for the remaining provinces and territories is C$500,000.

2. A federal general rate reduction of 13% applies to the base federal rate of 28% for active business income not eligible for other incentives, as well as to investment income earned by a non-Canadian controlled private corporation (CCPC). For taxation years beginning after 31 October 2011, income earned by a personal services business no longer benefits from the federal general rate reduction. The federal rate applicable to investment income earned by CCPCs is 34.67% due to the additional 6.67% refundable federal income tax.

3. The federal SBD is reduced if taxable capital employed in Canada exceeds C$10 million. The SBD generally applies to M&P income within the small-business income limit, except in the Yukon (see note 9 below).

4. The Nova Scotia small-business rate was reduced from 4.0% to 3.5% effective 1 January 2013 and is further reduced to 3.0% effective 1 January 2014.
### 1.1 Corporate income tax (national and sub-national combined)

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Corporate income tax rates</strong>* for active business income — 2014</td>
<td></td>
<td>General income not eligible for small business deduction (SBD) is the top marginal rate for business income.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Income eligible for small-business deduction (SBD) (%) (generally up to C$500,000)</td>
<td>Manufacturing and processing (M&amp;P) income not eligible for federal SBD (%) (greater than C$500,000)</td>
</tr>
<tr>
<td>New Brunswick</td>
<td>15.50</td>
<td>27.00</td>
</tr>
<tr>
<td>Quebec</td>
<td>19.00</td>
<td>26.90</td>
</tr>
<tr>
<td>Ontario</td>
<td>15.50</td>
<td>25.00</td>
</tr>
<tr>
<td>Manitoba</td>
<td>11.00 (up to C$425K)/23.00 (C$425K-C$500K)</td>
<td>27.00</td>
</tr>
<tr>
<td>Saskatchewan</td>
<td>13.00</td>
<td>25.00</td>
</tr>
<tr>
<td>Alberta</td>
<td>14.00</td>
<td>25.00</td>
</tr>
<tr>
<td>British Columbia</td>
<td>13.50</td>
<td>26.00</td>
</tr>
<tr>
<td>Northwest Territories</td>
<td>15.00</td>
<td>26.50</td>
</tr>
<tr>
<td>Nunavut</td>
<td>15.00</td>
<td>27.00</td>
</tr>
<tr>
<td>Yukon</td>
<td>13.50/15.00</td>
<td>17.50</td>
</tr>
<tr>
<td>Nonresident</td>
<td>N/A</td>
<td>25.00</td>
</tr>
</tbody>
</table>

*Rates represent calendar-year rates unless indicated otherwise.

5. The New Brunswick general corporate rate was increased from 10.0% to 12.0% effective 1 July 2013. The small-business rate was reduced from 5% to 4.5% effective 1 January 2012. However, as announced in its 2013-14 budget, New Brunswick has suspended further reductions to the small-business rate.

6. Ontario levies different rates on small-business income, eligible Canadian profits (M&P, farming, fishing and logging) and other income. In the Ontario 2012-13 budget, the minister proposed to freeze the general corporate rate at 11.5% until the budget is balanced. On 20 June 2012, the previously scheduled reductions to Ontario’s general corporate rate from 11.5% to 11% on 1 July 2012 and to 10% on 1 July 2013 were repealed.

7. A reduction in the Saskatchewan general corporate rate from 12% to 10% by 2015 was announced on 25 October 2012; however, a schedule for the reduction(s) has not yet been provided.

8. The British Columbia general corporate rate was increased from 10% to 11% effective 1 April 2013.

9. In the Yukon, the M&P rate (2.5%) is less than the small-business rate (4%). The first rate applies to M&P income eligible for the small-business deduction, while the second rate is for non-M&P income.
1.1 Corporate income tax (national and sub-national combined)

<table>
<thead>
<tr>
<th>2014</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Highest rate for small and medium enterprises (SMEs)/small business</td>
<td>The highest rate is the same as the top marginal corporate tax rate above.</td>
</tr>
<tr>
<td>• Special treatment of SMEs/small business (other reliefs, etc.)</td>
<td>Income is eligible for a small business deduction.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

No.

Some recent M&A deals involving North American family businesses

9 Dec 2013, US Koch Industries Inc.
the largest privately owned energy company in the United States, and the country's second-largest private company, acquired the entire share capital of Molex Inc. for US$7.07b. Koch Industries is controlled by the second generation – David and Charles Koch.

23 Jul 2013, US Weyerhaeuser
acquired the entire share capital of Longview Timber, a Longview-based owner and operator of timberlands, from Brookfield Asset Management Inc., for US$2.65b. Weyerhaeuser is currently under the control of the fourth generation.

19 Mar 2013, US Comcast Corporation
acquired the remaining 49% stake, which it did not already own, in NBCUniversal Media for US$16.7b. Brian Roberts, Chairman, President, and CEO of Comcast, is the son of cofounder Ralph Roberts.

18 Jun 2012, Czech Republic Molson Coors Brewing Company
of the US, acquired the entire share capital of Starbev Management Services sro, a Prague-based producer and wholesaler of beer, for US$3.53b. Ownership of Molson Coors is shared equally between the Molson and Coors families.

11 Nov 2012, Canada Leon's Furniture Limited
a furniture superstore – which opened its first store in 1909 in Welland, Ontario – acquired the entire share capital of The Brick Limited, an Edmonton-based retailer and wholesaler, for US$673.8m. Leon's is currently under the control of the third generation.
### Canada

#### 1.2 Individual income tax

<table>
<thead>
<tr>
<th>Province/Region</th>
<th>Ordinary income</th>
<th>Eligible dividends</th>
<th>Ordinary dividends</th>
<th>Capital gains</th>
</tr>
</thead>
<tbody>
<tr>
<td>British Columbia</td>
<td>45.80%</td>
<td>28.68%</td>
<td>37.98%</td>
<td>22.90%</td>
</tr>
<tr>
<td>Alberta</td>
<td>39.00%</td>
<td>19.29%</td>
<td>29.87%</td>
<td>19.50%</td>
</tr>
<tr>
<td>Saskatchewan</td>
<td>44.00%</td>
<td>24.81%</td>
<td>35.32%</td>
<td>22.00%</td>
</tr>
<tr>
<td>Manitoba</td>
<td>46.40%</td>
<td>32.26%</td>
<td>40.77%</td>
<td>23.20%</td>
</tr>
<tr>
<td>Ontario (income from C$136,271 to C$514,090)</td>
<td>46.41%</td>
<td>29.52%</td>
<td>36.45%</td>
<td>23.20%</td>
</tr>
<tr>
<td>Ontario (income in excess of C$514,090)</td>
<td>49.53%</td>
<td>33.82%</td>
<td>40.13%</td>
<td>24.76%</td>
</tr>
<tr>
<td>Quebec</td>
<td>49.97%</td>
<td>35.22%</td>
<td>39.78%</td>
<td>24.98%</td>
</tr>
<tr>
<td>New Brunswick</td>
<td>46.84%</td>
<td>27.35%</td>
<td>36.02%</td>
<td>23.42%</td>
</tr>
<tr>
<td>Nova Scotia</td>
<td>50.00%</td>
<td>36.06%</td>
<td>39.07%</td>
<td>25.00%</td>
</tr>
<tr>
<td>Prince Edward Island</td>
<td>47.37%</td>
<td>28.70%</td>
<td>38.74%</td>
<td>23.69%</td>
</tr>
<tr>
<td>Newfoundland and Labrador</td>
<td>42.30%</td>
<td>22.47%</td>
<td>31.01%</td>
<td>21.15%</td>
</tr>
<tr>
<td>Northwest Territories</td>
<td>43.05%</td>
<td>22.81%</td>
<td>30.72%</td>
<td>21.53%</td>
</tr>
<tr>
<td>Nunavut</td>
<td>40.50%</td>
<td>27.56%</td>
<td>31.19%</td>
<td>20.25%</td>
</tr>
<tr>
<td>Yukon</td>
<td>42.40%</td>
<td>19.29%</td>
<td>32.04%</td>
<td>21.20%</td>
</tr>
</tbody>
</table>

1. The rates shown are the 2014 maximum combined federal and provincial marginal tax rates, including surtaxes where applicable, based on known rates as at 1 January 2014.

2. Ordinary income includes such items as salary, interest, business income, and income from other sources, but excludes Canadian dividends and capital gains.

3. The rates apply to the actual amount of taxable dividends received in the year. Eligible dividends are those paid by public corporations and private companies out of earnings that have been taxed at the general corporate tax rate (the dividend must be designated by the payor corporation as an eligible dividend). These rates include the proposed measures announced in Ontario’s 2013 Economic Outlook and Fiscal Review; where applicable, Ontario surtax has been applied prior to deducting the dividend tax credit.

4. Commencing 1 January 2014, there will be a temporary two-year increase in the personal income tax rate applicable to individuals earning more than C$150,000 a year. The tax rate will increase by 2.1%, from 14.7% to 16.8%, for 2014 and 2015 only, before reverting back to 14.7% in 2016.

5. Taxable income for Quebec purposes is computed in accordance with the province’s legislation, which often differs from federal legislation. On 11 July 2013, Quebec announced that the province will harmonize the dividend gross-up rate for ordinary dividends with the federal rate; however, Quebec will decrease its dividend tax credit rate from 8% to 7.05% for ordinary dividends paid after 2013 rather than harmonize with the federal dividend tax credit rate.

6. It is assumed that the New Brunswick dividend tax credit rate will remain at 5.3%.

7. For eligible dividends, the territorial dividend tax credit exceeds the territorial tax otherwise payable on the dividends; the maximum personal marginal income tax rate (above) does not reflect the value of the excess credit that may be used to offset taxes payable from other sources of income.
1.2 Individual income tax

- **Personal allowance**: C$11,038 is the basic personal exemption. Rate is adjusted for inflation.

- **Minimum rate of personal income tax (PIT)**: Graduated rates of taxation. Rates have changed somewhat by province.

- **Highest marginal rate of PIT**: See personal marginal income tax rates table above. N/A.

- **Any special surtaxes**: Special surtaxes are built into graduated rate tables where applicable. N/A.

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

No.

---

**Key economic numbers – North America**

- **Unemployment**
  - USA: 8% (3%)
  - Canada: 7% (3%)

- **GDP per capita growth rate**
  - USA: 1% (2%)
  - Switzerland: -0.0% (1.0%)
  - EU-28: 1% (2012)

- **Inflation rate**
  - USA: 2.1%
  - Canada: 2.5%

Sources: The World Bank and the International Monetary Fund
### 1.3 VAT, GST and sales tax

#### Standard rate

<table>
<thead>
<tr>
<th>Province</th>
<th>PST rate</th>
<th>GST/HST rate</th>
<th>GST in tax base?</th>
<th>Combined rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>British Columbia</td>
<td>7%¹</td>
<td>5%</td>
<td>No</td>
<td>12%</td>
</tr>
<tr>
<td>Alberta</td>
<td>NIL</td>
<td>5%</td>
<td>N/A</td>
<td>5%</td>
</tr>
<tr>
<td>Saskatchewan</td>
<td>5%</td>
<td>5%</td>
<td>No</td>
<td>10%</td>
</tr>
<tr>
<td>Manitoba</td>
<td>8%²</td>
<td>5%</td>
<td>No</td>
<td>13%</td>
</tr>
<tr>
<td>Ontario</td>
<td>N/A³</td>
<td>13%</td>
<td>No</td>
<td>13%</td>
</tr>
<tr>
<td>Quebec</td>
<td>9.975%⁴</td>
<td>5%</td>
<td>No</td>
<td>14.975%</td>
</tr>
<tr>
<td>New Brunswick</td>
<td>N/A⁵</td>
<td>13%</td>
<td>N/A</td>
<td>13%</td>
</tr>
<tr>
<td>Nova Scotia</td>
<td>N/A⁶</td>
<td>15%</td>
<td>N/A</td>
<td>15%</td>
</tr>
<tr>
<td>Prince Edward Island</td>
<td>N/A⁷</td>
<td>14%</td>
<td>No</td>
<td>14%⁹</td>
</tr>
<tr>
<td>Newfoundland</td>
<td>N/A¹⁰</td>
<td>13%</td>
<td>N/A</td>
<td>13%</td>
</tr>
</tbody>
</table>

Source: EY Electronic Publishing Services Inc.

- Are there any special reliefs or exemptions for a family business?

No, VAT is a tax by definition that is paid at the end-user level; input tax credits for tax paid in a business are generally creditable and therefore recovered. British Columbia (BC), Saskatchewan, Manitoba and Alberta have not harmonized its retail sales tax with the federal Goods and Services Tax (GST).

---

1. British Columbia harmonized its PST with the GST for an HST rate of 12%, effective 1 July, 2010. However, the province reinstated a 7% PST and 5% GST regime effective 1 April, 2013.
2. As announced in its 2013 provincial budget, Manitoba is increasing its PST rate from 7% to 8% effective 1 July, 2013. This increase is scheduled to expire effective 1 July, 2023.
3. Ontario harmonized its PST with the GST for an HST rate of 13%, effective 1 July, 2010.
4. Quebec increased the QST rate from 9.5% to 9.975%, effective 1 January, 2013, in order to maintain a combined rate of 14.975%. With the harmonization of the QST/GST regimes effective 2013, the GST is no longer included in the QST base, meaning the combined rate would have fallen from 14.975% to 14.5% had the QST rate not been increased.
5. HST applies.
6. HST applies.
7. The provincial portion of the HST rose from 8% to 10% effective 1 July, 2010. In its 2012 provincial budget, Nova Scotia announced it will reduce the provincial portion of the HST to 9% effective 1 July, 2014, with a further reduction of the provincial portion of the HST to 8% effective 1 July, 2015.
8. HST applies.
9. Prince Edward Island repealed the PST regime and introduced a 14% HST, effective 1 April, 2013. Prior to that date, a 10% PST and 5% GST regime applied in the province, resulting in a combined rate of 15.5%.
10. HST applies.
### 1.4 Property taxes

- Does a family business receive any relief on property taxes not granted to other types of corporation? **No.**

### 1.5 Capital gains tax (CGT)

- **2013 rate – companies**
  
  Fifty percent of a capital gain is taxable to a corporation – see corporate rates for income not eligible for small-business deduction (SBD) for tax a corporation would pay, plus there is an additional refundable tax that is payable.

- **2013 rate – individuals**
  
  Fifty percent of a capital gain is taxable to an individual or trust. See the graduated rates for tax an individual would pay.

- **Reliefs/exemptions**
  
  There is a lifetime exemption of up to C$800,000 on disposition of shares of a qualified small business corporation or Canadian farm and/or fishing property.

### 1.6 Tax on dividends from ordinary shares

- **A. For corporation:** There is a 33.333% refundable tax-nil rate if from a “connected corporation.”

- **B. For the individual owners of a corporation:** The rate varies for eligible and non-eligible dividends paid by a corporation. See summary in 1.2 for the maximum personal marginal income tax rates.

### 1.7 Tax on dividends from preferential shares

- **A. For the business:** There is no distinction; the same treatment applies as ordinary dividends.

- **B. For the owners of the business:** There is no distinction; the same treatment applies as ordinary dividends.

### 1.8 Tax treatment of interest on a loan from the shareholders

- **A. For the business:** To be deductible it must meet certain tests based on use of the funds; interest on loans from controlling shareholders and related parties must be paid within two years of the year of accrual or deduction will be reversed to income of debtor.

- **B. For the owners of the business:** Individuals are taxed on interest earned as ordinary income on annual anniversary accrual basis; other shareholders are taxed on accrual basis to the year-end of entity.

### 1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

- **A. For the business:** Rent expense incurred in the business entity is deductible if the property is used in the course of carrying on a business to earn income and the amount is considered reasonable based on the facts and circumstances, i.e., it represents the amount that would have been paid in an arm's-length situation.

- **B. For the owners of the business:** Rental income earned by the property owner is taxable as ordinary income on an accrual basis.

### 1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

- **A. For the business:** Intellectual property (IP) Royalty expense incurred in the business entity is deductible if the IP is used in the course of carrying on a business to earn income and the amount is considered reasonable based on the facts and circumstances, i.e., it represents the amount that would have been paid in an arm's-length situation.

- **B. For the owners of the business:** IP Royalty income earned by property owner is taxable as ordinary income on an accrual basis.

### 1.11 Tax treatment of interest paid on bank debt by a family business

Simple interest expense on a bank debt is deductible on an accrual basis where the loan proceeds are used to earn business income. Compound interest is only deductible on a paid basis.
1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property
IP Royalty expense incurred in the business entity is deductible if the IP is used in the course of carrying on a business to earn income.

1.13 Tax treatment of rental payments made by a family business to third parties for real estate
Rent expense incurred in the business entity is deductible if the property is used in the course of carrying on a business to earn income.

1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group
Interest payments are deductible if monies are used in the business.

1.15 Does your country provide for a deemed deduction on equity and/or debt?
No. There is never a deduction, even on a paid basis, on the payment of dividends related to outstanding share capital. Interest is deductible on outstanding indebtedness only where there is a legal requirement to pay such amount and the debt was incurred for the purposes of earning income from a business or property.

1.16 Is the retainment of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?
Earnings can be retained indefinitely.

1.17 Wealth tax
- 2013 characteristics and rate: Canada does not have wealth tax.
- Is there an exemption for shares owned by a family that owns a business?: N/A.

1.18 Inheritance tax/estate tax
Canada does not have inheritance or estate tax. However, a taxpayer is deemed to recognize a disposition at the time of death of all capital properties owned at that time, with proceeds of disposition equal to the fair market value of the property at that time. There are exceptions to this rule for transfers to a spouse or qualified spouse trust.
Special rules apply to farm and/or fishing property passing to the issue of a deceased person.

1.19 Gift tax
Canada does not have a separate gift tax. However a taxpayer is deemed to recognize a disposition at the time of making a gift with proceeds of disposition equal to the fair market value of the property at that time. There are exceptions to this rule for transfers to a spouse or qualified spouse trust and special trusts created by someone older than 65 for their benefit or for themselves and their spouse.
Where farm or fishing property is transferred to a person’s issue there are special rules that the individual can defer any tax on the capital gain or recapture that would otherwise arise. Similar rules apply for family farming and/or fishing corporations.
### 1.20 Real estate transfer tax

Other personal and business taxes

<table>
<thead>
<tr>
<th>Province/Territory</th>
<th>Tax/duty*</th>
<th>Statute and other sources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alberta</td>
<td>No land transfer tax; however, registration fees may apply.</td>
<td>See the Tariff of Fees Regulation, Alta. Reg. 120/2000 for the application of registration fees.</td>
</tr>
<tr>
<td>British Columbia</td>
<td>Total of:</td>
<td>Property Transfer Tax Act, s. 3.</td>
</tr>
<tr>
<td></td>
<td>• 1% of the first C$200,000 of the taxable transaction’s fair market value (FMV)</td>
<td>See the Land Title Act, Schedule 2 for the application of registration fees.</td>
</tr>
<tr>
<td></td>
<td>• 2% of the remaining taxable transaction’s FMV</td>
<td></td>
</tr>
<tr>
<td>Manitoba</td>
<td>Total of:</td>
<td>Part III (Land Transfer Tax) of The Tax Administration and Miscellaneous Taxes Act, s. 112(1).</td>
</tr>
<tr>
<td></td>
<td>• 0.5% of the excess of the land’s FMV over C$30,000</td>
<td>See the Manitoba Land Titles Fee Regulation 55/2012 for the application of registration fees.</td>
</tr>
<tr>
<td></td>
<td>• 0.5% of the excess of the land’s FMV over C$90,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• 0.5% of the excess of the land’s FMV over C$150,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• 0.5% of the excess of the land’s FMV over C$200,000</td>
<td></td>
</tr>
<tr>
<td>New Brunswick</td>
<td>0.50% of the greater of:</td>
<td>Real Property Transfer Tax Act, ss. 2 (1.01).</td>
</tr>
<tr>
<td></td>
<td>• Consideration for the transfer</td>
<td>See the New Brunswick Regulation 83-130, Schedule B for the application of registration fees.</td>
</tr>
<tr>
<td></td>
<td>• Real property’s assessed value</td>
<td></td>
</tr>
<tr>
<td>Newfoundland and Labrador</td>
<td>No land transfer tax; however, registration fees may apply.</td>
<td>See the Registration of Deeds Prescribed Fees and the Registration of Deeds Act, 2009, s. 39 for the application of registration fees.</td>
</tr>
<tr>
<td>Northwest Territories</td>
<td>No land transfer tax; however, registration fees may apply.</td>
<td>See the Land Titles Act, s. 2 for the application of registration fees.</td>
</tr>
<tr>
<td>Nova Scotia</td>
<td>Determined by each municipality and applied to the sale price of every property that is transferred by deed. Maximum being 1.5% of the value of the property transferred.</td>
<td>Part V (Deed Transfers) of the Municipal Government Act, s. 102 (1). A list of municipality rates are available at: <a href="http://www.gov.ns.ca/snsmr/property/default.asp?mn=282.46.1064.1100">http://www.gov.ns.ca/snsmr/property/default.asp?mn=282.46.1064.1100</a></td>
</tr>
<tr>
<td>Nunavut</td>
<td>No land transfer tax; however, registration fees may apply.</td>
<td>See the Land Titles Tariff of Fees Regulations, s. 2 for the application of registration fees.</td>
</tr>
</tbody>
</table>
### 1.20 Real estate transfer tax

<table>
<thead>
<tr>
<th>Province</th>
<th>Total of:</th>
<th>Act/Regulation</th>
<th>Source/Website</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Ontario</strong></td>
<td>• 0.5% of the value of the conveyance’s consideration up to and including C$55,000</td>
<td>Land Transfer Tax Act, s. 2(1)</td>
<td>See the Land Titles Act, s. 163.1 for the application of registration fees.</td>
</tr>
<tr>
<td></td>
<td>• 1% of the value of the conveyance’s consideration exceeding C$55,000 up to and including C$250,000</td>
<td></td>
<td>Also see Minister’s Orders on the Ministry of Ontario Government Services website at:</td>
</tr>
<tr>
<td></td>
<td>• 1.5% of the value of the conveyance’s consideration exceeding C$250,000</td>
<td></td>
<td><a href="http://www.gov.on.ca/en/information_bundle/land_registration/content/ONT06_018789.html?openNav=orders">http://www.gov.on.ca/en/information_bundle/land_registration/content/ONT06_018789.html?openNav=orders</a></td>
</tr>
<tr>
<td></td>
<td>• 2.0% of the value of the conveyance’s consideration exceeding C$400,000 (only where conveyance of land containing at least one and not more than two single family residences)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Prince Edward Island</strong></td>
<td>1% of the greater of: • Consideration for the transfer • Real property’s assessed value</td>
<td>Real Property Transfer Tax Act, s. 3(1) and s. 4(2)</td>
<td>See the Registry Act, s. 50.1 for the application of registration fees.</td>
</tr>
<tr>
<td></td>
<td>No land transfer tax is applied where neither the greater of the consideration or assessed value exceeds C$30,000.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Quebec</strong></td>
<td>Total of:</td>
<td>An Act Respecting Duties on Transfers of Immovables, s. 2</td>
<td>See the Tariff of Fees Respecting Land Regulation for the application of registration fees.</td>
</tr>
<tr>
<td></td>
<td>• 0.5% of the basis of imposition up to and including C$500,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• 1% of the basis of imposition exceeding C$500,000 up to and including C$250,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• 1.5% of the value of the basis of imposition exceeding C$250,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>The basis of imposition being the greater of: • Consideration furnished for the transfer • Consideration stipulated for the transfer • Immovable’s market value at the time of the transfer</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Saskatchewan</strong></td>
<td>No land transfer tax; however, registration fees may apply.</td>
<td>See the Information Services Corporation website for the application of registration fees under the Land Titles Act at: <a href="https://www.isc.ca/LandTitles/Pages/LandTitlesFees.aspx">https://www.isc.ca/LandTitles/Pages/LandTitlesFees.aspx</a></td>
<td></td>
</tr>
<tr>
<td><strong>Yukon</strong></td>
<td>No land transfer tax; however, registration fees may apply.</td>
<td>See the Tariff of Fees, Regulation 2002/142 for the application of registration fees.</td>
<td></td>
</tr>
</tbody>
</table>

**Source:** EY Electronic Publishing Services Inc.

* Exemptions or refunds may be available in certain circumstances.
1.21 Endowment tax
Canada does not have an endowment tax.

1.22 Social security

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>National/social insurance contributions on employee income</td>
<td>There is an employee and employer payroll contribution required to the Employment Insurance (EI) Plan. An exception may apply for employees who are dealing at non-arm's length with an employer, such as controlling shareholder employees. The amount of EI premiums payable are levied only up to a maximum amount and not necessarily on all employment earnings.</td>
</tr>
<tr>
<td>Health/medical/dental care</td>
<td>There is an employer health tax levied by a number of provinces on the employer. There is a minimum threshold applied in most cases before the levy applies.</td>
</tr>
<tr>
<td>Retirement plans/pensions for employees</td>
<td>There is an employee/employer payroll contribution required to the Canada Pension Plan (CPP). The amount of CPP premiums payable are levied up to a maximum amount and not necessarily on all employment earnings.</td>
</tr>
</tbody>
</table>

1.23 Pensions and tax-efficient savings

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax relief on pension contributions – standard</td>
<td>Tax deferred savings plans are available in both employer and employee funded varieties. Employers may establish a Registered Pension Plan (RPP) for their employees and both employer and employee contributions may be made to such plans within defined contribution limits, with deductions available against business or personal income, respectively. Employees may establish their own Registered Retirement Savings Plans (RRSP), contribute to such plans within defined contribution limits and obtain a deduction against income for such contributions. Individuals may establish a savings vehicle called a Tax Free Savings Account (TFSA) and contribute to this plan within defined contribution limits. Contributions to the TFSA are not deductible.</td>
</tr>
<tr>
<td>Tax relief on pension contributions – any specific relief to family business?</td>
<td>There is no separate or specific relief for family business in this regard.</td>
</tr>
</tbody>
</table>

1.24 Taxation of flow-through entities/partnerships/trust funds
Partnerships are not taxable in their own right and are flow-through entities. Income is determined at the partnership level, such that net income/loss and capital gains/losses are allocable to the partners, along with other credits.

Trusts are taxable in their own right, but have the ability to allocate income and capital gains to beneficiaries depending upon the terms of the trust and the actions of the trustees.

Corporations are taxable in their own right in all circumstances, other than in the case of mutual fund corporations.

1.25 Exemptions in the law that specifically relate to family businesses
There are no exemptions in the law related to “family businesses.” Specific beneficial rates, R&D credits and capital gains exemptions apply in situations related to CCPCs where certain other tests are met. The small business deduction provides a lower rate of corporate income tax for CCPCs up to a maximum annual income amount. A beneficial investment tax credit rate applies for CCPCs up to a maximum expenditure amount. The small business capital gains exemption is referenced in Section 1.5.

1.26 Are there any business incentives in your country that are specific to

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>SMEs</td>
<td>R&amp;D credits as noted above related to CCPCs.</td>
</tr>
<tr>
<td>Family businesses</td>
<td>Same as above.</td>
</tr>
</tbody>
</table>
1.27 Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses?
  Loss relief regime is generally not specific to family businesses. Special deductibility is available for Allowable Business Investment Losses (ABIL) on capital losses related to shares and debt of certain qualifying small businesses.

- Are there any available loss reliefs that are specific to SMEs?
  Same as above.

Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

**Calculation 1:** The business makes a profit before tax of C$2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

Refer to the Alberta rates contained within the corporation and personal tax rate schedules by province.

Assume Alberta resident individual shareholder owns all the shares of Alberta resident Canadian corporation operating an “active” (i.e., not investment type) business only in Alberta and that individual is taxable at top marginal rate on dividends received from the corporation.

Corporation pays corporate tax: C$500,000 x 14% + (C$2,000,000 - C$500,000) x 25% = C$70,000 + C$375,000 = C$445,000

Dividend distribution is C$2,000,000 - C$445,000 = C$1,555,000.

Personal tax on dividend: C$1,080,000 x 19.29% + C$475,000 x 27.71% = C$339,955.

After-tax distributed profit to shareholder: C$1,215,045

Effective tax rate: (C$445,000 + C$339,955)/C$2,000,000 = 39.25%

**Calculation 2:** The business makes a profit before tax of C$500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

Same assumptions as in Calculation 1.

Corporation pays corporate tax: C$500,000 x 14% = C$70,000

Dividend distribution is C$500,000 - C$70,000 = C$430,000.

Personal tax on dividend: C$430,000 x 27.71% = C$119,153.

After-tax distributed profit to shareholder: C$310,847

Effective tax rate: (C$70,000 + C$119,153)/C$500,000 = 37.83%

Has this effective tax rate increased, decreased or stayed the same in the last three years?

The corporate and personal income tax rates have changed in some instances in the past three years.

Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

The tax rates applicable to business income whether directly or through a corporation is dependent on the province where the business income is earned. For an individual the income is taxed at the individual's marginal tax rate for ordinary income. The tax rate for corporate business income is also dependent on whether the income is eligible or in excess of the small business tax rates. There is no general rule of thumb that it may be cheaper or more expensive to use a corporation. Canada does employ an integration concept such that overall the amount of tax paid on such fully distributed business profit from a corporation is expected to be about the same in either case. However, integration is not perfect, as illustrated on page 71.
3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

### Integration tables by province for 2014
Based on all rate proposals announced up to 15 July 2013

<table>
<thead>
<tr>
<th>Province</th>
<th>Eligible for small business deduction (SBD) up to C$500k*</th>
<th>Eligible for federal SBD (C$400k-C$500k)</th>
<th>M&amp;P income not eligible for SBD</th>
<th>General ABI (non-M&amp;P) not eligible for SBD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alberta</td>
<td>0.69</td>
<td>25.00</td>
<td>n/a</td>
<td>0.47</td>
</tr>
<tr>
<td>British Columbia</td>
<td>0.56</td>
<td>32.30</td>
<td>n/a</td>
<td>1.42</td>
</tr>
<tr>
<td>Manitoba</td>
<td>0.89</td>
<td>35.40</td>
<td>7.99</td>
<td>23.40</td>
</tr>
<tr>
<td>New Brunswick</td>
<td>-0.91</td>
<td>31.34</td>
<td>n/a</td>
<td>19.84</td>
</tr>
<tr>
<td>Newfoundland &amp; Labrador</td>
<td>-0.94</td>
<td>27.30</td>
<td>n/a</td>
<td>22.30</td>
</tr>
<tr>
<td>Nova Scotia</td>
<td>-2.40</td>
<td>36.00</td>
<td>5.52</td>
<td>23.00</td>
</tr>
<tr>
<td>Ontario (income up to C$509,000)</td>
<td>-1.41</td>
<td>30.91</td>
<td>n/a</td>
<td>21.41</td>
</tr>
<tr>
<td>Ontario (income in excess of C$509,000)</td>
<td>-1.42</td>
<td>34.03</td>
<td>n/a</td>
<td>24.53</td>
</tr>
<tr>
<td>Prince Edward Island</td>
<td>1.95</td>
<td>31.87</td>
<td>n/a</td>
<td>16.37</td>
</tr>
<tr>
<td>Quebec</td>
<td>1.26</td>
<td>30.97</td>
<td>n/a</td>
<td>23.07</td>
</tr>
<tr>
<td>Saskatchewan</td>
<td>-0.27</td>
<td>31.00</td>
<td>n/a</td>
<td>19.00</td>
</tr>
</tbody>
</table>

* Except for Nova Scotia and Manitoba where the small-business limit is C$350,000 and C$425,000 respectively.

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1. The table illustrates the tax cost (or savings) on a fully distributed basis of earning active business income through a corporation rather than directly as an individual. The cost (savings) represents the tax cost (or savings) of not paying a bonus and instead distributing the after-tax corporate earnings as dividends. The tax deferral is available where the income is retained in the corporation for future distribution rather than being paid out as salary. This table should be used for general guidance only and does not replace the need to consider a client's specific circumstances.

2. The calculations assume the individual is taxed at the top marginal federal-provincial personal tax rate (except for the calculations for Ontario income up to C$509,000 that is subject to the top federal marginal tax rate and the second highest Ontario marginal tax rate) and the corporation has a December 31st year-end. Payroll taxes at the corporate level (such as CPP and employer health taxes) and CPP contributions and provincial health premiums at the individual level are ignored.

3. It is assumed that the after-tax amount of ABI not eligible for the small business deduction is distributed as eligible dividends on the basis that the income results in a sufficient general rate income pool (GRIP) balance.

4. M&P income is active business income from qualified manufacturing and processing activities. In certain provinces, this income qualifies for an M&P deduction.

5. Commencing 1 January 2014, there will be a temporary two-year increase in the personal income tax rate applicable to individuals earning more than C$150,000 a year. The tax rate will increase by 2.1%, from 14.7% to 16.8%, for 2014 and 2015 only, before reverting back to 14.7% in 2016.

6. It is assumed that the New Brunswick dividend tax credit rate will remain at 5.3%.

7. It is assumed that the Ontario income tax brackets will remain unchanged from 2013.

8. Taxable income for Quebec purposes is computed in accordance with the province's legislation, which often differs from federal legislation. On 11 July 2013, Quebec announced that the province will harmonize the dividend gross-up rate for non-eligible dividends with the federal rate; however, Quebec will decrease its dividend tax credit rate from 8% to 7.05% for non-eligible dividends paid after 2013 rather than harmonize with the federal dividend tax credit rate.
3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

Integration tables by province for 2014
Based on all rate proposals announced up to 15 July 2013

Table 2: Integration on investment income earned through a CCPC

<table>
<thead>
<tr>
<th>Province</th>
<th>Interest income [eligible for RDTOH treatment]</th>
<th>Non-eligible dividends [subject to Part IV tax]</th>
<th>Eligible dividends [subject to Part IV tax]</th>
<th>Capital gains [eligible for RDTOH treatment]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alberta</td>
<td>3.49 -5.67</td>
<td>0.00 -3.46</td>
<td>0.00 -14.04</td>
<td>1.75 -2.83</td>
</tr>
<tr>
<td>British Columbia</td>
<td>3.97 0.13</td>
<td>0.00 4.65</td>
<td>0.00 -4.66</td>
<td>1.98 0.07</td>
</tr>
<tr>
<td>Manitoba</td>
<td>6.22 -0.27</td>
<td>0.00 7.44</td>
<td>0.00 -1.07</td>
<td>3.11 -0.13</td>
</tr>
<tr>
<td>New Brunswick</td>
<td>1.97 0.17</td>
<td>0.00 2.68</td>
<td>0.00 -5.98</td>
<td>0.99 0.09</td>
</tr>
<tr>
<td>Newfoundland &amp; Labrador</td>
<td>3.89 -6.37</td>
<td>0.00 -2.32</td>
<td>0.00 -10.87</td>
<td>1.95 -3.18</td>
</tr>
<tr>
<td>Nova Scotia</td>
<td>3.70 -0.67</td>
<td>0.00 5.74</td>
<td>0.00 2.73</td>
<td>1.85 -0.33</td>
</tr>
<tr>
<td>Ontario (income up to C$509,000)</td>
<td>1.20 0.24</td>
<td>0.00 1.58</td>
<td>0.00 -3.79</td>
<td>0.60 0.12</td>
</tr>
<tr>
<td>Ontario (income in excess of C$509,000)</td>
<td>1.04 3.36</td>
<td>0.00 5.26</td>
<td>0.00 0.51</td>
<td>0.52 1.68</td>
</tr>
<tr>
<td>Prince Edward Island</td>
<td>7.05 -3.30</td>
<td>0.00 6.69</td>
<td>0.00 -4.63</td>
<td>3.53 1.65</td>
</tr>
<tr>
<td>Quebec</td>
<td>1.80 3.40</td>
<td>0.00 6.45</td>
<td>0.00 1.89</td>
<td>0.90 1.70</td>
</tr>
<tr>
<td>Saskatchewan</td>
<td>4.26 -2.67</td>
<td>0.00 1.99</td>
<td>0.00 -8.52</td>
<td>2.13 -1.33</td>
</tr>
</tbody>
</table>

Source: EY Electronic Publishing Services Inc.

1. The table illustrates the tax cost (or savings) on a fully distributed basis of earning investment income through a Canadian controlled private corporation rather than directly as an individual. The table also illustrates the tax deferral (or prepayment of tax) that results when the income is earned and retained in the corporation. This table should be used for general guidance only and does not replace the need to consider a client’s specific circumstances.

2. The table assumes the individual is taxed at the top federal-provincial marginal personal tax rate (except for the calculations for Ontario income up to C$509,000 that is subject to the top federal marginal tax rate and the second highest Ontario marginal tax rate) and the corporation has a December 31st year-end. Provincial health premiums at the individual level are ignored.

3. It is assumed the interest income and capital gains are eligible for refundable dividend tax treatment and that the corporation can pay the total amount of dividends necessary to recover the full amount of the refundable dividend tax on hand (RDTOH).

4. It is assumed that eligible dividends earned in the corporation can be flowed out to the individual as eligible dividends on the basis that the income results in a sufficient general rate income pool (GRIP) balance.

5. It is assumed that the non-taxable portion of any capital gains is flowed out to the shareholder as a capital dividend; however, there may be situations where it is more tax-effective to pay more taxable dividends (rather than a capital dividend) to recover RDTOH.

6. Commencing 1 January 2014, there will be a temporary two-year increase in the personal income tax rate applicable to individuals earning more than C$150,000 a year. The tax rate will increase by 2.1%, from 14.7% to 16.8%, for 2014 and 2015 only, before reverting back to 14.7% in 2016.

7. It is assumed that the New Brunswick dividend tax credit rate will remain at 5.3%.

8. It is assumed that the Ontario income tax brackets will remain unchanged from 2013.

9. Taxable income for Quebec purposes is computed in accordance with the province’s legislation, which often differs from federal legislation. On 11 July 2013, Quebec announced that the province will harmonize the dividend gross-up rate for non-eligible dividends with the federal rate; however, Quebec will decrease its dividend tax credit rate from 8% to 7.05% for non-eligible dividends paid after 2013 rather than harmonize with the federal dividend tax credit rate.
Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

For example, where an Alberta resident corporation earned active business income eligible for the SBD, the deferral advantage of using the corporation over having earned the income directly at the top personal marginal income tax rate in Alberta would be 25%. And on a fully distributed basis, the benefit of having used a corporation would be only 1.17%. For business income not eligible for the SBD (i.e., income above C$500,000 in the year), the deferral advantage of using the corporation would be 14%; however, on a fully distributable basis there would be a net cost of only 0.47%.

Only shares of corporations qualify for the C$800,000 capital gains exemption on the disposition of a qualified small business. As such, where a proprietorship was sold, the capital gains exemption would not be available.

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

Capital gains on the disposition of shares of a family business are 50% taxable at the marginal rate for regular income. For example, a resident of Alberta taxable on the capital gain at the top marginal income tax rate of 39% would have an effective rate of only 19.5% on the capital gain. Residents of most other provinces will be an effective rate of 22% to 25%.

Dividends rates are set so that taxation of income in the company and subsequently distributed is generally equal to the rate had the income been earned personally. The effective personal dividend tax rates on “eligible dividends” (i.e., distributions from business income taxed at the general corporate tax rate) range from 19.29 to 36.06%.

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

Shareholder appropriations which are not declared as dividends are taxed as ordinary income to the recipient (i.e., shareholder loan and benefit provisions). Where the loan or appropriation is repaid to the company a deduction will be allowed in the year of repayment.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

- Fully publicly listed? Yes. Similar tax rates apply for capital gains and expected dividends earned by individual shareholders. No capital gains exemption available for the disposition of public company shares. Public companies are not eligible for the SBD. Corporate income earned above that eligible for the SBD will be taxed similarly. We would not expect there to be shareholder appropriations or loans to shareholders in a public company context.

- Partly publicly listed? A company that is publicly listed, even if there is concentration of ownership by individuals within a family, is viewed as not a private corporation for income tax purposes. As such it would not qualify for the provisions discussed for CCPCs related to the SBD and capital gains exemption. The comments for fully publicly listed would be applicable.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

The answer is generally “No,” that ownership of less than 100% of the shares will not matter. As discussed, the SBD, the capital gains exemption on qualifying shares, the enhanced R&D tax credit and the beneficial loss treatment on ABILs require the corporate entity in question to be a CCPC in each instance. A CCPC is a “private corporation” that is not controlled by nonresidents or entities that are not private corporations. As such, the rate of income tax paid by the corporation is not impacted by the percentage of share ownership by any one individual, but by viewing the aggregate ownership of various shareholders who are not Canadian residents or CCPCs themselves. For example, where a Canadian resident individual owned 50% of the common shares while a nonresident or public company owned the other 50% of the common shares and control of the board of directors rested only with the votes attached to the common shares, the company would still be viewed as a CCPC. However, if the Canadian individual owned only 49.9% of the common shares and nonresidents/public company owned 50.1% of the common shares, the corporation would not be a CCPC.
Section 4: Succession planning

4.1 Life insurance

Life insurance death benefits received by either an individual or a corporation is not taxed. When received by a corporation, such death benefit amounts can generally be paid out tax free to shareholders. With universal life (i.e., a form of permanent insurance) policies, investment amounts within the policy are permitted by regulation and income earned thereon is not taxed until distributed, or not taxable if forming a component of the death benefit paid.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?

Shareholders' agreements and buy/sell agreements are utilized in Canada and are highly recommended.

4.3 Estate tax

Estate freezes are utilized extensively to cap the tax payable on death and transfer future appreciation to the next generation. They are often combined with insurance and other distribution planning to ensure the liability identified is payable on death from liquid assets where possible.

4.4 Pension plans

See Section 1.23.

4.5 Trusts, foundations and private purpose funds

*Inter vivos* trusts established during the life of the settlor are commonly used.

Foundations registered with the Canada Revenue Agency (CRA) as Registered Charities are often used to carry out charitable activities for philanthropic corporations and individuals/families.

There is no specific reference to “private purpose funds” within the income tax provisions in Canada. Certainly private funds can be established for investments, the holding of property and shares, and for many other purposes. The taxation of the entity will be dependent upon the many factors identified previously.
A will is a legal document that regulates an individual's estate after death. Canadian provinces will normally accept the formal validity of a will drafted under the laws of the deceased's place of residence at the time of making the will or at death. Whether the deceased had the personal legal capacity to make the dispositions in the will is generally governed by the law of the deceased's residence.

If there is no valid will at death, then the deceased's estate passes under predetermined rules known as intestate succession.

The intestacy rules are different depending on the province or territory in which the person was resident at his or her death. Generally, the laws of intestacy for the province of Ontario state that if the deceased had a spouse and no children, the spouse is entitled to receive the entire estate. The following table summarizes the intestacy rules for the province of Ontario. Other provinces have similar, but not identical, rules.

<table>
<thead>
<tr>
<th>Survivor</th>
<th>Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>If a spouse:</td>
<td>All to the spouse.</td>
</tr>
<tr>
<td>If a spouse and one child:</td>
<td>Preferential share (C$200,000) to the spouse, remainder split equally between the spouse and the child.</td>
</tr>
<tr>
<td>If a spouse and two or more children:</td>
<td>Preferential share to spouse plus one-third of remainder, two-thirds divided between children.</td>
</tr>
<tr>
<td>If no spouse and one or more children alive:</td>
<td>Children share equally; if one child is deceased but has children, those children get their parents' share equally (representation).</td>
</tr>
<tr>
<td>If no spouse and no children, but grandchildren:</td>
<td>Grandchildren share equally regardless; no representation.</td>
</tr>
<tr>
<td>If none of the above and a parent is alive:</td>
<td>Parents share equally, or if only one parent, parent gets estate absolutely.</td>
</tr>
<tr>
<td>If none of the above and at least one surviving brother or sister:</td>
<td>Brothers and sisters share equally with representation.</td>
</tr>
<tr>
<td>If none of the above and at least one niece or nephew:</td>
<td>Nieces and nephews equally with no representation.</td>
</tr>
<tr>
<td>If none of the above:</td>
<td>Next of kin of equal degree of consanguinity to the intestate equally without representation; degrees of kindred shall be computed by counting upward from the deceased to the nearest common ancestor and then downward to the relative, and the kindred of the half-blood shall inherit equally with those of the whole-blood in the same degree.</td>
</tr>
<tr>
<td>If none of the above:</td>
<td>Her Majesty the Queen (escheat to the Crown).</td>
</tr>
</tbody>
</table>
4.7 Passing on a business

Estate freeze – transfer during lifetime

An estate freeze can be implemented in a number of different ways; the simplest of which is selling or gifting assets to the next generation. If there are accrued gains inherent in these assets a current tax liability will result. This strategy would only be suggested if the anticipated growth is so significant that the payment of the current tax is negligible. In addition, one would be mindful that control of the assets is completely relinquished to the next generation, which may not be appropriate if your children are young.

The most common technique used to implement an estate freeze requires a transfer, usually on a tax-deferred basis, of the appreciated assets to a corporation in exchange for fixed value preferred shares (freeze shares). The family members, who are to benefit from the future growth, would subscribe for nominal value growth shares (common shares) either directly or indirectly using a family trust. If the asset subject to the freeze is a corporation already in existence, the freeze may be effected by creating a new class of fixed value preferred freeze shares and exchanging, on a tax deferred basis, the then outstanding common shares for new fixed value freeze shares of equal value. The original growth shares would be eliminated on this exchange and the next generation/family trust would own the new growth shares.

The growth shares held by the trust will be controlled by the trustee(s) and the terms of the trust may give the trustees the power to determine which of the beneficiaries will be entitled to the growth (thereby providing a certain amount of flexibility to the estate freeze). It is also possible for the person implementing the freeze to continue to control the company by subscribing for nominal value, super voting preferred control shares and by using a shareholders’ agreement which restricts the rights of the growth shareholders. This shareholders’ agreement could be entered into by the trustees and the individual who froze the company prior to the distribution of the growth shares held by the trust, making the new common shareholders (i.e., the children) subject to this shareholders’ agreement without actually signing it.

What is described is a complete freeze, but it is possible to implement a partial freeze and staged freezes (over time). In a partial freeze, participation in the company's growth by the current common share owner would occur by subscribing for a portion of the new growth shares, either directly or by being named as a beneficiary of the family trust.

Post mortem

It is possible to defer the capital gain realized on the deemed disposition on death by transferring assets to a spouse or a qualifying testamentary spouse trust created on death. In this case, the tax on this capital gain will be deferred until the earlier of the assets being sold and the death of the surviving spouse. The roll-over to a spouse trust will only apply if no one other than the surviving spouse is entitled to all the income of the trust and such spouse is the only discretionary capital beneficiary during his or her lifetime.

Using a testamentary spouse trust also permits an individual to control entitlement of the assets after the death of their spouse. If the assets are transferred directly to a spouse, it is the spouse's will that directs the distribution of the family assets.

Spouse trusts and any other testamentary trusts (which must be created by your will) are taxed as a separate taxpayer and subject to the graduated personal tax rates (proposed amendments may impact the duration of the application of graduated rates). As a result, it is possible to split income by having some of the income taxed in the testamentary trust and some of the income taxed in the beneficiary’s hands. Access to this additional set of graduated rates can result in a tax savings. Spouse trusts (testamentary or inter vivos) can exist for the life of the spouse; assets are deemed disposed of on the spouse’s death, rather than every 21 years as is the case in non-testamentary trust situations.

There is no ability to transfer the family business (excluding farming and fishing businesses) to the next generation on death on a tax deferred basis, but if the company qualifies the remaining capital gains exemption can be utilized on the decedent’s final personal return to reduce the tax on the deemed disposition on death.

4.8 Private equity

<table>
<thead>
<tr>
<th>Specific legislation/tax treatment of income derived from private equity (PE) activity</th>
<th>No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equivalent PE ratio</td>
<td>N/A.</td>
</tr>
<tr>
<td>Others</td>
<td>N/A.</td>
</tr>
</tbody>
</table>
Section 5: Tax policy environment

5.1 Policy environment relating to family business

Federal and provincial government budgets comment extensively on the importance of small (family) business and their impact on economic growth. The federal government has implemented broad-based tax reductions that support investment and growth across the Canadian economy. Keeping taxes low for Canadian business is a cornerstone of the government's long-term plan for jobs, growth and prosperity.

• Federal general corporate income tax rate reduced in stages to the current 15% on 1 January 2012 from 22.12% in 2007.
• Federal small business tax rate of 11% as of 1 January 2008, subject to an annual business limit of C$500,000 as of 1 January 2009.
• Life time capital gains exemption on qualified small business corporation shares of C$750,000, to be increased to C$800,000 in 2014 and indexed for inflation thereafter.
• Scientific research and experimental development investment tax credits – non-refundable, general business rate 20% (15% as of 2014) refundable small business rate of 35% (subject to an expenditure cap).

5.2 Specify change in the direction of tax policy in the last three years

Substantial on-going support to the formation and retention of small businesses through focused expenditures on red tape reduction, increasing access to capital skills and training.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners

The 2013 federal budget extended and expanded the temporary Hiring Credit for Small Business for one year. This temporary credit provides up to C$1,000 against a small firm's increase in its 2013 Employment Insurance (EI) premiums over those paid in 2012 to employers with premiums of C$15,000 or less in 2012.

In September 2013 the federal government announced a freeze on the EI premium rate for employees at the 2013 level of C$1.88 per C$100 of insurable earnings for 2014, and additionally that the rate will be set no higher than C$1.88 for 2015 and 2016. The 2012 federal budget announced that starting in 2017, EI premium rates will be set annually at a seven-year break-even rate.

5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions

Not at this time. Federal “capital tax” was eliminated in 2006, and the last of provincial capital tax was eliminated in 2012.
Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with:

- **High net worth individuals (HNWIs)**
  
  In the Canadian federal system, taxes are levied at both the national (federal) level and provincial level of government. The Canada Revenue Agency (CRA) administers all federal taxes and most but not all provincial ones through agreements with the provinces.

  Although the CRA does not have a specialized team that is dedicated to HNWIs, HNWIs’ audits are carried out by the Large Business Audit program under a “Related Parties Initiative” that targets wealthy individuals who have C$30 million or more in net assets and related groups comprising 50 or more entities for in-depth audit.

- **SMEs**
  
  Yes, SME taxpayers in the Small Business Audit group are typically individuals and CCPCs with annual gross revenues of less than C$1 million. Responsibility at CRA for Basic File audit population (comprising most businesses having annual gross revenues of between C$20 million and C$250 million) was transferred from the SME Directorate to the International and Large Business Directorate in 2012.

- **Family businesses**
  
  See Section 6.1.

- **Large corporate taxpayers**
  
  Yes, CRA’s International and Large Business Directorate’s Large Business Audit Division (in the Compliance Programs Branch); taxpayers with annual gross revenue in excess of C$250 million.

- **Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses**

  Large Business Audit Program under a “Related Parties Initiative” targets wealthy individuals who have C$30 million or more in net assets and related groups comprising 50 or more entities for in-depth audit.

6.2 Specify enforcement focus areas or defined programs that might touch a family business

Although the CRA does not have a specialized team that is dedicated to HNWIs, HNWIs’ audits are carried out by the Large Business Audit Program under a “Related Parties Initiative” that targets wealthy individuals who have C$30 million or more in net assets and related groups comprising 50 or more entities for in-depth audit.

6.3 Specify tax enforcement focus on any particular industry or profession

Underpinning the CRA’s compliance approach is the use of risk management to identify current as well as emerging compliance risks, and to assess them for their potential effect on the revenue base and on compliance in general. An important element of its risk-based approach is following up on informant leads. The mandate of the CRA’s Informant Leads Program is to coordinate all leads that the CRA receives from informants, to determine if there is an element of non-compliance with tax legislation, and ensure that the information is reviewed and provided to the corresponding compliance program for appropriate enforcement action.

The CRA’s Compliance Programs Branch also carries out periodic targeted national “projects” that are designed to address areas of non-compliance identified as part of its risk-based approach. A given project may focus on a particular tax measure, profession, industry group or geography.

Real estate entities appear to be the first targets of the RPI, likely because there are many related group corporate entities in this industry.

6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners

Individuals with net asset value in excess of C$50 million and related groups comprising 30 or more entities are the noted targets of the RPI.
6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

The CRA has periodically adjusted its administrative approach to the Voluntary Disclosure Program (VDP), but the legislative basis for the program has not changed in many years. The number and value of voluntary disclosures has consistently trended upward over the past number of years. The last year for which there is publically available data was 2012-13, when there were 15,167 disclosures representing C$863 million in undisclosed income compared to 12,811 cases in 2011-12 representing C$773 million in undisclosed income.

6.6 Are there any specific pre-filing processes that can be leveraged by:

- HNWIs: No.
- Family businesses: No.

6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

Yes. As of 31 August 2013, Canada has signed 90 tax treaties and 16 tax information exchange agreements. They have 10 tax treaties signed but not in force and 8 under negotiation. They also have 6 tax information exchange agreements signed but not yet in force and 8 under negotiation.

The 2013 federal budget contained proposals to:

- Require certain financial intermediaries including banks to report international electronic funds transfers of C$10,000 or more to the CRA.
- Extend the normal reassessment period by three years for a taxpayer who has failed to report income from a specified foreign property on their annual income tax return and failed to properly file the Foreign Income Verification Statement (Form T1135).
- Revise Form T1135 reporting to provide more detailed information including the names of specific foreign institutions and countries where offshore assets are located and the foreign income earned on those assets.
- Streamline the process for the CRA to obtain information concerning unnamed persons from third parties such as banks.

It also announced that the CRA will launch a Stop International Tax Evasion Program aimed at reducing international tax evasion and avoidance. Under this program, the CRA will pay rewards to individuals with knowledge of major international tax non-compliance when they provide information to the CRA that leads to the collection of outstanding taxes due. The CRA will pay a reward to an individual only if the information results in total additional assessments exceeding C$100,000 in federal tax. In this way, the CRA will target high-income taxpayers who attempt to evade or avoid tax using complex international legal arrangements.

It furthermore announced that the federal government is engaged in negotiations with the US for an agreement to enhance information exchange under the Canada-United States Tax Treaty. The agreement would include information exchange provisions in support of the United States Foreign Account Tax Compliance Act provisions.

Under the agreement, information exchange would be improved on a reciprocal basis to facilitate tax compliance in both countries. The agreement would reflect a commitment by Canada and the United States to work with other partners on adapting the terms of the agreement to a common model for automatic exchange of information.
Section 1: The accumulative tax burden on family business

2013 tax rates

1.1 Corporate income tax (national and sub-national combined)

<table>
<thead>
<tr>
<th>Year</th>
<th>Highest marginal rate</th>
<th>Change in rate in the last three years (up or down)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>The current income tax rate is 20%.</td>
<td>There have been some changes in the income tax rate within the last years: 2010 (17%); 2011 (20%); 2012 (18.5%); and 2013 (20%). Due to political debates, it is expected that there will be an increase on the corporate income tax (CIT) rate.</td>
</tr>
</tbody>
</table>

- Highest rate for small and medium enterprises (SMEs)/small business

The current income tax rate is 20%. N/A.

- Special treatment of SMEs/small business (other reliefs, etc.)

Income tax laws allow (Article 14 bis) taxpayers, whose annual incomes are below approximately CLP400,000, to delay the payment of the CIT, and pay it together with the personal income tax (PIT). N/A.

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

N/A.
### 1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Personal allowance</strong></td>
<td>Taxpayers whose annual incomes are below approximately CLP13,000 are not subject to personal income tax (PIT). In September 2012, the PIT rate was reduced at the intermediate layers, but the cap was held at 40%.</td>
</tr>
<tr>
<td><strong>Minimum rate of personal income tax (PIT)</strong></td>
<td>Below approximately CLP13,000 the PIT rate is 0%, above that range, the rate starts at 4% and rises to 40%, depending on the placement within the range. N/A.</td>
</tr>
<tr>
<td><strong>Highest marginal rate of PIT</strong></td>
<td>The highest rate for PIT is 40%, with annual incomes over approximately CLP143,000. N/A.</td>
</tr>
<tr>
<td><strong>Any special surtaxes</strong></td>
<td>No changes have been made. N/A.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

N/A.

### 1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Standard rate</strong></td>
<td>The current VAT rate is 19%. There hasn’t been any changes in the VAT rate over the last three years.</td>
</tr>
<tr>
<td><strong>Are there any special reliefs or exemptions for a family business?</strong></td>
<td>There are no special reliefs for small or family businesses. N/A.</td>
</tr>
</tbody>
</table>

### 1.4 Property taxes

- Does a family business receive any relief on property taxes not granted to other types of corporation?
  - Family businesses are not recognized by Chilean legislation, so there is no special treatment for them.

### 1.5 Capital gains tax (CGT)

<table>
<thead>
<tr>
<th>2013 rate – companies</th>
<th>N/A.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013 rate – individuals</td>
<td>N/A.</td>
</tr>
</tbody>
</table>
**1.5 Capital gains tax (CGT)**

- **Reliefs/exemptions**
  
  A capital gain can be subject to CIT of 20% as a sole tax if the following conditions are satisfied:
  
  - The shares or quotas were owned for at least one year.
  - The seller is not habitually engaged in the sale of shares.
  - The parties of the transaction are not related.

  If any of these conditions is not met, the taxation over the amount of the capital gain would be:
  
  - If the seller is Chilean resident: CIT at a rate of 20% plus PIT with a rate up to 40%.
  - If the seller is not a Chilean resident: withholding tax (WHT) at a 35% rate.

  Sales of companies listed on the stock exchange are exempt from income tax under the following conditions:
  
  - The shares should be sold in a stock exchange.
  - The shares must be acquired in a stock exchange.

**1.6 Tax on dividends from ordinary shares**

A. **For the business**: Dividends received by a company are not subject to CIT.

B. **For the owners of the business (physical persons)**: Dividends received by the owner of the business are subject to PIT with the rates explained earlier. CIT paid by the company can be used as a credit by the owner of the business against PIT.

**1.7 Tax on dividends from preferential shares**

A. **For the business**: The law makes no tax difference between ordinary or preferential shares, so what was offered for ordinary shares applies for preferential shares.

B. **For the owners of the business**: The law makes no tax difference between ordinary or preferential shares, so what was offered for ordinary shares applies for preferential shares.

**1.8 Tax treatment of interest on a loan from the shareholders**

A. **For the business**: As a general rule, interest would be deductible as an expense.

B. **For the shareholders**: Interest would be considered as taxable income, and a 20% (if company is domiciled in Chile) or 35% (if not) income tax rate would apply. If it is a physical person, it will be subject to the individual income tax.

The Chilean IRS has the power to assess the transaction if fair market value standards are not being applied.

**1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business**

A. **For the business**: The payments made by the company would be deductible as an expense.

B. **For the owners of the business**: The payments received are incomes and therefore subject to tax payments.

**1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business**

A. **For the business**: The payments made by the company would be deductible as an expense.

B. **For the owners of the business**: The payments received are incomes and therefore subject to tax payments.
1.11 Tax treatment of interest paid on bank debt by a family business
The interest paid by a company to a bank will be deductible by the company, as long as the loan is related to the business purpose of the company and not related to the shareholders. If the loan came from a foreign bank, the interest would pay WHT at the 4% rate.

1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property
The payments made by the business to third parties would be deductible as expenses.

1.13 Tax treatment of rental payments made by a family business to third parties for real estate
The payments made by the business to third parties would be deductible as expenses.

1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group
The interest paid by the company will be deductible as an expense.

1.15 Does your country provide for a deemed deduction on equity and/or debt?
Chilean legislation does not contemplate for a deemed deduction.

1.16 Is the retention of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?
Except for listed corporations, the law establishes no obligations in order to distribute profits. Listed corporations must distribute at least 30% of its profits every year.

1.17 Wealth tax
- 2013 characteristics and rate: N/A.
- Is there an exemption for shares owned by a family that owns a business?: N/A.

1.18 Inheritance tax/estate tax
Inheritance tax applies with a variable rate, which depends on the amount of the heritage. The rate starts at 1% and rises to 25%. Nevertheless, a deduction of approximately CLP47,500 is allowed for the relatives of the deceased (children and spouse).

1.19 Gift tax
Gift tax applies with a variable rate, which depends on the amount of the gift. The rate starts at 1% and rises to 25%. Similar to inheritance tax, a deduction of approximately CLP4,750 is allowed for the relatives of the deceased (children and spouse).

1.20 Real estate transfer tax
There is not special tax for real estate transferences. Under some conditions, capital gain in the sale of real estate is not taxable.

1.21 Endowment tax
N/A.

1.22 Social security
- National/social insurance contributions on employee income: Social security contributions covering funds are paid by employees at a rate of approximately 12% on salaries up to a maximum of 70.3 UF (Unidad de Fomento (UF) is a unit of accounting that is used in Chile) (approximately CLP3,200). These contributions are withheld and paid by employers on a monthly basis, and are deducted from the base upon which employment taxes are calculated.
### 1.22 Social security

- **Health/medical/dental care**
  
  Mandatory health insurance (public or private health system) is paid by the employees at a rate of 7% on salaries up to the same cap of the social security contribution. These contributions are withheld and paid by employers on a monthly basis, and are deducted from the base upon which employment taxes are calculated.

- **Retirement plans/pensions for employees**
  
  The retirement plans are considered into social security contributions; however, the employees may increase their funds by contributing voluntary savings, which are in general tax deductible.

### 1.23 Pensions and tax-efficient savings

- **Tax relief on pension contributions – standard**
  
  Mandatory pensions are deducted from the employee's monthly taxable base.

  In addition, for employees, voluntary savings are deductible from tax bases. This allowance applies with a cap of 600 UF (approximately CLP27,000) on a yearly basis.

- **Tax relief on pension contributions – any specific relief to family business?**
  
  N/A.

### 1.24 Taxation of flow-through entities/partnerships/trust funds

No changes have been made.

### 1.25 Exemptions in the law that specifically relate to family businesses

Family businesses are not legally recognized and there is no special treatment for them.

### 1.26 Are there any business incentives in your country that are specific to

- **SMEs**
  
  Currently, there is a certification that the company is “SMEs friendly,” and one of the standards that the company should meet is to pay to SMEs on time.

- **Family businesses**
  
  N/A.

### 1.27 Tax treatment of losses made by a family business

- **Are there any available loss reliefs that are specific to family businesses?**
  
  There are no special reliefs, but general rules apply.

- **Are there any available loss reliefs that are specific to SMEs?**
  
  There are no specific reliefs for SMEs. However, losses can be carried back or forward without time limits. It must first be carried back and then may be carried forward.

---

### Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- **Calculation 1:** The business makes a profit before tax of CLP2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.
The payable tax may undergo slight changes due to the fact that the rate is determined by a progressive scale.

- Calculation 2: The business makes a profit before tax of CLP500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

### Section 3: Tax treatment of family businesses and other issues

#### 3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

There are not special differences.

#### 3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

Capital gains and dividends distributions are subject to the taxation explained above, and there is no special treatment for family business.

#### 3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

There are control regulations, and the penalties are the same as the payment of the equivalent tax, interests and/or fines. Please note, those regulations are for everybody, and there are not special rules for family business.

#### 3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

A. Fully publicly listed? No.

B. Partly publicly listed? No.
3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

No.

Section 4: Succession planning

4.1 Life insurance

The amounts received for beneficiaries of life insurance are exempt of income tax.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?

Shareholders’ agreement or buy/sell agreements are commonly used.

4.3 Estate tax

There are no special allowances or techniques; each particular case should be analyzed individually.

4.4 Pension plans

Insurances with social security voluntary savings contributions have a tax benefit. The portion that represents the social security voluntary savings contributions may be received by heirs with a sole tax of 15%.

4.5 Trusts, foundations and private purpose funds

N/A. (In Chile, trusts, private foundations and private purpose funds are not legally recognized.)

4.6 Wills/intestacy/family charters

According to civil law, Chileans are not completely free to make a will. Moreover, the law provides that at least three-quarters of the estate should be assigned to the heirs, allowing only absolute freedom on the remaining quarter.

4.7 Passing on a business

No changes have been made.

4.8 Private equity

<table>
<thead>
<tr>
<th>Specific legislation/tax treatment of income derived from private equity (PE) activity</th>
<th>Currently, there is a regulation for the private equities, but this legislation is being reviewed by the authority.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equivalent PE ratio</td>
<td>N/A.</td>
</tr>
<tr>
<td>Others</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

Section 5: Tax policy environment

5.1 Policy environment relating to family business

Family business are not legally recognized, and there is no current discussion to give them recognition or benefits.

5.2 Specify change in the direction of tax policy in the last three years

N/A.
Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with:

- High net worth individuals (HNWIs) No.
- SMEs No.
- Family businesses No.
- Large corporate taxpayers The Large Corporate Taxpayers (DGC) is a special department of the Chilean IRS, which is located in Santiago.
- Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses N/A.

6.2 Specify enforcement focus areas or defined programs that might touch a family business

There are no special review programs.

6.3 Specify tax enforcement focus on any particular industry or profession

There are no special review programs.

6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners

There are no special review programs.

6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

N/A.

6.6 Are there any specific pre-filing processes that can be leveraged by:

- HNWIs: N/A.
- Family businesses: N/A.

6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

There are some mandatory statements for taxpayers, such as a transfer pricing statement and a trustee statement.
<table>
<thead>
<tr>
<th>Country name</th>
<th>China</th>
</tr>
</thead>
<tbody>
<tr>
<td>EY contacts</td>
<td>Rex Young</td>
</tr>
<tr>
<td></td>
<td>Hong Kong</td>
</tr>
<tr>
<td></td>
<td>+852 2629 3020</td>
</tr>
<tr>
<td></td>
<td><a href="mailto:rex.young@hk.ey.com">rex.young@hk.ey.com</a></td>
</tr>
<tr>
<td></td>
<td>Jason Mi</td>
</tr>
<tr>
<td></td>
<td>Beijing</td>
</tr>
<tr>
<td></td>
<td>+86 10 5815 3990</td>
</tr>
<tr>
<td></td>
<td><a href="mailto:jason.mi@cn.ey.com">jason.mi@cn.ey.com</a></td>
</tr>
<tr>
<td></td>
<td>Shelley Tang</td>
</tr>
<tr>
<td></td>
<td>Shanghai</td>
</tr>
<tr>
<td></td>
<td>+86 21 2228 2658</td>
</tr>
<tr>
<td></td>
<td><a href="mailto:shelley.tang@cn.ey.com">shelley.tang@cn.ey.com</a></td>
</tr>
</tbody>
</table>

Section 1: The accumulative tax burden on family business

2013 tax rates

1.1 Corporate income tax (national and sub-national combined)

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>Change in rate in the last three years (up or down)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highest marginal rate</td>
<td>The current highest rate is 25%.</td>
<td>No change.</td>
</tr>
<tr>
<td>Highest rate for small and medium enterprises (SMEs)/small business</td>
<td>Currently, the rate is 20% for a qualified small-scale enterprise (QSE). QSE refers to an industrial enterprise with annual taxable profits not more than CNY300,000, headcount not more than 100 and total assets not more than CNY30 million. Or other enterprise with annual taxable profits not more than CNY300,000, headcount not more than 80, and total assets not more than CNY10 million.</td>
<td>No change.</td>
</tr>
</tbody>
</table>

*China in this chapter refers to mainland China, which excludes Hong Kong.*
### 1.1 Corporate income tax (national and sub-national combined)

- **Special treatment of SMEs/ small business (other reliefs, etc.)**
  - If the annual taxable profit of a QSE is not more than CNY60,000, only 50% taxable profits would be accounted for corporate income tax (CIT) purpose, making the effective tax rate 10%.
  - No change in rate, but in 2011 the above mentioned preferential treatment applied to a QSE with taxable profit not more than CNY30,000.

#### 1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Personal allowance</strong></td>
<td></td>
</tr>
<tr>
<td>• For employment income and self-employment income, generally, there is a monthly standard deduction of CNY3,500 from the taxable income.</td>
<td>The monthly standard deduction for employment income and self-employment income was changed from previous CNY2,000 per month to CNY3,500 per month effective from September 2011.</td>
</tr>
<tr>
<td>• For royalties, rental or leasing income, copyright income and labor service income, there is a deduction of CNY800 or 20% of income, whichever is higher is allowable.</td>
<td></td>
</tr>
<tr>
<td><strong>Minimum rate of personal income tax (PIT)</strong></td>
<td></td>
</tr>
<tr>
<td>• For employment income, the minimum tax rate is 3%.</td>
<td>The minimum rate for employment income was changed from 5% to 3% effective from September 2011.</td>
</tr>
<tr>
<td>• For self-employment income, the minimum tax rate is 5%.</td>
<td></td>
</tr>
<tr>
<td>• For the other types of income as listed in above column, they are subject to flat tax rate of 20% (the applicable tax rate may be reduced subject to the provision of tax treaty and other tax relief regulations).</td>
<td></td>
</tr>
<tr>
<td><strong>Highest marginal rate of PIT</strong></td>
<td></td>
</tr>
<tr>
<td>• For employment income, the highest tax rate is 45%.</td>
<td>N/A.</td>
</tr>
<tr>
<td>• For self-employment income, the highest tax rate is 35%.</td>
<td></td>
</tr>
<tr>
<td>• Higher payment of labor service income is subject to a tax rate as high as 40%.</td>
<td></td>
</tr>
<tr>
<td><strong>Any special surtaxes</strong></td>
<td>No special surtax.</td>
</tr>
</tbody>
</table>
### 1.2 Individual income tax

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

In the China's revised Individual Income Tax Law effective from 1 September 2011, the monthly standard deduction from the taxable income is increased from CNY2,000 to CNY3,500. The minimum tax rates also decreased from 5% to 3%. In addition, there has been some adjustment on the income band. The tax rates effective from 1 September 2011 and for prior periods are as follows:

<table>
<thead>
<tr>
<th>Tax band</th>
<th>Income range - CNY (including tax)</th>
<th>Tax rate %</th>
<th>Quick reckoning deduction CNY</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>≤ 1,500</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>2</td>
<td>1,501-4,500</td>
<td>10</td>
<td>105</td>
</tr>
<tr>
<td>3</td>
<td>4,501-9,000</td>
<td>20</td>
<td>555</td>
</tr>
<tr>
<td>4</td>
<td>9,001-15,000</td>
<td>25</td>
<td>1,005</td>
</tr>
<tr>
<td>5</td>
<td>15,001-35,000</td>
<td>30</td>
<td>2,755</td>
</tr>
<tr>
<td>6</td>
<td>35,001-55,000</td>
<td>35</td>
<td>5,505</td>
</tr>
<tr>
<td>7</td>
<td>≥ 55,001</td>
<td>40</td>
<td>13,505</td>
</tr>
<tr>
<td>8</td>
<td>80,001-100,000</td>
<td>45</td>
<td>15,375</td>
</tr>
<tr>
<td>9</td>
<td>≥ 100,001</td>
<td>45</td>
<td>15,375</td>
</tr>
</tbody>
</table>

1. The above tax rate table applies to the calculation of individual income tax (IIT) with the income that is inclusive of tax.

### 1.3 VAT, GST and sales tax

- **Standard rate VAT:**
  - Sales of goods and provision of processing, repairing and replacement services, and the importation of goods would be subject to VAT at 17%.
  - Provision of transportation service would be subject to VAT at 11% effective from 1 August 2013.
  - Provision of modern services (such as R&D and technology services; information technology services; cultural and creative services; logistics auxiliary services; authentication; and consulting services) would be subject to VAT at 6% from 1 August 2013.
  - Movable property leasing is subject to VAT at 17% from 1 August 2013.

- **VAT:**
  - The VAT rates for the sales of goods and provision of processing, repairing and replacement services, and the importation of goods has not changed.
  - Provision of transportation service was subject to business tax (BT) at 3% before 1 August 2013 (except for certain VAT reform pilot cities).
  - Provision of modern services (such as R&D and technology services, information technology services, cultural and creative services, logistics auxiliary services, authentication, and consulting services) was subject to BT at 5% before 1 August 2013 (except for certain VAT reform pilot cities).
1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Standard rate BT:</td>
<td>• Movable property leasing was subject to BT at 5% before 1 August 2013 (except for certain VAT reform pilot cities).</td>
</tr>
<tr>
<td>• Sales of immovable property and land use rights and intangible assets would be subject to BT at 5%.</td>
<td>BT: For sales of immovable property and land use rights and intangible assets, there is no change. For provisions of other services (such as constructions, postage and communication, financial and insurance), there is no change.</td>
</tr>
<tr>
<td>• Provisions of other services (such as constructions; postage and communication; financial and insurance; and entertainment) other than those subject to VAT would be subject to BT at 3% to 20%.</td>
<td></td>
</tr>
<tr>
<td>• Movable property leasing was subject to BT at 5% before 1 August 2013 (except for certain VAT reform pilot cities).</td>
<td></td>
</tr>
</tbody>
</table>

- Are there any special reliefs or exemptions for a family business?

- For the following small-scale VAT taxpayers, the tax levy rate is 3%:
  - If the annual turnover for sales of goods is not more than CNY500,000 for a manufacturing taxpayer or a taxpayer with over 50% manufacturing income.
  - If annual turnover for sales of goods is not more than CNY800,000 for retail and wholesale taxpayer.
  - If the annual revenue under VAT reform services is not more than CNY5,000,000. While the tax levy rate of 3% is applied for small-scale VAT taxpayers, the input VAT could not be credited against the output VAT liability.
  - Effective from 1 August 2013, for taxpayers whose monthly turnover is not more than CNY20,000, VAT or BT is exempted for small business (general VAT taxpayers are excluded).

- No change since 2009.
- No such tax relief before 1 August 2013.

1.4 Property taxes

- Does a family business receive any relief on property taxes not granted to other types of corporation?

  There is no special property tax relief for family businesses in China.

1.5 Capital gains tax (CGT)

- 2013 rate – companies
  - N/A.
- 2013 rate – individuals
  - The current rate is 20%.
- Reliefs/exemptions
  - Capital gains derived from transfers of shares listed on China stock exchanges in the secondary market are temporarily exempt from China IIT.
  - The applicable tax rate may be reduced for individuals that are residents in treaty countries.

1.6 Tax on dividends from ordinary shares

A. For the business: The dividends are non-tax deductible for the company paying the dividends. The dividends are subject to 10% withholding tax if paid to non-tax resident and are exempted from income tax for tax resident company receiving dividends from tax resident enterprises (excluding holding (holding period) the shares listed in China stock market for a period of less than 12 months).

B. For the owners of the business: The dividend income is subject to individual income tax at the rate of 20%.
1.7 Tax on dividends from preferential shares

A. For the business: N/A.

B. For the owners of the business: N/A.

1.8 Tax treatment of interest on a loan from the shareholders

A. For the business: The interest expense is deductible for the company paying the interest, while it is subject to thin capitalization rules and the interest rate should not exceed the financial institution lending rate. The interest income is subject to 25% for tax resident company, while it is subject to 10% withholding tax for a non-tax resident company. Also, the income is subject to BT at 5% (plus local surcharges of up to 12% on the BT payable).

B. For the owners of the business: The interest income is subject to individual income tax at a rate of 20%. Also, it is subject to BT at 5% (plus local surcharges of up to 12% on the BT payable).

1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

A. For the business: The rental expense relevant to the business operation of the company is generally deductible for CIT purpose subject to arm’s-length review. The rental income would be subject to CIT at 25% for a tax resident company, while it is subject to 10% withholding tax for a non-tax resident parent company. Also, the income is subject to BT at 5% (plus local surcharges of up to 12% on the BT payable). Further, the rental income on real estate is also subject to real estate tax (RET) at 12%.

B. For the owners of the business: Rental or leasing income is subject to individual income tax at a rate of 20%. The income is allowed a deduction of CNY800 or 20% of income, whichever is higher. Also, it is subject to VAT at 6% (plus local surcharges of up to 12% on the VAT payable).

1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

A. For the business: The royalty expense paid the company if relevant to the business operation is generally deductible subject to arm’s-length review. The royalty income is subject to a 25% rate for tax resident company while it is subject to 10% withholding tax for a non-tax resident company. Also, the income is subject to VAT at 6% (plus local surcharges of up to 12% on the VAT payable).

B. For the owners of the business: Royalties income is subject to individual income tax at a flat rate of 20%. The income is allowed a deduction of CNY800 or 20% of income, whichever is higher. Also, it is subject to VAT at 6% (plus local surcharges of up to 12% on the VAT payable).

1.11 Tax treatment of interest paid on bank debt by a family business

The interest expense paid is generally deductible for the company paying the interest. If paid to a domestic bank, there is no withholding tax obligation; however, if paid to an offshore bank, the company shall withhold 10% income tax and 5% BT (plus local surcharges of up to 12% on the BT payable) on the interest paid.

1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

If relevant, the royalty expense paid to the company’s business operation is generally tax deductible. If paid to a domestic third party (corporate), there is no withholding tax obligation; however, if paid to an offshore third party (corporate), the company paying the royalty shall withhold 10% income tax and 6% VAT (plus local surcharges of up to 12% on the VAT payable) on the royalties paid.

1.13 Tax treatment of rental payments made by a family business to third parties for real estate

The rental expense relevant to the business operation of the company is generally deductible for CIT purpose. If paid to a domestic third party (corporate), there is no withholding tax obligation; however, if paid to an offshore third party (corporate), the company shall withhold 10% income tax and 5% BT (plus local surcharges of up to 12% on the BT payable) on the rental paid.
### 1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group

Related-party transactions should be conducted on an arm's-length basis, otherwise the tax bureau is entitled to make a tax adjustment. To be specific, the interest rate of the related-party loan should not exceed the prevailing financial institution lending rate while the principal should not exceed the prescribed debt-equity rate (i.e., debt-equity rate for financial enterprises is 5:1; for other enterprises it is 2:1). The interest expense exceeding the above rules is non-tax deductible for CIT purpose. If the interest is paid to a domestic corporate related party, the related party receiving such interest income is subject to CIT at 25% and BT at 5% (plus local surcharges of up to 12% on the BT payable). If the interest is paid to a non-tax resident company, it is subject to withholding income tax at 10% and BT at 5% (plus local surcharges of up to 12% on the BT payable).

### 1.15 Does your country provide for a deemed deduction on equity and/or debt?

No (from a corporate tax perspective).

### 1.16 Is the retainment of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

The earnings should be used to make up the losses in prior years (if any) before repatriation and is subject to statutory reserves up to 10% and it could be retained until the liquidation of the corporate.

### 1.17 Wealth tax

<table>
<thead>
<tr>
<th>2013 characteristics and rate</th>
<th>No wealth tax is levied in China.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is there an exemption for shares owned by a family that owns a business?</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

### 1.18 Inheritance tax/estate tax

No inheritance tax or estate tax is levied in China.

### 1.19 Gift tax

No gift tax is levied in China.

### 1.20 Real estate transfer tax

From the estate and succession perspective, no real estate transfer tax is levied in China. However, transfer of real estate or land-use rights in China may be subject to IIT, business tax, deed tax, stamp duty and land-appreciation tax.

- **IIT:** If a transfer of real estate or land-use rights is made without consideration, the property received would be considered “other income” to the recipient and subject to IIT at a flat tax rate of 20%. The transfer by virtue of inheritance or gift under the following circumstances will be exempted from the IIT:
  - Gratuitous transfer of land-use rights or real estate to lineal relatives (i.e., spouse, children, parents, grandparents, grandchildren and siblings)
  - Gratuitous transfer of land-use rights or real estate to dependents
  - Gratuitous transfer of land-use rights or real estate to statutory heirs and legatees upon the death of the decedent
  - Gratuitous transfer of land-use rights or real estate to a spouse by virtue of divorce

In order to claim IIT exemption on these transfers, transferees should fulfill the registration requirement with the local tax authority and obtain written approval.
1.20 Real estate transfer tax

- **Business tax:** The transfer of real estate or land-use rights would be considered a taxable transaction, and the transferor would be subject to the business tax and the relevant surtaxes at the time of transfer. The business tax rate applicable to the transfer of real estate and land-use rights is 5%. Gift transfers are temporarily exempted from business tax for individuals and the relevant surtaxes under the following circumstances:
  - Gratuitous transfer of land-use rights or real estate to lineal relatives
  - Gratuitous transfer of land-use rights or real estate to dependents
  - Gratuitous transfer of land-use rights or real estate to statutory heirs and legatees upon the death of the decedent
  - Transfer of land-use rights or real estate as a gift to a spouse by virtue of divorce

Transfers are required to comply with relevant registration formalities of the local tax authority to claim the business-tax exemption on the gift of the real estate or land-use rights.

- **Deed tax:** The transfer of real estate or land-use rights would be subject to deed tax. Deed tax rates range from 3% to 5% depending on the location of the cities in different provinces.

- **Stamp duty:** The stamp duty is imposed when a contract of property transfer is concluded. Both parties who sign the contract are liable for the stamp duty. The tax base for the stamp duty is calculated based on the value of the property specified in the contract. The tax rate applicable to the contract concluded for transferring property rights is 0.05%.

- **Land-appreciation tax (LAT):** Sale or compensated transfer of real estate or land-use rights is subject to LAT. A transferor who benefits from the transfer is liable for LAT. However, transfer of real estate or land-use rights without consideration, such as inheritance or gift, will not realize a charge.

1.21 Endowment tax

No endowment tax is levied in China.

1.22 Social security

- **National/social insurance contributions on employee income**
  
The coverage of social insurance contribution in China mainly covers the following categories and the rates vary by location:
  - Pension
  - Medical
  - Unemployment
  - Maternity
  - Work-related injury

Both the employer and employee shall be liable to make contributions to China social insurances, while the contribution rates applicable to the employer and employee could be different.

- **Health/medical/dental care**
  
  There is medical insurance in China, and the contribution rates vary by location, e.g., it is 10% for employer and 2% + CNY3 for employee in the city of Beijing for 2013.

- **Retirement plans/pensions for employees**
  
The pension insurance contribution rates vary by location, e.g., it is 20% for employer and 8% for employee in the city of Beijing for 2013.

1.23 Pensions and tax-efficient savings

- **Tax relief on pension contributions – standard**
  
The employers and employees contribute to pension insurance, which is within the ceiling of statutory contribution of that city, can be exempt/deductible for China IIT.

- **Tax relief on pension contributions – any specific relief to family business?**
  
  No.
China partnership is taxed on a flow-through basis, i.e., the partnership itself is not taxed but income allocated to partners is subject to tax at the partner level. For example, if the partner is an individual, his or her allocable income will be subject to IIT by reference to the taxation on the individual business owner but interest and dividend income flow-through to the individual partner will be subject to 20% tax rate only.

Exemptions in the law that specifically relate to family businesses

There are no exemptions that we are aware of at this time.

Are there any business incentives in your country that are specific to

- SMEs
  Considering the contribution made by the SMEs to the society, to promote employment, maintain economic development and social harmonies, the government has issued various incentives for the SMEs, such as 50% taxable profits exempted from CIT for the qualified SMEs; exempting the stamp duty on the loan contract between the financial institutions and the SMEs; extending the CIT preferential treatment on the bad debt provision for the SME loans made by the financial institutions; providing specialized funds to the SMEs to boost the development; and reducing government charges to SMEs.

- Family businesses
  No such incentive is specifically addressed to the family business.

Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses?
  No, not from a corporate tax perspective.

- Are there any available loss reliefs that are specific to SMEs?
  No, not from a corporate tax perspective.

Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

The business type as indicated in the above sample should be in nature of sole proprietorship enterprise, which means a business entity established within China with its capital contributed by one individual and its assets owned personally by the sole proprietor, who assumes unlimited liability to the extent of his personal assets, according to relevant law in China. For such a case, there is currently no corporate income tax that will be levied, but an individual income tax will be levied on the total income derived from its business production, after deducting costs, expenses and losses from the total amount of income in a tax payment year. Our calculations below were prepared based on the assumption that the profit before tax as mentioned below refers to the total income after relevant deductions, including the standard deduction of CNY42,000 per year.

- **Calculation 1:** The business makes a profit before tax of CNY2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.
  
  The individual income tax payable on the CNY2 million of before-tax profit is:
  
  \[ 2,000,000 \times 35\% - 14,750 = 685,250 \]

- **Calculation 2:** The business makes a profit before tax of CNY500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.
  
  The individual income tax payable on the CNY500,000 of before-tax profit is:
  
  \[ 500,000 \times 35\% - 14,750 = 160,250 \]
Has this effective tax rate increased, decreased or stayed the same in the last three years?

There has been no change on the tax rates in the last three years, but the range of taxable income corresponding to each tax rate has been increased since September 2011. Please see below the tax rate table applicable to the taxation of the individual income tax on the business type of sole proprietorship enterprise, partnership and individual business.

<table>
<thead>
<tr>
<th>Tax band</th>
<th>Income Range (including tax)</th>
<th>Tax rate %</th>
<th>Quick reckoning deduction (RMB)</th>
</tr>
</thead>
<tbody>
<tr>
<td>From 1 Sept. 2011</td>
<td>Prior to Sept. 2011</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>≤15,000</td>
<td>≤5,000</td>
<td>5</td>
</tr>
<tr>
<td>2</td>
<td>15,001-30,000</td>
<td>5,001-10,000</td>
<td>10</td>
</tr>
<tr>
<td>3</td>
<td>30,001-60,000</td>
<td>10,001-30,000</td>
<td>20</td>
</tr>
<tr>
<td>4</td>
<td>60,001-100,000</td>
<td>30,001-50,000</td>
<td>30</td>
</tr>
<tr>
<td>5</td>
<td>≥100,001</td>
<td>≥50,001</td>
<td>35</td>
</tr>
</tbody>
</table>

Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

The tax treatment shall be subject to the registered business type. As mentioned above, if it is registered as a sole proprietorship enterprise or partnership or individual business, no corporate income tax will be levied, but individual income tax will be levied, even if it is under a corporation veil. However, if it is registered as a limited liability company, there should be a difference on the tax treatment as corporate income tax will be raised.

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

There is no difference on the tax rate applicable to capital gain and dividend income, which is at a flat tax rate of 20% for both incomes. But for capital gain, costs and related expenses can be deducted from the income derived from the sale or transfer of movable or immovable property to arrive at the taxable income.

However, if the shareholder is a tax resident company, the capital gains would be subject to CIT at 25%, while the dividends it receives from another tax resident company (excluding holding listed shares less than 12 months) is exempted from CIT.

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

None.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

A. Fully publicly listed? No.
B. Partly publicly listed? No.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

No.

1. The above tax rate table applies to the calculation of IIT with the income that is inclusive of tax.
Section 4: Succession planning

4.1 Life insurance
None.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?
No.

4.3 Estate tax
There is no estate tax in China.

4.4 Pension plans
There are no special provisions available for owners or HNWI from the Chinese tax perspective.

4.5 Trusts, foundations and private purpose funds
There are no special tax provisions or preferential Chinese tax treatments available based on current regulations.

4.6 Wills/intestacy/family charters
There are no special tax provisions or preferential Chinese tax treatments available based on current regulations.

4.7 Passing on a business
No estate tax and gift tax in China on passing on a business. For the case of passing stocks of a private company to lineal relatives (i.e., spouse, children, parents, grandparents, grandchildren and siblings and other close relatives) as estate or gift for free, China IIT could be exempted at some locations in China.

4.8 Private equity
Specific legislation/tax treatment of income derived from private equity (PE) activity
Currently, there is no tax legislation in China tax law on the tax treatment of carried interest income for individual. In practice, if the carried interest income is earned due to employment and shall be defined in the nature of employment income, such income may be treated as employment income and be subject to individual income tax with the tax rates ranging from 3% to 45%. If the carried interest income is not earned in relation to employment and shall not be treated as employment income, such income may either be treated as income from self-employment with the applicable tax rates ranging from 5% to 35%, or be treated as dividend/interest income with the applicable tax rate of 20%.

Equivalent PE ratio  N/A.
Others  N/A.

Section 5: Tax policy environment

5.1 Policy environment relating to family business
The Chinese Government has been focused on the reforms of the tax regime from various aspects in recent years, aiming to stabilize the tax burden and optimize the industry structures. However, we are not aware that policies on family businesses are a regularly discussed topic.
China

5.2 Specify change in the direction of tax policy in the last three years
The Chinese Government has been offering tax incentives to small scale businesses in recent years, but not specifically to the family business.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners
The same as Section 5.2.

5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions
We are not aware of any at this time.

Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with:

- High net worth individuals (HNWIs) No.
- SMEs No.
- Family businesses No.
- Large corporate taxpayers There is a unit on the administration of taxation of large corporate taxpayers in the State Administration of Taxation (SAT), as well as in many sub-locations at the province and city level.
- Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses In the tax circulars issued by the SAT on the strengthening of administration of taxation of HNWI, one of the focus areas of administration is on the sole proprietorship enterprise, partnership and individual businesses with relatively large scale.

6.2 Specify enforcement focus areas or defined programs that might touch a family business
Yes, SAT in China has announced several tax circulars in 2010 and 2011 on strengthening the administration of taxation for high income earners, including tax circulars Guoshuifa [2010] No changes have been made. 54 and Guoshuifa [2011] No changes have been made. 50. As mentioned above, one of the focus areas of administration is on the sole proprietorship enterprise, partnership and individual businesses with relatively large scale.

6.3 Specify tax enforcement focus on any particular industry or profession
The industry of high income earners are mainly referring to the following:

- Electrical power, telecommunication, financing, insurance, securities, oil, tobacco, air, railway, real estate, and municipal water and gas supply
- Law firm, accounting firm, audit firm, CTA (Certified Tax Agent) firm, and CPV (Certified Public Valuer) firm
- Football club
- High and new technology enterprise and emerging industries
- Foreign investment enterprise, foreign enterprise and representative office
- Colleges and universities
- Entertainment enterprise
- Other enterprises and public servant units with good profit
6.3 Specify tax enforcement focus on any particular industry or profession

The profession of high income earners are mainly referring to the following:

- Owner of private enterprise of relatively large scale, investor of sole proprietorship or partnership and individual businesses of large scale
- Construction contractor
- Management personnel, board of director and board of supervisor of enterprises
- Actors, models, football coach/player
- Broker on culture and entertainment, sports and economy-related activities
- Certified lawyer, CPA, auditor, CTA
- Teachers of university, high school and middle school
- Self-employed individuals of special skill, e.g., doctor, tour guide, chef, equity market analyst, decoration designer

6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners

The SAT is putting more force on the administration of taxation of HNWI, especially on the following areas:

- Property transfer, especially the transfer of stock (or stock right) and real estate
- Dividend/interest income
- Income from production and operation by sole proprietorships, partnerships and individual businesses with relatively large scale

The tax authority may monitor the tax payment record periodically and carry out tax audit where special situation is noted (e.g., significant variance on tax payment amount). Also, tax audit could be carried out due to reason of taxation revenue or other reasons.

6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

No.

6.6 Are there any specific pre-filing processes that can be leveraged by:

- HNWIs: insert: See below.
- Family businesses: See below.

In China, the taxation is administrated by different tax bureaus in each city at local level and therefore the interpretation of the tax laws and local practices may vary among different city locations.

For frequent cases where there is no clear guidance from tax laws on the pre-filing process, they are subject to negotiations with the governing local tax bureaus based on the local tax practice.

6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

There is no special focus on the international sharing of taxpayer data that specifically relates to HNWI, but there is a growth in the signing of a tax information exchange agreement with certain countries or jurisdictions. The confidentiality of the taxpayer’s information in those countries will not be lowered.
<table>
<thead>
<tr>
<th>Country name</th>
<th>Colombia</th>
</tr>
</thead>
</table>
| EY contacts  | Ricardo Ruiz  
Bogotá  
+57 1 484 7537  
ricardo.ruiz@co.ey.com  
Luz Jaramillo  
Bogotá  
+57 1 484 7230  
luz.jaramillo@co.ey.com |

Section 1: The accumulative tax burden on family business

2013 tax rates

1.1 Corporate income tax (national and sub-national combined)

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Highest marginal rate</td>
<td>The current highest rates are as follows: 25% corporate income tax (CIT) and 9% CREE(^1) Tax (8% as of 2016). Nonresidents with no permanent establishment or branch are subject to a 33% tax rate. Law 1607 of 2012 introduced an additional income tax that resulted in a higher combined rate for taxable years 2013 to 2015.</td>
</tr>
<tr>
<td>• Highest rate for small and medium enterprises (SMEs)/small business</td>
<td>Same as explained above; however, special benefits to small businesses exist. Same as explained above.</td>
</tr>
</tbody>
</table>

---

1. Income tax for equality – CREE Tax, is an income tax created to fund the National Learning Service (SENA) and Family Welfare Institution (ICBF) applicable only for entities that are income tax taxpayers. As a consequence of its creation, some of the payroll contributions used to fund said entities were eliminated.
1.1 Corporate income tax (national and sub-national combined)

- **Special treatment of SMEs/small business (other reliefs, etc.)**
  
  A reduced and gradual income tax rate are available for small businesses (maximum 50 employees and assets equivalent to COP5,000 minimum monthly wages duly registered before the Chamber of Commerce after the issuance of Law 1429 of 2010, and until December 2014.\(^2\)

  - There is a progressive payment of income tax, meaning that the tax rate of the CIT will progressively increase from year to year as follows:
    - 0%: first two taxable periods
    - 25%: third taxable period
    - 50%: fourth taxable period
    - 75%: fifth taxable period
    - 100%: from the sixth taxable period and onward

  This progressive payment also applies for para-fiscal contributions.

  - The beneficiaries of this income tax rate reduction will not be subject to the determination of the income tax under the presumptive income system and will not be subject to tax withholdings during the term of application of the benefits.

---

**Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?**

Law 1607 of 2012 (tax reform) introduced a new tax – income tax for equality CREE Tax – which includes a taxable base that is inspired in a CIT taxable basis, but not all elements of CIT are included in its calculation. This new tax is only applicable for local corporations and foreign corporations with a branch or permanent establishment, that are income tax payers in Colombia.

In any case, the CREE taxable base cannot be lower than the presumptive income of the taxpayer.

Corporations subject to CREE Tax are not obliged to pay the social system contributions, SENA contribution or ICBF contribution of their employees – up to 10 minimum wages.\(^3\)

---

2. To conserve the abovementioned tax benefit, the small businesses have to comply with requirements established on the regulation (Decree No changes have been made. 545 of 2011) every year.

3. Approximately US$3,048. (Exchange rate: COP1,943.)
### 1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Personal allowance</td>
<td>Individual income tax will vary according to the amount of income (in taxable value units called UVT[4]) as follows:</td>
</tr>
<tr>
<td></td>
<td>• From UVT0 to UVT1.090: 0%</td>
</tr>
<tr>
<td></td>
<td>• From UVT1.091 to UVT1.700: 19%</td>
</tr>
<tr>
<td></td>
<td>• From UVT1.701 to UVT4.100: 28%</td>
</tr>
<tr>
<td></td>
<td>• From UVT4.101 onward 33%</td>
</tr>
<tr>
<td>UVT is equal to US$13.88 for 2013.</td>
<td>N/A.</td>
</tr>
<tr>
<td>• Minimum rate of personal income tax (PIT)</td>
<td>0% (Law 1607 of 2012) N/A.</td>
</tr>
<tr>
<td>• Highest marginal rate of PIT</td>
<td>33% (Law 1607 of 2012) N/A.</td>
</tr>
<tr>
<td>• Any special surtaxes</td>
<td>There are no special surtaxes applicable. N/A.</td>
</tr>
</tbody>
</table>

#### Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

Law 1607 of 2012 created an alternative income tax system (IMAN tax) for three categories of tax payers: employees, qualified independent workers and passive income holders. The tax base for each is revenues less limited deductible items defined by law. The ordinary income tax system continues, but if the tax calculated is less than the IMAN tax, the latter tax constitutes the final tax due.

Calculation via the IMAN tax system has a presumptive taxable base that does not allow the same deduction as the ordinary income tax system, but those indicated in Section 332 of the Colombian Tax Code, which establishes the items that are deductible of the taxable base, including:

- The amount of nontaxed dividends in favor of an individual
- Compensation of emerging damages
- Mandatory contributions to the social security system (health and pension)
- Representation costs indicated in Sub-section 7 of Section 206 of the Colombian Tax Code
- Health catastrophic payments (under certain limits)
- Losses derived from disaster or public calamity
- Cost of assets sold in the taxable period
- Compensation for life insurance

For standard income tax calculations, recent changes introduced by Law 1607 of 2013, include:

- Tax payers may take a monthly deduction of up to two dependents.
- Prepaid health payments may be deducted by the taxpayer, spouse and up to two children.

---

### 1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Standard rate</strong></td>
<td>The current rate is 16%.</td>
</tr>
<tr>
<td></td>
<td>Law 1607 of 2012 introduced certain modifications related to the VAT tax rates, creating three tax rate categories: 0%, 5% and 16%. Additionally, the list of excluded and exempted goods and services has been modified. Law 1607 of 2012 also introduced another new tax, called the “national consumption tax,” which includes food services, discotheque and bar services, and mobile phone services, among others. The rate varies from 4% to 16%. The tax paid does not generate input VAT.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Are there any special reliefs or exemptions for a family business?</th>
<th>There is no special tax relief for a small/family business.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 1.4 Property taxes

<table>
<thead>
<tr>
<th>Does a family business receive any relief on property taxes not granted to other types of corporation?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family businesses are not granted any relief on property taxes. The property tax is a municipal tax that is 100% deductible for income tax purposes but only to the extent it is related to the income producing activity of the taxpayer.</td>
</tr>
</tbody>
</table>

### 1.5 Capital gains tax (CGT)

<table>
<thead>
<tr>
<th>2013 rate – companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>As of 2013, the capital gain rate has been reduced from 33% to 10% for individuals and corporations, regardless of the type of fixed asset.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2013 rate – individuals</th>
</tr>
</thead>
<tbody>
<tr>
<td>As of 2013, the capital gain rate has been reduced from 33% to 10% for individuals and corporations, regardless of the type of fixed asset.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Reliefs/exemptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>The following are the exempted capital gains:</td>
</tr>
<tr>
<td>- The first UVT7,700 (2013 US$106,865) of the value of the urban and rural property.</td>
</tr>
<tr>
<td>- The first UVT3,490 (2013: US$48,436) of the marital portion or heritance.</td>
</tr>
<tr>
<td>- The first UVT7,500 (2013: US$104,089) of the profit generated on the sale of urban housing property owned by the deceased (certain requirements need to be met).</td>
</tr>
<tr>
<td>- Twenty percent of the value of goods and rights received by persons other than the heirs and/or the surviving spouse by concept of legacies and legacies, and 20% of the assets and rights received from donations and other legal acts gratuitously concluded, without such amount exceeds the equivalent of UVT (2,290) (US$31,785) are exempt.</td>
</tr>
<tr>
<td>- Equally books, clothes and utensils of personal use and the furniture in the house of the deceased are exempt.</td>
</tr>
</tbody>
</table>
1.6  Tax on dividends from ordinary shares

A. For the business: The tax rate is 25% plus 9% CREE (reduced to 8% in 2016).

B. For the owners of the business: If resident legal entities, the tax rate is 25% plus 9% CREE (reduced to 8% in 2016). If individuals, the rate is subject to progressive rate up to 33%.

Please note that the tax rates are applicable over dividends that have not been subject to taxes on a corporate level.

1.7  Tax on dividends from preferential shares

A. For the business: Similar to ordinary shares.

B. For the owners of the business: Similar to ordinary shares.

1.8  Tax treatment of interest on a loan from the shareholders

Interest is presumed in loans between the entity and its shareholders. This interest equals the current DTF rate as of 31 December of the prior year (yearly certified). If it is a cross-border loan, transfer pricing rules apply, instead of presumed interests.

Thin capitalization rules apply, meaning that income tax payers are only able to deduct interest on a loan, as long as the full loan average amount does not exceed a 3:1 ratio of the prior year net equity of the taxpayer.

Transfer pricing applies when the shareholder is a nonresident.

A. For the business: Interest income is subject to income tax at a 14% tax rate derived from loans obtained abroad for a term of one year or longer. If it is lower, a 33% withholding will apply. Some exceptions apply.

B. For the owners of the business: If shareholder is a resident individual, income from interest is taxable at progressive individual tax rates.

1.9  Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

A. For the business: Expense is deductible, provided general deductibility rules are observed.

B. For the owners of the business: If shareholder is a resident individual, income from interest is taxable at progressive individual tax rates.

Transfer pricing applies when the shareholder is a nonresident.

1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

A. For the business: Expense is deductible, provided general deductibility rules are observed.

B. For the owners of the business: If shareholder is a resident individual, income from interest is taxable at progressive individual tax rates.

Transfer pricing applies when the shareholder is a nonresident.

1.11 Tax treatment of interest paid on bank debt by a family business

Rules offered for Section 1.8 apply. Interests are deductible provided general deductibility requirements are met.
1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property
Payments are deductible provided general deductibility rules are observed.

1.13 Tax treatment of rental payments made by a family business to third parties for real estate
Payments are deductible provided general deductibility rules are observed.

1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group

A. Inter-group loans: Interests are presumed in loans between the entity and its shareholders. This interest is equal to the current DTF rate as of 31 December of the prior year.

Transfer pricing applies when a cross-border transaction exists. In this case, presumptive interest on loans does not apply.

B. Financing company: Thin capitalization rules apply, meaning that income tax payers are only able to deduct interest on a loan when the full average amount does not exceed a 3:1 ratio of the prior year net equity of the taxpayer. Transfer pricing applies where a cross-border transaction exists.

Thin capitalization rules apply for both scenarios, meaning that income tax payers are only able to deduct interest on a loan if the full average amount does not exceed a 3:1 ratio of the prior year net equity of the taxpayer.

1.15 Does your country provide for a deemed deduction on equity and/or debt?
No.

1.16 Is the retainment of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?
No.

1.17 Wealth tax

• 2013 characteristics and rate
  The last wealth tax was triggered in 2011. Currently, individuals subject to net wealth tax of 2011 are still paying installments until 2014.

• Is there an exemption for shares owned by a family that owns a business?
  There is no exemption for shares owned by a family who owns a business.

1.18 Inheritance tax/estate tax
Currently, the inheritance tax is 10%. The same rate applicable for capital gains.

1.19 Gift tax
Gifts are subject to a 10% tax rate as a capital gain.
Gifts can be deducted from the income tax if certain requirements are met.
1.20 Real estate transfer tax

The real estate transfer tax is 10% and it is deemed to be a capital gain in the event of a sale of fixed assets possessed for two years or more.

1.21 Endowment tax

In Colombia, the corporations, foundations and associations that are nonprofit are subject to a special regimen of taxation. They must pay an income tax, but at a rate of 20%. If such tax payers reinvested the net profit or net surplus fully in the activities of its object (according the regulation⁷), the abovementioned profit will be exempt of income tax.

1.22 Social security

- National/social insurance contributions on employee income
  - National Learning Service – SENA: 2%
  - Family Welfare Institute – ICBF: 3%
  - Family allowance – Cajas de Compensación Familiar: 4%
  - These percentages should correspond to 9% of the payroll of the company.

- Health/medical/dental care
  - Integrated Social Security System (SISS) includes the mandatory health and medical service (8.5% to be assumed by the employer).

- Retirement plans/pensions for employees
  - SISS includes the mandatory pension service (12% to be assumed by the employer).

1.23 Pensions and tax-efficient savings

- Tax relief on pension contributions – standard
  - Pension contributions are able to be deducted from the income tax up to UVT3,800 (2013: US$52,738). (Section 126-1).
  - Contributions to voluntary pension funds are nontaxable income, but the permanence term is increased from 5 to 10 years. Law 1607 of 2012 also limits the amount of contributions to a fixed amount of UVT3,800 (2013: US$52,738). In order to maintain the benefit, the contributions must be kept in the fund for 10 years, except when they are used for acquiring housing property.
  - The applicable tax treatment of a nontaxable income is that these contributions will only be taken into account in the calculation of the ordinary income tax of employees and not in the calculation of the IMAN Tax.

- Tax relief on pension contributions – any specific relief to family business?
  - There is no specific tax relief for family business.

1.24 Taxation of flow-through entities/partnerships/trust funds

Law 1607 of 2012 introduced the full transparency principle to domestic trust as follows:

- Losses generated are deductible for its settler and beneficiaries under general rules.
- Profits and losses booked by the beneficiaries maintain the same tax conditions that they had in the trust fund.
- Tax benefits of investments, gifts, acquisitions or any other concepts can be applied directly by the beneficiaries or via the trust fund.
- Trust fund rights have the same equity treatment as the assets owned by the trust fund.

1.25 Exemptions in the law that specifically relate to family businesses

There are no exemptions that specifically relate to family businesses.

### 1.26 Are there any business incentives in your country that are specific to

| SMEs                        | Job creation: The Law 1429 of 2010 established a gradual payment of the payroll taxes from the start of activities by small companies (see Section 1.1 above). The rates are as follows:  
  |                            | • 0% of the payroll taxes since the start of activities  
  |                            | • 25% of the payroll taxes for the third year  
  |                            | • 50% of the payroll taxes for the fourth year  
  |                            | • 75% of the payroll taxes for the fifth year  
  |                            | • 100% of the payroll taxes for the sixth year and onward  
  |                            | Special deduction for environmental investments: the total amount of the deduction may not exceed 20% of the taxpayer's net income, calculated before subtracting the investment value. The law provides several additional requirements to apply for this deduction.  
  |                            | There are special deductions for investment in scientific or technological development, including investments in projects qualified by Colciencias (Colombian Institute for the Development of Science and Technology) as “scientific, technological innovation nature” are deductible to the extent of 175% of the investment value in the relevant tax year. The total amount of the deduction may not exceed 40% of the taxpayer’s net income, calculated before subtracting the investment value. The law provides several additional requirements to apply for this deduction. The benefit can be transferred to shareholders.  
  |                            | There are special deductions for investment in scientific or technological development and special deductions for environmental investments are not limited to SMEs.  
  |                            | There are special deductions for investing in hotels. For a period of 30 years, income received from hotel services rendered in new hotels built or renovated since that the Act 788 of 2002 is in force (27 December 2002), will be exempt from income tax. The exemption for renovated hotels will be in proportion to the amount invested in renovating the hotel.  
  |                            | There are special deductions for ecotourism services certified by the Ministry of Environment or competent authority, since that the Act 788 of 2002 is in force (27 December 2002), are exempt from income tax for a term of 20 years.  
  |                            | Same benefits mentioned above apply.  

| Family businesses | There are loss reliefs in tax regulation, but they are not particular for family businesses.  
  | Losses can be off set with no limitation against income accrued in the following taxable periods.  
  | In this case, income tax return statute of limitation is five years from its filling, or when is compensated.  

| Are there any available loss reliefs that are specific to family businesses? | There are no special tax reliefs for SMEs.  

| Are there any available loss reliefs that are specific to SMEs? | There are no special tax reliefs for SMEs.  

### 1.27 Tax treatment of losses made by a family business

| Are there any available loss reliefs that are specific to family businesses? | There are loss reliefs in tax regulation, but they are not particular for family businesses.  
  | Losses can be off set with no limitation against income accrued in the following taxable periods.  
  | In this case, income tax return statute of limitation is five years from its filling, or when is compensated.  

| Are there any available loss reliefs that are specific to SMEs? | There are no special tax reliefs for SMEs.  

Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- **Calculation 1:** The business makes a profit before tax of COP2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

- **Calculation 2:** The business makes a profit before tax of COP500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

<table>
<thead>
<tr>
<th>Corporate level</th>
<th>Calculation 1 (COP)</th>
<th>Calculation 2 (COP)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Book profit (after tax)</td>
<td>1,800,000</td>
<td>300,000</td>
</tr>
<tr>
<td>Net taxable income</td>
<td>2,000,000</td>
<td>500,000</td>
</tr>
<tr>
<td>Income tax rate</td>
<td>25%</td>
<td>25%</td>
</tr>
<tr>
<td>Tax due</td>
<td>500,000</td>
<td>125,000</td>
</tr>
<tr>
<td>Maximum profit to be distributed as nontaxable income</td>
<td>1,500,000</td>
<td>375,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Shareholder’s level</th>
<th>COP</th>
<th>COP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Book profit</td>
<td>1,800,000</td>
<td>300,000</td>
</tr>
<tr>
<td>Maximum profit to be distributed as nontaxable income</td>
<td>1,500,000</td>
<td>375,000</td>
</tr>
<tr>
<td>Taxable profit</td>
<td>300,000</td>
<td>0</td>
</tr>
<tr>
<td>Excess to be carried forward</td>
<td>0</td>
<td>(75,000)</td>
</tr>
</tbody>
</table>

The excess between the accounting profit and the maximum profit to be distributed as nontaxable income will be distributed as a taxable dividend for the shareholders.

Based in Section 49 of the Colombian Tax Code, if the maximum amount to be distributed as nontaxable income for the shareholder, excess the accounting profit, the amount which excess may be offset with taxable profits obtained by the company in the following five years, or this amount could be offset as well with the taxable profits of the last two years.

**Has this effective tax rate increased, decreased or stayed the same in the last three years?**

The tax rate decreased from 33% to 25% with the issuance of Law 1607 of 2012 (enforceable from 1 January 2013).

Section 3: Tax treatment of family businesses and other issues

### 3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

There might be differences regarding the liability to which a shareholder is subject to in relation to the liability of a private business with no corporate veil. In this sense, the corporate veil of a corporation (capital-based entities) allows to limit the liability of its shareholder up to the amount of its contribution.

For example, in principle, for corporations (S.A.) the liability of the shareholders is limited to the amount of the equity contributed. They will never be jointly and severally liable for tax or labor liabilities.

A family business run as a corporation can be incorporated using the following legal vehicles: simplified share company (sociedad por acciones simplificada), corporation (sociedad anónima), limited liability company (sociedad de responsabilidad limitada), partnership (sociedad colectiva) or limited partnership (sociedad encomandita simple o sociedad encomandita por acciones).
Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

Limited partnerships (two shareholders required) are frequently used as standard family business vehicles, along with the simplified share companies (one shareholder required). Commercial regulations for entities are applicable for incorporated family businesses.

Section 764 of the Colombian Tax Code indicates the joint liability of the shareholders over the entities taxes, for all types of entities, with or without corporate veil, up to the amount of its contributions and during the time of its possession in the taxable period.

A family business run as a private business without a corporate veil would see through the individuals.

The difference between both tax treatments will be the tax rate applicable:

- Corporation: 25% plus 9% (CREE Tax)
- Resident individuals have a progressive tax rate according to the income (as shown below):

<table>
<thead>
<tr>
<th>Tax rate taxable income</th>
<th>0% US$0 up to US$15,128</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>19% From US$15,128 to US$23,593</td>
</tr>
<tr>
<td></td>
<td>28% From US$23,593 to US$56,902</td>
</tr>
<tr>
<td></td>
<td>33% From US$56,902 upward</td>
</tr>
</tbody>
</table>

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

The difference between both tax treatments will be the tax rate applicable:

- Capital gains: 10%
- Dividends: 33% if nonresident; standard corporate and CREE rates if a resident corporation; progressive rate if a resident individual

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

No, other ways are acceptable (services, labor) provided it does not meet the general anti-abuse rule.

According to the Section 869 of the Colombian Tax Code, it is considered, among other requirements, as an anti-avoidance or abusive behavior obtaining a tax benefit consisting, in the elimination, reduction and deferral of taxes, without a reasonable and legitimate commercial purpose. There will be responsibility of the taxpayer to demonstrate that there was no abuse when three or more of the following events occur:

1. The transactions were made between related parties.
2. The transactions involved the use of tax havens.
3. The transactions involved the use of legal entities belonging to the special tax regime, exempt entities, entities that are not subject to income tax or entities subject to special rate of the income tax.
4. When the transaction price agreed differs by more than 25% from the marked price of similar transactions.
5. When the transaction omits a person, a legal act, a document or material clause that would not be omitted in a similar commercial transaction.

When a scrutiny exists, in case of a challenge an accuracy penalty is likely to be applicable for those events in which the information provided to the tax authorities is wrong or incomplete, meaning that the tax authorities are able to audit the tax authorities if certain payments do not correspond to the concept of rendering services, but correspond to payments of profits. The inaccuracy penalty is equal to 160% of the difference between the balance due or the balance in favor determined in the official assessment and the amount included in the tax return.
Section 4: Succession planning

4.1 Life insurance
Compensations for life insurance policies are exempt from income tax.
Life insurance policies are not subject to VAT (Section 476 of the Colombian Tax Code).

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?
According to Law 222 of 1995, shareholders who are not directors of the company are able to sign shareholders' agreements which are enforceable, if in writing, if the agreement makes reference to the manner in which the votes should be cast at the meetings of the general assembly of shareholders, and provided that the agreement is duly deposited with the administration of the company. In the event of simplified share companies, Law 1258 of 2008 stipulates the possibility to sign such agreements with respect to any lawful matters.

From the profit obtained in the sale of shares that have been retained by the company and are considered as nontaxable dividends, generated between the date of acquisition and the date of sale, the portion of profit corresponding to each shareholder will be considered as a nontaxable income or capital gain.

4.3 Estate tax
There is no estate tax in Colombia.

4.4 Pension plans
Law 1607 of 2012: Contributions to voluntary pension funds are exempted income, but the permanence term is increased from five to 10 years. Law 1607 of 2012 also limits the amount of contributions to a fixed amount. Maximum limit of 30% over employee yearly revenues, including mandatory contribution to pension, and ACF banking amounts continues.

4.5 Trusts, foundations and private purpose funds
Private foundations: These entities are often incorporated in convenient jurisdictions and they are designed to protect the family equity, as well as to leave instructions on how to use it, which can be related to instructions that are compiled after the decease of its founders, and can therefore be used as a replacement figure of a will.

The contributions made as, donations by its founders represent the incorporation of a new equity headed upon the foundation, which serves to reduce the familys equity by reducing the succession mass and the capital gains tax in the event of a succession of any family member. However, where income is received by the Colombian resident beneficiary, a 10% capital gain results.

Foreign trust: A foreign trusts' functions are similar to private foundations, Provided the foreign trust beneficiary is a different person than the settler, contributed assets made as donations are used for succession planning. Once the condition is met, a 10% capital gain results for the Colombian resident.

4.6 Wills/intestacy/family charters
Goods received by a taxpayer for the concept of inheritance are subject to CGT (10% rate) and subject to a limited exemption. When goods have been acquired by the deceased during the same taxable period during which the succession takes place, the amount cannot be lower than its fiscal cost.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:
A. Fully publicly listed? Gains on disposal of shares of listed companies are not taxable provided the shares sold represent less than 10% of the outstanding shares during a taxable year.
B. Partly publicly listed? Gains on disposal of shares of listed companies are not taxable provided the shares sold represent less than 10% of the outstanding shares during a taxable year.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?
There is no difference. For commercial purposes, only the simplified share company is owned by one shareholder.
4.7 Passing on a business
Passing on a business can be done as follows:
During lifetime – within the same country: Vehicles used are often a corporation or by the constitution of a trust or a foundation.
To the next generation: Vehicles used are often corporation or a foundation.

4.8 Private equity
Specific legislation/tax treatment of income derived from private equity (PE) activity
No.

<table>
<thead>
<tr>
<th>Equivalent PE ratio</th>
<th>N/A.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Others</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

Section 5: Tax policy environment

5.1 Policy environment relating to family business
There is no particular policy environment related to family businesses. However, recent tax reform (Law 1607 of 2012), includes for the first time references to family business and succession planning vehicles like trust and private foundations.

5.2 Specify change in the direction of tax policy in the last three years
There hasn’t been any specific change in the direction of policy; however, as Colombia is expecting to enter into Organisation of Economic Co-operation and Development (OECD), potential directions may be given to Colombia in future, prior to being accepted.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners
There are no other specific tax provisions applicable.

5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions
There are no specific tax provisions applicable.

Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with:
- High net worth individuals (HNWIs) There is an administration that deals with individuals, irrespective of their wealth.
- SMEs No.
- Family businesses There is an administration that deals with individuals.
- Large corporate taxpayers There is the Large Taxpayers Division.
- Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses No.

6.2 Specify enforcement focus areas or defined programs that might touch a family business
That is a discretionary faculty of the Colombian tax authorities.
6.3 Specify tax enforcement focus on any particular industry or profession
It is a discretional faculty of Colombian tax authorities.

6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners
No, there are none that we are aware. It is a discretional faculty of Colombian tax authorities.

6.5 Are there any specific voluntary disclosure opportunities in the last three years and available data available on their perceived success
Law 1607 of 2012 created an amnesty related to the possibility of including in the tax return as capital gains, the amount omitted assets and inexistente liabilities that were generated in prior taxable periods that cannot be audited; without resulting in an equity difference.

However, on the last week of November the Constitutional Court declared the amnesty against the Colombian Constitution.

6.6 Specify pre-filing processes that can be leveraged by:
- **HNWIs:** There are no specific pre-filing processes.
- **Family businesses:** There are no specific pre-filing processes.

6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI
Tax information exchange agreements (TIEAs) signed by Colombia are not specifically related to HNWI, but has a broader scope. However, this is a high priority of the current government.

Colombia has signed information exchange agreements with the US as a step previous to Foreign Account Tax Compliance Act (FATCA). In addition, Colombia has signed the G20 multilateral agreement.

On November 2012, the Colombian Government issued a list of countries and territories considered as tax havens. The list includes:
Andorra, Angola, Anguila, Antigua and Barbuda, Bahamas, Bahrain, British Virgin Islands, Brunei, Cabo Verde, Cayman Islands, Cook Islands, Cyprus, Dominican Republic, Ducie Island, Grenada, Guyana, Henderson Island, Hong Kong, Isle of Man, Jersey, Jordan, Labuan, Lebanon, Liberia, Liechtenstein, Macau, Maldives, Marshall Islands, Mauritius, Monaco, Oeno Island, Oman, Nauru, Pitcairn Islands, Queshm Island, Santa Helena, Ascensión and Tristan de Cunha, Saint Kitts & Nevis, Saint Vincent and Grenadines, Saint Pierre and Miquelon, St. Lucia, Seychelles, Solomon Islands, Svalbard, Trinidad and Tobago, Vanuatu, Western Samoa and Yemen.

The following countries have a one-year exemption of the list:
Barbados, Bermuda, Guernsey, Kuwait, Panama, Qatar and United Arab Emirates.

As part of the analysis, the inclusion of a jurisdiction will depend on the existence of agreements to exchange information.
Family business in Latin America | Facts and figures

Introduction

Family businesses form the backbone to Latin America’s economy, comprising more than 80% of private sector economic activity on the continent. Much of the region has experienced strong growth in the last 10 years, and this has fueled a great deal of entrepreneurial activity, giving rise to new family businesses. Governments in the region are increasingly realizing the importance of family businesses to their economies, but family businesses themselves want more help, particularly with their tax burdens.

The importance of family businesses in Latin America

- **85%** of the companies in Latin America are family-owned businesses.
- **60%** of Latin America’s GDP is generated by family-owned businesses.
- **70%** of the workforce in Latin America and the Caribbean is employed by family-owned businesses.
- **47%** of the companies are managed by the first generation.
- **29%** of the companies are managed by the second generation.
- **14%** are managed jointly by the first and second generations.
- **10%** are led by the third or fourth generations.

Source: Family Business Magazine.

250 largest family businesses

6% of these companies are located in Latin America.
Country name | Cyprus
--- | ---
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| philippos.raptopoulos@cy.ey.com
| Antonia Iasonos
| Nicosia
| +357 22209768
| antonia.iasonos@cy.ey.com
| Costas Makrides
| Nicosia
| +357 22209703
| costas.makrides@cy.ey.com

Section 1: The accumulative tax burden on family business

2013 tax rates

<table>
<thead>
<tr>
<th>1.1 Corporate income tax (national and sub-national combined)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>Change in rate in the last three years (up or down).</td>
</tr>
<tr>
<td>• Highest marginal rate</td>
<td>The highest current rate is 12.5%. Until 2012, the tax rate was 10%.</td>
</tr>
<tr>
<td>• Highest rate for small and medium enterprises (SMEs)/small business</td>
<td>The rate of 12.5% applies to all corporate entities. N/A.</td>
</tr>
<tr>
<td>• Special treatment of SMEs/small business (other reliefs, etc.)</td>
<td>No. N/A.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

An intellectual property (IP) box regime was introduced in tax year 2012. The tax law allows a notional deduction of 80% of the profit arising on the use or sale of intellectual rights.
### 1.2 Individual income tax

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Personal allowance</strong></td>
<td>Tax free amount per individual is €19,500 per tax year.</td>
<td>N/A.</td>
</tr>
<tr>
<td><strong>Minimum rate of personal income tax (PIT)</strong></td>
<td>The current rate is 20%.</td>
<td>N/A.</td>
</tr>
<tr>
<td><strong>Highest marginal rate of PIT</strong></td>
<td>The current rate is 35%.</td>
<td>The 35% rate was introduced from tax year 2011, the highest rate previous to this was 30%.</td>
</tr>
<tr>
<td><strong>Any special surtaxes</strong></td>
<td>A special contribution for employees, self-employed and pensioners of the private sector was introduced on 1 January 2012. It will be in force until 31 December 2016. It is calculated based on the monthly gross salary and it is paid half by the employee and half by the employer.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The rates for 2012-2013 are:</td>
<td>N/A.</td>
</tr>
<tr>
<td></td>
<td>€0 to €2,500: 0%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>€2,501 to 3,500: 2.5% (minimum €0)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>€3,501 to €4,500: 3%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Over €4,500: 3.5%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The rates for 2014-16 are:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>€0 to €1,500: 0%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>€1,501 to 2,500: 2.5% (minimum €10)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>€2,501 to 3,500: 3%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Over €3,500: 3.5%</td>
<td></td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

N/A.
1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Standard rate</td>
<td>The 2013 rate until 12 January 2014 was 18%</td>
</tr>
<tr>
<td></td>
<td>Up until 29 February 2012 the rate was 15%.</td>
</tr>
<tr>
<td></td>
<td>From 1 March 2012 the rate was 17%.</td>
</tr>
<tr>
<td></td>
<td>From 14 January 2013 the rate has been 18%.</td>
</tr>
<tr>
<td></td>
<td>Starting from 13 January 2014 the rate will be 19%.</td>
</tr>
<tr>
<td>• Are there any special reliefs or exemptions for a family business?</td>
<td>N/A.</td>
</tr>
<tr>
<td></td>
<td>No changes have been made.</td>
</tr>
</tbody>
</table>

1.4 Property taxes

| Does a family business receive any relief on property taxes not granted to other types of corporation? | No. |

1.5 Capital gains tax (CGT)

| 2013 rate – companies | The current rate is 20%. |
| 2013 rate – individuals | The current rate is 20%. |
| Reliefs/exemptions | Lifetime exemptions: for individuals |
| | For the sale of own residence: €85,430 |
| | For the sale of agricultural land by farmer: €25,629 |
| | For other sales: €17,086 |

1.6 Tax on dividends from ordinary shares

A. For the business: Tax rate on dividends is 0% (dividend given from company to company is exempt from any withholding tax).
B. For the owners of the business: Tax rate on dividends is 20%, and the defense tax is withheld on dividends paid to tax residents of Cyprus (nonresidents are exempt). As from tax year 2014, the rate has been reduced to 17%.

1.7 Tax on dividends from preferential shares

A. For the business: Same as in Section 1.6.
B. For the owners of the business: Same as in Section 1.6.

1.8 Tax treatment of interest on a loan from the shareholders

A. For the business: Interest expense on loan taken from shareholders is allowed as expense assuming that the loan finances the acquisition of business assets.
B. For the owners of the business: Interest income derived by owners (shareholders) is subject to income tax if it arises in the ordinary course of business. Otherwise, it is subject to defense tax at the rate of 30%.
1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

A. For the business: Rental income is taxed at the hand of the owner (the owner is the person that has the title deed). In cases involving a company, the rental income is subject to 12.5% corporate income tax and defense tax of 3% on 75% of the gross rental.

B. For the owners of the business: Rental income received by an individual is subject to income tax and 3% defense tax on 75% of the rental.

Companies and individuals are entitled to deduct as expense 3% as wear and tear allowances on buildings, and the interest expense on a loan used to finance the acquisition of buildings. Individuals can also deduct 20% of the gross rental as expenses.

1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

A. For the business: Intellectual property (IP) rights are subject to income tax. An 80% notional deduction is allowed on the profit associated with these rights or on the sale of these rights.

B. For the owners of the business: The same information as above applies for individuals.

1.11 Tax treatment of interest paid on bank debt by a family business

This is allowable as an expense provided debt is used to finance the taxable activities of the business.

1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

Royalty payments constitute an allowable expense to the business. In cases where the payment is made to a non-Cypriot tax resident for the economic utilization of the IP in Cyprus then the royalty payment is subject to 10% withholding tax.

1.13 Tax treatment of rental payments made by a family business to third parties for real estate

Rental payments are allowed as an expense. The business (company) has the obligation to deduct and pay to IRD defense tax on these rentals and remit the net amount to the owner.

1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group

Interest payments are allowable as expense in both cases provided there is a margin on back-to-back financing.

1.15 Does your country provide for a deemed deduction on equity and/or debt?

No.

1.16 Is the retention of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

Deemed distribution rules exist for profits of the companies. Currently, 70% of the profit must be distributed within two years of the year they relate to. Otherwise, they are subject to defense tax at the rate of 20% (17% from tax year 2014). There is an exemption to this rule that applies to nonresident persons.

1.17 Wealth tax

- 2013 characteristics and rate N/A.
- Is there an exemption for shares owned by a family that owns a business? N/A.

1.18 Inheritance tax/estate tax

N/A.
### Gift tax

N/A.

### Real estate transfer tax

Transfer fees are payable to the Land Registry Office. The level of fees depends on the value of the property.

### Endowment tax

N/A.

### Social security

- **National/social insurance contributions on employee income**
  
  The current rates are:
  
  - 6.8% for employees
  
  - 10.5% for employers (including other funds)

  Beginning 1 January 2014, there will be an increase of 1% for both employee and employer.

- **Health/medical/dental care**
  
  Optional.

- **Retirement plans/pensions for employees**
  
  N/A. Companies in Cyprus usually set up provident funds in which both the employee and employer contribute.

### Pensions and tax-efficient savings

- **Tax relief on pension contributions – standard**
  
  Contributions to provident funds are allowable deductions for individuals assuming that provident fund is approved by Inland Revenue Department (IRD). Payments made to social insurance, provident funds, life insurance and medical are subject to 1/6 rule on gross salary (maximum amount allowed).

  Contributions to provident funds are allowable as expense for companies assuming that it is an approved provident fund.

- **Tax relief on pension contributions – any specific relief to family business?**
  
  No.

### Taxation of flow-through entities/partnerships/trust funds

Partnerships are transparent for tax purposes in Cyprus; consequently, partners are taxed on their share of profits from the partnership under income tax rules.

Similar principles apply to trustees as well.

### Exemptions in the law that specifically relate to family businesses

N/A.

### Are there any business incentives in your country that are specific to

- **SMEs**
  
  N/A.

- **Family businesses**
  
  N/A.

### Tax treatment of losses made by a family business

- **Are there any available loss reliefs that are specific to family businesses?**
  
  Same for all companies.

- **Are there any available loss reliefs that are specific to SMEs?**
  
  Same for all companies.
Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- **Calculation 1:** The business makes a profit before tax of €2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profit of the business (company) for tax year 2013</td>
<td>2,000,000</td>
</tr>
<tr>
<td>Corporation tax at 12.5%</td>
<td>250,000</td>
</tr>
<tr>
<td>Less provisional tax</td>
<td>0</td>
</tr>
<tr>
<td>Additional tax due to low provisional declared (does not cover 75% of profit)</td>
<td>25,000</td>
</tr>
<tr>
<td>Tax payable</td>
<td>275,000</td>
</tr>
<tr>
<td>After tax profit</td>
<td>1,725,000</td>
</tr>
<tr>
<td>All dividend distributed to shareholder (assume to be tax resident of Cyprus)</td>
<td></td>
</tr>
<tr>
<td>Defense tax payable at the rate of 20%</td>
<td>345,000</td>
</tr>
<tr>
<td>Effective tax rate</td>
<td>31%</td>
</tr>
</tbody>
</table>

- **Calculation 2:** The business makes a profit before tax of €500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profit of the business (company) for tax year 2013</td>
<td>500,000</td>
</tr>
<tr>
<td>Corporation tax at 12.5%</td>
<td>62,500</td>
</tr>
<tr>
<td>Less provisional tax</td>
<td>0</td>
</tr>
<tr>
<td>Additional tax due to low provisional declared (does not cover 75% of profit)</td>
<td>6,250</td>
</tr>
<tr>
<td>Tax payable</td>
<td>68,750</td>
</tr>
<tr>
<td>After tax profit</td>
<td>431,250</td>
</tr>
<tr>
<td>All dividend distributed to shareholder (assume to be tax resident of Cyprus)</td>
<td></td>
</tr>
<tr>
<td>Defense tax payable at the rate of 20%</td>
<td>86,250</td>
</tr>
<tr>
<td>Effective tax rate</td>
<td>31%</td>
</tr>
</tbody>
</table>

Has this effective tax rate increased, decreased or stayed the same in the last three years?

The effective tax rate is the same.

Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

In Cyprus, there is a concept of corporations, partnerships or self-employed individuals. A partnership is transparent for tax purposes and consequently the partners are taxed based on their share of profits from the partnership.
Section 4: Succession planning

4.1 Life insurance

A tax deduction is allowed for owners on their personal tax computation (the deduction is subject to the 1/6 rule on gross income as explained in Section 1.22).

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?

Yes, such agreements can exist.

4.3 Estate tax

There is no estate tax in Cyprus.

4.4 Pension plans

There are no private pension schemes in Cyprus. All employees contribute to the social insurance scheme of the government and upon the retirement age of 65, all people expect to receive a pension from the government.

4.5 Trusts, foundations and private purpose funds

Trusts can be set up in Cyprus. The trustee is subject to tax on an accruals basis.

4.6 Wills/intestacy/family charters

Wills can be made in cooperation with a lawyer.
4.7 Passing on a business
During lifetime, a business can be transferred by transferring the shares or assets (capital gains tax issues and transfer fees for immovable properties may arise).

On death, in case there is no will, then the inheritors should appoint an administrator for the estate who will arrange for the distribution of the estate to the inheritors.

4.8 Private equity

<table>
<thead>
<tr>
<th>Specific legislation/tax treatment of income derived from private equity (PE) activity</th>
<th>Income from private equity (PE) is exempt from income tax.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equivalent PE ratio</td>
<td>No changes have been made.</td>
</tr>
<tr>
<td>Others</td>
<td>No changes have been made.</td>
</tr>
</tbody>
</table>

Section 5: Tax policy environment

5.1 Policy environment relating to family business
None.

5.2 Specify change in the direction of tax policy in the last three years
None.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners
No.

5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions
N/A.

Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with:

- High net worth individuals (HNWIs) Yes.
- SMEs No changes have been made.
- Family businesses No changes have been made.
- Large corporate taxpayers Yes.
- Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses No changes have been made.

6.2 Specify enforcement focus areas or defined programs that might touch a family business
No changes have been made.

6.3 Specify tax enforcement focus on any particular industry or profession
Yes, doctors and self-employed individuals in general are under scrutiny by IRD.
<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners</td>
<td>Yes.</td>
</tr>
<tr>
<td>6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success</td>
<td>No.</td>
</tr>
<tr>
<td>6.6 Are there any specific pre-filing processes that can be leveraged by:</td>
<td></td>
</tr>
<tr>
<td>• HNWIs: No.</td>
<td></td>
</tr>
<tr>
<td>• Family businesses: No.</td>
<td></td>
</tr>
<tr>
<td>6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI</td>
<td>No.</td>
</tr>
</tbody>
</table>
Section 1: The accumulative tax burden on family business

2013 tax rates

### 1.1 Corporate income tax (national and sub-national combined)

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Highest marginal rate</td>
<td>The flat tax rate is 19%. No changes in the tax rate from 2011 to 2013.</td>
</tr>
<tr>
<td>• Highest rate for small and medium enterprises (SMEs)/small business</td>
<td>The flat tax rate is 19%. No changes in the tax rate from 2011 to 2013.</td>
</tr>
<tr>
<td>• Special treatment of SMEs/small business (other reliefs, etc.)</td>
<td>No specific treatment of SME/small businesses from the Czech tax perspective. N/A.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

There are ongoing changes in the Czech tax law (e.g., introduction of quicker depreciation for selected tangible assets) and in its interpretations by the Czech tax authorities and courts.

### 1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Personal allowance</td>
<td>There is a personal allowance of CZK 24,840 (tax discount, i.e. deductible from the tax liability). In 2011, the amount was CZK23,640.</td>
</tr>
</tbody>
</table>
### 1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Minimum rate of personal income tax (PIT)</td>
<td>The flat tax rate of 15% is applicable. N/A.</td>
</tr>
<tr>
<td>• Highest marginal rate of PIT</td>
<td>See above. N/A.</td>
</tr>
<tr>
<td>• Any special surtaxes</td>
<td>As of January 2013, the solidarity tax of 7% is applicable on a gross employment income and tax base from self-employment activities exceeding CZK1,242,432. The rate is applicable for a transitional period until the end of 2015. N/A.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

2008: Progressive tax rates applicable on a gross income were substituted by a flat tax rate of 15% applied on so-called “super gross income.” The super gross income is calculated as a gross employment income plus the employer’s part (actual or hypothetical) of social security and health insurance contributions.

### 1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Standard rate</td>
<td>The standard rate is 21%. Both VAT rates (reduced/standard) have increased in the last three years: 14%/20% (2011), 15%/20% (2012) and 15%/21% (2013).</td>
</tr>
<tr>
<td>• Are there any special reliefs or exemptions for a family business?</td>
<td>A threshold of CZK1 million applies to become a taxable person for VAT purposes. No special reliefs/exemptions apply. N/A.</td>
</tr>
</tbody>
</table>

### 1.4 Property taxes

- Does a family business receive any relief on property taxes not granted to other types of corporation? No.

### 1.5 Capital gains tax (CGT)

- 2013 rate – companies | The rate is 19%. |
- 2013 rate – individuals | The rate is 15%. |
1.6 Tax on dividends from ordinary shares

A. For the business: Dividend from ordinary shares is a nondeductible expense.

B. For the owners of the business: The 15% withholding tax should apply on dividend distribution unless the respective tax treaty or the Czech Participation Exemption states otherwise (35% withholding tax applies on interest paid to a resident of a non-treaty country as defined by the Czech tax law).

1.7 Tax on dividends from preferential shares

A. For the business: Dividend from preferential shares is a nondeductible expense.

B. For the owners of the business: The 15% withholding tax should apply on dividend distribution unless the respective tax treaty or the Czech Participation Exemption states otherwise (35% withholding tax applies on interest paid to a resident of a non-treaty country as defined by the Czech tax law).

1.8 Tax treatment of interest on a loan from the shareholders

A. For the business: Interest on a loan is a tax-deductible expense assuming the general tax deductibility condition is met and the expenses are not specifically considered as tax nondeductible (e.g., based on the Czech thin capitalization rules and transfer pricing rules).

B. For the owners of the business: The taxable income of an individual (a Czech tax resident) is subject to a 15% personal income tax rate. Interest income paid abroad should be subject to 15% withholding tax unless the respective tax treaty states otherwise (35% withholding tax applies on interest paid to a resident of a non-treaty country as defined by the Czech tax law). The Czech interest withholding tax should apply unless the conditions stated by the EU Interest-Royalty Directive as implemented into the Czech tax law are met.

1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

A. For the business: Rental expense is tax deductible assuming the general tax deductibility condition is met and the expenses are not specifically considered as tax nondeductible (e.g., based on the transfer pricing rules).

B. For the owners of the business: Rental income paid to a taxpayer who is neither the Czech nor other EU Member State nor EEA Member State tax resident should be subject to 10% securing tax.

1.5 Capital gains tax (CGT)

- Reliefs/exemptions

  Individuals:
  There are reliefs/exemptions on income from the sale of securities, if the period between acquisition and sale exceeds 6 months, and the person’s total direct share in the equity capital or voting rights of the company did not exceed 5% in the period of 24 months prior to the sale of securities.
  Sale of securities not meeting the above criteria is tax exempt if the period between acquisition and sale exceeds five years. There are reliefs/exemptions on income from the sale of a house or apartment, including a share of common areas of the house when the seller has its residence here for at least two years immediately prior to the sale. Otherwise, it is exempted after five years from acquisition.
  There are reliefs/exemptions on income from the sale of movable property not included in the business assets. There are reliefs/exemptions on income from the sale of motor vehicles, aircraft and ships if the period between the acquisition and sale exceeds one year.

  Companies:
  Capital gain is exempt if the conditions of the Czech Participation Exemption are met.

1.5 Capital gains tax (CGT)
1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

A. For the business: Expense from intellectual property (IP) is tax deductible (claimed generally as one-off expense, accrued expense or depreciation charge) assuming the general tax deductibility condition is met and the expenses are not specifically considered as tax nondeductible (e.g., based on the transfer pricing rules).

B. For the owners of the business: Income generated from IP is taxable income for an individual (a Czech tax resident) and is subject to 15% personal income tax rate. Royalty income paid abroad should be subject to 15% withholding tax unless the respective tax treaty states otherwise (35% withholding tax applies on royalty income paid to a resident of a non-treaty country as defined by the Czech tax law). The Czech royalty withholding tax should apply unless the conditions stated by the Interest-Royalty Directive as implemented into the Czech tax law are met.

1.11 Tax treatment of interest paid on bank debt by a family business

Financial expenses incurred on bank debt should be tax deductible if the general tax deductibility condition is met and the expenses are not specifically considered as tax nondeductible, e.g., based on the Czech thin capitalization rules (for so-called back-to-back loans) or if the expense is incurred to realize exempt income.

Interest income paid abroad should be subject to 15% withholding tax unless the respective tax treaty states otherwise (35% withholding tax applies on interest paid to a resident of a non-treaty country as defined by the Czech tax law).

1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

Expenses incurred on the use of IP should be tax deductible (claimed generally as one-off expense, accrued expense or depreciation charge) assuming the general tax deductibility condition is met and the expenses are not specifically considered as tax nondeductible.

Royalty income paid abroad should be subject to 15% withholding tax unless the respective tax treaty states otherwise (35% withholding tax applies on royalty income paid to a resident of a non-treaty country as defined by the Czech tax law).

1.13 Tax treatment of rental payments made by a family business to third parties for real estate

Expenses incurred on rental payments should be tax deductible if the general tax deductibility condition is met and the expenses are not specifically considered as tax nondeductible.

Rental income paid to a taxpayer who is neither the Czech nor other EU Member State nor EEA Member State tax resident should be subject to 10% securing tax.

1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group

The same tax treatment should generally apply assuming a creditor and a debtor are considered (directly or indirectly) related parties for Czech tax purposes.

Financial expenses incurred on loans should be tax deductible if the general tax deductibility condition is met and the expenses are not specifically considered as tax nondeductible, e.g., based on the Czech thin capitalization rules, the transfer pricing rules or if the expense is incurred to realize exempt income.

Interest income paid abroad should be subject to 15% withholding tax unless the respective tax treaty states otherwise (35% withholding tax applies on interest paid to a resident of a non-treaty country as defined by the Czech tax law). The Czech interest withholding tax should apply unless the conditions stated by the EU Interest-Royalty Directive as implemented into the Czech tax law are met.

1.15 Does your country provide for a deemed deduction on equity and/or debt?

No.

1.16 Is the retainment of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

No restriction from the Czech tax perspective should apply. Retained earnings should affect the debt-equity ratio for the Czech thin capitalization purposes.
## 1.17 Wealth tax

- 2013 characteristics and rate: N/A.
- Is there an exemption for shares owned by a family that owns a business? N/A.

## 1.18 Inheritance tax/estate tax

**2013 characteristics and rates**

- **Inheritance tax:**
  Progressive tax rates vary from 1% to 40%, depending on the recipient’s relationship to the deceased (see below) and the value of the assets.

  Group I and II (below) are exempt from inheritance tax.

- **Estate tax:**
  Complex determination of tax base and tax depending on area, number of stocks, type of land and location of estate. Separate estate taxes for land and buildings apply.

<table>
<thead>
<tr>
<th>Exemptions for recipients are based on the relationship to the deceased</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group I — lineal relatives and spouse</td>
</tr>
<tr>
<td>Group II — brothers, sisters, lineal relatives of a spouse, nieces, uncles, etc.</td>
</tr>
<tr>
<td>Group III — other beneficiaries (individuals and legal entities)</td>
</tr>
</tbody>
</table>

## 1.19 Gift tax

- **2013 characteristics and rates**
  Progressive tax rates vary from 1% to 40%, depending on the recipient’s relationship to the deceased (see above) and the value of the assets.

- **Exemptions for recipients are based on the relationship to the deceased**
  Group I and II are exempt from gift tax.

## 1.20 Real estate transfer tax

- **2013 characteristics and rates**
  The current rate is 4% from the price agreed or the price set by the authorized valuator (the higher one applies).

- **Exemptions**
  There are exemptions for when the transfer of ownership for a property has not been used (i.e., the new building), upon business reorganizations and upon contribution of estate into the share capital of a receiving company (if a certain share in the receiving company is held at least five years by the contributor).

## 1.21 Endowment tax

N/A.

## 1.22 Social security

- **National/social insurance contributions on employee income**
  Employer’s part is 25%.
  Employee’s part is 6.5%.

  If the employee is a participant of Pillar 2 of pension insurance (a funded insurance into which both employees and employers pay, Pillar 2 includes pension funds as well as defined contribution plans.), then 8.5%.

- **Health/medical/dental care**
  Employer’s part is 9%.
  Employee’s part is 4.5%.

- **Retirement plans/pensions for employees**
  N/A.
1.23 Pensions and tax-efficient savings

- Tax relief on pension contributions – standard
  Contributions exceeding CZK12,000 are deductible up to CZK12,000 (i.e., in order to maximize the deduction you need to contribute CZK24,000).

- Tax relief on pension contributions – any specific relief to family business?
  No.

1.24 Taxation of flow-through entities/partnerships/trust funds

The Czech tax law specifically addresses taxation of partners in Czech unlimited partnerships (v.o.s.) and limited partnerships (k.s.) only. The taxation occurs at the level of the unlimited partners.

The tax treatment of other (in particular, foreign) flow-through entities is not sufficiently clear. The Czech tax authorities tend to consider foreign flow-through entities as tax transparent (detailed review of specific fact pattern is highly recommended in this respect).

1.25 Exemptions in the law that specifically relate to family businesses

No changes have been made.

1.26 Are there any business incentives in your country that are specific to

- SMEs
  No. Standard R&D, job creation and investment incentives are available to all eligible tax payers.

- Family businesses
  No. Standard R&D, job creation and investment incentives are available to all eligible tax payers.

1.27 Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses?
  No. Standard five-year tax loss carryforward is available.

- Are there any available loss reliefs that are specific to SMEs?
  No. Standard five-year tax loss carryforward is available.

Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- Calculation 1: The business makes a profit before tax of CZK2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.
  Profit before tax: CZK2,000,000
  CIT rate: 19%
  Corporate income tax (assuming profit before tax equals to the Czech tax base): CZK380,000
  Profit after tax: CZK1,620,000
  Dividend distribution – PIT rate: 15%
  PIT on dividend distribution: CZK243,000
  Net dividend distribution: CZK1,377,000
  Effective tax rate (ratio of tax cost and profit before tax): 31.2%
• **Calculation 2**: The business makes a profit before tax of CZK500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

  Profit before tax: CZK500,000  
  CIT rate: 19%  
  Corporate income tax (assuming profit before tax equals to the Czech tax base): CZK95,000  
  Profit after tax: CZK405,000  
  Dividend distribution – PIT rate: 15%  
  PIT on dividend distribution: CZK60,750  
  Net dividend distribution: CZK344,250  
  Effective tax rate (ratio of tax cost and profit before tax): 31.2%

**Has this effective tax rate increased, decreased or stayed the same in the last three years?**

The effective tax rate (ratio of tax cost and profit before tax) should remain unchanged (under above assumption) in the last three years.

**Section 3: Tax treatment of family businesses and other issues**

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

Yes. The most significant differences are as follows:

- Private business (without a corporate veil) could be subject to tax based on received income/paid expenses (and not based on accrued income/expenses) under certain conditions.
- Lump-sum expenses (calculated as a percentage of income earned) can be claimed by a private business (without a corporate veil) under certain conditions.
  - A different personal income tax rate (15%) vs. corporate income tax rate (19%) applies.
  - Income from private business (without a corporate veil) should be subject to Czech social security and health insurance contributions.

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

Assuming that the income recipient is a Czech individual, and a Czech tax resident, the following applies:

- Dividends should be subject to 15% dividend withholding tax from the gross amount.
- Capital gains should be subject to 15% personal income tax from the tax base, i.e., the difference between income realized from the alienation of securities and the acquisition costs. Certain exemptions can apply.

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

No specific rules for other repayment of profits from the family business are stated by the Czech tax law.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

A. Fully publicly listed? In principle, no changes have been made.

B. Partly publicly listed? In principle, no changes have been made.
3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares? 

In principle, nothing is different.

Section 4: Succession planning

4.1 Life insurance 

N/A.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements? 

There are no specific tax rules for dealing with shares upon the succession planning per the Czech tax law; the general tax rules described above should apply.

4.3 Estate tax 

The Czech real estate transfer tax does not apply on transfer of shares in a company that owns real estate.

4.4 Pension plans 

N/A.

4.5 Trusts, foundations and private purpose funds 

Currently, there are no special tax treatments of trusts, foundations and private purpose funds for the purpose of succession planning, and we are not aware of any legal tools in the Czech Republic in this respect.

4.6 Wills/intestacy/family charters 

There are no specific tax rules for dealing with wills, intestacy or family charters. The general tax rules described above should apply.

4.7 Passing on a business 

Specific tax rules may apply when a family business (without a corporate veil) is passed on/prior death to another family member (e.g., for agricultural business).

4.8 Private equity 

Specific legislation/tax treatment of income derived from private equity (PE) activity: No.

Equivalent PE ratio: N/A.

Others: N/A.

Section 5: Tax policy environment

5.1 Policy environment relating to family business 

There is no specific tax policy for family business in the Czech Republic.

5.2 Specify change in the direction of tax policy in the last three years 

None.
Section 6: Tax administration and enforcement issues

### 6.1 Is there a specific unit within your tax administration that deals specifically with:

<table>
<thead>
<tr>
<th>Category</th>
<th>Yes/No</th>
</tr>
</thead>
<tbody>
<tr>
<td>High net worth individuals (HNWIs)</td>
<td>No.</td>
</tr>
<tr>
<td>SMEs</td>
<td>No.</td>
</tr>
<tr>
<td>Family businesses</td>
<td>No.</td>
</tr>
<tr>
<td>Large corporate taxpayers</td>
<td>Yes, Specialized Tax Authority for (inter alia) entities with turnover exceeding CZK2 billion.</td>
</tr>
<tr>
<td>Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses</td>
<td>No.</td>
</tr>
</tbody>
</table>

### 6.2 Specify enforcement focus areas or defined programs that might touch a family business

N/A.

### 6.3 Specify tax enforcement focus on any particular industry or profession

Yes, this applies to agriculture, which has a high lump sum of deductible costs (applies solely to self-employed individuals).

### 6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners

None.

### 6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

None.

### 6.6 Are there any specific pre-filing processes that can be leveraged by:

- HNWIs: No.
- Family businesses: No.

### 6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

- The EU Savings Directive as implemented into the Czech tax law applies on interest-based income.
- Tax treaties including a clause on tax information exchange in line with the Organisation for Economic Co-operation and Development (OECD) principles, Information exchange agreements with several territories were concluded (or are in the negotiation process). The Czech Republic signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters (currently in the ratification process). The practical use of these tools in tax administration is increasing.
Family business in Europe | Facts and figures

Introduction
Europe has a rich history of family businesses, and many of the world's best-known family businesses are based in the region. They have been hugely influential not just in Europe's economic development, but also — in many cases — in its social development. Europe has some of the oldest family businesses in the world. But it also has many new ones, particularly in Eastern Europe.

The importance of family businesses in Europe

85% of the companies in Europe are family-owned businesses.

Generate 70% of Europe’s GDP

Employ 60% of Europe’s workforce (more than 144 million employees)

33% of these companies are located in Europe.

Source: Family Business Magazine.
Section 1: The accumulative tax burden on family business

2013 tax rates

<table>
<thead>
<tr>
<th>1.1 Corporate income tax (national and sub-national combined)</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2013</td>
<td>Change in rate in the last three years (up or down).</td>
</tr>
<tr>
<td>Highest marginal rate</td>
<td>The current highest rate is 25%.</td>
<td>The rate dropped to 24.5% in 2014, and is to be dropped to 23.5% in 2015 and to 22% from 2016 onward.</td>
</tr>
<tr>
<td>Highest rate for small and medium enterprises (SMEs)/small business</td>
<td>N/A.</td>
<td>N/A.</td>
</tr>
<tr>
<td>Special treatment of SMEs/small business (other reliefs, etc.)</td>
<td>N/A.</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

Drop in corporate tax rate, same as above.

Limitation of the utilization of tax losses carryforwards from unlimited deduction to DKK7.5 million per year which can be deducted in full, losses above DKK7.5 million can only be used to reduce the taxable income with 60%.
### Individual income tax

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal allowance</td>
<td>There is a tax-free personal allowance of DKK42,000.</td>
<td>DKK900 has been dropped since 2012.</td>
</tr>
<tr>
<td>Minimum rate of personal income tax (PIT)</td>
<td>Minimum PIT rate is 40.3%.</td>
<td>The rate is down from 40.9%.</td>
</tr>
<tr>
<td>Highest marginal rate of PIT</td>
<td>Maximum PIT rate is 56.2%.</td>
<td>The rate is up from 56.1%.</td>
</tr>
<tr>
<td>Any special surtaxes</td>
<td>N/A.</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

The payments for pension plans used are to be fully deductible, irrespective of amount. In 2010, a ceiling of DKK100,000 was introduced for most pension plans. Payments above this amount were not deductible. From 2012, the ceiling was lowered to DKK50,000.

Highest marginal tax rate was dropped from 62.8% to 56.1% in 2010.

The tax value of deduction of net interest expenses of more than DKK50,000 (DKK100,000 for married couples) was reduced from the previous rate (33%) to the following:

- 2012: 32%
- 2013: 31%
- 2014: 30%
- 2015: 29%
- 2016: 28%
- 2017: 27%
- 2018: 26%
- 2019: 25%
### 1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Standard rate</td>
<td>The standard rate is 25%. N/A.</td>
</tr>
<tr>
<td>• Are there any special reliefs or exemptions for a family business?</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

### 1.4 Property taxes

- Does a family business receive any relief on property taxes not granted to other types of corporation? No.

### 1.5 Capital gains tax (CGT)

| 2013 rate – companies | N/A. |
| 2013 rate – individuals | The rate depends on the asset. CGT for individuals on shares are 27% of the first DKK48,300 (the individual’s total income from shares that year) and 42% of any amount above. In 2014, the amount is DKK49,200. Other forms of CGT are generally taxed at a progressive rate of up to 42%. |
| Reliefs/exemptions | A family-owned business can generally be transferred without taxation to certain family members (e.g., children, grandchildren, siblings, spouse) if transferred while the transferor is still alive. The transferee will then succeed into the transferor’s acquisition time and sum and taxation will be postponed until the transferee disposes of the business. |

### 1.6 Tax on dividends from ordinary shares

- **For the business:** Generally, tax on dividends is tax exempt if the business is a company holding more than 10% of the shares. If the company holds less than 10% the tax rate is 25% (2014: 24.5%).
- **For the owners of the business:** The rate is 27% of the first DKK48,300 (2013) (the individual's total income from shares that year) and 42% of any amount above.

### 1.7 Tax on dividends from preferential shares

- **For the business:** Same as above.
- **For the owners of the business:** Same as above.
1.8 Tax treatment of interest on a loan from the shareholders

A. For the business: If the business is the borrower, interest payments are generally deductible to the extent that they are on arm's length (if the lender is a controlling shareholder). Subject to three interest deductibility limitation rules:

1. Thin capitalization: The 4:1 debt-to-equity ratio must be observed. The ratio is calculated at market values at each year end and is (generally) made up on a consolidated Danish group level. In the event that the debt-to-equity ratio is breached, only the interest expenses relating to the controlled debt, which should have been converted into equity to meet the 4:1 ratio, is disallowed. Controlled debt is debt provided by group entities or debt secured by group entities. Interest deductions are allowed to the extent that it can be proven that the loan could be obtained on the same terms from an independent third party.

2. Interest ceiling: Only net financial expenses not exceeding the tax value of the company's assets (consolidated calculation for Danish jointly taxed companies) multiplied with a standard rate (4.2% in income year 2014) are deductible. However, an amount of DKK21.3 million is always deductible (subject to thin capitalization).

3. EBIT rule: The taxable income before net financial expenses of the company (consolidated calculation for Danish jointly taxed companies) can at a maximum be reduced with 80% as a consequence of net financial expenses. However, an amount of DKK21.3 million is always deductible (subject to thin capitalization and the interest ceiling rule).

D. For the owners of the business: Interests received by an individual are taxed as ordinary income.

1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

A. For the business: If the real estate is not held by the business, rental income is not taxed with the business. If the business is renting the real estate, rent is generally deductible. Rent must be on arm's length.

B. For the owners of the business: Rental income received by individuals is taxed as ordinary income.

1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

A. For the business: Royalties are generally deductible to the extent they are on arm's length.

B. For the owners of the business: Taxable as ordinary income.

1.11 Tax treatment of interest paid on bank debt by a family business

Same as Section 1.9, except that thin capitalization and arm's-length requirement do not apply.

1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

Royalty payments are generally deductible in the taxable income of a business.

1.13 Tax treatment of rental payments made by a family business to third parties for real estate

Rent payments are generally deductible in the taxable income of a business.

1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group

In both cases, same as Section 1.8.

1.15 Does your country provide for a deemed deduction on equity and/or debt?

N/A.

1.16 Is the retention of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

Earnings may be retained indefinitely.
### 1.17 Wealth tax

- 2013 characteristics and rate: N/A.
- Is there an exemption for shares owned by a family that owns a business? N/A.

### 1.18 Inheritance tax/estate tax

In the case of a family, generally the rate is 15% of any amount over DKK268,900 (2014). For others, there is an additional 25% of the remaining amount.

### 1.19 Gift tax

2013 characteristics and rates

Generally, a tax-exempt gift of DKK59,800 (2014) is allowed per year within the closest family. Gifts above this amount are taxed at a rate of 15%. Gifts between spouses are generally tax exempt. Gifts outside the family are taxed in the hands of the recipient as ordinary income.

### 1.20 Real estate transfer tax

2013 characteristics and rates

There is a registration fee of DKK1,660 + 0.6% of the purchase sum. Capital gains on real estate are tax exempt, provided that the owner has lived there.

### 1.21 Endowment tax

N/A.

### 1.22 Social security

- National/social insurance contributions on employee income: N/A.
- Health/medical/dental care: N/A.
- Retirement plans/pensions for employees: N/A.

### 1.23 Pensions and tax-efficient savings

- Tax relief on pension contributions – standard: Payments for most pension plans are fully deductible up to an amount of DKK50,000.
- Tax relief on pension contributions – any specific relief to family business? N/A.

### 1.24 Taxation of flow-through entities/partnerships/trust funds

Partnerships are transparent entities, i.e., it is the participants that are taxed, not the partnership itself. Denmark doesn't have “trusts,” but foreign trusts may sometimes be recognized.

### 1.25 Exemptions in the law that specifically relate to family businesses

N/A.

### 1.26 Are there any business incentives in your country that are specific to

- SMEs: N/A.
- Family businesses: N/A.
1.27 Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses? N/A.
- Are there any available loss reliefs that are specific to SMEs? N/A.

Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- **Calculation 1:** The business makes a profit before tax of DKK2m and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.
  
  The company pays a tax of DKK490,000, i.e., 24.5% (2014). The shareholder is taxed of the distributed DKK1,510,000 with 27% of the first DKK49,200 (i.e., DKK13,284 tax) and 42% of the amount exceeding DKK49,200 (i.e., DKK613,536 tax). Net income for the shareholder: DKK883,180. Overall effective tax rate is 55.84%.

- **Calculation 2:** The business makes a profit before tax of DKK500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.
  
  The company pays a tax of DKK122,500, i.e., 24.5% (2014). The shareholder is taxed of the distributed DKK377,500 with 27% of the first DKK49,200 (i.e., DKK13,284 tax) and 42% of the amount exceeding DKK49,200 (i.e., DKK137,883 tax). Net income for the shareholder: DKK238,233. Overall effective tax rate is 54.73%.

Has this effective tax rate increased, decreased or stayed the same in the last three years?

The effective tax rate decreased.

Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

No.

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

Capital gains on shares and dividends are taxed at the same rate, but in case of a sale of the shares, the acquisition sum can be deducted from the taxable amount.

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

It is illegal for a company to provide a loan to an individual who is also a shareholder. The shareholder would be taxed as if it was a dividend.

Also, if a company buys, for example, a house or a boat and makes it available for the shareholder to use, the shareholder is taxed of the value of the asset.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

- Fully publicly listed? No.
- Partly publicly listed? No.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

No. However, the rules where the shareholder is taxed on the value of the asset only apply to controlling shareholders.
Section 4: Succession planning

4.1 Life insurance
No tax incentives are available.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?
Shareholders' agreements are available. Tax consequences should be looked into on a case-by-case basis. No special provisions are available.

4.3 Estate tax
No special provisions are available.

4.4 Pension plans
No special provisions are available for shareholders.

4.5 Trusts, foundations and private purpose funds
It is possible to set up a “family fund”; however, contributions to the fund are taxed at 20%, and distributions taxed as ordinary income, which means the funds are not commonly used.

4.6 Wills/intestacy/family charters
Wills are available.

4.7 Passing on a business
Passing on a business during the business owner’s lifetime without taxation to certain family members (e.g., children, grandchildren, siblings) is possible to some extent. The transferee will then succeed into the transferor’s acquisition time and sum, and taxation will be postponed until the transferee disposes of the business.

4.8 Private equity
Specific legislation/tax treatment of income derived from private equity (PE) activity
Denmark has rules on carried interest.
Equivalent PE ratio
N/A.
Others
N/A.

Section 5: Tax policy environment

5.1 Policy environment relating to family business
Denmark has some significant family-owned businesses (such as Lego). Family business is discussed from time to time and tax policy environment is generally family businesses (such as Lego).

5.2 Specify change in the direction of tax policy in the last three years
None.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners
No.
### Section 6: Tax administration and enforcement issues

#### 6.1 Is there a specific unit within your tax administration that deals specifically with:

- **High net worth individuals (HNWIs)**: N/A.
- **SMEs**: N/A.
- **Family businesses**: N/A.
- **Large corporate taxpayers**: Yes. Center for Store Selskaber (Center for Large Companies).
- **Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses**: Not to our knowledge.

#### 6.2 Specify enforcement focus areas or defined programs that might touch a family business

Not to our knowledge.

#### 6.3 Specify tax enforcement focus on any particular industry or profession

Not to our knowledge.

#### 6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners

Large tax deductions are generally audit triggers.

#### 6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

Tax amnesty programs have been set in place on a few occasions, allowing taxpayers to report non-taxed funds hidden abroad to the tax authorities without risking jail. The taxpayers would have to pay the tax plus a fine of 60% of the evaded tax, plus interest.

#### 6.6 Are there any specific pre-filing processes that can be leveraged by:

- **HNWIs**: N/A.
- **Family businesses**: N/A.

#### 6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

Yes, there has been a focus on taxpayers hiding untaxed funds in offshore accounts and a growth in the number of tax information exchange agreements. There are now very few countries that Denmark does not have an information exchange agreement with.
Section 1: The accumulative tax burden on family business

2013 tax rates

<table>
<thead>
<tr>
<th>1.1 Corporate income tax (national and sub-national combined)</th>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highest marginal rate</td>
<td>The current rate is 24.5%.</td>
<td>The rate was 26% in 2010 and 2011, but changes to 24.5% on 1 January 2012.</td>
</tr>
<tr>
<td>Highest rate for small and medium enterprises (SMEs)/ small business</td>
<td>The current rate is 24.5%.</td>
<td>Same as above.</td>
</tr>
</tbody>
</table>
1.1 Corporate income tax (national and sub-national combined)

- Special treatment of SMEs/small business (other reliefs, etc.)

There is No changes have been made.

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

**Corporate income tax rate**

The corporate income tax rate has been reduced from the present 24.5% to 20% starting from 1 January 2014. However, the corporate income tax rate of 24.5% will be applied in the fiscal year 2014 in cases where the financial year of the company has been changed on 21 March or later so that the financial year of the company will be extended to 2014.

**Restrictions to interest deductibility**

New restrictions on interest deductibility were introduced on 1 January 2013; however, they will be applied for the first time in the tax assessment for the fiscal year 2014. Interest expenses are fully deductible against interest income also under the new restrictions. As of the tax year 2014, interest expenses exceeding interest income (i.e., net interest expenses) can be fully deducted only if the total amount of net interest expenses does not exceed €500,000 during the fiscal year or if they are paid to a non-related party. Otherwise net interest expenses paid to a related party can be deducted only to the extent they do not exceed 25% (earlier in year 2013 the limit was 30%, but starting from 1 January 2014 the limit is 25%) of the taxable business profit after adding back interest expense and tax depreciations and including received group contributions and excluding paid group contribution.

**Dividends**

Dividends received by a non-listed company from a listed company are fully taxable (at the moment 75% taxable) starting from 1 January 2014, unless the recipient of the dividend holds at least 10% of the dividend-paying company.
1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Personal allowance</td>
<td>The following are the primary deductions applicable to earned income for 2013:</td>
</tr>
<tr>
<td></td>
<td>• Travel expenses that exceed €600 incurred between home and office, up to a maximum of €7,000</td>
</tr>
<tr>
<td></td>
<td>• Self-employed person’s pension payment (YEL) 22.5% for a person under 53 years old and 23.85% for those over 53 years old</td>
</tr>
<tr>
<td></td>
<td>• Farmer’s pensions payment (MYEL): the variable percent depends on the size of the farm</td>
</tr>
<tr>
<td></td>
<td>• Payments to labor unions</td>
</tr>
<tr>
<td></td>
<td>• A deduction from salary income, up to a maximum of €620</td>
</tr>
<tr>
<td></td>
<td>• Expenses incurred in connection with earning income, to the extent they exceed €620</td>
</tr>
<tr>
<td></td>
<td>• Employee contributions for health insurance per diem, unemployment insurance and pension</td>
</tr>
<tr>
<td></td>
<td>Business deductions: Expenses incurred to create or maintain business income are generally deductible. Exceptions apply to salaries paid to entrepreneurs, their spouses and their children under 14 years of age who work for their business, as well as to 50% of entertainment expenses.</td>
</tr>
<tr>
<td></td>
<td>No significant changes except in the farmer’s pensions payment.</td>
</tr>
<tr>
<td></td>
<td>Farmer’s pension payment in year 2013 when the income is under €25,587.53:</td>
</tr>
<tr>
<td></td>
<td>• Under 53 years, it is 12.15% of the earned income</td>
</tr>
<tr>
<td></td>
<td>• Over 53 years, it is 12.879% of the earned income</td>
</tr>
<tr>
<td></td>
<td>The percentage increases according to sliding scale of wages when the income is between €25,587.53 and €40,209.04.</td>
</tr>
<tr>
<td></td>
<td>If the earned income exceeds €40,209.04:</td>
</tr>
<tr>
<td></td>
<td>• Under 53 years, it is 22.50% of the earned income</td>
</tr>
<tr>
<td></td>
<td>• Over 53 years, it is 23.85% of the earned income</td>
</tr>
<tr>
<td>• Minimum rate of personal income tax (PIT)</td>
<td>For 2013, national income tax is imposed on individual residents at the following progressive rates.</td>
</tr>
<tr>
<td></td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>16,100</td>
</tr>
<tr>
<td></td>
<td>23,900</td>
</tr>
<tr>
<td></td>
<td>39,100</td>
</tr>
<tr>
<td></td>
<td>70,300</td>
</tr>
<tr>
<td></td>
<td>100,000</td>
</tr>
<tr>
<td></td>
<td>No changes in last few years.</td>
</tr>
</tbody>
</table>

This section has been reproduced from Worldwide Personal Tax Guide 2012-2013. As our guides are updated at different times throughout the year, please refer to the source publication for latest updates.

• Highest marginal rate of PIT | Please see above. | N/A |
• Any special surtaxes | Municipal tax (permanent). For 2013, municipal tax is levied at a flat rate that ranges from 16.25% to 21.5% of taxable income, depending on the municipality. | N/A |
| | Church tax (permanent). For 2013, church tax is payable by members of certain churches at rates ranging from 1% to 2.15%. | This section has been reproduced from Worldwide Personal Tax Guide 2012-2013. As our guides are updated at different times throughout the year, please refer to the source publication for latest updates. 

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base? 

There has been not any.
### 1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Standard rate</strong></td>
<td>The standard rate is 24%. The standard rate of VAT applies to all supplies of goods or services, unless a specific measure allows a reduced rate or exemption. The reduced rates are 10% and 14%. Other rates include: zero-rated, exempt and exempt with credit.</td>
</tr>
<tr>
<td></td>
<td>Until 31 December 2012, the VAT rates were 23%, 9% and 13%.</td>
</tr>
</tbody>
</table>

This section has been reproduced from Worldwide VAT, GST and Sales Tax Guide 2013. As our guides are updated at different times throughout the year, please refer to the source publication for latest updates.

- **Are there any special reliefs or exemptions for a family business?**
  - The threshold for registration is €8,500 (not applicable to non-established business or municipalities).

This section has been reproduced from Worldwide VAT, GST and Sales Tax Guide 2013. As our guides are updated at different times throughout the year, please refer to the source publication for latest updates.

### 1.4 Property taxes

- **Does a family business receive any relief on property taxes not granted to other types of corporation?**
  - The amounts of reality tax are based on the property’s taxable value. Tax rates vary in different districts between 0.6% and 1.35% of tax value.
  - There are no exemptions related to family businesses.

### 1.5 Capital gains tax (CGT)

- **2013 rate – companies**
  - N/A.
- **2013 rate – individuals**
  - Capital gains on shares and real estate are taxed as capital income at a rate of 30%. If the capital income received during a calendar year exceeds €50,000, the excess income is taxed at a rate of 32%. A taxable capital gain is computed by deducting from the disposal proceeds the greater of the acquisition cost plus the sales cost, or 20% of the proceeds (40% for property owned for at least 10 years before disposal). The value used for property received by gift or inheritance is generally the value used for purposes of the gift and inheritance tax. However, certain exceptions may apply. Changes are expected in 2014, when the taxed rate is 32% for sums exceeding €40,000.

This section has been reproduced from Worldwide Personal Tax Guide 2012–2013. As our guides are updated at different times throughout the year, please refer to the source publication for latest updates.

- **Reliefs/exemptions**
  - A capital gain resulting from the sale of an apartment or house that the seller used as a primary residence for at least two years during the time of ownership is exempt from tax.
  - Capital losses are deductible only from capital gains derived in the year of the loss or in the five following years.
1.6 Tax on dividends from ordinary shares

A. For the business: A dividend received by a Finnish corporate entity from a company resident in Finland or from a company as defined in Article 2 of the EU Parent-Subsidiary Directive is usually exempt from tax. If a dividend is received by a Finnish corporate entity from a company resident in a non-EU country that has entered into a tax treaty with Finland, 75% of the dividend is included in taxable income. If a Finnish corporate entity receives a dividend from a company resident in a non-EU country that has not entered into a tax treaty with Finland, the dividend is usually fully (100%) taxable.

If an unlisted Finnish corporate entity receives a dividend from a listed company resident in Finland or in an EU country and if the unlisted company owns less than 10% of the shares in the distributing company, 75% of the dividend is included in taxable income. If a dividend is received by an unlisted Finnish corporate entity from a listed company that is resident in an EU country and if the recipient owns at least 10% of the shares in the distributing company, the dividend is exempt from tax. A dividend received by a listed Finnish corporate entity from a listed company resident in an EU country is usually exempt from tax.

Many minor changes are expected in 2014; the exact content of changes is uncertain at the moment.

B. For the owners of the business: For dividends received from a publicly listed company and from a foreign publicly listed company, 70% of the dividend is taxed as capital income and 30% is tax-exempt income.

Dividends received from non-listed companies are tax exempt or partially taxable, depending on whether the value of the dividend is higher than the annual return calculated on the mathematical value of the shares in question (9% of the annual return calculated on the mathematical value of the shares, up to a maximum of €60,000). Of the amount of dividends that exceed €60,000, 70% is taxed as capital income, and 30% is tax exempt. Tax exemption for dividends distributed by a non-listed company applies to an amount equal to 9% of the annual return calculated on the mathematical value of the shares, up to a maximum of €60,000. Of the amount of dividends that exceed €60,000, 70% is taxed as capital income and 30% is tax exempt.

Many minor changes are expected in 2014; the exact content of changes is uncertain at the moment.

This section has been reproduced from Worldwide Corporate Tax Guide 2013. As our guides are updated at different times throughout the year, please refer to the source publication for latest updates.

1.7 Tax on dividends from preferential shares

A. For the business: N/A.

B. For the owners of the business: N/A.

1.8 Tax treatment of interest on a loan from the shareholders

A. For the business: Interest expenses relating to business or farming activities are deductible for business or farming income purposes in determining taxable income from these activities. A taxation of hidden dividend is possible when the fair market value (FMV) is exceeded.

B. For the owners of the business: Interest expenses are taxable as capital income. A taxation of hidden dividend is possible when the FMV is exceeded.

1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

A. For the business: Same as above.

B. For the owners of the business: Same as above.

1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

A. For the business: Same as above.

B. For the owners of the business: Interest expenses are taxable as earned income or as capital income, depending on the circumstances.

1.11 Tax treatment of interest paid on bank debt by a family business

Interest paid back to the bank is generally deductible.
### 1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property
Payments on intellectual property are deductible.

### 1.13 Tax treatment of rental payments made by a family business to third parties for real estate
Rental payments are deductible.

### 1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group

#### Restrictions to interest deductibility

New restrictions on interest deductibility were introduced on 1 January 2013; however, they will be applied for the first time in the tax assessment for the fiscal year 2014. The restrictions are applied to corporations, partnerships, limited partnerships and permanent establishments of equivalent foreign corporations taxed according to the Finnish Business Income Tax Act. Interest expenses are fully deductible against interest income also under the new restrictions. As of the tax year 2014, interest expenses exceeding interest income (i.e., net interest expenses) can be fully deducted only if the total amount of net interest expenses does not exceed €500,000 during the fiscal year or if they are paid to a non-related party. Otherwise net interest expenses paid to a related party can be deducted only to the extent they do not exceed 30% (starting from 1 January 2014 the limit will be 25%) of the taxable business profit after adding back interest expense and tax depreciations and including received group contributions and excluding paid group contribution.

Interest deduction limitations will not be applied for a single taxpayer if the taxpayer provides clarification that the equity to total assets (solvency ratio) is equal to or higher than the solvency ratio calculated from the consolidated balance sheet. The non-deductible net interest expense can be carried forward and deducted in the following fiscal years without time limitations.

### 1.15 Does your country provide for a deemed deduction on equity and/or debt?
N/A.

### 1.16 Is the retainment of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?
N/A.

### 1.17 Wealth tax

- **2013 characteristics and rate**
  - Finland does not impose wealth tax.
- **Is there an exemption for shares owned by a family that owns a business?**
  - Please see above.
Inheritance tax/estate tax

Inheritance tax is levied on the individual share of each beneficiary and not on the estate of the deceased as a whole. Inheritance tax is levied on the following property received as an inheritance or a bequest:

- Any property provided the deceased or the person who receives the property as an inheritance or a bequest was a resident in Finland at the time of death.
- Real property situated in Finland and shares or other rights in a corporate body where more than 50% of the total gross assets of that corporate body consists of real property situated in Finland.

Rates of inheritance and gift tax are determined on the basis of two classes of relationships between the beneficiary (the donee) and the deceased (the donor).

**Tax class I**

Spouses, direct heirs in an ascending or descending line, spouses' direct heirs in a descending line and ascendants receive a certain allowance on the basis of the Code of Inheritance. The concept of direct heirs in an ascending or descending line includes persons in adoptive relationships and foster children in certain cases. Class I rates also apply if the provisions of the Income Tax Act concerning spouses are applicable for the year of death of the deceased and an individual who had lived with the deceased in free union. In other words, class I rates apply to spouses who previously have been married to each other or who have (or have had) a child together.

**Tax class II**

All other cases (relatives or nonrelatives):

<table>
<thead>
<tr>
<th>Taxable inheritance basic tax amount rate within brackets</th>
<th>Rates of inheritance for class I</th>
<th>Rates of inheritance for the class II</th>
</tr>
</thead>
<tbody>
<tr>
<td>€20,000-€40,000</td>
<td>€100</td>
<td>€100</td>
</tr>
<tr>
<td>€40,000-€60,000</td>
<td>€1,500</td>
<td>€4,100</td>
</tr>
<tr>
<td>€60,000-€200,000</td>
<td>€3,500</td>
<td>€9,300</td>
</tr>
<tr>
<td>€200,000-€1,000,000</td>
<td>€21,700</td>
<td>€9,300</td>
</tr>
<tr>
<td>Over €1,000,000</td>
<td>€149,700</td>
<td>€310,100</td>
</tr>
</tbody>
</table>

This section has been reproduced from International Estate and Inheritance Tax Guide 2013. As our guides are updated at different times throughout the year, please refer to the source publication for latest updates.
1.19 Gift tax

Rates of inheritance and gift tax are determined on the basis of two classes of relationships between the beneficiary (the donee) and the deceased (the donor).

Tax class I

Spouses, direct heirs in an ascending or descending line, spouses' direct heirs in a descending line and fiancé(e)s receive a certain allowance on the basis of the Code of Inheritance. The concept of direct heirs in an ascending or descending line includes persons in adoptive relationships and foster children in certain cases. Class I rates also apply if the provisions of the Income Tax Act concerning spouses are applicable for the year of death of the deceased and an individual who had lived with the deceased in free union. In other words, class I rates apply to spouses who previously have been married to each other or who have (or have had) a child together.

Tax class II

All other cases (relatives or nonrelatives):

<table>
<thead>
<tr>
<th>Rates of inheritance for class I</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>€4,000-€17,000</td>
<td>€100</td>
<td>7%</td>
</tr>
<tr>
<td>€17,000-€50,000</td>
<td>€1,010</td>
<td>10%</td>
</tr>
<tr>
<td>€50,000-€200,000</td>
<td>€4,310</td>
<td>13%</td>
</tr>
<tr>
<td>€200,000-€1,000,000</td>
<td>€23,810</td>
<td>16%</td>
</tr>
<tr>
<td>Over €1,000,000</td>
<td>€151,810</td>
<td>19%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rates of inheritance for the class II</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>€4,000-€17,000</td>
<td>€100</td>
<td>20%</td>
</tr>
<tr>
<td>€17,000-€50,000</td>
<td>€2,700</td>
<td>26%</td>
</tr>
<tr>
<td>€50,000-€1,000,000</td>
<td>€11,280</td>
<td>32%</td>
</tr>
<tr>
<td>Over €1,000,000</td>
<td>€315,280</td>
<td>35%</td>
</tr>
</tbody>
</table>

1.20 Real estate transfer tax

The tax rate is 2% on the total debt-free transfer price on the purchase price of an apartment in a housing company.

The transfer tax on real estate is 4% of the purchase price or value of other remuneration. The tax must be paid before seeking legal confirmation of possession or registration of the tenancy, which must be sought within six months of making said transfer contract. The local survey office of the municipality of the location will confirm possession. Applicants must present a receipt, or other documentation, to prove that the payment of the transfer tax has occurred.

When real properties are exchanged, this constitutes two separate transfers, which obliges both transferees to pay the transfer tax relating to the received acquisition.

If legal confirmation of possession and registration is not sought within six months of the transfer in question, the tax will be increased by 20% for each six-month period of delay. The maximum of total increase is 100%.

1.21 Endowment tax

N/A.
### 1.22 Social security

- **National/social insurance contributions on employee income**

  The social security tax is imposed on employers, employees and self-employed individuals. For employees and self-employed individuals in 2012, the social security contributions consist of a Medicare contribution and a per diem contribution. The per diem contribution is 0.82% of salary income (excluding certain items, such as employee stock options), and the Medicare contribution is 1.22% of municipal taxable income. Pensioners pay an increased Medicare contribution at a rate of 1.39%. In addition, for employees, a 5.15% compulsory pension insurance premium and a 0.6% unemployment insurance premium apply to earned income subject to withholding tax. The compulsory pension insurance premium is 6.5% for employees over 53 years of age.

  For employers, social security taxes are levied as a percentage of gross wages and salaries subject to withholding tax. No ceiling applies to the amount of wages subject to social security taxes. The average total percentage of all contributions for private sector employers is approximately 22.81%, which consists of 2.12% for sickness premiums (employer's social security premium); 0.07% for group life insurance premiums; pension premiums that average 17.35%; 1% for average accident insurance premiums; and 0.80% for unemployment insurance premiums (3.2% for salaries exceeding €1,936,500). To provide relief from double social security taxes and to assure benefit coverage, Finland has entered into totalization agreements with EEA countries, European Union countries, Australia, Canada, Chile, Israel, and the US.

  All business activities of the self-employed person are insured with one insurance policy, i.e., the Self-Employed Persons' Pensions Act (YEL) and Farmer's Pensions Act (MYEL).

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| This section has been reproduced from Worldwide Personal Tax Guide 2012-2013. As our guides are updated at different times throughout the year, please refer to the source publication for latest updates. |

### 1.23 Pensions and tax-efficient savings

- **Tax relief on pension contributions – standard**

  Contributions paid by individuals to voluntary pension insurance are generally deductible for tax purposes up to certain maximum limits from capital income.

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| This section has been reproduced from Worldwide Personal Tax Guide 2012-2013. As our guides are updated at different times throughout the year, please refer to the source publication for latest updates. |
1.24 Taxation of flow-through entities/partnerships/trust funds
Controlled foreign corporations (CFC) – legislation is in force (not described here). See Section 3.1 regarding partnerships and Section 4.5 regarding trust funds.

1.25 Exemptions in the law that specifically relate to family businesses
In some cases, it is possible to have a relief of change of generation based on Inheritance and Gift Tax Act.

1.26 Are there any business incentives in your country that are specific to
- SMEs There is a deduction available for R&D and location and training.
- Family businesses There is a deduction available for R&D and location and training.

1.27 Tax treatment of losses made by a family business
- Are there any available loss reliefs that are specific to family businesses? No.
- Are there any available loss reliefs that are specific to SMEs? No.

Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- **Calculation 1:** The business makes a profit before tax of €2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.
  
  Tax exemption for dividends distributed by a non-listed company applies to an amount equal to 9% of the annual return calculated on the mathematical value of the shares, up to a maximum of €60,000. Of the amount of dividends that exceed €60,000, 70% is taxed as capital income, and 30% is tax exempt.
  
  Of the amount exceeding the annual return, 70% is regarded as taxable earned income and 30% as tax-exempt income.
  
  The mathematical value used in the calculation of annual returns is derived by dividing the net assets of the company by the number of shares of the company. Net assets are derived by subtracting the total debts of the company from its total assets.

**Assumptions:**

- Enough net assets, all dividends are inside the bracket of 9% return on net assets and therefore treated as capital income net assets required €16.8 million.

**Taxation of the corporation**

<table>
<thead>
<tr>
<th>Description</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profit before tax:</td>
<td>2,000,000</td>
</tr>
<tr>
<td>CIT:</td>
<td>24.50%</td>
</tr>
<tr>
<td>CIT tax:</td>
<td>-490,000</td>
</tr>
<tr>
<td>Net profit:</td>
<td>1,510,000</td>
</tr>
<tr>
<td>Dividend paid:</td>
<td>1,510,000</td>
</tr>
<tr>
<td>Tax free portion:</td>
<td>60,000</td>
</tr>
<tr>
<td>Exceeding €60,000:</td>
<td></td>
</tr>
<tr>
<td>30% tax free:</td>
<td>435,000</td>
</tr>
<tr>
<td>70% capital income:</td>
<td>1,015,000</td>
</tr>
<tr>
<td>Dividend total:</td>
<td>1,510,000</td>
</tr>
</tbody>
</table>
**Taxation of shareholder**

<table>
<thead>
<tr>
<th>Taxes on capital income:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>First €50,000:</td>
<td>30%</td>
</tr>
<tr>
<td>Exceeding 50,000:</td>
<td>32%</td>
</tr>
</tbody>
</table>

| Taxes total: | 323,800 |

<table>
<thead>
<tr>
<th>Taxes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporation:</td>
</tr>
<tr>
<td>Shareholder:</td>
</tr>
<tr>
<td>Taxes total:</td>
</tr>
<tr>
<td>Effective tax rate total:</td>
</tr>
</tbody>
</table>

- **Calculation 2**: The business makes a profit before tax of €500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

**Assumptions:**

- Enough net assets, all dividends are inside the bracket of 9% return on net assets and therefore treated as capital income net assets required €4.2 million

---

**Taxation of the corporation**

| Profit before tax: | 500,000 |
|-------------------|
| CIT:              | 24.50% |
| Net profit:       | 377,500 |
| Dividend paid:    | 377,500 |
| Tax free portion: | 60,000 |
| Exceeding €60,000: |  |
| 30% tax free:     | 95,250 |
| 70% capital income: | 222,250 |
| Dividend total:   | 377,500 |

**Taxation of shareholder**

<table>
<thead>
<tr>
<th>Taxes on capital income:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>First €50,000:</td>
<td>30%</td>
</tr>
<tr>
<td>Exceeding 50,000:</td>
<td>32%</td>
</tr>
</tbody>
</table>

| Taxes total: | 70,120 |

<table>
<thead>
<tr>
<th>Taxes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporation:</td>
</tr>
<tr>
<td>Shareholder:</td>
</tr>
<tr>
<td>Taxes total:</td>
</tr>
<tr>
<td>Effective tax rate total:</td>
</tr>
</tbody>
</table>

Has this effective tax rate increased, decreased or stayed the same in the last three years?
The effective tax rate has increased.
Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

Yes. General partnership (avoin yhtiö), limited partnership (kommanditissyhtiö) and commercial name (toiminimi) are not considered as separate tax subjects.

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

See the Sections 1.5 and 1.6.

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

Profit distribution is deemed as a hidden dividend distribution if an interest rate, rent or any other way to pay profit to the owners exceeds a FMV.

Hidden dividend distribution is taxed as 70% earned income and 30% tax-exempt income based on Finnish Act on Assessment Procedure §29. Also, if booked as an expense, the expense is classified as nondeductible.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

A. Fully publicly listed? Yes, taxation of dividends is different.
B. Partly publicly listed? N/A.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

The level of shareholding does not directly influence the taxation of dividends received either by a company or an individual. See Section 1.6 for an explanation of taxation of dividends from non-listed companies received by business owners. The amount of the tax exempt part of the dividend depends on the mathematical value of the shares owned since 9% of the mathematical value of the shares will be regarded as tax exempt (up to €60.000). Therefore, the more shares the business owner has, the higher the annual return (9%) calculated on the mathematical value and therefore the tax exempt part would be bigger.

Otherwise, shareholding does not have any effect on the taxation of dividends.

Section 4: Succession planning

4.1 Life insurance

None.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?

No.

4.3 Estate tax

According to Finnish Inheritance and Gift Tax Law (Articles 55-57) there is an exemption of change of generation. If the certain conditions are fulfilled, the amount of the inheritance or gift tax will be decreased significantly.

4.4 Pension plans

There are no special reliefs for family business.
4.5 Trusts, foundations and private purpose funds
There is no legislation regarding trusts. Trust institution under Finnish tax legislation is open to interpretations in tax practice.
Foundations are allowed and have a separate legislation. The main rule is that they should distribute half of the income to the charity (named purpose in the rules of the foundations). The founder or his/her relatives have no right to get any benefits from the foundations.
Private purpose funds have no separate legislation in Finland.

4.6 Wills/intestacy/family charters
According to Finnish Inheritance and Gift Tax Law (Articles 55-57) there is an exemption of change of generation.

4.7 Passing on a business
N/A.

4.8 Private equity
Specific legislation/tax treatment of income derived from private equity (PE) activity
N/A.

Equivalent PE ratio
N/A.

Others
N/A.

Section 5: Tax policy environment

5.1 Policy environment relating to family business
The focus is on dividends of non-listed companies.

5.2 Specify change in the direction of tax policy in the last three years
Increased taxation of dividends of non-listed companies can be expected.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners
The same tax laws apply to family businesses and others. There is no tax relief for family businesses.

5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions
N/A.

Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with:
- High net worth individuals (HNWIs)
  Local tax offices, such as Pääkaupunkiseudun yritysverotoimisto
  Postal address: PB 400, 00052 Vero
  Street address: Rajatorpantie 8 A, Vantaa
  Telephone: +358 20 612 000
### 6.1 Is there a specific unit within your tax administration that deals specifically with:

<table>
<thead>
<tr>
<th>Category</th>
<th>Contact Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>SMEs</td>
<td>Corporate tax office&lt;br&gt;Postal address: PB 30, 00052 Vero&lt;br&gt;Street address: Opastinsilta 12 C, Helsinki&lt;br&gt;Telephone: +358 20 612 000</td>
</tr>
<tr>
<td>Family businesses</td>
<td>See above.</td>
</tr>
<tr>
<td>Large corporate taxpayers</td>
<td>Corporate tax office (see above) and/or Konserniverokeskus&lt;br&gt;Postal address: PB 10, 00052 Vero&lt;br&gt;Street address: Haapaniemenkatu 5, Helsinki&lt;br&gt;Telephone: +358 20 612 000</td>
</tr>
<tr>
<td>Close integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

### 6.2 Specify enforcement focus areas or defined programs that might touch a family business

None.

### 6.3 Specify tax enforcement focus on any particular industry or profession

None.

### 6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners

None.

### 6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

None.

### 6.6 Are there any specific pre-filing processes that can be leveraged by:

<table>
<thead>
<tr>
<th>Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>HNWIs:</td>
</tr>
<tr>
<td>Family businesses:</td>
</tr>
</tbody>
</table>

### 6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

There has been a lot of growth in the exchange of tax information during the last 10 years. It is mostly because of the tax treatment between countries and Organisation of Economic Co-operation and Development’s (OECD) regulations.
Section 1: The accumulative tax burden on family business

2013 tax rates

<table>
<thead>
<tr>
<th>1.1 Corporate income tax (national and sub-national combined)</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Highest marginal rate</strong></td>
<td>For fiscal year ended from 31 December 2011 to December 1 January 2015, companies with turnover exceeding €250 million are subject to a new 5% additional surtax on their CIT. The rate of this new additional surtax is 10.7% for 2013 onward.</td>
</tr>
<tr>
<td>The standard corporate income tax (CIT) tax rate is 33.3%. There is a 3.3% social security surtax and a 10.7% additional surtax may also apply resulting in a marginal effective rate of 38%. This 3.3% surtax is assessed on the portion of CIT due exceeding €763,000.</td>
<td></td>
</tr>
</tbody>
</table>

France

<table>
<thead>
<tr>
<th>Country name</th>
<th>France</th>
</tr>
</thead>
</table>
| EY contacts  | Franck Van Hassel  
Paris  
+ 33 1 55 61 11 40  
franck.van.hassel@ey-avocats.com  
Marion Capèle  
Paris  
+ 33 1 55 61 12 64  
marion.capele@ey-avocats.com  
Florentin Leroux  
Paris  
+ 33 1 55 61 15 88  
florentin.leroux@ey-avocats.com |
### 1.1 Corporate income tax (national and sub-national combined)

- **Highest rate for small and medium enterprises (SMEs)/small business**
  
  SME are subject to a reduced tax rate of 15% on their first €38,120 taxable profits and at the standard tax rate (i.e., 33.3%) for the exceeding portion.
  
  Companies are regarded as SME if their annual turnover is lower than €7,630,000 and if at least 75% of the company is owned by individuals.

- **Special treatment of SMEs/small business (other reliefs, etc.)**
  
  No changes have been made. N/A.

---

**Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?**

- A new 10.7% additional surtax on CIT was introduced in 2011 for companies whose turnover exceeds €250 million for fiscal year 2011/2015 (5% for 2011 and 2012).
- Consequently, the effective CIT rate has increased from 34.43% to 38% within the last five years.
- As from fiscal year ending on or after 31 December 2012, CIT is due on 12% of the amount of capital gains derived from the sale of qualifying shares.

### 1.2 Individual income tax

<table>
<thead>
<tr>
<th>Year</th>
<th>2013</th>
<th>Change in rate in the last three years (up or down)</th>
</tr>
</thead>
</table>
| Personal allowance | Under the family coefficient system, the income brackets to which the tax rates apply are determined by dividing taxable income by the number of allowances available to an individual. The final tax liability is then calculated by multiplying the tax computed for one allowance by the number of allowances claimed. Available allowances are shown in the following table. Available allowances are:  
  - 1 for a single person  
  - 2 for a married couple  
  - +0.5 for every child and +1 for each additional dependent child after 2 children | N/A. |
| Minimum rate of personal income tax (PIT) | The current rate is 0% until €6,011. | No changes have been made. |
| Highest marginal rate of PIT | The highest margin rate is 45% above €151,200. | There was an increase in the top rate of income tax from 41% to 45% for 2012 onward. |
1.2  Individual income tax

- Any special surtaxes
  A 3% or 4% exceptional surtax on high income was introduced for 2011 onward.
  Single payers are subject to a tax of 3% for the portion of taxable income ranging from €250,000 and €500,000 and 4% for the portion exceeding €500,000.
  Married taxpayers are subject to a tax of 3% for the portion of taxable income ranging from €500,000 and €1 million, and 4% for the portion exceeding €1 million.
  Please note that this surtax should be cancelled when the French budget is balanced.

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

- There was an increase in the top rate of personal income tax from 41% to 45% for 2012 onward.
- There was a 3% or 4% exceptional tax on high income introduced in 2011.
- Dividends are only taxable to the personal progressive income tax rate after a 40% deduction on their taxable base for 2013 onward.
- Capital gains are only taxable to the personal progressive income tax rate for 2013 onward. However, capital gains may benefit from a deduction ranging of 50%, 65% or 85% according to the ownership period of the shareholding.
- For income derived in 2013, the overall tax reductions and tax credit from which a taxpayer may benefit is capped at €10,000.

1.3  VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard rate</td>
<td>The standard rate is 20%. The medium rate is 10%. The reduced rate is 5.5%.</td>
</tr>
<tr>
<td></td>
<td>There will be an increase of the standard rate from 19.6% to 20% and the medium rate from 7% to 10% for 2014 onward.</td>
</tr>
<tr>
<td>Are there any special reliefs or exemptions for a family business?</td>
<td>No changes have been made.</td>
</tr>
<tr>
<td></td>
<td>N/A.</td>
</tr>
</tbody>
</table>

1.4  Property taxes

- Does a family business receive any relief on property taxes not granted to other types of corporation?
  This exemption was deleted by the Finance law for 2014. Transitional measures have been provided.
1.5 Capital gains tax (CGT)

- **2013 rate – companies**
  
  No changes have been made.

- **2013 rate – individuals**
  
  The capital gains tax increased from a flat rate of 19% to a flat rate of 24% for 2012.

  Beginning 1 January 2013, capital gains are no longer subject to the flat rate of 24% but to the personal progressive income tax rate ranging from 0% to 45%.

  Capital gains may also be subject to the specific surtax on high income at a rate ranging from 3% to 4% depending on the overall amount earned within a fiscal year by the taxpayer.

  In addition, capital gains are subject to social contributions at the rate of 15.5%.

- **Reliefs/exemptions**

  1. Capital gains benefit from a deduction of:
     - 50% per year for ownership period comprised between second and eighth years
     - 65% per year after the eighth year

  2. Capital gains on SMEs shares acquired within 10 years after their establishment benefit from a deduction of:
     - 50% for ownership period comprised between first and fourth years
     - 65% for ownership period comprised between fourth and eighth years
     - 85% after the eighth year

  3. Under specific conditions, capital gains derived from the sale of shares owned by entrepreneurs while retiring may benefit from a deduction of €500,000 and, for the remaining surplus, a deduction of 50%, 65% or 85%.

1.6 Tax on dividends from ordinary shares

A. **Companies:** In accordance with the parent exemption regime, dividends are exempted from CIT, except for a 5% portion provided that the company holds at least 5% of the share capital of the distributing company for two years.

B. **Individuals:** Dividends are only taxable to the personal progressive income tax rate after a 40% deduction on their taxable base for 2013 onward.

  This 40% deduction is granted as soon as:
  - Dividends are paid by a company located in the EU or in a country having concluded with France an agreement on tax assistance in order to fight fraud and tax evasion.
  - The company is subject to CIT in its country.

  Dividends may also be subject to the specific surtax on high income at a rate ranging from 3% to 4% depending on the overall amount earned within a fiscal year.

  In addition, dividends are subject to social contributions at the rate of 15.5% for their full amount.
1.7 Tax on dividends from preferential shares
No changes have been made.

1.8 Tax treatment of interest on a loan from the shareholders
A. For companies: In general, interest payments are fully deductible.
   However, interests accrued by a French entity with respect to loans from its direct shareholders may be deducted from the company tax result only if the following two conditions are satisfied:
   - The share capital of the company is paid in full.
   - The interest rate does not exceed a certain limit (based on the average interest rate granted by banks to French companies). The Finance law for 2014 introduced an anti-hybrid provision: interest paid out by a French enterprise to a related French enterprise or a nonresident enterprise will no longer be tax deductible for French Corporate Income Tax (CIT) purposes if the interest paid out is not subject to tax at the level of the beneficiary company at a rate of at least 25% of the French CIT that would have been due under the standard French rules.

B. For individuals: Beginning January 2013, interests are no longer subject to the flat rate of 21% but to the personal progressive income tax rate (i.e., marginal tax rate 45%).
   Interest may also be subject to the specific surtax on high income at a rate ranging from 3% to 4% depending on the overall amount earned within a fiscal year.
   In addition, interests are subject to social contributions at the rate of 15.5%.

1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business
A. For companies: If the company is subject to CIT, the rental income will be taxed at the standard rate (33.3%).
   If the company is a look-through real estate company, rental income is directly taxable under the hand of the partners to personal income tax at the standard progressive rate whether or not the income is actually distributed.

B. For individuals: Rental income is subject to the standard personal progressive tax rate plus the exceptional 3% or 4% tax on high income and the 15.5% of social contributions.
   Beginning 1 January 2012, nonresidents are subject to the 15.5% social contributions on rental income derived from a French property.

1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business
A. For companies: Income generated from the use of intellectual property is subject to CIT at the standard rate. However, income from granting licenses to use patents; patentable inventions or developments thereto; certain industrial manufacturing processes; and capital gains from the disposal of such elements are subject to CIT at the reduced rate of 15%.

B. For individuals: Income generated from the use of intellectual property patents is taxed at the personal progressive tax rate.

1.11 Tax treatment of interest paid on bank debt by a family business
Interests paid on bank debts are tax deductible from the taxable result.

1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property
Payments for the use of intellectual property are fully deductible.

1.13 Tax treatment of rental payments made by a family business to third parties for real estate
Rental payments made by a family business to third parties are deductible from the taxable result.
1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group

When a company belonging to a tax group acquires shares of another company from an outside shareholder of the tax group with the idea to consolidate it, financial charges have to be added back to the eight subsequent periods.

1.15 Does your country provide for a deemed deduction on equity and/or debt?

No changes have been made.

1.16 Is the retainment of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

No changes have been made.

1.17 Wealth tax

- 2013 characteristics and rate

Taxable base: A wealth tax is levied on taxpayers with total net wealth exceeding €1,300,000 on 1 January of each year.

French residents are taxed on their worldwide assets while non-residents are only taxed on their French assets.

Under specific conditions, nonresidents are not taxed on their financial investments other than in real estate companies.

In addition, individuals who transfer their residence in France and who have not been French residents during the preceding five years are exempt from wealth tax on their foreign assets for five years.

Tax rate: Taxpayers are subject to a progressive tax rate ranging from 0.5% to 1.5% as described in the table.

<table>
<thead>
<tr>
<th>Net taxable asset value (NTAV) (€)</th>
<th>Wealth tax amount (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>up to 800,000</td>
<td></td>
</tr>
<tr>
<td>From 800,000 to 1,300,000</td>
<td>0.5</td>
</tr>
<tr>
<td>From 1,300,000 to 2,570,000</td>
<td>0.7</td>
</tr>
<tr>
<td>From 2,570,000 to 5,000,000</td>
<td>1</td>
</tr>
<tr>
<td>From 5,000,000 to 10,000,000</td>
<td>1.25</td>
</tr>
<tr>
<td>Over 10,000,000</td>
<td>1.5</td>
</tr>
</tbody>
</table>

- Is there an exemption for shares owned by a family that owns a business?

Two tax exemptions are provided for business assets (industrial or commercial assets):

- There is a full exemption if the taxpayer owns at least 25% of the capital or voting rights of the company where he/she carries on his/her main professional activity and for which he/she earns its main professional income.

- There is a 75% exemption for shares owned for at least six years by employees or directors provided that they have their main activity in the company.

- There is a 75% exemption on shares of companies owned by the taxpayer provided that he/she and others shareholders undertake to keep the shares of the company for at least six years.
1.18 Inheritance tax/estate tax

**Taxable base:** If the decedent or the donor was a French resident, inheritance or gift tax are assessed on the worldwide assets, otherwise only French assets are taxed provided that the beneficiary is also a nonresident of France.

Personals reliefs and exemptions: Spouses or partners in a civil union are exempt from inheritance tax but not gift tax.

Currently, there is a personal allowance of:
- €100,000 is available once every 15 years to direct descendants (or ascendants) regarding gifts and inheritances.
- €80,724 is available for the spouse or the members of a civil union as regarding gifts.
- €15,932 is available for brothers and sisters.

All personal allowances are available once every 15 years.

Under specific conditions, the transfer of family business by death or gift may be partially exempt (75%) provided that the beneficiaries undertake to keep the shares for at least two years and at least one of the beneficiaries runs the business.

**Tax rate:** Direct line inheritances and gifts in favor of ascendants or descendants and gifts between spouses and members of a civil union are subject to a progressive tax rate ranging from 5% to 45%; Inheritances between brothers and sisters are subject to a progressive tax rate ranging from 35% to 45%.

1.19 Gift tax

Apart from specific rules (gift taxes between spouses or partners in a civil union), the same tax provisions related to inheritance tax apply to gift tax.

1.20 Real estate transfer tax

The transfer of real estate is subject to a 5.09% tax rate on the purchase price. Please note that the French Tax Administration may compare the purchase price and the fair market value of the property and assess the transfer tax on the fair market value if higher.

1.21 Endowment tax

Life insurance is not subject to the standard inheritance tax rules and may be fully or partially exempt from inheritance tax based on:
- Premiums paid before the 70th birthday of the insured are subject to a 20% or 31.25% onward 1 July 2014 flat rate on the portion exceeding €152,000.
- Premiums paid after the 70th birthday of the insured are subject to standard inheritance tax for the portion exceeding €30,500.

Please note that a specific tax treatment may apply for life insurance contract signed before October 1998.

1.22 Social security

- National/social insurance contributions on employee income
  - An individual's social security taxes are withheld monthly by the employer. French social security tax contributions are due on compensation, including bonuses and benefits in kind, earned from performing an activity in France even if paid from a foreign country. However, this rule may be modified by a social security totalization agreement.

- Health/medical/dental care

- Retirement plans/pensions for employees

1.23 Pensions and tax-efficient savings

- Tax relief on pension contributions – standard
- Tax relief on pension contributions – any specific relief to family business?
### 1.24 Taxation of flow-through entities/partnerships/trust funds

Income from partnerships and flow-through entities is taxable directly at the level of the partners whether or not the earnings are actually distributed.

If the partner is a corporation subject to CIT, income derived from the partnership should be subject to CIT.

Conversely, if the partner is an individual, income derived from the partnership should be declared in the category corresponding to the partnership activity (business income, property income, agricultural income, etc.).

Trusts are institutions that do not exist in French civil law. However, the 2011 amended financial law has introduced new provisions in order to subject assets owned by a trust located abroad to wealth tax and inheritance tax.

**For wealth tax purposes:** The settlor (or after his or her death, the beneficiaries treated as the initial settlor) is subject to net wealth tax on:

- The assets placed in the trust, regardless of the location of such assets, if the settlor is a French resident.
- The assets placed in the trust located in France (except for financial investments) if the settlor is not a French resident.

**The tax base for inheritance tax purposes:** Where the settlor (or beneficiary after the death of the settlor) is a French resident all the assets of the trust should be subject to inheritance tax in France.

Where neither the settlor, nor the beneficiaries are French residents, inheritance tax should only be due on French assets of the trust.

**Tax rate:** In principle, ordinary inheritance tax rates apply. There are nevertheless two exceptions:

1. If, at the time of the death, a share is allocated globally to the settlor’s descendants, that share will be subject to inheritance tax at the rate of 45%.
2. If, at the time of the death, a share is neither globally allocated nor attributed to a determined beneficiary, that share is subject to inheritance tax at the rate of 60%.

### 1.25 Exemptions in the law that specifically relate to family businesses

Capital gains derived from the sale of shares within a family benefit from a deduction of 50%, 65% or 85% provided that:

- The seller and his close family hold directly or indirectly 25% of the company.
- The new owner is a member of the aforementioned family and do not resell the shares to someone outside the family within five years.

### 1.26 Are there any business incentives in your country that are specific to...

- **SMEs**
  Young innovating enterprises with significant research and development may benefit from a full exemption from CIT during one year and a 50% exemption from CIT during another year.
  To be regarded as a young innovating enterprises, companies must satisfied the following conditions:
  - Companies must be less than eight years old
  - Companies must be SME (i.e., fewer than 250 employees, turnover below €50 million, 75% of the capital should be owned by individuals)
  - Direct research and development expenses should be at least 15% of total expenses

- **Family businesses**
  No changes have been made.
### 1.27 Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses? No changes have been made.
- Are there any available loss reliefs that are specific to SMEs? No changes have been made.

### Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- **Calculation 1:** The business makes a profit before tax of €2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

<table>
<thead>
<tr>
<th>CIT:</th>
<th>€</th>
</tr>
</thead>
<tbody>
<tr>
<td>€38,120 taxed at the 15% reduced tax rate:</td>
<td>5,718</td>
</tr>
<tr>
<td>€1,961,880 taxed at the 33.3% tax rate:</td>
<td>653,895</td>
</tr>
<tr>
<td><strong>Total CIT:</strong></td>
<td><strong>659,613</strong></td>
</tr>
</tbody>
</table>

**Profit after tax:** 1,340,387

**PIT:** (assumptions: married couple, no other income, distribution of €1,340,387):

<table>
<thead>
<tr>
<th></th>
<th>€</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxable dividends after a 40% reduction:</td>
<td>804,232</td>
</tr>
<tr>
<td>Personal income tax:</td>
<td>320,975</td>
</tr>
<tr>
<td>Exceptional contribution on high income:</td>
<td>24,127</td>
</tr>
<tr>
<td>Social contributions at the 15.5% rate:</td>
<td>207,760</td>
</tr>
<tr>
<td><strong>Total of personal tax:</strong></td>
<td><strong>552,852</strong></td>
</tr>
</tbody>
</table>

- **Calculation 2:** The business makes a profit before tax of €500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

<table>
<thead>
<tr>
<th>CIT:</th>
<th>€</th>
</tr>
</thead>
<tbody>
<tr>
<td>€38,120 taxed at the 15% reduced tax rate:</td>
<td>5,718</td>
</tr>
<tr>
<td>€461,880 taxed at the 33.3% tax rate:</td>
<td>153,945</td>
</tr>
<tr>
<td><strong>Total CIT:</strong></td>
<td><strong>159,663</strong></td>
</tr>
</tbody>
</table>

**PIT:**

<table>
<thead>
<tr>
<th></th>
<th>€</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxable dividends after a 40% reduction:</td>
<td>204,202</td>
</tr>
<tr>
<td>Personal income tax:</td>
<td>55,121</td>
</tr>
<tr>
<td>Exceptional contribution on high income:</td>
<td>0</td>
</tr>
<tr>
<td>Social contributions at the 15.5% rate:</td>
<td>52,752</td>
</tr>
<tr>
<td><strong>Total of personal tax:</strong></td>
<td><strong>112,873</strong></td>
</tr>
</tbody>
</table>

Has this effective tax rate increased, decreased or stayed the same in the last three years?

The effective tax rate has increased.
Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

Business profits earned by either individuals without any corporate veil or by a look-through company are directly subject to personal income tax on their business profits whereas profits incurred by the corporation are subject to CIT.

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

Beginning in 2013, both capital gains and dividends are subject to the personal progressive income tax rate (i.e., marginal rate of 45%). Dividends should benefit from a 40% deduction on their taxable amount irrespective of the ownership period of the shares of the distributing companies, whereas only capital gains derived from the sale of shares owned during at least two years should benefit from a 50% or 65% (after the eighth year) deduction.

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

The French Tax Administration may regard as deemed dividend any earnings that are not placed in a reserve account nor incorporated in the company's share capital, or funds that are put at the disposal of the shareholders and are not paid out of earnings.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

A. Fully publicly listed? No.
B. Partly publicly listed? No.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

No.

Section 4: Succession planning

4.1 Life insurance

See Section 1.20.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?

N/A.

4.3 Estate tax

"Pact Dutreil": This is a 75% exemption from inheritance and gift tax that may apply provided that:

- The shareholders and theirs heirs commit to retain, for at least two years, shares of a companies that were part of an official collective lock-up agreement signed by the shareholders and theirs heirs for up to 75% of their value prior to the estate or the gift.
- At least one of the beneficiaries runs the business.
4.4 Pension plans
N/A.

4.5 Trusts, foundations and private purpose funds
See Section 1.23.

4.6 Wills/intestacy/family charters
Bequests are provisions that become effective upon the donor’s death as part of a will. They may pertain to the entire succession (universal bequest), or to a share of a succession (legacy by general title) or private assets (specific bequest). They may be gradual or residual, similar to gifts, and are set up through a will.

4.7 Passing on a business
See Sections 1.5 and 4.3.

4.8 Private equity

<table>
<thead>
<tr>
<th>Specific legislation/tax treatment of income derived from private equity (PE) activity</th>
<th>Under specific conditions, carried interest should be taxed as capital gains tax. This tax regime used to be favorable as capital gains and were subject to a 19% flat rate. However, beginning in 2013, capital gains are subject to the personal progressive rate (i.e., 45% marginal rate).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equivalent PE ratio</td>
<td>Under specific conditions, carried interest should be taxed as capital gains tax. This tax regime used to be favorable as capital gains and were subject to a 19% flat rate. However, beginning in 2013, capital gains are subject to the personal progressive rate (i.e., 45% marginal rate).</td>
</tr>
<tr>
<td>Others</td>
<td>Under specific conditions, carried interest should be taxed as capital gains tax. This tax regime used to be favorable as capital gains and were subject to a 19% flat rate. However, beginning in 2013, capital gains are subject to the personal progressive rate (i.e., 45% marginal rate).</td>
</tr>
</tbody>
</table>

Section 5: Tax policy environment

5.1 Policy environment relating to family business
Yes, it is a regularly discussed topic and the French fiscal policy aims at promoting the investment in Family Business by granted tax credits and tax reductions to investors.

5.2 Specify change in the direction of tax policy in the last three years
Yes, the French policy has improved tax regime that promotes the investment in family business.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners
No.
5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions

None.

Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with:

- High net worth individuals (HNWIs): No.
- SMEs: No.
- Family businesses: No.
- Large corporate taxpayers: Yes.
- Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses: No.

6.2 Specify enforcement focus areas or defined programs that might touch a family business

None.

6.3 Specify tax enforcement focus on any particular industry or profession

None.

6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners

None.

6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

French taxpayers may benefit from a favorable tax treatment in case of voluntary disclosure of foreign bank account.

6.6 Are there any specific pre-filing processes that can be leveraged by:

- HNWIs: No.
- Family businesses: No.

6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

There is a growth in the use of tax information exchange agreements but it does not specifically relate to HNWI.
Section 1: The accumulative tax burden on family business

2013 tax rates

1.1 Corporate income tax (national and sub-national combined)

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Highest marginal rate</td>
<td>Corporate income tax (CIT) is 15% + 5.5% solidarity surcharge on CIT; the effective tax rate is 15.825%.</td>
</tr>
<tr>
<td></td>
<td>Trade tax, depending on the location of the business, is 7% to 17.5% (average about 13.5%).</td>
</tr>
<tr>
<td></td>
<td>No change in CIT rate in the last three years.</td>
</tr>
<tr>
<td></td>
<td>Municipalities may change the trade tax rate autonomously.</td>
</tr>
<tr>
<td>• Highest rate for small and medium enterprises (SMEs) / small business</td>
<td>There is no special rate for SME corporations.</td>
</tr>
<tr>
<td></td>
<td>N/A.</td>
</tr>
<tr>
<td>• Special treatment of SMEs / small business (other reliefs, etc.)</td>
<td>There is no special treatment for SME corporations.</td>
</tr>
<tr>
<td></td>
<td>N/A.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

From 2008 onward: Trade tax is not deductible and there is no more declining depreciation method. For trade tax purposes there was an introduction of various add-backs of expenses (interest, rental/leasing expenses, expenses for the use of rights); at the same time, there was a reduction of nominal tax rates (CIT and trade tax).

From 2009 onward: There is an interest barrier rule (see details below).
### 1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Personal allowance</strong></td>
<td>Personal allowance: In 2012, there was a personal allowance of €8,004 for a single person (€16,008 for a married couple filing jointly). In 2013, the rate was €8,130 single and €16,260 for a couple. Allowance for children: €2,184 + education allowance €1,320 (double amounts for married parents filing jointly). Investment income is tax-free in an amount of €801 per year for a single taxpayer (€1,602 for a couple).</td>
</tr>
<tr>
<td><strong>Minimum rate of personal income tax (PIT)</strong></td>
<td>The current rate is 14% (on income above €8,004/€16,008). Investment income is generally taxed at a flat rate of 25%, withheld at source, application possible for so-called most-favored-test (Günstigerprüfung) to achieve that investment income is subject to the individual progressive income tax rate, if this leads to lower tax burden than flat tax.</td>
</tr>
<tr>
<td><strong>Highest marginal rate of PIT</strong></td>
<td>The highest marginal rate is 45% on income above €250,730/€501,462. Investment income is generally taxed at a flat rate of 25% (plus solidarity surcharge of 5.5%, see below), withheld at source, exemptions apply for major shareholders receiving dividends/interest (see below).</td>
</tr>
<tr>
<td><strong>Any special surtaxes</strong></td>
<td>There is a solidarity surcharge of 5.5% and a church tax – if taxpayer is member of a church – of 9% or 8%, levied on the income tax. Business income is also subject to trade tax (see above), threshold of €24,500 for single businesses and partnerships; trade tax can be partly or in some cases fully credited against income tax.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

Trade tax: See above.

Income tax: A yearly increase is part of taxable income from retirement pensions until 2030; 100% of retirement pensions will be taxable income.
### 1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Standard rate</td>
<td>The standard rate is 19%. The reduced rate is 7%, which applies to specified transactions. Certain transactions are exempt.</td>
</tr>
<tr>
<td>• Are there any special reliefs or exemptions for a family business?</td>
<td>Enterprises with a gross turnover that does not exceed €17,500 in the last year and did not exceed €50,000 in the current (smallest entrepreneur (Kleinunternehmer) year do not have to invoice and pay VAT; they are also not entitled to a refund of VAT paid to others; it is possible to renounce the exemption.</td>
</tr>
</tbody>
</table>

### 1.4 Property taxes

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Does a family business receive any relief on property taxes not granted to other types of corporation?</td>
<td>Real estate property tax is levied by the municipality in which the real estate is located. The rate is 0.35% of the tax value of the property, multiplied by a municipal coefficient. No special reliefs for family businesses.</td>
</tr>
</tbody>
</table>

### 1.5 Capital gains tax (CGT)

<table>
<thead>
<tr>
<th>2013 rate – companies</th>
<th>N/A.</th>
</tr>
</thead>
<tbody>
<tr>
<td>• 2013 rate – individuals</td>
<td><strong>Sales of private real estate</strong> are subject to tax if the taxpayer owned the property for less than 10 years; taxed at individual rate.</td>
</tr>
<tr>
<td></td>
<td><strong>Sales of shares:</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Shares held in a non-corporate business:</strong> The rate is 60% of the capital gains taxable for income and trade tax at normal rates; 60% of costs are deductible.</td>
</tr>
<tr>
<td></td>
<td><strong>Shares held privately:</strong> If interest of 1% or more in corporation within the last five years: 60% of the gain is taxable, 60% of costs are deductible and there is no trade tax. If interest of less than 1%: capital gain subject to flat rate of 25% (26.375%, including the solidarity surcharge); application for “Günstigerprüfung” possible (see above).</td>
</tr>
<tr>
<td></td>
<td><strong>Shares held by corporations:</strong> Effectively 95% is tax exempt for CIT and trade tax purposes.</td>
</tr>
<tr>
<td>• Reliefs/exemptions</td>
<td>Shares held privately and acquired before 1 January 2009 can generally be sold tax-free (unless they arose by a contribution of a business or partnership into a corporation).</td>
</tr>
<tr>
<td></td>
<td>Gains from sales of assets and shares held in business (corporate or non-corporate) can be transferred under special conditions to newly purchased assets and shares and therefore be timely tax-free (Sec. 6b German Income Tax Law).</td>
</tr>
</tbody>
</table>
1.6  Tax on dividends from ordinary shares

A. For the business: Withholding tax will be retained by the distributing company. A statutory rate of 25% (26.375%, including the solidarity surcharge) applies, with several possibilities of refunds and reductions for nonresident corporate shareholders under certain conditions. Strict anti-treaty shopping rules apply.

B. For the owners of the business:

B.1. Corporation as owner

Dividends received by a German resident corporation (from both resident and foreign corporations) are effectively 95% tax exempt (100% is tax free; 5% is treated as a nondeductible expense); exemption not applicable for banks and financial service institutions that hold the shares for trade purposes, including holding companies.

The 95% tax exemption is not granted for portfolio dividends (less than 10% shareholding) received from 1 March 2013 onward.

The participation exemption applies for trade tax purposes if the parent holds at least 15% as of 1 January of the calendar year in which the dividend distribution takes place. For dividends from European Community (EC) corporations, the required minimum shareholding is 10%. For dividends of third-country corporations, the shares (minimum shareholding of 15%) must be held continuously since 1 January of the calendar year in which the dividend distribution takes place and the subsidiary’s gross income must be realized exclusively or almost exclusively from active business.

Normal tax rates apply (15% corporate tax, 5.5% solidarity surcharge, trade tax).

B.2. Partnership or single business as owner

Dividends held in business assets are effectively 40% income tax exempt (Teileinkünfteverfahren, TEV). That means, 60% is subject to income tax of the owner; 60% of the business expenses are deductible. The individual income tax rate is applicable.

For trade tax purposes, if the interest is at least 15% as of 1 January of the respective calendar year, the dividend is tax-free; if the owner holds less than 15% the dividend is fully taxed with trade tax. For dividends from corporations outside Germany see above.

In cases where a corporation holds an interest in a partnership, the respective dividends attributable to the corporation are treated as if the respective shares were directly held by the corporation (effectively 95% tax exemption, see above).

B.3. Privately held shares

Dividends held in private assets are taxed with a capital gains tax which is assessed at a rate of 25%. The shareholder can apply for the Günstigerprüfung (see above). There is no deduction of the costs, only the personal allowance (€801/€1,602) for investment income can be deducted.

Furthermore, the owner can apply for the TEV (see Section 1.6 B2) so that 40% are tax free and 60% of the costs can be deducted if the owner holds at least 25% in the corporation or the owner holds at least 1% and is working for the corporation.

1.7  Tax on dividends from preferential shares

A. For the business: No differences to Section 1.6.

B. For the owners of the business: No differences to Section 1.6.
1.8 Tax treatment of interest on a loan from the shareholders

**A. For the business:** Interest expenses are generally deductible; 25% (26.375% including solidarity surcharge) WHT is imposed on certain types of interest (for example interest paid by financial institutions).

Interest barrier rule (Zinsschranke): Interest paid by a business is deductible in the amount of interest earned during the same fiscal year. To the extent that the amount of interest expenses is higher than the interest earned, the net interest expenses are only deductible up to 30% of the earnings before interest, taxes, depreciation and amortization (EBITDA). Interest expenses which cannot be deducted due to the application of these rules will be assessed and carried forward to the following fiscal years in which they may possibly be deducted, again subject to the interest barrier. The following exemptions apply: (a) threshold of €3 million net interest expense; (b) interest barrier rule is only applicable for companies that are or could be part of a consolidated group (group clause); (c) interest barrier rule is not applicable if the equity of the business is not lower than 2% under the average equity of the entire group (escape clause).

Re-exemptions for corporations: Group clause and escape clause do not apply if interest paid to shareholders who hold more than 25% exceeds 10% of net interest expense in the FY.

If the business is a partnership, interest paid to partners is not deductible, but is part of the partnership’s business income.

**B. For the owners of the business:** If the loan is held in a single business of the owner, interest is business income. For partnerships, see above. If the loan is held privately, a flat rate of 25% is applied (26.375% including solidarity surcharge) except interest received from a corporation in which the owner holds interest of 10% or more which is taxed at the individual rate.

1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

Normally, renting real estate to commercial businesses by owners of the business leads to business income for the owner, which means it is also subject to trade tax. If rented to a partnership, the rent is part of the partnership’s business income, i.e., also subject to trade tax. Only in cases where the ownership of the business and the ownership of the real estate are not connected in a way that the owner can control both (alone or together with other people with interest in both), the rent can be seen as rental income.

1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

The rules for rental of real estate to your own business apply for any kind of (material or immaterial) asset that can be seen as fundamental for the business (wesentliche Betriebsgrundlage).

1.11 Tax treatment of interest paid on bank debt by a family business

See Section 1.8, especially the interest barrier rule.

1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

There are no special tax consequences.

1.13 Tax treatment of rental payments made by a family business to third parties for real estate

There are no special tax consequences.

1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group

See Section 1.8, especially the interest barrier rule. Intercompany payments must be generally at arm’s lengths to be accepted for tax purposes.
1.15 Does your country provide for a deemed deduction on equity and/or debt?

No.

1.16 Is the retainment of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

No restrictions.

For single businesses and interests in partnerships with a minimum stake of 10% or €10,000, a reduced tax rate of 28.25% (plus solidarity surcharge and church tax) on retained earnings can be applied for. An additional flat tax of 25% (plus solidarity surcharge and church tax) is levied in years where the accrued income under the special rules is distributed.

1.17 Wealth tax

- 2013 characteristics and rate: N/A.
- Is there an exemption for shares owned by a family that owns a business? N/A.

1.18 Inheritance tax/estate tax

Tax rates range from 7% to 50%, with various exemptions available. Thresholds from €20,000 to €400,000 (children) or €500,000 (spouses).

Business property/assets are valued at fair market value (FMV). Under certain conditions, the inheritance of business property can be 85% or 100% tax free. This may change in the near future (probably 2014) due to a decision of the German Supreme Court.

1.19 Gift tax

See inheritance tax, as Germany has a unified system of inheritance and gift taxation.

1.20 Real estate transfer tax

Real estate transfer tax (RETT) is levied on the transfer of real estate and numerous additional facts (such as transfer of more than 95% of shares of companies which hold real estate and other similar issues); local tax rates of 3.5% to 6% of purchase price/special value calculated according to German RETT Law. There are several exemptions, such as transfer between directly related family members.

1.21 Endowment tax

N/A.

1.22 Social security

<table>
<thead>
<tr>
<th>National/social insurance contributions on employee income</th>
<th>Employed individuals are required to make a contribution for pension, health and unemployment insurance. The employer bears 50% of the total contribution.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Health/medical/dental care</td>
<td>Employed individuals are required to make a contribution for pension, health and unemployment insurance. The employer bears 50% of the total contribution.</td>
</tr>
<tr>
<td>Retirement plans/pensions for employees</td>
<td>Employed individuals are required to make a contribution for pension, health and unemployment insurance. The employer bears 50% of the total contribution.</td>
</tr>
</tbody>
</table>
1.23 Pensions and tax-efficient savings

- Tax relief on pension contributions – standard Deductions, which are subject to restrictions, are available (e.g., social security contributions, insurance, medical expenses).
- Tax relief on pension contributions – any specific relief to family business? There are no specific rules.

1.24 Taxation of flow-through entities/partnerships/trust funds

For partnerships see above. Such vehicles are generally considered transparent for tax purposes. Trusts have to be analyzed on a case-by-case basis as the taxation depends on the nature of the trust (revocable/irrevocable).

1.25 Exemptions in the law that specifically relate to family businesses

None.

1.26 Are there any business incentives in your country that are specific to

- SMEs There is a deduction of 40% of the presumable acquisition costs for planned investments in the future three years.
- Family businesses No.

1.27 Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses? General rules apply.
- Are there any available loss reliefs that are specific to SMEs? General rules apply.

Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

**Calculation 1:** The business makes a profit before tax of €2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

**Business = corporation:** 15% CIT, 5% solidarity surcharge (SolZ), 14% trade tax = 29.825% x €2,000,000 = €596,500

Distribution €1,403,500 (creditable WHT disregarded); owner: 25% IT, 5% SolZ = 26.375% x €1,403,500 = €370,173 – net: €1,033,327 taxes: €966,673 – ETR = 48.33%

**Business = single business or partnership:** 14% trade tax on €2,000,000 – €24,500 = €276,570

Income tax 45% x €2,000,000 – €15,694 = €884,306 – credit of trade tax: 3.8 x 3.5% x (€2,000,000 – €24,500) = €262,742 – Income tax = €884,306 – €262,742 = €621,564

SolZ 5.5% x €621,564 = €34,186

Taxes: €932,320 Net: €1,067,680 – ETR= 46.62%

**Calculation 2:** The business makes a profit before tax of €500,000 and pays taxes on this profit. The after tax amount is then distributed to the same shareholder in the same tax year.

**Business = corporation:** 15% CIT, 5% solidarity surcharge (SolZ), 14% trade tax = 29.825% x €500,000 = €149,125

Distribution €350,875 (creditable WHT disregarded); owner: 25% IT, 5% SolZ = 26.375% x €350,875 = €92,543

Net: €258,332 Taxes: €241,668 – ETR = 48.33%
Germany

**Business = single business or partnership:** 14% trade tax on €500,000 – €24,500 = €66,570

Income tax 45% x €500,000 – €15,694 = €209,306 – credit of trade tax: 3.8 x 3.5% x (€500,000 – €24,500) = €63,242 – Income tax = €209,306 – €63,242 = €146,064

SolZ 5.5% x €146,064 = €8,033

Taxes: €220,667 Net: €279,333 – ETR= 44.13%

Has this effective tax rate increased, decreased or stayed the same in the last three years?
See above for comments concerning income tax, personal allowances and trade tax rate changes.

**Section 3: Tax treatment of family businesses and other issues**

<table>
<thead>
<tr>
<th>3.1</th>
<th>Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil</th>
</tr>
</thead>
<tbody>
<tr>
<td>See all the differences explained above.</td>
<td></td>
</tr>
</tbody>
</table>

| 3.2 | Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder. |
| See all the differences explained above. |

| 3.3 | Imposition of penalties where profits of a family business are paid out in any way other than as a dividend. |
| Contracts between single business and owner are not legally possible; payments between partnership and partner are not accepted as income/expenses for tax purposes and considered as part of the partnership's business income; remunerations and payments between corporations and shareholders have to be at arm's length to be accepted for tax purposes. |

| 3.4 | Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either: |
| A. Fully publicly listed? No. |
| B. Partly publicly listed? No. |

| 3.5 | In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares? |
| Not generally. See above for certain rules with different treatments that are dependent on the interest in a corporation. |
Section 4: Succession planning

4.1 Life insurance
There are no specific rules.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?
There are no specific rules.

4.3 Estate tax
- Pooling agreements can be used to meet the 25% threshold for the inheritance tax relief of Sect. 13a/13b of the German Inheritance Tax Code (see Section 4.7) in cases where the individual's stake is below 25%. There is the risk that the respective corporation will (partially) forfeit unused losses if pooling agreements are set in place.
- Generally speaking, German inheritance and estate tax can be mitigated in many cases by tax planning. The so-called tax relief of Sect. 13a/13b of the German Inheritance Tax Code of 85% or 100% has several and complicated requirements which have to be met.

4.4 Pension plans
There are no specific rules.

4.5 Trusts, foundations and private purpose funds
German civil law does not contain specific provisions for trusts, and Germany has not ratified the Hague Convention on the Recognition of Trusts dated 20 October 1984. Thus, it is not possible under German law to establish a trust.

According to German civil law, a foundation is an organization that, by using its capital, promotes a special purpose set by the founder. A foundation has no members or shareholders and can be formed as a legal entity.

4.6 Wills/intestacy/family charters
Succession
Under the universal succession principle, title and possession transfer automatically at death to the heirs. The following rules apply:
- Unlimited personal liability for the deceased's debts (limitation may be reached by the use of special legal provisions) transfer automatically.
- Under a will, legatees have only a personal claim against the heirs with no personal liability of the heirs and only to the extent of the disposable estate.
- The estate is not regarded as a separate legal entity.
- An appointed executor may have the sole right of disposal with regard to the estate for up to 30 years.

An inheritance may be refused by the heirs by way of a disclaimer within six weeks from the date the heir learns of his or her inheritance.

Forced heirship
The German Civil Code provides strict forced heirship rules that enable certain persons to claim a share of an estate if they are excluded from succession by the decedent's last will.

The descendants, the spouse, the partner of a registered same-sex partnership and the parents of the decedent may claim (in cash) an amount of up to one-half of their intestacy share (see Section 4.6).

German citizens can avoid these rules only by a pre-death waiver by the potential claimant. Such waiver may in some events require separate counsel for the claimant and will be valid only if performed by notarial deed.
4.6 Wills/intestacy/family charters

Matrimonial regimes and civil partnerships

German family law distinguishes between three marital property regimes:

1. Statutory marital property regime (Zugewinngemeinschaft; community of accrued gain): According to this regime, spouses and partners of a registered same-sex partnership hold their assets as separate property during their marriage or partnership, although there are partial restraints on management and disposal. Upon divorce or death, the gain accrued on the property of the spouses or the partners of a registered same-sex partnership during the marriage or the partnership will be shared. The statutory regime may be modified (within certain limits) by a marriage contract or by a contract between the partners of a registered same-sex partnership.

Upon formal agreement (by marriage contract or by a contract between the partners of a registered same-sex partnership), which has to be implemented by notarial deed, spouses and the partners of a registered same-sex partnership may elect one of two contractual matrimonial property regimes, which may be further modified (within certain limits) by the contract as well.

2. Separation of property (Gütertrennung): Under this regime, each spouse or partner of a registered same-sex partnership holds his or her property independently in separate ownership. Management and disposal are not subject to any limitations deriving from the marital status.

3. Community of property (Gütergemeinschaft): Under this regime, all assets become the joint property of the spouses or the partners of a registered same-sex partnership (common property). Generally speaking, a community of property is very rarely seen in practice.

Intestacy

A will is a legal document that regulates an individual's estate after death. Germany will normally accept the formal validity of a will drawn up under the laws of the deceased's domicile, nationality and place of residence at the time the will is made or at death. Whether an individual has the personal legal capacity to make the dispositions in the will is generally governed by the law of the deceased's citizenship.

If there is no valid will at death, then the deceased's estate passes under predetermined rules known as intestate succession. Where there are cross-border issues, the Conflicts of Law provisions will be relevant.

Intestate succession is governed by a system of succession per stirpes, which divides the possible intestate heirs into different orders depending on the relation to the decedent, while the closest applicable order excludes the more distant orders.

<table>
<thead>
<tr>
<th>Order</th>
<th>Heirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st order</td>
<td>Spouse or partner of a registered same-sex partnership and children.</td>
</tr>
<tr>
<td>2nd order</td>
<td>Parents and their descendants.</td>
</tr>
<tr>
<td>3rd order</td>
<td>Grandparents and their descendants.</td>
</tr>
<tr>
<td>4th order</td>
<td>Great-grandparents and their descendants.</td>
</tr>
<tr>
<td>Further heirs</td>
<td>More distant relatives and descendants.</td>
</tr>
<tr>
<td>No heirs</td>
<td>State.</td>
</tr>
</tbody>
</table>

Within the first three orders, a system of per-stirpes distribution and lineal heirs applies. Note that the intestacy rules are partially influenced by the matrimonial property regime, depending on the individual case at hand.

4.7 Passing on a business

By using the tax relief of Sect. 13a/13b of the German Inheritance Tax Code up to 100% of EC/EEA business assets/interests in a partnership/substantial shareholdings (direct participation of the donor respectively decedent in more than 25% of the registered share capital) can be transferred free of gift/inheritance tax. Restrictions apply regarding the ratio of non-operating assets in the business/corporation (Verwaltungsvermögen).
Carried interest paid out to an investment manager is considered as income from self-employment. Only 60% of the income is subject to the regular tax rates under Sect. 3 Nr. 40a of the German Income Tax Code. The treatment as income from self-employment only applies in cases where the respective entitlement has been granted under the condition of the full return of the investor-capital.

Regular distributions may be subject to the investment tax treatment (25% flat tax + solidarity surcharge and church tax) depending on the circumstances.

Equivalent PE ratio
N/A.

Others
N/A.

Section 5: Tax policy environment

5.1 Policy environment relating to family business
Inheritance tax is broadly discussed. The non-favorable climate for SMEs in Germany is often discussed, but not especially in relation to family businesses.

5.2 Specify change in the direction of tax policy in the last three years
Currently, there is a more favorable treatment, e.g., tax-free amount in trade tax, special considerations for small businesses in inheritance tax.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners
No.

5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions
None.

Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with:

- High net worth individuals (HNWIs)
  There are no formal units, but the informal building of workgroups on a local level.
  Public prosecution has specialized departments for financial offences including tax-related offenses.
  The Federal Central tax office (Bundeszentralamt für Steuern) is responsible for binding rulings prior the relocation of HNWI to Germany.

- SMEs
  No.

- Family businesses
  No.

- Large corporate taxpayers
  Yes.
### 6.1 Is there a specific unit within your tax administration that deals specifically with:

- Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses
  - No.

### 6.2 Specify enforcement focus areas or defined programs that might touch a family business

Inheritance tax may be applicable.

### 6.3 Specify tax enforcement focus on any particular industry or profession

N/A.

### 6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners

HNWI with income above €500,000 per annum can be audited at the discretion of the tax authorities (Sect. 193 para 1, Sect. 147a German Fiscal Code (*Abgabenordnung*). Those individuals also have to follow special preservation obligations regarding their tax documents (six years).

### 6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

There is the possibility to file a voluntary self-disclosure (*Strafbefreiende Selbstanzeige*) according to Sect. 371 German Fiscal Code (*Abgabenordnung*). The legal institute of the self-disclosure has been restricted with the legal reform since 2011, after which it has become more difficult to avoid criminal charges by voluntarily disclosing a committed tax evasion. Provided the self-disclosure is filed correctly, the taxpayer will be relieved from criminal charges. However, any tax avoided must be paid including interests and penalties (additional surcharge of 5% if in general tax burden is more than €50,000 in one assessment period).

### 6.6 Are there any specific pre-filing processes that can be leveraged by:

- **HNWIs:** Binding rulings may become necessary prior relocation of a HNWI to Germany in order to clarify the position of the German tax authorities regarding the tax treatment of the individual, e.g., regarding his investments in foreign trusts. Binding rulings can be applied for at the Federal Central Tax Office (*Bundeszentralamt für Steuern*) if the taxpayer is not yet considered a German tax resident.
- **Family businesses:** Binding ruling is applicable for tax structuring prior to implementation.

### 6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

The German Government is implementing the standard provisions of the Organisation for Economic Co-operation and Development Model Convention (OECD-MC) regarding the exchange of tax information in new German double tax treaties where possible. Germany is working on the implementation of automatic tax data exchange procedures where possible. Germany is constantly negotiating with tax havens in order to improve its tax data exchange network. For example, Germany concluded a tax treaty with Liechtenstein effective as of 1 January 2013 that included a respective exchange of information provision.

Furthermore, the German tax authorities purchased tax data regarding German residents that have been downloaded from Swiss and Luxembourg banks by former employees. The tax authorities acquired the data in order to search for undisclosed foreign capital income of German tax residents.
Section 1: The accumulative tax burden on family business

2013 tax rates

<table>
<thead>
<tr>
<th>1.1 Corporate income tax (national and sub-national combined)</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Highest marginal rate</strong></td>
<td>The basic rate and cess has been the same during last three years. However, there has been a marginal change in the rates of surcharge levy. For example, in financial year 2012-13 the surcharge rate was 5% for domestic companies and 2% for foreign companies.</td>
</tr>
<tr>
<td>Domestic companies are subject to tax at a basic rate of 30%, whereas foreign companies are subject to tax at a basic rate of 40%. The minimum alternative tax (MAT) applies to a company if the tax payable by the company on its total income, as computed under the Indian tax laws, is less than 18.5% of its book profit. In such cases, MAT is payable at a rate of 18.5% (plus applicable surcharge and cess) of adjusted book profit. For financial year 2013-14, there is a surcharge levy of 10% of the total tax liability of the domestic company (5% in case of foreign company) where the total income of the company exceeds INR100 million. Further, where the total income of the company exceeds INR10 million but is less than INR100 million, the surcharge rate is 5% for domestic company and 2% for foreign company. There is no surcharge levy for both domestic and foreign companies where the total income is less than INR10 million. In addition, a 3% cess is imposed on the income tax of such companies.</td>
<td></td>
</tr>
</tbody>
</table>

* All data included for India is valid from 1 April 2013 through 31 March 2014, unless otherwise noted.
1.1 Corporate income tax (national and sub-national combined)

- **Highest rate for small and medium enterprises (SMEs)/small business**
  
  In India, there is neither any special treatment nor any beneficial tax rate is available to SMEs/small business. Thus, the applicable rate of tax is same as that of domestic company or foreign company (refer to Section 1.27 for further details).
  
  N/A.

- **Special treatment of SMEs/small business (other reliefs, etc.)**
  
  In India, there is neither any special treatment nor any beneficial tax rate is available to SMEs/small business. Thus, the applicable rate of tax is same as that of domestic company or foreign company.
  
  N/A.

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

As mentioned above, the base rate and cess rate have been the same for domestic companies and foreign companies over the past few years. However, there has been a variation in the rates of surcharge (levied on total tax liability) ranging from 5% to 10% in case of domestic companies and 2% to 5% in case of foreign companies.

Further, there have been amendments in the law in the past five years that could potentially increase the overall size of the corporate income tax base. A few notable ones are listed below:

- The Finance Act 2012 extended the scope of transfer pricing (TP) provisions to cover specified domestic transactions (SDT), such as, payments to related parties, inter-unit transfer of goods or services of profit linked tax holiday-eligible units, transactions of profit-linked tax holiday-eligible units with other parties, etc. By extending TP provisions to SDT, pricing of these transactions will need to be determined with regard to arm's-length principles using methods prescribed under Indian TP regulations.

- Introduction of recipient-based taxation seeking to tax the following:
  
  - The excess premium (based on FMV of the company) received by a closely held company on the issue of its shares as income in the hands of the company

  - The difference between the FMV of the shares of a closely held company and consideration paid for the same by the acquiring company (being a closely held company) or a firm, as income in the hands of the acquiring company/firm (see Section 1.19 for further details)

- Introduction of tax on buy-back of shares by unlisted Indian company at the rate of 20% on “distributed income.” Consequently, the shareholder shall be exempt from tax on proceeds received pursuant to such buy-back.

- Introduction of General Anti-Avoidance Rules (GAAR) to deal with aggressive tax planning and tax avoidance. Herein wide discretion has been provided to the tax authorities to invalidate an arrangement, including the disregarding the application of double taxation tax treaties, if an arrangement is treated as an “impermissible avoidance arrangement. These provisions will be effective from FY2015-16.
1.2 Individual income tax

Deductions are available to individuals for contributions to prescribed schemes/plans/bonds, etc. For instance, individuals may claim a deduction of up to INR100,000 from gross total income for prescribed contributions to life insurance, savings instruments, pension funds and schemes and other specified instruments.

The following employer-paid items/allowances are not included in an employee’s taxable compensation to the extent that they do not exceed specified limits:

- Reimbursed medical expenses
- Contributions to Indian retirement benefit funds, including provident, gratuity and superannuation funds

Certain allowances, including house rent allowances and leave travel allowances, are either tax exempt or included in taxable income at a lower value, subject to certain conditions. Preferential tax treatment (subject to certain conditions) is available on certain elements of compensation such as employer-provided housing, hotel accommodations, interest-free/low-interest loans, etc.

The following tax rates apply to resident and nonresident individual taxpayers for the year ending 31 March 2014.

<table>
<thead>
<tr>
<th>Taxable income in INR</th>
<th>Rate %*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exceeding 0 - 200,000</td>
<td>Nil</td>
</tr>
<tr>
<td>Exceeding 200,000 - 500,000</td>
<td>10%</td>
</tr>
<tr>
<td>Exceeding 500,000 - 1,000,000</td>
<td>20%</td>
</tr>
<tr>
<td>Exceeding 1,000,000</td>
<td>30%</td>
</tr>
</tbody>
</table>

* An education cess of 3% is levied on the tax payable. The maximum marginal tax rate on annual income is effectively 30.9% (30% + 3% education cess).
1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard rate</td>
<td>12.36% (effective from 1 April 2012)</td>
</tr>
<tr>
<td>Are there any special reliefs or exemptions for a family business?</td>
<td>No specific exemption is available for family businesses; relief may be available for services where taxable turnover is less than INR10 lakhs (10 lakh = 1,000,000)</td>
</tr>
</tbody>
</table>

1. DTC seeks to replace the five decades old Indian income tax law. Based on press reports, we understand that the same is pending examination by various Government Ministries and shall be presented in the Indian Parliament for discussion when ready.
1.4 Property taxes

- Does a family business receive any relief on property taxes not granted to other types of corporation?

India does not have a separate tax regime for family businesses. Family businesses are taxed in a like manner as applicable to any other “person” depending on the nature of entity.

India does not have any specific property tax regime. However, transfer of property (including immovable property) could be subject to a stamp duty levy.

Typically, stamp duty is paid in respect of a transaction executed through a document or instrument under the provisions of the Indian Stamp Act of 1899 (central law governing the country) or the State Stamp Acts. Stamp duty is applicable on purchase of immovable property and also on various other transactions, e.g., lease, conveyance, mortgage, partitions, transfers, order passed by the High Court to sanction a scheme of arrangement, etc.

The rate of duty is generally calculated on an ad valorem basis depending on the nature of the instrument and the state where it is executed. Typically, for immovable property this duty is payable in the state where the property is located. The rates of stamp duty on instruments related to the transfer of immovable property vary from 3% to 10% on FMV of the property.

Stamp duty on transfer of shares of an Indian company is levied at 0.25% of the value of the transaction. However, if the shares are transferred under the depository mechanism, no stamp duty is payable on such transfer of shares.

Generally, no stamp duty is required to be paid for executing a will or a codicil. Also, no stamp duty is levied on inheritance of property by the legal heirs. Generally, stamp duty is payable on settlement of property into a trust and distribution of the assets of the trust to the beneficiaries.

2. Comments on stamp duty and legal provisions are based on information available in public domain.
1.5 Capital gains tax (CGT)

- **2013 rate – companies**
  
  In case a company has only earned capital gains, such gains are generally taxed at the following rates:
  
  - Listed equity shares or equity-oriented mutual funds sold through Indian recognized stock exchange:
    - Short-term capital gain\(^4\) – 15%/\(^5\)
    - Long-term capital gain\(^4\) – exempt
  
  - All other assets including unlisted shares and securities:
    - Short-term capital gain – 30%/\(^5\) (if domestic company)/40% (nonresident company)
    - Long-term capital gain – 10%/20%/\(^6\) (as applicable)

  For nonresidents, the long-term capital gains arising on sale of unlisted shares and securities is taxable at 10%/\(^6\) without inflation and foreign exchange fluctuation benefits.

- **2013 rate – individuals**
  
  In case a person has only earned capital gains, such gains are generally taxed at the following rates:
  
  - Listed equity shares or equity-oriented mutual funds sold through Indian recognized stock exchange:
    - Short-term capital gain\(^4\) – 15%/\(^6\)
    - Long-term capital gain\(^4\) – exempt
  
  - All other assets including unlisted shares and securities:
    - Short-term capital gain – at normal rates (see Section 1.2)
    - Long-term capital gain – 10%/20%/\(^6\) (as applicable)

  For nonresidents, the long-term capital gains arising on sale of unlisted shares and securities is taxable at 10%/\(^6\) without inflation and foreign exchange fluctuation benefits.

3. Tax rates/slab rates and indexation benefits would differ based on the nature of asset, residential status of the individual under the domestic tax law and applicable tax treaty, if any.

4. Long-term capital gains are gains on capital assets that have been held for more than 36 months except in case of securities which should have been held for more than 12 months.

5. The surcharge is levied at a rate of 5% for domestic companies and at a rate of 2% for foreign companies, if the net income of the company exceeds INR10 million. Where the net income exceeds INR100 million the applicable surcharge rate is 10% for domestic companies and 5% for foreign companies. Further, cess at 3% is also levied on the total tax liability.

6. Additional surcharge of 10% (on the amount of total tax liability) is levied if taxable income is over INR10 million. Further, cess at 3% can also be levied on the total tax liability.
1.5 Capital gains tax (CGT)

• Reliefs/exemptions

The law prescribes certain situations where the transaction is not regarded as a transfer and therefore exempt from capital gains tax. Few indicative ones are as below:

• Transfer of a capital asset under a gift or will or irrevocable trust

• Transfer of a capital asset by a holding company to its wholly owned company or vice versa subject to fulfillment of prescribed conditions

• Transfer of shares by the shareholders of the amalgamating company or demerged company pursuant to a scheme of amalgamation/demerger (which fulfills prescribed conditions) in consideration for shares of the amalgamated company or resulting company respectively

• Transfer of capital assets by the transferor company to the transferee company pursuant to a scheme of amalgamation/demerger, which fulfills prescribed conditions

• Transfer by way of conversion of bonds/debentures into shares

• Succession of sole proprietary concern or partnership firm by a company subject to fulfillment of prescribed conditions, etc.

Further certain reliefs are also available. Few are enlisted below:

• In calculating long-term capital gains, the cost of assets may be adjusted for inflation. However, this adjustment is not available in certain specified cases.

• Nonresidents are protected from fluctuations in the value of Indian rupee on sales of shares or debentures of an Indian company because the capital gains are computed in the currency used to acquire the shares or debentures. After being computed, the capital gains are converted into Indian rupees. Inflation adjustments are not permitted for this computation.

• Long-term capital gains derived from transfer of equity shares or units of an equity-oriented fund listed on a recognized stock exchange in India are exempt from tax if Securities Transaction Tax (STT) is paid on such transaction.

• Effective from 1 July 2012, unlisted equity shares sold under an offer for sale to the public included in the initial public offer are also subject to STT, and the resulting gains are exempt from tax if the shares are held for more than a year (long-term capital gains). These gains are subject to a reduced rate of 15% (plus cess and surcharge as maybe applicable) if they are held for less than a year (short-term capital gains).

• Long-term capital gains are exempt from tax in certain cases if the gains are reinvested in specified instruments within six months. However, if, within three years after purchase, the new assets are sold or used as a security for a loan or an advance, the capital gains derived from the sale of the original asset are subject to tax in the year the new assets are sold or used as a security.
1.6 Tax on dividends from ordinary shares

A. For the business: Domestic companies are required to pay dividend distribution tax (DDT) on profits distributed as dividends at a rate of 16.995% (including surcharge and cess). The DDT paid is a nondeductible expense. Further, on fulfillment of specified condition, it may be possible to mitigate the cascading impact of DDT to a certain extent.

B. For the owners of the business: Amounts declared, distributed or paid as dividends by Indian companies on which the company has paid DDT, are not taxable for shareholders.

1.7 Tax on dividends from preferential shares

A. For the business: Domestic companies are required to pay dividend distribution tax (DDT) on profits distributed as dividends at a rate of 16.995% (including surcharge and cess). The DDT paid is a nondeductible expense. Further, on fulfillment of specified condition, it may be possible to mitigate the cascading impact of DDT to a certain extent.

B. For the owners of the business: Amounts declared, distributed or paid as dividends by Indian companies on which the company has paid DDT, are not taxable for shareholders.

1.8 Tax treatment of interest on a loan from the shareholders

A. For the business: Interest paid by the company to the shareholder who has lent money to the company in the normal course of business should be deductible as an expense provided the company has used the loan amount for business purposes. However, where the funds are utilized to earn income that is exempt from tax, no deduction may be available. Further, such interest, if considered excessive, such excess may be disallowed.

B. For the owners of the business: Where the owner of the business (being the shareholder) is an Indian resident, interest income received would be taxable at the applicable rates. Where the owners of the business are nonresidents, such interest income would be taxable in India at the applicable rates. However, reduced rates may be available where the shareholder is a resident of a country that has entered into a double taxation avoidance agreement with India. Further, such interest income would need to meet the arm's-length requirement.

1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

A. For the business: Typically, rental expenses paid by the business are allowed as a deductible expense for the company. However, such rent if considered excessive, such excess, maybe disallowed.

B. For the owners of the business: Where the owner of the business is the shareholder and is engaged in real estate business, then the rental income so received would be taxable as business income at the applicable rates. However, where the shareholder is not engaged in real estate business then such income would be taxable as income from house property and in such case standard deduction and deduction for interest paid on borrowed funds is allowed subject to certain conditions.

1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

A. For the business: Typically, amount paid by the business towards use of intellectual property is allowed as a deductible expense for the business. However, where the payment is considered as excessive, such excess may be disallowed.

B. For the owners of the business: Where the owners of intellectual property are resident shareholders, then royalty income would be taxable at the applicable rates. Where they are nonresidents, such income would be taxable in India at the applicable rates. However, reduced rates may be available where the shareholder is a resident of a country that has entered into a double taxation avoidance agreement with India. Further, such royalty income would need to meet the arm's-length requirement.

1.11 Tax treatment of interest paid on bank debt by a family business

Interest paid by the company to the lender bank should be deductible as an expense for the company, provided that it is used for the purpose of business and has not been used to earn income that is exempt from tax.

1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

Payments made by the company to third parties for use of intellectual property should be allowed as a deductible expenditure for the company, subject to complying with withholding tax requirements.
1.13 Tax treatment of rental payments made by a family business to third parties for real estate

Payments made by the company to third parties for renting of real estate should be allowed as a deductible expenditure for the company.

1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group

Under the Indian law, amount advanced as loans and advances by a company to a certain category of shareholders or for the benefit of this category of shareholders, or to any concern in which such shareholder is a member or a partner and in which he/she has a substantial interest (20% or more holding) is considered as a deemed dividend. Such a dividend is not subject to DDT as discussed above but is taxable for the recipient as dividend income at the applicable tax rates.

However, the above restriction should not be applicable when the amount is advanced by a group financing company that is in the business of lending money and has advanced money to the company in the ordinary course of business. Further, the interest expenditure should be allowed as a deductible expense for the company subject to meeting arm’s-length requirement (if considered excessive).

1.15 Does your country provide for a deemed deduction on equity and/or debt?

No, India does not provide for any deemed deduction on equity/debt.

1.16 Is the retainment of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

Currently, there are no restrictions on retainment of earnings by the company.

1.17 Wealth tax

- 2013 characteristics and rate

In India, wealth tax is payable at 1% if the taxable value of an individual’s net worldwide wealth exceeds INR3 million. However, if the individual is a foreign citizen, nonresident or resident but not ordinarily resident, exemption from wealth tax is available on assets located outside of India.

Assets subject to tax include residential houses, cars, yachts, boats, aircraft, urban land, jewelry, bullion, precious metals, cash and commercial property not used as business, office or factory premises.

While certain categories of assets are specifically excluded from the ambit of net wealth, for others, a deduction is allowed for debts incurred in relation to taxable assets.

- Is there an exemption for shares owned by a family that owns a business?

Shares are excluded from the purview of wealth tax in India.

1.18 Inheritance tax/estate tax

There is no estate duty (inheritance tax) payable in India. Estate duty on property that is passed onto the legal heirs on death of a person was removed in 1985. Prior to removal, estate duty was payable on a slab basis ranging from 7.5% to 40% of the principal value of the estate. In 2012, this topic had gained prominence as there were news reports that the Indian Government was thinking of reintroducing this levy, but as yet, no formal proposal has been presented before the Parliament.
1.19 Gift tax

Until 1998, gift tax was levied on donors in India on transfer of any existing movable or immovable property, without consideration, at the rate of 30%. In 2004, taxation on transfer without consideration or inadequate consideration (together referred to as gift) was reintroduced in the form of income tax for the donee receipt of gift albeit certain exceptions. However, the tax exemption on transfer of property by way of gift continues. Currently, the following specified gifts when received by an individual are taxable at the rate applicable to him or her:

- Any sum of money received without consideration
- Any other property received without consideration or for consideration less than its fair value, such as:
  - Immovable property
  - Shares and securities
  - Jewelry
  - Archeological collections
  - Drawings
  - Paintings
  - Sculptures
  - Any work of art
  - Bullion

In cases where the gift is property, the difference between the fair value and the consideration paid by the donee is taxable for the donee. The methodology for determining the fair value of the property has also been specified under income tax law.

As mentioned above, certain categories of gift are exempt from such income tax, including:

- A gift received of value not exceeding INR 50,000
- A gift received from relatives (such as spouse, brother or sister of individual, parents of individual or spouse, etc.)
- A gift received on occasion of marriage
- A gift received from will or inheritance
- A gift received in contemplation of death of the donor

On subsequent transfer of the asset received by the donee as a gift, the difference between the sale consideration and the cost of such asset is taxable in the hands of the donee as capital gains. The cost of acquisition would differ in the following two scenarios:

- **Where the donee had paid income tax on receipt of gift:** The cost of acquisition would be the fair value of such asset on which the donee had paid income tax.
- **Where the donee had not paid income tax on account of such gift being exempt:** The cost of acquisition would be the same as the cost of acquisition of such asset as the previous owner (i.e., the donor).

1.20 Real estate transfer tax

From the estate and succession perspective, no real estate transfer tax is levied in India. However, transfer of real estate in India may be subject to income tax and stamp duty (see Section 1.4 above).

1.21 Endowment tax

India does not levy endowment tax.
1.22 Social security

- National/social insurance contributions on employee income

India does not have an exhaustive social security regime like countries such as the US and the European countries. The Indian social security system provides retirement and insurance benefits to employees working in covered establishments. The system is governed by the Employees' Provident Fund and Miscellaneous Provisions Act 1952 (PF Act) and the schemes made there under, namely, the Employees' Provident Fund scheme (EPF), Employees Deposit Linked Insurance scheme (EDLI) and the Employees' Pension Scheme (EPS).

This EPF scheme has recently gained more importance for setting up business in India, especially with the rise in inbound mobility as explained below.

Family business engaged in specified/notified industry employing 20 or more persons are mandatorily required to comply with social security regulations, others can voluntarily opt to be covered. The employer is required to contribute 24% of the monthly pay (12% each for the employer's and the employee's share) of which employees share can be recovered by the employer.

The employer’s contribution is allocated toward EDLI and EPS at specified percentages. While the employees may benefit under EPS on fulfilment of certain conditions, the benefits under EDLI can be enjoyed only during the period of employment.

Generally, employees are categorized as either international workers (IWPs) or others, i.e., local workers.

Generally, an IW is:

- An Indian employee (holding an Indian passport) who has worked or is going to work in a foreign country with which India has entered into a social security agreement and being eligible to avail benefits under the social security program of that country, by virtue of the eligibility gained or going to gain, under the said agreement.

- A foreign national who works for an establishment in India to which the social security legislation applies.

Further, the following employees would not be required to contribute to PF:

- An IW who has obtained certificate of coverage from the social security authorities of his/her home country with whom India has entered into a social security agreement.

- An IW who is contributing to social security of his/her home country with whom India has entered into a bilateral comprehensive economic agreement prior to 1 October 2008 (i.e., Singapore).

- Local employees earning a monthly salary of INR6,500 or more.

Once an employer gets covered by the above social security regulation, they cannot opt out of it.
1.22 Social security

- National/social insurance contributions on employee income

Withdrawal: There are also restrictions and conditions on withdrawal of social security for IWs. For IWs entering India from a non-social security country, the same cannot be withdrawn until retirement after 58 years or on permanent disability etc. Accordingly, where family businesses bear social security cost on behalf of the IWs, the same becomes a sunk cost for them.

However, for members covered under a social security agreement, a withdrawal can be made on fulfillment of certain conditions.

India has entered into social security agreements with Belgium, Denmark, France, Germany, South Korea, Luxembourg, the Netherlands, Hungary and Switzerland which are in force. It has also signed social security agreements with the Czech Republic, Finland, Norway, Canada, Japan, Austria, Portugal and Sweden, but these agreements have not yet entered into force.

In addition to the above, employees also have the option to invest in Public Provident Funds voluntarily which is a savings-cum-tax-saving instrument acting as a retirement planning tool for many of those who do not have retirement plans covering them or for those who wish to have additional retirement coverage over and above those mentioned above.

- Health/medical/dental care

There are no mandatory health/medical insurance requirements in India for all types of business. However, certain specific industry or labor laws may stipulate mandatory coverage of employees such as the Employer State Insurance Scheme (ESIC) which is mandatory to factories employing 10 or more persons and a few other establishments, covering employees below a specified wage limit.

Where an employer pays health or medical insurance premium, under a specified approved scheme, on behalf of the employees, the same shall not be taxable in the hands of the employees.

An employee who buys a health insurance policies in India for himself/herself, can claim a deduction from his taxable income up to INR15,000 (INR20,000 if the insured is a resident of India and is age 60 or older) against his/her income. An additional deduction up to a maximum of INR15,000 is allowed to an individual for medical insurance premiums paid by the individual for his or her parents (INR20,000 if the insured is a resident of India and is age 60 or older). The above limit applies to the total amount paid for both parents. Payments up to INR5,000 made for a preventive health checkup is also eligible for deduction within the above limit.
1.22 Social security

- Retirement plans/pensions for employees

As mentioned above, certain portions of provident fund contributions are allocated toward EPS; however, the benefits of EPS are not very attractive for local employees.

Further, there are certain retirement/pension benefits such as gratuity, superannuation, pension, etc. available to the employees at the time of retirement. Gratuity benefits are subject to eligibility criteria provided by the law or as per the internal policy framed by the company.

In India, pension/retirement benefits sector is still in a developing stage. The employees have the option to buy several pension products issued by various financial institutions. Typically, determinate contribution plans with fixed benefits have done well in India.

Further, with effect from 1 May 2009, the Indian pension fund authorities extended the eligibility to participate in the new pension scheme (low-cost portable pension scheme) to employees of the private sector which provides for tax benefits at the time of contribution. Prior to 2010, under this scheme and as per the provisions of Indian income tax law, both employee contribution and employer contribution toward the pension scheme were allowed as deduction up to 10% of the salary (i.e., 10% of employer contribution + 10% of employee contribution) subject to overall cap of INR100,000. However, subsequently, the above cap of INR100,000 does not include employer's contribution which is fully allowed, subject to a limit of 10% of salary. (Salary here includes dearness allowance, if terms of employment so provide, but excludes all other allowances and perquisites.)

1.23 Pensions and tax-efficient savings

- Tax relief on pension contributions – standard

See Section 1.22.

- Tax relief on pension contributions – any specific relief to family business?

No specific reliefs available for family businesses.

1.24 Taxation of flow-through entities/partnerships/trust funds

**Taxation of partnership firms/Limited Liability Partnership (LLP):**

Under the Indian tax laws, the partnership firm/LLP is taxed as a separate entity, distinct from its partners. No distinction is made between assessment of a registered and unregistered firm. Further, a partnership firm apart from claiming deduction for permissible business expenses can claim deduction for interest, salary, bonus, commission or remuneration (by whatever name called) paid to the partner, subject to fulfillment of prescribed conditions.
1.24 Taxation of flow-through entities/partnerships/trust funds

Taxation of trusts:

The rules governing taxation of a trust are quite complex. The taxability of a trust is dependent on the residential status of a trust, which is a fact-specific exercise.

The income of a trust is taxable for the trustee as a representative assessee of the beneficiary. However, in certain cases, tax authorities may tax either the trustees or the beneficiary directly.

A. Taxability on settlement of property into a trust

Settlement of property in a trust is not taxable for the settlor. Since Indian tax law envisages taxability for the recipient on receipt of a gift, there may be tax implications for the trust or beneficiary on settlement of property in a trust depending on the facts of the case.

B. Taxability of income earned or generated by a trust

The Indian tax law governing taxability of income earned by a trust depends on the nature of trust.

Discretionary trust: Income is taxable at the maximum marginal rate.

Determinate trust: Income is generally taxable at the tax rates applicable to each beneficiary except when it includes income from business (in which case, it is taxable at maximum marginal rate).

C. Taxability on distribution by a trust to the beneficiaries

Typically, at the time of distribution by the trust to the beneficiaries, no tax should arise. However, the same is dependent on facts of the case.

1.25 Exemptions in the law that specifically relate to family businesses

No specific exemptions are available under the Indian laws for family businesses.

1.26 Are there any business incentives in your country that are specific to

- SMEs
- Family businesses

Subject to prescribed conditions, certain tax exemptions and deductions are available to companies with respect to business carried on in India. A few indicative ones are stated below:

- Deduction of 100% of taxable profits from the specified businesses for a consecutive period of 10 years. Some of the specified businesses include:
  - Developing or operating and maintaining or developing, operating and maintaining specified infrastructure facilities
  - Generation or generation and distribution of power
  - Starting transmission or distribution by laying a network of new transmission or distribution lines
  - Undertaking substantial renovation and modernization (at least 50% increase in book value of plant and machinery) of an existing network of transmission or distribution lines

  The company may choose any 10 consecutive years within the first 15 years (10 out of 20 years in certain circumstances) for the period of the tax holiday.

- Deduction of 100% of taxable profits for a consecutive period of seven years for an undertaking that begins commercial production of mineral oil and natural gas in blocks licensed under certain specified circumstances.
1.26  Are there any business incentives in your country that are specific to

- SMEs
- Family businesses

- A 10-year tax holiday equal to 100% of profits and gains derived by an undertaking or enterprise from the business of developing a Special Economic Zone (SEZ) notified (through an official publication by the Government of India) after 1 April 2005, subject to certain conditions.

- A five-year tax holiday equal to 100% of taxable profits derived from operating and maintaining a hospital in specified locations.

- A tax deduction equal to 100% of profits derived from exports of articles, things or computer software by the following types of undertakings:
  - Undertakings located in free-trade zones
  - Technology parks for hardware and software or SEZs
  - 100% export-oriented undertakings

The aforementioned exemptions/deductions are available to all businesses that satisfy the prescribed conditions and is not limited to SMEs/family businesses.

Notwithstanding the above, an individual carrying on business through sole proprietorship, Hindu undivided family and partnership firms are eligible for a tax on presumptive basis at 8% of gross receipts/turnover of the business provided such gross receipts/turnover does not exceed INR10 million.

1.27  Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses?

- Are there any available loss reliefs that are specific to SMEs?

Typically, business losses (excluding losses resulting from unabsorbed depreciation of business assets) may be carried forward to be set off against taxable income derived from business in the following eight years, provided the income tax return for the year of loss is filed on time. For closely held corporations (a company in which public is not substantially interested), a 51% continuity of ownership test must also be satisfied.

Unabsorbed depreciation is allowed to be carried forward indefinitely for setting off against taxable income of subsequent years.

Losses under the heading “Capital Gains” (that is, resulting from transfers of capital assets) may not be set off against other income, but may be carried forward for eight years to be set off against capital gains. Long-term capital losses may be set off against long-term capital gains only.

Further, no specific treatment is prescribed for SMEs or family businesses.
Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- **Calculation 1:** The business makes a profit before tax of INR2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

- **Calculation 2:** The business makes a profit before tax of INR500,000 and pays taxes on this profit. The after tax amount is then distributed to the same shareholder in the same tax year.

Has this effective tax rate increased, decreased or stayed the same in the last three years?

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Calculation 1 for FY 2013-14</th>
<th>Calculation 2 for FY 2013-14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profit before tax (A)</td>
<td>INR2 million</td>
<td>INR500,000</td>
</tr>
<tr>
<td>Tax at 30.9% *</td>
<td>-618,000</td>
<td>-154,500</td>
</tr>
<tr>
<td>Profit after tax</td>
<td>1,382,000</td>
<td>345,500</td>
</tr>
<tr>
<td>DDT @ 16.995%</td>
<td>-200,753</td>
<td>-50,188</td>
</tr>
<tr>
<td>Profit distributed to shareholders (B)</td>
<td>1,181,247</td>
<td>295,312</td>
</tr>
<tr>
<td>Effective tax rate (A-B)/A x 100</td>
<td>41%</td>
<td>41%</td>
</tr>
</tbody>
</table>

* No surcharge is leviable under both situations since the taxable income of the company does not exceed INR100 million.

Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

In India, sole proprietorship (private business without a corporate veil) is not considered as a separate legal entity. The liability of the sole proprietor is unlimited i.e., his/her personal assets (in addition to the monies contributed in the business) are at stake, in case any liability or penalty arises in the name of sole proprietorship. The income tax liability in case of sole proprietorship is calculated as per slab rates applicable to an individual (see Section 1.2). The profits of the business are considered as income of the individual under the head Profits and Gains from Business or Profession.

In contrast, a corporation/company has a separate corporate identity distinct from its individual members and their liability is limited to the extent of shares held by them. Further, income earned by a company is subject to tax at the rates applicable to a company (refer to Section 1.1).

While there seems to be little tax benefit in carrying on business in form of sole proprietorship or company, it should be kept in mind that there is a tax leakage in the form of DDT (see Sections 1.6 and 1.7) when profits of the business are distributed by the company to the shareholders, which is not present when the business is carried as sole proprietorship.

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

See Section 1.5 for taxation of capital gains and Sections 1.6 and 1.7 for taxation of dividends.

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

Generally, there are no penalties levied on distribution of profits of a business in any way other than as a dividend. However, where the distribution is in the form of loan or advance to specified people (including a shareholder who owns more than 20% stake in the company), such income maybe deemed as dividend income of the shareholder and taxable as such. See Section 1.14 for further details.
Section 4: Succession planning

4.1 Life insurance

While there are no specific tax incentives for private/family businesses, the following tax benefits are available in general:

- The employer can consider taking group life insurance coverage for all of its employees, which would be tax deductible and not taxable for the employees, subject to conditions.

- The employer can consider buying Keyman life insurance policies for its key employees, which would be tax deductible for the employer. Any sum received on maturity under such a policy would be taxable to the employee or the employer.

Previously, Keyman life insurance policies assigned to employees acquired the characteristics of a normal life insurance policy and were claimed exempt for the employees on maturity. However, vide amendment, now such assigned policies at any time during the term of the policy have been made taxable for the employees.

Separately, premiums paid for securing life insurance policy for oneself, his or her spouse or his or her child of an amount not exceeding INR100,000 is allowed as a deduction while computing the taxable income of an individual. Any sum received under a life insurance policy on death of a person is tax exempt.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?

Typically, succession planning involving various branches of family, it is common to have a shareholders’ agreement that defines the right/obligations of each branch of family. It is increasingly being used by family members to tie in various branches of the family to ensure unity of action and control in a business environment.

4.3 Estate tax

As mentioned under Section 1.18, there is no estate tax (inheritance tax) payable in India.

However, large business houses and high net worth individuals (HNWIs) are resorting to succession planning irrespective of introduction of estate duty law to address other concerns arising on succession of business from one generation to other.

4.4 Pension plans

The owners of a family businesses can individually or through their business, purchase pension plans for themselves, which would be eligible for deductions or tax benefits as discussed in Section 1.22 above.
4.5 Trusts, foundations and private purpose funds

While the traditional method of passing on wealth through a will has been in vogue, it has quite a few administrative hassles. Hence, mere reliance on a will as a tool for succession planning is not advisable. Self-sustaining, professionally managed structures that offer flexibility for investing onshore and offshore, which help in protecting and maximizing wealth, which allows exercise of control over the assets and also helps in providing requisite liquidity, have been finding preference with HNWIs wanting to pass on the baton to the NextGen.

While vehicles such as partnership firms, limited liability partnerships (LLP), holding companies, etc. are commonly used holding vehicles for succession planning, the one that is increasingly finding favor with HNWIs are private family trusts - a combination of both discretionary and specific trust. Accordingly, interposing a combination of trust and LLP/firm/holding company in the group holding structure could assist in achieving the desired objectives of succession planning.

Typically, the trust consists of settlor; trustee (person appointed by the testator to administer the trust); beneficiary (person for whose benefit the trust is created); and trust property (subject matter of trust which could be movable immovable property). A trust could be settled as a discretionary trust, wherein the trustee has discretion to distribute the income/corpus of the trust or as a specific trust, wherein the settlor pre-fixes the entitlement of the beneficiaries.

A trust apart from serving as a holding vehicle for managing taxes and segregation of controlling interests from economic interest could also help to ensure that all the family members are treated fairly, regardless of the dynamics of the family business, assuming the same is structured appropriately. For example, a trust deed could provide for separate financial provision for heirs who do not work in the business, or for a minor’s education, daughter's wedding, medical expenses of a dependent, etc. A trust could also assume the role of “Family Office” to advice the NextGen in their new venture or running the existing business operations.

4.6 Wills/intestacy/family charters*

The rules of succession differ for different religions:

- Succession to the property of Hindus is governed by the provisions of Hindu Succession Act, 1956.
- Succession to property of Muslims is governed by Muslim Law, which is not yet codified but is based on their religious texts (Sunni and Shia laws).
- Succession of persons other than Hindus, Muslims, Buddhists, Sikhs or Jains is governed by Indian Succession Act 1925.

Typically, the law governing succession recognizes wills and on death of the individual, the property passes on to the persons named in the will. There is no concept of forced heirship in Indian succession laws in respect of self-acquired properties. However, certain laws, such as Muslim Law is an exception to this rule.

Where an individual dies intestate, the law governing the individual comes into play for determining the manner of distribution of deceased’s property. Under the Indian Succession Act, the order of succession that is prescribed for distribution of property upon death of the deceased who dies intestate is as follows:

- If there is no spouse or lineal descendant, the estate passes to the State according to the doctrine of escheat.
- If the deceased leaves behind a spouse and lineal descendants, the spouse will be entitled to one-third of the estate, while the remaining two-thirds will be divided between the lineal descendants.
- If the deceased leaves a spouse and persons who are kindred to him or her, but no lineal descendant, the spouse inherits half of the estate and those who are kindred shall inherit the other half.
- If the deceased leaves behind a spouse, but no lineal descendants or persons who are of related to him or her, then the whole estate passes to the spouse.

Similarly, the Hindu Succession Act, 1956 and Muslim Law also contain rules for distribution of property where a person dies intestate.

4.7 Passing on a business

Refer to our answers above.

* Based on information available in public domain.
4.8 Private equity

Specific legislation/tax treatment of income derived from private equity (PE) activity

Income earned from investments in specified PE fund (Category I Alternative Investment Fund) is taxable for the investor in the same and like manner as earned by the PE fund.

In the case of income from investment in other PE funds, there are no specific provisions in the Indian tax law and hence governed by general provisions.

While there are no specific provisions for taxation of carried interest income, the same could be structured to ensure that there is no double taxation (i.e., at fund level and at investor level).

Equivalent PE ratio

N/A.

Others

N/A.

Section 5: Tax policy environment

5.1 Policy environment relating to family business

Typically, the general economic scenario and the tax budgets influence tax decisions. Family businesses have little or no significant influence on policy decisions. There have been frequent discussions/speculations in press reports on proposed introduction of levy of inheritance tax and gift tax on HNWIs to bridge the gap between rich and poor and tax the super-rich people.

5.2 Specify change in the direction of tax policy in the last three years

There has been no specific change in the direction of policy in last three years. However, there has been an increased focus by the Income Tax Department in tracking and examining HNWIs. In recent times, the Indian Government has redoubled its efforts to curb leakages from the economy on account of black money. See Section 6.2 below for details.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners

There are no specific provisions that specifically support family businesses/family business owners.

5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions

Currently, there are no specific tax provisions which impair family businesses. However, the Indian tax laws includes general anti-avoidance rules (GAAR), which are likely to be effective from FY2015-16 that would be applicable to all tax payers. The GAAR are broad rules that are designed to deal with aggressive tax planning and avoidance. Wide discretion is provided to the tax authorities to invalidate an arrangement, including the disregarding of the application of tax treaties, if an arrangement is treated as an “impermissible avoidance arrangement.” The GAAR provisions are to be applied in accordance with rules and guidelines, which have not yet been notified by the government.

Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with:

- High net worth individuals (HNWIs)
- SMEs
- Family businesses

In India, there is no exclusive tax administration for HNWIs, SMEs or family businesses. However, to enable a coordinated investigation and to see a holistic picture, central circles have been set up by the income tax department, where cases of group companies and their promoters/directors are investigated/examined by specific designated officers.
### 6.1 Is there a specific unit within your tax administration that deals specifically with:

| Large corporate taxpayers | Large Taxpayers Unit (LTU) is a self-contained office to provide single window facilitation to taxpayers who pay direct and indirect taxes above a threshold limit. Large taxpayers, especially those having multilocational units/factories, can take benefit of the scheme by opting for it. Eligible taxpayers who opt for assessment in LTU are able to file their direct taxes and relevant indirect tax returns at such LTUs and for all practical purposes are assessed to all these taxes there under. The scheme aims at reducing tax compliance cost and delays, and bringing uniformity in the matters of tax/duty determination. |

| Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses | Refer to answers above. |

### 6.2 Specify enforcement focus areas or defined programs that might touch a family business

There are no specific defined programs that cover family businesses. However, there has been an increased focus on HNWI. The following pointers suggest the same:

- The Income Tax Department of India is zeroing in on HNWIs, and wants them to disclose the details of their assets in the country. A separate disclosure format, included in the income tax return forms for FY2012-13, wants details of movable assets (personal effects excluded) including vehicles, yachts, aircraft, bullion, jewelry, works of art and paintings. Also to be disclosed are details of financial assets such as bank balances, shares and insurance policies and disclosure of immovable assets covers land and buildings owned by the individual.

- An additional requirement has been introduced through the Finance Act of 2012, whereby ordinarily residents are required to disclose the details of foreign assets/bank accounts in their return of income.

- The time limit for issue of notice for reopening the audit of tax return of an individual has been increased to 16 years with effect from June 2012, where the income is in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment. Similar provisions have also been introduced under the Wealth Tax Act.

- Frequent discussions/speculations in press reports on the proposed introduction of levy of inheritance tax and gift tax to bridge the gap between the rich and poor and for taxation of the super-rich people.

- Press reports suggest that data relating to HNWIs who have invested in tax havens is increasingly being sought and probed.

- In general, the Indian tax authorities are becoming more vigilant wherein based on the data provided by external institutions such as banks, credit card issuers, mutual funds, etc.; non-compliant tax payers are being tracked.

- Also, a compliance management cell has been set up to monitor return filing and tax payment of identified/target segments.

### 6.3 Specify tax enforcement focus on any particular industry or profession

Cases of professionals such as doctors, chartered accountants, etc. are concentrated in a separate range (unit) headed by senior tax officials.

### 6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners

In India, audit of the income tax return filed by the taxpayer to assess his real tax liability is referred to as “scrutiny.” It is the process whereby the Income Tax Department select some income tax returns and examine them closely after calling for extra information and seeing if the details furnished by the tax payer are correct.

The Income Tax Department selects cases for scrutiny through computer-assisted scrutiny system (CASS) that picks cases meeting parameters fed into it from among the returns filed. Besides, senior tax officers are also allowed to pick up cases locally for scrutiny on account of specific information about the tax payer. Moreover, information from third parties such as banks, credit card companies, mutual funds through Annual Information Returns filed by them also play an important role in selecting scrutiny cases.
6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

There have been no voluntary disclosure opportunities for direct tax in the last three years.

6.6 Are there any specific pre-filing processes that can be leveraged by:

- **HNWIs**: Pre-filing processes are specified under Indian tax legislation. However, there is a provision for seeking advance ruling by a nonresident tax payer and certain public sector undertakings (PSUs) in certain circumstances.

- **Family businesses**: Same as above.

6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

India has a vast network of comprehensive double taxation avoidance agreements which contain Article relating to seeking exchange of information. Besides this, over the years there has been an increase in number of tax information exchange agreements that India has entered into with other countries and territories. Currently, 10 agreements are in effect, namely: Bahamas, Bermuda, British Virgin Islands, Isle of Man, Cayman Islands, Jersey, Macau, Liberia, Guernsey and Gibraltar.

### Some interesting anniversaries

<table>
<thead>
<tr>
<th>Anniversary</th>
<th>Company</th>
<th>Family</th>
<th>Industry</th>
<th>Headquartered</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>190</td>
<td>Gunn Family Farm</td>
<td>Gunn</td>
<td>Farm</td>
<td>Tea Tree</td>
<td>Australia</td>
</tr>
<tr>
<td>190</td>
<td>Archer Family Farm</td>
<td>Archer</td>
<td>Farm</td>
<td>Longford</td>
<td>Australia</td>
</tr>
<tr>
<td>130</td>
<td>Dabur Group</td>
<td>Burman</td>
<td>FMCG, health care</td>
<td>Ghaziabad</td>
<td>India</td>
</tr>
<tr>
<td>50</td>
<td>Sing Holdings Ltd</td>
<td>Huang</td>
<td>Real estate</td>
<td>Singapore</td>
<td>Singapore</td>
</tr>
<tr>
<td>40</td>
<td>Armstrong Industrial Corp Ltd</td>
<td>Ong</td>
<td>Machinery</td>
<td>Singapore</td>
<td>Singapore</td>
</tr>
</tbody>
</table>

Source: EY research, based on Dun & Bradstreet data.
More detailed information on the tax rates for Ireland is provided in the following table:

<table>
<thead>
<tr>
<th>Country name</th>
<th>Ireland</th>
</tr>
</thead>
<tbody>
<tr>
<td>EY contacts</td>
<td></td>
</tr>
<tr>
<td>John Heffernan</td>
<td>Dublin and Limerick</td>
</tr>
<tr>
<td>+353 1 221 1219 (Dublin)</td>
<td>+353 6 131 7784 (Limerick)</td>
</tr>
<tr>
<td><a href="mailto:john.heffernan@ie.ey.com">john.heffernan@ie.ey.com</a></td>
<td></td>
</tr>
<tr>
<td>Catriona Coady</td>
<td>Dublin</td>
</tr>
<tr>
<td>+353 1 221 2432</td>
<td><a href="mailto:catriona.coady@ie.ey.com">catriona.coady@ie.ey.com</a></td>
</tr>
<tr>
<td>Sinead McCormack</td>
<td>Dublin</td>
</tr>
<tr>
<td>+353 1 221 2107</td>
<td><a href="mailto:sinead.mccormack@ie.ey.com">sinead.mccormack@ie.ey.com</a></td>
</tr>
</tbody>
</table>

Section 1: The accumulative tax burden on family business

2013 tax rates

1.1 Corporate income tax (national and sub-national combined)

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Highest marginal rate</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Highest rate for small and medium enterprises (SMEs)/small business</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* All data included for Ireland is valid for 2013 and 2014, unless noted otherwise.
1.1 Corporate income tax (national and sub-national combined)

- Special treatment of SMEs/small business (other reliefs, etc.)
  N/A – reliefs outlined in more detail below.

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

N/A.

1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>• Personal allowance</td>
<td>The personal tax credit for a single person is €1,650 and €3,300 for a married person/civil partner. Tax credits are a deduction against the tax payable by an individual. In addition to the single person tax credit.married person tax credit, there is a range of tax credits that can be claimed which are based on the personal circumstances of the individual.</td>
</tr>
<tr>
<td>• Minimum rate of personal income tax (PIT)</td>
<td>The minimum rate is 20%.</td>
</tr>
<tr>
<td>• Highest marginal rate of PIT</td>
<td>The highest marginal rate is 41%.</td>
</tr>
<tr>
<td>• Any special surtaxes</td>
<td>The Universal Social Charge (USC) is an additional tax. It was introduced in 2011 and applies to gross income at rates from 2% to 10%. (In limited circumstances the amount of gross income liable to USC may be reduced.) Under current legislation the maximum 10% rate reverts to 7% from 2016.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

The USC would either significantly increase or decrease the overall size of the individual income tax base because it applies to gross income before reliefs and allowances, with the exception of capital allowances arising in the active trade or profession of the taxpayer. Personal pension contributions are not deductible when calculating the income on which USC is payable.

* All rates and regulations listed in Ireland are valid for years 2013 and 2014, unless otherwise noted.
### 1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Standard rate</strong></td>
<td>The standard rate is 23%. The rate was increased from 21% with effect from 1 January 2012.</td>
</tr>
<tr>
<td><strong>Are there any special reliefs or exemptions for a family business?</strong></td>
<td>Small and family businesses can operate VAT on the cash receipts basis (if annual turnover less than €1.25 million (€2 million from 1 May 2014) or greater than 90% turnover derives from supplies to non-registered persons). Small and family businesses are only required to register for VAT if turnover exceeds limits (€37,500 for services and €75,000 for goods).</td>
</tr>
<tr>
<td><strong>Are there any special reliefs or exemptions for a family business?</strong></td>
<td>N/A.</td>
</tr>
</tbody>
</table>

### 1.4 Property taxes

- **Does a family business receive any relief on property taxes not granted to other types of corporation?** Yes, subject to meeting a number of conditions, business property relief is available to reduce a liability to gift and inheritance tax (CAT is an abbreviation of capital acquisitions tax which is a tax on gifts and inheritances) and retirement relief to reduce or eliminate a liability to capital gains tax (CGT).

### 1.5 Capital gains tax (CGT)

- **2013 rate – companies** Subject to corporation tax at effective rate of 33%. Gains deriving from disposals of development land are subject to CGT.
- **2013 rate – individuals** CGT is 33%.
- **Reliefs/exemptions** An annual exemption of €1,270 is available to reduce the amount of the gain liable to CGT (individuals only). In addition, a number of reliefs are available such as retirement relief, principal private residence relief, a new CGT relief for entrepreneurs which applies from 1 January 2014 and relief from CGT for property purchased between 7 December 2011 and 31 December 2014 and held for seven years. All of the reliefs mentioned are subject to a number of conditions.

### 1.6 Tax on dividends from ordinary shares

- **For the business:** Dividend withholding tax (DWT) applies at a rate of 20% to dividends and other distributions made by Irish resident companies. Exemptions apply to dividends and other distributions to certain shareholders, such as an Irish resident company, certain residents of EU Member States or tax treaty countries.
- **For the owners of the business:** In addition to dividends, many distributions/forms of extraction of funds from a business are taxable as income for the business owner and may also be subject to DWT.

### 1.7 Tax on dividends from preferential shares

- **For the business:** See Section 1.6.
- **For the owners of the business:** See Section 1.6.
1.8 Tax treatment of interest on a loan from the shareholders

A. For the business: Restrictions apply to the tax deductibility of interest paid on loans from directors/associates of directors having a material interest (5%) in the company or a connected company. The deductible annual interest is limited to 13% of the lower of the total loans of this type and the nominal amount of the company's share capital plus share premium. The excess interest is treated as a distribution.

B. For the owners of the business: Tax treatment is subject to meeting a number of conditions, a deduction may be available against taxable income for interest paid on a loan from the shareholders.

1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

A. For the business: Assuming the family business is a corporate, rental payments are deductible for tax purposes.

B. For the owners of the business: The shareholders report net rental income as income subject to income tax. If a rental loss arises it can be carried forward for use in future years against rental income.

Undistributed investment and rental income of a closely held company may be subject to a 20% surcharge if it is not distributed within 18 months of the end of the accounting period in question. A closely held professional services company is additionally subject to a 15% surcharge on 50% of its undistributed trading income.

1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

A. For the business: Assuming the family business is a corporate, generally deductible for tax purposes. Annual payments may be subject to withholding tax.

B. For the owners of the business: Generally, income from the use of IP is taxable as income and liable to income tax, Universal Social Charge (USC) and Irish social security, if applicable. Credit for any tax withheld should be available for the shareholder.

1.11 Tax treatment of interest paid on bank debt by a family business

A. For the business: Interest expenses incurred wholly and exclusively for the purposes of a company's trade are allowable as a deduction for tax purposes. However, if these have been incurred in respect of non-trade-related activities a tax deduction is not granted. Withholding tax may apply on interest payments to non-EU/EEA countries.

B. For the owners of the business: Same as above.

1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

A. For the business: Payments made in the course of a company's trade for use of intellectual property (IP) are deductible for tax purposes. Payments made in relation to the use of patented IP qualify for a deduction for tax purposes on a paid basis only. A withholding tax may apply depending on certain conditions.

B. For the owners of the business: Same as above.

1.13 Tax treatment of rental payments made by a family business to third parties for real estate

A. For the business: Rental payments made in the course of a company's trade are deductible for tax purposes. If the third-party landlord is not a resident in Ireland, the company will be obliged to withhold 20% from rental payments made directly to the nonresident landlord and remit that tax to the Irish tax authority.

B. For the owners of the business: Same as above. The same withholding requirement applies for rental payments made to nonresident landlords.

1.14 Tax treatment of interest payments on A. inter-group loans or B. A financing company within the family-owned business group

A. For the business: See Section 1.11. In addition, under certain circumstances payments may be classified as dividend distributions and Section 1.6 will apply. Accordingly, such reclassified interest will not be allowable as a deduction in calculating the profits of the company.

B. For the owners of the business: Same as above.
1.15 Does your country provide for a deemed deduction on equity and/or debt?
A. For the business: No.
B. For the owners of the business: No.

1.16 Is the retention of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?
A. For the business: Earnings can be retained indefinitely. However, close company provisions apply to undistributed non-trading and professional income, i.e., a 20%/15% surcharge will apply unless such income is distributed within 18 months of the end of the accounting period in question.
B. For the owners of the business: Same as above with consequent tax implications when the earnings are distributed.

1.17 Wealth tax
- 2013 characteristics and rate N/A.
- Is there an exemption for shares owned by a family that owns a business? N/A.

1.18 Inheritance tax/estate tax
Capital acquisitions tax (CAT) is a tax levied on the recipient of gifts and inheritances. The beneficiary is allocated a tax-free threshold depending on their relationship with the disponer (the person who was the financial source of the particular benefit involved). There are three tax-free threshold groups. In general, if the threshold is exceeded, the tax is levied at a rate of 33%.

1.19 Gift tax
See Section 1.18.

1.20 Real estate transfer tax
A single rate of stamp duty of 2% applies to nonresidential property. For residential property, a rate of 1% applies where the consideration is up to €1 million and 2% of the excess over €1 million.

1.21 Endowment tax
N/A.

1.22 Social security
- National/social insurance contributions on employee income The rate is 4% with no earnings ceiling.
- Health/medical/dental care Subject to having made sufficient contributions to the social security system, basic dental, optical and aural treatment can be obtained free, e.g., one free dental examination in a calendar year.
  Tax relief is available for the individual, within limits, for medical and dental insurance premiums paid.
  Tax relief at the standard rate of income tax (20%) is also available for the individual for unreimbursed qualifying medical expenses.
- Retirement plans/pensions for employees A number of occupational plans are available for employees such as PRSAs and defined benefit or defined contribution pension plans.
  Contributions paid to the social security system count toward a state pension, which can supplement the private pension arrangements mentioned above.
1.23 Pensions and tax-efficient savings

- Tax relief on pension contributions – standard
  Tax relief is available at the individual’s marginal rate of income tax. No relief from the USC or social security is available. The amount of the contribution that is allowable is based on an earnings ceiling of €115,000 and age-related percentages. The amount that the individual can contribute tax efficiently is not impacted by the employer contribution to the scheme.

- Tax relief on pension contributions – any specific relief to family business?
  There is no specific relief for family business other than the favorable tax treatment of employer contributions to occupational pension schemes. This does not apply to contributions to the personal pension plan of a self-employed person, e.g., contributions to a Retirement Annuity Contract (RAC).

1.24 Taxation of flow-through entities/partnerships/trust funds

Detailed rules apply depending on the type of partnership and the type of trust.

1.25 Exemptions in the law that specifically relate to family businesses

There are no exemptions specifically aimed at family businesses.

1.26 Are there any business incentives in your country that are specific to

- SMEs
  There is a three-year corporation tax relief for start-up companies and EII relief. SMEs can raise tax based investment finance from individual investors under the Employment and Investment Scheme (EII). There are others not specifically aimed at SMEs but the SMEs may be able to avail for business incentives, such as, R&D and film relief. New legislation has recently introduced a Start Your Own Business Relief (SYOB).

- Family businesses
  There are none specifically aimed at family businesses other than the reliefs applicable to SMEs.

1.27 Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses?
  No, not specifically for family business.

- Are there any available loss reliefs that are specific to SMEs?
  No, not specifically for SMEs.
Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- **Calculation 1:** The business makes a profit before tax of €2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

<table>
<thead>
<tr>
<th></th>
<th>€</th>
</tr>
</thead>
<tbody>
<tr>
<td>PBT</td>
<td>2,000,000</td>
</tr>
<tr>
<td>Corporation tax at 12.5%*</td>
<td>-250,000</td>
</tr>
<tr>
<td>PAT/available for distribution</td>
<td>1,750,000</td>
</tr>
<tr>
<td>Gross distribution</td>
<td>1,750,000</td>
</tr>
<tr>
<td>DWT at 20%</td>
<td>-350,000</td>
</tr>
<tr>
<td>Net distribution</td>
<td>1,400,000</td>
</tr>
<tr>
<td>Income tax/PRSI/USC at 55%</td>
<td>962,500</td>
</tr>
<tr>
<td>Less DWT suffered</td>
<td>(350,000)</td>
</tr>
<tr>
<td>After tax amount received by shareholders</td>
<td>787,500</td>
</tr>
</tbody>
</table>

  *Taxed at corporation tax rate of 12.5% applicable to trading income

- **Calculation 2:** The business makes a profit before tax of €500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

<table>
<thead>
<tr>
<th></th>
<th>€</th>
</tr>
</thead>
<tbody>
<tr>
<td>PBT</td>
<td>500,000</td>
</tr>
<tr>
<td>Corporation tax at 12.5%</td>
<td>-62,500</td>
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<tr>
<td>PAT/available for distribution</td>
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<tr>
<td>Gross distribution</td>
<td>437,500</td>
</tr>
<tr>
<td>DWT at 20%</td>
<td>-87,500</td>
</tr>
<tr>
<td>Net distribution</td>
<td>350,000</td>
</tr>
<tr>
<td>Income tax/PRSI/USC at 55%</td>
<td>192,500</td>
</tr>
<tr>
<td>Less DWT suffered</td>
<td>(87,500)</td>
</tr>
<tr>
<td>After tax amount received by shareholders</td>
<td>245,000</td>
</tr>
</tbody>
</table>

Has this effective tax rate increased, decreased or stayed the same in the last three years?
The rate has remained the same.

Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

The tax treatment will differ depending on how the business is run.

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

If the disposal is not treated as a distribution, CGT at a rate of 33% will apply whereas income tax at a rate of up to 55% can apply on the dividend.
3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.
This depends on the mechanism used to pay out the profits other than by way of dividend as anti-avoidance provisions may apply.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:
A. Fully publicly listed?
B. Partly publicly listed?
Generally not, the same tax treatment as outlined above would apply except that more onerous tax rules apply to family businesses as they are typically regarded as close companies. Under Irish tax legislation a close company is a company that is controlled by five or fewer participators or is controlled by any number of participators who are directors.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?
Generally not, the same tax treatment as outlined above would apply.

Section 4: Succession planning

4.1 Life insurance
Payments of life insurance policies are taxable on beneficiaries on the basis that it is a benefit to them and can be within the charge to CAT, and the beneficiary can be liable to this tax on the benefit received. Certain life insurance policies that are specifically taken out to pay gift or inheritance tax will be exempt from CAT when they are used for the purpose of paying that tax.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?
Shareholder agreements such as buy/sell or redemption agreements can facilitate the succession plan of the business ownership.

4.3 Estate tax
Anti-avoidance provisions will need to be overcome in relation to such tax planning techniques, and it is possible to reduce taxable values by not providing an absolute interest in the asset.

4.4 Pension plans
Subject to the type of pension plan that is/was in operation, such plans can provide a tax-free lump sum and depending on the pension arrangement in place, tax efficient transfer of funds to the surviving spouse and children. There are also specific rules that apply to 20% of directors.
4.5 Trusts, foundations and private purpose funds

For Irish domiciled and resident individuals, trusts are used when there are minor or incapacitated beneficiaries or during a long-term succession planning mechanism for future generations.

Transfer of property (not euro cash) into the trust can give rise to CGT and stamp duty as it is treated as a disposal to a separate entity. Gift and inheritance tax arises when a beneficiary becomes beneficially entitled to a benefit from the trust. If this arises when the trust is created, or when assets are put into the trust, the arising CAT is then payable by the beneficiary. If it arises when assets are appointed out from the trust to a beneficiary as in the case of a discretionary trust, the gift/inheritance does not arise until the date of appointment. However, this deferral of gift/inheritance tax in the case of a discretionary trust can be countered by discretionary trust tax that applies to those trusts.

Foundations do not form part of Irish law; instead, trusts or companies limited by guarantee are utilized as are family partnerships.

Different types of trusts are:

**Bare trusts**

This type of trust is where one person holds a property as nominee for another. While the trustee only holds the legal interest, the beneficial interest in the property is owned by the other person.

**Express trusts**

In an express trust, instructions of exactly how and to whom distributions are to be made are clearly provided. For example, a life interest trust would include an individual who is entitled to income from the trust property for life, with a balance/capital being passed on to other named beneficiaries on his or her death.

**Discretionary trusts**

A discretionary trust is where trustees have the absolute discretion as to which class of beneficiaries or beneficiary to appoint the trust property to. The beneficiary of a discretionary trust only has the right to be considered favorably in the appointment of the property. Unless and until the trustees make an appointment out of the trust, no liability to gift or inheritance tax arises to the beneficiary.

Due to its flexibility, a discretionary trust is particularly useful when the beneficiaries are very young or incapable of managing their affairs. They can also be used for long-term succession planning.

That said, discretionary trusts are liable to discretionary trust tax. This tax arises when the settlor (i.e., individual who sets up the trust) is deceased and all the principal objects are over 21 or not incapacitated. The principal objects of a discretionary trust for these purposes include the spouse or civil partner of the settlor, children under age 21 of the settlor, or his or her civil partner, or if these children are predeceased, their children and their civil partner's children.

Discretionary trust tax is payable as a one-time initial charge of 6% on the value of the assets in the trust and thereafter as an annual charge of 1%. If all the assets of the trust are appointed out within five years, a refund of 3% of the initial charge is given.

Discretionary trust tax also applies to foundations that are similar to discretionary trusts.
Assets can pass on death in a number of ways:

- **By will**
  Assets are distributed in accordance with the terms of the will of the testator.

- **Under the intestacy rules**
  When a deceased person fails to make a valid and effective will, the estate is distributed in accordance with the state's rules on intestacy.
  These rights are governed by statute and depend primarily on the degree of relationship of the person claiming a share in the estate of the deceased.
  - If an individual has a spouse and children, then two-thirds of his or her estate will pass to his or her spouse and one-third equally between his or her children.
  - If an individual has a spouse and no children, then his or her spouse inherits all.
  - If an individual has no spouse or children, then his or her parent(s) inherit all.
  - If an individual has no spouse, children or surviving parents, then brothers and sisters inherit in equal shares.
  - If an individual has no spouse, children, surviving parents, brothers or sisters, then nephews or nieces take all in equal shares.
  - In addition there are also provisions for the children of his or her predeceased children.
  - If none of the above provisions apply there are further provisions in relation to the entitlements of the remaining next of kin.

- **By survivorship**
  Survivorship rules apply where an asset is held between two or more persons as joint tenants. Title to these assets passes automatically to the remaining joint tenant/tenants irrespective of the terms of the deceased's will. Typically, a family home is held by a husband and wife as joint tenants.
  For example, Joe owns a residence with another person Joan as joint tenants. Joe executes a valid will which leaves his entire estate to a registered charity. Joe's share of the residence will pass on his death to the surviving joint tenant – Joan. The remainder of his estate will pass to the registered charity.

- **Under a claim by a spouse for their minimum entitlement under the Succession Act**
  Under the Succession Act, a spouse is entitled to what is called a legal right share. Should they exercise the right to this entitlement, it will override the provisions of an individual's will. In the event that there are no children, the spouse would be entitled to one half of his or her estate. In the event that there are children, the spouse would be entitled to one-third of the estate.
  For example, Ben is married with no children. His estate comprises a farm and residence, which he leaves to his nephew, and he leaves his wife Mary a right of residence and support in the farmhouse. Mary is entitled to claim one half of the farm and the residence.

- **Under terms of a trust**
  Certain assets may pass under the terms of a trust document.
  For example, Jane has a life policy written in trust for her daughter Claire. These assets will pass to Claire under the terms of the trust and not under the terms of Jane's will.

### 4.7 Passing on a business

The estate plan for passing on the business needs to be considered to ensure that it achieves the following:

- Pass assets to beneficiaries at a time suitable for both the disponer and beneficiaries.
- Make sure proper provision is made for both the disponer and dependent if necessary.
- Make sure that the business survives the transfer to the new owners.
- Structure the transfer in a tax-efficient manner.
4.8 Private equity

Specific legislation/tax treatment of income derived from private equity (PE) activity

Yes, it is treated as capital gains.

Equivalent PE ratio

N/A.

Others

N/A.

Section 5: Tax policy environment

5.1 Policy environment relating to family business

It is a regular discussion topic, see Section 5.2.

However, there is increased revenue audit activity of small businesses and more focus on issues specific to small businesses, e.g., expenses being claimed, use of personal service companies to fund pensions.

5.2 Specify change in the direction of tax policy in the last three years

Recent Irish Government Budget announcements have been pro small business.

Budget 2013 outlined a 10-point tax reform plan to assist small business.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners

In addition to those previously outlined, there are a number of reliefs designed to support the farming sector that are typically family businesses. These numerous reliefs include stock relief, agricultural relief and farm profits, averaging etc.

5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions

There are a number of tax areas that are viewed as impairing family businesses and the following are viewed as some of the initiatives being undertaken to remove these obstacles.

1. Reforming the three-year corporation tax relief for start-up companies. This is to allow unused credits to be carried forward to help create jobs and improve cash flow.

2. Amending the Close company surcharge by increasing the de minimis level to €2,000 to reduce the administrative burden and assist cash flow.

3. Increasing the amount of expenditure eligible for the R&D tax credit on a full volume basis (without reference to the 2003 base year) to €200,000 (€300,000 for accounting periods commencing on or after 1 January 2014) to encourage innovation and help cash flow.

4. Increasing the VAT cash receipts basis accounting threshold from €1 million to €1.25 million (now €2 million since 1 May 2014) to help cash flow.

5. Extending the EII scheme to 2020 to help companies access funding.

6. Extending the general rate and Young Trained Farmers’ rate of stock relief, and amendments to the definition of registered partnerships for stock relief, to give a targeted assistance to the farming sector.

7. Introducing a capital gains tax relief for farmers for land restructuring to give a targeted assistance to the farming sector.
Section 6: Tax administration and enforcement issues

### 6.1 Is there a specific unit within your tax administration that deals specifically with:

<table>
<thead>
<tr>
<th>Specific Unit</th>
<th>Yes/No</th>
</tr>
</thead>
<tbody>
<tr>
<td>High net worth individuals (HNWIs)</td>
<td>Yes.</td>
</tr>
<tr>
<td>SMEs</td>
<td>No.</td>
</tr>
<tr>
<td>Family businesses</td>
<td>No.</td>
</tr>
<tr>
<td>Large corporate taxpayers</td>
<td>Yes.</td>
</tr>
<tr>
<td>Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses</td>
<td>None specifically identified.</td>
</tr>
</tbody>
</table>

### 6.2 Specify enforcement focus areas or defined programs that might touch a family business

None other than those outlined in Section 5.2.

### 6.3 Specify tax enforcement focus on any particular industry or profession

More recently doctors have been the focus of tax enforcement issues.

### 6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners

There are triggers for expense deductions, personal service companies, inaccuracies in payroll return and offshore fund investments.

### 6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

In relation to offshore assets. Normal revenue audit settlement procedures have applied.

### 6.6 Are there any specific pre-filing processes that can be leveraged by:

- **HNWIs**: None, other than advance clearances with revenue, where doubt exists.
- **Family businesses**: None, other than advance clearances with revenue, where doubt exists.

### 6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

There is an increased focus on data sharing and a growth in specific tax exchange agreements with other countries.
Italy

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---|---
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paolo.santarelli@it.ey.com
Claudio Quartana
Milan | +39 02 8514563
claudio.quartana@it.ey.com

Section 1: The accumulative tax burden on family business

2013 tax rates

<table>
<thead>
<tr>
<th>1.1 Corporate income tax (national and sub-national combined)</th>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Highest marginal rate</strong></td>
<td>The tax rate is driven by the legal status of the investor for tax purposes (individual vs. company). As a general rule, an individual's income deriving from financial assets and capital investments is subject to a flat tax rate (20%). At corporate level, income tax (IRES) is applied at 27.5%. A 6.5% surcharge applies to oil, gas and energy companies with revenues exceeding €3 million and a taxable income of €300,000. For 2011 to 2013, the 6.5% surcharge is increased to 10.5%, increasing the total tax rate to 38%. Italian resident companies are deemed to be “nonoperating companies” if the total of their average revenues are less than a specific minimum income quantified by law.</td>
<td>No changes in rates in the last three years.</td>
</tr>
</tbody>
</table>
# 1.1 Corporate income tax (national and sub-national combined)

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Highest marginal rate</strong></td>
<td>No changes in rates in the last three years.</td>
</tr>
<tr>
<td>In addition, the following companies are also deemed to be “nonoperating companies”:</td>
<td></td>
</tr>
<tr>
<td>- Companies that incurred losses for three consecutive fiscal years;</td>
<td></td>
</tr>
<tr>
<td>- Companies that incurred losses for two consecutive fiscal years and in the third fiscal year generated income in an amount lower than the above mentioned minimum income</td>
<td></td>
</tr>
<tr>
<td>At the sub-national level, the Italian regional tax on productive activities (IRAP) is applied at 3.9% (subject to changes on local basis).</td>
<td></td>
</tr>
<tr>
<td><strong>Highest rate for small and medium enterprises (SMEs)/small business</strong></td>
<td>No changes in rates in the last three years.</td>
</tr>
<tr>
<td>In Italy, the definition of SME (PMI) has been officially provided in 2005, and includes businesses with less than 250 employees and revenues within €50 million per year. Those businesses are subject to the ordinary tax rates as defined above.</td>
<td></td>
</tr>
<tr>
<td><strong>Special treatment of SMEs/small business (other reliefs, etc.)</strong></td>
<td>N/A.</td>
</tr>
<tr>
<td>No national special regimes are provided for SME. At local (regional) level, each region can provide with special (more often temporary tax relief/deductions for investments in certain sectors, i.e., agricultural).</td>
<td></td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

In 2008, both national corporate tax (IRES) and the Italian regional tax on productive activities (IRAP) have been reduced. IRES was reduced from 33% to 27.5%, IRAP was reduced from 4.25% to 3.9%.

CIT computation of international accounting standards (IAS)/International financial reporting standards (IFRS) adopter entities were started.

There is a CIT deduction for IRAP paid.

The Robin tax (10.5% surcharge tax for energy companies - total tax rate 38%) has no effects for CIT base.

*Readers should note that Italian Government announced that the 20% flat tax currently applicable to dividends, interest, and certain capital gains will increase to 26%. Interest and capital gains on Italian Government Bonds should remain taxable at the reduced 12.5% rate. The increase in revenue is intended to finance a 10% reduction of the Italian regional tax on productive activities (IRAP).*

*According to the Government plan, these tax measures will be enacted by 1 July 2014.*
## 1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Personal allowance</strong></td>
<td>Few tax-free personal allowances are provided by the law (for dependent family members, for type of income, for costs incurred or others) and a no tax area up to €8,000 (applicable under certain circumstances). N/A.</td>
</tr>
<tr>
<td><strong>Minimum rate of personal income tax (PIT)</strong></td>
<td>Income from employment and self-employment is generally subject to progressive tax rates (IRPEF). Income from €0 to €15,000 is subject to 23% national income tax. N/A.</td>
</tr>
<tr>
<td><strong>Highest marginal rate of PIT</strong></td>
<td>Income exceeding €75,000 is subject to 43% national income tax. N/A.</td>
</tr>
<tr>
<td><strong>Any special surtaxes</strong></td>
<td>In addition to the national income tax, local taxes apply ranging from 1.23% to 2.03% depending on the level of income and on the region of residence and a municipal tax ranging from 0 to 0.8% depending on the municipality of residence. Moreover, a further 10% tax applies to income exceeding €300,000 (this additional tax has not been confirmed yet for FY 2014). These tax rates are updated annually. In practice, the tax authorities release new rates in January or February of every year and these new rates are applicable from January to December of that calendar year.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

No significant legislative changes occurred in the last five years. On the personal income tax side, there has been a significant change on the taxation of stock options (in 2008): income from stock options does not benefit anymore from favorable tax regime (previously taxed at 12.5%) but is now taxed at ordinary rates (up to 43% plus local taxes). At the same time, a social security exemption applies if the incentive plans satisfy certain requirements.

## 1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Standard rate</strong></td>
<td>Ordinary tax rate is 22%. New rate as of 1 October 2013 (former rate 21%).</td>
</tr>
<tr>
<td><strong>Are there any special reliefs or exemptions for a family business?</strong></td>
<td>No. N/A.</td>
</tr>
</tbody>
</table>

## 1.4 Property taxes

- Does a family business receive any relief on property taxes not granted to other types of corporation? No special regimes apply.

## 1.5 Capital gains tax (CGT)

- **2013 rate – companies** | In general, capital gains derived by resident companies or are subject to IRES. Italian corporate taxpayers (that is, companies and branches) may benefit from a 95% participation exemption regime (i.e. only 5% is taxable) for capital gains arising from disposals of Italian or foreign shareholdings that satisfy certain conditions provided by Law. |
1.5 Capital gains tax (CGT)

- 2013 rate – individuals: Individuals are subject to the ordinary progressive income tax rates. Income from investment is usually taxed at a flat rate (20%). The amount of taxable income resulting from the sale of a qualifying participation is reduced to 49.72% of the net gain reported and taxed at ordinary rates (i.e., range from 23% to 43% plus local taxes).

- Reliefs/exemptions: See above (participation exemption regime).

Readers should note that Italian Government announced that the 20% flat tax currently applicable to dividends, interest, and certain capital gains will increase to 26%. Interest and capital gains on Italian Government Bonds should remain taxable at the reduced 12.5% rate. The increase in revenue is intended to finance a 10% reduction of the Italian regional tax on productive activities (IRAP).

According to the Government plan, these tax measures will be enacted by 1 July 2014.

1.6 Tax on dividends from ordinary shares

A. For the business: Dividends received by the company (not transparent for tax purposes) are taxed at corporate level. A participation exemption (PEX) regime applies, under this regime, IRES applies to 5% of the dividends (i.e., 95% exemption). As a general rule, no PEX applies to dividends from companies located in black list countries (i.e., tax heaven regimes).

B. For the owners of the business: The applicable regime depends on the nature of the business for tax purpose (i.e., transparent entity vs. non-transparent entity). Dividends received through a transparent entity may be taxed at 20% or at ordinary rates on 49.72% (in case of “qualifying” shareholding).

Readers should note that Italian Government announced that the 20% flat tax currently applicable to dividends, interest, and certain capital gains will increase to 26%. Interest and capital gains on Italian Government Bonds should remain taxable at the reduced 12.5% rate. The increase in revenue is intended to finance a 10% reduction of the Italian regional tax on productive activities (IRAP).

According to the Government plan, these tax measures will be enacted by 1 July 2014.

1.7 Tax on dividends from preferential shares

A. For the business: See Section 1.6.

B. For the owners of the business: See Section 1.6.

1.8 Tax treatment of interest on a loan from the shareholders

A. For the business: Interests earned are taxed as business income (on accrual basis).

B. For the owners of the business: Interests received are taxed at 20%.

Readers should note that Italian Government announced that the 20% flat tax currently applicable to dividends, interest, and certain capital gains will increase to 26%. Interest and capital gains on Italian Government Bonds should remain taxable at the reduced 12.5% rate. The increase in revenue is intended to finance a 10% reduction of the Italian regional tax on productive activities (IRAP).

According to the Government plan, these tax measures will be enacted by 1 July 2014.

1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

A. For the business: Rental income from real estate held by an Italian entity is subject to IRES at 27.5% (certain deductions for expenses are allowed).

B. For the owners of the business: Rental income from real estate held by an individual is subject to IRPEF at personal progressive rates up to 43% plus local taxes. A fixed 5% deduction can be claimed. Under certain circumstances, the owner can opt for a flat tax rate on rental income (21%).
### 1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

**A. For the business:** Royalties are taxed as business income (on accrual basis).

**B. For the owners of the business:** Royalties received by the individual are generally taxed at personal progressive rates up to 43% plus local taxes. As far as tax treatment of royalties is concerned, the withholding tax is generally applied to 75% of the gross amount of the payment.

### 1.11 Tax treatment of interest paid on bank debt by a family business

Interest expenses are deductible with the limit of the 30% earnings before interest, taxes, depreciation and amortization (EBITDA). The arm's-length principle is required.

### 1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

Royalties paid are generally deductible from the CIT base (on accrual basis).

### 1.13 Tax treatment of rental payments made by a family business to third parties for real estate

As a general rule, those expenses (relevant to the business) are deductible from the corporate taxable base in the fiscal year to which they relate.

### 1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group

Inter-group loans are subject to 30% EBITDA threshold and transfer pricing rules (the arm's length principle is required).

### 1.15 Does your country provide for a deemed deduction on equity and/or debt?

The NID allows an income tax deduction computed as a percentage of the qualifying unit foreign companies with branches in Italy formed after 2010.

### 1.16 Is the retention of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

Earnings can be retained indefinitely – notional interest deduction (NID) * (3% of the amount yearly retained) from the CIT base.

### 1.17 Wealth tax

- **2013 characteristics and rate**

  - As of fiscal year 2012, a new tax applies on the estate of tax resident individuals. The wealth tax applies both to financial assets (either held in Italy or abroad) and to real estates (either held in Italy or abroad).
  
  - Wealth tax on financial assets is 0.20% as of 1 January 2014; wealth tax on real estate is 0.76%.

- **Is there an exemption for shares owned by a family that owns a business?**

  - There are no exceptions or favorable regimes.

### 1.18 Inheritance/estate tax

On 2006, the Italian Government re-introduced the inheritance and gift tax (IGT). Where the decedent/donor is an Italian resident, this tax will apply to all the heirs and gift recipients. However, where the decedent/donor is not tax resident in Italy at the date of death/gift, the tax is restricted to properties held in Italy.

The rate of IGT depends on the relationship between the decedent/donor and the heir/beneficiary. Applicable rates range from 4% to 8%. Depending on the relationship between the parties involved, various thresholds apply (€1 million for direct relationships or €100,000 in case of brothers and sisters).

No changes are expected in the forthcoming months.
1.19 Gift tax
Same rules as inheritance tax (see Section 1.18).

1.20 Real estate transfer tax
As a general rule, real estate transfer tax applies to almost every transfer. Until FY 2013, the overall transfer taxes (including registration, mortgage and cadastral taxes) ranged from 3% to 10%. As of 1 January 2014, transfer taxes will be approximately 9%.

1.21 Endowment tax
N/A.

1.22 Social security

<table>
<thead>
<tr>
<th>Item</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>National/social insurance contributions on employee income</td>
<td>As a general rule, employees working in the Italian territory or employed by an Italian employer (subject to specific national/international provisions) are required to pay social security contributions in Italy. Contributions are both on the employer and employee's charge and are withheld and remitted to the Italian authorities by the employer (who acts as social security withholding agent). Rates depend on the size and the sector of activity of the company and on the role of the employee. Rates range from 33% to 40%, of which approximately 10% is the employee's charge.</td>
</tr>
<tr>
<td>Health/medical/dental care</td>
<td>Mandatory contributions withheld and remitted by the employer.</td>
</tr>
<tr>
<td>Retirement plans/pensions for employees</td>
<td>As a general rule, two pillars of pension/retirement arrangements are provided by the law: a mandatory pension pillar and a complementary/integrative pension pillar (usually managed by the employee itself or by pension funds).</td>
</tr>
</tbody>
</table>

1.23 Pensions and tax-efficient savings

<table>
<thead>
<tr>
<th>Item</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax relief on pension contributions – standard</td>
<td>Tax is generally deducted from the gross taxable base (up to certain limit).</td>
</tr>
<tr>
<td>Tax relief on pension contributions – any specific relief to family business?</td>
<td>No specific provisions.</td>
</tr>
</tbody>
</table>

1.24 Taxation of flow-through entities/partnerships/trust funds
The tax is generally treated as pass-through entities. Recently, the government introduced a specific legislation for trusts, stating they may be treated either as pass-through entities (transparent trusts) or as corporations (subject to corporate tax regime).

1.25 Exemptions in the law that specifically relate to family businesses
No changes have been made.
1.26 Are there any business incentives in your country that are specific to

- SMEs
  - Tax/social security incentives have been introduced for SMEs and any other legal entity with reference to job creation.
  - Social security deductions are granted to those companies who hire young employees (under 30 years of age).
  - Tax incentives are also granted in the green energy sector (i.e., clean technology, renewable energy).

- Family businesses
  - Tax/social security incentives have been introduced for SMEs and any other legal entity with reference to job creation.
  - Social security deductions are granted to those companies who hire young employees (under 30 years of age).
  - Tax incentives are also granted in the green energy sector (i.e., clean technology, renewable energy).

1.27 Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses?
  - Only in case of Consortium relief (Article 115 ICTC) or in case of Tax Consolidation regime (Article 117 ICTC).

- Are there any available loss reliefs that are specific to SMEs?
  - See above.

Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- **Calculation 1**: The business makes a profit before tax of €2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.
  
  Tax due (27.5% CIT + 3.9% regional tax) = €628,000
  
  After tax amount (amount distributable) = €2,000,000 - €628,000 = €1,372,000
  
  WHT on dividends distributed (20%) = €274,400
  
  Personal taxes on the shareholder (45% on 49.72% of the dividends) = €200,000 + €306,971 (20% WHT to be deducted) = €32,571
  
  (Assumption: qualified shareholder* taxed at higher national/local income tax rates.)
  
  ETR = (€628,000 + €306,971)/€2,000,000 = 46.75%
  
  * A qualified shareholder owns more than 20% of voting rights and 25% of the issued capital (if the company is not listed in a stock exchange market) or 2% of voting rights and 5% of the issued capital (if the company is listed).

- **Calculation 2**: The business makes a profit before tax of €500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.
  
  Tax due (27.5% CIT + 3.9% regional tax) = €157,000
  
  After-tax amount (amount distributable) = €500,000 - €157,000 = €343,000
Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

The tax treatment is different. Where the business is held through a vehicle, income is generally subject to the corporate tax regime (in terms of taxable base determination). Where the business is held as an individual taxpayer, income is generally taxed at personal progressive rates and subject to personal income tax regime (in terms of taxable base determination).

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

No differences in terms of overall taxation.

Where the shareholder is an individual (with no business veil), the capital gains are not subject to withholdings at source, but to personal progressive rates on 49.72% of the gain.

Dividend distributions are subject to 20% withholding at source, then subject to personal progressive tax rates on 49.72% (the 20% withholding is then deducted from the overall tax).

Readers should note that Italian Government announced that the 20% flat tax currently applicable to dividends, interest, and certain capital gains will increase to 26%. Interest and capital gains on Italian Government Bonds should remain taxable at the reduced 12.5% rate. The increase in revenue is intended to finance a 10% reduction of the Italian regional tax on productive activities (IRAP).

According to the Government plan, these tax measures will be enacted by 1 July 2014.

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

Under Article 47 (1) ITC, in case of concurrent existence of retained earning reserves and capital reserves, a tax ordering rule kicks in by which the retained earnings are deemed to be first distributed and as a consequence treated as dividends for tax purposes. The ordering rule works irrespective from the actual decision contained in the shareholder meeting minutes.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

A. Fully publicly listed? N/A.
B. Partly publicly listed? N/A.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

Please note our comments regarding the qualified shareholding definition. See Sections 2 and 3.2.
Section 4: Succession planning

4.1 Life insurance
Payments from life insurances benefit from a favorable tax regime in that the payments from a life insurance are generally not subject to progressive taxation, but are subject to a flat tax rate of 20%. Payments made due to a death, are tax exempt.
The favorable regime does not apply to financial life policies (i.e., those life insurances with investment purposes).

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?
Under certain strict Civil Law requirements, it is possible to agree to the transfer of the shareholding within family members (Patto di famiglia). Within non-family members, shareholders' agreements are allowed under certain strict Civil Law provisions (Patti parasociali).

4.3 Estate tax
Favorable tax regimes apply to shares inherited/transferred to family members (under certain circumstances no inheritance and gift tax (IGT) applies).

4.4 Pension plans
No special/favorable regimes are available.

4.5 Trusts, foundations and private purpose funds
See Section 4.2 (Patto di famiglia). Trusts and similar structures are not popular.

4.6 Wills/intestacy/family charters
See Section 1.19.

4.7 Passing on a business
See Sections 4.2 (Patto di famiglia) and 1.19.

4.8 Private equity
Specific legislation/tax treatment of income derived from private equity (PE) activity N/A.
Equivalent PE ratio
There is a national interest deduction (NID).
Financial interests can carryforward in accordance to specific tax law provisions.

Others
N/A.

Section 5: Tax policy environment

5.1 Policy environment relating to family business
There are no current discussions concerning family business.

5.2 Specify change in the direction of tax policy in the last three years
N/A.
5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners

N/A.

5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions

N/A.

Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with:

- High net worth individuals (HNWIs): Work has started on international cross-border units.
- SMEs: No.
- Family businesses: No.
- Large corporate taxpayers: There are special units for large corporations (plus specific tax audits procedures).
- Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses: No.

6.2 Specify enforcement focus areas or defined programs that might touch a family business

None.

6.3 Specify tax enforcement focus on any particular industry or profession

The current focus is on monitoring of foreign assets (both financial and real estates).

6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners

None.

6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

On 29 January 2014, the Italian Government approved a Law Decree ruling about a voluntary disclosure program, which was published in the official journal (Gazzetta Ufficiale). The voluntary disclosure initiative is designed to bring offshore money back into the Italian tax system and allow taxpayers to get current with their taxes from undisclosed income from hidden offshore accounts.

6.6 Are there any specific pre-filing processes that can be leveraged by:

- HNWIs: No changes have been made.
- Family businesses: No

6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

Yes, there is an increased focus on international exchange of information and joint tax audits on taxpayers involved in cross-border activities.
Country name | Japan
---|---
EY contacts | Shinichi Tanimoto
Tokyo
+81 3 3506 2483
shinichi.tanimoto@jp.ey.com
Shinya Abe
Tokyo
+81 3 3506 2580
shinya.abe@jp.ey.com
Chieko Shimizu
Tokyo
+81 3 3506 2633
chieko.shimizu@jp.ey.com

Section 1: The accumulative tax burden on family business

2013 tax rates

1.1 Corporate income tax (national and sub-national combined)

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highest marginal rate</td>
<td>The highest rate is 38.01%. The rate is down from 40.69% to 38.01% since 2012.</td>
</tr>
<tr>
<td>Highest rate for small and medium enterprises (SMEs)/small business</td>
<td>The highest rate is 25.53%. (In cases where total taxable income is ¥8 million or less.) SMEs for tax purposes are corporations with a stated capital of ¥100 million or less. The rate is down from 27.22% to 25.53% since 2012.</td>
</tr>
<tr>
<td>Special treatment of SMEs/small business (other reliefs, etc.)</td>
<td>There is a bad debt reserve for tax purposes. There are exemptions of personal holding company (PHC) taxation. There is a net operating loss (NOL) carry-back. N/A.</td>
</tr>
</tbody>
</table>
1.1 Corporate income tax (national and sub-national combined)

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

There has been an increase in the following:

- Limitation of NOL utilization (up to 80% of the current taxable income)
- Abolishment of bad debt reserve regime for tax purposes for corporations except for financial institutions and SMEs

There has been a decrease in the following:

- Tax exemption of dividends from foreign subsidiaries

1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N/A.</td>
</tr>
</tbody>
</table>

- Personal allowance

  The following personal deductions are available for national income tax purposes:
  - For physically handicapped persons: ¥270,000
  - For seriously or physically handicapped persons: ¥400,000
  - For seriously physically handicapped dependents living with taxpayer: ¥750,000
  - For widows (or divorcees), widowers or working students: ¥270,000
  - Spouse: ¥380,000
  - Senior spouses (70 years of age or older): ¥480,000
  - Dependents (16 years of age or older): ¥380,000
  - Senior dependents (70 years of age or older): ¥480,000
  - Senior dependents who are a parent of, and live with, the taxpayer: ¥580,000
  - Basic deduction: ¥380,000
  - For eligible dependents who are at least 19 years of age but less than 23 years of age, an additional education deduction of ¥250,000 is allowed.

  Personal deductions for inhabitant purposes are lower than those for national income tax.
1.2 Individual income tax

- Minimum rate of personal income tax (PIT)
  The national income tax rate is 5%. The local inhabitant tax is a flat rate of 10%. N/A.

- Highest marginal rate of PIT
  The national income tax rate is 40%. The local inhabitant tax is a flat rate of 10%. N/A.

- Any special surtaxes
  There is a special tax for reconstruction assistance with respect to the Tohoku earthquake disaster that is imposed from 2013 to 2037. The tax rate of 2.1% is applied to the amount of national income tax. N/A.

1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard rate</td>
<td>The consumption tax is 5%.</td>
</tr>
<tr>
<td></td>
<td>N/A.</td>
</tr>
<tr>
<td>Are there any special reliefs or exemptions for a family business?</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

1.4 Property taxes

- Does a family business receive any relief on property taxes not granted to other types of corporation? N/A.

1.5 Capital gains tax (CGT)

- 2013 rate – companies N/A.
- 2013 rate – individuals
  Capital gains from the sale of assets other than securities, land and buildings are divided into short-term and long-term gains and are then included in ordinary income and subject to tax at the normal income tax rates set forth in rates. National income tax rates are progressive. The rates range from 5% (on taxable income of up to ¥1.95 million) to 40% (on taxable income exceeding ¥18 million), as shown in the table below.

<table>
<thead>
<tr>
<th>Taxable income (¥)</th>
<th>Exceeding</th>
<th>Not exceeding</th>
</tr>
</thead>
<tbody>
<tr>
<td>¥0</td>
<td>1,950,000</td>
<td>0</td>
</tr>
<tr>
<td>¥1,950,000</td>
<td>3,300,000</td>
<td>97,500</td>
</tr>
<tr>
<td>¥3,300,000</td>
<td>6,950,000</td>
<td>232,500</td>
</tr>
<tr>
<td>¥6,950,000</td>
<td>9,000,000</td>
<td>962,500</td>
</tr>
<tr>
<td>¥9,000,000</td>
<td>18,000,000</td>
<td>1,434,000</td>
</tr>
<tr>
<td>¥18,000,000</td>
<td>–</td>
<td>4,404,000</td>
</tr>
</tbody>
</table>
1.5 Capital gains tax (CGT)

- 2013 rate – individuals

Gains derived from the disposal of property held longer than five years are considered long term, and only half of the gains are taxable. A ¥500,000 deduction is available from the total of short-term and long-term gains.

Capital gains derived from the sale of shares are generally taxed at 20% (15% national tax plus 5% local inhabitant tax). If a taxpayer sells certain listed shares through a securities company or bank in Japan, a reduced tax rate of 10% (7% national tax plus 3% local inhabitant tax) applies until 31 December 2013.

Capital gains derived from the sale of land and buildings are taxed separately from other income and at different rates. Gains from the sale of land and buildings held for no longer than five years are considered short term, and gains from the sale of similar assets held for longer than five years are treated as long-term gains.

Long-term gains are defined as income from the transfer of land and buildings that have been owned for more than five years as of 1 January of the year of transfer.

Short-term gains are taxed at a rate of 30%, plus a 9% inhabitant tax on taxable gains. Long-term gains are taxed at a rate of 15%, plus a 5% inhabitant tax on taxable gains.

Gains derived from the sale of residential property held longer than 10 years are taxed at a rate of 10% (plus a 4% local inhabitant tax) on taxable gains of up to ¥60 million and at a rate of 15% (plus a 5% local inhabitant tax) on gains in excess of ¥60 million. This favorable treatment applies to sales of residential property that have been held for more than 10 years as of 1 January of the year of transfer.

- Reliefs/exemptions

A special deduction of ¥30 million is available on gains from the sale of residential property if specified conditions are met.

1.6 Tax on dividends from ordinary shares

A. For the business: Dividends from listed shares are taxed at a flat rate of 20% (15% national tax plus 5% local inhabitant tax). A reduced tax rate of 10% (7% national tax plus 3% local inhabitant tax) applies until 31 December 2013. For dividends from listed shares that are received through a Japanese paying agent (securities company or trust company in Japan), a withholding tax is deducted by the Japanese paying agent. A taxpayer does not need to report the dividends as income on the tax return if the dividends are from listed shares and are received through a Japanese paying agent.

B. For the owners of the business: Dividends from unlisted shares and dividends received by shareholders who own 3% or more of listed shares are included in taxable income and taxed at progressive rates.
<table>
<thead>
<tr>
<th>1.7</th>
<th>Tax on dividends from preferential shares</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. For the business:</td>
<td>It is not different from ordinary shares.</td>
</tr>
<tr>
<td>B. For the owners of the business:</td>
<td>It is not different from ordinary shares.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1.8</th>
<th>Tax treatment of interest on a loan from the shareholders</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. For the business:</td>
<td>Interest is included in ordinary income and subject to tax at the normal income tax rates set forth in rates.</td>
</tr>
<tr>
<td>B. For the owners of the business:</td>
<td>Same as above.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1.9</th>
<th>Tax treatment of rental income on real estate owned by the shareholder(s) of a family business</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. For the business:</td>
<td>Rent is deducted as expense for corporate tax purposes.</td>
</tr>
<tr>
<td>B. For the owners of the business:</td>
<td>It is subject to income taxes at the rates set forth in rates. Taxable income consists of gross receipts, minus reasonable and necessary expenses incurred in connection with the business. Losses from rental, business and forestry activities may be used to offset income from other ordinary income categories. The portion of a rental loss equal to the ratio of interest expense on loans used to acquire the land, to total rental expenses, may not offset other income.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1.10</th>
<th>Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. For the business:</td>
<td>It is subject to income taxes at the rates set forth in Rates. Taxable income consists of gross receipts, minus reasonable and necessary expenses incurred in connection with the business.</td>
</tr>
<tr>
<td>B. For the owners of the business:</td>
<td>Same as above.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1.11</th>
<th>Tax treatment of interest paid on bank debt by a family business</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest paid on bank debt by a family business is treated as interest expenses and deductible as necessary business expenses.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1.12</th>
<th>Tax treatment of payments made by a family business to third parties for the use of their intellectual property</th>
</tr>
</thead>
<tbody>
<tr>
<td>Such tax payments are deductible as necessary business expenses.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1.13</th>
<th>Tax treatment of rental payments made by a family business to third parties for real estate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rental payments for real estate are deductible as necessary business expenses.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1.14</th>
<th>Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest payments on A. and B. are treated as interest expenses and deductible as necessary business expenses in both cases.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1.15</th>
<th>Does your country provide for a deemed deduction on equity and/or debt?</th>
</tr>
</thead>
<tbody>
<tr>
<td>When an asset is sold, if the acquisition cost is not known, 5% of the consideration of the sale can be deemed to be the acquisition cost, and capital gains reported accordingly.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1.16</th>
<th>Is the retention of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?</th>
</tr>
</thead>
<tbody>
<tr>
<td>When a group of shareholders holds over 50% of the issued shares of a corporation (excluding corporations with capital of ¥100 million or less), and the income of the corporation for a business year is retained at the corporation and not paid out as dividends to shareholders. In addition to the ordinary corporate tax, an extra corporate tax is applied to a certain portion of the retained income.</td>
<td></td>
</tr>
</tbody>
</table>
1.17 Wealth tax

- 2013 characteristics and rate: There is no wealth tax in Japan.
- Is there an exemption for shares owned by a family that owns a business? N/A.

1.18 Inheritance tax/estate tax

Inheritance tax is levied on heirs and legatees who acquire properties by inheritance or bequest. An individual domiciled in Japan is subject to tax on all property, regardless of location. An individual not domiciled in Japan is, in principle, taxed only on property located in Japan at the time of the decedent's death. However, a Japanese national not domiciled in Japan is subject to inheritance tax on all inherited properties, regardless of location.

Gifts made within three years before death are treated as inherited property and are included in taxable property for purposes of inheritance tax. Certain exemptions and allowances are permitted in the computation of total net taxable property. A basic exemption of ¥50 million, plus ¥10 million multiplied by the number of statutory heirs, is deductible from taxable properties. The inheritance tax is calculated separately for each statutory heir. The aggregate of the calculated tax is then prorated to those who actually receive the property.

Inheritance tax rates range from 10% to 50%, with a 20% surtax on transfers to heirs, other than the parents and children of the decedent, as shown in the following table.

<table>
<thead>
<tr>
<th>Taxable Amount</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 10 million</td>
<td>10%</td>
</tr>
<tr>
<td>Above 10 million up to 30 million</td>
<td>15%</td>
</tr>
<tr>
<td>Above 30 million up to 50 million</td>
<td>20%</td>
</tr>
<tr>
<td>Above 50 million up to 100 million</td>
<td>30%</td>
</tr>
<tr>
<td>Above 100 million up to 300 million</td>
<td>40%</td>
</tr>
<tr>
<td>Above 300 million</td>
<td>50%</td>
</tr>
</tbody>
</table>

Tax credits are allowed for surviving spouses, minors, gift taxes and foreign estate and inheritance taxes paid on property located outside Japan. The credit for a spouse is the amount of inheritance tax payable on the spouse's statutory share of the estate or on an estate of ¥160 million, whichever is higher.

1.19 Gift tax

Gift tax is levied on individuals receiving gifts from other individuals. A donee domiciled in Japan is taxable on all gifts of property, regardless of their location. A donee not domiciled in Japan is, in principle, taxable only on gifts of property located in Japan at the time of the gift. However, a donee who has Japanese nationality and is not domiciled in Japan is subject to tax on all gifts of property, wherever located. An annual exemption of ¥1.1 million applies. Spouses are each entitled to a one-time exemption of up to ¥20 million on a gift of a residential house or land if the period of marriage is 20 years or longer.

1.20 Real estate transfer tax

**Registration and license tax:** The registration of the transfer of ownership of real property by inheritance or bequest is subject to registration and license tax at the rate of 0.4% of assessed value of the land and building. The registration of the transfer of ownership by gift or sales is generally subject to registration and license tax at a standard rate of 2%. At present, the rate for land and residential buildings is tentatively reduced.

**Real estate acquisition tax:** The acquisition of real property by gift or sales is generally subject to real estate acquisition tax at 4%. At present, the rate for land and residential buildings is tentatively reduced. The acquisition of real property by inheritance or bequest is exempt from real estate acquisition tax.
1.22 Social security

- National/social insurance contributions on employee income
  Social security programs in Japan include health insurance, nursing care insurance (for employees 40 to 64 years of age), welfare pension insurance, unemployment insurance and workers' accident compensation insurance. The rates described below are the applicable rates as of 1 April 2012.

  The premium for health insurance is 9.97% of monthly remuneration and bonus, up to a maximum premium of ¥120,637 (bonus ceiling of ¥538,380 per year). The premium for nursing care insurance is 1.55% of monthly remuneration and bonus, up to a maximum premium of ¥18,755 (bonus ceiling of ¥83,700 per year). For welfare pensions, the premium is 16.412% of monthly remuneration and bonus, up to a maximum premium of ¥101,754 (bonus ceiling of ¥246,180 per month). Costs are borne equally by employers and employees for the types of insurance mentioned in this paragraph.

  The premium for unemployment insurance is 1.35%, of which 0.85% is borne by the employer and 0.5% by the employee. The premium for workers' accident compensation insurance is borne entirely by the employer at a rate of 0.3% of total compensation paid to employees.

- Health/medical/dental care
  N/A.

- Retirement plans/pensions for employees
  N/A.

1.23 Pensions and tax-efficient savings

- Tax relief on pension contributions – standard
  Pension contributions are fully deductible.

- Tax relief on pension contributions – any specific relief to family business?
  There is no specific relief for family businesses.

1.24 Taxation of flow-through entities/partnerships/trust funds

They are included in taxable income and taxed at progressive rates.

1.25 Exemptions in the law that specifically relate to family businesses

There is no exemption.

1.26 Are there any business incentives in your country that are specific to

- SMEs
  The following incentives are available where a corporate tax deduction can be made:
  - If energy-efficient equipment is acquired
  - If research expenses are equal to 10% or more of total sales
  - If employee salaries are increased

- Family businesses
  Same as above.
1.27 Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses? There are no loss reliefs available.
- Are there any available loss reliefs that are specific to SMEs? Same as above.

Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- **Calculation 1**: The business makes a profit before tax of ¥2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.
- **Calculation 2**: The business makes a profit before tax of ¥500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

Has this effective tax rate increased, decreased or stayed the same in the last three years?

A special corporate tax for reconstruction assistance with respect to the Tohoku earthquake disaster has been applied from 1 April 2012 to 31 March 2014. So this effective tax rate has increased.

<table>
<thead>
<tr>
<th>Profit before tax</th>
<th>Calculation 1: $2,000,000 ($1 = ¥100) = ¥200,000,000</th>
<th>Calculation 2: $500,000 ($1 = ¥100) = ¥50,000,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate tax (¥)</td>
<td>50,160,000</td>
<td>11,910,000</td>
</tr>
<tr>
<td>A special tax for reconstruction assistance with respect to the Tohoku earthquake disaster (¥)</td>
<td>5,016,000</td>
<td>1,191,000</td>
</tr>
<tr>
<td>Enterprise tax on corporation (¥)</td>
<td>19,849,800</td>
<td>4,740,300</td>
</tr>
<tr>
<td>Inhabitant tax on corporation (¥)</td>
<td>10,563,100</td>
<td>2,645,300</td>
</tr>
<tr>
<td>Total (¥)</td>
<td>85,588,900</td>
<td>20,486,600</td>
</tr>
<tr>
<td>Effective tax rate</td>
<td>42.79%</td>
<td>40.97%</td>
</tr>
</tbody>
</table>
## Section 3: Tax treatment of family businesses and other issues

### 3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

<table>
<thead>
<tr>
<th></th>
<th>As a corporation</th>
<th>Without a corporate veil (“blue form”)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manager’s compensation</td>
<td>Corporate officer compensation is deductible.</td>
<td>Compensation of business owner cannot be treated as a necessary expense.</td>
</tr>
<tr>
<td>Retirement allowance</td>
<td>Retirement allowance can be paid to manager or family employees.</td>
<td>Retirement allowance cannot be paid to business owner or to family members in the same household as the business owner.</td>
</tr>
<tr>
<td>Lease fees of assets for business use owned by the manager or their family</td>
<td>Ordinary lease fees can be deducted.</td>
<td>Lease fees paid to the business owner or to a family member in the same household cannot be treated as necessary expenses. However, expenses related to owning the asset can be treated as necessary expenses.</td>
</tr>
<tr>
<td>Life insurance premiums where the manager is the policy holder</td>
<td>Certain policies can be deducted.</td>
<td>Life insurance premiums cannot be treated as necessary expenses.</td>
</tr>
<tr>
<td>Loss carryforward</td>
<td>Carryforward can occur for up to nine business years.</td>
<td>Carryforward for up to three business years.</td>
</tr>
<tr>
<td>Entertainment expenses</td>
<td>A certain amount can be deducted.</td>
<td>The full amount of expenses deemed necessary for carrying out business operations can be treated as necessary expenses.</td>
</tr>
</tbody>
</table>

### 3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

In the case of share disposition, a national capital gains tax of 15% and a local capital gains tax of 5% apply. Dividends are taxed together with other income, and a progressive tax with a maximum rate of 50% applies.

### 3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

When cash is delivered to shareholders as a result of repayment of capital, distribution of residual assets upon corporate dissolution, acquisition of treasury stock, etc., it is deemed to be a dividend and taxed accordingly. However, this treatment is not limited to family corporations.

### 3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

A. Fully publicly listed? No.

B. Partly publicly listed? No.

### 3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

There is no difference.
Section 4: Succession planning

4.1 Life insurance

There is no tax incentive.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?

In 2008, as a special provision the Civil Code, if a successor to an SME receives a living gift of shares in the business from the predecessor of the SME, the successor can obtain agreement from the other presumed heirs to exclude the value of the gifted shares from the calculation of each heir’s share of the inheritance. This provision was introduced in order to avoid a situation in which the successor was unable to continue the business as a result of the other presumed heirs demanding a reduction of the successor’s share of the inheritance.

4.3 Estate tax

When a successor to an SME receives a gift of shares from the predecessor and certain conditions are met, gift tax on the shares may be delayed until the death of the predecessor, provided that the successor continues to operate the business.

When a successor acquires shares in an SME from a predecessor via inheritance, payment of a portion of the inheritance tax can be postponed, and if certain conditions are met, the acquisition may be exempted from inheritance tax.

4.4 Pension plans

If the owner of a business retires while alive and receives a retirement allowance, the company paying the allowance will experience a reduction in income and the assessed value of its shares will decrease. One method of reducing the tax cost of the succession in this instance would be to gift to the successor shares having a value equal to the decrease in assessed value.

4.5 Trusts, foundations and private purpose funds

A non-corporate charitable organization, including foundations and private purpose funds, is subject to inheritance or gift tax, but an exemption may be available if the properties transferred to the charitable organization are to be used only for authorized charity under Japanese laws. A corporate charitable organization is not subject to inheritance or gift tax, but is subject to corporate income tax on gains by the gift. However, if this is an authorized nonprofit organization and the income is derived from nonprofit business (i.e., charity), the income is exempt from corporate income tax.

4.6 Wills/intestacy/family charters

The Japanese Civil Code provides the types of wills. A few high net worth individuals (HNWIs) sometimes furnish the will. However, wills are not commonly used in Japan.

According to the Japanese Civil Code, all rights and obligations of the deceased transfer to heirs automatically and comprehensively at the time of decedent's death. For example, at the time of the deceased's death, all heirs jointly own the estate properties and distributed among each other according to as previously agreed upon. If a heir wants to waive the inheritance or accept the inheritance to the extent of the positive assets, notification to a family court has to be made within three months from the date the heir is informed of his or her inheritance.

According to Article 36 of the Act on General Rules of Application Laws, the law of the deceased’s home country (nationality) governs succession.

There are no regional rules on succession law (Civil Code) in Japan.

Statutory heirs

The Japanese Civil Code prescribes for statutory heirship. The decedent’s spouse is always a successor. Other than a spouse, the Civil Code provides three priority levels for successors. The spouse always becomes a successor of equal rank to a successor in any of the priority levels. Anyone in the lower priority groups will not become a successor if a higher priority person survives at the time of the opening of the succession.

An individual who waives an inheritance is not regarded as an heir upon waiver.

The actual allocation of estate properties is made based on agreement among the heirs. The above statutory share is applicable in the case where the agreement is not reached among the heirs.
Section 5: Tax policy environment

5.1 Policy environment relating to family business
Currently, no.

5.2 Specify change in the direction of tax policy in the last three years
Accumulated earnings tax for family corporations with capital of ¥100 million or less has been abolished.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners
No.

5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions
None.

Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with:
- High net worth individuals (HNWIs) No.
- SMEs No.
- Family businesses No.
- Large corporate taxpayers No.
- Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses No.

6.2 Specify enforcement focus areas or defined programs that might touch a family business
None.

6.3 Specify tax enforcement focus on any particular industry or profession
None.

6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners
None.
6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

None.

6.6 Are there any specific pre-filing processes that can be leveraged by:

- HNWIs: No.
- Family businesses: No

6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

N/A.

Some of the oldest family businesses in Asia Pacific

<table>
<thead>
<tr>
<th>Company</th>
<th>Toraya</th>
<th>Enshu Sado School</th>
<th>Takenaka Corporation</th>
<th>Kikkoman Corporation</th>
<th>Sumitomo Corporation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Founded</td>
<td>718</td>
<td>1600</td>
<td>1602</td>
<td>1610</td>
<td>1630</td>
</tr>
<tr>
<td>Family</td>
<td>Houshi</td>
<td>Kurokawa</td>
<td>Kobori</td>
<td>Takenaka</td>
<td>Mogi</td>
</tr>
<tr>
<td>Industry</td>
<td>Innkeeping</td>
<td>Confectioners</td>
<td>Ceremonial tea school</td>
<td>Construction</td>
<td>Soy sauce</td>
</tr>
<tr>
<td>Headquartered Country</td>
<td>Komatsu</td>
<td>Tokyo</td>
<td>Tokyo</td>
<td>Osaka</td>
<td>Noda</td>
</tr>
<tr>
<td></td>
<td>Japan</td>
<td>Japan</td>
<td>Japan</td>
<td>Japan</td>
<td>Japan</td>
</tr>
</tbody>
</table>

Source: EY research, based on Dun & Bradstreet data.
Section 1: The accumulative tax burden on family business

2013 tax rates

1.1 Corporate income tax (national and sub-national combined)

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highest marginal rate</td>
<td>Corporate income tax (CIT) is 22.47%, including contribution to the employment fund of 7%. (^1) MBT is 6.75% to 12% depending on the municipality.</td>
</tr>
<tr>
<td>Highest rate for small and medium enterprises (SMEs)/ small business(^2)</td>
<td>The highest CIT rate is 22.47%, including contribution to the employment fund of 7%. MBT is 6.75% to 12% depending on the municipality.</td>
</tr>
</tbody>
</table>

---

1. A distinction has to be made between opaque companies (corporations limited by shares) and transparent entities (partnerships or collective commercial undertakings): under Luxembourg law, partnerships are treated as tax transparent for CIT purposes, i.e., taxable income is determined at the level of the partnership but subject to tax at the level of the partners if the partnership undertakes a commercial activity through a Luxembourg permanent establishment. However, this does not apply for MBT purposes; MBT is levied at the level of the partnership if the latter carries a commercial activity or is commercially tainted by a resident corporation.

2. SMEs are defined as enterprises that employ fewer than 250 people and annual turnover does not exceed €50 million or total annual balance sheet does not exceed €43 million.
1.1 Corporate income tax (national and sub-national combined)

- Special treatment of SMEs/small business (other reliefs, etc.) N/A.

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

2009:
- Extension of the 80% tax exemption on net income from qualifying intangible property to income derived from domain names
- Increase of the ceiling of deductibility of donations from 10% to 20% of total net income, respectively from €500,000 to €1 million; introduction of carryforward of two years of donations exceeding the aforementioned limits; introduction of deductibility of donations for MBT purposes within the same limits as for CIT rules

2010:
- Extension of the deductibility of donations to donations made to non-Luxembourg organizations, insofar as they are resident in another EU Member State or in a Member State of the European Free Trade Association
- Introduction of the self-assessment procedure allowing the tax authorities to assess and levy tax based on the tax declaration filed; the tax authorities can further investigate during five years and issue a new tax assessment where required

2011:
- Introduction of a minimum corporate income tax of €1,500 for companies whose activities do not require a business license or the approval of a supervisory authority and if the sum of fixed financial assets, transferable securities, cash and receivables owed to affiliated companies exceeds 90% of their balance-sheet total
- Increase of the tax credit for additional investment from 12% to 13% and from 2% to 3% (for investments up to €150,000) respectively from 6% to 7% (for investments exceeding €150,000) for the tax credit for global investment
- Increase of the contribution to the employment fund from 4% to 5%
- Extension of the tax credit for investment to assets owned by a Luxembourg enterprise but located on the territory of another EU Member State or in a Member State of the European Economic Area

2013:
- Introduction of a general minimum tax for all taxpayers subject to corporate income tax (except certain holding companies; see next bullet); the tax ranges from €500 to €20,000 (plus contribution to the employment fund), depending on the balance-sheet total as of the closing date of the financial year
- Increase of the minimum corporate income tax from €1,500 to €3,000 for companies whose sum of fixed financial assets, transferable securities, cash and receivables owed to affiliated companies exceeds 90% of their balance-sheet total; this minimum tax will apply even if the company’s activities do not require a business license or the approval of a supervisory authority
- Decrease of the additional investment tax credit 13% to 12% and from 3% to 2% for the global investment tax credit
### 1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Personal allowance</strong></td>
<td>The following allowances are available:</td>
</tr>
<tr>
<td>• €672 (annual ceiling, subject to conditions) for each person in the taxpayer's household for (i) certain insurance premiums, (ii) interest on consumer loans (limited to €336) and (iii) contributions to house-saving institutions to finance housing through approved home-ownership plans.</td>
<td>Up to 2012, the annual ceiling for the deduction of interest on consumer loans was €672 per person in the taxpayer's household.</td>
</tr>
<tr>
<td>• Depending on the age of the subscriber, €1,500 to €3,200 (annual ceiling, subject to conditions) for old-age providence premiums paid.</td>
<td></td>
</tr>
<tr>
<td>• €4,500 for spouses or partners jointly taxable realizing income from a professional activity and being personally affiliated to a social security regime.</td>
<td></td>
</tr>
<tr>
<td>• €10,000 on the profit realized upon the termination or sale of a business, a self-employed activity or an agricultural activity; €25,000 if the business comprises a capital gain on real estate.</td>
<td></td>
</tr>
<tr>
<td>• €150 to €1,455 for extraordinary expenses in relation with a disability or handicap.</td>
<td></td>
</tr>
<tr>
<td>• €3,600 for child care expenses, maintenance of close relatives and employment of domestic staff.</td>
<td></td>
</tr>
<tr>
<td>• Up to €3,480 for expenses engaged for children not living in the household but being mainly dependent from the taxpayer.</td>
<td></td>
</tr>
<tr>
<td>• €50,000 (€100,000 for spouses or partners jointly taxable) on the capital gain realized upon the sale of substantial shareholdings (more than 10%) at least six months after acquisition.</td>
<td></td>
</tr>
<tr>
<td>• €50,000 (€100,000 for spouses or partners jointly taxable) on the capital gain realized upon the sale of real estate at least two years after acquisition; the allowance is renewed every 10 years. An additional allowance of €75,000 for each spouse/partner is available for the sale of a home inherited by a direct descendant that was the principal residence of the taxpayer's parents or spouse.</td>
<td></td>
</tr>
</tbody>
</table>

| **Minimum rate of personal income tax (PIT)** | Minimum rate is 0% for annual income not exceeding €11,265. | N/A. |
| **Highest marginal rate of PIT** | Highest marginal rate is 40%, increased to 43.6% by application of the contribution to the employment fund. | The 39% rate was increased to 41.34% by application of the contributions to the employment fund. |
1.2 Individual income tax

- Any special surtaxes
- Contribution to the employment fund was introduced in 1987. The rate is applied on the PIT and amounts to 7% for annual income up to €150,000 respectively €300,000 for married couples or partners jointly taxable, and 9% for annual income exceeding €150,000 for single individuals and single, separated or divorced individuals with children and €300,000 for married couples or partners jointly taxable. The rates were 4% and 6% respectively, for the 2012 and 2011.

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

2009:
- The final withholding tax of 10% on interest income can be extended upon option of the taxpayer to eligible interest income received from paying agents located in an EU Member State, in a European Economic Area State or a jurisdiction that has entered into an agreement with Luxembourg that includes measures equivalent to those of the EU Savings Directive (i.e., dependent and associated territories and third countries).
- Another change is the replacement of certain allowances (commercial and agricultural allowance, single-parent allowance, etc.) by tax credits.

2011:
- There was an addition of a new maximum CIT rate of 39% applicable to annual income exceeding €41,793.
- There was an increase of the contribution to the employment fund from 2.5% to 4% or 6%, depending on the personal status and the annual income of the taxpayer.
- There was the introduction of a crisis contribution of 0.8% levied on professional income and income from wealth.
- There was the introduction of a special tax regime for expatriate highly skilled employees (subject to conditions) providing for tax relief for certain costs linked to expatriation.

2012:
- The crisis contribution of 0.8% was abolished.

2013:
- Annual ceiling for the deduction of interest on consumer loans has been decreased from €672 to €336.
- There was an addition of a new maximum CIT rate of 40% applicable to annual income exceeding €100,000.
- There was an increase of the contribution to the employment fund from 4% (or 6%) to 7% (or 9%).
- There was an introduction of a special tax regime for carried interest (i.e., share in the profits of the Alternative Investment Fund (AIF) accrued to the AIF managers (AIFM) as compensation for the management of the AIF and excluding any share in the profits of the AIF accrued to the AIFM as a return on any investment by the AIFM into the AIF) according to which carried interest is, under conditions, taxed at a rate of one-quarter of the marginal tax rate applicable to the adjusted income (i.e., 10.9% for 2013).

1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard rate</td>
<td>The standard rate 15%. The reduced VAT rates are 3%/6%/12%. There are others, including exemptions without credit and exempt with credit.</td>
</tr>
<tr>
<td>Are there any special reliefs or exemptions for a family business?</td>
<td>No changes have been made.</td>
</tr>
<tr>
<td>N/A.</td>
<td>N/A.</td>
</tr>
</tbody>
</table>
1.4 Property taxes

- Does a family business receive any relief on property taxes not granted to other types of corporation?
  
  No.

1.5 Capital gains tax (CGT)

- 2013 rate – companies
  
  N/A.

- 2013 rate – individuals
  
  - Capital gains on movable property are fully subject to personal income tax (PIT) at normal rates if realized within six months following the acquisition.
  - Capital gains on substantial shareholdings (more than 10%) in resident or nonresident corporations realized more than six months after acquisition are taxed at half of the average tax rate (i.e., at a maximum 21.8% for 2013).
  - Capital gains on real estate are fully subject to PIT at normal rates; except capital gains on real estate realized more than two years after acquisition, for which half of the average tax rate (i.e., at a maximum 21.8% for 2013) applies.
  - Gains realized on the sale or cessation of a business (run under the form of a collective commercial undertaking or an individual business) are taxed at half of the average tax rate (i.e., at a maximum 21.8% for 2013).

- Reliefs/exemptions
  
  - Capital gains on movable property realized more than six months after acquisition are tax exempt.
  - Capital gains derived from the sale of a principal residence are tax exempt.
  - Under certain conditions, taxation of gains on the sale of privately-owned real estate may be deferred if the proceeds are reinvested in newly built leasehold housing properties located in Luxembourg.
  - Gains realized on the sale or cessation of a business (run under the form of a collective commercial undertaking or an individual business) are not subject to MBT.

1.6 Tax on dividends from ordinary shares

A. For the business: If the business is run under the form of a corporation subject to CIT, normal tax rates apply on dividend income, unless:

- Provisions of Parent-Subsidiary Directive apply: if the requirements pertaining to the form of the beneficiary and distributing entity, the holding threshold and holding period are met, the dividend income will be tax exempt. Any expense incurred during the year and which is directly linked to the tax-exempt dividend is not deductible up to the amount of such dividend received.

- The dividend is derived from a fully taxable resident corporation, a corporation resident in a Member State that has concluded a double tax treaty with Luxembourg and that is fully liable to a tax comparable to Luxembourg CIT or a company resident in an EU Member State and within the scope of Article 2 of the Parent-Subsidiary Directive: a 50% tax exemption applies. Accordingly, 50% of related expenses are not deductible up to the amount of the tax-exempt dividend income.

If the business is run under the form of a collective commercial undertaking (like a partnership) and the shares in the distributing entity are held by the said undertaking, the dividend is subject as part of the commercial income at the level of the taxpayer to PIT (taxpayer is an individual). Aforementioned tax exemption of 50% may apply under the same conditions. If the undertaking is subject to MBT, dividends (including liquidation proceeds) might be subject to MBT at the level of the undertaking with a special exemption applicable to dividends and liquidation proceeds for MBT purposes.

B. For the owners of the business: Dividend received from resident or nonresident company is generally subject to PIT at the level of the owner (being an individual). The aforementioned 50% exemption is also applicable to individuals. A 15% withholding tax withheld by a Luxembourg distributing company, can either be offset against Luxembourg PIT or refunded.
1.7 Tax on dividends from preferential shares

A. For the business: Dividends are the same as normal shares except some specific instruments treated as debt instruments.

B. For the owners of the business: Dividends are the same as normal shares except some specific instruments treated as debt instruments.

1.8 Tax treatment of interest on a loan from the shareholders

A. For the business: Interest paid by an entity subject to CIT on a loan from the shareholders is deductible from taxable income, provided the rate applied meets the arm's-length principle. If this is not the case, the tax authorities could assess a deemed dividend distribution: the excessive interest would thus be nondeductible and subject to 15% withholding tax rate (if the shareholder is an individual or a non-qualifying company).

Even if the tax law does not provide for specific thin capitalization rules, tax authorities in principle require certain debt-to-equity ratios to be respected in order for the company not to be considered as thinly capitalized and thus to avoid deemed dividend requalification of the interest paid on the excessive amount of debt. Regarding the financing of participations, it is common rule to respect a ratio of 85 (debt): 15 (equity). If the business is run under the form of a collective commercial undertaking (like a partnership) not subject to CIT, the interest paid to the partner(s) is not deductible for income tax and MBT purposes.

B. For the owners of the business: Interest income received on a loan granted to a corporate shareholding is fully taxable in the category of income from capital at normal PIT rates at the level of the beneficiary (being an individual). In case of reassessment at the level of the paying company into hidden dividend distribution, the aforementioned tax exemption of 50% on the re-qualified income may apply.

If the interest is paid by a collective commercial undertaking (like a partnership) which carries out a commercial activity, it is taxable at the level of the individual taxpayer as part of the business income derived from the undertaking or partnership at normal PIT rates.

1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

A. For the business: Any expense incurred by an entity subject to CIT for renting real estate owned by the shareholder(s) of the entity is deductible from taxable income, provided the amounts paid meet the arm's-length principle. If this is not the case, the tax authorities could assess a deemed dividend distribution: the excessive rental expense would thus be nondeductible and subject to 15% withholding tax (if the shareholder is an individual or a non-qualifying company).

If the entity sub-lends the real estate, generating thus also rental income, care should be taken that the rental activity generates an appropriate margin. Rental income incurred by a business is part of the commercial income and subject to tax at normal rates.

If the real estate is put at the disposal of the business for free, there is in principle no adverse tax consequence at the level of the business.

If the business is run under the form of a collective commercial undertaking (like a partnership) not subject to CIT, the rent paid to the partner(s) is not deductible for income tax and MBT purposes. Rental income derived from a sub-rental is fully taxable as part of the business income for MBT purposes.

If the real estate is owned by the shareholder through a transparent entity (see Section 1.23 below) and rent out to an opaque entity ~ a corporation limited by shares and as such a taxpayer on its own compared to a partnership that is regarded as a transparent entity for taxation purposes and consequently the shareholders are taxed ~ belonging to the same shareholder, the rental income is in principle not considered as business income at the level of the transparent vehicle and thus not subject to MBT if the transparent entity does only carry out a rental activity. However, this does not apply if the structure qualifies as a “scission d'entreprises,” meaning a split of the family business into the real estate owned by a transparent vehicle and the operational business run by an opaque entity that are both controlled by the same taxpayer. In such a case, the rental income realized by the transparent vehicle might, under certain conditions, be considered to be business income and hence subject to MBT.

B. For the owners of the business: Rental income derived from real estate rented to a corporate shareholding is fully taxable in the category of rental income at normal PIT rates at the level of the beneficiary (being an individual). In cases of reassessment at the level of the paying company into hidden dividend distribution, the aforementioned tax exemption of 50% on the re-qualified income may apply.

If the rent is paid by a collective commercial undertaking (like a partnership), it is taxable at the level of the individual taxpayer as part of the business income derived from the undertaking at normal PIT rates.
1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

A. For the business: Any royalty expense incurred by an entity subject to CIT for the use of intellectual property (IP) owned by the shareholder(s) of the entity is deductible from taxable income, provided the amounts paid meet the arm's-length principle. If this is not the case, the tax authorities could assess a deemed dividend distribution: the excessive royalty (the remuneration received/paid for the use of an intellectual property) would thus be nondeductible and subject to 15% withholding tax (if the shareholder is an individual or a non-qualifying company).

If the entity grants a sub-license and thus generates royalty income, care should be taken that an appropriate margin is realized. Net income derived from qualifying IP may benefit, under conditions, of an 80% tax exemption on the net income derived from the qualifying IP. Since one of the conditions is that the entity is the economical owner of the IP, the aforementioned exemption cannot be applied to income generated by a sub-license. Royalty income is thus part of the commercial income and subject to tax at normal rates.

If the IP is put at the disposal of the business for free, there is in principle no adverse tax consequence at the level of the business.

If the business is run under the form of a collective commercial undertaking (like a partnership) not subject to CIT, the royalty paid to the partner(s) is not deductible for MBT purposes. Royalty income derived from a sub-license is fully taxable as part of the business income for income tax and MBT purposes.

B. For the owners of the business: Royalty income derived from the use of an IP or an IP rented to a corporate shareholding is fully taxable in the category of rental income at normal PIT rates at the level of the beneficiary (being an individual). The above-mentioned 80% tax exemption does not apply if the IP is owned as part of an individual's private wealth (and not as part of a commercial business). In case of reassessment at the level of the paying company into hidden dividend distribution, the aforementioned tax exemption of 50% for dividends on the re-qualified income may apply.

If the royalty is paid by a collective commercial undertaking (like a partnership) which carries out a commercial activity, it is taxable at the level of the individual taxpayer in the category of business income derived from the commercial undertaking at normal PIT rates. The aforementioned tax exemption of 80% may apply (under certain conditions).

1.11 Tax treatment of interest paid on bank debt by a family business

Interest paid by a family business on bank debt is fully deductible, unless it is directly linked to a tax-exempt income. In such case, the interest is not deductible up to the amount of income that is exempt.

1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

Payments made by a family business to third parties (who are not related to or close persons of the owners of the family persons) for the use of their intellectual property are tax deductible.

1.13 Tax treatment of rental payments made by a family business to third parties for real estate

Payments made by a family business to third parties (who are not related to or close persons of the owners of the family persons) for the real estate are tax deductible.

1.14 Tax treatment of interest payments on A. inter-group loans or B. A financing company within the family-owned business group

There is no specific treatment in case a financing company is part of a family-owned business group; general provisions as regard inter-group financing apply. On 28 January 2011, the Luxembourg tax authorities issued an administrative Circular (LIR n°164/2) on the tax treatment of companies carrying out intra-group financing activities in Luxembourg. In essence, the Circular covers the following topics:

- Confirmation that the arm's-length principle included in the Luxembourg income tax law follows the arm's-length principle as defined by Article 9 of the OECD Model Tax Convention on Income and Capital
- Guidance to determine an arm's-length price to be realized by an intra-group financing company
- The Circular also includes guidance on the conditions to be met in order to have sufficient substance in Luxembourg
- Binding clearance from the Luxembourg tax administration on the transfer prices applied to financing transactions entered into by an intra-group financing company
- Guidance regarding the information which should be provided with the clearance application
1.15 Does your country provide for a deemed deduction on equity and/or debt?

No deemed deduction on equity or debt foreseen by tax law.

1.16 Is the retainment of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

There is in principle no restriction on the retention of earnings. However, according to the company law, an amount equal to 10% of the share capital of a company must be allocated to a so-called legal reserve which must be maintained during the lifetime of the company. In case of capital decrease, the amount of the legal reserve can be adjusted accordingly.

Furthermore, the allocation of profits to a special reserve enables a taxpayer to reduce net wealth tax. Opaque entities are subject each year to net wealth tax of 0.5% which is calculated on the unitary value of the company as at 1 January of each year. The unitary value corresponds to the total of assets valued according to the provisions of the Luxembourg Valuation Law, less debts and provisions. The Luxembourg law states that the net wealth tax is reduced to nil (zero), provided that the company allocates each year to a special net wealth tax reserve an amount equal to five times the amount of net wealth tax payable and that this reserve is maintained for a period of five years. Net wealth tax can only be reduced for a given year up to the amount of CIT payable for the same year before tax credits. As of the year 2013, net wealth tax can only be reduced down to the amount of the theoretical minimum corporate income tax due by a company.

1.17 Wealth tax:

- 2013 characteristics and rate
  Net wealth tax for resident and nonresident individuals was abolished effective from 1 January 2006.

- Is there an exemption for shares owned by a family that owns a business?
  N/A.

1.18 Inheritance tax/estate tax

The tax base for inheritance tax is the market value at the time of death of the entire net estate inherited from a person domiciled in Luxembourg. Exemptions apply to real estate located abroad and, under certain conditions, to movable assets held outside Luxembourg. If the decedent was a nonresident at the time of his or her death, tax is levied only on real estate located in Luxembourg. The inheritance tax rate range from 0% to 48%. The rate that is generally applicable to heirs in direct line (for example, son or daughter or grandson or granddaughter) is 0%. A 0% rate also applies to any inheritance between spouses or registered partners of more than three years with at least one common child.

1.19 Gift tax

Gifts and donations that are registered or required to be registered (e.g., real estate) are subject to gift tax, insofar as the real estate property that is donated is located in Luxembourg. Gift tax is payable by the resident or nonresident donee on the gross market value of the assets received. The rates range from 1.8% to 14.4%, depending on the relationship between the donor and the donee. Gifts and donations of real estate not located in Luxembourg are registered at a fixed fee of €12; gifts of movable property, which are made in Luxembourg by notarial deed, are subject to percentage gift taxes wherever the movable property is located.

Gifts that are not required to be made in writing (for example, gifts of movable assets transferred by hand delivery (dons manuels) are generally accepted without registration. However, such gifts may be subject to registration tax if another registered deed refers to them.

1.20 Real estate transfer tax

The sale of real estate located in Luxembourg is generally subject to 6% registration duty and 1% transcription tax. The sale of certain types of immovable property located in Luxembourg City is generally subject to 9% registration duty (including a municipal surcharge of 3%) and 1% transcription tax.

1.21 Endowment tax

N/A.
### 1.22 Social security

**National/social insurance contributions on employee income**

<table>
<thead>
<tr>
<th></th>
<th>Employee %</th>
<th>Employer %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pension</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>Illness</td>
<td>3.05</td>
<td>3.05</td>
</tr>
<tr>
<td>Accident</td>
<td>N/A</td>
<td>1.15</td>
</tr>
<tr>
<td>Health at work</td>
<td>N/A</td>
<td>0.11</td>
</tr>
<tr>
<td>Mutual insurance</td>
<td>0.5</td>
<td>No changes have been made.</td>
</tr>
<tr>
<td>Care insurance</td>
<td>1.40</td>
<td>No changes have been made.</td>
</tr>
</tbody>
</table>

**Health/medical/dental care**

Health expenses have to be prepaid and are reimbursed by the National Health Fund (Caisse Nationale de Santé) according to predefined rates, except as regards medicine where the reduced price is immediately applied. As an example, medical examinations are reimbursed up to 80%.

It is generally advised to subscribe for a complementary health insurance to cover health expenses not borne by the CNS.

**Retirement plans/pensions for employees**

The amount of the legal pension depends on the duration of the work, the salary earned during the working period and the annual ceiling (corresponding to five times the minimum legal salary, see above).

Luxembourg tax law provides for a favorable employer pension schemes tax regime: 20% flat tax on contributions, borne by the employer; benefits are free.

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3. The contribution rates are subject to an annual ceiling of €112,451.28.

4. This contribution applies to blue-collar workers only and will be abolished beginning 1 January 2014.

5. An allowance of €468.55 is applied to the assessment basis.
1.24 Taxation of flow through entities/partnerships/trust funds

A distinction has to be made between opaque companies (corporations limited by shares) or certain other types of vehicles like cooperative companies and transparent entities (partnerships or collective commercial undertakings): under Luxembourg law, partnerships are treated as tax transparent for PIT or CIT purposes, i.e., the taxable income is determined at the level of the partnership but subject to tax at the level of the partners. However, this does not apply for MBT purposes; MBT is levied at the level of the partnership insofar as the transparent entity carries out a commercial activity and thus realizes a commercial profit or is deemed to realize a commercial profit because it is “tainted.” The tainting theory applies to the following entities:

- Limited partnerships (société en commandite simple) and specialized limited partnerships (société en commandite spéciale), where at least one general partner is a corporation holding at least 5% of interest
- General partnerships (société en nom collectif), economic interest groups (groupement d'intérêt économique), European economic interest groups (groupement d'intérêt économique Européen) and civil law companies, where the majority of interest is held by one or more corporations

See Section 4.5 as regards the taxation of trusts.

1.25 Exemptions in the law that specifically relate to family businesses

None.

1.26 Are there any business incentives in your country that are specific to

- SMEs

A number of incentives (upon conditions) are available for SMEs, and:

- Employment aid and programs within the framework of recruitment:
  - Financial aid with respect to the hiring of older or long-term unemployed persons (recovery of social security contributions paid)
  - Tax credit for hiring an unemployed person
  - Apprenticeship subsidies and awards (financial aid amounting to 27% of the gross apprenticeship allowance paid to the apprentice plus the employer's share of the social security contributions payable on the apprenticeship allowance)
- State aid for disabled workers
- Financial aid for continuing vocational training programs
- Tax credit or reimbursement of salaries normally paid to employees for inactive hours, provided the employees participate in training during said hours
- Financial aid for the start-up or takeover of an SME:
  - Financial aid for unemployed persons to start/take over a business (available to the hard-to-place unemployed for starting or taking over a business to help them return to a professional activity)
  - Financial aid for a business start-up or takeover (aid is granted in the form of a capital subsidy or interest subsidy)

---

7. Some of these incentives are available to large companies as well.

8. Restrictions exist as regards the combination of the various incentives.
### 1.26 Are there any business incentives in your country that are specific to Luxembourg?

- Financial aid for the set-up or expansion of an SME:
  - Investment aid for craft or commercial SMEs or for consultancy services for craft or commercial SMEs
  - Financial aid for first-time participation in a trade fair or exhibition for craft and commercial SMEs
  - Financial aid for food safety measures for craft and commercial SMEs (aims to encourage craft and commercial businesses in the food sector to invest in equipment or methods allowing them to ensure or increase the traceability and quality of food products)
  - Innovation, research and development aid for craft or commercial SMEs
  - Investment aid for SMEs operating in the industrial or services sector that constitute a driving force economic growth
  - Investment aid to stimulate economic growth in certain regions of the country (intended for businesses in the manufacturing or processing sector and for businesses in the services sector operating in an area of activity recognized as constituting a driving force to economic growth or carrying out research activities); for all aforementioned incentives, the aid is granted in the form of a capital subsidy or interest subsidy (investment aid to stimulate economic growth in certain regions of the country may take the form of a partial tax relief)
- Financial aid schemes for the HORECA sector: aid schemes for the hotel trade to promote investments in the modernization, rationalization or construction of new accommodation establishments (aid is granted in the form of a capital subsidy or interest subsidy)
- Financial aid for tourism infrastructure: financial aid for regional and national tourism infrastructure projects to encourage the implementation of tourism infrastructure projects and the introduction of service quality certification programs awarding quality labels (aid is granted in the form of a capital subsidy or interest subsidy)
- Investment aid for environmental protection and rational use of natural resources: aims to encourage and support investments in the areas of environmental protection and the rational use of natural resources (aid is granted in the form of a capital subsidy or interest subsidy)

| Family businesses | No specific incentives for family businesses; a family business meeting the criteria to qualify as SME can apply for the normally available incentives for SMEs. |

### 1.27 Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses? No.
- Are there any available loss reliefs that are specific to SMEs? No, normal rules apply, i.e., a deficit generated in one financial year can be charged against the profits of other financial years in order to reduce the tax base thereof. The deficit can be deducted from the profits made during any subsequent financial year (carryforward); there is no limitation in time of the carryforward.

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9. HORECA refers to the hotel and catering industry.
Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- **Calculation 1**: The business makes a profit before tax of €2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

  | At the level of the business (corporate entity): |   |   |
  |-----------------|----------|----------|----------|
  |                | 2013     | 2012     | 2011     |
  | Profit before tax: | €2,000,000 | €2,000,000 | €2,000,000 |
  | CIT (22.47%/22.05%): | -449,400 | -441,000 | -441,000 |
  | MBT (6.75%) \(^\text{10}\): | -133,820 | -133,820 | -133,820 |
  | Net distributable profit: | 1,416,780 | 1,425,180 | 1,425,180 |
  | WHT on dividend (15%): | -212,517 | -213,777 | -213,777 |
  | Net dividend received by shareholder: | 1,204,263 | 1,211,403 | 1,211,403 |

  | At the level of the shareholder (Luxembourg resident individual, jointly taxable with spouse or partner) |   |   |
  |-----------------|----------|----------|----------|
  |                | 2013     | 2012     | 2011     |
  | Gross dividend income: | 1,416,780 | 1,425,180 | 1,425,180 |
  | Tax exemption (50%): | -708,390 | -712,590 | -712,590 |
  | Taxable income: | 708,390 | 712,590 | 712,590 |
  | PIT \(^\text{11}\): | 284,445 (20.08%) | 272,929 (19.15%) | 272,929 (19.15%) |
  | Less withholding tax (WHT) (WHT needs to be deducted): | -212,517 | -213,777 | -213,777 |
  | Final PIT payable: | 71,928 | 59,152 | 59,152 |

  | Net income (after tax) received by the shareholder: |   |   |
  |-----------------|----------|----------|----------|
  |                | 2013     | 2012     | 2011     |
  | 1,132,335 (56.62% of gross profit) | 1,152,251 (57.61% of gross profit) | 1,152,251 (57.61% of gross profit) |

- **Calculation 2**: The business makes a profit before tax of €500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

  | At the level of the business (corporate entity): |   |   |
  |-----------------|----------|----------|----------|
  |                | 2013     | 2012     | 2011     |
  | Profit before tax: | 500,000 | 500,000 | 500,000 |
  | CIT (22.47%/22.05%): | -112,350 | -110,250 | -110,250 |
  | MBT (6.75%) \(^\text{12}\): | -33,750 | -33,750 | -33,750 |
  | Net distributable profit: | 353,900 | 356,000 | 356,000 |
  | WHT on dividend (15%): | -53,085 | -53,400 | -53,400 |
  | Net dividend received by shareholder: | 300,815 | 302,600 | 302,600 |

---

10. There is an after-tax allowance of €17,500 and applying MBT rate of Luxembourg City.
11. This includes contribution to the employment fund.
12. This refers to an after-tax allowance of €17,500 and applying MBT rate of Luxembourg City.
At the level of the shareholder (Luxembourg resident individual, jointly taxable with spouse or partner):

<table>
<thead>
<tr>
<th>Year</th>
<th>2013</th>
<th>2012</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross dividend income:</td>
<td>353,900</td>
<td>356,000</td>
<td>356,000</td>
</tr>
<tr>
<td>Tax exemption (50%):</td>
<td>-176,950</td>
<td>-178,000</td>
<td>-178,000</td>
</tr>
<tr>
<td>Taxable income:</td>
<td>176,950</td>
<td>178,000</td>
<td>178,000</td>
</tr>
<tr>
<td>PIT:</td>
<td>53,985 (15.25%)</td>
<td>52,898 (14.86%)</td>
<td>52,898 (14.86%)</td>
</tr>
<tr>
<td>WHT:</td>
<td>-53,085</td>
<td>-53,400</td>
<td>-53,400</td>
</tr>
<tr>
<td>Final PIT payable:</td>
<td>900</td>
<td>-502</td>
<td>-502</td>
</tr>
</tbody>
</table>

Net income (after tax) received by the shareholder:

<table>
<thead>
<tr>
<th>Year</th>
<th>2013</th>
<th>2012</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>299,915 (59.98% of gross profit)</td>
<td>303,102 (60.62% of gross profit)</td>
<td>303,102 (60.62% of gross profit)</td>
<td></td>
</tr>
</tbody>
</table>

Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

Please refer to Section 1.23. Where a business is run as a private business without corporate veil, tax is levied at the level of the individual running the business, except as regards MBT, which is levied at the level of the individual business. The individual will pay PIT on its share of income deriving from the business.

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

Dividends received by a Luxembourg tax resident individual benefit from a 50% tax exemption, whereas capital gains derived from the sale (more than six months after the acquisition) of a 100% shareholding in a family business are taxed at half of the applicable PIT, which should at the end of the day correspond to the same effective tax rate. However, since the law provides for a tax-free allowance in case of capital gains realized upon the sale of shares in corporate family businesses (see Section 1.2) as well as a revaluation mechanism of the acquisition price of the shareholding linked to the acquisition date of the latter, effective PIT should be lower on capital gains compared to PIT on dividend income.

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

There are no penalties foreseen; however, tax authorities could assess a hidden dividend distribution in case of profit shifting to the shareholder via transactions between the person and the person’s company. The consequence hereof is a non-deduction of the excessive expenses/payments at the level of the family business and the levy of 15% withholding tax on the aforementioned amount (see Sections 1.8 and 1.9 for examples).

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

A. Fully publicly listed? No.
B. Partly publicly listed? No.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

If the shareholder has held, alone or together with his spouse or partner and his under age children, 10% or less in a company (corporate entity) during the five years preceding the date of the sale and the sale takes place more than six months after acquisition, the capital gain realized is tax exempt.

13. This includes a contribution to the employment fund.
Section 4: Succession planning

4.1 Life insurance

In case of a contract made for the benefit or in favor of a third party (e.g., a life insurance contract), the cash and/or other assets that this third party is expected to receive at the moment of the decease (i.e., execution of the contract) are considered as collected as legacy by the beneficiary and thus included in the inheritance tax basis, except if the said stipulation was already subject to registration duties applicable for gifts.

If the stipulation is made by a person for the benefit of his or her partner/spouse as provided in the paragraph above, the cash and/or other assets that are received by the beneficiary are considered as a legacy for their full amount.

There are no particular provisions as regards owners of private/family businesses.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?

Whereas family business were often run in the past under the form of an individual business or a partnership, nowadays most of them are structured under the form of a corporation limited company (société anonyme) or private limited company (société à responsabilité limitée). Indeed, the transfer of shares appears to be more flexible and sometimes less expensive than transferring real estate or assets and liabilities. The structuring often includes a double tier structure, wherein the shares of the operational company are held by a second Luxembourg corporation, which is ultimately held by the individual shareholder respectively by several corporations (each individual shareholder having its own company through which the shares in the operational company are held). Any dividend distributed by the operational company can, upon conditions, benefit from a withholding tax exemption and a tax exemption at the level of the beneficiary company.

The donation of major shareholding (more than 10%) during the lifetime to a Luxembourg tax resident does not trigger any income tax consequences, since such transfer can be made neutral from a tax perspective. As regards gift taxes, a rate of 1.80%, respectively 2.40% applies on donations of shares to direct heirs, depending if the donation is made without or with reintegration exemption. The gift tax only applies if the gift is made by a notarial deed which is registered; gifts made by hand delivery or indirect gifts are in principle not subject to registration and hence no gift tax applies unless such gifts are registered subsequently.

Corporate vehicles like for example the partnership limited by shares (société en commandite par action) can also be interesting since they allow to separate the management of a family business from the investment in the family business: the general partner is in charge of the management of the firm, whereas the partners limited by shares receive the profits from the family business under the form of dividend payments, but they may not interfere in the management of the company.

Civil law companies are also often used especially for holding real estate (not included in the business). Such structuring is not chosen for taxation purposes, but mainly to avoid joint ownership and hence to ease division of the property by allocation of interests in the civil law company.

4.3 Estate tax

The inheritance tax rate is 0% for net assets transferred to direct heirs, to the spouse in presence of common children and to the registered partner in presence of common children.

Inter vivos gifts to direct line heirs, which qualify as ancestors’ partition (partage d’ascendants), are exempt from transfer duty. Partage d’ascendants is a method by which a person can distribute his or her estate or part of it during his or her lifetime to his or her direct heirs.

4.4 Pension plans

See Section 1.22.
4.5 Trusts, foundations and private purpose funds

Trusts

Under the law of 27 July 2003, Luxembourg ratified The Hague Convention of 1 July 1985 relating to the recognition of foreign trusts. It also revised the Luxembourg legislation regarding fiduciary agreements in order to facilitate the recognition of a Luxembourg fiduciary by other contracting states. The same law also introduced different indirect tax measures in relation to trusts and fiduciary agreements.

Trust and fiduciary agreements are not subject to compulsory registration formalities even if they are established by public deed, before the courts or before any other Luxembourg authority. This is provided they do not own immovable property located in Luxembourg, planes, ships or boats for navigation on internal waterways registered in Luxembourg, nor any rights over such an asset that must also be transcribed, recorded or registered. Voluntary registration is possible.

Fiduciary contracts and trust deeds, which relate to assets or rights which the fiduciary or the trustee must retransfer within 30 years, are subject to a fixed registration duty of €12 when they are registered. The same applies to deeds effecting the retransfer of the assets or rights to the fiduciary or to the settlor within that period. In cases where the assets or the rights are definitively transferred, during or at the end of the fiduciary contract or trust agreement, to the fiduciary or the trustee and where the fiduciary contract or the trust agreement had been registered at the fixed registration duty of €12, the assets or rights transferred must be registered at the rates applicable under common law. Accordingly, the higher rates for sales are applicable, except for some specific transactions relating to the transfer of assets under pledge (which are only subject to the fixed registration duty). For real estate located in Luxembourg, property transfer tax amounts to 7% (10% if the real estate is located within the municipality of Luxembourg City). For movable property, the registration duty may vary from 1.2% to 6% upon voluntary registration. The transfer of movable property, other than by way of a gift or an inheritance, is not subject to compulsory registration. No percentage registration duty applies on the transfer of shares even if the transfer is registered, except for the transfer of units in partnerships owning a real estate located in Luxembourg. In case of a gratuitous transfer of an asset or a right owed by a fiduciary or a trustee to a third-party beneficiary, gift tax is due depending on the degree of relationship between the beneficiary and the fiduciary or the settlor. The same applies for the calculation of inheritance tax and death duties.

Patrimonial foundations

In July 2013, the Minister of Finance deposited a draft law to the Luxembourg Parliament that will introduce into Luxembourg law of an orphan structure called “patrimonial foundation.” The foundation can be used as an instrument to ensure the continuity in the management of a family business since it enables the dissociation of the economic ownership of the family fortune from the management of the family business. The object of the patrimonial foundation is to manage its assets for the benefit of one or more beneficiaries or for the benefit of one or more purposes other than those exclusively reserved to non-profit foundations (being charitable, scientific social, etc.). It may strictly not exercise any commercial, industrial, agricultural or self-employed activity.

A fixed registration duty of €12 applies to the transfer of assets by a transferor to a patrimonial foundation, upon incorporation or at a later stage, as well as the transfer of assets by the patrimonial foundation back to the transferor. Transfers made by the foundation are subject to registration duties at similar rates as those normally applicable in the cases of donations or inheritance. Any transfer to a beneficiary made at a time where the founder is alive is taxed at the rate that would have been applied if the donation was made directly by the founder to the beneficiary. At the death of the Luxembourg resident founder, all net assets (after deduction of liabilities) are in principle subject to registration tax at a rate of 40%. This rate is reduced to 0% for net assets transferred to the spouse of the founder, his/her partner and his/her direct ascendant or descendant. It is furthermore reduced to 12% for certain other categories of relatives of the founder. The aforementioned rates also apply at the death of a nonresident founder, whereby the registration tax is only levied on the estimated net market value (after deduction of liabilities) of any real estate located in Luxembourg.

The patrimonial foundation is an autonomous taxpayer liable to corporate income tax. Certain types of income should be tax exempt at the level of the patrimonial foundation such as any income derived from capital, capital gains realized upon the sale of assets generating income from capital and capital gains realized upon the sale of movable assets insofar as the sale takes place more than six months after the acquisition. In addition, capital and the redemption value received pursuant to an individual long-term savings, disability or life insurance policy should also be tax exempt at the level of the patrimonial foundation.

SIF

In 2007, Specialized Investment Funds (SIF) have been introduced in Luxembourg law primarily to satisfy the demand from the “buy side” (especially from institutional, professional and high net-worth investors) along with their advisors for a “lightly regulated” on-shore investment fund vehicle for all types of alternative investment fund products. The SIF Law introduces a qualified investor/professional investor scheme. A fund created under the SIF Law may be sold to “informed investors,” i.e., an institutional investor, a professional investor, any other type of investor who has declared in writing that he/she is an informed investor, and either invests a minimum of €125,000 or has an appraisal from a bank, an investment firm or a management company (all of these with a European passport) certifying that he has the appropriate expertise, experience and knowledge to adequately understand the investment made in the fund. The primary objective of a SIF must be the collective investment of the funds raised from its investors while applying the principle of risk diversification.
4.5 Trusts, foundations and private purpose funds

The SIF must reach a minimum size of €1.25 million within 12 months of its date of authorization. SIFs are not subject to any Luxembourg taxes on capital gains or income, nor to withholding tax on distributions; however, such funds are subject to registration duties and an annual subscription tax (taxe d'abonnement). The registration duty is levied at the time of the creation, or subsequently when new contributions are made. The fixed charge is €1,250. The annual subscription tax of 0.01% is levied based on the quarterly net asset value of the SIF. The following are exempt from the subscription tax:

- Assets of investment funds that have already been subject to the subscription tax.
- Investment funds and sub-funds of umbrella funds whose exclusive object is the collective investment in money market instruments and the placing of deposits with credit institutions, and whose weighted residual portfolio maturity does not exceed 90 days, and that have obtained the highest possible rating from a recognized rating agency.
- Investment funds whose securities are reserved for (i) institutions for occupational retirement provision, or similar investment vehicles, created on the initiative of a same group for the benefit of its employees and (ii) undertakings of this same group investing funds they hold to provide retirement benefits to their employees.

Luxembourg has concluded around 70 double taxation treaties. It should be possible to structure SIFs and their related investments to benefit from the majority of these treaties.

SPF

During the same year, Luxembourg also launched the Personal Investment Company (société de gestion de patrimoine familial (SPF – is the French name for personal investment company)), a new private wealth management vehicle benefiting from a preferential tax regime which is intended for the private wealth and asset management of individuals.

The SPF should have the legal form of either a limited liability company (S.à r.l.) or joint stock company (S.A.) or partnership limited by shares (SCA) or cooperative company organized under the form of a joint stock company. The SPF cannot have the legal form of a partnership. Investors may only be individuals or patrimonial entities, acting exclusively within the framework of the private wealth of individuals or intermediaries acting on behalf of such individuals or patrimonial entities.

The SPF may acquire, hold, manage and realize financial assets (i.e., financial instruments, cash or other liquid assets held in accounts) excluding any commercial activity. The SPF may thus only carry out activities falling under the private wealth management of individuals as opposed to a commercial activity within the meaning of the Luxembourg income tax law. The SPF can also hold participations (even majority shareholdings) but only to the extent that it does not interfere in the management of its participations. The SPF can thus not be involved in the management of its participations (for instance the SPF cannot have a board seat) but could only exercise its shareholder rights (e.g., voting rights).

The SPF is exempt from both corporate income tax and municipal business tax as well as from net wealth tax. However, the SPF is subject to a subscription tax (taxe d'abonnement) at an annual rate of 0.25%, with a minimum amount of €100 and up to a maximum annual amount of €125,000. The subscription tax is levied on each January 1st (or at the date of its incorporation) on the amount of the paid-up capital increased by the amount of share premium and the amount of debts exceeding eight times the paid-up capital and share premium.

Dividend distributions from the SPF to its shareholders are exempt from Luxembourg withholding tax. Moreover, capital gains realized upon the sale or liquidation of a SPF are not taxable in the hands of nonresident shareholders. There is no withholding tax upon distribution of liquidation proceeds.

4.6 Wills/intestacy/family charters

Anyone can decide on the attribution of his wealth upon his death by means of a will. Care should be taken to respect the forced heirship rules: Luxembourg civil law indeed protects the rights of the descendants of a deceased. In this respect, children are entitled to statutory shares of the estate. However, third parties may benefit from the gifts or legacies (i.e., the disposable portion) provided that the statutory compulsory shares are not denuded.

<table>
<thead>
<tr>
<th>Family situation as of the death</th>
<th>Statutory share</th>
<th>Disposable portion</th>
</tr>
</thead>
<tbody>
<tr>
<td>One child</td>
<td>Half for the child</td>
<td>Half</td>
</tr>
<tr>
<td>Two children</td>
<td>Two-thirds for the two children</td>
<td>One-third</td>
</tr>
<tr>
<td>Three children or more</td>
<td>Three-quarters for the children</td>
<td>A quarter</td>
</tr>
</tbody>
</table>
4.6 Wills/intestacy/family charters

If the spouses have joint children or descendants, they are allowed to make mutual donations (either through a marriage contract or during the marriage) of:

- The full ownership of the disposable portion and the usufruct of the balance of the estate

Or

- The usufruct of the total estate

<table>
<thead>
<tr>
<th>Number of children</th>
<th>Statutory share</th>
<th>Surviving spouse</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Half in bare ownership</td>
<td>Half in full ownership and half in usufruct</td>
</tr>
<tr>
<td>2</td>
<td>Two-thirds in bare ownership</td>
<td>One-third in full ownership and two-thirds in usufruct</td>
</tr>
<tr>
<td>3 and more</td>
<td>Three-quarters in bare ownership</td>
<td>One-quarter in full ownership and three-quarters in usufruct</td>
</tr>
</tbody>
</table>

4.7 Passing on a business

Passing on a business during lifetime or on death is subject to applicable gift tax/inheritance tax at normal rates, which vary according to the relationship between the transferor and the beneficiary and the amount at stake. There are no preferred tax rates applicable to the transfer of a family business.

As regards direct taxes, the Luxembourg law provides for a tax neutral transfer of assets to heirs, meaning that the various assets transferred on death are valued at book value. This measure certainly eases the transfer of businesses if heirs choose to continue the business. The same applies as regards the transfer of shares of a corporation operating the business (see Section 4.2). It also provides for full deductibility of interest expenses financing a balancing payment to be paid by a co-heir in the frame of a transmission by inheritance of a collective commercial undertaking.

4.8 Private equity

Specific legislation/tax treatment of income derived from private equity (PE) activity

The Law dated 12 July 2013 on Alternative Investment Fund Managers (AIFM Law) defines “carried interest” as a share in the profits of the Alternative Investment Fund (AIF) accrued to the AIFM as compensation for the management of the AIF and excluding any share in the profits of the AIF accrued to the AIFM as a return on any investment by the AIFM into the AIF. The Law permits the taxation of carried interest realized by certain physical persons that are employees of the AIF or their management company as speculative income under Luxembourg's Income Tax Law; the applicable rate is one-quarter of the marginal tax rate applicable to the adjusted income (10.9% for 2013).

To benefit from the tax regime, physical persons must not have been Luxembourg tax residents, nor have been subject to tax in Luxembourg on their professional revenues during the five years before the year of implementation of the AIFM Law. The physical persons must furthermore establish their tax domicile in Luxembourg during the year of implementation of the AIFM Law or during the following five years. The favorable tax treatment is limited in time (10 years starting with the year during which the individual persons have started their activity entitling to the aforementioned income).

Equivalent PE ratio

No changes have been made.

Others

No changes have been made.
Section 5: Tax policy environment

5.1 Policy environment relating to family business

There is no tax policy specific to family business, although one can mention the abolishment of net worth tax for individuals as from 1 January 2006 as well as the commitment to keep the tax system stable over the years in key areas of relevance to family businesses, such as capital gains tax and avoidance of double taxation of income, whatever the legal form chosen by the entrepreneur to run his or her business. The Luxembourg Government is conscious of the important contribution of SMEs to the national economy, and therefore supports various initiatives aiming to encourage and to assist family businesses, including:

- The Chamber of Commerce has for example launched, in association with the Luxembourg Government, an initiative called Business Mentoring. The Business Mentoring program should facilitate the start-up of companies and boost their growth, encourage the sharing of experience among business leaders, without a conflict of interest and significantly increase the survival rate of businesses.
- On a yearly basis, the Chamber of Commerce, the Chamber of Trades, the Ministry of the Economy and Foreign Trade and the Ministry of Small and Medium-Sized Businesses organize the business creation, development and takeover days, giving future entrepreneurs the opportunity to meet the key players in one place and to benefit from a broad range of advice on their projects.
- The Chamber of Commerce hosts a specific center, the Espace Entreprises, which is a point of single contact that welcomes businesses and entrepreneurs and informs them about issues relating to the life of a business. It comprises for example a specific platform (business exchange) dedicated to put into contact sellers and acquirers of businesses.
- Finally, a large panel of grants and subsidies are made available to SMEs.

5.2 Specify change in the direction of tax policy in the last three years

None.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners

As mentioned above (see Sections 4.2 and 4.7), assets can be transferred at book value, allowing hence a tax neutral operation. The Income Tax Law also gives family businesses the possibility to build tax-deductible provisions for the payment of indemnities due according to labor law regulations in case of termination of business due to old age, illness, disability or decease of the owner. The annual allocation to this special reserve may not exceed 10% of the gross salaries payable during a business year with a limit of €25,000 per year. The maximum amount of the reserve may not exceed 25% of the total gross salaries payable during a business year nor €62,000. The amount can be doubled, provided that the additional €62,000 is covered by a guarantee.

Furthermore, interest paid on a loan used to finance the acquisition of a corporate business is fully deductible for PIT purposes in the category of income from capital. If the latter category shows a loss (due to such interest deduction), this loss can be used to offset positive amounts derived from other categories of income, provided that the individual holds a participation of at least 10% in the company and that he earns more than 50% of his professional income from an occupation in this company.

5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions

None.

---

14. For example, individuals running a business without legal form, collective undertakings or corporations provided that all or more than 50% of the shares and voting rights are held by an individual running the business and that the latter plays a prominent role in the functioning and the daily management of the company.
**Section 6: Tax administration and enforcement issues**

6.1 Is there a specific unit within your tax administration that deals specifically with:

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>High net worth individuals (HNWIs)</td>
<td>The Luxembourg tax administration comprises 28 offices in charge of the taxation of individuals. The allocation of an individual taxpayer to one specific tax office depends on its domicile; no specific office is in charge of HNWIs.</td>
</tr>
<tr>
<td>SMEs</td>
<td>The Luxembourg tax administration comprises eight offices in charge of the taxation of companies. Two of them are more specifically in charge of large corporate companies. The allocation of a company to one specific tax office depends on its legal form and/or on the municipality of its registered office.</td>
</tr>
<tr>
<td>Family businesses</td>
<td></td>
</tr>
<tr>
<td>Large corporate taxpayers</td>
<td></td>
</tr>
<tr>
<td>Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses</td>
<td>No.</td>
</tr>
</tbody>
</table>

6.2 Specify enforcement focus areas or defined programs that might touch a family business

None.

6.3 Specify tax enforcement focus on any particular industry or profession

None.

6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners

None.

6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

None.

6.6 Are there any specific pre-filing processes that can be leveraged by:

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>HNWIs:</td>
<td>Where there is an uncertainty as regards the tax treatment of a given transaction/factual situation, advanced tax clearance (ATC) can be sought either directly with the tax officer responsible for the tax office of the taxpayer or with the tax directorate. There is no legal procedure foreseen for the filing of ATCs and it is available for all taxpayers (individual and corporate taxpayers); no specific process for HNWIs or family businesses.</td>
</tr>
<tr>
<td>Family businesses:</td>
<td></td>
</tr>
</tbody>
</table>

6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

From a general perspective, tax information exchanges have increased. Referring to the activity report of the direct tax authorities, the latter has handled 33% more information requests, automatic and spontaneous exchange requests and notifications in 2012 as compared to 2011. Since there is no specific office in charge of HNWI, it is not possible to identify if these requests were mainly focused on HNWI.
Country name  | Malaysia
---|---
EY contacts  | Lay Keng Tan
Kuala Lumpur  | + 603 7495 8283
lay-keng.tan@my.ey.com
Christopher Lim
Kuala Lumpur  | + 603 7495 8378
christopher.lim@my.ey.com

Section 1: The accumulative tax burden on family business

2013 tax rates

1.1 Corporate income tax (national and sub-national combined)

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highest marginal rate</td>
<td>The highest marginal rate is 25%. Rate is effective from the year of assessment (2009).</td>
</tr>
</tbody>
</table>

Highest rate for small and medium enterprises (SMEs)/small business

SMEs are defined as a resident company with paid-up capital of MYR2.5 million and below at the beginning of the basis period. SMEs are taxed 20% on first MYR500,000 chargeable income and 25% on subsequent chargeable income. Preferential tax rate of 20% shall not apply to a company if its paid-up capital is more than 50% owned (directly or indirectly) by a related company that has paid-up capital exceeding MYR2.5 million in respect of ordinary shares. Rate is effective from the year of assessment (2009). |
### 1.1 Corporate income tax (national and sub-national combined)

- **Special treatment of SMEs/small business (other reliefs, etc.)**
  
  SMEs are exempted from furnishing an estimate tax payable for two years of assessment after the commencement of operations.

  Treatments are effective from the year of assessment 2010.

  Special allowance of 100% or capital allowance at standard rates is given to small value assets not exceeding MYR1,000 each but not exceeding a total value of MYR10,000.

  However, the maximum limit of MYR10,000 is not applicable to a SME with effect from the year of assessment 2009.

  Pursuant to Income Tax (Exemption) (No changes have been made. 17) Order 1995 PU (A) 213, a SME is exempted from tax up to a maximum of MYR580,000 in respect of the monies received by way of grant from the Industrial Technical Assistance Fund (ITAF) from 1 August 1990.

  Pursuant to Income Tax (Deductions of Interest Payable on Loan to A Small Business) Rules 1981 PU (A) 90, deduction is allowed for any interest payable on a loan to a small business if the person claiming the deduction is able to produce a certificate from an appropriate authority designated to approve any loan to a small business and the interest is allowable under Section 33 of Malaysian Income Tax Act, 1967 (MITA).

  N/A.

---

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

N/A.
### 1.2 Individual income tax

<table>
<thead>
<tr>
<th>Personal allowance</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>The following allowances, perquisites and benefits-in-kind are exempted from tax:</td>
<td>Change in rate in the last three years (up or down). N/A.</td>
</tr>
<tr>
<td>• Petrol card or petrol allowance or travel allowance and toll card for official duties up to MYR6,000 a year</td>
<td></td>
</tr>
<tr>
<td>• Allowance or fees for parking</td>
<td></td>
</tr>
<tr>
<td>• Meal allowance</td>
<td></td>
</tr>
<tr>
<td>• Allowance or subsidies for childcare in respect of children up to MYR2,400 a year</td>
<td></td>
</tr>
<tr>
<td>• Medical benefits (include maternity expenses and traditional medicines such as ayurvedic and acupuncture) or dental benefit</td>
<td></td>
</tr>
<tr>
<td>• Employers’ own goods provided free of charge or at discounted value where the value of the discount does not exceed MYR1,000 a year</td>
<td></td>
</tr>
<tr>
<td>• Employers’ own services provided free or at a discount for the benefit of the employee, spouse or unmarried child</td>
<td></td>
</tr>
<tr>
<td>• Telephone, mobile phone, pager and personal data assistant (PDA)</td>
<td></td>
</tr>
<tr>
<td>• Subscription of broadband, telephone, mobile phone, pager and PDA registered in the name of the employee or employer</td>
<td></td>
</tr>
<tr>
<td>• Perquisite (where in money or otherwise) provided to the employee pursuant to his employment in respect of the following is exempted up to MYR2,000:</td>
<td></td>
</tr>
<tr>
<td>• Past achievement award</td>
<td></td>
</tr>
<tr>
<td>• Service excellence award, innovation award or productivity award</td>
<td></td>
</tr>
<tr>
<td>• Long service award provided that the employee has exercised an employment for more than 10 years with the same employer</td>
<td></td>
</tr>
<tr>
<td>• Leave passage for travel of fares for the employee and members of immediate family:</td>
<td></td>
</tr>
<tr>
<td>• Within Malaysia not exceeding three times in any calendar year (cost of meals and accommodation is exempted for local leave passages)</td>
<td></td>
</tr>
<tr>
<td>• Outside Malaysia not exceeding one passage in any calendar year, is limited to a maximum of MYR3,000 (confined only to the cost of fares for the employee and members of immediate family)</td>
<td></td>
</tr>
<tr>
<td>• Insurance premiums which are obligatory for foreign workers as a replacement to SOCSO contributions</td>
<td></td>
</tr>
</tbody>
</table>
1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Group insurance premium to cover workers in the</td>
</tr>
<tr>
<td></td>
<td>event of an accident</td>
</tr>
<tr>
<td></td>
<td>Interest subsidies for loans up to MYR300,000 in</td>
</tr>
<tr>
<td></td>
<td>respect of housing, motor vehicle and education</td>
</tr>
<tr>
<td></td>
<td>loans; exemption is given on existing loans and</td>
</tr>
<tr>
<td></td>
<td>new loans</td>
</tr>
<tr>
<td></td>
<td>Interest exempted from tax is computed using the</td>
</tr>
<tr>
<td></td>
<td>following formula:</td>
</tr>
<tr>
<td></td>
<td>[ A \times B ]</td>
</tr>
<tr>
<td></td>
<td>[ C ]</td>
</tr>
<tr>
<td></td>
<td>[ A = \text{the difference between the amount of interest to be borne by the employee and the amount of interest payable by the employee in a basis period for a year of assessment} ]</td>
</tr>
<tr>
<td></td>
<td>[ B = \text{the aggregate of balance of principal amount of housing, education or car loan taken by the employee in a basis period for a year of assessment or RM300,000, whichever is lower} ]</td>
</tr>
<tr>
<td></td>
<td>[ C = \text{the total aggregate of principal amount of housing, education or car loan taken by the employee} ]</td>
</tr>
<tr>
<td></td>
<td>Note: The above exemptions are not applicable to</td>
</tr>
<tr>
<td></td>
<td>employees having control over the company, sole</td>
</tr>
<tr>
<td></td>
<td>proprietors or partners of partnership businesses.</td>
</tr>
<tr>
<td></td>
<td>N/A.</td>
</tr>
</tbody>
</table>

| Minimum rate of personal income tax (PIT) | Minimum rate is 0%. | N/A. |
| Highest marginal rate of PIT | The highest marginal rate 26%. | Rate is effective from the year of assessment 2010. |
| Any special surtaxes | N/A. | N/A. |

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

N/A.

1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard rate</td>
<td>Service tax is 6%.</td>
</tr>
<tr>
<td></td>
<td>The sales tax is a 10% standard rate and 5% specific rate for certain classes of petroleum.</td>
</tr>
<tr>
<td></td>
<td>Prior to 1 January 2011, the service tax rate was 5%.</td>
</tr>
<tr>
<td>Are there any special reliefs or exemptions for a family business?</td>
<td>No.</td>
</tr>
</tbody>
</table>
1.4 Property taxes

- Does a family business receive any relief on property taxes not granted to other types of corporation? Please refer to Section 1.5 below.

1.5 Capital gains tax (CGT)

- 2013 rate – companies N/A.
- 2013 rate – individuals The following real property gains tax rates apply to all persons inclusive of SME with effect from 1 January 2013:
  - 15% for a holding period of up to two years
  - 5% for a holding period exceeding two years until five years
  - 0% for a holding period exceeding five years

The real property gains tax rates on the gains from disposal of real properties and shares in real property companies has been revised to the following rates with effect from 1 January 2014:

<table>
<thead>
<tr>
<th>Date of disposal</th>
<th>Real Property Gains Tax Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Companies</td>
</tr>
<tr>
<td>Within 3 years from date of acquisition</td>
<td>30%</td>
</tr>
<tr>
<td>In the 4th year</td>
<td>20%</td>
</tr>
<tr>
<td>In the 5th year</td>
<td>15%</td>
</tr>
<tr>
<td>In the 6th year and subsequent years</td>
<td>5%</td>
</tr>
</tbody>
</table>

- Reliefs/exemptions

Exemptions available under the Real Property Gains Tax Act, 1976 (RPGT) include the following:

- An individual will be given an exemption equal to MYR10,000 or 10% of the chargeable gain, whichever is greater. Prior to 1 January 2010, the exemption was equal to MYR5,000 or 10% of the chargeable gain, whichever was greater.

- An individual who is a Malaysian citizen or a permanent resident will be given a once-in-a-lifetime exemption on any chargeable gain arising from the disposal of his/her private residence if he/she elects in writing for the exemption to apply to that private residence.

- Transactions in which the disposal price is deemed equal to acquisition price (i.e. “no gain no loss” transactions) – per Para 3 Sch 2 of the RPGT Act 1976:
  - Devolution of a deceased person’s assets to his trustee or legatee.
  - Transfer between spouses.
  - Transfer of assets owned by an individual, his wife or by an individual jointly with his wife or with a connected person to a company controlled by the individual, his wife or by an individual jointly with his wife or with a connected person, for a consideration consisting substantially (more than 75%) of shares in that company.
1.5 Capital gains tax (CGT)

- Reliefs/exemptions
- Transfer between an individual and a nominee who has no vested interest in the assets.
- Transfer by way of security in or over an asset.
- Gifts to the government, local authority or charity exempt from income tax.
- Disposal due to compulsory acquisition.
- Disposal of chargeable assets pursuant to an approved financing scheme which is in accordance with Syariah principles, where such disposal will not be required for conventional financing scheme.
- Gifts – per Sch 2 Para 12 of the RPGT Act 1976: gifts between husband and wife, parent and child or grandparent and grandchild are deemed to be “no gain no loss” transactions.

1.6 Tax on dividends from ordinary shares

A. For the business: Dividends from ordinary shares are not taxable as single-tier dividends received by/distributed to the owner of the business are not taxable. In addition, there is no requirement to withhold tax for payment of dividend for ordinary shares.

B. For the owners of the business: With effect from the year of assessment 2008, single-tier dividends received by/distributed to the owner of the business are not taxable.

1.7 Tax on dividends from preferential shares

A. For the business: See Section 1.6.

B. For the owners of the business: See Section 1.6.

1.8 Tax treatment of interest on a loan from the shareholders

A. For the business: Pursuant to Section 33 (1) (a) of the MITA, interest payable upon any money borrowed by the person employed in that period in the production of gross income from that source or laid out on assets used or held in that period for the production of gross income from that source is allowable for a tax deduction.

B. For the owners of the business: Interest income is taxable under Section 4 (c) of the MITA in the year of assessment when it has been received.

1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

A. For the business: Pursuant to Section 33 (1) (b) of the MITA, rent payable for that period by that person in respect of any land or building or part thereof occupied by him or her in that period for the purpose of producing gross income from that source is allowed for a tax deduction.

B. For the owners of the business: Rental income is taxable under Section 4 (d) of the MITA in the year of assessment when it has been received.

1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

A. For the business: Pursuant to Section 33 (1) of the MITA, expenses wholly and exclusively incurred during that period by that person in the production of gross income from that source are allowable for tax deductions.

B. For the owners of the business: Royalty income is taxable under Section 4 (d) of the MITA in the year of assessment when it has been received.

1.11 Tax treatment of interest paid on bank debt by a family business

Same as Section 1.8A.

1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

Same as Section 1.10A.
### 1.13 Tax treatment of rental payments made by a family business to third parties for real estate

Pursuant to Section 33(1) of the MITA, expenses wholly and exclusively incurred during that period by that person in the production of gross income from that source are allowable for tax deductions.

### 1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group

Same as Section 1.8A. However, the interest payments should be at arm's length in order to secure a tax deduction.

### 1.15 Does your country provide for a deemed deduction on equity and/or debt?

N/A.

### 1.16 Is the retention of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

N/A.

### 1.17 Wealth tax:

- **2013 characteristics and rate**
  
  N/A.

- **Is there an exemption for shares owned by a family that owns a business?**
  
  N/A.

### 1.18 Inheritance tax/estate tax

N/A

### 1.19 Gift tax

N/A

### 1.20 Real estate transfer tax

Please refer to Section 1.5.

### 1.21 Endowment tax

N/A

### 1.22 Social security

- **National/social insurance contributions on employee income**
  
  Pertubuhan Keselamatan Sosial (PERKESO)/Social Security Malaysia (SOCSO).

- **Health/medical/dental care**
  
  N/A.

- **Retirement plans/pensions for employees**
  
  Kumpulan Wang Simpanan Malaysia (KWSP)/Employees' Provident Fund (EPF).

### 1.23 Pensions and tax-efficient savings

- **Tax relief on pension contributions – standard**
  
  A maximum of MYR6,000 tax relief for life insurance premiums/approved fund contributions/approved pension fund contributions made by the tax payer and spouse under combined assessment.

- **Tax relief on pension contributions – any specific relief to family business?**
  
  N/A.
1.24 Taxation of flow-through entities/partnerships/trust funds

Partnership (excluding a Limited Liability Partnership (LLP))

Partnership is not a taxable person. The partnership income will be subject to personal income tax after it is distributed to the respective partner.

Trust funds

The distribution to the beneficiary is allowable as a tax deduction if:

a. The trust body of a trust is resident for the basis year for a year of assessment.

b. A beneficiary who has a share of the total income of the trust body for that year of assessment is resident for the basis year for that year of assessment.

1.25 Exemptions in the law that specifically relate to family businesses

No changes have been made.

1.26 Are there any business incentives in your country that are specific to

• SMEs N/A.

• Family businesses N/A.

1.27 Tax treatment of losses made by a family business

• Are there any available loss reliefs that are specific to family businesses? No.

• Are there any available loss reliefs that are specific to SMEs? No.

Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

• Calculation 1: The business makes a profit before tax of MYR2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

<table>
<thead>
<tr>
<th></th>
<th>Sole proprietor</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statutory income from business</td>
<td>2,000,000</td>
<td>2,000,000</td>
</tr>
<tr>
<td>Less: Tax reliefs</td>
<td>(12,000)</td>
<td></td>
</tr>
<tr>
<td>Chargeable income</td>
<td>1,988,000</td>
<td>2,000,000</td>
</tr>
<tr>
<td>Tax on the first RM100,000</td>
<td>13,850.00</td>
<td></td>
</tr>
<tr>
<td>Tax on the balance RM1,888,000 @ 26%</td>
<td>490,880.00</td>
<td></td>
</tr>
<tr>
<td>Total income tax payable</td>
<td>504,730.00</td>
<td></td>
</tr>
<tr>
<td>Tax on the first RM500,000 @ 20%</td>
<td></td>
<td>100,000.00</td>
</tr>
<tr>
<td>Tax on the balance RM1,500,000 @ 25%</td>
<td></td>
<td>375,000.00</td>
</tr>
<tr>
<td>Total income tax payable</td>
<td></td>
<td>475,000.00</td>
</tr>
<tr>
<td>Amount available for distribution to shareholders</td>
<td></td>
<td>1,525,000.00</td>
</tr>
<tr>
<td>Effective tax rate</td>
<td>25.24%</td>
<td>23.75%</td>
</tr>
</tbody>
</table>
• **Calculation 2:** The business makes a profit before tax of MYR500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

<table>
<thead>
<tr>
<th></th>
<th>Sole proprietor</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statutory income from business</td>
<td>500,000</td>
<td>500,000</td>
</tr>
<tr>
<td>Less: Tax reliefs</td>
<td>(12,000)</td>
<td></td>
</tr>
<tr>
<td>Chargeable income</td>
<td>488,000</td>
<td>500,000</td>
</tr>
<tr>
<td>Tax on the first RM100,000</td>
<td>13,850.00</td>
<td></td>
</tr>
<tr>
<td>Tax on the balance RM388,000 @ 26%</td>
<td>100,880.00</td>
<td></td>
</tr>
<tr>
<td>Total income tax payable</td>
<td>114,730.00</td>
<td>100,000.00</td>
</tr>
<tr>
<td>Total income tax payable @ 20%</td>
<td></td>
<td>100,000.00</td>
</tr>
<tr>
<td>Amount available for distribution to shareholders</td>
<td>400,000.00</td>
<td></td>
</tr>
<tr>
<td>Effective tax rate</td>
<td>22.95%</td>
<td>20.00%</td>
</tr>
</tbody>
</table>

The above calculations are prepared on the following assumptions:

a. The Company is a resident company that has a paid-up ordinary capital of RM2,500,000 or less and is taxed at a rate of 20% on the first RM500,000 of chargeable income. The balance is taxed at 25%. These rates do not apply to petroleum companies, which are taxed at a rate of 38%.

b. The Company does not have other adjustments, income and expenses.

c. The sole proprietor is a tax resident and will only claim self and spouse relief. He derives no other income. The effective tax rates remain the same in the last three years.

**Section 3: Tax treatment of family businesses and other issues**

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

N/A.

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

Capital gain tax is not applicable in Malaysia.

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

N/A.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

A. Fully publicly listed? No difference (except for Real Property Company). See Section 3.2.

B. Partly publicly listed? N/A.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

N/A.
## Section 4: Succession planning

<table>
<thead>
<tr>
<th>4.1</th>
<th>Life insurance</th>
<th>None.</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.2</td>
<td>Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?</td>
<td>N/A.</td>
</tr>
<tr>
<td>4.3</td>
<td>Estate tax</td>
<td>N/A.</td>
</tr>
<tr>
<td>4.4</td>
<td>Pension plans</td>
<td>N/A.</td>
</tr>
<tr>
<td>4.5</td>
<td>Trusts, foundations and private purpose funds</td>
<td>N/A.</td>
</tr>
<tr>
<td>4.6</td>
<td>Wills/intestacy/family charters</td>
<td>N/A.</td>
</tr>
<tr>
<td>4.7</td>
<td>Passing on a business</td>
<td>N/A.</td>
</tr>
<tr>
<td>4.8</td>
<td>Private equity</td>
<td>N/A.</td>
</tr>
<tr>
<td></td>
<td>Specific legislation/tax treatment of income derived from private equity (PE) activity</td>
<td>N/A.</td>
</tr>
<tr>
<td></td>
<td>Equivalent PE ratio</td>
<td>N/A.</td>
</tr>
<tr>
<td></td>
<td>Others</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

## Section 5: Tax policy environment

<table>
<thead>
<tr>
<th>5.1</th>
<th>Policy environment relating to family business</th>
<th>N/A.</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2</td>
<td>Specify change in the direction of tax policy in the last three years</td>
<td>N/A.</td>
</tr>
<tr>
<td>5.3</td>
<td>Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners</td>
<td>N/A.</td>
</tr>
<tr>
<td>5.4</td>
<td>Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions</td>
<td>N/A.</td>
</tr>
</tbody>
</table>
Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with:

<table>
<thead>
<tr>
<th></th>
<th>HNWIs</th>
</tr>
</thead>
<tbody>
<tr>
<td>• High net worth individuals (HNWIs)</td>
<td>HNWIs are normally handled by the Very Important Person (VIP) unit of the tax department.</td>
</tr>
<tr>
<td>• SMEs</td>
<td>No.</td>
</tr>
<tr>
<td>• Family businesses</td>
<td>No.</td>
</tr>
<tr>
<td>• Large corporate taxpayers</td>
<td>Corporate tax unit.</td>
</tr>
<tr>
<td>• Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

6.2 Specify enforcement focus areas or defined programs that might touch a family business
None.

6.3 Specify tax enforcement focus on any particular industry or profession
None.

Largest family businesses in MENA
The top 10 generate approximately US$79b to MENA's US$1.5t GDP in 2012 and employ nearly 355,000 people. The largest family business by revenue is Saudi Binladin Group, and the largest by number of employees is Mohammed Abdulmohsin Al Kharafi & Sons Co.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Saudi Binladin Group</td>
<td>30,000</td>
<td>85,000</td>
<td>No</td>
<td>Binladin</td>
<td>Saudi Arabia</td>
</tr>
<tr>
<td>2</td>
<td>Saudi Oger Ltd.</td>
<td>8,000</td>
<td>5,000</td>
<td>No</td>
<td>Hariri</td>
<td>Saudi Arabia</td>
</tr>
<tr>
<td>3</td>
<td>Savola Group Company</td>
<td>7,031</td>
<td>16,267</td>
<td>Yes</td>
<td>Al Issa, Al Muhaideb, Al Subeaie</td>
<td>Yes</td>
</tr>
<tr>
<td>4</td>
<td>Orascom Group</td>
<td>6,360</td>
<td>20,000</td>
<td>Yes</td>
<td>Sawiris</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Source: EY research, based on Dun & Bradstreet, dnb.com. Note: We define companies as family businesses when they are either public companies with a minimum shareholding or voting power of the owner family of 32% or private companies with a minimum shareholding of the owner family of 50%.
6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners

N/A.

6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

None.

6.6 Are there any specific pre-filing processes that can be leveraged by:

- HNWIs: No.
- Family businesses: No.

6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

No.
Section 1: The accumulative tax burden on family business

2013 tax rates

<table>
<thead>
<tr>
<th>1.1 Corporate income tax (national and sub-national combined)</th>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Highest marginal rate</td>
<td>The standard rate of income tax is 35%.</td>
<td>No changes.</td>
</tr>
<tr>
<td>• Highest rate for small and medium enterprises (SMEs)/small business</td>
<td>The highest rate is 35%.</td>
<td>No changes.</td>
</tr>
<tr>
<td>• Special treatment of SMEs/small business (other reliefs, etc.)</td>
<td>Grants are available for the creation and development of innovative start-ups and the development of forward-looking small and medium-sized businesses carrying on or intending to carry out an activity that may contribute to the economic development of Malta, provided that certain conditions are fulfilled. Furthermore, businesses engaged in specified activities can benefit from tax credits regarding capital expenditure, job creation or reinvestment of profits derived from trade or business in an approved project.</td>
<td>No changes.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

N/A.
## 1.2 Individual income tax

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Personal allowance</td>
<td>Individuals are taxed at the progressive rates. Individuals can benefit from the tax-free brackets (see rates below).</td>
<td>In the 2013 Malta Budget there was a reduction of the top income tax rate from 35% to 32% for individuals earning between €20,000 and €60,000 a year. The 32% has been further reduced to 29% in the 2014 Malta Budget.</td>
</tr>
<tr>
<td>• Minimum rate of personal income tax (PIT)</td>
<td>The minimum PIT is 0%.</td>
<td>N/A.</td>
</tr>
<tr>
<td>• Highest marginal rate of PIT</td>
<td>The highest rate for PIT is 35%.</td>
<td>N/A.</td>
</tr>
<tr>
<td>• Any special surtaxes</td>
<td>N/A.</td>
<td>N/A.</td>
</tr>
</tbody>
</table>
### 1.2 Individual income tax

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

The following table illustrates the progressive tax rates for residents for year of assessment 2014.

<table>
<thead>
<tr>
<th>Tax rates</th>
<th>Chargeable income (€)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>From</td>
</tr>
<tr>
<td>Single rates</td>
<td></td>
</tr>
<tr>
<td></td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>8,501</td>
</tr>
<tr>
<td></td>
<td>14,501</td>
</tr>
<tr>
<td></td>
<td>19,501</td>
</tr>
<tr>
<td></td>
<td>60,001</td>
</tr>
<tr>
<td>Married rates</td>
<td></td>
</tr>
<tr>
<td></td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>11,901</td>
</tr>
<tr>
<td></td>
<td>21,201</td>
</tr>
<tr>
<td></td>
<td>28,701</td>
</tr>
<tr>
<td></td>
<td>60,001</td>
</tr>
<tr>
<td>Parent rates</td>
<td></td>
</tr>
<tr>
<td></td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>9,801</td>
</tr>
<tr>
<td></td>
<td>15,801</td>
</tr>
<tr>
<td></td>
<td>21,201</td>
</tr>
<tr>
<td></td>
<td>60,001</td>
</tr>
</tbody>
</table>

Proposed amendments to the Income Tax Act

The Budget Measures Implementation Act, 2014 proposes that from year of assessment (2014) the following individuals can also use resident rates:

- An individual (who is a national of a European Union or European Economic Area Member State) who proves to the satisfaction of the Commissioner for Revenue that 90% of the individual’s worldwide income is derived from Malta is eligible for the application of the resident single income tax rates.

- An individual (who is a national of a European Union or European Economic Area Member State) who proves to the satisfaction of the Commissioner for Revenue that 90% of the couple’s worldwide income is derived from Malta and who satisfies the other requirements is eligible for the application of the resident married rates even if his/her spouse is not a resident in Malta.
### 1.5 Capital gains tax (CGT)

- **2013 rate – companies**
  - The CGT rate is 35%, but in 2006, property transfer tax on immovable property situated in Malta was introduced. This tax is a final tax that is imposed at a rate of 12% on the value of the consideration for transfer of immovable property and rights over immovable property. In general, property transfer tax is imposed instead of the income tax on capital gains. In certain circumstances, taxpayers may elect to be taxed on transfers of immovable property under the normal income tax measures instead of under the 12% tax regime.

- **2013 rate – individuals**
  - Same as above.

- **Reliefs/exemptions**
  1. If the immovable property is donated to spouses, ascendants or descendants no tax will be imposed.
  2. The transfer of property that has been owned and occupied by the transferor as his/her own residence for a period of three years and disposed within 12 months will be exempt from tax.
  3. Where an asset is transferred from one company to another company and such companies are deemed to be a group of companies it shall be deemed that no loss or gain has arisen from such transfer.
  4. Where a transfer involves the exchange of shares on restructuring of holding upon mergers, demergers, divisions, amalgamation and reorganization, it shall be deemed that no loss or gain has arisen from such transfer.

### 1.6 Tax on dividends from ordinary shares

Dividends received in Malta are taxed at the rate of 35%; however, if there is a distribution of these dividends, the shareholder will receive a refund on the tax paid by the company in Malta. Furthermore, Malta does not effectively impose any withholding tax on the distribution of taxed profits.

### 1.7 Tax on dividends from preferential shares

See Section 1.6.

### 1.8 Tax treatment of interest on a loan from the shareholders

Interest received in Malta is taxed at the rate of 35%.
### 1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

Rental income on real estate received in Malta is taxed at 35%.

### 1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

Royalties, advances and similar income derived from patents in respect of inventions, trademarks and copyrights are eligible to a tax exemption. The exemption applies to self-developed intellectual property and acquired intellectual property, but with trademarks and copyrights it has not been implemented yet.

### 1.11 Tax treatment of interest paid on bank debt by a family business

The general tax regime applies. Any sums payable by way of interest upon any money borrowed wholly and exclusively which was exclusively incurred in the production of the income can be deducted from the total income of that business.

### 1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

Whenever the tax exemption on income from intellectual property is either waived or is inapplicable, income from intellectual property may be relieved by special tax credits and deductions. Deductions are allowed in respect of expenditure on intellectual property rights. The Income Tax Act (ITA) prescribes that any expenditure of a capital nature on intellectual property rights incurred by a person engaged in a trade, business, profession or vocation and proved to the satisfaction of the tax commissioner to have been incurred for the use and benefit of the trade, business, profession or vocation is allowed as a deduction for tax purposes.

### 1.13 Tax treatment of rental payments made by a family business to third parties for real estate

Any rent paid for the purpose of acquiring the income can be deducted from the total income.

### 1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group

In both scenarios, if the interest payments are made upon any money borrowed that was exclusively incurred in the production of the income, it can be deducted from the total income of that business.

### 1.15 Does your country provide for a deemed deduction on equity and/or debt?

No.

### 1.16 Is the retention of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

No.

### 1.17 Wealth tax

<table>
<thead>
<tr>
<th>Characteristics and rate</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013 characteristics and rate</td>
<td>There is no wealth tax in Malta.</td>
</tr>
</tbody>
</table>

### 1.18 Inheritance tax/estate tax

Maltese law does not envisage an inheritance tax, but duty on documents and transfers applies to transmission *causa mortis* of certain assets.

### 1.19 Gift tax

Maltese law does not contemplate gift tax, but the donation of certain assets attracts income tax on capital gains and duty on documents and transfers. Exemptions with respect to donations to relatives are envisaged.
1.20 Real estate transfer tax

Transfers of immovable property situated in Malta are subject to property transfer tax. Generally, property transfer tax is charged at 12% of transfer value but there are cases when the 12% tax is levied by reference to the excess, if any, of the transfer value over its acquisition.

In certain cases, transferee can elect to opt out of property transfer tax and pay income tax on capital gains on transfers of immovable property done by persons who are resident and domiciled in Malta. Cases when a person may opt out of property transfer tax include cases involving property situated in special designated areas, transfers by nonresidents and transfer of property owned less than 12 years.

1.21 Endowment tax

No endowment tax is levied in Malta.

1.22 Social security

- National/social insurance contributions on employee income

  Social security is provided by a system of social insurance and a system of social assistance regulated by the Social Security Act.

  **Contributions:** All employed and self-employed persons must pay social security contributions. Employers make social security contributions at a rate of 10% of the basic wage paid to their employees, subject to a minimum amount of €16.57 and a maximum amount of €34.25 for persons born up to 31 December 1961 or €41.21 for persons born from 1 January 1962 onward, per week per employee. Employees make a 10% contribution, subject to the same minimum. Employees aged 18 years and older earning less than €165.68 per week may elect to pay 10% of their weekly gross week. However, if the employee makes such election, he or she is entitled to pro rata contributory benefits.

  Employers deduct the social security contributions before paying the net salary to the employee. The minimum amount for persons under 18 years old is €6.62 per week. The employer must remit the amount due to the Inland Revenue Department by the end of the following month in which the wages or salaries are paid.

- Health/medical/dental care

  Maltese citizens receive free services and financial aid benefits for unemployment, illness, work injury, disability, old age, early retirement, marriage, maternity, children, widowhood and medical care. All employees who pay a minimum amount of social security contributions are entitled to a basic pension on retirement.

- Retirement plans/pensions for employees

  Employer’s offers retirement plans/pensions for employees in Malta through a private insurance agency.

1.23 Pensions and tax-efficient savings

- Tax relief on pension contributions – standard

  The income of any retirement fund shall be exempt from tax.

- Tax relief on pension contributions – any specific relief to family business?

  No.

1.24 Taxation of flow-through entities/partnerships/trust funds

Certain partnerships and trusts are treated as flow-through entities.

1.25 Exemptions in the law that specifically relate to family businesses

None.
1.26 Are there any business incentives in your country that are specific to

- SMEs

See Section 1. Furthermore, fiscal incentives and cash grants are offered to stimulate innovative enterprises to engage in research and development. Also, companies engaged in specified activities can benefit from tax credit regarding capital expenditure, job creation or reinvestment of profits derived from trade or business in an approved project.

- Family businesses

Same as above.

1.27 Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses?

No changes have been made. Tax losses incurred in a trade or business may be carried forward indefinitely to offset all future income. Unabsorbed tax depreciation may also be carried forward indefinitely, but may offset only income derived from the same source. A carry-back of losses is not allowed.

- Are there any available loss reliefs that are specific to SMEs?

No.

Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- Calculation 1:

Example 1 – Company claiming unilateral relief/double tax treaty relief

<table>
<thead>
<tr>
<th>Company</th>
<th>€</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross foreign income</td>
<td>1,000</td>
</tr>
<tr>
<td>Tax thereon @ 35%</td>
<td>-350</td>
</tr>
<tr>
<td>Double tax relief</td>
<td>300</td>
</tr>
<tr>
<td>Tax due</td>
<td>50</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Shareholder</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross dividend</td>
<td>1,000</td>
</tr>
<tr>
<td>Tax thereon @ 35%</td>
<td>350</td>
</tr>
<tr>
<td>Full imputation system credit</td>
<td>-350</td>
</tr>
<tr>
<td>Tax due</td>
<td>-</td>
</tr>
</tbody>
</table>

Shareholder receives net dividend of €650 and a tax refund of 2/3 of the tax suffered gross of any double tax relief (restricted though to the actual tax paid in Malta, i.e., two-thirds of €350 restricted to 50).
Calculation 2:

Example 2 – company claiming the Flat Rate Foreign Tax Credit (FRFTC)

<table>
<thead>
<tr>
<th>Company</th>
<th>€</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net foreign income</td>
<td>800</td>
</tr>
<tr>
<td>FRFTC @ 25%</td>
<td>200</td>
</tr>
<tr>
<td></td>
<td>1000</td>
</tr>
<tr>
<td>Tax thereon @ 35%</td>
<td>350</td>
</tr>
<tr>
<td>FRFTC credit</td>
<td>-200</td>
</tr>
<tr>
<td>Tax due</td>
<td>150</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Shareholder</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross dividend</td>
</tr>
<tr>
<td>Tax thereon @ 35%</td>
</tr>
<tr>
<td>Full imputation system credit</td>
</tr>
<tr>
<td>Tax due</td>
</tr>
</tbody>
</table>

Shareholder receives net dividend of €650 and a tax refund of €100 (two-thirds of €150).

Annex 1

The Maltese tax system offers significant fiscal opportunities via the refundable tax credit system. Under this system, tax is paid by a company registered in Malta on its profits at the rate of 35%, but when such company distributes its profits to its shareholders (irrespective of whether such shareholders are residents/nonresidents, individuals/bodies of persons) the shareholder is entitled to receive a refund of a substantive part of the tax paid by the distributing company. In addition, Malta retains the full imputation system whereby the tax paid by the company will essentially remain a prepaid tax on behalf the shareholder's tax liability. The amount of the refund depends on the nature of the income derived by the distributing company as explained below.

The Six-Sevenths Refund

A person, who holds 100% of the shares, is in receipt of a dividend paid to him by a company registered in Malta from profits allocated to its Maltese taxed account or its foreign income account not consisting in passive interest or royalties may claim a refund of six-sevenths of the tax paid by the distributing company pertaining to those profits distributed to him/her by way of a dividend.

<table>
<thead>
<tr>
<th>Company registered in Malta</th>
<th>€</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income gross of tax</td>
<td>1,000</td>
</tr>
<tr>
<td>Tax thereon @ 35%</td>
<td>-350</td>
</tr>
<tr>
<td>Net income</td>
<td>650</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Shareholder</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross dividend</td>
</tr>
<tr>
<td>Tax thereon @ 35%</td>
</tr>
<tr>
<td>Full imputation system credit</td>
</tr>
<tr>
<td>Tax due</td>
</tr>
</tbody>
</table>

Shareholder receives net dividend of €650 and a tax refund of €300 (6/7 of €350). The effective tax rate is 5%.
Malta

Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

There are no differences at the present time.

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

There are no differences at the present time.

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

There are no penalties.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

A. Fully publicly listed? N/A.
B. Partly publicly listed? N/A.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

N/A.

The Five-Sevenths Refund

Distributions of profits derived from passive interest or royalties are not subject to the six-sevenths refund but are subject to a refund of five-sevenths of the tax paid by the company.

<table>
<thead>
<tr>
<th>Company registered in Malta</th>
<th>€</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income gross of tax</td>
<td>1,000</td>
</tr>
<tr>
<td>Tax thereon @ 35%</td>
<td>-350</td>
</tr>
<tr>
<td>Net income</td>
<td>650</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Shareholder</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross dividend</td>
</tr>
<tr>
<td>Tax thereon @ 35%</td>
</tr>
<tr>
<td>Full imputation system credit</td>
</tr>
<tr>
<td>Tax due</td>
</tr>
</tbody>
</table>

Shareholder receives net dividend of €650 and a tax refund of €250 (5/7 of €350). The effective tax rate is 10%.

The Two-Thirds Refund

The six-sevenths and five-sevenths refunds apply to distributions made by companies that do not claim any form of double tax relief. Dividends that are paid out from the profits allocated to the foreign income account —which the distributing company has received as a result of some type of double tax relief (such as, double tax treaty relief, unilateral relief or the flat rate foreign tax credit) — are subject to a two-thirds refund.

Refer to Annex 1 above.

Has this effective tax rate increased, decreased or stayed the same in the last three years?

No, the tax rates have not been changed.

Section 3: Tax treatment of family businesses and other issues
Section 4: Succession planning

4.1 Life insurance
A duty of 10% is charged on any policy of life insurance which shall only be chargeable on policies where the policyholder is resident in Malta or in cases where the policy holder is a legal person and where such policy holder is incorporated or otherwise created in Malta.

The income of any retirement fund or retirement scheme that is duly licensed other than income from immovable property situated in Malta is exempt from tax.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?
Duty on documents is due at the rate of 2% on the acquisition of marketable securities. However, if the securities are held by a real estate company, with at least 75% of its total asset value being held in immovable property, the duty increase by 3%.

4.3 Estate tax
Malta does not have estate tax treaties, but it currently has transposed more than 60 double tax treaties.

4.4 Pension plans
A retirement scheme registered in Malta that qualifies as a qualifying recognized overseas pension scheme (QROPS) can offer many advantages for pension plans.

4.5 Trusts, foundations and private purpose funds
Maltese law provides for trusts and foundations.

4.6 Wills/intestacy/family charters
Under Malta’s succession law, a testator who has no ascendants, descendants or spouse may freely dispose of his or her estate. Other testators are required to leave a specified portion to the above-mentioned heirs.

4.7 Passing on a business
Transmission of businesses is not subject to duty.

4.8 Private equity
Specific legislation/tax treatment of income derived from private equity (PE) activity
<table>
<thead>
<tr>
<th></th>
<th>N/A.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equivalent PE ratio</td>
<td>N/A.</td>
</tr>
<tr>
<td>Others</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

Section 5: Tax policy environment

5.1 Policy environment relating to family business
There are currently no legal regulations referring to family businesses, but the Malta Government has announced the promulgation of a Family Business Act.

5.2 Specify change in the direction of tax policy in the last three years
Family Business Law is expected soon.
Section 6: Tax administration and enforcement issues

### 6.1 Is there a specific unit within your tax administration that deals specifically with:

<table>
<thead>
<tr>
<th>Focus</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>High net worth individuals (HNWIs)</td>
<td>Inland Revenue Department</td>
</tr>
<tr>
<td>SMEs</td>
<td>Inland Revenue Department</td>
</tr>
<tr>
<td>Family businesses</td>
<td>Inland Revenue Department</td>
</tr>
<tr>
<td>Large corporate taxpayers</td>
<td>Inland Revenue Department</td>
</tr>
<tr>
<td>Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses</td>
<td>Inland Revenue Department</td>
</tr>
</tbody>
</table>

### 6.2 Specify enforcement focus areas or defined programs that might touch a family business

The rental income is under scrutiny.

### 6.3 Specify tax enforcement focus on any particular industry or profession

N/A.

### 6.4 Specify commonly occurring audit triggers related to HNWI or family business owners

Inland Revenue Department.

### 6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

N/A.

### 6.6 Are there any specific pre-filing processes that can be leveraged by:

- **HNWIs**: International Tax Unit
- **Family businesses**: N/A.

### 6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

N/A.
Section 1: The accumulative tax burden on family business

2013 tax rates

<table>
<thead>
<tr>
<th>1.1 Corporate income tax (national and sub-national combined)</th>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highest marginal rate</td>
<td>The highest marginal rate is 30%.</td>
<td>The highest marginal rate in 2014 is 35%.</td>
</tr>
<tr>
<td>Highest rate for small and medium enterprises (SMEs)/small business</td>
<td>Medium Taxpayer Regime (between MXN2 million and MXN4 million) pay 5%. The small taxpayer regime (up to MXN2 million) is 2%.</td>
<td>For 2014, the previous two tax regimes have been repealed and the taxpayers with entrepreneurial activities will pay 35% when their bi-monthly income is above MXN500,000. Those taxpayers who start operations in 2014 will have a decreasing abatement benefit of 100% of the payable tax during 2014, which will decrease 10% each year.</td>
</tr>
<tr>
<td>Special treatment of SMEs/small business (other reliefs, etc.)</td>
<td>See comment above.</td>
<td>See comment above.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

No changes.
1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Personal allowance</td>
<td>None.</td>
</tr>
</tbody>
</table>

| • Minimum rate of personal income tax (PIT) | The minimum rate is 1.92% on income up to MXN5,952. | For 2014, the rate is 1.92% on income up to MXN5,952. |
| • Highest marginal rate of PIT | The highest marginal rate is 30% on income above MXN392,841.97. | For 2014: 35% on income above MXN3 million. |
| • Any special surtaxes | N/A. | N/A. |

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

Mexican tax authorities have introduced for 2014 an incorporation tax regime, whereby they plan to increase the individual tax base, this new tax regime proposes a decreasing tax abatement of the individual's tax liability. There is no really a measured impact on the expected collections, as the tax authorities do not have clear estimates of the entrepreneurs, and will look for them to apply for this regime.

1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Standard rate</td>
<td>The standard rate is 16%.</td>
</tr>
</tbody>
</table>

| • Are there any special reliefs or exemptions for a family business? | No. | No. |

1.4 Property taxes

| Does a family business receive any relief on property taxes not granted to other types of corporation? | Property taxes are levied state by state (predial). To request an abatement of this tax, negotiations need to be performed locally, and they are granted on a discretionary basis. |
1.5 Capital gains tax (CGT)

- 2013 rate – companies 30%
- 2013 rate – individuals Same marginal rates applicable to individuals.
- Reliefs/exemptions Sales of stock through the Mexican Stock Exchange are tax exempt until 31 December 2013. As of 1 January 2014, a 10% final tax will be payable on net gains received.

1.6 Tax on dividends from ordinary shares

A. For the business: Dividends are taxable at the corporate rate of 30% for 2013. Additional 10% definitive tax will be withheld as of 1 January 2014.

B. For the owners of the business: Dividends are taxable at the individual marginal rates for 2013. Additional 10% definitive tax will be withheld as of 1 January 2014. This additional 10% is definitive tax and cannot be credited on the annual tax return.

1.7 Tax on dividends from preferential shares

A. For the business: N/A.

B. For the owners of the business: N/A.

1.8 Tax treatment of interest on a loan from the shareholders

A. For the business: Interest on a loan is taxable at the corporate rate on the net interest that exceeds inflation.

B. For the owners of the business: Interest on a loan is taxable at the individual marginal rates on the interest that effectively exceeds inflation.

1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

A. For the business: Rental income is taxable at corporate tax rate, on the net gain after claiming deductions to rent the property.

B. For the owners of the business: Rental income is taxable at the individual marginal rates, for the gain after claiming the applicable deductions.

1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

A. For the business: Income generated from the use of intellectual property (IP) is taxable at corporate tax rate.

B. For the owners of the business: Individuals have an exempt portion of MXN472,750 per year when their IP is used for public printing and sharing. Otherwise, it is taxed as an entrepreneurial activity taxed at his/her individual tax rates.

1.11 Tax treatment of interest paid on bank debt by a family business

Interest paid on loans to maintain the operation is deductible on the real portion that exceeds inflation. There is one restriction to deduct the portion of the loan which may have been used to grant loans to the shareholders or employees of the business.

1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

Payments made for the use of IP are considered a deduction when the use of the IP is part of the business.

1.13 Tax treatment of rental payments made by a family business to third parties for real estate

Rental payments are tax deductible only in cases where the real estate is used for business purposes.
### 1.14 Tax treatment of interest payments on A. inter-group loans or B. A financing company within the family-owned business group

See Section 1.11.

### 1.15 Does your country provide for a deemed deduction on equity and/or debt?

No.

### 1.16 Is the retainment of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

Earnings can be retained indefinitely.

### 1.17 Wealth tax

- 2013 characteristics and rate: N/A.
- Is there an exemption for shares owned by a family that owns a business?: N/A.

### 1.18 Inheritance tax/estate tax

N/A.

### 1.19 Gift tax

N/A.

### 1.20 Real estate transfer tax

At the state level, there is a tax levied by each state on the transfer of property that is sold, inherited or gifted. The rate varies from state to state, but the average is 0.06%.

### 1.21 Endowment tax

No changes have been made.

### 1.22 Social security

- National/social insurance contributions on employee income
  
  For social security, the maximum rate of the social security contribution payable by employees is approximately 2.775% of the integrated salary. The contribution is withheld by the employer from wages. The maximum rate of the social security contribution payable by employers can reach 36.15% (including the percentage for job hazard, federal retirement and housing funds). The maximum amount of salary that may be used to compute the social security contribution equals 25 times the minimum wage. These contributions are all subject to caps that are determined based on a multiple of the minimum daily wage in the area in which the work is performed. For 2014, the maximum annual social contributions per employee are approximately MXN61,264.58 for the employer portion and MXN16,744 for the individual employee portion.

- Health/medical/dental care

- Retirement plans/pensions for employees: N/A.
1.23 Pensions and tax-efficient savings

- Tax relief on pension contributions — standard
  For mandatory pension plans the employer’s contributions to a pension plan that is managed by a bank in the employee’s name equal 2% of an employee’s compensation. The maximum amount of salary that may be used to compute the pension plan contribution equals 25 times the minimum wage.

- Tax relief on pension contributions — any specific relief to family business?
  N/A.

1.24 Taxation of flow-through entities/partnerships/trust funds

At the individual level at the marginal rates.

1.25 Exemptions in the law that specifically relate to family businesses

None.

1.26 Are there any business incentives in your country that are specific to

- SMEs  No.
- Family businesses  No.

1.27 Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses?
  In general terms, losses can be carried forward for 10 years until they are depleted.

- Are there any available loss reliefs that are specific to SMEs?
  Same as above.

Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- Calculation 1: The business makes a profit before tax of MXN2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

  Currently, there is no impact to the individual, provided this profit is derived from a company or small business, which has already paid the tax on the taxable profits of the business.

- Calculation 2: The business makes a profit before tax of MXN500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

  Currently, there is no impact to the individual, provided this profit is derived from a company or small business, which has already paid the tax on the taxable profits of the business.

Has this effective tax rate increased, decreased or stayed the same in the last three years?

No.
Mexico

Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

None.

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

None.

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

None.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

A. Fully publicly listed? No.
B. Partly publicly listed? No.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

There is no different income tax treatment.

Section 4: Succession planning

4.1 Life insurance

None.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?

No.

4.3 Estate tax

There is no inheritance tax in Mexico; for income tax purposes, donations among ascendants or descendants in straight line are tax exempt.

4.4 Pension plans

Contributions to personal retirement accounts can be deductible on the annual income tax return of the individual up to an amount of MXN105,000.

4.5 Trusts, foundations and private purpose funds

Trusts are transparent entities, so there is no direct benefit to the taxpayers by using them.

4.6 Wills/intestacy/family charters

Wills are an advisable way to document the transfers of property. Under Mexican income tax rules, transfers of property from ascendants to descendants are tax exempt.
4.8 Private equity

| Specific legislation/tax treatment of income derived from private equity (PE) activity | No. |
| Equivalent PE ratio | N/A. |
| Others | N/A. |

**Section 5: Tax policy environment**

5.1 Policy environment relating to family business

Almost all Mexican companies are family businesses or commenced as family businesses. Some of them have a certain amount of influence with the Mexican Congress or the President. Nevertheless, their penetration is low as Mexican Law does not provide lobbying rules.

5.2 Specify change in the direction of tax policy in the last three years

None.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners

No.

5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions

None.

**Section 6: Tax administration and enforcement issues**

6.1 Is there a specific unit within your tax administration that deals specifically with:

- High net worth individuals (HNWIs) Yes.
- SMEs No.
- Family businesses No.
- Large corporate taxpayers Yes.
- Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses No, not that we are aware of.

6.2 Specify enforcement focus areas or defined programs that might touch a family business

All initiatives are aimed to collect as much tax possible. However, they are not aimed to a specific set of taxpayers.
### 6.3 Specify tax enforcement focus on any particular industry or profession
None.

### 6.4 Are there any specific commonly occurring audit triggers related to HNWIs or family business owners
No, not that we are aware of.

### 6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success
None.

### 6.6 Specify pre-filing processes that can be leveraged by:

| • HNWIs: | All of them should obtain a valid working visa. |
| • Family businesses: | None. |

### 6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

Mexican tax authorities have signed tax treaties and almost all of them include a clause for the exchange of information. This is not specifically aimed to HNWI.
Section 1: The accumulative tax burden on family business

2013 tax rates

<table>
<thead>
<tr>
<th>1.1 Corporate income tax (national and sub-national combined)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td></td>
</tr>
<tr>
<td>Highest marginal rate</td>
<td></td>
</tr>
<tr>
<td>The highest marginal rate is 25%.</td>
<td></td>
</tr>
<tr>
<td>Change in rate in the last three years (up or down).</td>
<td></td>
</tr>
<tr>
<td>The rate was lowered from 25.5% to 25% per 1 January 2012.</td>
<td></td>
</tr>
<tr>
<td>Highest rate for small and medium enterprises (SMEs) / small business</td>
<td></td>
</tr>
<tr>
<td>The highest rate is 20%.</td>
<td></td>
</tr>
<tr>
<td>Special treatment of SMEs/ small business (other reliefs, etc.)</td>
<td>No.</td>
</tr>
<tr>
<td>Special treatment of SMEs/ small business (other reliefs, etc.)</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

There was an introduction of an “innovation box” in 2008. The possibility to lower ETR to approximately 10% to 20% for (very) innovative companies.
### 1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Personal allowance</td>
<td>There are general allowances for every taxpayer (€2,001), an employment allowance for recipients of income from profits of a private business and employment (up to €1,173) and other allowances, such for children, single parents and senior citizens. In general, the personal tax allowance may not exceed tax payable plus national social security contributions, and therefore, applications of the allowance cannot result in a refund.</td>
</tr>
<tr>
<td>• Minimum rate of personal income tax (PIT)</td>
<td>The minimum rate is 37% for those under 65 (including social security contributions). The minimum rate is 19.1% for those 65 and older.</td>
</tr>
<tr>
<td>• Highest marginal rate of PIT</td>
<td>The highest rate is 52%.</td>
</tr>
<tr>
<td>• Any special surtaxes</td>
<td>No.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

1. For entrepreneurs: Rebate of 14% of taxable basis (was 10%).
2. For homeowners: Lowering effective tax refund on interest deduction.
3. For HNWI’s: Beginning in 2010, the income and assets/liabilities of trusts and other so called “Separated Private Funds,” such as foundations, are attributed to the settler of the trust or his/her heirs. Prior to 2010, this was only possible in case a structure that should be qualified as tax transparent.
### 1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Standard rate</td>
<td>The main standard rate is 21%. There is a secondary standard rate of 6% for primary goods.</td>
</tr>
<tr>
<td></td>
<td>The rate changed from 19% to 21% in October 2012.</td>
</tr>
<tr>
<td>• Are there any special reliefs or exemptions for a family business?</td>
<td>No.</td>
</tr>
<tr>
<td></td>
<td>N/A.</td>
</tr>
</tbody>
</table>

### 1.4 Property taxes

- Does a family business receive any relief on property taxes not granted to other types of corporation? No.

### 1.5 Capital gains tax (CGT)

- **2013 rate – companies**
  - The rate is 20% (up to €200,000) or 25%, unless it concerns a capital gain on shares to which the participation exemption applies.

- **2013 rate – individuals**
  - The rate is 52% in cases of private business assets, including private assets that are used in a company in which the high net worth individuals (HNWIs) or his/her family holds an interest.
  - The rate is 25% in case a HNWI qualifies as a so-called “substantial shareholder.” A substantial shareholder is a person who holds at least 5% of (a class of) share capital.
  - The rate is 0% in cases of portfolio investments (interests in companies under 5% of (a class of) share capital, bonds, deposits, portfolio shares, real estate, etc.).

- Reliefs/exemptions None.

### 1.6 Tax on dividends from ordinary shares

**For the business:**
- The rate is 52% in cases of privately held business assets.
- The rate is 25% in cases where a company receives dividend and the participation exemption does not apply. Dividend withholding tax will be credited against the CIT liability.
- The rate is 0% in cases where a company receives dividend and the participation exemption applies; the participation exemption applies in general in case the company holds at least 5% of the nominal paid up capital in a subsidiary; and the dividend withholding tax will not be credited against the CIT liability.

**For the owners of the business:**
- Dividend withholding tax will in general be credited against income tax liability (including the possibility of a refund).
- The rate is 25% in cases where the shareholder is an individual substantial shareholder.
- The rate is 0% in cases where the shareholder is an individual small shareholder.
- The rate is 15% in cases of foreign shareholders who cannot make use of any relief.
1.7 Tax on dividends from preferential shares

A. **For the business:** See Section 1.6.

B. **For the owners of the business:** See Section 1.6.

1.8 Tax treatment of interest on a loan from the shareholders

**For the business:** Interest on a loan is tax deductible, unless any limitation or interest deduction applies (generally abuse of law provisions).

**For the owners of the business:**

- Substantial shareholders in the company: The interest is taxed at maximum rate of 52% PIT with a rebate of 14% of taxable income. Interest must be at arm's length.

- Portfolio shareholders in the company: Interest itself is not taxed. Please note, the fair market value (FMV) of the receivable is subject to an effective tax of 1.2%.

1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

A. **For the business:** The amount of the rent is tax deductible. Rent must be at arm's length.

B. **For the owners of the business:**

- Substantial shareholders in the company: The rental income is taxed at a maximum rate of 52% PIT with a rebate of 14% of taxable income when held in private. When held via a company: rental income is taxed at 25% CIT. Interest must be at arm's length.

- Portfolio shareholders in the company: Interest itself is not taxed. Please note, the FMV of the real estate is subject to an effective tax of 1.2%.

1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

A. **For the business:** Royalty payments tax deductible.

B. **For the owners of the business:**

For substantial shareholders, the royalty income is taxed at maximum rate of 52% PIT with a rebate of 14% of taxable income. Royalty must be at arm's length.

For portfolio shareholders in the company: The royalty itself is not taxed. Please note, the FMV of the intellectual property is subject to an effective tax of 1.2%.

1.11 Tax treatment of interest paid on bank debt by a family business

Interest paid is deductible from the taxable profit, unless any limitation on interest deduction applies (generally abuse of law provisions), which can in general come into play in case any related party has given a bank guarantee or is liable for the bank debt in any other way.

1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

Royalties paid to third parties are deductible from the taxable profit.

1.13 Tax treatment of rental payments made by a family business to third parties for real estate

Rental payments for real estate are deductible from the taxable profit.

1.14 Tax treatment of interest payments on A. inter-group loans or B. A financing company within the family-owned business group

A. Interest paid is deductible from the taxable profit, unless any limitation on rental deduction applies (generally abuse of law provisions).

B. Same as above.
### 1.15 Does your country provide for a deemed deduction on equity and/or debt?

No, except for deemed interest deduction or any other cost which is not paid on or calculated at an arm's-length principle.

### 1.16 Is the retention of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

Earnings can be retained indefinitely. Please note that a substantial shareholder of an investment company (i.e., after sale of the family business) must pay income tax (25% on a deemed capital gain) ultimately at death.

### 1.17 Wealth tax

<table>
<thead>
<tr>
<th>2013 characteristics and rate</th>
<th>Net wealth tax as such was abolished in 2005, but income tax is levied on the value of net wealth at an effective rate of 1.2% each year.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is there an exemption for shares owned by a family that owns a business?</td>
<td>Substantial shareholders do not pay the 1.2% annually on their shareholding.</td>
</tr>
</tbody>
</table>

### 1.18 Inheritance tax/estate tax

Inheritance tax is levied on all assets (located worldwide) of a decedent who was a resident or was deemed to be a resident of the Netherlands at the time of his or her death.

Several exemptions apply, e.g., acquisition by the surviving partner (maximum exemption of €616,880 in 2013) and an exemption for children (€19,535 in 2013). Exemption for family-owned business: 100% up to a value of the family business of €1,028,000 (2013) and 83% on the excess value.

Rates came down from 27% to 20% in 2010. Inheritance tax rates can be 20% (spouse/partner and children) or 40% (non-related persons).

### 1.19 Gift tax

Every act that results in an enrichment of the donee and in an impoverishment of the donor and that was caused by the intention of the donor to enrich the donee.

Rates are 10% to 20% for spouse/partner and children and 30% to 40% for non-related persons.

Several exemptions apply, e.g., gifts from parents to their children (≤€5,141 in 2013) and a general one-off exemption of €26,732 (2013) for a child whose age is between 18 and 40. This exemption may be raised to €100,000 (as per October 2013 until 31 December 2014) if the gift is used to purchase a home or redeem a mortgage on the home. Exemption for family owned business: 100% up to a value of the family business of €1,028,000 (2013) and 83% on the excess value.

Rates came down from 27% to 20% in 2010.

### 1.20 Real estate transfer tax

In principle, real estate transfer tax (rate 6%, for houses 2%) is payable upon any transfer of (deemed) real estate (including economic ownership and so-called real estate companies). Acquisitions by way of inheritance and matrimonial regime are not regarded as transfers and, therefore, are tax exempt.

### 1.21 Endowment tax

Endowment tax is not a part of the Dutch tax system. N/A.
1.22 Social security

- National/social insurance contributions on employee income
  National insurance contributions on taxable income of up to €33,363 (2013) and are not deductible for tax purposes but is part of the personal income tax rate of 37% (see Section 1.2).
  The maximum income assessable for employee insurance schemes is €50,583 (2013) and is retained by the employer. The rate depends on the line of business of the employer.

- Health/medical/dental care
  Every individual who is socially insured in the Netherlands must take out an individual health insurance policy. Every individual aged 18 and older pays a standard contribution averaging €1,222 (2013) for health insurance.

- Retirement plans/pensions for employees
  The rate is 17.90% for the general Old Age Pension Act (this is also part of the personal income tax rate of 37%). Supplemental insurance or “collective” pension plans (based on CAO) are common.

1.23 Pensions and tax-efficient savings

- Tax relief on pension contributions – standard
  In principle, pension entitlement on qualifying pension plans are untaxed, distribution taxed.

- Tax relief on pension contributions – any specific relief to family business?
  No

1.24 Taxation of flow-through entities/partnerships/trust funds

Usually no taxation at the level of the flow-through entities (e.g., stichting administratiekantoor), but there is attribution of income and assets/liabilities to the economic owner.

1.25 Exemptions in the law that specifically relate to family businesses

Other than mentioned in Sections 1.18 and 1.19, a substantial shareholder should take into account an arm’s-length wage (to prevent that labor income is converted into business profits).

1.26 Are there any business incentives in your country that are specific to

- SMEs
  - Several incentives for R&D activities:
    - R&D rebate on wage tax
    - Depreciation incentive on R&D investments
    - Innovation box on R&D profits
    - Wage tax rebate on training activities
    - Wage tax rebate on job creation
    - Depreciation incentives on investments related to environment and energy savings

- Family businesses
  See SMSes and Sections 1.18 and 1.19.
1.27 Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses?
  No, general rules apply.

- Are there any available loss reliefs that are specific to SMEs?
  No, general rules apply.

Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- **Calculation 1**: The business makes a profit before tax of €2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

- **Calculation 2**: The business makes a profit before tax of €500,000 and pays taxes on this profit. The after tax amount is then distributed to the same shareholder in the same tax year.

Has this effective tax rate increased, decreased or stayed the same in the last three years?

The effective tax rate has stayed the same in the last three years.

- **Example 1**
  
  Profit before tax: €2,000,000
  
  20% x €200,000 = €40,000
  
  25% x €1,800,000 = €450,000
  
  Total CIT is €490,000
  
  Profit after tax is €1,510,000
  
  Dividend 15%. Deductible with income tax.
  
  Income tax: 25% = €1,510,000 x 25% = €377,500
  
  Shareholder receives net: €1,132,500
  
  ETR: 43.375%

- **Example 2**

  Profit before tax: €500,000
  
  20% x €200,000 = €40,000
  
  25% x €300,000 = €75,000
  
  Total CIT is €115,000
  
  Profit after tax is €385,000
  
  Dividend 15%. Deductible with income tax.
  
  Income tax: 25% = €385,000 x 25 = €96,250
  
  Shareholder receives net: €288,750
  
  ETR: 42.25%

Please note that in both cases we assume the shareholder has already received an arm's-length wage for his/her activities.
Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

In the case of a family business without a corporate veil, all income is immediately taxed at maximum rate of 52% PIT with a rebate of 14% of the taxable income. Furthermore, under conditions tax allowances can apply to entrepreneurs, i.e., self-employed persons’ allowance (€7,280 in 2013).

In the case of a family business with a corporate veil, in principle all income is immediately taxed at 20% (up to €200,000) or 25% CIT (unless participation exemption applies). Dividend distributions to substantial shareholders are taxed at the moment of distribution at 25% PIT.

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

The rate is 25% for dividends and capital gains.

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

No, unless the payout is qualified as a hidden dividend distribution and it is not declared as such (e.g., in case of the transfer of any asset not at FMV).

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

A. Fully publicly listed? No.
B. Partly publicly listed? No.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

Yes, see Sections 1.5 and 1.6 (i.e., in case of a portfolio shareholder that holds less than 5% of any class of shares).

Section 4: Succession planning

4.1 Life insurance

The receipt of the proceeds of a life insurance is taxable as if it were an acquisition by way of inheritance if the deceased was legally obliged to contribute to the premiums paid for such insurance. This rule does not apply if the premiums are financed out of the private property of the beneficiary.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?

In cases where the shares in the family are transferred to the next generation, the value of those shares is co-determined by stipulations such as a forced sale to family members, the possibility to receive dividends, formulas and/or discounts that have been agreed upon within the family.

4.3 Estate tax

There is the possibility of creating different classes of shares. This may include common and preferred shares (cumulative preference shares). Under certain conditions it is possible to convert common shares into preferred shares tax free. With this converting, the value of the converted shares is frozen. The preferred shares give the right to a fixed dividend each year. The surplus profit is allocated to the common shares, which are for instance hold by the next generation. This way the increase in value of the family business is “transferred” to the next generation without any taxation.

For more details, see Sections 1.18 and 1.19. In case of the transfer of (shares in) a family business, a business succession facility may under certain conditions apply.
4.4 Pension plans

It is possible to build up a pension within the family business. Rules are quite tight compared to the rules for normal employees (who can only build up a pension with an insurance company).

4.5 Trusts, foundations and private purpose funds

The concept of a trust is not recognized in Dutch civil law. Dutch law is familiar with the distinction between real rights and personal rights (e.g., applied in the distinction between legal ownership and economic ownership), but is unfamiliar with a distinction between legal interests in property and beneficial interests in property.

In some civil law jurisdictions, foundations are widely used in family estate planning. The concept of the foundation is known in Dutch civil law; however, the opportunities to use a Dutch foundation for family estate planning are limited. This is caused by the provision in the Dutch Civil Code that the person who establishes the foundation cannot benefit from it, nor can any person who belongs to the board of directors of the foundation. Other persons can only benefit from the foundation if the character of the distribution made by the foundation could be categorized as being of a social character or are acknowledged to have an idealistic tendency.

Starting 1 January 2010, irrevocable discretionary trusts and other entities of functional similarity, such as family foundations (so-called Separated Private Funds (SPF)), are regulated in the areas of income tax, gift and inheritance tax. They are in general treated as being transparent toward the settler or to his or her heirs.

The law contains provisions that give the tax authorities the power to execute SPF assets for a tax debt of the person to whom the property of the SPF is attributed. The code also provides for a possibility for the tax authorities to execute assets that belong to a legal entity in the Netherlands of which the SPF owns more than 5% of its shares.

4.6 Wills/intestacy/family charters

Normally, the succession is regulated by way of a will. Mutual wills are void in the Netherlands. The same applies in regard to agreements on succession. Although the possibility of a holographic will exists, normally wills are made by notarized deed. To the extent the deceased had not disposed of the inheritance, the intestacy rules apply.

For married couples (including registered partners) the following applies: If a couple did not conclude a prenuptial agreement prior to the marriage, the Dutch regime of the universal community of property becomes applicable at the moment the marriage is concluded. Under this regime, all assets and all debts of both the spouses become part of the community of property regime. Both spouses participate equally in the community. Gifts and inheritances also become part of the community regime regardless of whether they were acquired before or during the marriage. An exception applies only to a gift or bequest that was made subject to an exclusion clause. For example, the donor or the deceased explicitly provided that the acquired property will not become a part of the community of property regime of the couple. In the field of matrimonial property, freedom of contract is an important principle. In almost any arrangement the party’s desire is possible. It is also possible to change an existing regime during the marriage. When parties are married under separation or for community of property regime, it is accepted that no gift tax or inheritance tax becomes due. This opens up possibilities for tax planning between spouses. This can be of importance because only a limited exemption applies to inheritance tax, and only the general exemption of €2,057 (2013) applies to gift tax. For the purposes of matrimonial property law, a registered partnership is treated as a marriage.

Other items can be taken into account in case of succession planning via wills, such as generation skipping, making use of all exemptions and mitigate progressive tax rates.

4.7 Passing on a business

If (the share in) a business property is donated by way of gift or acquired by way of bequest, the business succession facility might apply. If all legal requirements for application of the business succession facility are satisfied, the value of the total business up to €1.028 million (2013) is exempt. For the possible remainder value of the business (assets), an exemption of 83% applies. In addition, a maximum of 5% of the value of the business assets is exempt when the company is holding investments that cannot be qualified as business assets. The deceased must have been an entrepreneur during the entire year prior to his or her death, so as to avoid the situation where taxable assets are converted into exempt assets (business property) while death is imminent. For gifts, this period is five years.

After the acquisition of the business property, the acquirer must continue the business for at least five years. When the acquisition concerns shares, he or she must keep the shares for at least five years and the company must not sell the family business in that period.
### 4.8 Private equity

**Specific legislation/tax treatment of income derived from private equity (PE) activity**

A so-called “lucrative interest” is taxed at maximum rate of 52% with an escape to 25% taxation.

One important condition for a share interest to qualify as a lucrative interest is that the interest should be considered a reward for activities performed by the shareholder. However, based on the parliamentary history in relation to the introduction of the lucrative interest regulation, the applicable legislation does not purport to affect the participation of “initial investors” attracting additional financing or in case of a business succession.

**Equivalent PE ratio**

The lucrative interest rules apply to any form of investment of which the value increase is dependent on (management or shareholder) performance criteria.

**Others**

N/A.

### Section 5: Tax policy environment

5.1 **Policy environment relating to family business**

Yes. Both the most important individual family business owners and institutes that represent family businesses have access to and influence with politics/legislators.

5.2 **Specify change in the direction of tax policy in the last three years**

The direction is positive, as the business succession facility has improved.

5.3 **Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners**

No.

5.4 **Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions**

Inheritance tax is argued to impair family businesses against publicly held companies. This was one of the reasons to improve the business succession facility in 2010.
### Section 6: Tax administration and enforcement issues

**6.1 Is there a specific unit within your tax administration that deals specifically with:**

<table>
<thead>
<tr>
<th>Unit</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>High net worth individuals (HNWIs)</td>
<td>No changes have been made.</td>
</tr>
<tr>
<td>SMEs</td>
<td>Yes, but no “dedicated” tax inspector.</td>
</tr>
<tr>
<td>Family businesses</td>
<td>No, they are divided between SMEs and large corporate taxpayers.</td>
</tr>
<tr>
<td>Large corporate taxpayers</td>
<td>Yes, with a dedicated tax inspector (or teams).</td>
</tr>
<tr>
<td>Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses</td>
<td>A HNWI is dealt with by the same tax inspector/teams as the family business.</td>
</tr>
</tbody>
</table>

**6.2 Specify enforcement focus areas or defined programs that might touch a family business**

Several special “knowledge groups” are active. They make impact on all taxpayers, including family business.

**6.3 Specify tax enforcement focus on any particular industry or profession**

The tax administration is organized in dealing with all sectors (e.g., real estate, health care, transport, oil and gas, etc.).

**6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners**

The following can serve as triggers:

- The use of trusts/other family foundations.
- Loans to or from related parties.
- Transfer of assets from a company to its shareholder or vice versa.

**6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success**

Yes, until 1 July 2014, it is possible to disclose non-reported assets voluntarily without a penalty (penalties for voluntarily disclosure are up to 30% and in case of fraud up to 300%). After 1 July 2014, the penalties increase to 60%.

**6.6 Are there any specific pre-filing processes that can be leveraged by:**

- **HNWIs:** Advance tax rulings can be obtained (i.e., upfront discussion on the tax treatment of individual circumstances, resulting in a mutual agreement on an affirmation by the tax inspector).
- **Family businesses:** Advance tax rulings (see above), advance pricing agreements (agreement on transfer pricing issues) or horizontal monitoring (upfront disclosure of all relevant tax items, in exchange for faster answers, more certainty upfront and less audits).

**6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI**

There is no specific increase for HNWI or family business. In general, there is an increase in the use of tax information exchange agreements (TIEAs).
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## New Zealand

<table>
<thead>
<tr>
<th>Country name</th>
<th>New Zealand</th>
</tr>
</thead>
<tbody>
<tr>
<td>EY contacts</td>
<td></td>
</tr>
<tr>
<td>Darren White</td>
<td>Auckland</td>
</tr>
<tr>
<td></td>
<td>+64 9 300 8140</td>
</tr>
<tr>
<td></td>
<td><a href="mailto:darren.white@nz.ey.com">darren.white@nz.ey.com</a></td>
</tr>
<tr>
<td>Craig Riddle</td>
<td>Wellington</td>
</tr>
<tr>
<td></td>
<td>+64 4 495 7368</td>
</tr>
<tr>
<td></td>
<td><a href="mailto:craig.riddle@nz.ey.com">craig.riddle@nz.ey.com</a></td>
</tr>
<tr>
<td>Carey Wood</td>
<td>Christchurch</td>
</tr>
<tr>
<td></td>
<td>+64 3 372 2466</td>
</tr>
<tr>
<td></td>
<td><a href="mailto:carey.wood@nz.ey.com">carey.wood@nz.ey.com</a></td>
</tr>
<tr>
<td>Paige Cuthbert</td>
<td>Christchurch</td>
</tr>
<tr>
<td></td>
<td>+64 3 372 2452</td>
</tr>
<tr>
<td></td>
<td><a href="mailto:paige.cuthbert@nz.ey.com">paige.cuthbert@nz.ey.com</a></td>
</tr>
</tbody>
</table>

### Section 1: The accumulative tax burden on family business

#### 2013 tax rates

1.1 Corporate income tax (national and sub-national combined)

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highest marginal rate</td>
<td>The highest marginal rate is 28%.</td>
<td>Down from 30% with effect from 1 April 2011.</td>
</tr>
<tr>
<td>Highest rate for small and medium enterprises (SMEs)/small business</td>
<td>The highest rate for SMEs/small business is 28%.</td>
<td>Same as above.</td>
</tr>
</tbody>
</table>
1.1 Corporate income tax (national and sub-national combined)

- Special treatment of SMEs/small business (other reliefs, etc.)
- Low value stock rules offering less stringent measurement requirements.
- PAYE filing concessions enabling fewer payments and filings.
- GST ratio method for provisional tax eliminating risk of interest on underpayments.
- Dividends distributed by a qualifying company (an electing company with five or fewer individual shareholders) are not subject to tax.
- Look-through companies (an electing company with five or fewer individual shareholders) are taxed at the shareholder level on all gains and losses.

N/A.

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

There was a reduction of the corporate tax rate from 33% to 30% (1 April 2009) and from 30% to 28% (1 April 2011).

1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal allowance</td>
<td>N/A.</td>
</tr>
<tr>
<td>Minimum rate of personal income tax (PIT)</td>
<td>The minimum is 10.5%.</td>
</tr>
<tr>
<td>Highest marginal rate of PIT</td>
<td>The highest margin rate is 33%.</td>
</tr>
<tr>
<td>Any special surtaxes</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

There was a reduction of personal tax rates from a high of 39% to 33%.
### 1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down). Please offer details.</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Standard rate</td>
<td>The standard rate is 15%.</td>
</tr>
<tr>
<td>• Are there any special reliefs or exemptions for a family business?</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

### 1.4 Property taxes

| Does a family business receive any relief on property taxes not granted to other types of corporation? | N/A. |

### 1.5 Capital gains tax (CGT)

| 2013 rate – companies | N/A. |
| 2013 rate – individuals | N/A. |
| Reliefs/exemptions | N/A. |

### 1.6 Tax on dividends from ordinary shares

A. **For the business**: Withholding tax applied at the rate of 33%, reduced if imputation credits are attached (up to a maximum of 28%).

B. **For the owners of the business**: The rate is 33%.

### 1.7 Tax on dividends from preferential shares

A. **For the business**: Withholding tax applied at the rate of 33%, reduced if imputation credits are attached (up to a maximum of 28%).

B. **For the owners of the business**: The rate is 33%.

### 1.8 Tax treatment of interest on a loan from the shareholders

A. **For the business**: Interest is deductible and *prima facie* subject to withholding tax at source.

B. **For the owners of the business**: Interest is taxable. It is deemed a dividend if interest is above market value.

### 1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

A. **For the business**: Rental income is deductible.

B. **For the owners of the business**: Interest is taxable. It is deemed a dividend if rent is above market value.

### 1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

A. **For the business**: Expenditure for use of or right to use the intellectual property would ordinarily be deductible.

B. **For the owners of the business**: Income generated is taxable. It is deemed a dividend if royalty is above market value.

### 1.11 Tax treatment of interest paid on bank debt by a family business

Interest paid is deductible. Withholding tax or approved issuer levy may apply if the bank is nonresident.

### 1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

Payments made are deductible. Withholding tax or approved issuer levy may apply if the third party is nonresident.
### 1.13 Tax treatment of rental payments made by a family business to third parties for real estate

Rental payments for real estate are deductible.

### 1.14 Tax treatment of interest payments on A. inter-group loans or B. A financing company within the family-owned business group

**Inter-group loans:** Interest is deductible/taxable unless within a consolidated tax group in which case the interest is ignored. Interest on group company loans is not subject to withholding tax.

**Finance group levy:** Same as above.

### 1.15 Does your country provide for a deemed deduction on equity and/or debt?

No for equity and yes for debt. Interest incurred by company on debt is *prima facie* deductible except in specified circumstances.

### 1.16 Is the retention of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

No specific provisions exist but the retention of earnings may trigger the application of general anti-avoidance provisions if owners do not receive a sufficient distribution of earnings from privately owned (service) companies. Inland Revenue Department's (IRD) position is that owners should be expected to receive at least 80% of after tax income except where mitigating circumstances exist.

### 1.17 Wealth tax

- **2013 characteristics and rate**
  - N/A.
- **Is there an exemption for shares owned by a family that owns a business?**
  - N/A.

### 1.18 Inheritance tax/estate tax

N/A.

### 1.19 Gift tax

N/A.

### 1.20 Real estate transfer tax

N/A.

### 1.21 Endowment tax

N/A.

### 1.22 Social security

- **National/social insurance contributions on employee income**
  - There are no separately identifiable social insurance contributions.
- **Health/medical/dental care**
  - A compulsory Accident Compensation Corporation (ACC) Levy is payable by:
    - Employees at 1.7% of earnings, up to a maximum of NZ$113,768.
    - Employers at rates of between 0.03% and 6.46% of earnings, up to a maximum of NZ$116,089.
    - Self-employed at rates of between 0.04% and 8.34% of earnings, up to a maximum of NZ$113,768.
### 1.22 Social security

- Retirement plans/pensions for employees

  KiwiSaver is a voluntary retirement saving scheme that all new employees join, though they may opt out. The minimum employee contribution is 3% of salary or wages and employers have a compulsory obligation to pay a contribution of 3%. The employer contribution is subject to Employer Superannuation Contribution Withholding Tax (ESCT) at source at a rate equivalent to the employee's marginal tax rate.

### 1.23 Pensions and tax-efficient savings

- Tax relief on pension contributions – standard
  - N/A.

- Tax relief on pension contributions – any specific relief to family business?
  - N/A.

### 1.24 Taxation of flow-through entities/partnerships/trust funds

<table>
<thead>
<tr>
<th>Look-through company (LTC)</th>
<th>Requires five or fewer individual shareholders. Income and expenditure are taxed at the individual level.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limited partnership (LP)</td>
<td>Requires one general partner and at least one limited partner. Income and expenditure taxed in hands of partners. Limited partners have restrictions on their ability to be involved in management of the LP.</td>
</tr>
<tr>
<td>Trusts</td>
<td>Income received by a trust and distributed to a beneficiary within the period allowed for filing the respective tax returns (which could be up to 18 months after balance date) is taxed in the hands of the beneficiary at their marginal tax rate.</td>
</tr>
</tbody>
</table>

### 1.25 Exemptions in the law that specifically relate to family businesses

None.

### 1.26 Are there any business incentives in your country that are specific to

- SMEs
  - A discussion paper has recently been released proposing to allow R&D losses of up to NZ$500,000 to be cashed up. In other words, a taxpayer may elect to forfeit R&D tax losses and be paid a cash sum equivalent to the tax effect of the losses.

- Family businesses
  - N/A.

### 1.27 Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses?
  - No.

- Are there any available loss reliefs that are specific to SMEs?
  - No.
Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- **Calculation 1:** The business makes a profit before tax of NZ$2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

- **Calculation 2:** The business makes a profit before tax of NZ$500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

Has this effective tax rate increased, decreased or stayed the same in the last three years?

Effective tax rates and notes on rates are included at the bottom of the sample tax calculations.

<table>
<thead>
<tr>
<th>Sample tax calculation for two typical family businesses</th>
<th>Calculation 1</th>
<th>Calculation 2</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Company</strong></td>
<td>2,000,000</td>
<td>500,000</td>
</tr>
<tr>
<td>Profit before tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Company tax @ 28%</td>
<td>-560,000</td>
<td>-140,000</td>
</tr>
<tr>
<td>Profit after tax</td>
<td>1,440,000</td>
<td>360,000</td>
</tr>
<tr>
<td>Net dividend</td>
<td>-1,340,000</td>
<td>-335,000</td>
</tr>
<tr>
<td>Resident withholding tax</td>
<td>-100,000</td>
<td>-25,000</td>
</tr>
<tr>
<td>Retained earnings</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Effective tax rate</td>
<td>28%</td>
<td>28%</td>
</tr>
</tbody>
</table>

As per Section 1.1, effective tax rate has reduced in the last three years.

<table>
<thead>
<tr>
<th><strong>Shareholder</strong></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Net dividend</td>
<td>1,340,000</td>
<td>335,000</td>
</tr>
<tr>
<td>Imputation credits</td>
<td>560,000</td>
<td>140,000</td>
</tr>
<tr>
<td>Resident withholding tax</td>
<td>100,000</td>
<td>25,000</td>
</tr>
<tr>
<td>Gross dividend</td>
<td>2,000,000</td>
<td>500,000</td>
</tr>
<tr>
<td>Tax @ marginal rates (assuming no other income)</td>
<td>-650,920</td>
<td>-155,920</td>
</tr>
<tr>
<td>Imputation credits</td>
<td>560,000</td>
<td>140,000</td>
</tr>
<tr>
<td>Resident withholding tax</td>
<td>100,000</td>
<td>25,000</td>
</tr>
<tr>
<td>Tax refund due</td>
<td>9,080</td>
<td>9,080</td>
</tr>
<tr>
<td>Effective tax rate</td>
<td>32.55%</td>
<td>31.18%</td>
</tr>
</tbody>
</table>

As per Section 1.2, effective tax rate has reduced in the last three years.

Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

A corporate is taxed at 28% and taxation provisions exist in respect of distributions (i.e., dividends) to shareholders and transactions as between the corporate and shareholders. A corporate will present the ability to transact either an asset sale or share sale on exit, and presents considerations around liquidation on cessation of business.

A non-corporate business would be taxed at the marginal personal tax rate of the operator(s). No distribution considerations would arise but greater scrutiny would likely apply around the private vs. business boundary.
3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

A disposal of shares in a family business would not ordinarily give rise to taxable income, and any capital gain would not be subject to tax.

A dividend to a shareholder would be subject to tax at the shareholders marginal tax rate, noting that the paying company may impute the dividend, such that a tax credit equivalent to 28% of the gross dividend was attached, and the company would also have an obligation to deduct withholding tax up to 33% of the gross dividend (less any amount of imputation credits attached).

A distribution of capital gain amounts on the liquidation of a company would not give rise to a dividend for tax purposes and such distributions would not be taxable.

A distribution from a qualifying company or look-through company would also not give rise to a dividend for tax purposes and hence would not be taxable.

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

Loans advanced to shareholders are subject to interest at prescribed rates otherwise a deemed dividend arises.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

A. Fully publicly listed? A publicly listed company cannot be a qualifying company (QC) or look-through company (LTC).

B. Partly publicly listed? A partly listed company cannot be a QC or LTC.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

Holding less than 100% of shares would not alter the position in itself.

Section 4: Succession planning

4.1 Life insurance

N/A.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?

Shareholders’ agreements are common and, subject to suitable professional advice having been taken, would be expected to deal with such matters as buy/sell arrangements, pre-emptive rights, drag along/tag along provisions and significant events (i.e., acquisition, IPO, etc.).

4.3 Estate tax

N/A.

4.4 Pension plans

Employee contributions to KiwiSaver must be matched by employer contributions up to 3% of gross earnings and will also be matched by a non-taxable government contribution up to NZ$21.43 per annum (pa). New KiwiSaver plans also receive a NZ$1,000 tax-free government contribution.
4.5 Trusts, foundations and private purpose funds

Trusts

Trusts are well-established and recognized under New Zealand law, and trusts are commonly used for asset protection and succession planning purposes. The terms of discretionary trusts can provide considerable flexibility as to income and capital entitlements and distributions while retaining significant influence or control by those who initiate or settle the trust. Assets held on trust for others are generally not regarded as part of the estate of a deceased that may be subject to claims under the Family Protection Act 1955 or the Law Reform (Testamentary Promises) Act 1949. The maximum length of time a trust (other than certain public or charitable trusts) may continue is generally limited by the Perpetuities Act 1964, which allows periods up to 80 years to be specified.

The settlement of property on a trust could previously be subject to gift duty (on the same basis as dispositions of property to any other person or entity could constitute dutiable gifts up to 30 September 2011) and is likely to have New Zealand income tax implications. Distributions to beneficiaries in terms of a trust were not regarded as constituting dutiable gifts, and resettlements may or may not have involved dutiable gifts, depending on the beneficiaries and terms of each of the trusts involved.

There may be income tax and GST implications if trust assets are distributed in-kind. In some circumstances, settlements of property to be held on trust or other property transfers or payments may be challenged and reversed if transferors subsequently become bankrupt or if the transfers are intended to defeat the rights of spouses/partners under the Property (Relationships) Act 1976.

New Zealand’s Law Commission is currently carrying out a comprehensive review of New Zealand’s trust law.

Income tax treatment of trusts

The New Zealand income tax treatment of trusts can be complex, particularly if there are any cross-border elements, whether in terms of assets, settlors, trustees or beneficiaries. Unit trusts are generally treated as companies for income tax purposes, but trusts in a family context are not normally unit trusts.

In very summary terms, New Zealand seeks to tax income derived through trusts (other than unit trusts) if it is sourced in New Zealand, if settlements on the trust have been made directly or indirectly by New Zealand tax residents or if beneficiaries receiving or being credited with distributions are tax resident in New Zealand. The New Zealand income tax treatment of trusts is therefore not necessarily determined by the place where the trust was established or by the residence of the trustees.

Current year taxable income may be taxed in the trustees’ hands (at 33%) or as beneficiary income (at adult beneficiaries' personal tax rates or, generally, at 33% in relation to minor beneficiaries under 16) if the income vests in or is paid to, credited or applied for beneficiaries within prescribed time frames.

For income tax purposes, the concepts of settlor and settlement are defined broadly and may generally include any person who has transferred value or provided services or financial assistance to the trust without receiving equivalent market value consideration in return. In some circumstances, for instance, beneficiaries with trust current account credit balances may arguably be regarded as settlors for New Zealand income tax purposes.

Categorization of trusts under the income tax rules as complying, foreign or non-complying affects the income tax treatment of distributions (other than of current year taxable income) to beneficiaries, with the most advantageous treatment (no further income tax liability) applying to distributions (other than of current year income) from complying trusts. Distributions from foreign trusts may be tax free if they are of realized capital gains or of corpus while the only tax-free distributions from non-complying trusts are those of corpus. The concept of corpus is defined narrowly for New Zealand income tax purposes.

Distributions from foreign and non-complying trusts are generally subject to ordering rules and may result in double taxation without effective relief under double tax treaties. Where foreign trusts have New Zealand resident trustees but no New Zealand settlors, assets, income or beneficiaries, and would therefore not normally need to file New Zealand income tax returns, specific information about the trusts must be maintained in New Zealand and disclosed to the Commissioner of Inland Revenue.

Foundations

Trusts are commonly used to establish foundations for charitable or other nonprofit purposes. Settlements on or donations to such trusts were exempt from gift duty if they were registered under the Charities Act 2005 or otherwise approved as done organizations for income tax purposes.

The income of trusts or other bodies that are registered under the Charities Act 2005 is generally exempt from income tax unless it is derived directly or indirectly from business activities and is used for purposes outside New Zealand or persons who can control the business can also influence or determine benefits or advantages for themselves. The net income of other nonprofit organizations is generally taxable, although they may be entitled to a statutory deduction up to NZ$1,000 in addition to deductions for their normal operating costs.

GST may apply to charitable and other non-profit bodies although there is generally no GST on unconditional gifts or on supplies of donated goods and services.
4.6 Wills/intestacy/family charters

Choice of law to govern succession

New Zealand laws should be regarded as potentially applying in any situation where individuals are domiciled or resident in New Zealand at death or where they have assets situated in New Zealand.

New Zealand law provides rules for the succession to individuals’ net assets if they die without effective wills that meet Wills Act 2007 requirements. Otherwise adult individuals are generally free to leave their assets by will, as they choose, although their estates may be subject to claims by certain affected relatives and others under specific statutory provisions, such as those contained in the:

- Property (Relationships) Act 1976 (claims by spouses, civil union or de facto partners).
- Family Protection Act 1955 (claims for maintenance or support by a limited class of relatives who consider the deceased may not have made adequate provision for them).
- Law Reform (Testamentary Promises) Act 1949 (claims by those who have performed services for the deceased on the basis of promises to reward them by some testamentary provision).

Wills are generally revoked automatically by entry into marriage or civil union unless they are made specifically in contemplation of that event. Dissolutions of marriage or civil unions or formal separation orders generally revoke dispositions in a will to the former spouse or civil union partner.

Application of the New Zealand rules may be affected by the domicile of the deceased person at the date of making any will or at the date of death and on the location and movable or immovable nature of their assets.

Intestacy

The Administration Act 1969 provides rules stipulating who inherits a deceased person’s assets if the person dies intestate, or to the extent there is no valid will dealing with particular assets. The Administration Act 1969’s intestacy rules provide primarily for set proportions and types of assets to pass to spouses, civil union or de facto partners, issue (children or other descendants) and surviving parents, but if there are no individuals in any of those categories, assets may pass to siblings, in default to grandparents, aunts and uncles. If there are no individuals in any of these categories, the assets pass to the Crown, which has discretion to apply them to other dependents or persons for whom the deceased might reasonably have been expected to make provision.

4.7 Passing on a business

New Zealand does not have inheritance tax, estate duty or gift duty. Effective tax planning is still an essential part of any succession plan and various tax concessions exist to facilitate the transfer of ownership between family members.

4.8 Private equity

Specific legislation/tax treatment of income derived from private equity (PE) activity

<table>
<thead>
<tr>
<th>Equivalent PE ratio</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>No.</td>
</tr>
</tbody>
</table>

An interest in a foreign investment fund (FIF) is not an attributing interest in certain circumstances where it relates to a New Zealand company that emigrates to a grey-list country or a grey-list company which holds greater than 50% of the shares in a New Zealand company. The grey-list comprises Australia, Canada, Germany, Japan, UK, US, Norway and Spain.

Section 5: Tax policy environment

5.1 Policy environment relating to family business

Family business is not a regularly discussed topic in itself though the application of general anti-avoidance provisions, in particular with respect to SMEs, has been a topic of debate in recent years. The judicial environment has seen the IRD win a series of cases where anti-avoidance has been asserted in circumstances which historically may not have been expected to give rise to avoidance concerns.
### 5.2 Specify change in the direction of tax policy in the last three years

As above, family businesses are not specifically receiving favorable or unfavorable treatment, but the IRD's approach coupled with the judicial environment in recent years has resulted in family businesses perceiving an unfavorable environment.

### 5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners

N/A.

### 5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions

N/A.

## Section 6: Tax administration and enforcement issues

### 6.1 Is there a specific unit within your tax administration that deals specifically with:

| · High net worth individuals (HNWIs) | Yes. |
| · SMEs | No. |
| · Family businesses | No. |
| · Large corporate taxpayers | Yes. |
| · Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses | Yes. |

### 6.2 Specify enforcement focus areas or defined programs that might touch a family business

IRD has had a focus on the level of shareholder salaries paid by service companies following the decision in Penny & Hooper vs. CIR, resulting in findings of avoidance where insufficient salaries have been paid, typically in conjunction with the retention of profits or the distribution of profits to shareholder trust, which, historically, were taxed at a lower tax rate (i.e., 33% vs. 39%).

### 6.3 Specify tax enforcement focus on any particular industry or profession

Yes, surgeons, doctors and other service professionals.

### 6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners

Yes.

### 6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

IRD invited voluntary disclosure by taxpayers who thought they exhibit factors similar to the position in Penny & Hooper. This window expired in the first half of 2013. IRD regards the process as having been successful with regard to the number of disclosures made and tax collected.

### 6.6 Are there any specific pre-filing processes that can be leveraged by:

| · HNWIs: No. |
| · Family businesses: No. |

### 6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

Yes.
Country name Norway

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Section 1: The accumulative tax burden on family business

2013 tax rates

<table>
<thead>
<tr>
<th>1.1 Corporate income tax (national and sub-national combined)</th>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highest marginal rate</td>
<td>The highest marginal rate is 28%.</td>
<td>No.</td>
</tr>
<tr>
<td>Highest rate for small and medium enterprises (SMEs) / small business</td>
<td>The highest rate for SMEs/small business is 28%.</td>
<td>No.</td>
</tr>
<tr>
<td>Special treatment of SMEs/ small business (other reliefs, etc.)</td>
<td>No changes have been made.</td>
<td>No.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

No.
### 1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Personal allowance</td>
<td>The personal allowance is NOK45,350 for individuals without dependents and NOK90,700 for individuals with dependents.</td>
</tr>
<tr>
<td>• Minimum rate of personal income tax (PIT)</td>
<td>Minimum rate for salary is 28% + 7.8% and for pensions 28% + 4.7%.</td>
</tr>
<tr>
<td>• Highest marginal rate of PIT</td>
<td>Highest marginal rate is 47.8% for salary and 51% for business income.</td>
</tr>
<tr>
<td>• Any special surtaxes</td>
<td>The wealth tax rate is 1.1% for net assets exceeding NOK750,000.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base? No.

### 1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Standard rate</td>
<td>For VAT the standard rate is 25%; for transportation the rate is 8%; and for food and like items the rate is 15%.</td>
</tr>
<tr>
<td>• Are there any special reliefs or exemptions for a family business?</td>
<td>No.</td>
</tr>
</tbody>
</table>
1.4 Property taxes

• Does a family business receive any relief on property taxes not granted to other types of corporation?  
  No.

1.5 Capital gains tax (CGT)

• 2013 rate – companies  
  N/A.

• 2013 rate – individuals  
  The rate is 28%.

• Reliefs/exemptions  
  For private residence the gain is tax-free if a person has owned the residence and lived there for at least one year. 
  For shares the exemption system applies; see below.

1.6 Tax on dividends from ordinary shares

A. For the business: No.

B. For the owners of the business: For individuals a shareholders' model applies. Dividends exceeding a risk-free return on the investment (the cost base of the shares) are taxed as general income when distributed to individual shareholders. Taking into account the company taxation of 28%, the total maximum marginal tax rate on dividends is 48.16%. The part of the dividend that does not exceed a risk-free return on the investment is not taxed for the shareholder, and is consequently subject only to the company taxation of 28%. If the dividend for one year is less than the calculated risk-free interest, the tax-free surplus amount can be carried forward to be offset against dividends distributed in a subsequent year on any capital gain derived from the alienation of the shares on which the dividend is paid.

Corporate shareholders are exempt from taxation of dividend of shares, except for a claw back of 3% net gains and dividends for shareholders outside a group.

1.7 Tax on dividends from preferential shares

A. For the business: No changes have been made.

B. For the owners of the business: See Section 1.6.

1.8 Tax treatment of interest on a loan from the shareholders

A. For the business: The interest is deductible with tax rate of 28%.

B. For the owners of the business: Ordinary taxation on interest is 28%. In addition, for personal shareholders, the part of the interest payment that exceeds the risk-free interest on the loan is taxable at 28%. Taking into account the ordinary taxation of 28%, the total maximum marginal tax rate on loans for personal shareholders is 48.16%).

1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

A. For the business: The rental payment (marked value) is deductible.

B. For the owners of the business: The rental income is taxable.

1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

A. For the business: The payment (marked value) is deductible.

B. For the owners of the business: The income is taxable.
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
</table>
| 1.11    | **Tax treatment of interest paid on bank debt by a family business**  
There are no special rules; paid interest is deductible with a tax rate of 28% for the debtor. |
| 1.12    | **Tax treatment of payments made by a family business to third parties for the use of their intellectual property**  
The payment is deductible. |
| 1.13    | **Tax treatment of rental payments made by a family business to third parties for real estate**  
The payment is deductible. |
| 1.14    | **Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group**  
Currently, interest expense is fully tax deductible. On 11 April 2013, the Norwegian Government published a consultation paper suggesting that net interest expense will be fully deducted if the total amount does not exceed NOK1 million during the fiscal year or if the interest is paid to a non-related party. Otherwise, net interest expense paid to a related party could be deducted only to the extent internal and external interest expense combined does not exceed 25% of the taxable business profit after adding back net internal and external interest expense and tax depreciation (a taxable earnings before interest, tax, depreciation and amortization (EBITDA)). The change is proposed to enter into force on 1 January 2014. |
| 1.15    | **Does your country provide for a deemed deduction on equity and/or debt?**  
No. |
| 1.16    | **Is the retention of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?**  
In general, there are no limitations or restrictions to retainment of earnings. |
| 1.17    | **Wealth tax**  
• **2013 characteristics and rate**  
Resident individual taxpayers are subject to net wealth tax on their worldwide assets. Nonresident taxpayers are only subject to net wealth tax on certain property in Norway, generally on assets connected to a business carried out in Norway. The tax rate is 1.1% on net wealth exceeding NOK700,000.  
• **Is there an exemption for shares owned by a family that owns a business?**  
There is no exemption, but the tax base for unlisted shares is value based on the company’s taxable wealth (can be significantly lower than marked value). |
| 1.18    | **Inheritance tax/estate tax**  
The tax is levied to a person entitled to inheritance from the donor or the deceased under the Succession Act or under will, until 31 December 2013.  
For children, foster children and parents of the donor/deceased: The tax rates vary from 0% to 10%.  
For all other beneficiaries: The tax rates vary from 0% to 15%.  
These rules were abolished in 2014. |
1.19 Gift tax

See Section 1.18.

1.20 Real estate transfer tax

The registration of transactions in immovable property in the Land Registry is subject to stamp duty of 2.5% of marked value.

1.21 Endowment tax

There are no special tax rules.

1.22 Social security

- National/social insurance contributions on employee income

Employers and employees, as well as self-employed individuals, must make social security contributions. Contributions are payable on all taxable salaries, wages and allowances, and on personal income for self-employed individuals.

For employees, contributions are withheld by employers together with income tax, and the total amount is paid to the tax authorities. Employers’ contributions are deductible for income tax purposes. Employees’ and self-employed individuals’ contributions are not deductible. The 2013 contributions rates are 7.8% of salary for employees and 11% for self-employed persons. The employer’s contribution is 14%. In certain municipalities, the rate for employers is lower.

- Health/medical/dental care

The special tax rule granting deduction for major medical expenses was abolished in 2012.

- Retirement plans/pensions for employees

N/A.

1.23 Pensions and tax-efficient savings

- Tax relief on pension contributions – standard

The employer is granted tax deductions of 28% for contributions to defined contribution plan.

- Tax relief on pension contributions – any specific relief to family business?

No.

1.24 Taxation of flow-through entities/partnerships/trust funds

Partnerships: In addition of being taxed for their net share of profits, each personal partner also has to pay tax on distributions from the partnership. A gain from sale of an interest in the partnership is also taxable for the partner. For companies being partners in the partnership, an exemption system applies. The current profits are taxable.

Trusts: Generally, trust will be recognized for tax purposes and will be regarded as being a separate taxable entity. Beneficiaries resident in Norway may be liable to tax on the income and the value of the trust under the CFC-regime.

1.25 Exemptions in the law that specifically relate to family businesses

No.

1.26 Are there any business incentives in your country that are specific to

- SMEs

No.

- Family businesses

No.
Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

• Calculation 1: The business makes a profit before tax of NOK2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.
  
  Tax in business: NOK2,000,000 x 28% = NOK560,000
  
  Dividend tax for a personal shareholder in a limited company: NOK1,440,000 x 28% = NOK403,200. Effective tax rate is 48.16%.

• Calculation 2: The business makes a profit before tax of NOK500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.
  
  Tax in business: NOK500,000 x 28% = NOK140,000
  
  Dividend tax for a personal shareholder in a limited company: NOK360,000 x 28% = NOK100,800. Effective tax rate is 48.16%.

Has this effective tax rate increased, decreased or stayed the same in the last three years?
It has not changed.

Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

For self-employed individuals, all business profits exceeding a risk-free interest on the capital invested are taxed as personal income (maximum tax rate of 51% on net profits for each fiscal year). If the family business is run as a limited company, the shareholder’s model applies (see Section 1.6). Thus, the shareholders will just be taxed for dividend and capital gains from the company, which is the maximum tax rate of 48.16% for company and personal shareholder combined.

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

Both capital gains and dividends paid to personal shareholders in a limited liability holding are subject to the same rules (modified classical system).

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

Breaches of taxation rules can be subject to a penalty tax of 30% (6%) of the tax determined by the tax authorities.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

A. Fully publicly listed? No.
B. Partly publicly listed? No.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

No.
## Section 4: Succession planning

<table>
<thead>
<tr>
<th>4.1 Life insurance</th>
<th>None.</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?</td>
<td>No.</td>
</tr>
<tr>
<td>4.3 Estate tax</td>
<td>N/A.</td>
</tr>
<tr>
<td>4.4 Pension plans</td>
<td>N/A.</td>
</tr>
<tr>
<td>4.5 Trusts, foundations and private purpose funds</td>
<td>N/A.</td>
</tr>
<tr>
<td>4.6 Wills/intestacy/family charters</td>
<td>N/A.</td>
</tr>
<tr>
<td>4.7 Passing on a business</td>
<td>N/A.</td>
</tr>
<tr>
<td>4.8 Private equity</td>
<td>No.</td>
</tr>
</tbody>
</table>

### Specific legislation/tax treatment of income derived from private equity (PE) activity
- Equivalent PE ratio: No.
- Others: No.

## Section 5: Tax policy environment

<table>
<thead>
<tr>
<th>5.1 Policy environment relating to family business</th>
<th>The burden of wealth tax and inheritance/gift tax for family business are hot topics in Norway.</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2 Specify change in the direction of tax policy in the last three years</td>
<td>A change of government in 2013 may change the rules regarding wealth and gift tax to benefit the taxpayers.</td>
</tr>
<tr>
<td>5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners</td>
<td>No.</td>
</tr>
<tr>
<td>5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions</td>
<td>No.</td>
</tr>
</tbody>
</table>
Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with:

<table>
<thead>
<tr>
<th>Specific Unit</th>
<th>Yes/No</th>
</tr>
</thead>
<tbody>
<tr>
<td>High net worth individuals (HNWIs)</td>
<td>No.</td>
</tr>
<tr>
<td>SMEs</td>
<td>No.</td>
</tr>
<tr>
<td>Family businesses</td>
<td>No.</td>
</tr>
<tr>
<td>Large corporate taxpayers</td>
<td>Yes.</td>
</tr>
<tr>
<td>Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses</td>
<td>No.</td>
</tr>
</tbody>
</table>

6.2 Specify enforcement focus areas or defined programs that might touch a family business

N/A.

6.3 Specify tax enforcement focus on any particular industry or profession

No, the focus is on family business, regardless of their choice of industry.

6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners

None.

6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

N/A.

6.6 Are there any specific pre-filing processes that can be leveraged by:

<table>
<thead>
<tr>
<th>entity</th>
<th>Yes/No</th>
</tr>
</thead>
<tbody>
<tr>
<td>HNWIs:</td>
<td>No.</td>
</tr>
<tr>
<td>Family businesses:</td>
<td>No.</td>
</tr>
</tbody>
</table>

6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

Our impression is that tax authorities in different countries increasingly share information related to HNWI.
Section 1: The accumulative tax burden on family business

2013 tax rates

1.1 Corporate income tax (national and sub-national combined)

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highest marginal rate</td>
<td>The current rate is 30%.</td>
<td>None.</td>
</tr>
<tr>
<td>Highest rate for small and medium enterprises (SMEs)/small business</td>
<td>The current rate is 30%. There is only one fixed statutory rate for all corporations, including SMEs.</td>
<td>None.</td>
</tr>
<tr>
<td>Special treatment of SMEs/small business (other reliefs, etc.)</td>
<td>There is a two-year income tax holiday for Barangay micro-business enterprises. Barangay micro-business enterprises are those with assets of not more than PHP3 million.</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

No.
### 1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal allowance</td>
<td>There is a personal exemption of PHP50,000. There is an additional exemption of PHP25,000 for each dependent child (not exceeding four children). None.</td>
</tr>
<tr>
<td>Minimum rate of personal income tax (PIT)</td>
<td>The minimum rate is 5%. None.</td>
</tr>
<tr>
<td>Highest marginal rate of PIT</td>
<td>The highest marginal rate is 32%. None.</td>
</tr>
<tr>
<td>Any special surtaxes</td>
<td>None. None.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

No.

### 1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard rate</td>
<td>The current rate is 12%. None.</td>
</tr>
<tr>
<td>Are there any special reliefs or exemptions for a family business?</td>
<td>If the business is not earning more than PHP1.9 million a year, it has the option to be registered as non-VAT taxpayer and be subject to 3% tax instead of 12% VAT. None.</td>
</tr>
</tbody>
</table>

### 1.4 Property taxes

- Does a family business receive any relief on property taxes not granted to other types of corporation? None.
1.5 Capital gains tax (CGT)

- 2013 rate - companies
  N/A.

- 2013 rate - individuals
  The current rate is 6% of fair market value (FMV), zonal value or selling price, whichever is higher.

- Reliefs/exemptions
  Reliefs are exempted from CGT, if one is selling his/her residence and the entire proceeds of the sale are utilized to buy another residence within 18 months from sale of original residence.

1.6 Tax on dividends from ordinary shares

A. For the business: From one resident corporation to another resident corporation. The rate is 0%.

B. For the owners of the business: The current rate is 10%.

1.7 Tax on dividends from preferential shares

A. For the business: From one resident corporation to another resident corporation the rate is 0%.

B. For the owners of the business: The current rate is 10%.

1.8 Tax treatment of interest on a loan from the shareholders

A. For the business: Interest is not deductible if shareholder is a controlling shareholder.

B. For the owners of the business: Interest is subject to income tax.

1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

A. For the business: Rental income is a deductible expense.

B. For the owners of the business: Rental income is subject to income tax.

1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

A. For the business: Income generated from the use of intellectual property (IP) is deductible expense.

B. For the owners of the business: Generally, income generated from the use of IP is subject to final withholding tax of 20% if passive income. If IP is ordinary asset, income from it is subject to income tax.

1.11 Tax treatment of interest paid on bank debt by a family business

Interest is a deductible expense.

1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

Payments are a deductible expense.

1.13 Tax treatment of rental payments made by a family business to third parties for real estate

N/A.

1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group

A. Interest payments on inter-group loans are deductible expenses.

B. Interest payments on loans with a financing company within the family-owned business group are generally deductible expenses except when more than 50% in value of the outstanding stock of creditor company and debtor company is owned directly or indirectly, by or for the same individual.
1.15 Does your country provide for a deemed deduction on equity and/or debt?
No.

1.16 Is the retainment of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?
A company cannot retain more than 100% of paid up capital. Anything in excess is subject to Improperly Accumulated Earnings Tax (IAET) of 10%.

1.17 Wealth tax
- 2013 characteristics and rate None.
- Is there an exemption for shares owned by a family that owns a business? N/A.

1.18 Inheritance tax/estate tax
The Philippines Government only imposes estate tax which applies on the FMV of a decedent’s estate at the time of the person’s death. In determining the value of the gross estate, the FMV of all properties, real or personal, tangible or intangible, is included regardless of their location. With respect to nonresident aliens, only properties located in the Philippines are subject to estate tax.

Donations or transfers in contemplation of death (one which will only take effect upon death of transferor) are still considered part of the estate. The same holds true for transfers during the life of transferor which were done for less than the adequate and full consideration (undervalued transfers) of the asset.

1.19 Gift tax
Donations made during the lifetime of the donor (donation inter vivos) are subject to donor’s tax. Donor’s tax is imposed on total net gifts made in any calendar year. Generally, any donation to a “stranger” is subject to donor’s tax at the rate of 30% of the FMV of the property or cash donated.

Donations to immediate family members up to fourth civil degree (first cousin) by consanguinity are subject to graduated scale of donor’s tax.

1.20 Real estate transfer tax
Real estate transfer tax is imposable on all transfers of real estate property including transfer by way of inheritance. This is referred to as “local transfer tax” (LTT) and is being imposed by the local government unit having jurisdiction over the location of the property and not by the national government. In the case of cities, the maximum rate of LTT is 75% of 1% of the FMV, zonal value or consideration received, whichever is higher of the three. On the other hand, municipalities cannot impose LTT that is higher than 50% of 1% of the FMV, zonal value or consideration received, whichever is higher.

In case of transfer by way of inheritance, the LTT should be paid within 60 days from the time of death of the decedent.

1.21 Endowment tax
None.

1.22 Social security
- National/social insurance contributions on employee income The rate is minimal.
- Health/medical/dental care The rate is minimal.
- Retirement plans/pensions for employees Contributions of employers to the employees’ retirement plan are deductible. Retirement benefits are not taxable for employees provided that employee had 10 years of service and at least 50 years old upon retirement.
1.23 Pensions and tax-efficient savings

- Tax relief on pension contributions — standard: None.
- Tax relief on pension contributions — any specific relief to family business?: None.

1.24 Taxation of flow-through entities/partnerships/trust funds

The Philippine Government recognizes the concept of flow-through entities.

1.25 Exemptions in the law that specifically relate to family businesses

None.

1.26 Are there any business incentives in your country that are specific to

- SMEs: None.
- Family businesses: None.

1.27 Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses?: None.
- Are there any available loss reliefs that are specific to SMEs?: None.

Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- **Calculation 1:** The business makes a profit before tax of PHP2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.
  
  \[
  \text{PHP2,000,000} \times 30\% \text{ corporate income tax} = \text{PHP600,000.00 (tax due)} \\
  \text{PHP1,400,000} \times 10\% \text{ (final withholding tax on dividend distribution to individual shareholder)} = \text{PHP140,000} \\
  \text{PHP1,260,000.00} = \text{net take-home pay}
  \]

- **Calculation 2:** The business makes a profit before tax of PHP500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.
  
  \[
  \text{PHP500,000} \times 30\% \text{ corporate income tax} = \text{PHP150,000 (tax due)} \\
  \text{PHP350,000} \times 10\% \text{ Final Withholding Tax (FWT) on dividends to individual shareholder} = \text{PHP35,000} \\
  \text{PHP315,000} = \text{net take-home pay}
  \]

Has this effective tax rate increased, decreased or stayed the same in the last three years?

No.
Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

If the family business is a business partnership, it will be taxed as a corporation. If a family business is operating under the name of just one person, it will be subject to 32% personal income tax instead of the 30% corporate income tax.

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

Capital gains tax is only 10% and is based on net gain, while dividends received by individual shareholders are subject to 10% final withholding tax (FWT).

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

Generally, No changes have been made. For example, management fees may be paid to family members and the said fees may be claimed as deductible expense of the family corporation provided they are paid under arm's-length condition and are properly substantiated by documents.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

A. Fully publicly listed?

Shares sold through the stock exchange are subject only to half of 1% on gross value. However, the inland revenue (Bureau of Internal Revenue) has recently taken the position that if the public ownership is less than 10%, shares sold through the stock exchange will be subject to 10% on net gain.

B. Partly publicly listed? See Section 3.4A.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

Answer will be the same.

Section 4: Succession planning

4.1 Life insurance

The proceeds of life insurance will be totally exempt from estate tax if the life insurance was taken upon the life of the business owner; the beneficiary is other than his or her estate or executor or administrator; and the designation of the beneficiary is irrevocable.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?

Shareholders' agreements can be used to determine business succession.

4.3 Estate tax

Selling the shares to the next generation is more tax efficient since it will only be subject to 10% capital gains tax on net gain. If the next has no capacity to buy the shares, the shares may just be donated to them. Donor's tax (maximum rate is 15%) is still lower than estate tax (maximum rate is 20%).
4.4 Pension plans

Only pensions coming from the Social Security System (SSS) are exempt from income tax.

4.5 Trusts, foundations and private purpose funds

Table 2 (Graduated scale of estate tax and graduated scale of donor’s tax) taxable net estate is:

<table>
<thead>
<tr>
<th>Over (PHP)</th>
<th>But not over (PHP)</th>
<th>The tax shall be (PHP)</th>
<th>Plus</th>
<th>Of the excess over (PHP)</th>
</tr>
</thead>
<tbody>
<tr>
<td>200,000</td>
<td>500,000</td>
<td>0</td>
<td>5%</td>
<td>200,000</td>
</tr>
<tr>
<td>500,000</td>
<td>2,000,000</td>
<td>15,000</td>
<td>8%</td>
<td>500,000</td>
</tr>
<tr>
<td>2,000,000</td>
<td>5,000,000</td>
<td>135,000</td>
<td>11%</td>
<td>2,000,000</td>
</tr>
<tr>
<td>5,000,000</td>
<td>10,000,000</td>
<td>465,000</td>
<td>15%</td>
<td>5,000,000</td>
</tr>
<tr>
<td>10,000,000</td>
<td>Above 10,000,000</td>
<td>1,215,000</td>
<td>20%</td>
<td>10,000,000</td>
</tr>
</tbody>
</table>

If taxable net gift is:

<table>
<thead>
<tr>
<th>Over (PHP)</th>
<th>But not over (PHP)</th>
<th>The tax shall be (PHP)</th>
<th>Plus</th>
<th>Of the excess over (PHP)</th>
</tr>
</thead>
<tbody>
<tr>
<td>100,000</td>
<td>200,000</td>
<td>0</td>
<td>2%</td>
<td>100,000</td>
</tr>
<tr>
<td>200,000</td>
<td>500,000</td>
<td>2,000</td>
<td>4%</td>
<td>200,000</td>
</tr>
<tr>
<td>500,000</td>
<td>1,000,000</td>
<td>14,000</td>
<td>6%</td>
<td>500,000</td>
</tr>
<tr>
<td>1,000,000</td>
<td>3,000,000</td>
<td>44,000</td>
<td>8%</td>
<td>1,000,000</td>
</tr>
<tr>
<td>3,000,000</td>
<td>5,000,000</td>
<td>204,000</td>
<td>10%</td>
<td>3,000,000</td>
</tr>
<tr>
<td>5,000,000</td>
<td>10,000,000</td>
<td>404,000</td>
<td>12%</td>
<td>5,000,000</td>
</tr>
<tr>
<td>10,000,000</td>
<td>Above 10,000,000</td>
<td>1,004,000</td>
<td>15%</td>
<td>10,000,000</td>
</tr>
</tbody>
</table>

As an estate planning tool, only irrevocable trusts, in whatever name, shape or form, can be used to reduce the estate and, thus, minimize estate tax. However, as transfers to an irrevocable trust is considered full transfer of all rights and ownership over the assets that are placed in the trust, it is considered as a donation inter vivos (donation during the lifetime of the giver), hence, subject to donor’s tax. If the irrevocable trust is in favor of a brother, sister (whether by whole or half-blood), spouse, ancestor and lineal descendant or first cousin, the donor’s tax will be in accordance with the graduated scale in Table 2 above. If it is in favor of a stranger, the donor’s tax is 30% of the FMV of the property at the time of the transfer to the irrevocable trust.

For the trust to be considered irrevocable, the trustor must not retain any right to amend, alter or revoke the trust. The trustor must not also retain the power to possess or enjoy the property or any of its fruits or income.

Also, assets that are considered part of the legitime of compulsory or forced heirs cannot be the subject of any condition. Hence, they cannot be transferred to an irrevocable trust that is subject to certain conditions. In other words, only assets other than those pertaining to the legitime of forced heirs may be transferred to an irrevocable trust subject to certain conditions, say for example, scheduled and periodic release of the funds, or upon the beneficiary reaching a certain age.

Life insurance trust

Since the proceeds of life insurance (taken upon the life of the decedent where the irrevocable beneficiary is other than the decedent or his estate) is not considered part of the gross estate, the said proceeds may be placed in a trust and be the subject of certain conditions like gradual and periodic release of funds to see to it that an improvident child-beneficiary, for example, will not be able to squander the whole amount.
### 4.5 Trusts, foundations and private purpose funds

#### Generation-skipping trust

The merger of usufruct in the owner of the naked title is not subject to estate tax; a trust, therefore, can be formed where the naked title to the asset of the trust can be placed in the name of a grandchild but the usufruct or right to use the same can be given to the immediate child of the decedent. Hence, when the child of decedent dies, the usufruct and the title on the asset will merge in the grandchild, which is exempt from estate tax. Thus, one generation of estate tax is saved.

However, again, this can only be done on properties that are not part of the legitime of forced heirs as legitime cannot be the subject of any condition, burden or substitution.

#### Foundations

If a foundation is an accredited donee-institution, donations to it can be claimed as a deductible expense of the donor-company. The donation will also be exempt from donor's tax.

### 4.6 Wills/intestacy/family charters

The Philippines has, by law, institutionalized the concept of compulsory heirs and their legitime. Thus, regardless of the wishes and desires of a testator as provided in his/her will, the legitime of compulsory heirs must be respected. Legitime cannot be the subject of any burden, restriction, condition or substitution.

Legitime or automatic inheritance of compulsory heirs must be respected at all times. Compulsory heirs can rescind or collate inofficious dispositions of the decedent/testator if they impair their legitime. Hence, in other words, legitime is the minimum amount of inheritance that compulsory heirs are entitled to. Once the legitime of each compulsory heir is satisfied, everything else is considered part of “free portion,” which the testator can freely dispose of, or bequeath to any person, natural or juridical, and which may be subject to conditions imposed by the testator.

If a citizen dies without a last will and testament, intestate succession rules will govern the distribution of the decedent's entire estate and there will be no “free portion” to speak of.

Compulsory heirs are legitimate and illegitime children and spouse and in some instances, parents or ascendants. (Please see Table 3 for the legitimes of compulsory heirs and available free portion when a person dies with a will. Table 4 shows the summary of legitimes when a person dies without a will, hence, intestate succession takes place.)

#### Table 3: Legitimes and free portion

(If there is a will and testament)

<table>
<thead>
<tr>
<th>Surviving relatives</th>
<th>Legitimate children and descendants</th>
<th>Surviving spouse</th>
<th>Illegitimate children</th>
<th>Legitimate parents and ascendants</th>
<th>Illegitimate parents</th>
<th>Free portion</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Legitimate children alone</td>
<td>Half, divided by the number of children</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>Half</td>
</tr>
<tr>
<td>2. One legitimate child and surviving spouse</td>
<td>Half</td>
<td>One-quarter</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>One-quarter</td>
</tr>
<tr>
<td>3. Two or more leg children, surviving spouse and illegitimate children</td>
<td>Half, divided by the number of children</td>
<td>Same as the share of one legitimate child</td>
<td>Half the share of a leg child for each illegitimate child subject to free portion</td>
<td>X</td>
<td>X</td>
<td>Balance, if any</td>
</tr>
<tr>
<td>4. Surviving spouse and illegitimate children</td>
<td>X</td>
<td>One-third</td>
<td>1/3 divided by the number of illegitimate children</td>
<td>X</td>
<td>X</td>
<td>One-third</td>
</tr>
</tbody>
</table>
### 4.6 Wills/intestacy/family charters

<table>
<thead>
<tr>
<th>Surviving relatives</th>
<th>Legitimate children and descendants</th>
<th>Surviving spouse</th>
<th>Illegitimate children</th>
<th>Legitimate parents and ascendants</th>
<th>Illegitimate parents</th>
<th>Free portion</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. Legitimate parents (or ascendants) surviving spouse and illegitimate children</td>
<td>X</td>
<td>One-eighth</td>
<td>One-quarter - divided by the number of illegitimate children</td>
<td>Half</td>
<td>X</td>
<td>One-eighth</td>
</tr>
<tr>
<td>7. Illegitimate children alone</td>
<td>X</td>
<td>X</td>
<td>Half, divided by the number of illegitimate Children</td>
<td>X</td>
<td>X</td>
<td>Half</td>
</tr>
<tr>
<td>8. Surviving spouse alone</td>
<td>X</td>
<td>Half, one-third, half</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>Balance</td>
</tr>
<tr>
<td>9. Legitimate parents and surviving spouse</td>
<td>X</td>
<td>One-quarter</td>
<td>X</td>
<td>Half</td>
<td>X</td>
<td>One-quarter</td>
</tr>
<tr>
<td>10. Illegitimate parents alone</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>Half</td>
<td>Half</td>
</tr>
<tr>
<td>11. Illegitimate parents and surviving spouse</td>
<td>X</td>
<td>One-quarter</td>
<td>X</td>
<td>X</td>
<td>One-quarter</td>
<td>Half</td>
</tr>
</tbody>
</table>

#### Table 4: Table of legitimes
(Informate succession)

<table>
<thead>
<tr>
<th>Survivors</th>
<th>Legitimate children and descendants</th>
<th>Illegitimate children and descendants</th>
<th>Surviving spouse</th>
<th>Legitimate parents and ascendants</th>
<th>Illegitimate parents</th>
<th>Brothers, sisters, nephews, nieces</th>
<th>Other collateral</th>
<th>State</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legitimate children and descendants alone</td>
<td>All</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Legitimate children and surviving spouse</td>
<td>All (to be shared with surviving spouse)</td>
<td>X</td>
<td>Consider spouse as 1 leg. child and divide estate by total number</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Legitimate children, illegitimate children</td>
<td>Proportion of 2:1 provided that legitimes of legitimate children are not impaired</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>
## 4.6 Wills/intestacy/family charters

<table>
<thead>
<tr>
<th>Survivors</th>
<th>Legitimate children and descendants</th>
<th>Illegitimate children and descendants</th>
<th>Surviving spouse</th>
<th>Legitimate parents and ascendants</th>
<th>Illegitimate parents</th>
<th>Brothers, sisters, nephews, nieces</th>
<th>Other collateral</th>
<th>State</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legitimate children, illegitimate children and surviving spouse</td>
<td>Same as above</td>
<td>Same as above</td>
<td>Same as 1 legitimate child</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Illegitimate children alone</td>
<td>X</td>
<td>All</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Illegitimate children, surviving spouse</td>
<td>X</td>
<td>Half</td>
<td>Half</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Surviving spouse alone</td>
<td>X</td>
<td>X</td>
<td>All</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Illegitimate children, surviving spouse and legitimate parents</td>
<td>X</td>
<td>One-quarter</td>
<td>One-quarter</td>
<td>Half</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Legitimate parents and surviving spouse</td>
<td>X</td>
<td>X</td>
<td>Half</td>
<td>Half</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Legitimate parents alone</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>All</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Surviving spouse and illegitimate parents</td>
<td>X</td>
<td>Half</td>
<td>Half</td>
<td>X</td>
<td>Half</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Illegitimate parents alone</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>All</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Surviving spouse, brother,</td>
<td>X</td>
<td>X</td>
<td>Half</td>
<td>X</td>
<td>X</td>
<td>Half</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Sister, nephews, nieces</td>
<td>X</td>
<td>X</td>
<td>Half</td>
<td>X</td>
<td>X</td>
<td>Half</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Brother, sister, nephews, nieces alone</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>All</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Other collateral relatives</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>All</td>
<td>X</td>
</tr>
<tr>
<td>State (by escheat)</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>All</td>
<td></td>
</tr>
</tbody>
</table>
4.7 Passing on a business

During lifetime

If the transfer of the shares of the family corp. is by sale, the sale of shares is subject to CGT of 10% and documentary stamp tax (DST) of PHP75/PHP200 of total par value.

If transferred by way of donation, subject to donor’s tax at graduated rate. If FMV of shares is more than PHP10 million, first PHP10 million is subject to donor’s tax of PHP1,004,000 and anything in excess of PHP10 million is subject to 15% donor’s tax.

Upon death

FMV of the shares owned by the business owner shall be subject to estate tax. First PHP10 million is subject to PHP1,215,000 estate tax and anything in excess of PHP10 million is subject to an additional 20% estate tax.

4.8 Private equity

Specific legislation/tax treatment of income derived from private equity (PE) activity

No changes have been made. The Philippine Government has no attribution rule yet. However, the tax treaties provide that income earned by PEs must be based on taxable income earned in the Philippines.

Equivalent PE ratio

None at the moment.

Others

None.

Section 5: Tax policy environment

5.1 Policy environment relating to family business

Family businesses do not enjoy preferential treatment. They are taxed like any other corporation.

5.2 Specify change in the direction of tax policy in the last three years

Starting in 2010, as regards any publicly listed family corporation, if public float is less than 10%, the sale of its shares will be subject to 10% CGT even if the sale is done through the stock exchange, instead of the preferential half of 1% on gross value.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners

None.

5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions

Improperly Accumulated Earnings Tax (IAET) is designed to target family corporations to force them to declare dividends. There is no move yet to have the IAET repealed.

Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with:

- High net worth individuals (HNWIs)
  Yes, it is called the Large Taxpayers Service.
- SMEs
  None.
- Family businesses
  None.
- Large corporate taxpayers
  Yes, it is called the Large Taxpayers Service.
6.1 Is there a specific unit within your tax administration that deals specifically with:
- Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses. No changes have been made. However, the inland revenue will normally do a simultaneous tax audit of the family corporation and its owners if they are suspected of tax fraud.

6.2 Specify enforcement focus areas or defined programs that might touch a family business
None.

6.3 Specify tax enforcement focus on any particular industry or profession
Yes, there is a focus on doctors, lawyers, CPAs and artists.

6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners
Yes, when there is a lot of related-party transactions between the family corporation and business owner.

6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success
No changes have been made.

6.6 Are there any specific pre-filing processes that can be leveraged by:
- HNWIs: No changes have been made.
- Family businesses: No changes have been made.

6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI
The Philippine Government has already enacted a law allowing tax information exchange with other governments. However, we have yet to hear that this is utilized to build cases for tax evasion against individuals, local or foreign.
## Section 1: The accumulative tax burden on family business

**2013 tax rates**

<table>
<thead>
<tr>
<th>Corporate income tax (national and sub-national combined)</th>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highest marginal rate</td>
<td>The current rate is 19%.</td>
<td>N/A.</td>
</tr>
<tr>
<td>Highest rate for small and medium enterprises (SMEs)/small business</td>
<td>The current rate is 19%.</td>
<td>N/A.</td>
</tr>
<tr>
<td>Special treatment of SMEs/small business (other reliefs, etc.)</td>
<td>N/A.</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

N/A.
### 1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal allowance</td>
<td>Up to PLN3,089 annually is a tax-free amount.</td>
</tr>
<tr>
<td>Minimum rate of personal income tax (PIT)</td>
<td>The current rate is 18%.</td>
</tr>
<tr>
<td>Highest marginal rate of PIT</td>
<td>The current rate is 32%.</td>
</tr>
<tr>
<td>Any special surtaxes</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

No.

### 1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard rate</td>
<td>The current rate is 23%.</td>
</tr>
<tr>
<td>Are there any special reliefs or exemptions for a family business?</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

The rate increased from 22%.

### 1.4 Property taxes

- Does a family business receive any relief on property taxes not granted to other types of corporation? No.

### 1.5 Capital gains tax (CGT)

<table>
<thead>
<tr>
<th>2013 rate – companies</th>
<th>N/A.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013 rate – individuals</td>
<td>The current rate is 19%.</td>
</tr>
<tr>
<td>Reliefs/exemptions</td>
<td>Insignificant.</td>
</tr>
</tbody>
</table>
### 1.6 Tax on dividends from ordinary shares

**A. For the business:** The current rate is 19%.

**B. For the owners of the business:** The current rate is 19%.

### 1.7 Tax on dividends from preferential shares

**A. For the business:** The current rate is 19%.

**B. For the owners of the business:** The current rate is 19%.

### 1.8 Tax treatment of interest on a loan from the shareholders

**A. For the business:** The thin capitalization rate is three times the share capital.

**B. For the owners of the business:** Transaction tax may be applicable.

### 1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

**A. For the business:** The current rate is 19%.

**B. For the owners of the business:** Private rental income is subject to general rules – 18%/32%, possibility of 8.5% lump tax regime.

### 1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

**A. For the business:** The current rate is 19%.

**B. For the owners of the business:** The current rate is 19%.

### 1.11 Tax treatment of interest paid on bank debt by a family business

Interest could be included in the tax-deductible costs.

### 1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

Payments could be included in the tax-deductible costs.

### 1.13 Tax treatment of rental payments made by a family business to third parties for real estate

Rental payments could be included in the tax-deductible costs.

### 1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group

Transfer pricing documentation is required.

### 1.15 Does your country provide for a deemed deduction on equity and/or debt?

No.

### 1.16 Is the retention of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

They are subject to taxation.

### 1.17 Wealth tax

- **2013 characteristics and rate:** N/A.
- **Is there an exemption for shares owned by a family that owns a business?** N/A.
1.18 Inheritance tax/estate tax

Taxpayers of inheritance tax are only individuals; in case of legal persons corporate income tax (CIT) is levied. Inheritance tax is imposed on acquisition by inheritance of property (movable and immovable) located in Poland and property rights exercised in Poland, including money. In addition, acquisition of property located outside Poland and rights exercised abroad is taxable if at the moment of death of the decedent, the beneficiary was a Polish national or had a permanent place of residence in Poland. Acquisition of movables located in Poland and property rights exercised in Poland is excluded from taxation if at the moment of death neither the decedent nor the beneficiary were Polish nationals or had permanent residence in Poland.

Taxable base is market value of acquired property or property rights, reduced by the value of debts and other burdens. Rates are differentiated (from 3% to 20%) according to categories of family proximity between the beneficiary and decedent as well as the value of acquired property. Tax-free amounts are also set depending on proximity. Lowest rates and highest tax-free amounts are reserved for taxpayers belonging to so called “first tax group,” including spouses, descendants, ascendants, siblings, stepchildren, stepparents, children-in-law and parents-in-law. For instance, tax on a piece of property worth PLN20,000 inherited from parents amounts to PLN208.30 plus 5% of excess above PLN10,278.

Acquisition by members of the first tax group is exempt from tax if reported to tax office within a month since coming into force of a court judgment confirming acquisition of heritage. Other exemptions encompass acquisition of a farm, an immovable property registered as a relic and house furnishings. A relief is granted in the case of an acquisition of a dwelling building or a part thereof, by excluding from the taxable base the value of upmost 110 m2 of utility area.

Taxpayers submit an informative tax return within a month since the tax moment (generally acceptance of the heritage). Tax liability arises upon issuance and service of an assessment decision.

1.19 Gift tax

Same as in Section 1.18.

1.20 Real estate transfer tax

The Polish tax system does not include a separate tax on real estate transfer.

1.21 Endowment tax

The Polish tax system does not include a separate endowment tax.

1.22 Social security

<table>
<thead>
<tr>
<th>National/social insurance contributions on employee income</th>
<th>Social security contributions are levied at the following rates calculated on employee’s gross remuneration:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• 19.52% on pension contributions (paid equally by employer and employee)</td>
<td></td>
</tr>
<tr>
<td>• 8% on disability contributions (6.5% paid by employer, 1.5% paid by employee)</td>
<td></td>
</tr>
<tr>
<td>• 2.45% on sickness contributions (paid by employee)</td>
<td></td>
</tr>
<tr>
<td>• 0.67% to 3.86% on accident contributions (paid by employer)</td>
<td></td>
</tr>
<tr>
<td>• 2.45% on Labour Fund contributions (paid by employer)</td>
<td></td>
</tr>
<tr>
<td>• 0.1% on Guaranteed Employee Benefits Fund contributions (paid by employer).</td>
<td></td>
</tr>
</tbody>
</table>

| Health/medical/dental care | Health care contributions are levied at 9% of the assessment base, which is gross remuneration less social security contributions; 7.75% is tax deductible. |

| Retirement plans/pensions for employees | The rate is 19.52% (part of social security contributions listed above). |
1.23 Pensions and tax-efficient savings

- Tax relief on pension contributions – standard
  For tax purposes, social security contributions generally reduce taxable income.

- Tax relief on pension contributions – any specific relief to family business?
  N/A.

1.24 Taxation of flow-through entities/partnerships/trust funds

- For entities: Partially yes, but EU parent-subsidiary directive applies.
- For flow-through entities: No.
- For partnerships: No.
- For trusts: N/A.

1.25 Exemptions in the law that specifically relate to family businesses

None.

1.26 Are there any business incentives in your country that are specific to

- SMEs
  Some options exist, such as EU grants, new technologies relief in PIT law, etc. These are no specific incentives for SMEs.

- Family businesses
  Same as above.

1.27 Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses?
  Generally, there is no specific treatment of family businesses. The amount of loss from previous five years can be deducted from income (with restrictions – a maximum of 50% of the original loss amount carried forward may be offset against profits in each of the following five years).

- Are there any available loss reliefs that are specific to SMEs?
  Same as above.

**Section 2: Sample tax calculations for two typical family businesses**

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- **Calculation 1:** The business makes a profit before tax of PLN2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

<table>
<thead>
<tr>
<th>Tax due</th>
<th>PLN89,410</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effective tax rate</td>
<td>17.88%</td>
</tr>
</tbody>
</table>

- **Calculation 2:** The business makes a profit before tax of PLN500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

<table>
<thead>
<tr>
<th>Tax due</th>
<th>PLN374, 410</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effective tax rate</td>
<td>18.72%</td>
</tr>
</tbody>
</table>

Has this effective tax rate increased, decreased or stayed the same in the last three years?

The rate has stayed the same.
Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

Generally, there are no specific differences in treatment of family businesses.

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

Generally, there are no specific differences; 19% rate for capital gains and dividends is applicable, with some planning opportunities for capital gains.

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

No, but planning opportunities are potentially available.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

A. Fully publicly listed? No.

B. Partly publicly listed? No.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

No.

Section 4: Succession planning

4.1 Life insurance

N/A.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?

Upon meeting business substance needs, planning on disposal of shares is possible and may result in the material decrease of the nominal 19% tax rate.

4.3 Estate tax

N/A.

4.4 Pension plans

N/A.

4.5 Trusts, foundations and private purpose funds

N/A.

4.6 Wills/intestacy/family charters

N/A.
4.7 Passing on a business
Donation of a business within a family can be free of donation tax.

4.8 Private equity

| Specific legislation/tax treatment of income derived from private equity (PE) activity | No. |
| Equivalent PE ratio | No. |
| Others | No. |

Section 5: Tax policy environment

5.1 Policy environment relating to family business
It is not a regularly discussed topic, as family businesses generally do not receive specific benefits or treatment unavailable to other business activities regimes.

5.2 Specify change in the direction of tax policy in the last three years
None.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners
No.

5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions
None.

Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with:
- High net worth individuals (HNWIs) No specific units.
- SMEs No specific units.
- Family businesses No specific units.
- Large corporate taxpayers So-called “large” tax offices.
- Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses No.

6.2 Specify enforcement focus areas or defined programs that might touch a family business
As far as business activity in general is concerned, such focus areas are the application of deductible costs or running business activity under specific tax regimes (e.g., 19% flat rate or 3% to 20% lump tax regime).

6.3 Specify tax enforcement focus on any particular industry or profession
None.
6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners

As far as business activity in general is concerned, see Section 6.2.

6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

An abolition act in social security is in force as of 15 January 2013 for the next 24 months, allowing companies to reveal the amount of unpaid contributions for the period 1 January 1999 to 28 February 2009 due from business activity income.

6.6 Are there any specific pre-filing processes that can be leveraged by:

- HNWIs: No.
- Family businesses: No.

6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

Not for HNWIs specifically, but there is sharing of taxpayers’ data based on intra-EU cooperation and double tax treaties provisions on exchange of information.

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Key economic numbers – Middle East

- **Unemployment**
  - EU-28: 2%
  - Switzerland: 4%

- **GDP per capita growth rate**
  - EU-28: 1%
  - Switzerland: 0% (2012)

- **Inflation rate**
  - EU-28: 2%
  - Switzerland: -0.7%

*Source: Statistische Bundesamt, Statistisches Jahrbuch, 2013.*
**Country name**  Portugal

**EY contacts**

<table>
<thead>
<tr>
<th>Name</th>
<th>Location</th>
<th>Phone</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pedro Paiva</td>
<td>Porto</td>
<td>+351 22 607 9694</td>
<td><a href="mailto:pedro.paiva@pt.ey.com">pedro.paiva@pt.ey.com</a></td>
</tr>
<tr>
<td>Mónica Costa</td>
<td>Lisbon</td>
<td>+351 21 791 20 24</td>
<td><a href="mailto:monica.costa@pt.ey.com">monica.costa@pt.ey.com</a></td>
</tr>
<tr>
<td>Joana Aranda Freitas</td>
<td>Porto</td>
<td>+351 22 600 2015</td>
<td><a href="mailto:joana.aranda-freitas@pt.ey.com">joana.aranda-freitas@pt.ey.com</a></td>
</tr>
</tbody>
</table>

**Section 1: The accumulative tax burden on family business**

2013 tax rates

1.1 Corporate income tax (national and sub-national combined)

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Highest marginal rate</td>
</tr>
<tr>
<td></td>
<td>• Corporate income tax (CIT) (resident entities that</td>
</tr>
<tr>
<td></td>
<td>exercise a commercial, industrial or agricultural</td>
</tr>
<tr>
<td></td>
<td>activity as main activity): The current rate is 25%</td>
</tr>
<tr>
<td></td>
<td>in Portugal mainland and Madeira and 17.5% in Azores.</td>
</tr>
<tr>
<td></td>
<td>• Municipal surcharge: Defined and levied by the</td>
</tr>
<tr>
<td></td>
<td>municipal authorities, up to a maximum rate of 1.5%</td>
</tr>
<tr>
<td></td>
<td>applicable to the taxable profit.</td>
</tr>
<tr>
<td></td>
<td>• State surcharge: The current rate is 3% on taxable</td>
</tr>
<tr>
<td></td>
<td>profit between €1,500,000 and €7,500,000 and 5% on</td>
</tr>
<tr>
<td></td>
<td>taxable profit exceeding €7,500,000.</td>
</tr>
<tr>
<td></td>
<td>Consequently, the maximum combined rate of the CIT</td>
</tr>
<tr>
<td></td>
<td>and the surcharges on companies is 31.5%.</td>
</tr>
<tr>
<td></td>
<td>• Elimination of the reduced rate of 12.5% applied to</td>
</tr>
<tr>
<td></td>
<td>taxable income up to €12,500.</td>
</tr>
</tbody>
</table>
### 1.1 Corporate income tax (national and sub-national combined)

<table>
<thead>
<tr>
<th>Description</th>
<th>Details</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highest rate for small and medium enterprises (SMEs)/small business</td>
<td>SMEs are subject to the standard CIT rate (and surcharges).</td>
<td>N/A</td>
</tr>
<tr>
<td>Special treatment of SMEs/small business (other reliefs, etc.)</td>
<td>There is a tax benefit applicable to SME: share capital remuneration (See Section 1.14).</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

Some important changes that contributed to the decrease of CIT liability include:

- Introduction and elimination of the reduced rate of 12.5% applicable to taxable income up to €12,500.
- Introduction of a special tax regime to support productive investment (Regime Fiscal de Apoio ao Investimento). This regime allows for a tax credit deductible up to 50% of the CIT liability.
- Introduction of the extraordinary investment relief for investment in the second semester of 2013 (Crédito Fiscal Extraordinário ao Investimento). This regime allows for a tax credit deductible up to 70% of the CIT liability.

### 1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal allowance</td>
<td>For 2013, individuals may credit the following against their tax liability:</td>
</tr>
<tr>
<td></td>
<td>• €213.75 for each individual.</td>
</tr>
<tr>
<td></td>
<td>• €213.75 for each child (€237.50 when there are three or more children and €427.50 for each child who is younger than three years old).</td>
</tr>
<tr>
<td></td>
<td>• €261.25 for each ascendant who lives with the taxpayer and does not receive income above the minimum social security retirement pension. This credit is increased to €403.75 if only one such ascendant lives with the taxpayer.</td>
</tr>
<tr>
<td>Minimum rate of personal income tax (PIT)</td>
<td>Minimum normal PIT rate is 14.50%.</td>
</tr>
<tr>
<td>Highest marginal rate of PIT</td>
<td>Maximum PIT rate is 48%.</td>
</tr>
</tbody>
</table>

The rate was 11.5% in 2012.
The rate was 46.5% in 2012.
1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>Standard VAT rate for Portugal mainland is 23%; for Azores it is 16%; and for Madeira it is 22%. Intermediate VAT rate for Portugal mainland is 13%; for Azores it is 9%; and for Madeira it is 12%. Reduced VAT rate for Portugal mainland is 6%; for Azores it is 4%; and for Madeira it is 5%. The standard rate increased from 21% to 23% on 1 January 2011. The increase of the rates is applicable to Madeira.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>Standard VAT rate for Portugal mainland is 23%; for Azores it is 16%; and for Madeira it is 22%. Intermediate VAT rate for Portugal mainland is 13%; for Azores it is 9%; and for Madeira it is 12%. Reduced VAT rate for Portugal mainland is 6%; for Azores it is 4%; and for Madeira it is 5%. The standard rate increased from 21% to 23% on 1 January 2011. The increase of the rates is applicable to Madeira.</td>
</tr>
</tbody>
</table>
1.4 Property taxes

- Does a family business receive any relief on property taxes not granted to other types of corporation?  
  There are no specific exemptions for family businesses.

1.5 Capital gains tax (CGT)

- 2013 rate – companies: N/A.
- 2013 rate – individuals: Tax resident individuals:
  As a rule, taxable capital gains that are not specifically exempt or taxed separately are taxed at the ordinary rates (see above). However, the following capital gains benefit from special tax treatment:
  - Capital gains derived from the sale of securities (including autonomous warrants) and derivative financial products are subject to tax at a rate of 28%.
  - Capital gains derived from the sale of real estate are taxed only to the extent of 50% of the gain.

- Reliefs/exemptions:
  - Capital gains derived from sales of securities and real estate (except land for construction) acquired before 1 January 1989 are exempt from tax.
  - Capital gains derived from the sale of a personal residence are exempt when the proceeds are reinvested in another personal residence in a EU Member State within 36 months after the sale or 24 months prior to the sale.

1.6 Tax on dividends from ordinary shares

A. For the business (tax resident companies): Dividends are subject to the standard CIT rate. A 25% withholding tax rate applies (payment on account of the final tax due) on dividends paid by a tax resident company (to another company). There is an exemption if a direct participation of at least 10% is held consecutively for one year prior to the date at which the profits are made available. Other exemptions are also available (e.g., tax grouping regime). Dividends are not deductible for CIT purposes.

B. For the owners of the business (tax resident individuals): Dividends paid by Portuguese entities should be subject to final withholding taxation at the flat tax rate of 28%. Individuals may opt to tax this type of income together with other income at progressive tax rates and benefit from a 50% exemption.

1.7 Tax on dividends from preferential shares

A. For the business: No special conditions apply to dividends from preferential shares.

B. For the owners of the business: No special conditions apply to dividends from preferential shares.
1.8 Tax treatment of interest on a loan from the shareholders

A. For the business (tax resident companies): Interest is subject to the standard CIT rate. A 25% withholding tax rate applies (payment on account of the final tax due) on interest paid by a tax resident company (to another company). Some exemptions (of withholding tax) may apply. There are some restrictions to the deductibility of interest.

B. For the owners of the business (tax resident individuals): There is a 28% final withholding tax. Individuals may opt to tax this type of income together with other income, at progressive tax rates.

Shareholder loans are exempt from stamp duty under certain conditions.

1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

A. For the business: Rental income is subject to the standard CIT rate. A 25% withholding tax rate applies (payment on account of the final tax due) on rental income paid by a tax resident company (to another company). Some exemptions (of withholding tax) may apply.

B. For the owners of the business: There is a 28% flat tax rate, but the individual can opt to tax this income at the ordinary PIT rates (see above).

1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

A. For the business: This type of income is subject to the standard CIT rate. A 25% withholding tax rate applies.

B. For the owners of the business: This can qualify as business income or investment income. A tax relief of 50%, up to €10,000, is available for business income.

1.11 Tax treatment of interest paid on bank debt by a family business

In general, the tax treatment would be similar to the one described above. Stamp duty would apply on the principal amount and on interest and commissions charged by banks and financial companies.

1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

See Section 1.9. We are assuming the third parties would be a tax resident in Portugal.

1.13 Tax treatment of rental payments made by a family business to third parties for real estate

See Section 1.8. We are assuming the third parties would be a tax resident in Portugal.

1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group

Generally, intercompany loans may trigger stamp duty on the principal, both on inflows (inbound supplies of funds) and outflows (outbound supplies of funds). Some exemptions are available. Regarding interest, under the rules foreseen in the Stamp Duty Code, stamp duty is levied on interest payments in inter-group loans at a rate of 4%, only if the operation is carried out by or with the intermediation of a credit or financial institution, or by other entities legally equivalent or any other financial institutions. In this sense, if there is no financing or credit company within the group, the interest paid should not be subject to stamp duty.

Interest income obtained by tax residents in Portugal is taxed at the standard CIT rate, i.e., 25% (plus a municipal and a state surcharge). A 25% withholding tax may be applied.

Under domestic rules, nonresident beneficiaries of Portuguese interest are subject to a 25% corporate withholding tax. However, Portugal has signed a Double Tax Treaty (DTT) with several countries. Thus, a reduced withholding rate may be available, if certain formal requirements would be met. In addition, Portugal has transposed to its domestic legislation, the EU Royalty and Interest Directive, meaning that, in specific conditions, interest may qualify for an exemption.
1.15  Does your country provide for a deemed deduction on equity and/or debt?

There is a tax benefit called share capital remuneration (Remuneração convencional do capital social). SMEs held by individuals, venture capital companies and business angels can benefit for a three-year period from a notional interest deduction of 3% on the amount of cash contributions by shareholders to share capital made during the period of 2011 through 2013.

1.16  Is the retainment of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

There are specific provisions in the Commercial Companies Code. As a general rule, shareholders have the right to receive a share in the profits of the company but if there is a contractual clause or a specific deliberation (75%) the company may not distribute dividends. However, there are restrictions imposed by the Code (e.g., existence of losses, legal reserves).

1.17  Wealth tax

- 2013 characteristics and rate  
  Portugal does not impose net wealth tax.

- Is there an exemption for shares owned by a family that owns a business?  
  No.

1.18  Inheritance tax/estate tax

Historically, inheritance and gifts were subject to Inheritance and Gift Tax (Imposto sobre Sucessões e Doações). However, as a result of a tax reform, effective from 1 January 2004, inheritance and gift tax was revoked and inheritance and gifts became subject to stamp tax (ST) (Imposto do Selo) hereinafter ST. The ST Code was adjusted to accommodate the rules previously applicable under the Inheritance and Gift Tax but also to introduce several changes to the taxation of gratuitous transfers (including inheritance and gifts).

With regards to incidence, the ST Code expressly indicates which goods and rights are not subject to tax, eliminating taxation on personal or domestic goods as well as the assumption of their existence.

Gratuitous transfers in favor of taxpayers subject to corporate income tax (CIT) (Imposto sobre o Rendimento das Pessoas Colectivas) became also excluded from ST. Only individuals became subject to ST.

With regards to territoriality, ST continues to apply to transfers of goods and assets located in Portuguese territory.

The rules to determine the taxable amount of a gratuitous transfer are simplified and aligned with other taxes, e.g., personal income tax or (PIT) (Imposto sobre o Rendimento das Pessoas Singulares) and property tax (Imposto Municipal sobre Imóveis).

The Portuguese Tax Administration assesses the tax due on a gratuitous transfer. The most important innovation in this regard is that the tax basis on transmissions by death ceased to be the hereditary share of each heir, becoming the global hereditary mass for the person who was the head of the household. Thus, the tax assessment does not require the prior sharing process of the inheritance – although ideal – that constituted an important factor of simplification and efficiency.

The tax rate applicable on gratuitous transfers suffered a significant reduction to 10%.

This section has been reproduced from International Estate and Inheritance Tax Guide 2013. As our guides are updated at different times throughout the year, please refer to the source publication for latest updates.

1.19  Gift tax

See Section 1.18.

This section has been reproduced from International Estate and Inheritance Tax Guide 2013. As our guides are updated at different times throughout the year, please refer to the source publication for latest updates.

1.20  Real estate transfer tax

RETT is levied on the transfer for consideration (i.e., onerous transfers) of ownership rights or parts thereof on real estate (immovable property) situated in the Portuguese territory, regardless of how such transfer is carried out.

1.21  Endowment tax

This is not applicable in Portugal.
1.22 Social security

- National/social insurance contributions on employee income
  Social security contributions are payable on all salaries, wages, bonuses and other regular income. Some exclusions are available. The employer’s share is 23.75% and the employee is 11%.

- Health/medical/dental care
  Health insurance is not liable to social security contributions.
  Subsidies granted to employees to cover health/medical/dental care are not liable to social security contributions (those amounts should be supported by expenses effectively incurred by the employees).

- Retirement plans/pensions for employees
  Premiums/contributions will be subject to social security contributions when there is redemption, payment or forgiveness or any other form of anticipation corresponding to availability or in any case of receiving the capital before passing to pensioner or outside the legally defined rules.

1.23 Pensions and tax-efficient savings

- Tax relief on pension contributions – standard
  The employee may qualify for a tax deduction from the PIT, up to €400, still subject to overall limits.

- Tax relief on pension contributions – any specific relief to family business?
  No.

1.24 Taxation of flow-through entities/partnerships/trust funds

Trusts are not recognized figures in the Portuguese legal system or in the Portuguese tax system, with the exception of the specific regime for the Madeira Free Zone. Portugal has not ratified the Hague Convention on the Recognition of Trusts dated as of 20 October 1984.

The lack of recognition of this figure implies that the tax treatment of trusts is still a gray area in Portugal. Recently, though the Portuguese tax authorities issued a ruling indicating that trusts do not benefit from the application of the double tax treaties when they obtain income in Portugal, except, if so expressly stated in the treaties (as in the case of the treaties signed with the US and Canada), by requiring additional evidence that the trust is the beneficial owner of such income (beyond other requirements foreseen in each of these two treaties).

On the other hand, foundations have a specific legal framework in Portugal. There is no specific tax regime for foundations. Even though, as a general rule, they are subject to several taxes, e.g., CIT and ST, some exemptions may be available, depending on the type of foundation. There are several types of private funds in Portugal, such as, immovable property funds and movable property funds, pension funds, venture capital funds. Normally, each type has its own legal and tax regime.

This section has been reproduced from International Estate and Inheritance Tax Guide 2013. As our guides are updated at different times throughout the year, please refer to the source publication for latest updates.

1.25 Exemptions in the law that specifically relate to family businesses

None.
1.26 Are there any business incentives in your country that are specific to SMEs

Please refer to our comments in sections above. Regime Fiscal de Apoio Ao Investimento (Portuguese: Tax Regime to Support Investment) (RFAI) and Crédito Fiscal Extraordinário ao Investimento (CFEI) are available for SME.

Other tax incentives are also available:

- SIFIDE: applies to R&D activities
- Contractual based incentives: applies to investment projects
- Net job creation

Main financial incentives:

- SI&DT
- SI Inovação

Specifically for SMEs: SI Qualificação PME - Incentive System for SME Eligibility and Internationalization designed to provide support to investment projects fostered by one or more SME in cooperation and aimed at innovation, modernization and internationalization of SMEs. The amount of incentive granted is equivalent to a percentage of the actual investment that is deemed eligible in accordance with the law while the range of eligible expenses varies according to the nature of the project. The rates that apply to the incentive vary according to certain criteria laid down in the applicable national legislation, which in turn must conform to the applicable EU framework.

1.27 Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses?

Tax losses may be carried forward for five years (six years if losses were computed before 2010 and four years if losses were computed in 2010). For losses used from 1 January 2012, the amount deductible each year is capped by 75% of the taxable profit of the year.

There are no specificities for family businesses.

- Are there any available loss reliefs that are specific to SMEs?

There are no specificities for SMEs. Please refer to our comments above.
Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

• Calculation 1: The business makes a profit before tax of €2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

**Calculation 1**

<table>
<thead>
<tr>
<th>CIT</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Profit before taxes:</td>
<td>2,000,000.00</td>
<td>Standard tax rate:</td>
<td>500,000.00</td>
<td>Municipal surcharge (1.5%):</td>
<td>30,000.00</td>
<td>State surcharge:</td>
<td>15,000.00</td>
</tr>
<tr>
<td>Tax amount:</td>
<td>545,000.00</td>
<td>Profit after taxes:</td>
<td>1,455,000.00</td>
<td>Effective tax rate:</td>
<td>27.25%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Assumptions:
The taxable profit corresponds to the accounting result. No adjustments are made to the accounting result or to the taxable profit of the year. There are no tax losses available from prior years.

• Calculation 2: The business makes a profit before tax of €500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

**Calculation 2**

<table>
<thead>
<tr>
<th>CIT</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Profit before taxes:</td>
<td>500,000.00</td>
<td>Standard tax rate:</td>
<td>125,000.00</td>
<td>Municipal surcharge (1.5%):</td>
<td>7,500.00</td>
<td>State surcharge:</td>
<td>0.00</td>
</tr>
<tr>
<td>Tax amount:</td>
<td>132,500.00</td>
<td>Profit after taxes:</td>
<td>367,500.00</td>
<td>Effective tax rate:</td>
<td>26.50%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Assumptions:
The taxable profit corresponds to the accounting result. No adjustments are made to the accounting result or to the taxable profit of the year. There are no tax losses available from prior years.

We are assuming that the fiscal transparency regime does not apply.
Has this effective tax rate increased, decreased or stayed the same in the last three years?

The effective CIT rate depends not only on the nominal CIT rate but also on the adjustments imposed by the CIT Code. Considering the changes that have occurred in the last three years and the assumptions we considered in our calculations, we would say that the effective tax rate has increased.

Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

There is no specific treatment in Portugal applicable to family businesses. The rules applicable would depend on how the business is run:

- As a corporation: CIT Code
- Without a corporate veil: PIT Code (in principle, as business income)

The fiscal transparency regime could be applicable in some cases.

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

### Calculation 1

<table>
<thead>
<tr>
<th>CIT</th>
<th>Profit before taxes:</th>
<th>2,000,000.00</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Standard tax rate:</td>
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<tr>
<td></td>
<td>Profit after taxes:</td>
<td>1,455,000.00</td>
</tr>
<tr>
<td></td>
<td>Effective tax rate:</td>
<td>27.25%</td>
</tr>
</tbody>
</table>

**PIT**

| Profit: | 1,455,000.00 |
| Tax rate: | 28.00% |
| Tax liability: | 407,400.00 |
| Effective tax rate: | 28.00% |

**Assumptions:**

The individual does not elect to include these dividends in taxable income in the tax return.

### Assumptions:

The taxable profit corresponds to the accounting result. No adjustments are made to the accounting result or to the taxable profit of the year. There are no tax losses available from prior years.

### Calculation 2

<table>
<thead>
<tr>
<th>CIT</th>
<th>Profit before taxes:</th>
<th>500,000.00</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Standard tax rate:</td>
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</tr>
<tr>
<td></td>
<td>State surcharge:</td>
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<tr>
<td></td>
<td>Tax amount:</td>
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</tr>
<tr>
<td></td>
<td>Profit after taxes:</td>
<td>367,500.00</td>
</tr>
<tr>
<td></td>
<td>Effective tax rate:</td>
<td>26.50%</td>
</tr>
</tbody>
</table>

**PIT**

| Profit: | 367,500.00 |
| Tax rate: | 28.00% |
| Tax liability: | 102,900.00 |
| Effective tax rate: | 28.00% |

**Assumptions:**

The individual does not elect to include these dividends in taxable income in the tax return.

### Assumptions:

The taxable profit corresponds to the accounting result. No adjustments are made to the accounting result or to the taxable profit of the year. There are no tax losses available from prior years.
### Section 4: Succession planning

#### 4.1 Life insurance

Premiums and commissions related to life insurance benefit from an exemption from stamp tax (ST).

Life insurance can be exempt from PIT at the beneficiary level and deductible for CIT purposes (at the level of the company). Some conditions have to be met.

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#### 4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?

A sale of shares should be supported with a share-purchase agreement.

#### 4.3 Estate tax

Portugal has not concluded any double tax treaty with other countries and territories in connection with inheritance and gifts or real estate transfers. Portugal has signed several double tax treaties for income tax purposes: Algeria, Austria, Barbados*, Belgium, Brazil, Bulgaria, Canada, Cape Verde, Chile, China, Colombia*, Cuba, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Guinea*, Hong Kong*, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan*, Kuwait*, Latvia, Lithuania, Luxembourg, Macau, Malta, Mexico, Moldova, Morocco, Mozambique, the Netherlands, Norway, Pakistan, Panama*, Poland, Qatar*, Romania, Russia, San Marino*, Singapore, Slovak Republic, Slovenia, South Africa, South Korea, Spain, Sweden, Switzerland, East Timor*, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay and Venezuela.

Some tax efficient structures can be implemented.

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#### 4.4 Pension plans

Contributions to pension plans can be exempt from PIT (at the level of the beneficiary) and deductible for CIT purposes (at the level of the company). Some conditions have to be met.

---

* This tax treaty is not yet in force.
4.5 Trusts, foundations and private purpose funds

Trusts are not recognized figures in the Portuguese legal system or in the Portuguese tax system, with the exception of the specific regime for the Madeira Free Zone. Portugal has not ratified the Hague Convention on the Recognition of Trusts dated as of 20 October 1984.

The lack of recognition of this figure implies that the tax treatment of trusts is still a gray area in Portugal. Recently, though the Portuguese tax authorities issued a ruling indicating that trusts do not benefit from the application of the double tax treaties when they obtain income in Portugal, except, if so expressly stated in the treaties (as in the case of the treaties signed with the US and Canada), by requiring additional evidence that the trust is the beneficial owner of such income (beyond other requirements foreseen in each of these two treaties).

On the other hand, foundations have a specific legal framework in Portugal. There is no specific tax regime for foundations. Even though, as a general rule, they are subject to several taxes, e.g., CIT and ST, some exemptions may be available, depending on the type of foundation.

There are several types of private funds in Portugal, such as, immovable property funds and movable property funds, pension funds, venture capital funds. Normally, each type has its own legal and tax regime (even though there might not be a specific tax regime, there may be specific rules applicable).

4.6 Wills/intestacy/family charters

Under the Portuguese Law of Succession, a person may only dispose of its legally available quota of property or estate (quota disponível) for the time after death by will (Testamento).

When a person dies leaving a valid will concerning the disposable quota of its goods and assets or estate, the law will ascertain the validity of the will provided a set of formalities to be complied with and, in some cases, the taxes to be paid.

The Portuguese law of succession will also ensure that the immediate members of the deceased's family are not deprived of their minimum statutory quota of the estate. Under the Portuguese rules of succession, there are two forms of making a valid will:

- Public will (Testamento público) this is a document drafted by a Portuguese notary upon the instructions of the testator read by the notary to ensure that it complies with the wishes of the testator and is signed by the testator in front of two witnesses.

- Secret will (Testamento cerrado) this is a will drafted by the testator and approved by the notary under the notarial laws. The testator may keep the secret will in its power, have it kept under the custody of a third party or deposit it in any notary office.

Where there are cross-border issues, the Conflicts of Law provisions will be relevant.

4.7 Passing on a business

The Portuguese Succession Law follows universal succession principles according to the law of the deceased's nationality.

Heirs have universal succession, and unless they refuse to accept the inheritance, they are personally liable for the deceased's debt plus the total taxes due. These obligations are placed upon all the heirs jointly. The heir succeeds to the decedent in all aspects. However, the heirs' liability is limited to the value of the inheritance received in case the heir accepts the inheritance with the benefit of inventory, in which case only the goods and assets included in the inventory respond toward the respective liability (as set for in Article 2071 of the Portuguese Civil Code). On the contrary, if the inheritance is accepted pure and simple (not accepted under the benefit of inventory), it is up to the heir to make proof that there are not enough values found in the inheritance to meet the respective liabilities.

A legatee under a will has only a personal claim against a compulsory heir (subjected to forced heirship laws) and is not liable for a deceased's debt although it is liable for the relevant taxes on any legacy.

The main connecting factor for succession purposes is the nationality of the deceased.

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4.8 Private equity

Specific legislation/tax treatment of income derived from private equity (PE) activity

Venture capital companies and business angels may benefit from special rules (e.g., exemption on capital gains arising from the sale of shares and tax credits as a result of investments made in certain types of companies).

Carried interest is not specifically foreseen in the tax legislation. In situations like this, one should attend to the nature of the income.

Binding rulings can be requested to the Portuguese tax authorities.

<table>
<thead>
<tr>
<th>Equivalent PE ratio</th>
<th>N/A.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Others</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

Section 5: Tax policy environment

5.1 Policy environment relating to family business

It is not a regularly discussed topic. However, most of the biggest Portuguese groups are family businesses.

5.2 Specify change in the direction of tax policy in the last three years

There are no policies specifically addressed to family businesses. However, the Tax Reform of the CIT in force in 2014 contains provisions that are aimed at promoting the smallest companies.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners

N/A.

5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions

N/A.

Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with:

- High net worth individuals (HNWIs) No “dedicated” unit, issues are dealt with by the PIT department.
- SMEs No “dedicated” unit, issues are dealt with by the CIT department.
- Family businesses No “dedicated” unit, issues are dealt with by the CIT department.
- Large corporate taxpayers Yes – Large Taxpayers Unit.
- Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses N/A.

6.2 Specify enforcement focus areas or defined programs that might touch a family business

Not specifically.
6.3 Specify tax enforcement focus on any particular industry or profession
The special tax regime for non-habitual residents (i.e., individuals that decide to move to Portugal). This regime was introduced to attract highly skilled people to Portugal, e.g., doctors, engineers, architects, musicians, auditors, tax consultants and senior executives.

6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners
Normally, the tax authorities follow a random basis. Large taxpayers are subject to a more regular monitoring and face more inspections (e.g., internal and externals).

6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success
Yes. There have been Special Regimes for Tax Regularization – RERT I, RERT II and RERT III. However, there is no regime currently in force.

6.6 Are there any specific pre-filing processes that can be leveraged by:
- **HNWIs**: The Portuguese PIT returns are currently pre-filed by the Portuguese tax authorities with some data which is previously communicated by the employers and other entities that pay income.
- **Family businesses**: N/A.

6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI
Under the EU Savings Tax Directive, tax authorities are already exchanging information.
Even though the double-taxation treaties (DTTs) foresee a mechanism of exchange of information, it has not been used actively so far although there have been cases of exchange of information.
The Administrative Cooperation Directive would allow for the exchange of information with regards to other types of income. This should be in force in 2015.
Russia

<table>
<thead>
<tr>
<th>Country name</th>
<th>Russia</th>
</tr>
</thead>
<tbody>
<tr>
<td>EY contacts</td>
<td></td>
</tr>
<tr>
<td>Anton Ionov</td>
<td>Moscow</td>
</tr>
<tr>
<td>+7 495 755 9747</td>
<td><a href="mailto:anton.ionov@ru.ey.com">anton.ionov@ru.ey.com</a></td>
</tr>
<tr>
<td>Anna Savon</td>
<td>Moscow</td>
</tr>
<tr>
<td>+7 495 660 4860</td>
<td><a href="mailto:anna.savon@ru.ey.com">anna.savon@ru.ey.com</a></td>
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<tr>
<td>Maria Detkina</td>
<td>Moscow</td>
</tr>
<tr>
<td>+7 495 660 4882</td>
<td><a href="mailto:maria.m.dmetkina@ru.ey.com">maria.m.dmetkina@ru.ey.com</a></td>
</tr>
</tbody>
</table>

**Section 1: The accumulative tax burden on family business**

**2013 tax rates**

<table>
<thead>
<tr>
<th><strong>1.1 Corporate income tax (national and sub-national combined)</strong></th>
<th>2013</th>
<th>Change in rate in the last three years (up or down)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highest marginal rate</td>
<td>2013</td>
<td>The current highest marginal rate is 20%.</td>
</tr>
<tr>
<td>Highest rate for small and medium enterprises (SMEs)/small business</td>
<td></td>
<td>No.</td>
</tr>
<tr>
<td>Currently, 15% tax is levied on profit vs. 6% tax levied on gross income (depending on the regime chosen). Generally, SMEs include companies with a total headcount of up to 100 and annual revenue of US$2m. Special tax regimes for SMEs include a simplified taxation system, a regime for taxation of imputed income and some other special tax regimes applicable depending on industry/types of activities.</td>
<td></td>
<td>No.</td>
</tr>
</tbody>
</table>
### 1.1 Corporate income tax (national and sub-national combined)

- **Special treatment of SMEs/small business (other reliefs, etc.)**
  
  Under the regime for taxation of imputed income and the simplified taxation system, SMEs pay “regular” corporate income tax and assets tax; VAT is not applied (input VAT becomes an ultimate cost).

- **No.**

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

No.

### 1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>• Personal allowance</td>
<td>N/A.</td>
</tr>
<tr>
<td>• Minimum rate of personal income tax (PIT)</td>
<td>Ordinary income: 13% for tax residents and 30% for tax nonresidents on Russian-source ordinary income. Dividends: 9% for tax residents and 15% on dividends from Russian companies for tax nonresidents.</td>
</tr>
<tr>
<td>• Highest marginal rate of PIT</td>
<td>Please see above.</td>
</tr>
<tr>
<td>• Any special surtaxes</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

We are aware of numerous discussions on luxury tax in Russia entailing changes in the taxation of real estate and cars. There are also rumors that the highly valued property tax would be introduced, but currently, according to the Russian Ministry of Finance, it is anticipated to realize this via introduction of an individual real estate tax and increased transport tax (applicable to sport and luxury cars). The law on individual real estate tax is currently being drafted. No information on the increased transport tax rates is available. Most likely new rules on CFCs will be established in Russian until the end of 2014. See more detailed information in Section 1.23.
1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Standard rate</td>
<td>The current rate is 18%. No.</td>
</tr>
<tr>
<td>- Are there any special reliefs or exemptions for a family business?</td>
<td>Companies applying special tax regimes are not considered VAT payers. No.</td>
</tr>
</tbody>
</table>

1.4 Property taxes

- Does a family business receive any relief on property taxes not granted to other types of corporation?

- Corporations pay property tax at the maximum rate of 2.2%. Companies applying special tax regimes are not considered property tax payers.

1.5 Capital gains tax (CGT)

- 2013 rate – companies N/A.
- 2013 rate – individuals

  Capital gains received by individuals due to realization of interest participations in the companies are subject to standard personal income tax at 13% (certain exemptions should become available starting 2016).

  Capital gains realized by Russian companies from disposal of Russian shares or participation interests acquired after 1 January 2011 and held for at least five years are exempt provided certain criteria are met.

- Reliefs/exemptions

  Income received by individuals who are recognized as Russian tax residents from the sale of property (excluding securities) that has been owned by the taxpayer for 5 years or more is exempted from tax in Russia.

  If the property has been owned for less than three years, an individual may deduct from his/her taxable base either RUB1 million for immovable property and RUB250,000 for other property or expenses related to the purchase of property.

  No deductions are available for tax nonresidents (even deduction of expenses is disallowed).

1.6 Tax on dividends from ordinary shares

A. For the business: In general, dividends received by a Russian company are subject to a 9% tax. However, dividends received by a company that holds at least 50% in the capital of its subsidiary for a period not less than one year are exempt from tax provided the said subsidiary is located in a jurisdiction that is not black-listed by the Russian Ministry of Finance.

B. For the owners of the business: Dividends received by individuals who are Russian tax residents are subject to tax at a 9% rate. Dividends received from Russian organizations by individuals who are Russian tax nonresidents are subject to tax at a 15% rate and are subject to double taxation treaty (DTT) relief.

1.7 Tax on dividends from preferential shares

A. For the business: The same as mentioned above for ordinary shares.

B. For the owners of the business: The same as mentioned above for ordinary shares.
1.8 Tax treatment of interest on a loan from the shareholders

A. For the business: Interest income received by a company is treated as ordinary income for tax purposes and subject to corporate tax at a standard rate of 20% (unless special tax regime is applied).

B. For the owners of the business: Interest income received by individual shareholders will be treated as ordinary income and subject to tax at a 13% rate (tax residents) and at a 30% rate (tax nonresidents).

1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

A. For the business: Rental income received by a company is treated as ordinary income for tax purposes and subject to corporate tax at a standard rate of 20% (unless special tax regime is applied).

B. For the owners of the business:
- Individual shareholders will be taxed on rental income in full at 13% (tax residents) and 30% (tax nonresidents).
- Simplified tax regime for the individual entrepreneurs (IE) allows taxing the total rental income amount at 6% and the net proceeds (income less expenses) at 15%.
- Patent regime for IE allows to tax rental income at 6% (for Moscow a tax base for 2013 was estimated at the level of RUB1 million).

1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

A. For the business: Royalties received by a company are treated as ordinary income for tax purposes and subject to corporate tax at the standard rate 20% (unless special tax regime is applied).

B. For the owners of the business: The income from the use of intellectual property will be taxed at 13%.

1.11 Tax treatment of interest paid on bank debt by a family business

In general, interest paid by a company is tax-deductible subject to certain requirements. Deduction of interest is limited by statutory caps (depending on the currency of a loan) and also thin capitalization rules (requires 3:1 debt to equity ratio).

Interest paid to foreign financial company/bank is subject to withholding tax (WHT) in Russia. Standard WHT is 20%, subject to decrease under respective DTT.

In case a bank debt is attracted by the individual, the material benefit may occur if the interest is lower than 9% on a foreign currency loan or lower two-thirds of the refinancing rate established by the Central Bank of Russia (currently 8.25%) for loans in rubles. Material benefit is taxed at a 35% tax rate.

1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

In general, royalties are recognized as business expenses and could be deducted provided certain criteria are met.

Royalties paid by the Russian company to a foreign license holder are subject to WHT at 20% rate, subject to decrease under respective DTT.

1.13 Tax treatment of rental payments made by a family business to third parties for real estate

In general, rental payments paid by a company could be deducted provided certain requirements are met.

Rental payments made by a Russian entity to a non-Russian entity is subject to WHT 20%.

Rental payments made by a Russian entity to another Russian entity is not subject at the source.

1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group

See Section 1.12.
### 1.15 Does your country provide for a deemed deduction on equity and/or debt?

No.

### 1.16 Is the retention of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

No.

### 1.17 Wealth tax

- **2013 characteristics and rate**: N/A.
- **Is there an exemption for shares owned by a family that owns a business?**: N/A.

### 1.18 Inheritance tax/estate tax

There is no inheritance tax in Russia. However, if an heir receives royalties for the intellectual property, these payments will be treated as ordinary income and taxed at a 13% rate (tax residents) and at a 30% rate (nonresidents).

### 1.19 Gift tax

There is no gift tax in Russia. Gifts between close relatives are tax exempt. Gifts between not closely related people are also tax exempt, except for gifts in kind of shares, means of transport and immovable property, that will be taxed at ordinary tax rates 13% (tax residents) and 30% (tax nonresidents).

### 1.20 Real estate transfer tax

N/A.

### 1.21 Endowment tax

N/A.

### 1.22 Social security

- **National/social insurance contributions on employee income**: All payments to employees who are Russian nationals are subject to social fund contributions at the aggregate flat rate of 30% until the cumulative amount of remuneration of the employee for the year concerned reaches RUB568,000 (subject to annual review) and at a rate of 10% on the earnings in excess of this threshold.

  Earnings of employees who are foreign nationals (except highly qualified specialists) are subject to pension fund contributions at a rate of 22% until the cumulative amount of remuneration of the employee for the year concerned reaches RUB568,000 (subject to annual review) and at a rate of 10% on the earnings in excess of this threshold.

  All contributions are payable by employers.

- **Health/medical/dental care**: N/A.
### 1.22 Social security

- **Retirement plans/pensions for employees**
  - Pensions paid by the Pension Fund of Russia are not taxable in Russia.
  - Retirement plans/pensions for employees provided by employers are considered as benefits for employees and are not taxable within RUB12,000. Amounts in the excess of RUB12,000 are taxed at ordinary tax rates – 13% (tax residents) and 30% (tax nonresidents).
  - Contributions made by the employer for the benefit of employees into the licensed funds are non-taxable in Russia.

### 1.23 Pensions and tax-efficient savings

- **Tax relief on pension contributions – standard**
  - Mandatory pension contributions to the Pension Fund are tax exempt in Russia.
  - Contributions made by individuals under non-state pension insurance agreements are not taxable in Russia.

- **Tax relief on pension contributions – any specific relief to family business?**
  - N/A.

### 1.24 Taxation of flow-through entities/partnerships/trust funds

- N/A – there are no flow-through entities in Russia.
  - CFC rules are currently not applicable in Russia. However, there is a draft CFC law, which will most likely be implemented by the end of 2014. In accordance with this law, CFC income is includable in taxable income of an individual or entity (Russian tax resident) at the end of each calendar year. As the rules are currently under review, we recommend consulting with your tax advisor.
  - Taxable event for an individual may occur only upon distribution of funds to him or upon obtaining the right of disposal of them.

### 1.25 Exemptions in the law that specifically relate to family businesses

- No.

### 1.26 Are there any business incentives in your country that are specific to

- **SMEs**
  - No.

- **Family businesses**
  - No.

### 1.27 Tax treatment of losses made by a family business

- **Are there any available loss reliefs that are specific to family businesses?**
  - No specific regimes for family businesses. Under the general rule, losses can be carried forward over a 10-year period.

- **Are there any available loss reliefs that are specific to SMEs?**
  - No.
**Section 2: Sample tax calculations for two typical family businesses**

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- **Calculation 1:** The business makes a profit before tax of US$20 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.
  
  US$20 million X 20% = US$4 million – tax due is calculated (general 20% rate is applied)
  
  US$20 million – US$4 million = US$16 million – after tax profit is calculated
  
  US$16 million X 9% = US$1.4 million – tax withheld at source and remitted to the Russian Revenue (dividends distributed by a company to an individual shareholder being a Russian resident are subject to WHT 9%)
  
  US$16 million – US$1.4 million = US$14.6 million – net income received by the individual shareholder (Russian resident)

- **Calculation 2:** The business makes a profit before tax of US$1.3 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.
  
  US$1.3 million X 15% = US$0.2 million – tax due is calculated (assuming company applies special tax regime)
  
  US$1.3 million – US$0.2 million = US$1.1 million – after tax profit is calculated
  
  US$1.1 million X 9% = US$0.1 million – tax withheld at the source and remitted to the Russian Revenue (dividends distributed by a company to an individual shareholder being a Russian resident are subject to WHT 9%)
  
  US$1.1 million – US$0.1 million = US$1 million – net income received by the individual shareholder (Russian resident)

Has this effective tax rate increased, decreased or stayed the same in the last three years?

Rate has not changed.

**Section 3: Tax treatment of family businesses and other issues**

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

In some instances at the corporate veil level, more expenses can be deducted. Also input VAT can be offset. All the rest depends on particular case specifics.

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

Capital gains realized by a Russian company or individuals from the disposal of Russian shares or participation interest in Russian companies acquired after 1 January 2011 and held for at least five years are exempt from taxation in Russia.

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

None.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

A. Fully publicly listed? No.
B. Partly publicly listed? No.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

No.
Section 4: Succession planning

4.1 Life insurance
Payments received upon life insurance event are not taxable.
Other insurance benefits under life insurance agreements are taxable in Russia on the positive difference between the amount of contributions made and the amount of benefits received. The tax rate applicable to such income is 13%.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?
There are two possible options for transfer of shares to successors: via a personal holding vehicle or via making a will. In case shares are passed by means of will, inherited shares will not be subject to taxation. The same is applicable to shares received via a personal holding vehicle, provided it is set up in a favorable jurisdiction from a taxation standpoint and the transfer of shares between the individuals is structured by means of the introduction of a beneficiary (i.e., without actual change of title to the shares).

4.3 Estate tax
No changes have been made. Only stamp duties are applicable.

4.4 Pension plans
See Sections 1.22 and 1.23.
A deduction in the amount of RUB120,000 per year may be claimed in relation to the contributions made under non-state pension insurance agreements and under voluntary pension insurance agreements that are concluded by an individual in his or her own favor or in favor of his or her close relatives.

4.5 Trusts, foundations and private purpose funds
No changes have been made. None of the above mentioned personal holding vehicles are available in Russia. Russian individuals usually set up such structures in classic jurisdictions, such as Jersey, BVI, Bahamas, etc.

4.6 Wills/intestacy/family charters
They are available, but may not be enforced with respect to the mandatory part of the heritage and other family property-related limitations.

4.7 Passing on a business
Passing on a business between close relatives is possible without tax implications. In general, the succession of a business is more flexible by means of setting up a trust.

4.8 Private equity
Specific legislation/tax treatment of income derived from private equity (PE) activity
No, the ordinary tax rate of 13% is applicable.
Equivalent PE ratio
No.
Others
No.
Section 5: Tax policy environment

5.1 Policy environment relating to family business
There are certain discussions over CFC rules, introduction of the alternative to trust concept in Russian legislation, wealth tax and changes into tax administration. No specific draft laws are currently available.

5.2 Specify change in the direction of tax policy in the last three years
N/A.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners
N/A.

5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions
N/A.

Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with:

| | High net worth individuals (HNWIs) | No. |
| | SMEs | N/A. |
| | Family businesses | N/A. |
| | Large corporate taxpayers | Yes. |
| | Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses | The focus was declared; however, it has not yet been seen in practice. |

6.2 Specify enforcement focus areas or defined programs that might touch a family business
See Section 5.1.

6.3 Specify tax enforcement focus on any particular industry or profession
None.

6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners
Yes, in the currency control sphere.

6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success
None.
6.6 Are there any specific pre-filing processes that can be leveraged by:

- **HNWIs:** There are discussions on the possible introduction of a preliminary rulings institution. No specific details are available.
- **Family businesses:** No.

6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI.

Currently, the general approach in respect of auto-exchange of information between countries is announced.

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Some recent M&A deals involving European family businesses:

**Jan 2014, US**
Grifols SA of Spain acquired the blood transfusion diagnostic unit of Novartis AG for US$1.68b. The transaction included patents, brands, licenses and royalties, and commercial offices in the US, Switzerland and Hong Kong. Grifols is controlled by the Grifols Roura family.

**Nov 2013, Italy**
LVMH French luxury goods giant LVMH Moet Hennessy Louis Vuitton acquired an 80% interest in clothing company Loro Plana SpA, for €2b (US$2.57b). LVMH is controlled by the Arnault family.

**Oct 2013, Belgium**
Solvay SA of Belgium acquired chemicals company Chemlogics Group for US$1.35b in cash. Solvay is controlled by the Solvay family.

**Jan 2013, Italy**
Atlantia SpA merged with Generale Mobiliare Interessene Azionarie SpA in a stock swap transaction, valued at €2.32b (US$3.02b). Atlantia – a worldwide operator of toll roads – is controlled by the Benetton family.

Sources: Thomson Reuters, MergerMarket.
Section 1: The accumulative tax burden on family business

2013 tax rates

<table>
<thead>
<tr>
<th>1.1 Corporate income tax (national and sub-national combined)</th>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highest marginal rate</td>
<td>The current rate is 17%.</td>
<td>No change for past three years.</td>
</tr>
<tr>
<td>Highest rate for small and medium enterprises (SMEs)/small business</td>
<td>The current rate is 17%. SME is defined as businesses with annual sales turnover of not more than S$100 million or employing no more than 200 staff.</td>
<td>N/A.</td>
</tr>
<tr>
<td>Special treatment of SMEs/small business (other reliefs, etc.)</td>
<td>From a tax perspective, all companies are treated in the same manner. SMEs do not get special tax treatment.</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

No.
### 1.2 Individual income tax

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal allowance</td>
<td>None.</td>
<td>None.</td>
</tr>
<tr>
<td>Minimum rate of personal income tax (PIT)</td>
<td>The current rate is 2%.</td>
<td>YA (year of assessment) 2011 (3.5%)</td>
</tr>
<tr>
<td>Highest marginal rate of PIT</td>
<td>The current rate is 20%.</td>
<td>None.</td>
</tr>
<tr>
<td>Any special surtaxes</td>
<td>None.</td>
<td>None.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base? No.

### 1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard rate</td>
<td>The current rate is 7%.</td>
<td>No changes have been made.</td>
</tr>
<tr>
<td>Are there any special reliefs or exemptions for a family business?</td>
<td>No changes have been made.</td>
<td>No changes have been made.</td>
</tr>
</tbody>
</table>

### 1.4 Property taxes

| Does a family business receive any relief on property taxes not granted to other types of corporation? | No changes have been made. |

### 1.5 Capital gains tax (CGT)

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2013 rate – companies</td>
<td>No changes have been made.</td>
</tr>
<tr>
<td>2013 rate – individuals</td>
<td>Singapore does not impose tax on capital gains.</td>
</tr>
<tr>
<td>Reliefs/exemptions</td>
<td>No changes have been made.</td>
</tr>
</tbody>
</table>
### 1.6 Tax on dividends from ordinary shares

**A. For the business:** There is no dividend withholding tax. Dividends paid by a Singapore tax resident company is exempt from tax for all shareholders.

**B. For the owners of the business:** There is no dividend withholding tax. Dividends paid by a Singapore tax resident company is exempt from tax for all shareholders.

### 1.7 Tax on dividends from preferential shares

**A. For the business:** Same as Section 1.6.

**B. For the owners of the business:** Same as Section 1.6.

### 1.8 Please describe the tax treatment of interest on a loan from the shareholders

**A. For the business:** Interest on borrowings is deductible if the interest is payable on capital employed in acquiring income that is subject to tax.

**B. For the owners of the business:** The interest received by shareholders would be taxable.

### 1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

**A. For the business:** Rental income in respect of real estate owned by the business is taxable.

**B. For the owners of the business:** Rental income in respect of real estate owned by the owners of business is taxable.

### 1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

**A. For the business:** If the intellectual property (IP) is used in the business (operated as a company) for purposes of generating taxable income, royalties paid to the shareholders who are the IP owners would be tax deductible.

**B. For the owners of the business:** Royalties received from IP would be taxable.

### 1.11 Tax treatment of interest paid on bank debt by a family business

Same comment as Section 1.9 (A).

### 1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

Deduction is claimable if the use of IP generated taxable income.

### 1.13 Tax treatment of rental payments made by a family business to third parties for real estate

Deduction is claimable if the rented premise is used to generate taxable income.

### 1.14 Tax treatment of interest payments on A. inter-group loans or B. A financing company within the family-owned business group

Same comment as Section 1.8 (A).

### 1.15 Does your country provide for a deemed deduction on equity and/or debt?

No.

### 1.16 Is the retention of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

No.
1.17  Wealth tax

- 2013 characteristics and rate: N/A.
- Is there an exemption for shares owned by a family that owns a business? N/A.

1.18  Inheritance tax/estate tax

N/A.

1.19  Gift tax

N/A.

1.20  Real estate transfer tax

In general, sellers of properties do not incur stamp duty except for:

- Residential property – stamp duty rates range from 4% to 16% if property is owned for less than four years or one year or less for property that was purchased on or after 14 January 2011.
- Industrial property – stamp duty rates range from 5% to 15% if property is owned for less than three years or one year or less for property that was purchased on or after 12 January 2013.

1.21  Endowment tax

N/A.

1.22  Social security

- National/social insurance contributions on employee income
  
  The Central Provident Fund (CPF) is a statutory scheme to provide for employees’ old-age retirement in Singapore. Only Singapore citizens and permanent residents working in Singapore are required to contribute to the CPF. All foreigners are exempt from CPF contributions.

  Both employees and employers must contribute to the fund based on the following:

  - Employee whose age is 50 years or less – employers to contribute 20% and employees to contribute 16%
  - Employee whose age is above 50 and up to 55 years – employer to contribute 18% and employee to contribute 12%

  Maximum contribution limits apply to both “ordinary” and “additional” wages. For ordinary wages, contributions for employees are payable on monthly wages that does not exceed S$5,000.

  Contributions on additional wages, such as bonuses and other non-regular wages, are subject to limits if the employee’s total wages for the year exceed S$85,000.

- Health/medical/dental care: N/A.
- Retirement plans/pensions for employees: N/A.
### 1.23 Pensions and tax-efficient savings

- Tax relief on pension contributions – standard  
  N/A.
- Tax relief on pension contributions – any specific relief to family business?  
  N/A.

### 1.24 Taxation of flow-through entities/partnerships/trust funds

Trust could be a flow-through entity if certain conditions are met. In such a case, the tax resident beneficiaries of that trust will be taxed on their share of their entitlement to the trust income. Nonresident beneficiaries’ share of their entitlement to the trust income remains taxable in the name of the trustee.

Partners of the partnership are the persons who are subject to tax on their respective share of the partnership’s taxable income.

### 1.25 Exemptions in the law that specifically relate to family businesses

No changes have been made.

### 1.26 Are there any business incentives in your country that are specific to

<table>
<thead>
<tr>
<th>Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>SMEs</td>
<td>Eligibility for business incentives are based on activities, purpose and whether the applicant can meet the criteria set out by the relevant government agency. There is no specific business incentive that is tailored to SMEs or family businesses.</td>
</tr>
<tr>
<td>Family businesses</td>
<td>See above comments.</td>
</tr>
</tbody>
</table>

### 1.27 Tax treatment of losses made by a family business

- Available loss reliefs that are specific to family businesses.  
  There is no special loss relief available to family businesses. Unabsorbed tax losses, donations and capital allowances may be carried forward for set-off against future taxable profits subject to a substantial shareholders test. The company's ultimate shareholders must remain substantially (50% or more) the same at the end of the year (or YA for capital allowances) in which the losses, donations or capital allowances arose and on the first day of the YA in which these items are claimed. For unabsorbed capital allowances, there is an additional condition that the trade giving rise to the capital allowances is still carried on. Unabsorbed donations can only be carried forward for up to five years.
- Available loss reliefs that are specific to SMEs.  
  No.
Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

• Calculation 1: The business makes a profit before tax of S$2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

<table>
<thead>
<tr>
<th>Chargeable income (before partial tax exemption)</th>
<th>S$2,000,000</th>
<th>S$500,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less partial tax exemption</td>
<td>-S$152,500</td>
<td>-S$152,500</td>
</tr>
<tr>
<td>Tax at 17%</td>
<td>S$314,075</td>
<td>S$59,075</td>
</tr>
<tr>
<td>Amount available for distribution to shareholders</td>
<td>S$1,685,925</td>
<td>S$440,925</td>
</tr>
<tr>
<td>Effective tax rate</td>
<td>15.7%</td>
<td>11.8%</td>
</tr>
</tbody>
</table>

• Calculation 2: The business makes a profit before tax of S$500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

See above.

Has this effective tax rate increased, decreased or stayed the same in the last three years?
The rate has remained the same.

Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

The tax rate is different. For a family business run as a company, the taxable profits (after partial tax exemption) are subject to tax at the rate of 17%. Where the family business is carried on by the individual as a sole proprietor, the taxable profits will be subject to tax based on that individual’s marginal tax rate – the highest being 20%.

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

In general, there is no tax on capital gains. Also, there is no tax on dividends received by a shareholder from a Singapore tax resident company.

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

None.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

A. Fully publicly listed? No.

B. Partly publicly listed? No.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

No.
Section 4: Succession planning

<table>
<thead>
<tr>
<th>4.1 Life insurance</th>
<th>None.</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?</td>
<td>Singapore does not impose tax on capital gains. However, in certain circumstances, the tax authorities may treat gains derived from purchase and sale of shares as revenue subject to income tax if the taxpayer is in the business of dealing in shares.</td>
</tr>
<tr>
<td>4.3 Estate tax</td>
<td>There is no estate tax.</td>
</tr>
<tr>
<td>4.4 Pension plans</td>
<td>See Section 1.22.</td>
</tr>
<tr>
<td>4.5 Trusts, foundations and private purpose funds</td>
<td>Trusts, foundations and charitable organizations are available.</td>
</tr>
<tr>
<td>4.6 Wills/intestacy/family charters</td>
<td>If there is a will and the grant of probate is issued, the executor will have the responsibility of administering and distributing the estate according to the instructions in the will. In the absence of a will, the deceased's estate will be distributed according to the rules of intestacy as stated in the Intestate Succession Act.</td>
</tr>
<tr>
<td>4.7 Passing on a business</td>
<td>N/A.</td>
</tr>
<tr>
<td>4.8 Private equity</td>
<td>Is there any specific legislation/tax treatment of income derived from private equity (PE) activity (i.e., carried interest)? In general, there are incentives to encourage fund management activities in Singapore. If the activities qualify for the incentive, the management fee is taxed at the concessionary rate of 10%.</td>
</tr>
<tr>
<td>Equivalent PE ratio</td>
<td>N/A.</td>
</tr>
<tr>
<td>Others</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

Section 5: Tax policy environment

<table>
<thead>
<tr>
<th>5.1 Policy environment relating to family business</th>
<th>Discussions are more focused on helping SMEs manage business costs and increase productivity.</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2 Specify change in the direction of tax policy in the last three years</td>
<td>Indifferent.</td>
</tr>
<tr>
<td>5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners</td>
<td>No.</td>
</tr>
</tbody>
</table>
5.4 Specify tax provisions in your country that are perceived to actively impair family businesses? Is there any momentum to change these provisions?

No.

Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with:

- High net worth individuals (HNWIs) No.
- SMEs No.
- Family businesses No.
- Large corporate taxpayers Yes.
- Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses No.

6.2 Specify enforcement focus areas or defined programs that might touch a family business

Yes, generally the basis for tax deduction is examined by:

- Claiming of remuneration is not commensurate with services performed
- Claiming of private and domestic expenses
- Incorrect claim of interest expense

6.3 Specify tax enforcement focus on any particular industry or profession

Yes, doctors, tuition agencies, and the beauty and wellness industry.

6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners

None.

6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

None.

6.6 Are there any specific pre-filing processes that can be leveraged by:

- HNWIs: No.
- Family businesses: No

6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

Yes.
### Section 1: The accumulative tax burden on family business

#### 2013 tax rates

<table>
<thead>
<tr>
<th>1.1 Corporate income tax (national and sub-national combined)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2013</strong></td>
<td><strong>Change in rate in the last three years (up or down).</strong></td>
</tr>
<tr>
<td>Highest marginal rate</td>
<td>No change in rate in the last three years.</td>
</tr>
<tr>
<td>The highest marginal rate is 24.2% (corporate income tax (CIT) 22%, local income surtax 2.2%).</td>
<td></td>
</tr>
<tr>
<td>Highest rate for small and medium enterprises (SMEs)/small business</td>
<td>No change in rate in the last three years.</td>
</tr>
<tr>
<td>The highest rate is 24.2%.</td>
<td></td>
</tr>
<tr>
<td>SME refers to small and medium-sized enterprises whose size of sales (or the number of employees, total asset, etc.) meet the Minor Enterprise Basic Law.</td>
<td></td>
</tr>
<tr>
<td>Special treatment of SMEs/small business (other reliefs, etc.)</td>
<td>N/A.</td>
</tr>
<tr>
<td>• Only SMEs are entitled to carry-back losses (one year carry-back).</td>
<td></td>
</tr>
<tr>
<td>• Tax incentives for newly established SMEs.</td>
<td></td>
</tr>
<tr>
<td>• Various types of tax credits and exemptions are available, such as a special tax exemption for SMEs which is engaged in certain business.</td>
<td></td>
</tr>
</tbody>
</table>

### Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

There is a new middle income tax bracket.

The basic South Korean CIT rates for FY 2011 are 10% on the first KRW200 million of the tax base and 22% for the excess. In FY 2012 and thereafter, the top rate of corporate income tax will be maintained while a middle income tax bracket will be created: 10% on the first KRW200 million, 20% for the tax base between KRW200 million and KRW20 billion, and 22% for the excess.
### 1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Personal allowance</td>
<td>N/A.</td>
</tr>
<tr>
<td>• Minimum rate of personal income tax (PIT)</td>
<td>The minimum rate is 6.6% (6% PIT + 0.6% surtax).</td>
</tr>
<tr>
<td>• Highest marginal rate of PIT</td>
<td>The highest marginal rate is 41.8% (38% PIT + 3.8% surtax).</td>
</tr>
<tr>
<td>• Any special surtaxes</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

An additional income tax rate of 38% (41.8% including surtax) for those earning above KRW300 million was introduced in 2012.

According to recent tax amendment in 2014, tax bracket applicable for tax rate 38% will be lowered to KRW150 million.

### 1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Standard rate</td>
<td>The standard rate is 10%.</td>
</tr>
<tr>
<td>• Are there any special reliefs or exemptions for a family business?</td>
<td>There is no special relief or exemptions for a small/family business.</td>
</tr>
</tbody>
</table>

### 1.4 Property taxes

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Does a family business receive any relief on property taxes not granted to other types of corporation?</td>
<td>An individual owning land, building, ships or aircraft at a certain assessment date is subject to a property tax on the assets. No relief is available for family business.</td>
</tr>
</tbody>
</table>
1.5 Capital gains tax (CGT)

- 2013 rate – companies: N/A.
- 2013 rate – individuals:

  **Transfer of real estate:**
  Gains arising from the disposal of real estates are included in an individual’s taxable income but are taxed separately from global income (global income taxation is aggregate taxation system, progressive from 6.6% to 41.8%).

  **Transfer of shares:**
  - If the stake is in a SME, the gains are subject to tax at 11% (including resident surtax).
  - If the stake is not in a SME, the gains are subject to tax at 22% (including resident surtax).
  - Gains from the transfer of listed stock are specifically exempt from tax purposes in order to boost South Korea stock market. However, exceptionally, when the total stake of a shareholder together with any related parties (major shareholder) in a listed company exceeds 2% (4% for KOSDAQ-listed corporations) or total market value of the stock held by a shareholder is KRW5 billion (KRW4 billion for KOSDAQ-listed corporations) or more, the capital gains are taxed at rate 11% for the share of SME or 22% for the share of non-SME.

- Reliefs/exemptions:
  Gains arising from the disposal of capital assets are included in an individual’s taxable income but are taxed separately from global income. Certain capital gains are specifically exempt from tax purposes. These include gains from certain transfers of farmland and other real estate; gains from the transfer of a house, including land, per household with certain conditions; and gains from the transfer of listed stock.

1.6 Tax on dividends from ordinary shares

**A. For the business:** Dividend incomes are included in ordinary taxable income. If the business distributes dividends to its shareholders, the distributed dividend is not deductible from income.

**B. For the owners of the business:** Dividend incomes received from the domestic corporations are taxable. The dividend income earned is subject to 14% withholding tax at source. When a total amount of his/her financial income exceeds KRW20 million per year, the taxpayer is subject to global taxation on the sum of financial income and global income by applying a progressive tax rate (tax credit for dividend income allowed).

1.7 Tax on dividends from preferential shares

**A. For the business:** Dividend incomes are included in ordinary taxable income. If the business distributes dividends to its shareholders, the distributed dividends are not deductible from income.

**B. For the owners of the business:** All distributions to shareholders are taxed as dividend income, whether the type of shares is ordinary shares or preferential shares.
1.8 Tax treatment of interest on a loan from the shareholders

A. For the business: Interest on a loan from the shareholder is deductible from income. Since the shareholder is the related party of the company, however, the interest rate should be made at fair price in accordance with Korea corporate income tax law.

B. For the owners of the business: Interest income on a loan (non-commercial loans) is withheld at a rate of 27.5% (including 2.5% surtax). The owner is subject to global taxation on the sum of financial income and global income by applying a progressive rate below.

<table>
<thead>
<tr>
<th>Amount of tax base</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>For the first KRW12 million</td>
<td>6%</td>
</tr>
<tr>
<td>For KRW13 to KRW46 million</td>
<td>15%</td>
</tr>
<tr>
<td>For KRW47 to KRW88 million</td>
<td>24%</td>
</tr>
<tr>
<td>For KRW89 to KRW300 million</td>
<td>35%</td>
</tr>
<tr>
<td>For the excess of KRW300 million</td>
<td>38%</td>
</tr>
</tbody>
</table>

1.9 Tax treatment of rental income on real estate owned by the shareholder (s) of a family business

A. For the business: Rental expenses on real estate owned by the shareholder of a family business are deductible from income while the price of rental should be made at fair market price accordance with South Korea corporate income tax law.

B. For the owners of the business: Rental income is taxed as business income by applying a progressive rate.

1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder (s) of a family business

A. For the business: Expenses generated from the use of intellectual property (IP) are deductible from income while the price for use of IP should be made at fair market price accordance with South Korea corporate income tax law.

B. For the owners of the business: When the lending of IP is made frequently and the purpose of the lending is profit making, the income related to IP is taxed as business income. Otherwise, the income would be taxed as other income.

1.11 Tax treatment of interest paid on bank debt by a family business

Interest incurred in the ordinary course of business is deductible as long as the related loan is used for business purposes. However, there are a number of exceptions to the general rule. For example, interest on loans related to non-business purpose assets and funds loaned to related parties is not deductible.

1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

The expenses incurred in the ordinary course of business is deductible as long as the IP is used for business purposes.

1.13 Tax treatment of rental payments made by a family business to third parties for real estate

Rental expense incurred in the ordinary course of business is deductible as long as the related borrowed asset is used for business purposes.

1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group

The interest expenses incurred in the ordinary course of business is deductible as long as the loan is used for business purposes regardless if the loan is financed from an inter-group company or from financing company within the family-owned business group (see Section 1.10). But the interest rate between related parties should be made at fair price in accordance with South Korea CIT law.

1.15 Does your country provide for a deemed deduction on equity and/or debt?

A deemed deduction on equity and debt is not provided.
1.16 **Is the retainment of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?**

The retainment of earnings can be retained indefinitely.

1.17 **Wealth tax**

<table>
<thead>
<tr>
<th>2013 characteristics and rate</th>
<th>South Korea does not levy a wealth tax.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is there an exemption for shares owned by a family that owns a business?</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

1.18 **Inheritance tax/estate tax**

Inheritance tax is imposed on inherited property, which is transferred upon death of an individual without consideration. It includes a testamentary gift, a donation becoming effective at the death of an individual, and a divisional donation, which is inherited to a special party under certain circumstances stipulated in the Civil Act. Inheritance tax is levied on the beneficiary at progressive rate up to 50%.

1.19 **Gift tax**

Gift tax is imposed on a transfer (including a transfer at a price significantly lower than the fair market value) of property by one person to another with no compensation. With the comprehensive taxation principle adopted in 2004, gift tax is imposed based on the economic substance of the transaction regardless of its title, form or objective. Gift tax is levied on the beneficiary at progressive rate up to 50%.

1.20 **Real estate transfer tax**

Generally, gains arising from real estate transfer are subject to capital gains tax under the Individual Income Tax Law rather than gift tax, unless the transfer, despite its possible form of sale, is deemed as a gift in substance in accordance with the Inheritance Tax and Gift Tax Law, including the following cases:

- The properties transferred or taken over at a remarkably lower or higher price than market values without any justifiable reasons in the common practices of transactions.
- The properties transferred to the spouse or lineal ascendants of descendants shall be deemed to be the value of donated properties of the spouse, etc. by presuming that the spouse, etc. have obtained donations of the value of such properties.

1.21 **Endowment tax**

This is not applicable in South Korea.

1.22 **Social security**

- National/social insurance contributions on employee income: National pension, medical insurance and unemployment insurance premiums that are based on the gross income of an employee are payable by both the employee and the employer.
- Health/medical/dental care: The employee contributes 4.5% of the monthly salary to the national pension fund (with the employer contributing the same percentage). The employee and the employer contribute 2.945% and 0.55%, respectively, of the average monthly wage as a national medical insurance premium and an unemployment insurance premium. In addition to the 0.55% unemployment insurance, the employer contributes an insurance premium of 0.25% to 0.85% of an employee's average monthly wage, depending on the number of employees.
- Retirement plans/pensions for employees:
### 1.23 Pensions and tax-efficient savings

<table>
<thead>
<tr>
<th>Item</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax relief on pension contributions – standard</td>
<td>The government gives incentive to save for retirement by giving tax relief on pension contributions. The amount of deposits of retirement pension is deductible from income with limit of KRW4,000,000.</td>
</tr>
<tr>
<td>Tax relief on pension contributions – any specific relief to family business?</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

### 1.24 Taxation of flow-through entities/partnerships/trust funds

<table>
<thead>
<tr>
<th>Item</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partnership</td>
<td>A partnership's income is not subject to corporate income tax and each partner's income is subject to the tax on the income attributable each partner.</td>
</tr>
<tr>
<td>Trust fund</td>
<td>Generally, trust fund is treated as a flow-through entity and the tax resident beneficiaries of that trust will be taxed on their share of their entitlement to the trust income. The income from profit accruing from trust other than collective investment scheme shall be classified according to the substance of income accruing from the property rights which have been transferred to the trustees</td>
</tr>
</tbody>
</table>

### 1.25 Exemptions in the law that specifically relate to family businesses

Inherited family business (a SME that has been run by the deceased for 10 years or longer) is eligible for additional deduction from the value of the inherited property. The amount of deduction is 100% of property value of an inherited family business up to KRW20 billion (up to KRW30 billion for a business run for 15 years or longer and up to KRW50 billion for a business run for 20 years or longer). The requirement to apply to this deduction is significantly complicated and the provision of ex-post facto management exists as well.

### 1.26 Are there any business incentives in your country that are specific to

<table>
<thead>
<tr>
<th>Item</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>SMEs</td>
<td>Various type of tax credits and exemptions are available, such as an investment (of eco-efficient equipment, R&amp;D equipment, business fixed asset) tax credit, R&amp;D tax credit, etc., provided the requirement of Tax Incentive Limitation Law (TILL) are met.</td>
</tr>
<tr>
<td>Family businesses</td>
<td>No incentives are offered solely for family business.</td>
</tr>
</tbody>
</table>

### 1.27 Tax treatment of losses made by a family business

<table>
<thead>
<tr>
<th>Item</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are there any available loss reliefs that are specific to family businesses?</td>
<td>There are no available specific loss reliefs to family business.</td>
</tr>
<tr>
<td>Are there any available loss reliefs that are specific to SMEs?</td>
<td>There are no available specific loss reliefs to family business. (SMEs may apply to carry-back losses (one-year carry-back).)</td>
</tr>
</tbody>
</table>
Section 2: Sample tax calculations for two typical family businesses

- **Calculation 1**: The business makes a profit before tax of KRW250 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

<table>
<thead>
<tr>
<th>EBT</th>
<th>KRW250,000,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax rate</td>
<td>10% (20%)</td>
</tr>
<tr>
<td>CIT</td>
<td>30,000,000</td>
</tr>
<tr>
<td>Surtax (10%)</td>
<td>3,000,000</td>
</tr>
<tr>
<td>Tax payable (CIT)</td>
<td>33,000,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Income tax rate</th>
<th>6%-38%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual tax</td>
<td>69,404,500</td>
</tr>
<tr>
<td>Tax credit</td>
<td>23,870,000</td>
</tr>
<tr>
<td>PIT</td>
<td>45,534,500</td>
</tr>
<tr>
<td>Surtax</td>
<td>4,553,450</td>
</tr>
<tr>
<td>Tax payable</td>
<td>50,087,950</td>
</tr>
</tbody>
</table>

1. **Tax rate (CIT)**

<table>
<thead>
<tr>
<th>Amount of tax base</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>For the first KRW200 million</td>
<td>10%</td>
</tr>
<tr>
<td>For tax base between KRW200 million and KRW20 billion</td>
<td>20%</td>
</tr>
<tr>
<td>For the excess of KRW20 billion</td>
<td>22%</td>
</tr>
</tbody>
</table>

2. **Tax rate (PIT)**

<table>
<thead>
<tr>
<th>Amount of tax base</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>For the first KRW12 million</td>
<td>6%</td>
</tr>
<tr>
<td>For KRW13 to 46 million</td>
<td>15%</td>
</tr>
<tr>
<td>For KRW47 to 88 million</td>
<td>24%</td>
</tr>
<tr>
<td>For KRW89 to 300 million</td>
<td>35%</td>
</tr>
<tr>
<td>For the excess of KRW300 million</td>
<td>38%</td>
</tr>
</tbody>
</table>

3. **Gross-up and tax credit**: Gross-up is applied to the dividend income exceeding KRW20 million, which is subject to income tax. A tax credit for dividends is allowed.

- **Calculation 2**: The business makes a profit before tax of KRW5,000,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

<table>
<thead>
<tr>
<th>Has this effective tax rate increased, decreased or stayed the same in the last three years?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effective tax rate of Case 1: (CIT + individual tax)/EBT = 33.2%</td>
</tr>
<tr>
<td>Effective tax rate of Case 1: (CIT + individual tax)/EBT = 16.8%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EBT</th>
<th>5,000,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax rate</td>
<td>10%</td>
</tr>
<tr>
<td>CIT</td>
<td>500,000</td>
</tr>
<tr>
<td>Surtax</td>
<td>50,000</td>
</tr>
<tr>
<td>Tax payable</td>
<td>550,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Distributable income</th>
<th>4,450,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual tax</td>
<td>267,000</td>
</tr>
<tr>
<td>Surtax</td>
<td>26,700</td>
</tr>
<tr>
<td>Tax payable</td>
<td>293,700</td>
</tr>
</tbody>
</table>
Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

Corporate income tax law applies to a family business run as a corporation while individual income tax law applies to one as a private business. There are various differences between CIT and IIT on treatment of business taxation. One of the noticeable differences is that the maximum marginal rate of CIT (22%) is quite lower than the maximum marginal rate of PIT (38%).

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

- Taxation of capital gain
  - If the stake is in a SME, the gains are subject to tax at 11% (including resident surtax).
  - Gains from the transfer of listed stock are specifically exempt from tax purposes in order to boost South Korea stock market. However, and exceptionally, when the total stake of a shareholder together with any related parties (called “major shareholder”) in a listed company exceeds 2% (4% for KOSDAQ-listed corporations) or total market value of the stock held by a shareholder is KRW5 billion (KRW4 billion for KOSDAQ-listed corporations) or more, the capital gains are taxed at the rate of 22% (if the holding period is less than one year, 33% would be applied).

- Taxation of dividends
  When the dividends paid to an individual shareholder, the distributed income is taxed as dividend income at a rate of 6.6% to 41.8%.

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

The South Korea commercial law only permits corporate dividends in cash dividend or by stock dividend. The Korea Communications Commission (KCC) provisions relating to the board’s final approval authority are silent on profit distribution in any way other than as a dividend. However, if profit is distributed in any way other than as a dividend, the board might be responsible for the distribution and face lawsuit.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

A. Fully publicly listed?
   3.1: No difference.
   3.2: See Section 3.2.
   3.3: According to KCC, there is no difference between listed company and non-listed company in relation to way of profit distribution.

B. Partly publicly listed? No.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

There is no difference.
Section 4: Succession planning

4.1 Life insurance

There are no specific incentives aimed for the owners of private/family business.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?

Transfer of shares: Capital gain tax is levied at 10% (or 20%).
Donation of shares: Inheritance tax is levied at rate ranging between 10% and 50%.

4.3 Estate tax

There are various ways to transfer shares tax-efficiently, including:

- By donating the shares to next generation before the value of the share increases.
- By minimizing the value of share through restructuring company governance.
- By using favorable tax provisions. For example, the taxpayer has an opportunity to donate shares with a low rate (10%, limit KRW3 billion) prior to the death of a individual and may take advantage of family business deduction upon death of an individual.

4.4 Pension plans

There is no special provision related to pension plan solely for owners.

Practically, CEOs as well as employees tend to use insurance products. If the CEOs or employees maintain the insurance contract for a certain of period (mostly 10 years), the income incurred on the insurance premium paid by the insurant is not subject to income tax.

Moreover, SME often uses insurance products for pension for owner. SME pays insurance premium as an insurant during his tenure as CEO. Before the CEO's retirement, SME change the name of insurant into the name of CEO so that the CEO could get the right to receive the insurance upon his retirement. This insurance is taxed as a retirement income, which is subject to greater deduction compared to earned income (salary income), resulting in lowering effective tax rate.

4.5 Trusts, foundations and private purpose funds

The value of contribution to a foundation operating a business for religious, charitable, academic or other purpose of public good is not be included in the taxable amount of inheritance taxes. The value of property, among inherited property through a trust for religious, charitable, academic or other purposes of public good is not be included in the taxable amount of inheritance taxes.

4.6 Wills/intestacy/family charters

In South Korea, a will is a document in writing or a recorded statement which designates beneficiaries (grantees) and their portions to the deceased’s (testator’s) estate. South Korea recognizes freedom of will within the limitations of the law, which is called legal reserve of inheritance. If a South Korean dies without a valid will, South Korean inheritance law operates to divide the property among any heirs, which is called statutory inheritance. A will operates on persons and property existing at the time of the testator’s death, so it is possible for the testator to change the will before his death if the proper rules are followed.

4.7 Passing on a business

During life time

The most common forms of succession are transfer of shares and divisional donation of shares.
An individual may take advantage of special exemption provision (see Section 5.3).

Upon death

The inheritance tax is assessed on all properties bequeathed by a resident and all properties within the territory of South Korea bequeathed by a nonresident. In case of the death of a nonresident, therefore, only those donated properties that are located within the territory of South Korea are deemed taxable.

Inheritance tax includes a divisional donation to a beneficiary within 10 years prior to the commencement date of succession.

Where the beneficiary or testamentary donee is a lineal descendant other than a son or daughter of the deceased, a surtax of 30% is levied in addition to inheritance tax. (generation-skipping surtax)
Section 5: Tax policy environment

5.1 Policy environment relating to family business

Since South Korean chaebol is owned and run by family, family business in South Korea generally refers to conglomerates. The National Tax Service (NTS) plans to boost its tax inspections on these big companies with sales of more than KRW50 billion (about US$44.2 million), which amounts to about 1,170 enterprises in the country, as well as increase the duration of its regular audits to six to eight months from the current three to four months. NTS expanded the number of its auditors, while providing a bigger award to those with inside information on companies allegedly evading tax payments.

Even if the size of family business is not big enough to attract public (or NTS) attention, NTS generally pays close attention to the owner-related transaction, such as transactions between owners and a company or transfer of shares between related parties.

NTS also pays intensive attention to the super-rich and private-business people in the black market who have easily evaded taxes by boosting its financial information system, enabling transparency of transactions for taxation on unofficial currency traders, money lenders and gas distributors among others.

Added to this, family-owned business, especially big companies, have been under fire in the country for their practice of granting profitable contracts to their affiliates owned by owners’ children or relatives in a bid to avoid paying gift taxes on future transfers of wealth.

5.2 Specify change in the direction of tax policy in the last three years

Deemed gift taxation was introduced in 2012 and takes effect from 2013. This new law requires major shareholders of domestic company whose inter-affiliate transactions surpassed 30% of their sales as of last year to pay inheritance tax on the income derived from such concentrated transaction among intra-group related parties.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners

In cases where any resident aged 18 or older takes the donation of stocks or equity shares of a family business, the gift tax may be levied at the tax rate of 10% after deducting KRW500 million from the taxable value subject to the gift tax.

In cases where any resident aged 18 or older takes the donation of any property for the purpose of starting up a SME, the gift tax may be levied at the tax rate of 10% after deducting KRW500 million from the taxable value.

5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions

There is a relatively high inheritance tax rate (or gift tax). The maximum marginal tax rate is 50% for property valued in excess of KRW3 billion. There have been debates on reduced tax rate and change in tax bracket.

Against current backdrop, however, the NTS have intensively focused on boosting revenue sources by performing tax audits on large-sized companies and high-income individuals.

It is not likely that there is momentum to change tax environment favorably in near future.
## Section 6: Tax administration and enforcement issues

### 6.1 Is there a specific unit within your tax administration that deals specifically with:

<table>
<thead>
<tr>
<th></th>
<th>No special unit for HNWIs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>High net worth individuals (HNWIs)</td>
<td>No special unit for SMEs.</td>
</tr>
<tr>
<td>SMEs</td>
<td>No special unit for SMEs.</td>
</tr>
<tr>
<td>Family businesses</td>
<td>No special unit for family businesses.</td>
</tr>
<tr>
<td>Large corporate taxpayers</td>
<td>No special unit for large corporate taxpayers.</td>
</tr>
<tr>
<td>Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses</td>
<td>Generally, NTS performs a tax audit every four or five years and does not place extra focus on family businesses. In addition, there is no tax audit solely for family businesses. Regardless of whether the business is run as family business or not, NTS generally pays close attention to the owner-related transaction such as transaction between owners and company or transfer of shares between related parties.</td>
</tr>
</tbody>
</table>

### 6.2 Specify enforcement focus areas or defined programs that might touch a family business

There is increasing attention to high-income individuals or super-rich people doing business.

### 6.3 Specify tax enforcement focus on any particular industry or profession

There is a focus on individual business owners (or high-income self-employed earners), the medical treatment industry and liquor-related entertainment businesses.

### 6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners

Generally, the transfer of shares between a related party or restructuring the governance of the family business tends to trigger a tax audit.

### 6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

There is no voluntary tax-related disclosure opportunity.

### 6.6 Are there any specific pre-filing processes that can be leveraged by:

- **HNWIs**: In case of capital gain, a taxpayer should pre-file the return of tax base of transfer income. However, this preliminary return does not reduce the amount of tax payable.

- **Family businesses**: For a family business run as a corporation there are no pre-filing processes which can be leveraged. For a family business run as a private business, a taxpayer should pre-file the return of capital gain from transfer of property. However, this preliminary return does not reduce the amount of tax payable.

### 6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

So far, the NTS primarily depends on the data sourced from taxpayers. In 2013, Washington-based International Consortium of Investigative Journalists (ICIJ) unveiled names of taxpayers who have accounts in a tax heaven (BVI) and NTS, based on these names, started to investigate the individuals and companies for alleged tax evasion through overseas accounts.
Some recent M&A deals involving Asia-Pacific family businesses

Aug 2013, Thailand
CP ALL PCL
The retail group increased its interest in Siam Makro. CP All is controlled by the Chearavanont family.

Mar 2013, Singapore
First Pacific Company Limited
and Manila Electric Company agreed to acquire 70% of GMR Energy (Singapore) via a jointly held subsidiary. Investment management company First Pacific, which is controlled by the Salim family, paid US$488m in cash and US$49m in equity for its stake.

Feb 2013, China
Charoen Pokphand Group Co. Ltd.
agreed to acquire a 15.57% stake in Ping AN Insurance (Group) Company of China Ltd. from HSBC Insurance Holdings Ltd and The Hong Kong and Shanghai Banking Corporation Limited for HKD72.73b (US$9.39b).

Changes in leadership

Feb 2014, Cheung Kong’s Li
Guessing game continues on succession: “I am ready to retire, but have no immediate plans to do so,” said Hong Kong tycoon Li Ka-shing in a late November interview with the Nanfang Media Group. Li is the chairman of property developer Cheung Kong (Holdings) and conglomerate Hutchison Whampoa. His elder son Victor Li, who is currently vice-chairman of the two companies, has already been confirmed as his successor.

Jul 2013, Hopson Development
Hopson Development founder makes daughter his deputy: Chu Kat Yung has been named Deputy Chairman at Hopson Development. She is the daughter of Chu Meng Yee, the billionaire founder of the Chinese real estate business.

Some of the oldest family businesses in Asia-Pacific

<table>
<thead>
<tr>
<th>Company</th>
<th>Hoshi Ryokan</th>
<th>Toraya</th>
<th>Enshu Sado School</th>
<th>Takenaka Corporation</th>
<th>Kikkoman Corporation</th>
<th>Sumitomo Corporation.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Founded</td>
<td>718</td>
<td>1600</td>
<td>1602</td>
<td>1610</td>
<td>1630</td>
<td>1630</td>
</tr>
<tr>
<td>Family</td>
<td>Houshi</td>
<td>Kurokawa</td>
<td>Kobori</td>
<td>Takenaka</td>
<td>Mogi</td>
<td>Sumitomo</td>
</tr>
<tr>
<td>Industry</td>
<td>Innkeeping</td>
<td>Confectioners</td>
<td>Ceremonial tea school</td>
<td>Construction</td>
<td>Soy sauce</td>
<td>Conglomerate</td>
</tr>
<tr>
<td>Headquartered</td>
<td>Komatsu</td>
<td>Tokyo</td>
<td>Tokyo</td>
<td>Osaka</td>
<td>Noda</td>
<td>Tokyo</td>
</tr>
<tr>
<td>Country</td>
<td>Japan</td>
<td>Japan</td>
<td>Japan</td>
<td>Japan</td>
<td>Japan</td>
<td>Japan</td>
</tr>
</tbody>
</table>

Source: EY research, based on Factiva.
Section 1: The accumulative tax burden on family business

2013 tax rates

### 1.1 Corporate income tax (national and sub-national combined)

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highest marginal rate</td>
<td>The general tax rate is 30%.</td>
<td>N/A.</td>
</tr>
</tbody>
</table>
1.1 Corporate income tax (national and sub-national combined)

- Highest rate for small and medium enterprises (SMEs) / small business

According to CIT Law, SMEs are entities with net revenue (on a group basis) of less than €10 million in the immediately preceding tax year. SMEs are taxed at a rate of 25% on positive taxable income up to €300,000, and at a rate of 30% on the positive taxable income exceeding this amount.

Effective for fiscal years beginning 2009, 2010, 2011, 2012 and 2013, the tax rate applicable to SMEs with less than 25 employees that maintain or increase the number of employees and with net revenues of less than €5 million is 20% on positive taxable income up to €300,000 and 25% on the positive taxable income exceeding this amount. This measure has been extended for fiscal year 2014.

SMEs may benefit from certain tax incentives regulated under a special regime in the CIT Law.

This special regime also applies during the three successive tax periods following that in which the €10 million threshold is reached (provided that the special regime was applicable, both in such period and in the two preceding tax years).

The main tax incentives of this regime are outlined below:

**Free tax depreciation**

SMEs may freely depreciate for tax purposes new tangible fixed assets and investments property provided that the following requirements are met:

- During the following 24 months from the start date of the tax period in which the new assets come into operation, the total average workforce of the company is increased with respect to the average number of the previous 12 months.
- This increase is maintained for a further period of 24 months.

The incentive is limited to the amount resulting from multiplying €120,000 by the personnel increase.

Without prejudice to the above, if the unitary value of the relevant assets does not exceed the amount of €601.01, assets may be freely depreciated up to a total amount of €12,020.24 each tax year.
1.1 Corporate income tax (national and sub-national combined)

- Highest rate for small and medium enterprises (SMEs) / small business

  **Accelerated depreciation**
  New tangible and intangible fixed assets, as well as investment property, may be depreciated at double the maximum depreciation rate established by the official depreciation tables.

  **Depreciation of reinvested assets**
  Tangible fixed assets and investment property connected to business activities acquired as reinvestment of the amounts obtained in the transfer of tangible fixed assets and investment property (also used for economic activities), may be depreciated at an increased rate of three times the maximum depreciation rate established by the official depreciation tables.

  **Bad debt allowance**
  A generic provision of up to 1% of the existing bad debtors that have not been individually allocated at the end of the tax period is deductible.

  **Tax rate**
  Please, see previous section.

  **Reinvestment tax credit**
  The Spanish Government has recently approved a new law in support of entrepreneurs which includes a tax measure specifically aimed at SMEs. Effective for tax years beginning 2013, SMEs, subject to certain requirements, will enjoy a 10% tax credit of the yearly profits (before tax) that are reinvested in tangible fixed assets and investment property connected to economic activity. The reinvestment must be made in the tax period in which the profit is obtained or in the subsequent two tax periods, although a special plan may be requested to the tax authorities.

  For companies applying the reduced rate linked to the maintenance of employment (see above – entities with net revenues below €5 million and less than 25 employees) the tax credit shall be 5%.

  Tax credit shall be applicable in the year in which the reinvestment takes place.

- Special treatment of SMEs / small business (other reliefs, etc.)

  N/A.

  N/A.
The importance of family businesses in Europe

85% of the companies in Europe are family-owned businesses.

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<thead>
<tr>
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</thead>
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Changes in leadership

**IKEA**

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1.1 Corporate income tax (national and sub-national combined)

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

Restrictions on the deduction of financial expenses

Effective for tax years beginning in 2012 (for example, if a company close its financial year, for example, in March, the new measure will apply to FY starting April 2012), the thin capitalization rule (debt-to-equity ratio of 3:1) is abolished and other limitations on the deductibility of financial expenses have been introduced. In general, net interest expenses exceeding 30% of the so called “operating profit” (similar to earnings before interest, tax, depreciation and amortization (EBITDA)) may not be taken as deductible for tax purposes in the year of their accrual. There is a minimum allowance of €1 million per year. The excess may be carried forward for 18 years. In case the net interest expense of the fiscal period does not exceed the 30%, the difference may be carried forward and increase the threshold for the following five years.

Leveraged intra-group transactions

Interest expenses on intra-group financing that is entered into for the acquisition of shares in entities when the seller belongs to the same group of companies and the capitalization of entities belonging to the same group as the borrower, will not be deductible unless there are valid economic reasons that justify the intra-group-leveraged transaction.

Restrictions to offset carried forward tax losses generated in previous year

For tax years 2011, 2012 and 2013, the utilization of net operating losses (NOLs) has been limited for taxpayers with a turnover exceeding €6 million in the preceding tax year. For tax year 2013 the limitations are as follows:

- Utilization of NOLs is limited to 50% of the taxable base prior to such utilization, when in the 12 preceding months the annual turnover was at least €20 million but less than €60 million.
- Utilization of NOLs is limited to 25% of the taxable base prior to such utilization, when in the 12 preceding months the annual turnover was at least €60 million.

The restrictions have been extended for fiscal years 2014 and 2015.

Derogation of accelerated tax depreciation incentive for large-sized companies

From 31 March 2012, the free tax depreciation regime established in the Eleventh Additional Provision of the CIT Law was derogated regarding large companies. Notwithstanding the above, accelerated depreciation corresponding to investments made before 31 March is still applicable (but limited to 40% or 20% of the tax base) under a transitional regime.

Limitation on depreciation expenses for large-sized companies

For tax periods 2013 and 2014, only 70% of the maximum tax depreciation allowed under CIT regulations for fixed assets shall be tax deductible. The depreciation expense considered not tax deductible would be deductible linearly over a 10-year period or during the remaining lifetime of the assets, beginning the fiscal year initiated on 2015.

Increase of the percentage applied to determine interim payments on account of CIT

The tax rate applied to determine the CIT interim payments to be filed from October 2011 to December 2013 increases. As a general rule, instead of applying the previous tax rate (21%), the rate to be applied by companies, with a turnover within the 12 months prior to the beginning of the fiscal year is between €20 million and €60 million, shall amount to 24%, whereas the rate to be applied by companies with a turnover above €60 million shall amount to 27%.

The increase of the payments on account has been extended for fiscal year 2014.
1.2 Individual income tax

<table>
<thead>
<tr>
<th>Personal allowance</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal allowance is €5,151.</td>
<td>N/A.</td>
</tr>
<tr>
<td>For taxpayers older than 65, this allowance is increased by €918. For taxpayers older than 75 the latter is increased by €1,122.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Minimum rate of personal income tax (PIT)</th>
<th>General tax base tax rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>General tax base tax rates</td>
<td>The general structure of the PIT distinguishes between the general tax base and the investment income tax base.</td>
</tr>
<tr>
<td>The applicable general tax base rate consists of two tranches: one established centrally by the Spanish Government and one established by each of the Spanish autonomous regions, within certain limits.</td>
<td></td>
</tr>
<tr>
<td>Consequently, the final maximum marginal rate depends on the autonomous region where the taxpayer resides.</td>
<td></td>
</tr>
<tr>
<td>The taxpayer’s place of habitual residence determines the autonomous region in which income is deemed to be obtained for PIT purposes. Specific rules to prevent tax-motivated changes of residence might apply.</td>
<td></td>
</tr>
<tr>
<td>The tax scales do not vary on the basis of the type of return (joint or separate) chosen by the taxpayer.</td>
<td></td>
</tr>
<tr>
<td>For year 2013, unless a specific autonomous region has approved its own applicable tax rates, the total applicable tax rates to the general tax base would be the following:</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Total tax scale</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Net taxable income up to (€)</td>
<td>Gross tax payable (€)</td>
</tr>
<tr>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>17,707.20</td>
<td>2,124.86</td>
</tr>
<tr>
<td>33,007.20</td>
<td>4,266.86</td>
</tr>
<tr>
<td>53,407.20</td>
<td>8,040.86</td>
</tr>
<tr>
<td>120,000.20</td>
<td>22,358.36</td>
</tr>
<tr>
<td>175,000.20</td>
<td>34,733.36</td>
</tr>
</tbody>
</table>

Finally, it should be highlighted that on 30 December 2011, the Spanish Government approved a Royal Decree with relevant tax measures for years 2012 and 2013, which increased the tax rates for Spanish residents. This increase of tax rates was, in principle, a temporary measure, effective from 1 January 2012 to 31 December 2013. However, these increased rates have been extended for 2014. Thus, PIT rates (general tax scale) have also been increased for this period by means of the so-called “solidarity surcharge.”
1.2 Individual income tax

- Minimum rate of personal income tax (PIT)
- Highest (marginal) rate of PIT
- Any special surtaxes

<table>
<thead>
<tr>
<th>Solidary surcharge</th>
<th>Gross tax payable (€)</th>
<th>Rest of net taxable income up to (€)</th>
<th>Tax rate applicable (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net taxable income up to (€)</td>
<td>0</td>
<td>0</td>
<td>0.75</td>
</tr>
<tr>
<td>17,707.20</td>
<td>132.80</td>
<td>17,707.20</td>
<td>2</td>
</tr>
<tr>
<td>33,007.20</td>
<td>438.80</td>
<td>20,400.00</td>
<td>3</td>
</tr>
<tr>
<td>53,407.20</td>
<td>1,050.80</td>
<td>66,593.00</td>
<td>4</td>
</tr>
<tr>
<td>120,000.20</td>
<td>3,714.52</td>
<td>55,000.00</td>
<td>5</td>
</tr>
<tr>
<td>175,000.20</td>
<td>6,464.52</td>
<td>125,005.00</td>
<td>6</td>
</tr>
<tr>
<td>300,000.20</td>
<td>13,964.52</td>
<td>Above</td>
<td>7</td>
</tr>
</tbody>
</table>

Investment income tax rates

Investment income is subject to a total variable tax rate of 19% on the first €6,000 and at 21% thereafter.

<table>
<thead>
<tr>
<th>Saving income tax rates</th>
<th>Tax rate applicable (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net taxable income up to (€)</td>
<td>6,000.00</td>
</tr>
<tr>
<td>More than 6,000.00 and above</td>
<td>19</td>
</tr>
</tbody>
</table>

However, effective as of 1 January 2012 and up to 31 December 2014, the tax rates for the investment income tax base will be the following:

<table>
<thead>
<tr>
<th>Saving income tax rates</th>
<th>Tax rate applicable (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net taxable income up to (€)</td>
<td>6,000.00</td>
</tr>
<tr>
<td>More than 6,000.00 up to 24,000.00</td>
<td>25</td>
</tr>
<tr>
<td>More than 24,000.00</td>
<td>27</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

In the context of measures taken to relieve the consequences of the financial crisis, capital gains generated in a period of less than a year are excluded from the savings taxable base and taxed under the general progressive scale. Lottery prizes over €2,500 will be subject to tax at a special charge of 20%.

With effects from January 2013 the tax credit for the acquisition or restoration of the taxpayer’s habitual residence has been abolished.

For fiscal years 2012, 2013 and 2014 PIT rates have been temporary increased as indicated above.
### 1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Standard rate</td>
<td></td>
</tr>
<tr>
<td>The standard current rate is 21%.</td>
<td>Before 1 September 2012 the standard rate was 18% and the reduced to 8% and 4%.</td>
</tr>
<tr>
<td>The rate on certain necessary products and services is 10%.</td>
<td></td>
</tr>
<tr>
<td>The rate on basic products is 4%.</td>
<td></td>
</tr>
</tbody>
</table>

• Are there any special reliefs or exemptions for a family business?  No.

### 1.4 Property taxes

• Does a family business receive any relief on property taxes not granted to other types of corporation? No.

### 1.5 Capital gains tax (CGT)

• 2013 rate – companies N/A.

• 2013 rate – individuals A distinction between short-term (i.e., generated over a period of less than a year) and long-term (i.e., generated over a period of more than a year) capital gains should be made:
  • Capital gains obtained in short-term period will be included in the general tax base and taxed at the individual taxpayer’s marginal rate.
  • Capital gains obtained in long-term period will be taxed as investment income and subject to the investment income tax rates.

As a general rule, capital gains are not subject to withholding tax except those arising from collective investment schemes. Capital gains are taxed at investment income tax rates (see Section 1.2).

• Reliefs/exemptions For Spanish tax residents only, capital losses incurred on sales of assets may be offset against capital gains. Any excess losses may be carried forward for four years.

  Certain special reductions in the taxable base may apply if the acquisition date was prior to 31 December 1994.

  Additionally, a resident individual taxpayer may benefit from an exemption on the gains derived from the sale of the habitual dwelling in case of reinvestment, subject to certain conditions.
1.6 Tax on dividends from ordinary shares

A. For the business: Dividends received by a resident company from another resident company are subject to corporate tax (as well as withholding tax), which may be credited against the corporate tax. However, the withholding tax is not imposed if, at the time of the distribution, the recipient of the dividend has owned at least 5% of the payer for an uninterrupted period of more than one year. Under Spanish domestic law, in general, a tax credit of 50% is granted to a resident company that receives dividends. The credit is increased to 100% if, at the time of the distribution, the company receiving the dividend has owned (or is committed to own) at least 5% of the paying company for an uninterrupted period of one year (the shareholding interest percentage may be reduced to 3% under certain circumstances). The 50% or 100% tax credit does not apply if the shares on which the dividends are paid are purchase within a two-month period before the date of distribution of the dividends and such shares or similar shares are sold within the two-month period after such date. The credit does not apply if the dividend does not increase taxable income or if the distribution causes depreciation the value of the shares. The credit may be carried forward to the following seven years.

The exemption method may be used to avoid double taxation on dividends received from abroad. If the exemption method does not apply, a tax credit is allowed for underlying foreign taxes paid by a subsidiary on the profits out of which dividends are paid and for foreign withholding taxes paid on dividends.

Dividends paid out by a Spanish company are not a tax-deductible expense for CIT purposes.

B. For the owners of the business: Dividends obtained by individual resident shareholders from holdings in the equity of any kind of entity will be regarded as investment income for tax purposes (thus being part of the investment income tax base and subject to the investment income tax rates).

Spanish investor shall compute the gross dividend obtained (including amounts withheld, if any) in the investment income tax base of the tax period in which the dividend is due. Individual resident taxpayers can generally benefit from an exemption for the first €1,500 annual dividends obtained.

Spanish dividends are subject to withholding tax, currently at a 21% tax rate.

Resident taxpayers who suffer foreign withholding taxes on dividends from foreign entities would apply the Spanish foreign tax credit under certain requirements.

1.7 Tax on dividends from preferential shares

In general terms, preferred shares will be taxed as equity and thus, the tax treatment on equities should apply. However, the “preferred” item should be analyzed in order to conclude whether it should be accounted for separately from the “equity” component of the share as a financial liability.

If the preferred return is deemed a financial liability it would likely be deemed to generate investment income for the Individual.

1.8 Tax treatment of interest on a loan from the shareholders

A. For the business: A loan from the shareholders, considered as a related-party transaction according to the CIT Law, must be assessed at normal market value. This means that the loan interest should be the one that would have been agreed upon by non-related persons or entities under conditions of free competition. Otherwise, transfer pricing adjustments may be applied. Additionally, net financial expenses derived from the loan will be deductible for CIT purposes provided that they do not exceed 30% of the operating profit of the tax period. However, €1 million in net financial expenses is allowed without any limitation.

B. For the owners of the business: Income obtained by resident individual shareholders from a loan is qualified as interest for tax purposes, forming part of the investment income tax base and subject to the investment income tax rates. Shareholder shall compute the gross interest obtained (including amounts withheld, if any) in the investment income tax base of the tax period in which the interest is due. However, when the amount lent to a related entity exceeds three times the net equity of the borrowing related company, the interest income corresponding to such exceed should be included in the general taxable base and taxed at the progressive tax scale.

Spanish source interest is subject to withholding tax, currently at a 21% tax rate.
1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

A. For the business: Rental expenses are tax deductible following general rules as long as the real estate is used with business purposes. However, arm’s-length values should be always considered.

B. For the owners of the business: Rental income is deemed to be income arising from the rental of properties, as well as from any rights in them which may be held over any property (e.g., usufruct).

Once the whole amount of the income received by the owner of the property has been calculated, the following costs will be deductible (provided that they are not passed onto third parties):

1. Necessary costs to obtain the income, such as:
   - Loan interest, up to the maximum amount of the income
   - Non-government taxes and charges, fees, etc. (e.g., local property tax (IBI), refuse charges)
   - Amounts payable to third parties for professional services (e.g., caretaker), community of owner’s costs, repairs, etc.

2. Depreciation of property: Calculated at 3% of the greater of the acquisition cost and the ratable value, without including the value of the land.

The whole income less the aforementioned costs will give rise to the net income which will be reduced by 60% in the case of properties leased for residential use, and by as much as 100% if the lessee meets certain requirements.

1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

A. For the business: Expenses derived from the use of intellectual property (IP) will be treated as a regular expense, fully deductible from the taxable base provided that the agreed price is in accordance with the arm’s-length principle.

B. For the owners of the business: For PIT purposes, income generated from the use of IP for the owners of the business could be classified as employment income, business income or movable capital income depending of certain circumstances, including: (i) the organization on their own account of means of production and human resources or either one of these, in order to take part in the production of goods or services and (ii) the status of author of the recipient of the income.

The payments related to IP are subject to withholding tax at a single rate of 21% independently on the previous classification of the income.

1.11 Tax treatment of interest paid on bank debt by a family business

Net interest expenses exceeding 30% of the so-called “operating profit” (similar to earnings before interest, tax, depreciation and amortization (EBITDA)), may not be taken as deductible for tax purposes in the year of their accrual. There is a minimum allowance of €1 million per year. The excess may be carried forward for 18 years.

In case the net interest expense of the fiscal period does not exceed the 30%, the difference may be carried forward and increase the threshold for the following five years.

1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

Payments made by a family business to third parties for the use of their IP shall be tax deductible following general rules. Payments shall be subject to withholding tax at a rate of 21%.

1.13 Tax treatment of rental payments made by a family business to third parties for real estate

The rental payments made by family business to third parties for real estate shall be tax deductible following general rules. Payments will be subject to withholding tax with the following exceptions:

- When the company rents the property for its employees.
- When the rent paid by the lessee to the same lesser does not exceed €900 per year.
- When the activity of the lesser is classified in any of the headings of the group 861 of the tax rates corresponding to the Business Activities Tax, approved by Royal Decree 1175/1990, as of 28 September, or some other empowering heading for leasing or subleasing activity of urban real estate, and applying to the cadastral value of the property the rules for determining the quota established under the headings of the group 861, the resulting quota is not zero.
1.14 Tax treatment of interest payments on A. inter-group loans or B. A financing company within the family-owned business group

In both cases, as the loan agreement is carried out between related parties the interest rate shall be arm's length.

Net interest expenses exceeding 30% of the so-called “operating profit” (similar to EBITDA), may not be taken as deductible for tax purposes in the year of their accrual. There is a minimum allowance of €1 million per year. The excess may be carried forward for 18 years.

In case the net interest expense of the fiscal period does not exceed the 30%, the difference may be carried forward and increase the threshold for the following five years.

Interest expenses on intra-group financing that is entered into for (i) the acquisition of shares in entities when the seller belongs to the same group of companies and (ii) the capitalization of entities belonging to the same group as the borrower, will not be deductible unless there are valid economic reasons that justify the intra-group leveraged transaction.

1.15 Does your country provide for a deemed deduction on equity and/or debt?

No.

1.16 Is the retention of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

According to Spanish Corporate Law, since October 2011, minority shareholders can benefit from a separation right when the company’s earnings are unjustifiably retained by decision of the majority shareholder.

After five business years from the company’s registration in the Commercial Registry, any shareholder who votes in favor of a dividend distribution will have the right to withdraw from the company if the shareholders general meeting does not agree on the distribution of an amount equal to at least one-third of its (legally distributable) operating profits in the previous financial year. In such case the company shall be obliged to pay the shareholder the fair value of the shares. Nevertheless, this separation right has been suspended until 31 December 2014.

1.17 Wealth tax

- 2013 characteristics and rate

Wealth tax is a tax collected by the autonomous communities. At present there are different general exempt amounts and different scales in a number of communities. In addition, the Madrid autonomous community has a 100% quote relief, therefore exempting their taxpayers from wealth tax.

Following the publication of Royal Decree 13/2011 on the Official Gazette, Spanish wealth tax was reintroduced for 2011 and 2012. The Budget Act for 2013 and 2014 extended it for 2013 and 2014. The applicable law will continue to be mainly the same as the one in force prior to its suspension in 2008, with a number of slight changes.

The law grants exemptions to certain assets, notably:

- Habitual dwelling: The Royal Decree introduces an exemption on the first €300,000 (previous exemption amounted to €150,000) of property worth per taxpayer.
- Family business relief: This continues to apply and exempts from tax business property, including shares in operating companies, provided certain conditions are met.
- Works of art, provided certain requirements are met and the National Heritage regulations are complied with.

The Royal Decree increased the general amount exempt to €700,000 of net worth per taxpayer, now including nonresident individuals as well (unlike prior to 2008).
1.17 Wealth tax

- 2013 characteristics and rate
  Consequently, taxpayers with net taxable assets below €700,000 will not be subject to tax. The law continues to include an obligation to submit tax returns for taxpayers with gross assets in excess of €2 million, even if there is no tax payable.

  The rates remain unchanged. They are determined by application of a progressive scale of rates ranging from 0.2% to 2.5%. The current marginal rate of 2.5% applies to taxable net worth (after the €700,000 reduction) in excess of €10.7 million.

- Is there an exemption for shares owned by a family that owns a business?
  According to the wealth tax legislation, absolute ownership, bare ownership and life interest in holdings in entities will be exempt if the following conditions are met:
  - The entity’s main activity is not merely the management of movable capital or real estate assets.
  - The taxpayer’s holding in the entity is at least 5% calculated individually, or 20% calculated jointly with the interest held by his/her spouse, ascendants, descendants or collateral relatives up to the second degree.
  - The taxpayer performs management functions at the entity, for which he/she receives remuneration representing more than 50% of all his/her business, professional or personal income from other sources. However, where the interest in the entity is held jointly with any of the persons mentioned above, at least one of these persons must meet the conditions relating to performance of management functions and compensation, even though they will all be entitled to the tax exemption.

1.18 Inheritance tax/estate tax

According to the Spanish gift and inheritance law, this tax is levied on the acquisition by individuals of assets (whether tangible or intangible) by virtue of inheritance (mortis causa), donation (inter vivos) or life insurance policies where the payer of the premium and the beneficiary are different persons (subject to certain exceptions).

Gift and Inheritance tax are similar across the different Spanish regions. However, the autonomous regions may introduce limited modifications to the general gift an inheritance tax regime as follows:

- They may increase or expand the range of reductions to the taxable base.
- They may modify the general scale of rates and the special personal rates.
- They may increase or expand the range of tax credits available.

Additionally, the autonomous regions of Navarre and Basque Country have a wide right to self-regulate gift and inheritance tax. Taxation in these regions is significantly different from the mainstream Spanish tax laws.
1.18 Inheritance tax/estate tax

The legislation of an autonomous region applies where the heir or donee is a Spanish resident and the deceased has been a resident for a greater number of days in that particular autonomous region during the five-year period prior to the decease.

Donations of Spanish real estate to Spanish resident donees are taxed by application of the legislation of the autonomous region where the property is located.

Legislation in force in Spain imposes gift and inheritance tax on donees, heirs or insurance beneficiaries regardless of the tax residence of the donor, deceased or payer of the policy premiums.

Taxpayers are the heir, the donee or the beneficiary, according to the following rules:

- Resident taxpayers are liable to the tax on their share in the estate of the deceased or the assets donated, or the life insurance benefit, regardless of where the assets forming part of the estate, or received by virtue of donation, are located or where the life insurance policy is contracted.

- Nonresident taxpayers are only liable for the tax on the Spanish located assets acquired by virtue of inheritance or donation, or where the insurance policy is Spanish.

The taxable value of the acquisition by the taxpayer is determined by taking into account the fair market value of the assets forming part of the estate or donated, or the benefit from the life insurance policy.

The taxable base is taxed (both for gift and inheritance tax purposes) by application of the following progressive scale:

<table>
<thead>
<tr>
<th>Net taxable base up to (€)</th>
<th>Tax quota</th>
<th>Remaining taxable base</th>
<th>Tax rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.00</td>
<td>0.00</td>
<td>7,993.46</td>
<td>7.65</td>
</tr>
<tr>
<td>7,993.4</td>
<td>611.50</td>
<td>7,987.45</td>
<td>8.50</td>
</tr>
<tr>
<td>15,980.91</td>
<td>1,290.4</td>
<td>7,987.45</td>
<td>9.35</td>
</tr>
<tr>
<td>23,968.36</td>
<td>2,037.26</td>
<td>7,987.45</td>
<td>10.20</td>
</tr>
<tr>
<td>31,955.81</td>
<td>2,851.98</td>
<td>7,987.45</td>
<td>11.05</td>
</tr>
<tr>
<td>39,943.26</td>
<td>3,734.59</td>
<td>7,987.45</td>
<td>11.90</td>
</tr>
<tr>
<td>47,930.72</td>
<td>4,685.10</td>
<td>7,987.45</td>
<td>12.75</td>
</tr>
<tr>
<td>55,918.17</td>
<td>5,703.50</td>
<td>7,987.45</td>
<td>13.60</td>
</tr>
<tr>
<td>63,905.62</td>
<td>6,789.79</td>
<td>7,987.45</td>
<td>14.45</td>
</tr>
<tr>
<td>71,893.07</td>
<td>7,943.98</td>
<td>7,987.45</td>
<td>15.30</td>
</tr>
<tr>
<td>79,880.52</td>
<td>9,166.06</td>
<td>39,877.15</td>
<td>16.15</td>
</tr>
<tr>
<td>119,757.67</td>
<td>15,606.22</td>
<td>39,877.15</td>
<td>18.70</td>
</tr>
<tr>
<td>159,634.83</td>
<td>23,063.2</td>
<td>79,754.30</td>
<td>21.25</td>
</tr>
<tr>
<td>239,389.13</td>
<td>40,011.04</td>
<td>159,388.41</td>
<td>25.50</td>
</tr>
<tr>
<td>398,777.54</td>
<td>80,655.08</td>
<td>398,777.54</td>
<td>29.75</td>
</tr>
<tr>
<td>797,555.08</td>
<td>199,291.40</td>
<td>Excess</td>
<td>34.00</td>
</tr>
</tbody>
</table>
1.18 Inheritance tax/estate tax

Resulting tax gross should be further increased by the application of certain additional coefficients that take into account the acquirer's net wealth prior to the acquisition, as well as his/her relationship with the donor/deceased.

<table>
<thead>
<tr>
<th>Donee’s preexisting wealth</th>
<th>Group (family relationship)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>I</td>
</tr>
<tr>
<td>0-402,678,11</td>
<td>1</td>
</tr>
<tr>
<td>402,678,12-2,007,380,43</td>
<td>1.05</td>
</tr>
<tr>
<td>2,007,380,44-402,678,11</td>
<td>1.1</td>
</tr>
<tr>
<td>Over 402,678,11</td>
<td>1.2</td>
</tr>
</tbody>
</table>

Therefore, the effective maximum rate may reach 81.60% (i.e., maximum general rate: 34% x maximum personal rate: 2.4 = 81.60%). These rates have been slightly modified in certain autonomous regions.

The resulting amount is further reduced, regardless of the residence status of the acquirer, by application of certain allowances in cases of inheritance or life insurance benefits, as follows:

- Reductions on inheritance, depending on the family relationship between the heir and the deceased, as follows:
  - Group I: descendants under 21: €15,956, plus €3,990 for each year the descendant is under 21 years. Total reduction may not exceed €47,858.
  - Group II: descendants older than 21, spouse and ascendants: €15,956.
  - Group IV: others: 0
- Disabled acquirers: €47,858 or €150,253. Disability is determined according to Spanish social security regulations.
- Acquisition of the principal private residence by close relatives: 95% of the real estate value, up to an amount of €122,606.
- Benefits deriving from life insurance policies may be reduced by 100% up to a maximum amount of €9,195 where the beneficiary is the spouse, ascendant or descendant of the payer of the premiums.
- There are a number of transitional measures applicable to life insurance policies contracted before 19 January 1987.
- Acquisition of qualified shareholdings in family-owned operating companies by certain relatives (including the spouse of the deceased or donor). This reduction is applicable, up to 95% of the shares’ value, provided that a number of requirements are met, including that the conditions required for wealth tax exemption are met as of the date of death. This reduction also applies to donations, subject to the fulfillment of additional requirements.

1.19 Gift tax

See Section 1.18

1.20 Real estate transfer tax

Transfer tax is levied at a general rate of 6% (7% in most autonomous communities) on the second and any subsequent transfers of real estate. No transfer tax is triggered where the transaction is subject to VAT.

The transfer of real estate by inheritance or gifts is exempt from Spanish real estate transfer tax.
1.21 Endowment tax

As a general rule, donations made to charitable foundations (meeting certain requirements and pursuing special charitable purposes) allow the donors to claim a tax credit.

If the donor is a corporation, then a tax credit of 35% of the amount donated can be applied if certain requirements are met. Nevertheless, the tax base of the credit cannot exceed 10% of the period’s total taxable base. Non-deducted amounts due to an insufficient tax quota can be applied during the following 10 years.

If the donor is an individual, then a tax credit of 10% (or 25% if some conditions are met) of the amount donated can be applied. The tax base of the credit is also subject to the limit of 10% of the period’s total taxable base.

Donations made to charitable foundations are not tax deductible for CIT purposes.

1.22 Social security

- National/social insurance contributions on employee income

In Spain, companies and employees must pay Social Security contributions on a monthly basis. The contributions to be paid are calculated taking into account the following: (i) base of contribution and (ii) rates of contribution.

The base of contribution corresponds to the salary of the employee, but it is capped, it means that there is a maximum base of contribution that is fixed every year by the Spanish Government. For 2013, the maximum base of contribution is €41,108.40 gross per year (€3,425.70 gross per month), so any sum of salary exceeding such amount is not taxable from a Social Security point of view.

The rates are different for employers and employees: The general rate for employers is 30% approximately (it can vary a bit depending on the specific activity of the company), and the rate for employees is 6.35%. For a better understanding we explain it with an example:

If we consider a salary of €25,000 gross per year the approximate cost for company and employee would be the following:

- Company's contributions: 25,000 × 30%= €7,500 per year.
- Employee's contributions: 25,000 × 6.35%= €1,587.50 per year.

These rates of contributions are compulsory and cannot be split to cover different contingencies. The referred percentages/rates must be paid compulsory and cover retirement pension, health, illness, unemployment, etc.

- Health/medical/dental care

The health care is included in the contributions explained above. Additional coverage can be provided to the employees through private insurances. Sometimes, the applicable collective agreement obliges to subscribe some private coverage.

- Retirement plans/pensions for employees

The retirement pension is included in the contributions explained above.

Additional coverage can be provided to the employees through private insurances. Sometimes, the applicable collective agreement obliges to subscribe some private coverage.
1.23 Pensions and tax-efficient savings

- Tax relief on pension contributions – standard
  Contributions made to a regulated pension plan reduce the general PIT tax base. The annual deduction is limited to the lesser of €10,000 (€12,500 if the individual is more than 50 years old) or 30% of net employment income or business income (50% if the individual is more than 50 years old). In addition to the deduction described in the preceding sentence, individuals whose spouses receive net earned income and income from business activities of less than €8,000 may deduct from their tax base additional contributions of up to €2,000. Excess deductions may be carried forward for five years.

- Tax relief on pension contributions – any specific relief to family business?
  No.

1.24 Taxation of flow-through entities/partnerships/trust funds

Partnerships

In the case of foreign transparent/look-through entities without a permanent establishment in Spain, the PIT Law envisages a special rule for taxation (hereinafter, Special look-through regime), whereby the Spanish resident members or partners of the entity are considered to be each individually taxpayers of the Spanish PIT for the part of the income obtained which is attributable to each one of them (i.e., the Spanish PIT Law establishes a transparency regime for the taxation of the investors of the foreign vehicle). Such income will be taxed under the general tax base and subject to the individual taxpayer’s marginal rate (from 47% up to 54% from 2012 and 2013).

The Spanish PIT Law envisages the application of the aforementioned special look-through tax treatment to foreign entities/vehicles whose legal nature is identical or analogous to look-through entities incorporated under Spanish law.

In this connection, Spanish PIT Law does not expressly define what it should be meant by a foreign entity being identical or analogous to Spanish look-through entities. Therefore, Spanish tax law does not define the legal attributes that an entity should meet in order to trigger a look-through tax treatment.

However, considering the main legal features of the entities that receive a look-through tax treatment under Spanish Law and the criterion followed by the Spanish tax authorities in their rulings issued to other taxpayers in this respect, a foreign entity should receive a look-through treatment for Spanish tax purposes, if it complies with all or most of the following conditions:

- Lack of legal personality (but there are certain exceptions, so this issue is not decisive)
- The capital is not divided in shares/participations
- Existence of limitations to the transfer of the member’s interest in the entity
- Existence of a unity of rights and assets that may be differentiated (regardless of legal ownership) from the rest of the rights and assets of the members of the entity
- Unlimited liability of the partners vis-à-vis third parties
- It is not necessary a formal agreement for the distribution of profits to its members
- The entity is transparent for tax purposes in the jurisdiction of incorporation, this is, the entity is not subject to CIT and its income is attributed to its members/partners

Notwithstanding the above, it must be highlighted that the Spanish tax authorities does not establish a degree of importance of each one of those conditions listed above.

Given the above, and taking in consideration that there is not a clear rule in order to conclude about if the entity should be considered a look-through entity for Spanish tax purposes, an analysis on a case-by-case basis should be made for this purposes.

Trusts

It should be point out that Spanish tax legislation does not contain any provision on the taxation of trusts, the settlor, trustees or beneficiaries; and this has generated certain legal uncertainty when dealing with trusts for Spanish tax purposes. Thus, a case-by-case analysis would always be needed to determine the tax implications of foreign trusts in Spain.
Spain

1.25 Exemptions in the law that specifically relate to family businesses

Wealth Tax Law establishes an exemption with regard to the assets and rights necessary for the development of the business and professional activities provided that:

- The individual taxpayer performs the activity personally, directly and habitually.
- The activity constitutes its main source of income. Compensation for management functions or any other remuneration coming from entities whose holding is equally exempt shall be excluded from the computation of the main source of income.

Inheritance and Gift Law sets forth a 95% reduction in the taxable base where a family business is transferred to the spouse, descendants or adopted by virtue of a donation if some requirements are met:

- The donor must be 65 years old or older. If not, he must be in circumstances of personal disability (full personal or severe disability).
- The donor holds, on his own, at least, the 5% of the company’s share capital or, with his spouse, ascendants and/or descendants, the 20% of the company’s share capital.
- The company does not have the consideration of just asset-holding company. A company is qualified as asset-holding when its principal activity is the management of assets.
- The donor has been exercising supervisory or direction roles in the company prior to the donation and has obtained income from these roles that exceeds more than the 50% of his whole business or professional activity income.
- The donor, if he had supervisory or direction roles in the company, must stop from such after the donation and stop perceiving income due to this charge.
- The donee must keep what has been donated and keep meeting the previous requirements during 10 years from the donation, unless the donee deceases during this term.

This reduction is also applicable in case of death when the heirs or legatees are the spouse or direct and legally adopted descendants provided that the participation transferred is covered by the wealth tax exemption (see Section 1.17) and the acquisition is maintained during 10 years from the death date.

1.26 Are there any business incentives in your country that are specific to

- SMEs Many SMEs and family business could benefit from the tax incentives related to indefinite labor contracts.

  Thus, if a company with fewer than 50 employees enters into its first labor contract (indefinite full-time labor contract) with an individual under 30 years of age, it may benefit from a €3,000 tax credit.

  In addition, if the company hires an individual who is receiving unemployment benefits, the company may benefit from a tax credit equal to 50% of the outstanding unemployment payments the employee was supposed to receive, with the limit of 12 monthly payments if certain requirements are met.

  See Section 1.1 for reinvestment tax credit.

- Family businesses No special incentives for family businesses.

1.27 Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses? No. General loss relief rules apply.

- Are there any available loss reliefs that are specific to SMEs? No. General loss relief rules apply.
Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- **Calculation 1:** The business makes a profit before tax of €2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

<table>
<thead>
<tr>
<th>Business</th>
<th>€</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxable base   =</td>
<td>€2,000,000</td>
</tr>
<tr>
<td>Tax rate 30% (general) =</td>
<td>€600,000</td>
</tr>
<tr>
<td>Profit after taxes =</td>
<td>€1,400,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Individual shareholder</th>
<th>€</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dividends =</td>
<td>€1,400,000</td>
</tr>
<tr>
<td>Exempt amount =</td>
<td>€1,500</td>
</tr>
<tr>
<td>Taxable dividends =</td>
<td>€1,398,500</td>
</tr>
<tr>
<td>On first €6,000: 21% =</td>
<td>€1,260</td>
</tr>
<tr>
<td>More than €6,000 up to €24,000: 25% =</td>
<td>€4,500</td>
</tr>
<tr>
<td>More than 24,000: 27% =</td>
<td>€371,115</td>
</tr>
<tr>
<td>Gross tax quota =</td>
<td>€376,875</td>
</tr>
<tr>
<td>Withholding tax on saving income: 21% =</td>
<td>€293,685</td>
</tr>
<tr>
<td>Tax quota =</td>
<td>€83,190</td>
</tr>
<tr>
<td>Effective tax rate =</td>
<td>26.95%</td>
</tr>
</tbody>
</table>

- **Calculation 2:** The business makes a profit before tax of €500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

<table>
<thead>
<tr>
<th>Business</th>
<th>€</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxable base   =</td>
<td>€500,000</td>
</tr>
<tr>
<td>Tax rate 30% (general) =</td>
<td>€150,000</td>
</tr>
<tr>
<td>Profit after taxes =</td>
<td>€350,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Individual shareholder</th>
<th>€</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dividends =</td>
<td>€350,000</td>
</tr>
<tr>
<td>Exempt amount =</td>
<td>€1,500</td>
</tr>
<tr>
<td>Taxable dividends =</td>
<td>€348,500</td>
</tr>
<tr>
<td>On first €6,000: 21% =</td>
<td>€1,260</td>
</tr>
<tr>
<td>More than €6,000 up to €24,000: 25% =</td>
<td>€4,500</td>
</tr>
<tr>
<td>More than 24,000: 27% =</td>
<td>€87,615</td>
</tr>
<tr>
<td>Gross tax quota =</td>
<td>€93,375</td>
</tr>
<tr>
<td>Withholding tax on saving income: 21% =</td>
<td>€73,185</td>
</tr>
<tr>
<td>Tax quota =</td>
<td>€20,190</td>
</tr>
<tr>
<td>Effective tax rate =</td>
<td>26.79%</td>
</tr>
</tbody>
</table>

Has this effective tax rate increased, decreased or stayed the same in the last three years?

The effective tax rate has increased in the last three years due to the temporary tax measures introduced by the Spanish Government.
Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil
Business activities carried out as an individual (without corporate veil) are taxed under PIT at the general tax rates. In general terms CIT rules apply to determine the taxable base, with certain exceptions established under PIT Law.

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.
Regarding PIT, capital gains and dividends are included in the savings taxable base and are taxed at the same rate. Nevertheless, dividends are exempt up to the amount of €1,500.

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.
None.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:
A. Fully publicly listed? No.
B. Partly publicly listed? No.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?
No.

Section 4: Succession planning

4.1 Life insurance
Life insurance policies where the payer of the premium and the beneficiary are different persons will be liable for inheritance tax (subject to certain exceptions).
Benefits deriving from life insurance policies may be reduced by 100% up to a maximum amount of €9,195 where the beneficiary is the spouse, ascendant or descendant of the payer of the premiums.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?
The requirements in the transfers of shares will depend on the type of company involved in the agreement, a limited liability company or public corporation. Generally, the transfer of the holding in a limited liability company is much more restrictive than in a public corporation and shall be necessarily documented in a public deed.

4.3 Estate tax
There is a very advantageous tax treatment with regard to the transfer of the business via succession to other family members as there is a 95% reduction of the taxable base in order to encourage the continuity of the family business. Autonomous regions may increase the reduction percentage.
See Section 1.25.
4.4 Pension plans

Contributions to a regulated pension plan reduce the PIT tax base. The annual deduction is limited to the lesser of €10,000 (€12,500 if the individual is more than 50 years old) or 30% of net employment income or business income (50% if the individual is more than 50 years old). In addition to the deduction described in the preceding sentence, individuals whose spouses receive net earned income and income from business activities of less than €8,000 may deduct contributions of up to €2,000 from their tax base. Excess deductions may be carried forward for five years.

4.5 Trusts, foundations and private purpose funds

Trusts are institutions alien to the Spanish civil and tax laws. Additionally, Spain is not a signatory to The Hague Convention of 1 July 1985, on the law applicable to trusts and on their recognition. As a consequence of this, income obtained from, assets held through or inheritances or gifts involving trusts must be carefully analyzed, as it is extremely complex to determine their Spanish tax and legal status.

4.6 Wills/intestacy/family charters

A will is a legal document that regulates an individual’s estate after death. Spain is a member of The Hague Treaty of 5 October 1961, regarding will formalities, and consequently, will accept the formal validity of a will drawn under:

- The laws of the deceased’s domicile, nationality, place of residence at the time of execution of the will or at death
- The laws of the place where the will has been executed
- The laws where real estate is located, but only regarding real estate

If there is no valid will at death, then the deceased's estate passes under predetermined rules known as intestate succession, in the following order:

- Children and other descendants (observing forced heirship rules applicable to the surviving spouse)
- Ascendants (observing forced heirship rules applicable to the surviving spouse)
- The surviving spouse (special rules apply in the case of separated couples)
- Other relatives, up to the fourth degree (uncles, aunts, nephews, nieces and cousins)
- The Spanish state

4.7 Passing on a business

See Section 1.24

4.8 Private equity

**Specific legislation/tax treatment of income derived from private equity (PE) activity**

An analysis on a case-by-case basis should be made in order to conclude if the entity should be considered a normal corporate entity, a look-through entity for Spanish tax purposes, or whether CFC rules or other special regime should apply.

<table>
<thead>
<tr>
<th>Equivalent PE ratio</th>
<th>N/A.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Others?</td>
<td>N/A.</td>
</tr>
</tbody>
</table>
Section 5: Tax policy environment

5.1 Policy environment relating to family business
There are several associations of family business (i.e., *instituto de empresa familiar*) that are active lobbies.

5.2 Specify change in the direction of tax policy in the last three years
No, other than those referred to wealth tax and inheritance tax.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners
None.

5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions
None.

Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with:

<table>
<thead>
<tr>
<th>Unit</th>
<th>No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>High net worth individuals (HNWIs)</td>
<td></td>
</tr>
<tr>
<td>SMEs</td>
<td></td>
</tr>
<tr>
<td>Family businesses</td>
<td></td>
</tr>
<tr>
<td>Large corporate taxpayers</td>
<td>Large Taxpayers Central Unit</td>
</tr>
<tr>
<td></td>
<td>The Order of the Ministry of Economy and Finance 3230/2005 created the Large Taxpayers Central Unit inside the Tax Agency with the aim of intensifying the control over large taxpayers.</td>
</tr>
<tr>
<td>Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses</td>
<td>No.</td>
</tr>
</tbody>
</table>

6.2 Specify enforcement focus areas or defined programs that might touch a family business
None.

6.3 Specify tax enforcement focus on any particular industry or profession
Spanish tax authorities pay special attention to professional activities carried out by artists and athletes in order to find unreported income.

6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners
According to the 2013 Tax Control Annual Plan, Spanish tax audits will focus on family groups of individuals and the companies in which they participate in order to make a proper division of the income attributable to each of them and prevent fraudulent transfers of income between one another.

Additionally, taxpayers who have avoided filing the new 720 informative form related to assets and rights located abroad will be under investigation. Royal Decree 1558/2012 established a new formal obligation to inform the tax authorities of the assets and rights held outside Spain. The information obligation is intended for individuals and companies, tax residents in Spain, holding assets and rights (mainly bank accounts, securities and property) located abroad, with a joint balance or combined value of more than €50,000 per each one of the three types of assets.
6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

The Spanish Government approved on 30 March 2012 a Tax Amnesty allowing individuals and corporate entities to voluntarily regularize their fiscal situation by filing a special tax return. The Tax Amnesty covered PIT, Non-Resident Income Tax (NRIT) and CIT and basically consisted in the payment of a 10% rate on the acquisition value of any unreported assets. As a result of regularization, no interest, penalties or surcharges were applicable. Under this procedure any criminal liability was also waived.

The Tax Amnesty program collected approximately €12,000 million, an amount considerably lower than expected by the Spanish authorities.

Also, a reduced 8% tax charge was introduced for dividends and capital gains derived from non-Spanish resident subsidiaries that do not comply with the participation exemption regime “subject to tax test,” provided that they have complied with the remaining requirements for the application of this regime. This special charge only applied in Fiscal Year 2012. The 8% charge had to be declared and paid by the Spanish taxpayer within a maximum term of 25 days following accrual of the relevant income. A special, ad hoc tax return was approved by the Spanish authorities for these purposes.

According to the 2013 Tax Control Annual Plan, taxpayers who have participate in voluntary adjustments processes, ordinary or extraordinary, regarding their tax situation may be investigated to determine if those processes have been set in accordance with the intended purpose of the relevant regulations.

6.6 Are there any specific pre-filing processes that can be leveraged by:

- HNWIs: No.
- Family businesses: No.

6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

No.
Sweden

<table>
<thead>
<tr>
<th>Country name</th>
<th>Sweden</th>
</tr>
</thead>
<tbody>
<tr>
<td>EY contacts</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Gustaf Linder</td>
</tr>
<tr>
<td></td>
<td>Malmö</td>
</tr>
<tr>
<td></td>
<td>+46 40 693 15 72</td>
</tr>
<tr>
<td></td>
<td><a href="mailto:gustaf.linder@se.ey.com">gustaf.linder@se.ey.com</a></td>
</tr>
<tr>
<td></td>
<td>Tobias Wetterberg</td>
</tr>
<tr>
<td></td>
<td>Stockholm</td>
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<tr>
<td></td>
<td>+46 8 520 59 117</td>
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<tr>
<td></td>
<td><a href="mailto:tobias.wetterberg@se.ey.com">tobias.wetterberg@se.ey.com</a></td>
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<tr>
<td></td>
<td>Carl Philgren</td>
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<td></td>
<td>Stockholm</td>
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<td></td>
<td>+46 8 520 59 522</td>
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<td></td>
<td><a href="mailto:carl.philgren@se.ey.com">carl.philgren@se.ey.com</a></td>
</tr>
</tbody>
</table>

Section 1: The accumulative tax burden on family business

2013 tax rates

<table>
<thead>
<tr>
<th>1.1 Corporate income tax (national and sub-national combined)</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td></td>
</tr>
<tr>
<td>Highest marginal rate</td>
<td>The highest rate is 22%.</td>
</tr>
<tr>
<td>The new tax rate of 26.3% was effective 1 January 2013.</td>
<td></td>
</tr>
<tr>
<td>Highest rate for small and medium enterprises (SMEs)/small business</td>
<td>The highest rate is 22%.</td>
</tr>
<tr>
<td>26.3%</td>
<td></td>
</tr>
</tbody>
</table>

*All data in this chapter is valid for 2013-2014 unless otherwise denoted.*
1.1 Corporate income tax (national and sub-national combined)

- Special treatment of SMEs/small business (other reliefs, etc.)
  - No. No.

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

Since 2009, the Swedish Income Tax Act has placed limits on the tax deductibility of interest expenses relating to intra-group loans that have been used to finance intra-group acquisition of shares.

From 1 January 2013, the interest deduction limitation rules have been expanded to include interest expenses relating to all intra-group loans, i.e., not only loans that have financed intra-group acquisition of shares as was the case with the previous legislation.

As a general rule, all interest payments to a party within a community of interest are not deductible for tax purposes. A community of interest is defined as companies that have significant influence in one way or another over the other or are subject to mutual governance either directly or indirectly.

However, a deduction is granted if either of the following exceptions is applicable:

- The corresponding interest income is taxed with at least 10% in the hands of the beneficial owner of the interest. The level of taxation is determined by a hypothetical test, where the interest income is considered the recipient's only income. Deduction will not be granted if the loan has arisen mainly to provide the group with a substantial tax benefit. In this case, the taxpayer has the burden of proof.

- Both the intra-group acquisition and the intra-group loan are (approximately 75% or more) motivated by business reasons besides than tax savings. This exception is limited only to instances in which the recipient of the interest income is a resident in a state within the European Economic Area (EEA) or, under certain conditions, in a state with which Sweden has a tax treaty.

There have been a lot of discussions about changing the interest deduction limitation rules in Sweden and the government is currently investing whether the possibility to deduct interest expenses should be dealt with in another way. Therefore it is expected that the rules may be amended in the near future.
1.2 Individual income tax

### 2013 Change in rate in the last three years (up or down).

- **Personal allowance**
  - The personal allowance ranges between SEK13,100 and SEK34,300 per year. In addition employees will receive an earned tax credit based on the earned income, age and municipality tax rate.
  - The government has increased the personal allowance for employees in five phases. The last phase became effective 1 January 2014.

- **Minimum rate of personal income tax (PIT)**
  - The highest rate is 29%.
  - N/A.

- **Highest marginal rate of PIT**
  - The highest rate is 59%.
  - N/A.

- **Any special surtaxes**
  - N/A.

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

A proportional local tax rate in the basic structure of the Swedish statutory income tax system applies to all earned income and taxable transfers. The individual is the taxpaying unit. For total labor incomes above a certain threshold, the taxpayer is also responsible for a central government income tax. Before computing the individual's tax liability, a basic deduction is mechanically made by the tax authorities against the individual's assessed total labor income. Since 1991, this deduction is phased in at lower income levels and phased out at higher income levels with consequences for the marginal tax rate facing the individual in these income intervals.

In 2007, a non-targeted earned income tax credit was introduced in Sweden. Further steps in the same direction have been taken in 2008, 2009 and 2010. The stated motive of the reform was to boost employment. In particular, there was drive to provide incentives for individuals to go from unemployment to, at least, part-time work. The fifth step in the same direction was introduced by the government in 2014 and became effective 1 January 2014, meaning that employees is entitled to a further deduction.

The earned income tax credit (EITC) is a nonrefundable tax credit. This means that the credit cannot reduce the individual's tax liability below zero. The Swedish tax credit has a very general formula: all individuals aged below 65 have the same tax credit formula, regardless of marital status or number of children in the household. The taxpayer does not need to apply for the tax credit. The individual's tax liability is automatically reduced with the size of the tax credit.

1.3 VAT, GST and sales tax

### 2013 Change in rate in the last three years (up or down).

- **Standard rate**
  - VAT of 25%, 12% and 6%.
  - N/A.

- **Are there any special reliefs or exemptions for a family business?**
  - No.
  - N/A.

1.4 Property taxes

- **Does a family business receive any relief on property taxes not granted to other types of corporation?**
  - No.
1.5 Capital gains tax (CGT)

- 2013 rate – companies: N/A.
- 2013 rate – individuals: The current rate is 30%.
- Reliefs/exemptions:
  Special rules apply to qualified shares in closely held companies. There are two ways to determine whether a corporation is counted as a closely held company. One is based on the number of owners of the firm (main rule), while the other is regardless of the number of partners (special rule). A share is considered qualified if the shareholder or a relative is active to a significant degree so that his activity has a significant influence on the income generated by the company during the income year or any of the previous five income years.

  Two-thirds of the capital gains on qualified shares are taxable at 30% (in other words, the capital gain is taxed with an effective tax rate of 20%) to the extent the capital gain fits within the calculated threshold amount. Any capital gain that exceeds the threshold amount is taxed as income from employment, which can vary from about 29% to 59%.

  CGT on unqualified shares in unlisted companies are taxed with an effective tax rate of 25%.

1.6 Tax on dividends from ordinary shares

A. For the business: Dividends are nondeductible for the distributing company. Dividends received by company on shares held for business purposes are exempt from tax. To qualify for the exemption, the shares must be held in a Swedish or comparable foreign company for business purposes. Unlisted shares are always deemed to be held for business purpose, and listed shares qualify if a company holds at least 10% of the voting rights in the other company or if the holding is considered to be done due to business reasons. A one-year minimum holding period is required for listed shares.

B. For the owners of the business: The same rates as CGT apply.

1.7 Tax on dividends from preferential shares

A. For the business: The same principles as for ordinary shares apply.

B. For the owners of the business: The same principles as for ordinary shares apply.

1.8 Tax treatment of interest on a loan from the shareholders

A. For the business: Provided the interest is considered to be at fair market value (FMV) the company is able to deduct all interest expenses in order to reduce the corporate income tax (CIT) base.

B. For the owners of the business: Provided the interest is considered to be at FMV the interest will be taxed as capital income, hence with a tax rate of 30%. If the interest is above FMV, the excess amount would be considered as employment income.

1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

A. For the business: Solely the owner of the business is taxed for the income.

B. For the owners of the business: Rental income is taxed as income of business with a progressive rate up to 59%. In addition, the income is subject to social security fees.
1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

A. For the business: The business should pay remuneration corresponding to FMV to the shareholder. Such payment is deductible for the business.

B. For the owners of the business: Provided that the royalty is not derived from the employment, the shareholder should treat such payments as business income, which will be taxed at a progressive tax rate from 29% up to 59%. In addition, the income is subject to social security fees.

1.11 Tax treatment of interest paid on bank debt by a family business

No special treatment. The interest expense is deductible.

1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

No special treatment. The business may deduct the expenditure and the receiver should pay tax on received income.

1.13 Tax treatment of rental payments made by a family business to third parties for real estate

The rental payments are deductible as normal expenditures.

1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group

There is no difference between A and B.

In general, all interest payments to a party within a community of interest are not deductible for tax purposes. A community of interest is defined as companies that have significant direct or indirect influence over the other or are subject to mutual governance.

However, a deduction is granted if either of the following exceptions is applicable:

- The corresponding interest income is taxed with at least 10% in the hands of the beneficial owner of the interest. The level of taxation is determined by a hypothetical test, where the interest income is considered the recipient's only income. However, deduction will not be granted if the loan has arisen mainly to provide the group with a substantial tax benefit. In this respect, the taxpayer has the burden of proof.

- Both the intra-group acquisition and the intra-group loan are mainly (approximately 75% or more) motivated by business reasons other than tax savings. This exception is limited only to include scenarios when the recipient of the interest income is resident in a state within the EEA or, under certain conditions, in a state with which Sweden has a tax treaty.

Note: There has been much discussion about changing the interest deduction limitation rules in Sweden, and the government is currently investing whether the possibility to deduct interest expenses should be dealt with differently. Therefore, it is expected that the rules may be amended in the near future.

1.15 Does your country provide for a deemed deduction on equity and/or debt?

No, but as the deduction of interest expenses on intra-group loans is currently being scrutinized, a deemed deduction on equity and/or debt may be an option in the future.

1.16 Is the retainment of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

Earnings may be retained indefinitely.

1.17 Wealth tax

- 2013 characteristics and rate
  
  Sweden does not have any wealth tax.

- Is there an exemption for shares owned by a family that owns a business?
  
  N/A.
### 1.18 Inheritance tax/estate tax
Sweden does not have any inheritance tax.

### 1.19 Gift tax
Sweden does not have any gift tax.

### 1.20 Real estate transfer tax
Real estate that is transferred to legal entities is subject to a stamp duty of 4.25% of the acquisition price. The stamp duty amounts to 1.5% in cases where the real estate has been acquired privately.

### 1.21 Endowment tax
All endowments are subject to yield tax. The tax on Swedish endowments is handled by the insurance company. Foreign endowments are subject to yield tax of 30% of the government borrowing rate as of 30 November the year before the income year. The tax base includes the surrender value as of 1 of January, any payments during the year (only 50% of payments are done between July and December).

### 1.22 Social security
- **National/social insurance contributions on employee income**: In 2014, the social security reduction for research and development was introduced. The rules may imply reduced employer social fees for employees within the private sector engaged in research and development. The reduction amounts to 10% of the salary. The social fee reduction is maximized at SEK230,000 per month.
- **Health/medical/dental care**: N/A.
- **Retirement plans/pensions for employees**: Pension payments are subject to special employer's contribution of 24.26%.

### 1.23 Pensions and tax-efficient savings
- **Tax relief on pension contributions — standard**: Contributions up to SEK12,000, towards personal pension is deductible towards income. Employers may deduct pension contributions that do not exceed 35% of the salary or 10 basic amount (44,400 x 10 for 2014).
- **Tax relief on pension contributions — any specific relief to family business?**: No.

### 1.24 Taxation of flow-through entities/partnerships/trust funds
Income from partnerships is taxed as business income at the level of the owner. When the partnership is owned by legal entities, the tax rate is 22%. However, if private persons are part of the partnership, then their share of income is taxed with the progressive tax rate, which varies from 29% and 59% (plus social security contribution).

### 1.25 Exemptions in the law that specifically relate to family businesses
No, but please see Section 1.5 for information on how dividends and capital gains from qualified shares in closely held companies (normally family businesses) are treated.
1.26 Are there any business incentives in your country that are specific to

- SMEs
  The government has introduced an investment deduction, effective from 1 December 2013, meaning that it is possible for private persons to deduct half of the acquisition value in a company. The maximum deduction for a person is SEK650,000 a year (i.e., investment of SEK1.3 million). The invested company must conduct regular business and have no more than 50 employees. Furthermore the company’s total revenue may not exceed SEK80 million. A company cannot have investors, who willfully use more than SEK20 million a year to deduct the investment.

  In 2014, the social security reduction for research and development was introduced. The rules may imply reduced employer social fees for employees within the private sector engaged in research and development. The reduction amounts to 10% of the salary. The social fee reduction is maximized at SEK230,000 per month.

- Family businesses
  See above.

1.27 Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses?
  No specific treatment of family businesses.

- Are there any available loss reliefs that are specific to SMEs?
  No specific treatment of SMEs.

Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- **Calculation 1:** The business makes a profit before tax of SEK2 million and pays taxes on this profit. The after tax amount is then distributed to the same shareholder in the same tax year.

- **Calculation 2:** The business makes a profit before tax of SEK500,000 and pays taxes on this profit. The after tax amount is then distributed to the same shareholder in the same tax year.

For both calculations, please also show the effective tax rate.

Please note that it is not possible to make a proper calculation without making several assumptions, or having more information. The outcome depends on whether the owner has other employment income, how much salary the companies have, the age of the owner, etc.

With a business profit of SEK500,000 the owner may have a tax rate on approximately 34%, provided there is no other income. Please note that this outcome is based on the assumptions that some income is paid as salary. The highest effective tax rate on the profit is 55.35% which is applicable provided the shareholder has other employment income and the company has no salaries.

With a business profit of SEK2 million, the owner will have a tax rate on approximately 40%, provided no other income and that the company has salaries of SEK4 million. Where there are no salaries within a company, the tax rate is 56.66%.

Note that in all calculations, the owner is assumed to hold qualified shares in a closely held company.

Has this effective tax rate increased, decreased or stayed the same in the last three years?

No major changes.
Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

Yes, corporations are taxed with CIT of 22% and privately run businesses are taxed with a progressive tax rate that varies between 29% and 59% (plus social security contribution). The aim of the government is to tax business income neutrally, meaning that the business owner should have the same net income, whether he conducts his business privately or through a company. In order to achieve a neutral tax system, the private business is allowed to make different kinds of tax allocations that postpone the taxation until the profits are transferred for private use.

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

Capital gains and dividends are taxed almost in the same way. The only difference is that dividends that exceed a special threshold are taxed as employment income up to 90 basic income amounts (SEK512,100 for income year 2014). The exceeded amount is taxed as normal income of capital, with a tax rate of 30%. When it comes to capital gains the maximum amount is taxed as employment income increases to 100 basic income amounts. In such situations, the shareholder is allowed to include capital gain — that has been taxed as employment income — from the same company during the five preceding years.

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

No, but in closely held companies, dividends may be considered as employment income when the shareholder is working within the business.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

A. Fully publicly listed? When company’s listed CIT is 22%, any exemptions related to closely held companies are not applicable.

B. Partly publicly listed? See Section 3.4A.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

No.

Section 4: Succession planning

4.1 Life insurance

There are no specific tax incentives related to life insurance. All insurances (life insurance and pension insurances) are subject to yield tax. The tax on Swedish endowments is handled by the insurance company. Foreign endowments are subject to a yield tax of 30% of the government borrowing rate as of 30 November prior to the income year. The tax base includes the surrender value as of 1 January, any payments during the year (only 50% of payments are done between July and December). The tax on pension insurance issued by foreign insurance companies is 15% of the average government borrowing rate from the year before the income year. The tax base includes the surrender value as of 1 January.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?

It is possible to use shareholders agreements and buy/sell agreements. These agreements are not regulated by tax law.

4.3 Estate tax

Sweden does not have inheritance tax or gift tax so no such techniques are used to transfer shares.
4.4 Pension plans
N/A.

4.5 Trusts, foundations and private purpose funds
Family funds may be used in order to separate assets from the company. All payments from the fund is taxed as employment income.

4.6 Wills/intestacy/family charters
It is possible to bequeath the assets through a will. However, if the testator has children (heirs of the first inheritance class), they always have the right to half of the inheritance whether or not a will exists. This is called the reserved portion.

Certain procedural requirements apply for the will to be legally valid. It has to be in writing and witnessed by two non-biased (they may not directly or indirectly inherit the will) witnesses. Both witnesses shall also witness the testator's signature, or the testator. Recognizing both the testator and/or the testator’s signature does not give them the right to the will's content.

4.7 Passing on a business
It is possible to pass on the company through a gift to children during life time. If this is not done, the children will inherit the business at the time of the death of the owner. The gift may be provided whether or not the children reside in either in Sweden or abroad, without any tax consequences.

4.8 Private equity
Specific legislation/tax treatment of income derived from private equity (PE) activity
The tax treatment of carried interest has been discussed a lot and the taxation has differed in diverse cases. In some appealed court cases, the tax authority has succeeded in claiming that the income should be considered as employment income.

<table>
<thead>
<tr>
<th>Equivalent PE ratio</th>
<th>N/A.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Others</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

Section 5: Tax policy environment

5.1 Policy environment relating to family business
Though constantly evolving, the case law regarding shares in closely held companies should be considered as qualified that triggers a special tax treatment. The matter is repeatedly discussed in media and the government has recently announced a change in legislation.

5.2 Specify change in the direction of tax policy in the last three years
Qualified shares in closely held companies have become less favorable due to discussions in media and changes in legislation and case law.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners
See Section 1.5.

5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions
N/A.
Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with:
- High net worth individuals (HNWIs): Yes.
- SMEs: Yes.
- Family businesses: Yes.
- Large corporate taxpayers: Yes.
- Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses: N/A.

6.2 Specify enforcement focus areas or defined programs that might touch a family business
The tax authority may select to audit an entity through three different ways:
1. The company might be chosen mechanically with different thresholds that trigger an audit.
2. The company might be selected through a planned audit scheme.
3. The company might be audited due to hints from general public or certain projects.

6.3 Specify tax enforcement focus on any particular industry or profession
It changes from year to year. Normally certain groups are chosen.

6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners
No, the criterion changes every year. With major changes in profits and/or a fast-growing company, the tax authority is likely to scrutinize the company a bit further.

6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success
When a person has fiscal residence in Sweden and has assets abroad that generates income, the person is usually obliged to report this income for tax purposes. It is an obligation by Swedish tax law for the taxpayer to provide information within the regular tax process. The potential consequences of submitting incorrect information may include adjustment of the income for tax purposes, tax surcharges and criminal charges against the taxpayer. The taxpayer may avoid this by making a voluntary disclosure and requesting a review of the incorrect tax returns. A correction, will however, not be considered voluntary if the Swedish Tax Agency has already made inquiries about the taxpayer's tax return related to the given incorrect information. The voluntary disclosure may relate to incorrect information concerning the previous six income years.

In prior years, we have noticed that private persons tend to make voluntary disclosures regarding income from tax havens, for example.

6.6 Are there any specific pre-filing processes that can be leveraged by:
- HNWIs: N/A.
- Family businesses: N/A.

6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI
Yes, Sweden has TIEAs with almost every country in the world. The purpose of these agreements is to promote international cooperation in tax matters through exchange of information.
Country name: Switzerland

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  christian.wasser@ch.ey.com

Section 1: The accumulative tax burden on family business

2013 tax rates

1.1 Corporate income tax (national and sub-national combined)

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Highest marginal rate</td>
<td>The current rate is approximately 12% to 24%, covering federal/cantonal/communal ETR for ordinary taxed SwissCo (i.e., not addressing ETRs of privileged tax regimes such as, tax holiday regime, HoldCo, MixedCo, IP-Box, etc.) *</td>
</tr>
<tr>
<td>• Highest rate for small and medium enterprises (SMEs)/small business</td>
<td>Same as above.</td>
</tr>
</tbody>
</table>

* ETR (effective tax rate); SwissCo (Swiss company); HoldCo (holding company); MixCo (company that is subject to special tax regime at cantonal/communal level when certain requirements are met); IP-Box (company, which is subject to special tax regime regarding income deriving from Intellectual Properties (IP), if certain requirements are met).
1.1 Corporate income tax (national and sub-national combined)

- Special treatment of SMEs/small business (other reliefs, etc.)
  In Switzerland there are various privileged tax regimes (see above) also applicable for SMEs/small businesses.
  N/A.

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

In Switzerland, CIT due has been a deductible item in the P&L ever since. Further, until now there has not been tax base broadening measures applied for corporate income tax (CIT) purposes. However, as of 1 January 2011, capital contribution reserves, i.e., contributions from the direct shareholders that are openly declared and booked on separates accounts, can be distributed without any Swiss withholding tax (WHT) and are not subject to CIT or personal income tax (PIT) at the Swiss shareholder level.

1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal allowance</td>
<td>Yes, amounts depend on various criteria and are different in every canton.</td>
</tr>
<tr>
<td>Minimum rate of personal income tax (PIT)</td>
<td>Progressive rates</td>
</tr>
<tr>
<td>Federal level: 0% up to taxable income of CHF14,500 (singles) resp. up to CHF28,300 (married)</td>
<td>N/A.</td>
</tr>
<tr>
<td>Cantonal/communal level (e.g., canton of Schwyz): 0% up to taxable income of CHF100 (singles and married)</td>
<td></td>
</tr>
<tr>
<td>Highest marginal rate of PIT</td>
<td>Progressive rates that vary depending on Canton:</td>
</tr>
<tr>
<td>Federal level: 11.5% for taxable income exceeding CHF755,200 (singles) resp. exceeding CHF895,900 (married)</td>
<td>N/A.</td>
</tr>
<tr>
<td>Cantonal/communal level (e.g., canton of Schwyz): approximately 7% (singles and married) for taxable income exceeding CHF225,800 (singles) resp. CHF429,000 (married)</td>
<td></td>
</tr>
<tr>
<td>Total tax range on federal/cantonal/communal level (considering all cantons): 18.6% to 46%</td>
<td></td>
</tr>
</tbody>
</table>
1.2 Individual income tax

- Any special surtaxes: No.

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

Federal level: Yes, for dividend income of qualifying participations (10% and more), tax basis is reduced to 50% if participation is held as business asset respectively to 60% if it is held as private asset (applicable since 1 January 2009).

Cantonal level: Similar legislation rules are introduced that either reduce the tax basis or the tax rate.

As of 1 January 2011, capital contribution reserves, i.e., contributions from the direct shareholders that are openly declared and booked on separates accounts, can be distributed without any Swiss WHT and are not subject to CIT or PIT at the Swiss shareholder level.

1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard rate</td>
<td>The current rate is 8%.</td>
</tr>
<tr>
<td></td>
<td>Rate changed from 7.6% to 8%.</td>
</tr>
<tr>
<td>Are there any special reliefs or exemptions for a family business?</td>
<td>No, but 3.8% for hotel businesses and 2.5% for nutrition, water, medicines, newspapers, etc.</td>
</tr>
<tr>
<td></td>
<td>Further, small businesses (sales of not more than CHF5.02 million and output VAT of less than CHF109,000) may apply a simplified procedure.</td>
</tr>
<tr>
<td></td>
<td>Rate changed from 3.6% to 3.8% resp. from 2.4% to 2.5%.</td>
</tr>
</tbody>
</table>

1.4 Property taxes

- Does a family business receive any relief on property taxes not granted to other types of corporation? No.

1.5 Capital gains tax (CGT)

- 2013 rate – companies: N/A.

- 2013 rate – individuals: There is no CGT on capital gains from the sale of movable assets if asset is hold as private asset by an individual unless special events are triggered (see below). If it is hold as business asset, capital gain is taxed at ordinary tax rate (progressive).

- Reliefs/exemptions: Special events such as indirect partial liquidation, transposition and commercial securities dealer.

1.6 Tax on dividends from ordinary shares

A. For the business: N/A.

B. For the owners of the business: Generally ordinary taxation, see Section 1.2.

1.7 Tax on dividends from preferential shares

A. For the business: N/A.

B. For the owners of the business: Generally ordinary taxation, see Section 1.6.
1.8 **Tax treatment of interest on a loan from the shareholders**

| A. For the business: | Interest is tax deductible if interest expense is business related (interest on hidden equity is not business related); safe haven rules are applicable unless effective costs (arm's length) can be proven. Otherwise interest expense is re-qualified as hidden distribution (dividend). |
| B. For the owners of the business: | Taxed as ordinary income. |

1.9 **Tax treatment of rental income on real estate owned by the shareholder(s) of a family business**

| A. For the business: | Rental expense is tax deductible if business related (arm's-length principle has to be considered). |
| B. For the owners of the business: | Taxed as ordinary income. |

1.10 **Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business**

| A. For the business: | Intellectual property (IP) expense is tax deductible if business related (arm's-length principle has to be considered). |
| B. For the owners of the business: | Income is taxed as ordinary income (if shareholder is an individual). |

1.11 **Tax treatment of interest paid on bank debt by a family business**

Interest paid is tax deductible if it is business related.

1.12 **Tax treatment of payments made by a family business to third parties for the use of their intellectual property**

Payments are tax deductible if they are business related.

1.13 **Tax treatment of rental payments made by a family business to third parties for real estate**

Rental payments are tax deductible if they are business related.

1.14 **Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group**

Interest payments are tax deductible if they are business related (arm's-length principle has to be considered).

1.15 **Does your country provide for a deemed deduction on equity and/or debt?**

No, there is no notional interest deduction concept in place (yet).

1.16 **Is the retention of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?**

No, unless treaty shopping and respective abuse rules require minimum dividend distributions.

1.17 **Wealth tax**

- **2013 characteristics and rate**
  - Rate is approximately 0.1% to 1% on net wealth.
- **Is there an exemption for shares owned by a family that owns a business?**
  - There is a reduction on tax base under certain conditions.
1.22 Social security

- National/social insurance contributions on employee income

For 2013:

AHV (old-age and survivors' insurance): 4.2% (employer and employee each) on gross income respectively 7.8% on gross income if self-employed.

IV (disability insurance): 0.7% (employer and employee each) on gross income respectively 1.4% on gross income if self-employed.

EO (income compensation benefits): 0.25% (employer and employee each) on gross income respectively 0.5% on gross income if self-employed.

ALV (insurance for unemployment): 1.1% (employer and employee each) on gross income up to a gross income of CHF126,000 plus 0.5% (employer and employee each) on gross income between CHF126,000 and CHF315,00; self-employed are not insured against unemployment.

UVG: Insurance against accidents is mandatory for employees (insurance premiums depend on the service provider); insurance against accidents is not mandatory if self-employed.
1.22 Social security

- BVG (Swiss occupational plan): Company pension schemes are mandatory in Switzerland. The premiums vary depending on the pension plan.

- Health/medical/dental care: In general, premiums are paid privately and are not tax deductible.

- Retirement plans/pensions for employees: Contributions are tax deductible. Benefits apply to various taxation models.

1.23 Pensions and tax-efficient savings

- Tax relief on pension contributions — standard: Yes, they are tax deductible.

- Tax relief on pension contributions — any specific relief to family business?: No.

1.24 Taxation of flow-through entities/partnerships/trust funds

Partnerships are considered tax transparent. Trusts themselves are not subject to taxation. However, the settlor or the beneficiary is depending on the kind of trust. Flow-through service entities may be either taxed on an ordinarily income tax base or be subject to privileged taxation. In either case, they need to have a certain amount of taxable profits (e.g., cost plus 5%).

1.25 Exemptions in the law that specifically relate to family businesses

None.

1.26 Are there any business incentives in your country that are specific to

- SMEs: Yes, but all of them are open for a wider range of entities.

- Family businesses: Yes, but all of them are open for a wider range of entities.

1.27 Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses?: Switzerland applies the tax loss carryforward principle, i.e., legal entities and self-employed persons may offset tax losses stemming from seven business years preceding the current tax year.

- Are there any available loss reliefs that are specific to SMEs?: Same as above.

Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- Calculation 1: The business makes a profit before tax of CHF2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

- Calculation 2: The business makes a profit before tax of CHF500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.
Has this effective tax rate increased, decreased or stayed the same in the last three years?

ETR has been stable over the last 3 years (e.g., canton of Zurich; city of Zurich).

<table>
<thead>
<tr>
<th>Corporate income tax</th>
<th>Calculation 1</th>
<th>Calculation 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profit before tax</td>
<td>2,000,000</td>
<td>500,000</td>
</tr>
<tr>
<td>CIT</td>
<td>422,964</td>
<td>105,728</td>
</tr>
<tr>
<td>Federal level</td>
<td>134,045</td>
<td>33,507</td>
</tr>
<tr>
<td>Cantonal/communal level</td>
<td>288,919</td>
<td>72,221</td>
</tr>
<tr>
<td>Profit after tax</td>
<td>1,577,036</td>
<td>394,272</td>
</tr>
<tr>
<td>Tax burden (ETR)</td>
<td>21.15%</td>
<td>21.15%</td>
</tr>
<tr>
<td>Federal level</td>
<td>7.83%</td>
<td>7.83%</td>
</tr>
<tr>
<td>Cantonal/communal level</td>
<td>13.32%</td>
<td>13.32%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Personal income tax</th>
<th>Calculation 1</th>
<th>Calculation 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dividend income</td>
<td>1,577,036</td>
<td>394,272</td>
</tr>
<tr>
<td>PIT</td>
<td>304,685</td>
<td>65,245</td>
</tr>
<tr>
<td>Federal level</td>
<td>90,677</td>
<td>19,597</td>
</tr>
<tr>
<td>Cantonal/communal level</td>
<td>214,008</td>
<td>45,648</td>
</tr>
<tr>
<td>Tax burden</td>
<td>19.32%</td>
<td>16.55%</td>
</tr>
<tr>
<td>Federal level</td>
<td>5.75%</td>
<td>4.97%</td>
</tr>
<tr>
<td>Cantonal/communal level</td>
<td>13.57%</td>
<td>11.58%</td>
</tr>
</tbody>
</table>

Remark: tax rates depend on the Canton and Commune of the legal entity’s domicile and the shareholder’s domicile. In this example for the year 2013, the legal entity as well as the shareholder is domiciled in the city of Zurich for a single shareholder without religious confession.

Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

Yes, legal entities are subject to CIT and dividends distributed to shareholders are subject to PIT (reduced tax base/rate if participation is 10% and more). Partnerships are considered tax transparent; accordingly profits are taxable with the respective partner (PIT).

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

Capital gains from the sale of privately held assets are in general (cf. 1.5 for exceptions) tax free whereas dividend income is ordinarily taxed (with the exception of dividends from qualifying participations (see above)). Capital contribution reserves can be distributed without any Swiss WHT and are not subject to CIT or PIT at the Swiss shareholder level.

Capital gains from the sale of business assets as well as dividends thereof are subject to PIT (with the exception of dividends and capital gains from qualifying participations (see above)). Capital contribution reserves can be distributed without any Swiss WHT and are not subject to CIT or PIT at the Swiss shareholder level.

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

N/A.
Section 4: Succession planning

4.1 Life insurance
No, general rules are applicable.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?
Sale of at least 20% of privately held shares to a business asset sphere could be re-qualified from a tax free capital gain to taxable income if not properly handled.

4.3 Estate tax
To a certain extent.

4.4 Pension plans
Basically, employees and owners employed shall be treated similarly. There are exist planning opportunities in this respect.

4.5 Trusts, foundations and private purpose funds
Swiss family foundation; Swiss corporate foundation; investment clubs/SICAV/SICAF private limited partnership for collectively held assets.

4.6 Wills/intestacy/family charters
It is referred to in publicly available literature.

4.7 Passing on a business
Various alternatives, including tax privileges in specific situations.

4.8 Private equity
Specific legislation/tax treatment of income derived from private equity (PE) activity
No, but there is a widely differing tax practice depending on each single case.
Equivalent PE ratio
N/A.
Others
N/A.
Section 5: Tax policy environment

5.1 Policy environment relating to family business
There are ongoing discussions concerning various topics. Just recently, the Swiss Government decided not to create a special tax status for startup companies.

5.2 Specify change in the direction of tax policy in the last three years
There are company tax reforms: I (1997), II (2009/2011), and III (probably 2020). There is no special treatment of family businesses.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners
N/A.

5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions
There may be a federal inheritance tax initiative (to be voted on in 2015/2016).

Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with:

<table>
<thead>
<tr>
<th>Category</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>High net worth individuals (HNWIs)</td>
<td>No, all natural persons are treated the same way.</td>
</tr>
<tr>
<td>SMEs</td>
<td>No.</td>
</tr>
<tr>
<td>Family businesses</td>
<td>No.</td>
</tr>
<tr>
<td>Large corporate taxpayers</td>
<td>No.</td>
</tr>
<tr>
<td>Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses</td>
<td>No.</td>
</tr>
</tbody>
</table>

6.2 Specify enforcement focus areas or defined programs that might touch a family business
None.

6.3 Specify tax enforcement focus on any particular industry or profession
There are on-going discussions in the EU and OECD regarding the acceptance of certain structures (such as principal structures).

6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners
None.

6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success
Simplified taxation for heirs in cases where the deceased has not been fully declared (in force as of 1 January 2010); there is a retroactive self-declaration once in a lifetime.
6.6 Are there any specific pre-filing processes that can be leveraged by:

- HNWIs: No.
- Family businesses: No.

6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

No specifics in terms of HNWI. There is a general tendency to disclose information, also supported by amended information exchange clauses in the various double taxation treaties (DTTs). With regard to the US, e.g., the protocol for the renewal of the DTT between Switzerland and the US with respect to an extended tax information exchange has however not been ratified yet.

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### Some famous family entrepreneurs

Jean Marie Pierre Hubert Taittinger of the famous Champagne house of Taittinger died aged 89.

Berthold Albrecht was the third-generation family member of the Aldi supermarket empire (owner of Aldi Süd). He died aged 58.

Gerald Bowthorpe, who was the third-gen former Chairman of UK-based facilities management group OCS, died aged 90.

Erwin Hymer, founder of German caravan and motorhome maker Hymer AG, died aged 82.

Ottavio Missoni, founder of the Italian fashion house Missoni Spa, died aged 92. Missoni's eldest child, and company CEO, Vittorio Missoni also died this year. In January 2013, while on holiday in Venezuela, he was killed in a small-plane crash along with his wife and four other people.

Jörg Bentz had been a general partner at the Melitta Group, a German-based company selling coffee, paper coffee filters, and coffee makers. He was the grandson of the company founder Melitta Bentz. He died aged 72.

Rosalía Mera, the co-founder of Spanish retail giant Inditex, owner of fashion chain Zara, died aged 69. She held almost 7% of Inditex and was Spain’s richest woman, according to *Forbes* magazine.

Raymond Weil, founder of Swiss watchmaker Raymond Weil SA, died at aged 87.

Hans Riegel, who was the second-generation head of German family confectionary firm Haribo, died aged 90.
Section 1: The accumulative tax burden on family business

2013 tax rates

<table>
<thead>
<tr>
<th>1.1 Corporate income tax (national and sub-national combined)</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Highest marginal rate</strong></td>
<td>For Thai-incorporated companies, the current rate is 20% for the two accounting periods commencing on or after 1 January 2013 and 2014, but no later than 31 December 2014.</td>
</tr>
<tr>
<td></td>
<td>The current rate was reduced from 23% a year earlier (FY 2012), and 30% before that (FY 2 011 and before). The rate to be applied after FY 2014 is under consideration.</td>
</tr>
<tr>
<td><strong>Highest rate for small and medium enterprises (SMEs)/small business</strong></td>
<td>The current rate is 20%.</td>
</tr>
<tr>
<td></td>
<td>SMEs are subject to progressive income tax rate as below:</td>
</tr>
<tr>
<td></td>
<td>THB1 - THB300,000 = Exempt</td>
</tr>
<tr>
<td></td>
<td>THB300,001 - THB1 million = 15%</td>
</tr>
<tr>
<td></td>
<td>Over THB1 million = 20%</td>
</tr>
<tr>
<td></td>
<td>A SME is an incorporated company with paid-up capital of no more than THB5 million on the last day of the accounting period and revenue of no more than THB30 million from sales of goods or services during the accounting period.</td>
</tr>
</tbody>
</table>
1.1 Corporate income tax (national and sub-national combined)

- Special treatment of SMEs/small business (other reliefs, etc.)
  For SMEs, accelerated depreciation shall be granted subject to certain rules and conditions, including:
  - Buildings: 20 years with 25% upfront on the acquisition date for factory buildings
  - Computer hardware and software: three years with 40% upfront on the acquisition date

A SME is a company or juristic partnership with fixed assets (excluding land) of no more than THB200 million and with no more than 200 employees.

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

Reduction of corporate income tax rate from 30% in 2011 to 23% in 2012 and 20% in 2013 to 2014.

1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal allowance</td>
<td>There is a personal allowance of THB30,000 per person per year.</td>
</tr>
<tr>
<td>Minimum rate of personal income tax (PIT)</td>
<td>The tax rate for 2013 is based on the progressive tax rates of 5% to 35%.</td>
</tr>
<tr>
<td>Highest marginal rate of PIT</td>
<td>The rate is 35% for the tax year 2014 onward.</td>
</tr>
<tr>
<td>Any special surtaxes</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

No significant changes in the last five years. In Thailand, a payer of income is subject to monthly payroll withholding tax obligation deductible at source on gross amount. At year-end, the individual is required to file an annual personal income tax return (PND. 91) by the end of March the following year.
1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard rate</td>
<td>The current VAT rate of 7% is legally a temporary reduction from the original standard rate of 10%. N/A.</td>
</tr>
<tr>
<td>Are there any special reliefs or exemptions for a family business?</td>
<td>None. N/A.</td>
</tr>
</tbody>
</table>

1.4 Property taxes

- Does a family business receive any relief on property taxes not granted to other types of corporation? No.

1.5 Capital gains tax (CGT)

- 2013 rate – companies N/A.
- 2013 rate – individuals The progressive tax rates are 5% to 35% for the tax year 2014 onward.

- Reliefs/exemptions
  - No exemptions for capital gains paid to local tax payer.
  - However, the exemptions might be applied for capital gain paid to overseas under certain tax treaties.

1.6 Tax on dividends from ordinary shares

A. For the business:

- Dividend payment is subject to 10% withholding tax, which is a final tax only for foreign corporation not carrying on business in Thailand.

- However, according to Thai Revenue Code, Section 65 bis (10), a Thai SET-listed company and an unlisted company, that owns at least 25% of shares in the Thai company distributing dividend, can excluded all dividends received from a Thai resident company from its taxable profit under certain conditions.

- Other unlisted companies can exclude half (50%) of dividends received from a Thai resident company from its taxable profit.

- In addition, either full or half amount of dividend tax exemption applied, the recipient Thai entity must hold the related shares for at least three months prior to the dividend distribution and continue to hold the shares for another three months thereafter.

B. For the owners of the business: Dividend payment is subject to 10% withholding tax deductible at source on dividends can be treated as final tax. However, it is optional to take 10% withholding tax deducted as tax credit on annual personal tax filing.

1.7 Tax on dividends from preferential shares

A. For the business: See Section 1.6A.

B. For the owners of the business: See Section 1.6B.
1.8 Tax treatment of interest on a loan from the shareholders

A. For the business: The company pays interest on loan from the Thai shareholders has the duty to deducted 1% withholding tax for shareholders that are companies or 15% withholding tax for shareholders that are individual persons and remitted to the tax authority. Such interest can be claimed as tax-deductible expenses for corporate income tax purpose provided the loans are used for the business.

B. For the owners of the business: Shareholders that are individual persons granting loans to the company can treat such 15% withholding tax as final tax or include those interest as assessable income for personal income tax purpose and use the 15% as tax credit when filing personal income tax return. In cases where the shareholders provide loans as a normal business, the shareholder may be required to register as specific business tax (SBT) registrant and has the duty to remit the 3.3% SBT of the interest incomes to the tax authority.

1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

A. For the business: The company pays rental of real estate to its shareholders (either company or individual person who has Thai tax resident) has the duty to deducted 5% withholding tax and remitted to the tax authority. Such rental can be claimed as tax-deductible expenses for corporate income tax purpose provided the real estates are used for the business.

B. For the owners of the business: Shareholders that are individual persons who have Thai tax resident receiving the rental income shall include the rental as assessable income for personal income tax purpose and use the 5% as tax credit when filing personal income tax return.

1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

A. For the business: The company pays a royalty fee to its shareholders and has the duty to deducted 3% withholding tax for payment made to local company and progressive personal income tax rate for payment made to individual person who has Thai tax resident and remitted to the tax authority. Such royalty fee can be claimed as tax-deductible expenses for corporate income tax purpose provided the royalty is used for the business.

B. For the owners of the business: Shareholders that are individual persons who have Thai tax resident receiving the royalty fee shall include the royalty as assessable income for personal income tax purpose and use the withholding tax as tax credit when filing personal income tax return. In cases where the shareholders earn royalty income more than THB1.8 million in any year, the shareholders are required to register as VAT registrant and has the duty to charge 7% VAT on the royalty fee to the company and remit the balance of input and out tax to the tax authority.

1.11 Tax treatment of interest paid on bank debt by a family business

There is no withholding tax applied on interest paid on bank debt by a family business.

1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

See Section 1.10.

1.13 Tax treatment of rental payments made by a family business to third parties for real estate

See Section 1.9.

1.14 Tax treatment of interest payments on A. inter-group loans or B. A financing company within the family-owned business group

A. Inter-group loans: There is a 1% withholding tax imposed on interest payments made to local company, but a 15% withholding applicable to the payment made to overseas company.

B. Financing company: See Section 1.11.
1.15 Does your country provide for a deemed deduction on equity and/or debt?

A deemed deduction on equity and/or debt are not applicable in Thailand.

1.16 Is the retention of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

The companies have to set the legal reserve at 5% of company's profit but capped at 10% of company's registered capital.

1.17 Wealth tax

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013 characteristics and rate</td>
<td>N/A.</td>
</tr>
<tr>
<td>Is there an exemption for shares owned by a family that owns a business?</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

1.18 Inheritance tax/estate tax

N/A.

1.19 Gift tax

N/A.

1.20 Real estate transfer tax

There is 2% transfer fee collected by Land Department for land and building transfer registration.

1.21 Endowment tax

N/A.

1.22 Social security

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>National/social insurance contributions on employee income</td>
<td>National Social Security Fund Contribution on employee's income is 5% of the first THB15,000 and the contribution is subject to a monthly cap of THB750.</td>
</tr>
<tr>
<td>Health/medical/dental care</td>
<td>The benefits will be effective from contribution for certain periods of the months.</td>
</tr>
<tr>
<td>Retirement plans/pensions for employees</td>
<td>The benefits will be effective from contribution for certain periods of months.</td>
</tr>
</tbody>
</table>

1.23 Pensions and tax-efficient savings

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax relief on pension contributions – standard</td>
<td>Actual contribution amount to an approved provident would be deductible, but capped at 15% or THB500,000 of total assessable income of individual per year.</td>
</tr>
<tr>
<td>Tax relief on pension contributions – any specific relief to family business?</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

1.24 Taxation of flow-through entities/partnerships/trust funds

N/A.

1.25 Exemptions in the law that specifically relate to family businesses

N/A.
1.26 Are there any business incentives in your country that are specific to SMEs?

Below are the business incentives for SMEs:

- Buildings: 20 years with 25% upfront on the acquisition date for factory buildings
- Computer hardware and software: three years with 40% upfront on the acquisition date
- 1.5 times tax deduction on the difference between wage expenses under the previous minimum wage rate and those under the new minimum wage rate (i.e., THB300 per day), but this incentives are granted for the payment made during 1 January 2013 to 31 December 2013

- Family businesses

Same as those granted to SME or company.

1.27 Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses? N/A.
- Are there any available loss reliefs that are specific to SMEs? N/A.

Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- Calculation 1: The business makes a profit before tax of THB2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

Based on the information provided, please find below the Thai tax payable for individual shareholder and effective tax rate. It should be noted that both calculations below were calculated based on current Thai tax rates, which are 5% to 35%.

<table>
<thead>
<tr>
<th>Taxable income</th>
<th>Thai tax rate</th>
<th>Tax payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>First THB150,000</td>
<td>0%</td>
<td>0</td>
</tr>
<tr>
<td>Next THB150,000</td>
<td>5%</td>
<td>THB7,500</td>
</tr>
<tr>
<td>Next THB200,000</td>
<td>10%</td>
<td>THB20,000</td>
</tr>
<tr>
<td>Next THB250,000</td>
<td>15%</td>
<td>THB37,500</td>
</tr>
<tr>
<td>Next THB250,000</td>
<td>20%</td>
<td>THB50,000</td>
</tr>
<tr>
<td>Next THB1,000,000</td>
<td>25%</td>
<td>THB250,000</td>
</tr>
<tr>
<td><strong>Total: THB2,000,000</strong></td>
<td></td>
<td><strong>Total: THB365,000</strong></td>
</tr>
</tbody>
</table>

Effective tax rate is 18.25%.
Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

The tax base and income tax rate would be different between corporation and individual tax status.

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

N/A.

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

No penalty imposed if it is paid in other form as its normal cause of business.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

A. Fully publicly listed? No.
B. Partly publicly listed? No.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

N/A.

Section 4: Succession planning

4.1 Life insurance

For PIT, actual premium paid to life insurance company incorporated in Thailand and the term of duration of the insurance policy is at least 10 years is deductible, but capped at THB100,000 per year.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?

Under Thai law governing devolution of an estate, when a person dies, his/her estate including shares will devolve on the heirs by will. In the case where a person dies without having made a will, or if having made a will but his/her will has no effect, the whole of his estate shall be distributed among his statutory heirs according to the law.
4.3 Estate tax
Estate tax is not applicable in Thailand.

4.4 Pension plans
For corporate income tax, actual contribution made by employer is eligible for deductibility.

4.5 Trusts, foundations and private purpose funds
There is the Trust for Transactions in Capital Market Act, B.E. 2550, which prescribes that trust shall be established for the purpose of transactions in capital market.

4.6 Wills/intestacy/family charters
See Section 4.2.

4.7 Passing on a business
There are no restrictions on passing on a business during lifetime but the form of transfer shall be in writing as evidence and registration with the competent authorities might be required. With regard to passing on a business on death, see Section 4.2.

4.8 Private equity
Specific legislation/tax treatment of income derived from private equity (PE) activity
- N/A.
Equivalent PE ratio
- N/A.
Others
- N/A.

Section 5: Tax policy environment

5.1 Policy environment relating to family business
There are no specific measures for family businesses in Thai tax system. The family businesses will be treated as normal businesses depending on its type of business entities. However, many family businesses have benefited from the measures targeted at SMEs.

5.2 Specify change in the direction of tax policy in the last three years
N/A.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners
N/A.

5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions
N/A.
### Section 6: Tax administration and enforcement issues

#### 6.1 Is there a specific unit within your tax administration that deals specifically with:

<table>
<thead>
<tr>
<th>Category</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>High net worth individuals (HNWIs)</td>
<td>N/A.</td>
</tr>
<tr>
<td>SMEs</td>
<td>The Small and Medium Business Tax Administration Unit of the Thai Revenue Department.</td>
</tr>
<tr>
<td>Family businesses</td>
<td>N/A.</td>
</tr>
<tr>
<td>Large corporate taxpayers</td>
<td>The Large Business Tax Administration Office (LTO) of the Thai Revenue Department.</td>
</tr>
<tr>
<td>Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

#### 6.2 Specify enforcement focus areas or defined programs that might touch a family business

N/A.

#### 6.3 Specify tax enforcement focus on any particular industry or profession

It does not focus on profession of taxpayer.

#### 6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners

N/A.

#### 6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

N/A.

#### 6.6 Are there any specific pre-filing processes that can be leveraged by:

- HNWIs: N/A.
- Family businesses: N/A.

#### 6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

No changes have been made.
Key economic numbers – Asia-Pacific

Unemployment: Asia 2.3% of the total labor force

GDP per capita growth rate: Asia 4.5% change from a year earlier

Inflation rate: Asia 6.2% Consumer price index

The importance of family businesses in Asia-Pacific

85% of the companies in Asia-Pacific are family-owned businesses.

Employ 57% of employees of listed companies in South Asia
Employ 32% of employees of listed companies in North Asia

Generate 32% of total market capitalization
Generate 34% of total nominal Asian GDP

Sources: The World Bank and the International Monetary Fund.
Section 1: The accumulative tax burden on family business

2013 tax rates

1.1 Corporate income tax (national and sub-national combined)

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highest marginal rate</td>
<td>The current rate is 20%.</td>
<td>N/A.</td>
</tr>
<tr>
<td>Highest rate for small and medium enterprises (SMEs)/small business</td>
<td>Taxation rate with regard to corporate tax is 20%. Definition of SMEs in Turkey has been changed as follows as per the Regulation on Definition, Characteristics and Classification of Small and Medium Enterprises beginning 4 November 2012.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Micro enterprise</th>
<th>Between 2005-12</th>
<th>After 4 November 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Very small enterprises are those that annually employ less than 10 employees and neither the annual net sales revenue nor the financial balance exceeds TRY1 million.</td>
<td>Enterprises are those that annually employ less than 10 employees and neither the annual net sales revenue nor the financial balance exceeds TRY1 million.</td>
</tr>
</tbody>
</table>
1.1 Corporate income tax (national and sub-national combined)

<table>
<thead>
<tr>
<th>Enterprise Type</th>
<th>Between 2005-12</th>
<th>After 4 November 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small enterprise</td>
<td>Enterprises are those that annually employ less than 50 employees and neither the annual net sales revenue nor financial balance exceeds TRY5 million.</td>
<td>Enterprises are those that annually employ less than 50 employees and neither the annual net sales revenue nor financial balance exceeds TRY8 million.</td>
</tr>
<tr>
<td>Medium enterprise</td>
<td>Enterprises are those that annually employ less than 250 employees and neither the annual net sales revenue nor financial balance exceeds TRY25 million.</td>
<td>Enterprises are those that annually employ less than 250 employees and neither the annual net sales revenue nor financial balance exceeds TRY40 million.</td>
</tr>
</tbody>
</table>

- Special treatment of SMEs/ small business (other reliefs, etc.)
  The Small and Medium-Sized Industry Development Organization (KOSGEB) makes significant contributions to strengthening SMEs by various support instruments in financing, R&D, common facilities, market research, investment site, marketing, export and training.

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

N/A.
1.2 Individual income tax

There is a minimum living allowance practice for wage earners in Turkey. Minimum living allowance is applied to the annual gross amount of the minimum wage which is applicable at the beginning of the calendar year when the wage is earned and which is paid to the workers over the age 16 working in the industry sector; 50% for the employee himself, 10% for the unemployed spouse who does not receive any kind of income, 7.5% for the first two children and 5% for other children, separately calculated for each child.

2013 minimum living allowances amounts

<table>
<thead>
<tr>
<th>Marital status</th>
<th>Monthly (TRY)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single</td>
<td>73.40</td>
</tr>
<tr>
<td>Married, unemployed spouse, no children</td>
<td>88.07</td>
</tr>
<tr>
<td>Married, unemployed spouse, 1 child</td>
<td>99.08</td>
</tr>
<tr>
<td>Married, unemployed spouse, 2 children</td>
<td>110.09</td>
</tr>
<tr>
<td>Married, unemployed spouse, 3 children</td>
<td>117.43</td>
</tr>
<tr>
<td>Married, unemployed spouse, 4 children</td>
<td>124.77</td>
</tr>
</tbody>
</table>

2012 minimum living allowances amounts

<table>
<thead>
<tr>
<th>Marital status</th>
<th>Monthly (TRY)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single</td>
<td>66.49</td>
</tr>
<tr>
<td>Married, unemployed spouse, no children</td>
<td>79.79</td>
</tr>
<tr>
<td>Married, unemployed spouse, 1 child</td>
<td>89.76</td>
</tr>
<tr>
<td>Married, unemployed spouse, 2 children</td>
<td>99.73</td>
</tr>
<tr>
<td>Married, unemployed spouse, 3 children</td>
<td>106.38</td>
</tr>
<tr>
<td>Married, unemployed spouse, 4 children</td>
<td>113.03</td>
</tr>
</tbody>
</table>
1.2 Individual income tax

### Personal allowance

#### 2011 minimum living allowances amounts

<table>
<thead>
<tr>
<th>Marital status</th>
<th>Monthly (TRY)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single</td>
<td>59.74</td>
</tr>
<tr>
<td>Married, unemployed spouse, no children</td>
<td>71.69</td>
</tr>
<tr>
<td>Married, unemployed spouse, 1 child</td>
<td>80.65</td>
</tr>
<tr>
<td>Married, unemployed spouse, 2 children</td>
<td>89.61</td>
</tr>
<tr>
<td>Married, unemployed spouse, 3 children</td>
<td>95.58</td>
</tr>
<tr>
<td>Married, unemployed spouse, 4 children</td>
<td>101.55</td>
</tr>
<tr>
<td>Married, employed spouse, no children</td>
<td>59.74</td>
</tr>
<tr>
<td>Married, employed spouse, 1 child</td>
<td>68.70</td>
</tr>
<tr>
<td>Married, employed spouse, 2 children</td>
<td>77.66</td>
</tr>
<tr>
<td>Married, employed spouse, 3 children</td>
<td>83.63</td>
</tr>
<tr>
<td>Married, employed spouse, 4 children</td>
<td>89.61</td>
</tr>
</tbody>
</table>

- **Minimum rate of personal income tax (PIT)**: 15%
- **Highest marginal rate of PIT**: 35%
- **Any special surtaxes**: No changes have been made.

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

N/A.

1.3 VAT, GST and sales tax

### Standard rate

- Deliveries of newspapers and magazines: 1%
- Processing and deliveries of agricultural commodities: 1%
- Basic foods: 1% - 8%
- Deliveries of books and similar publications: 8%
- Cinema, theater, opera, etc.: 8%
- Medical products and devices, etc.: 8%
- Cotton and certain textile products: 8%
- Shoes, cases, bags, carpets, leather dressings: 8%

- **Are there any special reliefs or exemptions for a family business?**

N/A.
### 1.4 Property taxes
- Does a family business receive any relief on property taxes not granted to other types of corporation?
  - N/A.

### 1.5 Capital gains tax (CGT)
- 2013 rate – companies: N/A.
- 2013 rate – individuals: N/A.

<table>
<thead>
<tr>
<th>Resident real persons</th>
<th>Nonresident real persons</th>
</tr>
</thead>
</table>
| **Capital gains derived from shares**  
Share certificates acquired after 1 January 2006 | The gains derived from sale of share certificates of other than marketable securities investment trusts traded in Istanbul Stock Exchange (ISE):  
- Are subject to 0% withholding  
- Withholding is the final tax  
- Not declared  
- The gains derived from sale of the share certificates of marketable security investment trusts traded in ISE:  
- Are subject to 10% withholding. (those which are held for more than one year are not subject to withholding)  
- Withholding is the final tax  
- Not declared  
- Capital gains not derived through the intermediation of banks or intermediary institutions (for example unquoted share certificates), will be declared pursuant to the general provisions of the Income Tax Code.  
- The gains derived from share certificates of resident corporations held for more than two years are exempt. | The gains derived from sale of share certificates of other than marketable securities investment trusts traded in ISE:  
- Are subject to 0% withholding  
- Withholding is the final tax  
- Not declared  
- Capital gains not derived through the intermediation of banks or intermediary institutions (for example unquoted share certificates) will be declared pursuant to the general provisions of the Income Tax Code.  
- The gains derived from share certificates of resident corporations held for more than two years are exempt. |
| **Capital gains derived from government bonds and treasury bills**  
Those issued after 1 January 2006 | Subject to 10% withholding.  
- Withholding is the final tax.  
- Not declared. | Subject to 10% withholding.  
- Withholding is the final tax.  
- Not declared. |
### 1.5 Capital gains tax (CGT)

- **Reliefs/exemptions**

<table>
<thead>
<tr>
<th>Capital gains derived from the eurobonds issued by the undersecretariat of treasury</th>
<th>Resident real persons</th>
<th>Nonresident real persons</th>
</tr>
</thead>
</table>
| Those issued before 1 January 2006                                              | • Not subject to withholding.  
  • The capital gains are calculated on Turkish lira (TRY) basis.  
  • The acquisition cost can be increased at Producer Price Index rate of increase for each month except for the month of discharge, unconditionally.  
  • Capital losses are offset from capital gains.  
  • TRY 21,000 together with the other capital gains for 2013 is exempt from tax. The portion exceeding the exemption is declared. | • Not subject to withholding.  
  • Not declared. |
| Capital gains derived from the eurobonds issued by the undersecretariat of treasury | • Not subject to withholding.  
  • The capital gains are calculated on Turkish lira basis.  
  • The acquisition cost can be increased at Producer Price Index rate of increase, for each month except for the month of disposal provided that Producer Price Index rate is equal to or exceeds 10%.  
  • Capital losses are offset from capital gains.  
  • The capital gains are declared regardless of the amount. | • Not subject to withholding.  
  • Not declared. |

Those issued after 1 January 2006
1.5 Capital gains tax (CGT)

<table>
<thead>
<tr>
<th>Capital gains derived from private sector bonds (bonds, asset backed securities, commercial papers)</th>
<th>Resident real persons</th>
<th>Nonresident real persons</th>
</tr>
</thead>
</table>
| Those issued after 1 January 2006 | • Income derived from those issued in Turkey through the intermediation of banks or intermediary institutions:  
  • Is subject to 10% withholding  
  • Withholding is the final tax  
  • Is not declared  
  • Income derived from bonds issued without the intermediation of banks or intermediary institutions and bonds issued by resident corporations abroad:  
  • Is not subject to withholding  
  • The capital gains are calculated on Turkish lira basis  
  • The acquisition cost can be increased at producer price  
  • Index rate of increase for each month except for the month of discharge, on condition that PPI increase rate is minimum 10%.  
  • Capital losses can be offset from capital gains.  
  • Declared regardless of the amount of gain. | • Income derived from those issued in Turkey through the intermediation of banks or intermediary institutions:  
  • Is subject to 10% withholding  
  • Withholding is the final tax  
  • Is not declared  
  • Income derived in Turkey from those issued without the intermediation of banks or intermediary institutions:  
  • Is not subject to withholding  
  • The capital gains are calculated on Turkish lira basis  
  • The acquisition cost can be increased at Producer Price Index (PPI) rate of increase for each month except for the month of discharge, on condition that PPI increase rate is minimum 10%.  
  • Capital losses are offset from capital gains.  
  • Declared regardless of the amount of gain |

• Reliefs/exemptions
### 1.5 Capital gains tax (CGT)

**• Reliefs/exemptions**

<table>
<thead>
<tr>
<th>Capital gains derived from participation certificates of stock exchange investment funds</th>
<th>Resident real persons</th>
<th>Nonresident real persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>• 0% withholding is applied to the gains derived from the share certificate-intensive funds at least 75% of whose portfolio consists of the share certificates traded in Istanbul Stock Exchange (excluding the share certificates of marketable securities investment trusts) on a monthly weighted average basis.</td>
<td>• 0% withholding is applied to the gains derived from the share certificate-intensive funds at least 75% of whose portfolio consists of the share certificates traded in Istanbul Stock Exchange (excluding the share certificates of marketable securities investment trusts) on a monthly weighted average basis.</td>
<td>• Those derived from other stock exchange investment funds are subject to 10% withholding.</td>
</tr>
<tr>
<td>• Those derived from other stock exchange investment funds are subject to 10% withholding.</td>
<td>• Withholding is the final tax.</td>
<td>• Withholding is the final tax.</td>
</tr>
<tr>
<td>• Withholding is not declared.</td>
<td>• Withholding is not declared.</td>
<td>• Withholding is not declared.</td>
</tr>
</tbody>
</table>
### 1.6 Tax on dividends from ordinary shares

**A. For the business:**

**B. For the owners of the business:**

<table>
<thead>
<tr>
<th>Dividend income derived from shares (excluding marketable securities investment trusts and real estate investment trusts)</th>
<th>Resident corporations</th>
<th>Resident real persons</th>
<th>Nonresident corporations</th>
<th>Nonresident real persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not subject to withholding.</td>
<td>15% withholding is applied by the corporation distributing the dividend. (Zero percent for venture capital investment funds and trusts.)</td>
<td>15% withholding is applied by the corporation distributing the dividend. (Zero percent for venture capital investment funds and trusts.)</td>
<td>15% withholding is applied by the corporation distributing the dividend. (Zero percent for venture capital investment funds and trusts.)</td>
<td>15% withholding is applied by the corporation distributing the dividend. (Zero percent for venture capital investment funds and trusts.)</td>
</tr>
<tr>
<td>Those derived from resident corporations (including venture capital investments funds and trusts) are exempt from corporate tax. (Corporate Tax Code 5/1-a).</td>
<td>Half of the dividend income derived from resident corporations (before withholding) is declared with an annual tax return in case its total amount together with other capital gains from marketable securities and rent income from immovable property which are subject to tax through withholding, exceeds the declaration limit (TRY26,000 for 2013). (Excluding the income mentioned in the Temporary Article 62 of the Income Tax Code.)</td>
<td>Withholding is the final tax.</td>
<td>Withholding is not declared.</td>
<td>Withholding is not declared.</td>
</tr>
<tr>
<td>In this case, the whole withholding amount applied by the corporation which distributed the dividends is offset from the income tax calculated on the tax return.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Dividend income derived from shares of marketable securities investment trusts and real estate investment trusts</th>
<th>Resident corporations</th>
<th>Resident real persons</th>
<th>Nonresident corporations</th>
<th>Nonresident real persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not subject to withholding.</td>
<td>Withholding is applied by the corporation distributing the dividend (0%).</td>
<td>Withholding is applied by the corporation distributing the dividend (0%).</td>
<td>Withholding is applied by the corporation distributing the dividend (0%).</td>
<td>Withholding is applied by the corporation distributing the dividend (0%).</td>
</tr>
<tr>
<td>Subject to corporate tax.</td>
<td>Half of the dividend income derived from resident corporations (before withholding) is declared with an annual tax return in case its total amount together with other capital gains from marketable securities and rent income from immovable property which are subject to tax through withholding, exceeds the declaration limit (TRY26,000 for 2013).</td>
<td>Withholding is the final tax.</td>
<td>Withholding is not declared.</td>
<td>Withholding is not declared.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
1.7 Tax on dividends from preferential shares
A. For the business: N/A.
B. For the owners of the business: N/A.

1.8 Tax treatment of interest on a loan from the shareholders
A. For the business:

B. For the owners of the business:

In the application of corporate tax law, of all kinds of loans which companies receive either directly or indirectly from their shareholders or their related parties and use in the enterprise, the portion which exceeds three folds of the company's total equity as of the beginning of the period at any time within the fiscal period is deemed thin capital for the relevant fiscal period. Again, in the scope of Corporate Tax Law, interest, exchange rate differences and similar expenses paid or calculated on thin capital may not be deducted.

1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business
A. For the business: In Turkish tax legislation, legal entities of the business and business owners are accepted as different from each other. Therefore, the rental income that shareholders derive from their real estate has no tax effect with regard to this business. However, if this real estate is a component of the business, it must be treated within the business income and subjected to corporate tax.

B. For the owners of the business: The incomes derived from the lease of the real estate which is not included in the business although it belongs to the business owner as workplace or house are deemed income from real estate. Such incomes must be declared in the section “income from real estate” in the annual income tax return which the business owner will file. As per Income Tax Law, 20% withholding must be applied to the rental income derived from the real estate leased as a workplace. This withholding, which is applied by the lessee in the name of the real estate owner, is deducted from the income tax calculated on the tax return in case the real estate owner files annual income tax return due to these incomes.

1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business
A. For the business: In Turkish tax legislation, legal entities of the business and business owners are accepted as different from each other. Therefore, the rental income which shareholders derive from their intellectual property has no tax effect with regard to this business.

B. For the owners of the business: In the application of the Income Tax Law, earnings derived from all kinds of independent personal service are regarded as independent personal service income. Independent personal service on the other hand is the performance of the works that are not of a commercial nature and which are based on personal effort, scientific and professional knowledge or specialization rather than capital under one's own responsibility and in one's own name and behalf without being subject to any employer. Recipients of independent personal service must apply income withholding tax to their payments to independent personal service providers (except for the payments made to public notaries due to their independent personal service). Withholding rate is generally 20%. The withholding applied to the payments made to independent personal service providers is a preliminary taxation, and this withholding shall be deducted from the tax calculated in the annual income tax return.

1.11 Tax treatment of interest paid on bank debt by a family business
Such payments are treated as expense in the determination of corporate profit, and they do not impose any different practice for family businesses.

1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property
Such payments are treated as expense in the determination of corporate profit. However, these payments are subjected to 20% independent personal service withholding tax and declared in the withholding tax return of the relevant month. This practice is applicable for all businesses operating in Turkey, and there is no separate practice for family businesses. On the other hand, if the payments are made to foreign third parties, relevant provisions of Double Taxation Treaties must be taken into account.
1.13 Tax treatment of rental payments made by a family business to third parties for real estate

Such payments are treated as expense in the determination of corporate profit. However, these payments are subjected to 20% rental withholding and declared in the withholding tax return of the relevant month. This practice is also applicable for all businesses operating in Turkey, and there is no separate practice for family businesses.

1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group

Treatment of these payments as expense depends on certain conditions in the scope of corporate tax law. In the application of corporate tax law, of all kinds of loans which companies receive either directly or indirectly from their shareholders or their related parties and use in the enterprise, the portion which exceeds three folds of the company's total equity as of the beginning of the period at any time within the fiscal period is deemed thin capital for the relevant fiscal period. In the application of the income and corporate tax laws, amounts calculated or payments made on thin capital such as interests and similar payments except exchange rate differences shall be deemed as dividends distributed or as amounts distributed to the headquarters for Nonresidents as of the last day of the fiscal period when conditions for thin capital were fulfilled, both for the loan provider and the borrower, and they must be subjected to dividend withholding at the end of fiscal period. Again, in the scope of corporate tax law, interest, exchange rate differences and similar expenses paid or calculated on thin capital may not be deducted. On the other hand, if the company providing the loan is a group company resident abroad and offers financing service in its home country only to the group it is affiliated to, corporate withholding tax (this rate is 10%, yet provisions of double taxation treaties should also be taken into account) and 18% reverse charge VAT must be calculated on the interest payments made to this company. On the other hand, in the scope of Corporate Tax Law, earnings shall be considered to have been wholly or partially distributed in a disguised manner if the company engages in purchase or sale of goods or services with related parties at prices or at amounts in a manner conflicting with the arm's-length principle. Buying, selling, manufacturing and construction operations and services, renting and leasing transactions, borrowing or lending money, bonuses, wages and similar payments are deemed as purchase or sale of goods or services in any case and under any condition. At this point, we would like to note that the profits distributed in a disguised manner through transfer pricing may never be deducted in the application of the corporate tax law.

1.15 Does your country provide for a deemed deduction on equity and/or debt?

N/A.

1.16 Is the retainment of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

N/A.

1.17 Wealth tax

- 2013 characteristics and rate
  - N/A.
- Is there an exemption for shares owned by a family who owns a business?
  - N/A.

In Turkey, wealth and transition of wealth are subject to tax. Property tax and motor vehicles tax are taxes on wealth. Also, transfer of wealth to another person by inheritance or gratuitously in another way is subject to inheritance and gift tax.

1.18 Inheritance tax/estate tax

The transition of goods obtained from heritage, testament and inheritance contract is subject to inheritance tax.

<table>
<thead>
<tr>
<th>Taxable value of the acquisition</th>
<th>Tax rate for inheritance (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>First TRY190,000</td>
<td>1%</td>
</tr>
<tr>
<td>Following TRY430,000</td>
<td>3%</td>
</tr>
<tr>
<td>Following TRY940,000</td>
<td>5%</td>
</tr>
<tr>
<td>Following TRY1.8 million</td>
<td>7%</td>
</tr>
<tr>
<td>Taxable value more than TRY 3.36 million</td>
<td>10%</td>
</tr>
</tbody>
</table>

Please note that for the 2013 year, TRY140,774 of inheritance gains is exempt from tax.
1.19 Gift tax

The transition of goods gratuitously by donation or any style is subject to gift tax.

<table>
<thead>
<tr>
<th>Taxable value of the acquisition</th>
<th>Tax rate for gift (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>First TRY190,000</td>
<td>10%</td>
</tr>
<tr>
<td>Following TRY430,000</td>
<td>15%</td>
</tr>
<tr>
<td>Following TRY940,000</td>
<td>20%</td>
</tr>
<tr>
<td>Following TRY1.8 million</td>
<td>25%</td>
</tr>
<tr>
<td>Taxable value more than TRY 3.36 million</td>
<td>30%</td>
</tr>
</tbody>
</table>

Please note that for the 2013 year, TRY3,244 of gift gains is exempt from tax.

1.20 Real estate transfer tax

There is no tax in Turkey called “real estate transfer tax.” However, real estate transfer is subject to the taxes mentioned below.

The transition of real estate that belongs to Turkish citizens and the transition of real estate in Turkey from one person to another person by inheritance or gratuitously in another way are subject to inheritance and gift tax.

Income derived from the sale of the real estate for money by an individual person within five years from the date of acquisition of that real estate is subject to income tax. However, income derived from the sale of the real estate transferred by inheritance or gratuitously is not subject to income tax.

1.21 Endowment tax

There is no tax in Turkey called “endowment tax.” However, the transition of goods gratuitously by donation or any style is subject to inheritance and gift tax.

1.22 Social security

- National/social insurance contributions on employee income
  - Unemployment insurance premium rate is 4%:
    - 1% insurant's share
    - 2% employer's share
    - 1% state's share

- Health/medical/dental care
  - Premium rate in disablement, old age and death insurances is 20%.
  - Premium rate for short-term insurance branches ranges from 1% to 6.5%.
  - Premium rate for general health insurance is 12.5%.

- Retirement plans/pensions for employees
  In Turkey, state contribution is calculated for the contributions paid to the private pension system from 1 January 2013. “Participation share” is the amount which the state pays to the participant's pension account at 25% of the contributions paid by the participant. In its calculation, the contributions paid only in the name of Turkish citizen participants are taken into account.
1.23 Pensions and tax-efficient savings

- Tax relief on pension contributions – standard

Starting 29 August 2012, withholding taxes applied to the principal during the exit from both life insurances and private pension contracts will change. In this regard, these withholdings will not be applied to the principal, but only to the return derived.

In life insurance policies:

a. 15% tax will be levied on the return paid to those who exit the system after paying premiums or fees for less than 10 years.

b. 10% tax will be levied on the return paid to those who exit the system after paying premiums or fees for 10 years or exit due to uncontrollable events such as death, disablement or discharge.

In private pension contracts:

a. 15% tax will be levied on the return which the payments made to those who exit after paying contributions less than 10 years and those who have partially received payments during this period contain.

b. 10% tax will be levied on the return which the payments made to those who exit without entitlement to retirement despite having paid contributions for 10 years and those who have partially received payments during this period contained.

c. 5% tax will be levied on the return which the payments made to those who have become entitled to retirement and those who exit this system due to uncontrollable events such as death, disablement or discharge contain.

- Tax relief on pension contributions – any specific relief to family business?

N/A.

1.24 Taxation of flow-through entities/partnerships/trust funds

Trust funds do not have any tax liabilities for their donation incomes, if they are deemed as public utility foundations by the Prime Minister. Foundations are not liable for VAT either. Partnerships do not have any additional liabilities and their partners are liable for income tax.

1.25 Exemptions in the law that specifically relate to family businesses

N/A.

1.26 Are there any business incentives in your country that are specific to

- SMEs

The Small and Medium Sized Industry Development Organization (KOSGEB) makes significant contributions to strengthening SMEs by various support instruments in financing, R&D, common facilities, market research, investment site, marketing, export and training.

- Family businesses

N/A.
1.27 Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses? N/A.
- Are there any available loss reliefs that are specific to SMEs? N/A.

Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

• Calculation 1: The business makes a profit before tax of TRY2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

• Calculation 2: The business makes a profit before tax of TRY500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

Has this effective tax rate increased, decreased or stayed the same in the last three years?

Due to the slight changes in exempt amounts and tax brackets within the last three years, the effective tax burden remains the same. (In the calculations, the provisions that must be separated from the distributable profit in the scope of Turkish Commercial Code have not been taken into account.)

<table>
<thead>
<tr>
<th>2013 (TRY)</th>
<th>2013 (TRY)</th>
<th>2012 (TRY)</th>
<th>2012 (TRY)</th>
<th>2011 (TRY)</th>
<th>2011 (TRY)</th>
<th>2011 (TRY)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profit before tax (a)</td>
<td>2,000,000</td>
<td>500,000</td>
<td>2,000,000</td>
<td>500,000</td>
<td>2,000,000</td>
<td>500,000</td>
</tr>
<tr>
<td>Corporate tax (a x 20% = b)</td>
<td>400,000</td>
<td>100,000</td>
<td>400,000</td>
<td>100,000</td>
<td>400,000</td>
<td>100,000</td>
</tr>
<tr>
<td>Distributable profit (a - b = c)</td>
<td>1,600,000</td>
<td>400,000</td>
<td>1,600,000</td>
<td>400,000</td>
<td>1,600,000</td>
<td>400,000</td>
</tr>
<tr>
<td>Withholding tax (c x 15% = w)</td>
<td>240,000</td>
<td>60,000</td>
<td>240,000</td>
<td>60,000</td>
<td>240,000</td>
<td>60,000</td>
</tr>
<tr>
<td>Net profit</td>
<td>1,360,000</td>
<td>340,000</td>
<td>1,360,000</td>
<td>340,000</td>
<td>1,360,000</td>
<td>340,000</td>
</tr>
</tbody>
</table>

Amount to be declared with the annual income tax return (c/2 = d)

| 800,000 | 200,000 | 800,000 | 200,000 | 800,000 | 200,000 |

Declaration limit (e) | 26,000 | 26,000 | 25,000 | 25,000 | 23,000 | 23,000 |

Taxable income (d - e = f) | 774,000 | 174,000 | 775,000 | 175,000 | 777,000 | 177,000 |

Income tax (g) | 263,745 | 53,745 | 264,360 | 54,360 | 265,630 | 55,630 |

Withholding to be deducted (w) | 240,000 | 60,000 | 240,000 | 60,000 | 240,000 | 60,000 |

Payable tax/refundable tax (g - w) | 23,745 | -6,255 | 24,360 | -5,640 | 25,630 | -4,370 |

Effective tax burden 0.25 0.24 0.25 0.24 0.25 0.24
Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

Corporations are liable for corporate tax, and the standard corporate tax rate is 20%. However, private companies are liable neither for corporate tax nor income tax. Shareholders of such companies have income tax liability. In this case, the incomes that shareholders derive due to the company are subject to progressive tax rates between 15% and 35%.

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

Please see the table under the Section 1.6.

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

The expected practice is a money transfer to shareholders through profit distribution. Transfers other than this run the risk of not being accepted as expense in terms of corporate tax, and the amount in question must be subjected to dividend withholding if it is detected by the authority.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

A. Fully publicly listed? N/A.
B. Partly publicly listed? N/A.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

N/A.

Section 4: Succession planning

4.1 Life insurance

N/A.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?

N/A.

4.3 Estate tax

N/A.

4.4 Pension plans

N/A.

4.5 Trusts, foundations and private purpose funds

N/A.

4.6 Wills/intestacy/family charters

N/A.
### 4.7 Passing on a business

N/A.

### 4.8 Private equity

**Specific legislation/tax treatment of income derived from private equity (PE) activity**

<table>
<thead>
<tr>
<th>Dividend income</th>
<th>Resident corporations</th>
<th>Resident real persons</th>
<th>Nonresident corporations</th>
<th>Nonresident real persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Income derived by joint stock companies:</td>
<td>Withholding is not applied over the gains derived from the participation certificates of marketable securities investment funds, at least 51% of whose portfolio continuously consists of share certificates traded in ISE, if the certificates are held for more than one year. Such gains are not declared either.</td>
<td></td>
<td>Withholding is not applied over the gains derived from the participation certificates of marketable securities investment funds, at least 51% of whose portfolio continuously consists of share certificates traded in ISE, if the certificates are held for more than one year. Such gains are not declared either.</td>
<td></td>
</tr>
<tr>
<td>• Companies limited by shares and limited companies;</td>
<td></td>
<td></td>
<td>• Withholding is the final tax.</td>
<td></td>
</tr>
<tr>
<td>• Is subject to 0% withholding.</td>
<td></td>
<td></td>
<td>• Withholding is not declared.</td>
<td></td>
</tr>
<tr>
<td>• Is subject to corporate tax.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Income derived by companies other than those mentioned above;</td>
<td>Withholding is not applied over the gains derived from the participation certificates of marketable securities investment funds, at least 51% of whose portfolio continuously consists of share certificates traded in ISE, if the certificates are held for more than one year. Such gains are not declared either.</td>
<td></td>
<td>Withholding is not applied over the gains derived from the participation certificates of marketable securities investment funds, at least 51% of whose portfolio continuously consists of share certificates traded in ISE, if the certificates are held for more than one year. Such gains are not declared either.</td>
<td></td>
</tr>
<tr>
<td>• Withholding is not applied over the gains derived from the participation certificates of marketable securities investment funds, at least 51% of whose portfolio continuously consists of share certificates traded in ISE, if the certificates are held for more than one year. Such gains are not declared either.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Income derived by foreign corporations in the nature of joint stock companies, companies limited by shares and limited companies and foreign corporations which are determined by Ministry of Finance to be in similar nature with investment funds and investment trusts established according to the Capital Markets Code:</td>
<td>Is subject to 0% withholding.</td>
<td>Withholding is not declared.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Withholding is the final tax.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Withholding is not declared.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Incomes derived by companies other than those mentioned above:</td>
<td>Withholding is not applied over the gains derived from the participation certificates of marketable securities investment funds, at least 51% of whose portfolio continuously consists of share certificates traded in ISE, if the certificates are held for more than one year. Such gains are not declared either.</td>
<td></td>
<td>Withholding is not applied over the gains derived from the participation certificates of marketable securities investment funds, at least 51% of whose portfolio continuously consists of share certificates traded in ISE, if the certificates are held for more than one year. Such gains are not declared either.</td>
<td></td>
</tr>
<tr>
<td>• Withholding is not applied over the gains derived from the participation certificates of share certificate intensive funds at least 75% of whose portfolio consists of the share certificates traded in ISE (excluding the share certificates of marketable securities investment trusts) on a monthly weighted average basis.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Gains derived from the investment fund participation certificates other than those mentioned above are subject to 10% withholding.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Withholding is the final tax.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Withholding is not declared.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Equivalent PE ratio**

N/A.

**Others**

N/A.
<table>
<thead>
<tr>
<th>Dividend income</th>
<th>Resident corporations</th>
<th>Resident real persons</th>
<th>Nonresident corporations</th>
<th>Nonresident real persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>• 0% withholding is applied to the gains derived from the participation certificates of share certificate-intensive funds at least 75% of whose portfolio consists of the share certificates traded in ISE (excluding the share certificates of marketable securities investment trusts) on a monthly weighted average basis.</td>
<td>• 0% withholding is applied to the gains derived from the participation certificates of share certificate-intensive funds at least 75% of whose portfolio consists of the share certificates traded in ISE (excluding the share certificates of marketable securities investment trusts) on a monthly weighted average basis.</td>
<td>• Gains derived from the investment fund participation certificates other than those mentioned above are subject to 10% withholding.</td>
<td>• Withholding is the final tax.</td>
<td></td>
</tr>
<tr>
<td>• Gains derived from the investment fund participation certificates other than those mentioned above are subject to 10% withholding.</td>
<td>• Withholding is not declared.</td>
<td>• Withholding is the final tax.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Companies which have to submit corporate tax return can offset the withholding paid from the corporate tax calculated on the tax return.</td>
<td>• 0% withholding is applied to the gains derived from the share certificate-intensive funds at least 75% of whose portfolio consists of the share certificates traded in ISE (excluding the share certificates of marketable securities investment trusts) on a monthly weighted average basis.</td>
<td>• Is subject to 0% withholding.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Capital gains derived from participation certificates of stock exchange investment funds</th>
<th>Resident corporations</th>
<th>Resident real persons</th>
<th>Nonresident corporations</th>
<th>Nonresident real persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Income derived by joint stock companies, companies:</td>
<td>• 0% withholding is applied to the gains derived from the share certificate-intensive funds at least 75% of whose portfolio consists of the share certificates traded in ISE (excluding the share certificates of marketable securities investment trusts) on a monthly weighted average basis.</td>
<td>• Is subject to 0% withholding.</td>
<td>• 0% withholding is applied to the gains derived from the share certificate-intensive funds at least 75% of whose portfolio consists of the share certificates traded in ISE (excluding the share certificates of marketable securities investment trusts) on a monthly weighted average basis.</td>
<td></td>
</tr>
<tr>
<td>• Is limited by shares and limited companies and investment funds</td>
<td>• Is subject to 0% withholding.</td>
<td>• Is subject to corporate tax</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Capital gains derived from participation

#### Certificates of stock exchange investment funds

<table>
<thead>
<tr>
<th>Resident corporations</th>
<th>Resident real persons</th>
<th>Nonresident corporations</th>
<th>Nonresident real persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Income derived by companies nonresident corporations other than those mentioned above:</td>
<td>• Those derived from other stock exchange investment funds are subject to 10% withholding.</td>
<td>• Withholding is the final tax.</td>
<td>• Those derived from other stock exchange investment funds are subject to 10% withholding.</td>
</tr>
<tr>
<td>• 0% withholding is applied to the gains derived from the shares certificates-intensive funds at least 75% of whose portfolio consists of the shares certificates traded in ISE (excluding the shares certificates of marketable securities investment trusts) on a monthly weighted average basis.</td>
<td>• Withholding is the final tax.</td>
<td>• Withholding is not declared.</td>
<td>• Withholding is the final tax.</td>
</tr>
<tr>
<td>• Those derived from other stock exchange investment funds are subject to 10% withholding.</td>
<td>• Withholding is not declared.</td>
<td></td>
<td>• Withholding is not declared.</td>
</tr>
<tr>
<td>• Companies which have to submit tax return can offset the withholding paid from the corporate tax calculated on the tax return.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Incomes derived by companies other than those mentioned above:</td>
<td>• Those derived from other stock exchange investment funds are subject to 10% withholding.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• 0% withholding is applied to the gains derived from the shares certificates-intensive funds at least 75% of whose portfolio consists of the shares certificates traded in ISE (excluding the shares certificates of marketable securities investment trusts) on a monthly weighted average basis.</td>
<td>• Withholding is the final tax.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Those derived from other stock exchange investment funds are subject to 10% withholding.</td>
<td>• Withholding is not declared.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Withholding is the final tax.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Withholding is not declared.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

Section 5: Tax policy environment

5.1 Policy environment relating to family business
Although family businesses are influential on the economy, they do not influence tax policies.

5.2 Specify change in the direction of tax policy in the last three years
N/A.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners
N/A.

5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions
N/A.

Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with:

<table>
<thead>
<tr>
<th></th>
<th>High net worth individuals (HNWIs)</th>
<th>SMEs</th>
<th>Family businesses</th>
<th>Large corporate taxpayers</th>
<th>Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N/A.</td>
<td>Yes.</td>
<td>N/A.</td>
<td>Yes.</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

6.2 Specify enforcement focus areas or defined programs that might touch a family business
N/A.

6.3 Specify tax enforcement focus on any particular industry or profession
Yes, they focus on pharmaceutical, automotive and agricultural industries.

6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners
Yes, particularly large-scale business mergers and acquisitions trigger such audits.
6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

The temporary article 85 added to the Income Tax Law as per the Article 13 of the “Law on the Amendment of the Social Insurance and General Health Insurance Law and Certain Laws” includes the following regulations.

Declaration of monies, marketable securities and real estate present abroad

The Article 13 (Cash Repatriation) of the Bill stipulates that money, gold, foreign exchange, marketable securities and other capital market instruments and immovable property (whose existence is proven with a conclusive document), which are owned by real or legal persons as at 15 April 2013 and present abroad must be notified to the banks or intermediary institutions or declared to tax offices with their market value in TRY by 31 July 2013.

A 2% tax must be paid over the market values of the assets notified or declared. This tax must be paid until the end of the month following the month when the assessment was made.

The depreciation shall not be set aside over the assets subject to declaration. Furthermore, losses arising from the disposal of these assets may not be treated as expense or as deduction items in the income and corporate tax application.

Tax inspection and tax assessment shall not be conducted in any manner whatsoever, in respect of the declared assets.

Temporary exemption relating to gains derived from abroad

The Bill also includes a temporary exemption for gains obtained from abroad. Accordingly, income emerging from the sale of participation shares of the companies whose legal and business headquarters are not in Turkey; participation incomes obtained from companies whose legal and business headquarters are not in Turkey; business profits obtained through the establishment or permanent representative abroad; and incomes obtained by the real persons and companies subject to full tax liability until 31 October 2013 will be exempt from income and corporate taxes provided that they are transferred to Turkey until 31 December 2013 as of the date when this article has become effective, 29 May 2013.

6.6 Are there any specific pre-filing processes that can be leveraged by:

- HNWIs: N/A.
- Family businesses: N/A.

6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

There are TIEAs that Turkey is party to, but they mostly cover corporate taxpayers and do not specifically relate to HNWIs.
Section 1: The accumulative tax burden on family business

2013 tax rates

<table>
<thead>
<tr>
<th>1.1 Corporate income tax (national and sub-national combined)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2013</strong></td>
<td><strong>Change in rate in the last three years (up or down).</strong></td>
</tr>
<tr>
<td>Highest marginal rate</td>
<td>1 January 2011 to 31 December 2011: 23%</td>
</tr>
<tr>
<td></td>
<td>1 January 2012 to 31 December 2012: 21%</td>
</tr>
<tr>
<td></td>
<td>1 January 2013 to 31 December 2013: 19%</td>
</tr>
<tr>
<td></td>
<td>1 January 2014 to 31 December 2014: 18%</td>
</tr>
<tr>
<td></td>
<td>1 January 2015 to 31 December 2015: 17%</td>
</tr>
<tr>
<td></td>
<td>1 January 2016 onward: 16%</td>
</tr>
<tr>
<td>Highest rate for small and medium enterprises (SMEs)/small business</td>
<td>N/A.</td>
</tr>
</tbody>
</table>
### 1.1 Corporate income tax (national and sub-national combined)

- Special treatment of SMEs/small business (other reliefs, etc.)

Yes, see table below. No changes have been made.

#### Table – Single tax (simplified tax system for small and medium enterprises which replaces CIT and VAT)

<table>
<thead>
<tr>
<th>Group</th>
<th>Personnel employed</th>
<th>Revenue for the tax period</th>
<th>Fixed rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 (individual entrepreneurs)</td>
<td>No employees</td>
<td>Less than UAH150,000</td>
<td>From 1% to 10% of minimal salary depending on the type of activity</td>
</tr>
<tr>
<td>2 (individual entrepreneurs)</td>
<td>Fewer than 10 persons simultaneously</td>
<td>Less than UAH1,000,000</td>
<td>2% to 20% of minimal salary depending on the type of activity</td>
</tr>
</tbody>
</table>
| 3 (individual entrepreneurs) | Fewer than 20 persons simultaneously | Less than UAH1,000,000 | a. 3% of revenue if registered as VAT payer  
| | | | b. 5% of revenue otherwise |
| 4 (legal entities) | Fewer than 50 average number of employees during the year | Less than UAH5,000,000 | a. 3% of revenue if registered as VAT payer  
| | | | b. 5% of revenue otherwise |
| 5 (individual entrepreneurs) | No limits | Less than UAH20,000,000 | a. 5% of revenue if registered as VAT payer  
| | | | b. 7% of revenue otherwise |
| 6 (legal entities) | No limits | Less than UAH20,000,000 | a. 5% of revenue if registered as VAT payer  
| | | | b. 7% of revenue otherwise |

1. UAH1,218 for 2013.
1.1 Corporate income tax (national and sub-national combined)

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

Since 2011, the following changes were implemented, they mainly relate to transactions with nonresidents:

- Consultancy, marketing and advertising fees paid to nonresidents in an amount exceeding 4% of income (net of VAT and excise tax) for the prior year are not deductible. Fees are entirely nondeductible if paid to residents of listed tax havens.

- Engineering fees paid to nonresidents in an amount exceeding 5% of the customs value of related goods imported into Ukraine are not deductible. If the services are not accompanied by the import of goods, no fees can be deducted. Such fees are entirely not deductible if paid to residents of listed tax havens or to non-beneficial owners of the respective payment.

- Royalties paid to nonresidents in an amount exceeding 4% of income (net of VAT and excise tax) for the prior year are not deductible. Furthermore, royalties paid (i) to residents of listed tax havens, (ii) to non-beneficial owners (iii) to a person who shall not be taxed with regard to such royalty or (iv) for intellectual property rights generated in Ukraine, are not tax deductible at all.

- Tax deduction of interest payable by subsidiaries of foreign companies to related entities is effectively limited to the taxpayer’s interest income plus 50% of EBIT (previously EBITDA). The Tax Code explicitly provides the possibility to deduct excessive interest in future tax periods within the limit stated above.

- New TP legislation was introduced in September 2013. All affected taxpayers should file a report on controlled transactions by the first of May of the year following the reporting year. The threshold for controlled transactions will be UAH50 million, net of VAT (will apply cumulatively for all transactions with one counterparty per year).

1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal allowance</td>
<td>There are no significant personal allowances in Ukraine. N/A.</td>
</tr>
<tr>
<td>Minimum rate of personal income tax (PIT)</td>
<td>15% (for income below UAH12,180) N/A.</td>
</tr>
<tr>
<td>Highest marginal rate of PIT</td>
<td>17% (for income in excess of UAH 12,180) N/A.</td>
</tr>
<tr>
<td>Any special surtaxes</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

No.

1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard rate</td>
<td>20%. 1 January 2011 to 31 December 2014: 20%. 01 January 2015 onward: 17%.</td>
</tr>
<tr>
<td>Are there any special reliefs or exemptions for a family business?</td>
<td>Yes, see table in Section 1.1. N/A.</td>
</tr>
</tbody>
</table>
### 1.4 Property taxes

- **Does a family business receive any relief on property taxes not granted to other types of corporation?**
  
  No property taxes in Ukraine.

### 1.5 Capital gains tax (CGT)

- **2013 rate – companies**
  
  Usual corporate income tax (CIT) rules apply.

- **2013 rate – individuals**
  
  Usual PIT rules apply.

- **Reliefs/exemptions**
  
  Usual PIT rules apply.

### 1.6 Tax on dividends from ordinary shares

- **A. For the business:** Dividend income is exempt if received from Ukrainian company or foreign-controlled foreign company and is properly structured. Otherwise it is fully taxable.

- **B. For the owners of the business:** Tax rate is 5%.

### 1.7 Tax on dividends from preferential shares

- **A. For the business:** Same as Section 1.6.

- **B. For the owners of the business:** Same as Section 1.6.

### 1.8 Tax treatment of interest on a loan from the shareholders

- **A. For the business:** Tax deduction of interest payable by subsidiaries of foreign companies to related entities is effectively limited to the Ukrainian taxpayer’s interest income plus 50% of earnings before interest and taxes.

- **B. For the owners of the business:** Usual PIT rules apply as well as transfer pricing regulations should be considered.

### 1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

- **A. For the business:** Usual CIT rules apply as well as transfer pricing regulations should be considered.

- **B. For the owners of the business:** Usual PIT rules apply as well as transfer pricing regulations should be considered.

### 1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

- **A. For the business:** Usual CIT rules apply as well as transfer pricing regulations should be considered.

- **B. For the owners of the business:** Usual PIT rules apply as well as transfer pricing regulations should be considered.

### 1.11 Tax treatment of interest paid on bank debt by a family business

Usual CIT rules apply, plus refer simplified tax regime for small and medium enterprises.

### 1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

- **Deductible if incurred for the business purposes.**

- Royalties paid to nonresidents in an amount exceeding 4% of income (net of VAT and excise tax) for the prior year are not deductible. Furthermore, royalties paid (i) to residents of listed tax havens, (ii) to non-beneficial owners (iii) to a person who shall not be taxed with regard to such royalty, or (iv) for intellectual property rights generated in Ukraine, are not tax deductible at all.
1.13 Tax treatment of rental payments made by a family business to third parties for real estate
- Deductible if incurred for the business purposes.

1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group
- Deductible if incurred for the business purposes.
- Tax deduction of interest payable by subsidiaries of foreign companies to related entities is effectively limited to the Ukrainian taxpayer’s interest income plus 50% of EBIT.

1.15 Does your country provide for a deemed deduction on equity and/or debt?
No.

1.16 Is the retainment of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?
No statutory provisions for mandatory distribution of profits and retain earnings exist.

1.17 Wealth tax
- 2013 characteristics and rate
  - Ukraine does not levy a wealth tax. There were several proposals to implement it, but neither of them was successful.
- Is there an exemption for shares owned by a family that owns a business?
  - N/A.

1.18 Inheritance tax/estate tax
Ukraine does not levy a inheritance tax. Usual PIT rules apply; however, inheritance between first tier relatives is exempt.

1.19 Gift tax
Ukraine does not levy a gift tax. Usual PIT rules apply; however, gift tax between immediate relatives are exempt.

1.20 Real estate transfer tax
Real estate transfer tax
Gains derived from the alienation of real estate are subject to PIT at rates of 0% or 5% depending on the following:
- Duration of property ownership
- Size of the property
- Frequency of alienation
- Type of property

Property tax
Calculated as: property living space that exceeds 120 square meters for an apartment and 250 square meters for a house is subject to property tax. Property tax varies from 1% of a minimal salary (UAH12.18) to 2.7% of a minimum salary (UAH32.89) per square meter of living space.
1.21 Endowment tax
Ukraine does not levy a real estate tax.

1.22 Social security

<table>
<thead>
<tr>
<th>National/social insurance contributions on employee income</th>
<th>USC is a major cost and administrative issue in Ukraine.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Currently, only income paid by Ukrainian entities or by Ukrainian representative offices of foreign entities is subject to USC:</td>
</tr>
<tr>
<td></td>
<td>• An employee's USC is 3.6%; being withheld from gross remuneration/cap and remitted by the Ukrainian employer to the budget.</td>
</tr>
<tr>
<td></td>
<td>• An employer's USC is 36.6% to 49.7%, depending on the entity's class of professional risk, paid on the top of gross remuneration/cap.</td>
</tr>
<tr>
<td></td>
<td>• Remuneration paid to individuals performing services under civil agreements is subject to USC withholding (within a cap) at 2.6%; the entity should pay USC at a 34.7% rate.</td>
</tr>
<tr>
<td></td>
<td>• Currently, income subject to USC is capped. In 2013, the cap varied from UAH19,499 to UAH20,706 per month.</td>
</tr>
<tr>
<td></td>
<td>• There is a draft law that removes the cap but reduces rates; however it is uncertain whether it will pass.</td>
</tr>
<tr>
<td></td>
<td>• There are options for voluntary contributions.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Health/medical/dental care</th>
<th>This represents additional benefit and is subject to PIT.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Retirement plans/pensions for employees</th>
<th>No social security payments are levied on pension plans contributions.</th>
</tr>
</thead>
</table>

1.23 Pensions and tax-efficient savings

<table>
<thead>
<tr>
<th>Tax relief on pension contributions – standard</th>
<th>Employers may deduct for CIT purposes and employees are exempt from PIT on the monthly payments capped at 15% of monthly salary but not higher than five minimal monthly salaries (since 1 January 2014 the minimum monthly salary is UAH1,218). Repayments are taxed at usual (15%) rate; however, the tax base is only 60% of the repayment (if certain conditions are met).</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Tax relief on pension contributions – any specific relief to family business?</th>
<th>No.</th>
</tr>
</thead>
</table>

1.24 Taxation of flow-through entities/partnerships/trust funds
Ukraine does not recognize trust, foundations, partnerships or other flow-through entities. Tax treatment is considered for each particular case.

1.25 Exemptions in the law that specifically relate to family businesses
None.
### Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

The below examples relate to Ukrainian legal entity owned by Ukrainian resident individual. Case-by-case analysis is required for situations when legal entity or individual are non-Ukrainian residents.

**Calculation 1:** The business makes a profit before tax of UAH2 million and pays taxes on this profit. The after tax amount is then distributed to the same shareholder in the same tax year.

**Step 1:** Legal entity pays corporation tax on its profits.

Profits (UAH2,000,000) multiplied by current CIT rate (19%) equals UAH380,000.

**Step 2:** Legal entity distributes all after-tax profits in the form of dividend payments.

No tax levied at this stage. If dividends are distributed before the end of tax period, corporation is required to pay advance corporate profits tax from the total amount of dividends distributed (the same as shown in Step 1). Corporation may use such advance payment in the current tax period or carryforward it indefinitely.

**Step 3:** Individual receives dividends.

Dividend income (UAH2,000,000 - UAH380,000) multiplied by current PIT rate for dividends (5%) equals UAH81,000.

**Calculation 2:** The business makes a profit before tax of 500,000 and pays taxes on this profit. The after tax amount is then distributed to the same shareholder in the same tax year.

**Step 1:** Legal entity pays corporation tax on its profits.

Profits (UAH 500,000) multiplied by 19% (current CIT rate) equals UAH95,000.

**Step 2:** Legal entity distributes all after-tax profits in the form of dividend payments.

No tax levied at this stage. If dividends are distributed before the end of tax period, corporation is required to pay advance corporate profits tax from the total amount of dividends distributed (the same as shown in Step 1). Corporation may use such advance payment in the current tax period or carryforward it indefinitely.

**Step 3:** Individual receives dividends.

Dividend income (UAH 500,000 - UAH 95,000) multiplied by 5% (current PIT rate for dividends) equals UAH 20,250.

Effective tax rate remains the same for each calculation:

- **Calculation 1:** Effective tax rate: \((\text{UAH380,000} + \text{UAH81,000}) \div \text{UAH2,000,000} = 23.05\%\)
- **Calculation 2:** Effective tax rate: \((\text{UAH95,000} + \text{UAH20,250}) \div \text{UAH500,000} = 23.05\%\)

Has this effective tax rate increased, decreased or stayed the same in the last three years?

Effective tax rate decreased due to decrease in corporate tax rate from 23% to 19% and will further decrease in 2014 when corporate tax rate will be 16%.
Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

View table in Section 1.1.

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

Sale of business by individual shareholders is subject to standard (15%) PIT rate, receipt of dividends by individual is subject to decreased (5%) PIT rate.

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

Ukrainian tax law operates a substance-over-form approach. However if a transaction is of a business nature for the family business, it is allowed. But if the is transaction is artificial, the only option for the tax authorities to challenge it and treat it as “invalid” (the detailed description of the process is provided below). If the transaction is treated as invalid, possible penalties will be:

- To detect a sham transaction, the tax authorities can only charge additional tax liabilities for violation of the tax law plus corresponding fines (up to 50% of the underpaid amount) and penalties (120% of the annual National Bank of Ukraine discount rate as of the date of payment (accrual) for each day of underpayment). In such cases, the Ukrainian tax authorities can charge additional liabilities without the court’s involvement.

- To detect a void transaction, tax authorities are authorized to refer it to a court. If intention to violate the state's interests is proven, the court can seize all property and assets relating to such a transaction.

PIT rate for dividends distribution in Ukraine is 5%, which is considerably lower than the usual PIT rate of 15%/17%. Therefore, dividend distribution is the most commonly known form of profit repatriation from the business to its owners.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

A. Fully publicly listed? No.
B. Partly publicly listed? No.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

No.

Section 4: Succession planning

There is no inheritance tax in Ukraine. Transfers between immediate relatives (either lifelong or after death) are exempt. Transfers to others are taxable at usual PIT rates.

4.1 Life insurance

N/A.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?

N/A.
Section 5: Tax policy environment

5.1 Policy environment relating to family business
There is no notion of “family business” in Ukraine. Ukraine operates special tax regime for small and medium-sized enterprises (both legal entities and private entrepreneurs. See table in Section 1.1.

5.2 Specify change in the direction of tax policy in the last three years
N/A.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners
N/A.

5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions
N/A.
### Ukraine

#### Section 6: Tax administration and enforcement issues

**6.1 Is there a specific unit within your tax administration that deals specifically with:**

<table>
<thead>
<tr>
<th>Unit</th>
<th>Yes/No</th>
</tr>
</thead>
<tbody>
<tr>
<td>High net worth individuals (HNWIs)</td>
<td>No.</td>
</tr>
<tr>
<td>SMEs</td>
<td>No.</td>
</tr>
<tr>
<td>Family businesses</td>
<td>No.</td>
</tr>
<tr>
<td>Large corporate taxpayers</td>
<td>Yes.</td>
</tr>
<tr>
<td>Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses</td>
<td>No.</td>
</tr>
</tbody>
</table>

**6.2 Specify enforcement focus areas or defined programs that might touch a family business**

None.

**6.3 Specify tax enforcement focus on any particular industry or profession**

None.

**6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners**

None.

**6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success**

None.

**6.6 Are there any specific pre-filing processes that can be leveraged by:**

- HNWIs: No.
- Family businesses: No.

**6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI**

The trend currently relates more to legal entities, not individuals. Ukraine is following general trends in TIEAs and DDTs. This year Ukraine ratified new double-taxation treaties (DTT) with Cyprus, signed DTT with Ireland and decided to sign DTT with Malta.
## Section 1: The accumulative tax burden on family business

### 2013 tax rates

<table>
<thead>
<tr>
<th>1.1 Corporate income tax (national and sub-national combined)</th>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highest marginal rate</td>
<td>0%</td>
<td>N/A.</td>
</tr>
<tr>
<td>Highest rate for small and medium enterprises (SMEs)/small business</td>
<td>0%</td>
<td>N/A.</td>
</tr>
<tr>
<td>Special treatment of SMEs/small business (other reliefs, etc.)</td>
<td>N/A.</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

No.

---

* All rates and regulations listed in the UAE are valid for years 2013 and 2014, unless otherwise noted.
1.2 Individual income tax

<table>
<thead>
<tr>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>Change in rate in the last three years (up or down).</td>
</tr>
<tr>
<td></td>
<td>• Personal allowance</td>
</tr>
<tr>
<td></td>
<td>N/A.</td>
</tr>
<tr>
<td></td>
<td>• Minimum rate of personal income tax (PIT)</td>
</tr>
<tr>
<td></td>
<td>0%</td>
</tr>
<tr>
<td></td>
<td>• Highest marginal rate of PIT</td>
</tr>
<tr>
<td></td>
<td>0%</td>
</tr>
<tr>
<td></td>
<td>• Any special surtaxes</td>
</tr>
<tr>
<td></td>
<td>N/A.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

No.

1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>Change in rate in the last three years (up or down).</td>
</tr>
<tr>
<td></td>
<td>• Standard rate</td>
</tr>
<tr>
<td></td>
<td>0%</td>
</tr>
<tr>
<td></td>
<td>• Are there any special reliefs or exemptions for a family business?</td>
</tr>
<tr>
<td></td>
<td>No changes have been made.</td>
</tr>
</tbody>
</table>

1.4 Property taxes

• Does a family business receive any relief on property taxes not granted to other types of corporation?

No.

1.5 Capital gains tax (CGT)

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013 rate – companies</td>
<td>N/A.</td>
</tr>
<tr>
<td>2013 rate – individuals</td>
<td>The rate for individuals is 0%.</td>
</tr>
<tr>
<td>Reliefs/exemptions</td>
<td>N/A.</td>
</tr>
</tbody>
</table>
1.6 Tax on dividends from ordinary shares

A. For the business: The rate is 0%.
B. For the owners of the business: The rate is 0%.

1.7 Tax on dividends from preferential shares

A. For the business: The rate is 0%.
B. For the owners of the business: The rate is 0%.

1.8 Tax treatment of interest on a loan from the shareholders

We assume that the shareholders/owners provide a loan to the family company in return for interests.
A. For the business: The rate is 0%.
B. For the owners of the business: The rate is 0%.

1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

A. For the business: The rate is 0%.
B. For the owners of the business: The rate is 0%.

1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

A. For the business: The rate is 0%.
B. For the owners of the business: The rate is 0%.

1.11 Tax treatment of interest paid on bank debt by a family business

Interest paid is tax exempt.

1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

Interest by royalty paid is tax exempt.

1.13 Tax treatment of rental payments made by a family business to third parties for real estate

Rental payments are tax exempt.

1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group

Interest payments for both are tax exempt.

1.15 Does your country provide for a deemed deduction on equity and/or debt?

No.

1.16 Is the retention of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

No.
### 1.17 Wealth tax

- 2013 characteristics and rate
  - The rate is 0%.
- Is there an exemption for shares owned by a family that owns a business?
  - N/A.

### 1.18 Inheritance tax/estate tax

The rate is 0%.

### 1.19 Gift tax

The rate is 0%.

### 1.20 Real estate transfer tax

There is a 0% transfer tax. However, a sale and purchase fee of 4% of the contract price applies on the transfer of real estate. Typically, 2% will be paid by the buyer and 2% paid by the seller.

### 1.21 Endowment tax

The rate is 0%.

### 1.22 Social security

In the UAE, social security is applicable only to UAE and other GCC nationals. Contributions for UAE nationals are stated below. Contributions for other GCC nationals are based on their local requirements.

<table>
<thead>
<tr>
<th>National/social insurance contributions on employee income</th>
<th>Government sector employees</th>
<th>Private sector employees</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Abu Dhabi employees:</td>
<td>Abu Dhabi employees:</td>
</tr>
<tr>
<td></td>
<td>Employer contribution is 15%</td>
<td>Employer contribution is 15%</td>
</tr>
<tr>
<td></td>
<td>Employee contribution is 5%</td>
<td>Employee contribution is 5%</td>
</tr>
<tr>
<td></td>
<td>Government contribution is 6%</td>
<td>Government contribution is 6%</td>
</tr>
<tr>
<td></td>
<td>Dubai and other Emirates employees</td>
<td>Dubai and other Emirates employees</td>
</tr>
<tr>
<td></td>
<td>Employer contribution is 15%</td>
<td>Employer contribution is 12.5%</td>
</tr>
<tr>
<td></td>
<td>Employee contribution is 5%</td>
<td>Employee contribution is 5%</td>
</tr>
<tr>
<td></td>
<td>Government contribution is 0%</td>
<td>Government subsidy is 2.5%</td>
</tr>
</tbody>
</table>

| Health/medical/dental care | UAE nationals have full health care coverage at public clinics and hospitals. Please note that the Emirate of Abu Dhabi initiated a new program that provides all employees and dependents with coverage at private clinics and hospitals. Dubai has plans to implement similar schemes by 2016. |

| Retirement plans/pensions for employees | There are no other retirement plans/pensions in the UAE besides the Social Security system. |
1.23 Pensions and tax-efficient savings

| Tax relief on pension contributions — standard | Not applicable since there is currently no individual tax system in the UAE. |
| Tax relief on pension contributions — any specific relief to family business? | Not applicable since there is currently no individual tax system in the UAE. |

1.24 Taxation of flow-through entities/partnerships/trust funds

The rate is 0%.

1.25 Exemptions in the law that specifically relate to family businesses

None.

1.26 Are there any business incentives in your country that are specific to

- SMEs No.
- Family businesses No.

1.27 Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses? N/A.
- Are there any available loss reliefs that are specific to SMEs? N/A.

Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- **Calculation 1:** The business makes a profit before tax of US$2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.
  
  Net income is US$2 million; tax burden is US$0.

- **Calculation 2:** The business makes a profit before tax of US$500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.
  
  Net income is US$500,000; tax burden is US$0.

Effective tax rate is 0%.

Has this effective tax rate increased, decreased or stayed the same in the last three years?

No.
Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

None.

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

Both are tax exempt.

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

No.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

A. Fully publicly listed? No.
B. Partly publicly listed? No.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

No.

Section 4: Succession planning

4.1 Life insurance

There are no tax incentives provided given the lack of taxation in the UAE, but attention must be paid to Shariah aspects.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?

N/A.

4.3 Estate tax

Estate tax is 0%.

4.4 Pension plans

See Section 1.

4.5 Trusts, foundations and private purpose funds

DIFC trust, the use of offshore trusts and foundations is quite common, although attention must be paid to Shariah aspects hereof.

4.6 Wills/intestacy/family charters

Wills are commonly used, especially by non-nationals/expatriates. Debatable whether local will of country of origin will be sufficient. Attention to be paid to UAE property in connection with inheritance under applicable Shariah laws.

4.7 Passing on a business

The rate is 0%.
5.2 Specify change in the direction of tax policy in the last three years

In principle, a maximum of 49% foreign ownership is allowed for companies in main UAE. It is possible to have 100% foreign ownership in companies in the Free Zones.

There has not been any specific change in the direction of tax policy in the last three years. However, there have been some proposed policy developments in terms of foreign shareholding. While there was an initial push to relax the 49% limitation on foreign ownership in some sectors, we understand that the recent development is geared more toward upholding this 51%/49% shareholding in the companies established in the UAE.

Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with:

- High net worth individuals (HNWIs) No.
- SMEs No.
- Family businesses No.
- Large corporate taxpayers No.
- Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses No.

6.2 Specify enforcement focus areas or defined programs that might touch a family business

See Section 5.2.

6.3 Specify tax enforcement focus on any particular industry or profession

N/A.
6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners

N/A.

6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

We are not currently aware of any voluntary disclosures.

6.6 Are there any specific pre-filing processes that can be leveraged by:

- HNWIs: No.
- Family businesses: No.

6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

The UAE is a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes and there is a drive to meet and comply with the standards for such exchange of information. The tax treaties concluded by the UAE generally contain exchange of information provisions. The UAE is also in the process of negotiating tax information exchange agreements (TIEAs) with some jurisdictions.

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The importance of family businesses in the Middle East

90% of the companies in the Middle East are family-owned businesses.

| Generate | 80% | of the region's GDP, approximately |
| Constitute | 75% | of private sector economic activity |
| Employ | 70% | of the labor force in the Cooperation Council for the Arab States of the Gulf region – more than 67 million employees |
| Control | 98% | of the oil producing companies operating in the Gulf region |
**Section 1: The accumulative tax burden on family business**

2013 tax rates

<table>
<thead>
<tr>
<th>1.1 Corporate income tax (national and sub-national combined)</th>
<th></th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2013</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Highest marginal rate</td>
<td>23% (Rate drops to 21% from 1 April 2014).</td>
<td>Rate was reduced from 26% to 24%, and then again to 23%.</td>
</tr>
<tr>
<td>• Highest rate for small and medium enterprises (SMEs) / small business</td>
<td>There is a 20% corporation tax rate for profits up to £300,000; main rate of 23% on profits over £1.5m, marginal relief available for profits that fall in between these thresholds.</td>
<td>20% small profits rate has remained the same.</td>
</tr>
</tbody>
</table>

*Unless otherwise stated, the content relates to the UK tax year ending 5 April 2014. The rates of tax given are for the year ending 31 March 2014 for corporation tax and the year ending 5 April 2014 for income tax for individuals.*
1.1 Corporate income tax (national and sub-national combined)

- Special treatment of SMEs/small business (other reliefs, etc.)  N/A. N/A.

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

From April 2013, a new regime (“Patent Box”) applies to profits attributable to UK or European patents. Under the regime, there is a lower effective rate of Corporation Tax, which by 2017 will be as low as 10%.

Budget 2012: There have been regular reductions in the main corporation tax rate in recent years, with rate set to reduce to 20% from 1 April 2015.

Rates of capital allowances available on capital investment have also progressively decreased during the same period. Businesses with high capital spend therefore may not fully benefit from the reduction in the main Corporation Tax rate.

1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal allowance</td>
<td>Allowance is £9,440 (for the 2013-14 tax year) up to an income limit of £100,000, after which it is reduced by £7 for every £2 of income over £100,000</td>
</tr>
<tr>
<td>Minimum rate of personal income tax (PIT)</td>
<td>Basic rate is 20%.</td>
</tr>
<tr>
<td>Highest marginal rate of PIT</td>
<td>Additional rate is 45%.</td>
</tr>
<tr>
<td>Any special surtaxes</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

There was an increase in the top rate of income tax from 40% to 50% for three tax years. This has subsequently been reduced to 45% from 2013-14.

An additional income tax rate of 50% for those earning above £150,000 was introduced in 2010-11.

The additional rate of tax for incomes over £150,000 fell to 45% for the 2013-14 tax year onward. The Chancellor stated that the 50% rate damaged the UK economy and raised relatively little in extra tax yield.

An increase in the personal allowance to £9,440 for 2013-14 and £10,000 for 2014-15.

In terms of other changes the personal allowance will rise to £9,440 for 2013-14 and will rise to £10,000 for 2014-15. This is withdrawn by £1 for every £2 of income over £100,000. However, non-UK domiciled individuals who elect to be taxed on the remittance basis generally already lose their personal allowance.

The basic rate band was reduced to £32,010 for 2013-14. This resulted in an increase in tax for those not entitled to a personal allowance, such as individuals taxed on the remittance basis or who have their personal allowance partially or completely withdrawn.
1.2 Individual income tax

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

The allowances, rates and bands for 2013-14 are detailed below:

<table>
<thead>
<tr>
<th>Allowance</th>
<th>2013/2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal allowance*</td>
<td>£9,440</td>
</tr>
<tr>
<td>Starting rate for savings: 10%</td>
<td>£0 to £2,790</td>
</tr>
<tr>
<td>Basic rate: 20%</td>
<td>£2,790 to £32,010</td>
</tr>
<tr>
<td>Higher rate: 40%</td>
<td>£32,010 to £150,000</td>
</tr>
<tr>
<td>Additional rate: 45%</td>
<td>Over £150,000</td>
</tr>
</tbody>
</table>

* Withdrawn by £1 per £2 of income over £100,000 or entirely for those who claim the remittance basis.

1.3 VAT, GST and sales tax

2013

- VAT
  - Standard rate is 20%.
  - Reduced rate is 5%.
  - Other: zero-rated, exempt and outside the scope of UK VAT.

Change in rate in the last three years (up or down).

Prior to 4 January 2011, the standard rate was 17.5%.

Are there any special reliefs or exemptions for a family business?
No.

This section has been reproduced from Worldwide VAT, GST and Sales Tax Guide 2013. As our guides are updated at different times throughout the year, please refer to the source publication for latest updates.

1.4 Property taxes

- Does a family business receive any relief on property taxes not granted to other types of corporation?
No.

1.5 Capital gains tax (CGT)

- 2013 rate – companies
  N/A.

- 2013 rate – individuals
  The current rate is 18% and 28% for individuals (the tax rate you use depends on the total amount of your taxable income and gains).
  The current rate is 28% for trustees or personal representatives.
  The current rate is 10% for gains qualifying for Entrepreneurs’ Relief.
1.5 Capital gains tax (CGT)

- Reliefs/exemptions

Entrepreneurs’ Relief allows individuals and some trustees to claim relief in qualifying gains made on the disposal of any of the following interests, which have been held for a minimum of 12 months:

- All or part of a business
- The assets of a business after it has stopped trading
- Certain shareholdings in a trading company

The relief applies for the years 2008-09 onward. There is a maximum lifetime limit of Entrepreneurs’ Relief you can claim.

The relief is available for an individual if:

- The person is in business, for example as a sole trader or as a partner in a trading business
- The person holds a given proportion of the equity and voting rights in the family business/personal trading company

The relief is also available for some trustees. Entrepreneurs’ Relief is not available for companies.

1.6 Tax on dividends from ordinary shares

Dividends paid by UK resident companies are not subject to withholding tax. For dividends received by UK resident companies, the UK has a dividend exemption regime. A dividend or other income distribution received on or after 1 July 2009 is generally exempt from UK corporation tax if all of the following conditions are satisfied:

- The distribution falls within an exempt class or, if the recipient is a “small” company, the payer is resident in a qualifying territory.
- The distribution is not of a specified kind.
- No deduction is allowed to a resident of any territory outside the UK under the law of that territory with respect to the distribution.

UK resident shareholders other than companies are subject to income tax on the distribution received plus a deemed tax credit. The deemed tax credit attaching to dividends is equal to 10/90 of the net dividend. Under several of the UK’s double tax treaties, a foreign shareholder in a UK company may claim payment of part or all of this deemed tax credit that would have been available to a UK individual. However, in most cases, the benefit is eliminated or reduced to a negligible amount.

*This section has been reproduced from Worldwide Corporate Tax Guide 2013. As our guides are updated at different times throughout the year, please refer to the source publication for latest updates.*

1.7 Tax on dividends from preferential shares

A. For the business: As above for tax on dividends from ordinary shares.

B. For the owners of the business: As above for tax on dividends from ordinary shares.

1.8 Tax treatment of interest on a loan from the shareholders

A. For the business: Interest payments on “short loans” (loans with a duration that cannot exceed 364 days) may be made without the need to account for withholding tax.

B. For the owners of the business: All interest payments by UK resident companies may be made without the imposition of withholding tax if the paying company reasonably believes that the interest is subject to UK corporation tax in the hands of the recipient. An individual shareholder is subject to income tax on interest receivable.
1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

A. For the business: The business should obtain a deduction for rental payments against its business profits.

B. For the owners of the business: An individual shareholder is subject to income tax on the net rental profits.

1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

A. For the business: The business should obtain a deduction for payments for the use of intellectual property against its business profits.

B. For the owners of the business: An individual shareholder is subject to income tax on income generated from the use of intellectual property.

1.11 Tax treatment of interest paid on bank debt by a family business

Interest paid on a bank debt by a family business should generally be deductible in computing business profits, subject to any applicable anti-avoidance provisions (e.g. regarding an unallowable purpose).

1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

Payments made by a family business to third parties for the use of intellectual property should generally be deductible in computing business profits.

1.13 Tax treatment of rental payments made by a family business to third parties for real estate

Rental payments made by a family business to third parties should generally be deductible in computing business profits.

1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group

The rules under the “loan relationships” regime are designed to allow the tax treatment of interest on debt instruments to follow the accounting treatment in most circumstances. However, the regime includes many anti-abuse measures as well as other measures, such as the Worldwide Debt Cap, which can restrict the allowable deductions.

The UK’s transfer pricing measures apply to the provision of finance (as well as to trading income and expenses). As a result, companies must self-assess their tax liability on financing transactions using the arm’s-length principle (SMEs are generally exempt from the UK’s transfer pricing measures, in most circumstances.)

1.15 Does your country provide for a deemed deduction on equity and/or debt?

No.

1.16 Is the retention of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

No restrictions.

1.17 Wealth tax

- 2013 characteristics and rate
  - There is no net wealth tax in the UK.

- Is there an exemption for shares owned by a family that owns a business?
  - N/A.

This section has been reproduced from International Estate and Inheritance Tax Guide 2013. As our guides are updated at different times throughout the year, please refer to the source publication for latest updates.
1.18 Inheritance tax/estate tax

The UK has a unified estate and gift tax called inheritance tax (IHT). IHT applies to the value of an individual's estate when he or she dies (in which case he or she is deemed to make a transfer of the whole estate immediately before such time) and to certain transfers or gifts made during the individual's lifetime. The tax applies on the basis of the loss to the donor's estate that arises by reason of the transfer of value.

Adjustments are made to property that increases or decreases in value by reason of an individual's death (i.e., life insurance policies that mature on death and form part of the deceased's estate).

Certain other events give rise to deemed transfers of value (e.g., deliberate depreciatory transactions), and sales at an undervalue or where a person's interest in certain trusts comes to an end or where a close company (broadly one in the control of five or fewer persons) makes a disposition. In addition, certain trusts are subject to 10 yearly inheritance tax charges and charges when an asset is distributed out of trust.

This section has been reproduced from International Estate and Inheritance Tax Guide 2013. As our guides are updated at different times throughout the year, please refer to the source publication for latest updates.

1.19 Gift tax

There is no specific gift tax in UK law although the above sets out circumstances when lifetime gifts can trigger an IHT charge. Additionally, lifetime gifts (other than to a spouse) are treated as disposals for capital gains tax purposes.

This section has been reproduced from International Estate and Inheritance Tax Guide 2013. As our guides are updated at different times throughout the year, please refer to the source publication for latest updates.

1.20 Real estate transfer tax

The UK levies a stamp duty land tax charge on transfers of land and buildings, at rates ranging from 0% (for properties below a certain value) to 7% (for residential properties in excess of £2 million). The duty is charged on the purchaser of the land or property. Gifts of land and buildings for no chargeable consideration do not, however, realize a charge.

As well as this, a special stamp duty land tax (SDLT) rate of 15% is now payable on the acquisition of residential properties above £2m by "non-natural persons", such as companies (which are defined as bodies corporate), collective investment schemes and partnerships where at least one of the partners is a company (irrespective of whether these are UK or non-UK entities). These changes may affect many individuals with offshore structures who use Special Purpose Vehicles or offshore trusts to hold UK property and will not be limited to those who have engaged in SDLT planning.

An annual tax charge (known as the Annual Tax on Enveloped Dwellings ATED) equivalent to between 0.3% and 0.75% of the property value (but capped initially at a maximum of £140,000 per annum) will apply to those interests held by non-natural persons from 1 April 2013.

This section has been reproduced from International Estate and Inheritance Tax Guide 2013. As our guides are updated at different times throughout the year, please refer to the source publication for latest updates.

1.21 Endowment tax

There is no endowment tax in the UK.

1.22 Social security

- National/social insurance contributions on employee income

  Class 1 paid by both employees and employers at 13.8% of the employee's earnings.

  Class 2 is £2.70 per week (for 2013-14) and paid by self-employed taxpayers.

  Class 3 National Insurance Contributions are voluntary.

  Class 4 is paid by self-employed individuals, and is payable at 9% on annual profits between £7,755 and £41,450 (for 2013-14) and 2% on any profit over that amount.

- Health/medical/dental care

  N/A.

- Retirement plans/pensions for employees

  The UK offers a state pension. Other pension schemes are available, i.e., through employers, to supplement this income during retirement.
1.23 Pensions and tax-efficient savings

- Tax relief on pension contributions – standard

**UK-registered plans:** No limit is imposed on the absolute amount that may be contributed to UK registered pension schemes, but an annual allowance charge applies to restrict the tax relief available if the contributions or increase in accrual in the pension input period (PIP) ending in a tax year exceeds the permitted annual allowance. For UK-registered schemes, the PIP may be the same as the UK tax year, or it may be another period ending on a different date, nominated by the pension scheme administrator (or in the case of money purchase arrangements only, either the pension scheme administrator or the individual scheme member). For UK schemes established on or after 6 April 2011, the default PIP is the same as the UK tax year, but it may be changed by a nomination.

In determining whether the annual allowance is exceeded for a defined contribution scheme, any employer and employee contributions need to be added together, or, for a defined benefit scheme the increase in the expected pension value over the course of the PIP must be multiplied by (effective from 6 April 2011) a factor of 16 to arrive at the capital value by which the fund is deemed to have increased over that period.

Effective from 6 April 2011, the annual allowance is limited to £50,000 (for the 2011-12 UK tax year and subsequent tax years). The annual allowance is to reduce to £40,000 from 6 April 2014. Any unused annual allowances from the previous three UK tax years may be carried forward to offset any excess pension inputs in the 2011-12, and subsequent, tax years. However, in calculating any surplus for carryforward, the allowances are based on the rates and valuation principles applying for the 2011-12 tax year, rather than the higher levels of annual allowance that actually applied in those earlier years.

An overall limit is imposed on the maximum amount that may be saved tax efficiently over a lifetime, known as the lifetime allowance. For the 2011-12 tax year, this was set at £1,800,000. However, it was reduced to £1,500,000, effective from 6 April 2012, for the 2012-13 tax year and subsequent tax years. The lifetime allowance is to reduce to £1,250,000 from 6 April 2014. The level of pension saving is tested against the lifetime allowance if a benefit crystallization event occurs, such as the employee beginning to draw a pension, and a lifetime allowance charge is levied if the lifetime allowance is exceeded.
1.23 Pensions and tax-efficient savings

- Tax relief on pension contributions — standard

**International equivalents:** Non-UK schemes that the UK regards as being like a UK scheme are subject to a similar regime to the one described above, but with slightly different rules. For example, for non-UK schemes, by law, the PIP is the UK tax year. The following four types of schemes may fall within this group:

1. Schemes in which Migrant Member Relief (MMR) has been claimed.
2. Schemes in which transitional corresponding acceptance (TCR) has been claimed.
3. Schemes on which tax relief on contributions has been claimed under an appropriate double tax treaty.
4. Overseas pension schemes (as defined) with employer contributions that are not taxable on the employee because the scheme provides only death and retirement benefits. In very broad terms, an overseas pension scheme is usually one that is subject to a system of regulation in the country in which it is established and that is open to local residents in that country.

For any of the above schemes, employer contributions are also usually deductible for corporation tax purposes. However, for tax relief for the employee personally, total pension inputs are subject to the annual allowance and lifetime allowance limits described above. If, after leaving the UK and not having been nonresident for a period of five complete UK tax years, an employee draws UK tax-relieved benefits from his or her pension scheme in a form that would not be permitted for a UK-registered pension scheme, an unauthorized payment charge may apply.

Other pension schemes: Other schemes that are not UK-registered schemes or deemed in law to be of the same type are typically subject to tax under the UK’s “disguised remuneration” regime, unless they can be shown to be wholly unfunded. This usually means that any contributions to a scheme that are with respect to or otherwise earmarked for an employee must be taxable to the employee through PAYE at the time of payment.

Wholly unfunded schemes: Wholly unfunded schemes are usually outside the disguised remuneration rules. However, under an extended definition of funding for this purpose, if, for example, the employer provides an asset as security, this is usually regarded as providing funding for the scheme.

The law with respect to pension schemes in the UK is extremely complex. As a result, specific advice should be obtained in all cases.

- Tax relief on pension contributions — any specific relief to family business? None.

This section has been reproduced from Worldwide Personal Tax Guide 2012-2013. As our guides are updated at different times throughout the year, please refer to the source publication for latest updates.

1.24 Taxation of flow-through entities/partnerships/trust funds

A Trust resident in the UK may be taxed in the UK, depending upon the nature of the Trust. In certain circumstances, the settlor and/or beneficiaries may be taxed. Specific advice should be sought in this regard.

Partnerships are typically regarded as transparent for income and capital gains tax purposes, but as for trusts, specific advice should be sought in respect of the taxation of these entities and their partners/members.
1.25 Exemptions in the law that specifically relate to family businesses

None.

1.26 Are there any business incentives in your country that are specific to

- SMEs
  Relief of 225% available to SMEs on R&D expenditure. Various other reliefs for investors, such as Enterprise Investment Scheme and Seed Enterprise Investment Scheme, designed largely to encourage investment.

- Family businesses
  None.

1.27 Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses?
  No reliefs specific to family businesses.

- Are there any available loss reliefs that are specific to SMEs?
  No reliefs specific to SMEs. In general, trading losses may be used to relieve other income and capital gains of the year in which the loss was incurred and of the preceding year, provided the same trade was then carried on. Losses may also be carried forward, without time limit, for relief against future profits from the same trade. A company which ceases trading may carry back trading losses and offset them against profits of the preceding 36 months.

Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

- Calculation 1: The business makes a profit before tax of £2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.
  Rates are for the year ended 5 April 2014

<table>
<thead>
<tr>
<th>Corporation tax</th>
<th>£</th>
<th>£</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profits subject to corporation tax:</td>
<td>2,000,000.00</td>
<td></td>
</tr>
<tr>
<td>Tax at 23%:</td>
<td>460,000.00</td>
<td></td>
</tr>
<tr>
<td>Net distributable reserves:</td>
<td>1,540,000.00</td>
<td></td>
</tr>
</tbody>
</table>

| Personal tax | |
|--------------| |
| Net dividend: | 1,540,000.00 |
| Dividend subject to tax (net dividend * 100/90): | 1,711,111.11 |
| Tax liability: | 3,201.00 |
| 117,990.00 | 38,346.75 |
| 1,561,111.11 | 585,416.67 |
| Less: notional tax credit: | -171,111.11 |
| Tax liability: | 455,853.31 |
| Effective rate of tax: | 45.79% |
• **Calculation 2:** The business makes a profit before tax of £500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

Rates are for the year ended 5 April 2014.

<table>
<thead>
<tr>
<th>Corporation tax</th>
<th>£</th>
<th>£</th>
<th>£</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profits subject to corporation tax:</td>
<td>500,000.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax at 23%:</td>
<td></td>
<td>115,000.00</td>
<td></td>
</tr>
<tr>
<td>Less: marginal relief:</td>
<td></td>
<td>-7,500.00</td>
<td></td>
</tr>
<tr>
<td>3/400 (1,500,000 - 500,000):</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Corporation tax liability:</td>
<td>107,500.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net distributable reserves:</td>
<td>392,500.00</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Personal tax</th>
<th>£</th>
<th>£</th>
<th>£</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net dividend:</td>
<td>392,500.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dividend subject to tax (net dividend * 100/90):</td>
<td>436,111.11</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax liability:</td>
<td>32,010.00 * 10%</td>
<td>3,201.00</td>
<td>3,201.00</td>
</tr>
<tr>
<td></td>
<td>117,990.00 * 32.5%</td>
<td>38,346.75</td>
<td></td>
</tr>
<tr>
<td></td>
<td>286,111.11 * 37.5%</td>
<td>107,291.67</td>
<td></td>
</tr>
<tr>
<td>Less: notional tax credit:</td>
<td>436,111.11 * 10%</td>
<td>-43,611.11</td>
<td>105,228.31</td>
</tr>
<tr>
<td>Tax liability:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Effective rate of tax:</td>
<td></td>
<td>42.55%</td>
<td></td>
</tr>
</tbody>
</table>

**Has this effective tax rate increased, decreased or stayed the same in the last three years?**

For profits before tax of £2 million, the effective rate of tax has decreased from 52.83% in 2010-2011 to 45.79% in 2013-2014.

For profits before tax of £500,000, the effective rate of tax has decreased from 47.08% in 2010-2011 to 42.55% in 2013-2014.

**Section 3: Tax treatment of family businesses and other issues**

3.1 **Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil**

A family business that is run as a corporation is subject to corporation tax on its profits. A shareholder will be subject to tax when value is extracted from the company. A family business which is run without a corporate veil may be subject to income tax, with no further tax cost of extraction.

3.2 **Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.**

Capital gains is paid at 18% or 28% by an individual, depending on their level of income. Individuals can also qualify for Entrepreneurs’ Relief, if they meet certain criteria, which include owning at least 5% of the equity and voting rights in the family business; individuals that qualify for this relief pay Capital Gains Tax at 10% (up to a lifetime limit of £10 million). Chargeable gains incurred by a company are included in their taxable profit and taxed as such.

The top rate of tax on a dividend paid to a shareholder is 37.5%, with the 10% tax credit applied to this (as shown in Section 2) providing an effective rate of 30.75%.
3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.
None.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:
A. Fully publicly listed? Most, if not all fully publicly listed family businesses are corporations.
B. Partly publicly listed? Most, if not all partly publicly listed family businesses are corporations.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?
Subject to meeting the other conditions, individuals qualify for Entrepreneurs’ Relief with an interest of 5% or more in the entity. Otherwise, there should be no change in the rate at which tax is paid if the level of shareholding varies.

Section 4: Succession planning

4.1 Life insurance
None.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?
Business Property Relief can provide relief from Inheritance Tax at up to 100% on assets such as unquoted shares in a trading company, provided that the asset in question was owned throughout the two years prior to the “transfer.” This enables ownership of a business to be passed down to future generations with a partly or completely reduced inheritance tax charges.

4.3 Estate tax
There is estate tax in the UK.

4.4 Pension plans
Yes, in certain circumstances.

4.5 Trusts, foundations and private purpose funds
From an estate planning point of view, trusts are often used as a means of making lifetime gifts to enable the donor to place constraints on the donee. Property will normally be gifted at a time when it does not attract an IHT liability, and any growth in value of assets held by the trust is outside of the donor’s estate. Care needs to be taken when making gifts as this can attract a capital gains tax liability on any unrealized appreciation in the asset.

Types of UK trust

Bare trust
A bare trust is the simplest form of trust where property is held effectively as nominee for another person, who would be absolutely entitled, but for being under a disability (e.g., a minor or a person who is mentally incapacitated). For trust purposes, the trustees have certain duties and obligations, but for UK tax purposes, the trust and gifts to it are treated largely as if the principal beneficiary were the owner of the assets themselves.

Interest in possession trust
An interest in possession trust, or life interest trust, is one that confers on one or more persons a right to receive the income, with potential discretionary distributions of capital. From 22 March 2006, gifts to an interest in possession trust follow that for discretionary trusts (see below).
4.5 Trusts, foundations and private purpose funds

Discretionary trust

A discretionary trust is one where the trustees have discretion over distributions of capital and income, including accumulation and maintenance trusts. An accumulation and maintenance trust is a type of discretionary trust, for a class of beneficiaries under 25 years of age, which prior to 22 March 2006 (provided it complied with special rules) had beneficial ongoing inheritance tax treatment. This tax treatment is no longer available and the tax treatment follows that of a discretionary trust, as set out below. In place of accumulation and maintenance trusts, there are two new trust regimes: trusts for bereaved minors and 18-25 trusts, and provided certain conditions are met, each trust has a more beneficial inheritance tax treatment than a normal discretionary trust.

However, as far as new trusts are concerned, both these new categories of trust can only be set up on death.

Creation of trusts and transfers of assets in

The creation of an interest in possession trust or a discretionary trust, or the transfer of property into such a trust, is, generally speaking, a chargeable lifetime transfer. The creation of an interest in possession trust in favor of a disabled person is an exempt transfer.

The gift to a trust may therefore incur a lifetime IHT charge of 20% if the value of assets given over the seven-year cumulative period exceeds the nil-rate band or the transfer does not otherwise qualify for relief. Additionally, a tax charge of up to 6% of the fund value applies at each 10-year anniversary of the trust's creation (the periodic charge) and, proportionately, on distributions from the trust between these anniversaries (the exit charge).

It should be noted that there has been consultation regarding periodic and exit charges on trusts.

Discussions have centered on allowing trustees to opt to pay the maximum 6% charge on the full value of the property in the limited circumstances where the assets are held in cash and quoted shares. This would ensure that professionals would not be required to perform more complex calculations, and it would allow a standard approach to dealing with accumulated income (and income that has not been distributed for a long period without being formally accumulated).

Prior to 22 March 2006, the creation of an interest in possession trust and an accumulation and maintenance trust were potentially exempt transfers. Since 22 March 2006, only the following gifts into trust should qualify as a potentially exempt transfer:

• A gift into a qualifying disabled person’s trust
• A gift into a bare trust created for an individual beneficiary

Non-UK settlements

Trusts, whether or not UK resident, which are created by UK domiciled or deemed domiciled individuals, are subject to the UK IHT legislation regardless of the residence of the settlor or the time of their creation or the situs of the assets held. Whenever trusts are formed by non-UK persons, care needs to be taken to ensure they are not still deemed to be UK domiciled and so subject to the UK IHT provisions.

Excluded property settlements

If a trust is established by a settlor when he or she is non-UK domiciled (and when he or she is also not deemed domiciled in the UK) and the trust assets are sited outside the UK, the trust is an excluded property trust. This means that the assets, provided they are situated outside the UK at the time of any charge to IHT, will remain outside the scope of IHT, even if the settlor subsequently becomes UK domiciled or deemed domiciled. As the law currently stands, the trust can therefore offer total protection against IHT for such assets. Such trusts are normally non-UK resident trusts since this status can also attract capital gains tax benefits.

It is also possible to take advantage of the excluded property trust status where the assets are sited in the UK. This can be achieved by means of the trust owning the UK assets through the medium of a non-UK situs company. The assets of the trust are in these circumstances regarded as being the shares in the company (which are regarded as non-UK situs assets) rather than the underlying assets situated in the UK. Certain assets should typically not be held in this way as there may be other UK tax disadvantages (e.g., UK real estate occupied by a beneficiary).

This section has been reproduced from International Estate and Inheritance Tax Guide 2013. As our guides are updated at different times throughout the year, please refer to the source publication for latest updates.
4.6 Wills/intestacy/family charters

Testamentary documents and intestacy

A will is a legal document that regulates an individual's estate after death. Subject to what is said above with regard to Scotland, in the UK an individual generally has complete freedom of disposition. The UK will normally accept the formal validity (i.e., of the document itself) of a will drawn under the laws of the deceased's domicile, nationality or place of residence at the time of making the will or at death. In the UK, the requirement is that the testator signs at the end of the will in the presence of two witnesses and they must sign in his or her presence and in the presence of each other. A will can generally be revoked and replaced save in limited circumstances where mutual wills have been written.

Whether he or she has the personal legal capacity to make the dispositions in the will is generally governed by the law of the deceased's domicile. In the case of the UK, this means the law of the situs of the assets will be relevant where real estate is concerned and the law of the deceased's domicile will be relevant in the case of other assets.

If there is no valid will at death, then the deceased is intestate and his or her estate passes under the statutory rules of intestate succession. Where there are cross-border issues, the Conflicts of Law provisions will be relevant, which are beyond the scope of this chapter. The intestacy rules are different depending on whether the individual is domiciled in England, Wales or Scotland on their death.

This section has been reproduced from International Estate and Inheritance Tax Guide 2013. As our guides are updated at different times throughout the year, please refer to the source publication for latest updates.

4.7 Passing on a business

Planning is often undertaken in respect of passing on a family business, including use of entities, such as family limited partnerships and family investment companies, gifting assets to the younger generation either directly or to trust.

4.8 Private equity

| Specific legislation/tax treatment of income derived from private equity (PE) activity | No. Carried interest is often structured such that gains are capital rather than income. |
| Equivalent PE ratio | N/A. |
| Others | N/A. |

Section 5: Tax policy environment

5.1 Policy environment relating to family business

The UK does not carve out family businesses, which might benefit from the corporation tax changes and a number of the provisions aimed at SMEs. These are generally focused on simplification of administration (e.g., accounting on a cash basis) rather than a reduced rate. Indeed, the reduction of the main rate of corporation tax to 20% eliminates the benefit of the small profits rate.
5.2 Specify change in the direction of tax policy in the last three years

The Government has formally set out its intention for the UK to have a competitive tax system and has focused on cutting corporate tax rates (on course to deliver the joint lowest corporate tax rate in the G20 at 20%, by the end of this Parliament (2015-16)). In addition, the UK Government has cut the top headline rate of income tax from 50% to 45%.

Despite this concentration on competitiveness, the government remains focused on delivering strong tax revenues and a broad “austerity” approach, tempered by targeted incentives. Recent budgets have set out a plan to raise revenues and cut public spending in order to reduce the deficit.

The UK has created the Office of Tax Simplification, which has been reviewing the tax system with a view to stripping out complex and outdated provisions.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners

None.

5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions

None.

Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with:

<table>
<thead>
<tr>
<th>Unit</th>
<th>Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>High net worth individuals (HNWIs)</td>
<td>The main HMRC business unit dealing with HNWIs is the High Net Worth Unit (HNWU). See Appendix 1 in Section 6.7 for detailed information about the HNWU taken from the HMRC website.</td>
</tr>
<tr>
<td>SMEs</td>
<td>The HM Revenue &amp; Customs (HMRC) business unit dealing with incorporated SMEs is: HMRC Local Compliance Small &amp; Medium Sized Enterprises (Local Compliance SME). Unincorporated SMEs run by HNWIs will normally be dealt with by the High Net Worth Unit (HNWU). Further information about the HNWU is provided below.</td>
</tr>
<tr>
<td>Family businesses</td>
<td>There is no single HMRC business unit that deals specifically with family businesses. Where they are dealt with will depend on their size and structure. Generally, if a family business is incorporated it will be dealt with by Local Compliance SME. If the business is not incorporated, the family business will usually be dealt with by the HNWU (see below).</td>
</tr>
<tr>
<td>Large corporate taxpayers</td>
<td>Large companies are dealt with either by:</td>
</tr>
<tr>
<td></td>
<td>a. Local Compliance, Large &amp; Complex (generally companies with turnover between £50m to £200m).</td>
</tr>
<tr>
<td></td>
<td>b. The Large Business Service (generally companies with turnover of over £200m).</td>
</tr>
<tr>
<td>Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses</td>
<td>Although the HNWU (see below) may not have principal responsibility for the corporates associated with the HNWI, they are now very coordinated in their approach and HMRC’s risk assessment of the individual will almost always involve consideration of any corporates/other structures (e.g. trusts) with which they are connected. Often interventions are jointly run by the HNWU and the relevant HMRC office dealing with associated corporate entities.</td>
</tr>
</tbody>
</table>
6.2 Specify enforcement focus areas or defined programs that might touch a family business

Larger family businesses (generally with turnover over £200 million) will be affected by the senior accounting officer (SAO) rules that require companies to certify that they have appropriate tax accounting arrangements. After an initial “light touch” approach, HMRC are not actively policing the provisions.

HMRC are very active in investigating all matters related to offshore bank accounts. Where non-UK domiciled individuals are involved HMRC’s focus is on whether all remittances have been correctly identified and reported.

6.3 Specify tax enforcement focus on any particular industry or profession

There have been a number of HMRC compliance campaigns focused on specific professions in recent years. For example, in 2010 HMRC ran a campaign that offered an opportunity for medical professions to make a disclosure of undeclared income on favorable terms and in 2012 a similar campaign was targeted at the legal profession. HMRC have stated that they will continue to launch similar campaigns targeted at specific professions.

In addition to campaigns aimed at specific professions, HMRC run campaigns aimed at specific issues. For example, there is currently a campaign offering an opportunity for taxpayers to disclose issues associated with the sale of residential property.

However, it should be noted that whilst information connected with these campaigns may feed into the risk assessment undertaken by the HNWU, the decision taken to audit a HNWI tends to be specifically related to the personalized risk assessment rather than as the result of a general targeting of a specific profession.

6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners

The HNWU will carry out a detailed risk review in advance of opening an audit. This will take into account a wide range of factors including:

- Complex structures (e.g., use of offshore trusts, partnerships companies)
- Basic compliance (are returns filed by the filing date, are payments made on time, etc.)
- Concerns about the quality of internal controls, for example where a business is undergoing a period of rapid growth
- Third-party information: for example information received from UK and offshore banks
- Evidence of the use of tax planning arrangements
- Whether audits have been carried out in recent years and the outcome of those audits
- Review of publicly available information about events that may affect tax position (e.g., press cuttings)
- Information from other HMRC business units, for example offices dealing with connected corporate entities

6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

HMRC have launched a wide range of voluntary disclosure opportunities over the last three years. Many of these are unlikely to be of relevance to HNWIs. The main disclosure that is still of relevance is the Liechtenstein Disclosure Facility (LDF) which was launched in 2009 and remains open until 5 April 2016. This allows the disclosure of any historical offshore liabilities, not only those associated with Liechtenstein. The key features of this disclosure facility are:

- Liabilities arising before 6 April 1999 are effectively written off
- In most cases a fixed penalty of 10% of the tax payable is due for years up to 2008-09 and 20% for subsequent years
- Immunity from prosecution
- Ability to discuss with HMRC on a “no names” basis in advance of registering

The LDF has been perceived by HMRC to be highly successful and this has resulted in its original closure date of 31 March 2015 being extended to 5 April 2016. By June 2013, the LDF had resulted in additional payments to HMRC of approximately £700 million.

HMRC have recently announced similar disclosure facilities in respect of Jersey, Guernsey and the Isle of Man, but in the majority of cases it is likely that the LDF will give a better result than using these facilities.
6.6 Are there any specific pre-filing processes that can be leveraged by:

- **HNWIs**: The HNWU encourages early engagement between the client and the HMRC client relationship manager (CRM). Meetings can therefore be arranged to discuss issues in advance of filing returns.

- **Family businesses**: Whether a family business will readily be able to discuss its affairs with HMRC pre-filing will depend on which HMRC office they are dealt with by. If they are covered by the HNWU the position will be the same as mentioned above for HNWIs.
  
  If they are dealt with by Local Compliance SME they are unlikely to have a dedicated person with HMRC looking at their affairs and engagement prior submission is unlikely to be readily available.

  If they are dealt with by either Local Compliance Large & Complex or the Large Business Service then early engagement with HMRC should be possible.

6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

This has been a very big area of focus for HMRC, and in particular the HNWU, in recent years.

The network of TIEAs have been regularly been added to and these are now used routinely by the HNWU and HMRC generally.

Additionally, HMRC have recently entered into agreements with Jersey, Guernsey and the Isle of Man that will result in the disclosure of large amounts of financial information held in these jurisdictions about entities (including trusts, companies and possibly underlying beneficiaries) that are connected with individuals based on the UK.

Appendix 1

High Net Worth Unit (HNWU)

The HNWU deals with the tax affairs of HMRC wealthiest individual customers. By focusing primarily on this customer group, the unit aims to:

- Build relationships to better understand these customers and make it easier for them to pay the right amount of tax
- Tailor service delivery for these customers through proactive engagement and provide a single point of contact and a holistic approach to their tax affairs

HNWU is made up of about 400 staff in 31 customer teams based in Birmingham, Bradford, Cardiff, East Kilbride, Edinburgh, Portsmouth, Washington and Wrexham.

A large number of staff working in HNWU are from the previous Complex Personal Tax Team and have experience in a wide variety of tax specialties.

What happens when the HNWU deals with your tax affairs?

When the unit takes ownership of a customer’s tax affairs, both the customer and their authorized tax agent or adviser will receive a letter welcoming them to HNWU. This letter also contains contact details for their CRM.

HNWU will continue to work with agents to identify suitable customers for the unit. If you believe HNWU has not classified you or your client correctly, you can write to them and provide a short breakdown of the value of the assets you or your client control. Please send your letter to:

HM Revenue & Customs

High Net Worth Unit SO970

PO Box 202

Bootle

L69 9AL
6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI?

HNWU External Stakeholder Forum

The HNWU External Stakeholder Forum was set up following the launch of the unit in April 2009, to enable external customers to get involved and work together with HMRC.

Follow this link to read more about the forum including terms of reference, agenda and minutes, professional bodies and organizations member lists.

http://www.hmrc.gov.uk/consultations/hnwu-forum.htm

HNWU e-magazine

HNWU launched their e-magazine in May 2011.

The e-magazine gives tax agents and advisers an insight into how HNWU works.


Largest family businesses in Europe

The top 10 generate approximately US$916b to Europe's US$16.6t GDP in 2012 and employ more than 1.7 million people. The largest family businesses by revenue and number of employees are Volkswagen and EXOR.

<table>
<thead>
<tr>
<th>Rank</th>
<th>Company name</th>
<th>Revenues (2012) in US$m</th>
<th>Number of employees (2012)</th>
<th>Family shareholding or voting rights (latter indicated by *)</th>
<th>Publicly listed company</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Volkswagen AG</td>
<td>261,535</td>
<td>399,381</td>
<td>Porsche and Piech</td>
<td>Yes</td>
<td>Germany</td>
</tr>
<tr>
<td>2</td>
<td>EXOR SpA</td>
<td>142,207</td>
<td>301,441</td>
<td>Agnelli</td>
<td>Yes</td>
<td>Italy</td>
</tr>
<tr>
<td>3</td>
<td>Bayerische Motoren-Werke AG (BMW)</td>
<td>100,970</td>
<td>109,871</td>
<td>Quandt and Klatten</td>
<td>Yes</td>
<td>Germany</td>
</tr>
<tr>
<td>4</td>
<td>Aldi Group</td>
<td></td>
<td></td>
<td>Albrecht</td>
<td>No</td>
<td>Germany</td>
</tr>
</tbody>
</table>

Source: EY research, based on Dun & Bradstreet, dnb.com. Note: We define companies as family businesses, when they are either public companies with a minimum shareholding or voting power of the owner family of 32% or private companies with a minimum shareholding of the owner family of 50%.
## Some interesting anniversaries

<table>
<thead>
<tr>
<th>Anniversary</th>
<th>Company</th>
<th>Family</th>
<th>Industry</th>
<th>Headquartered</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>400</td>
<td>v. Stern'sche Druckerei</td>
<td>v. Stern, Paulus, Keller</td>
<td>Printing, publishing</td>
<td>Lüneburg</td>
<td>Germany</td>
</tr>
<tr>
<td>325</td>
<td>Ede &amp; Ravenscroft Ltd.</td>
<td>Middleton</td>
<td>Ceremonial robes</td>
<td>London</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>150</td>
<td>Faure SAS</td>
<td>Faure</td>
<td>Ribbons</td>
<td>Rambert</td>
<td>France</td>
</tr>
</tbody>
</table>

Source: EY research, based on Dun & Bradstreet data.

<table>
<thead>
<tr>
<th>Company</th>
<th>Headquarters</th>
<th>Shareholder</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>ArcelorMittal</td>
<td>Luxembourg</td>
<td>39.4%</td>
<td>Luxembourg</td>
</tr>
<tr>
<td>Groupe Auchan SA</td>
<td>France</td>
<td>84%</td>
<td>France</td>
</tr>
<tr>
<td>Lidl Stiftung &amp; Co. KG</td>
<td>Germany</td>
<td>100%</td>
<td>Germany</td>
</tr>
<tr>
<td>Roche Holding Ltd. A/S</td>
<td>Switzerland</td>
<td>45%</td>
<td>Switzerland</td>
</tr>
<tr>
<td>AP Moeller-Maersk A/S</td>
<td>Denmark</td>
<td>56.5%</td>
<td>Denmark</td>
</tr>
<tr>
<td>LVMH Louis Vuitton Moet Hennessy SA</td>
<td>France</td>
<td>62.6%*</td>
<td>France</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Company</th>
<th>Headquarters</th>
<th>Shareholder</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mittal</td>
<td>Luxembourg</td>
<td>39.4%</td>
<td>Luxembourg</td>
</tr>
<tr>
<td>Mulliez</td>
<td>France</td>
<td>84%</td>
<td>France</td>
</tr>
<tr>
<td>Schwarz</td>
<td>Germany</td>
<td>100%</td>
<td>Germany</td>
</tr>
<tr>
<td>Hoffmann, Oeri</td>
<td>Switzerland</td>
<td>45%</td>
<td>Switzerland</td>
</tr>
<tr>
<td>Mærsk Mc-Kinney Møller</td>
<td>Denmark</td>
<td>56.5%</td>
<td>Denmark</td>
</tr>
<tr>
<td>Arnault</td>
<td>France</td>
<td>62.6%*</td>
<td>France</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Company</th>
<th>Headquarters</th>
<th>Shareholder</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes Luxembourg</td>
<td>Yes</td>
<td>Yes</td>
<td>France</td>
</tr>
<tr>
<td>No</td>
<td>No</td>
<td>Germany</td>
<td>Germany</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Switzerland</td>
<td>Switzerland</td>
</tr>
<tr>
<td>No</td>
<td>No</td>
<td>Denmark</td>
<td>Denmark</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>France</td>
<td>France</td>
</tr>
</tbody>
</table>
Section 1: The accumulative tax burden on family business

2013 tax rates

<table>
<thead>
<tr>
<th>1.1 Corporate income tax (national and sub-national combined)</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2013</strong></td>
<td></td>
</tr>
<tr>
<td>• Highest marginal rate</td>
<td></td>
</tr>
<tr>
<td>The highest effective federal income tax rate on corporations is 35% (34% for corporations with less than US$10 million of taxable income). (Marginal federal income tax rates as high as 39% may apply over limited ranges of income as the benefits of lower graduated rates are phased out for larger corporate enterprises.) State and local corporate income taxes may apply in addition to the federal income taxes, and range from 0% to 12% depending on the state and local jurisdiction. (State income taxes are allowed as a deduction in calculating the taxable income of corporations.) The capital gains of corporations are taxed at the same rate as ordinary income (i.e., a highest effective rate of 35%).</td>
<td>The highest federal income tax rate on corporations has remained unchanged for the last three years. There have been modest changes in state tax rates. The top federal income tax rates applied to dividends paid to individual shareholders was increased from 15% to 20% effective for 2013. The new 3.8% Medicare tax took effect in 2013.</td>
</tr>
</tbody>
</table>
### 1.1 Corporate income tax (national and sub-national combined)

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N/A.</td>
</tr>
</tbody>
</table>

- **Highest marginal rate**

  The taxation of corporate capital gains at a top effective rate of 35% should be contrasted with the top US individual long-term capital gains rate of 20%.

  Corporations that are subject to an entity level income tax (i.e., those not treated as fiscally transparent as described below, or otherwise exempt from income tax) are referred to as “C-corporations” in the US.

  Dividends paid to US *individual* shareholders by US domestic C-corporations are generally taxed at a top rate of 20% plus an additional 3.8% net investment income tax applies to high income individuals. Dividends from non-US corporations may be taxed at the top individual income tax rates on ordinary income as described below and the 3.8% net investment income tax could also apply.
1.1 Corporate income tax (national and sub-national combined)

- Highest rate for small and medium enterprises (SMEs)/small business

Generally, no special rates apply to small and medium-sized C-corporations except that the C-corporation tax rates are graduated and start at 15% for the first US$50,000 of taxable income, and gradually increase to a top effective rate of 35%. The benefits of the lower federal rates are phased out completely for corporations with more than US$18,333,333 of taxable income (which means that the highest marginal rate exceeds 35% at some levels of income).

S-corporation election. Certain corporations may elect to be treated as fiscally transparent for federal and state income tax purposes. In these cases, the income of the corporation will be reported by its individual shareholders and the tax rates for individuals will apply, rather than the corporate tax rates applicable to C-corporations. These fiscally transparent corporations are referred to as S-corporations.

Distributions from an S-corporation are generally tax-free (i.e., they are not taxed as dividends). Thus, the shareholder level of tax that is assessed on dividends paid to individual shareholders of a C-corporation is avoided (typically at the cost of paying the higher income tax rates that apply to individuals, as opposed to those applying to C-corporations, on ordinary business income).

Another benefit of electing S status is that long-term capital gains of the corporation will be taxed at the individual long-term capital gains rate, which is a maximum federal rate of 20% (the 3.8% Medicare tax may also apply), as compared to the maximum C-corporation federal income tax on capital gains of 35%.

To qualify to elect S-corporation status, the corporation generally must be a domestic US corporation, owned only by US individuals, estates or certain trusts, have no more than 100 shareholders (all members of a family are treated as one shareholder), have only one class of stock (except that differences in voting rights are permitted) and it must elect to be treated as fiscally transparent and each of its shareholders must consent to such treatment. Electing small business corporations are referred to as S-corporations in the US. There is no eligibility limit on the size of an S-corporation in terms of gross revenue or assets. The only size limit is on the number of shareholders.

Note that some states impose a tax on an S-corporation’s taxable income (even though S-corporations are generally transparent for federal and state income tax purposes).

As noted below, the top federal rate applicable to ordinary income of individual taxpayers was increased from 35% to 39.6% effective for 2013, and an additional 3.8% Medicare tax applies to investment income and certain types of business income of “non-active” individual shareholders/owners of fiscally transparent (i.e., flow-through) entities.
1.1 Corporate income tax (national and sub-national combined)

- Special treatment of SMEs/small business (other reliefs, etc.)

As noted above, qualifying and electing small business corporations (S-corporations) may elect to be treated as fiscally transparent. Partnerships and LLCs are also generally treated as fiscally transparent entities. Individual owners of fiscally transparent entities are taxed on the entity's income at their individual income tax rates (which are discussed below) and distributions from such entities are generally tax-free.

There are several other special relief provisions for small businesses.

*Qualified Small Business Stock.* During 2013, and for certain periods in the past, a direct investment of funds in a C-corporation in exchange for stock that qualified as a “Small Business Stock” qualified for a 100% capital gains tax exemption on the sale of the stock provided the stock had been held for at least five years. Generally, to meet the requirements for Small Business Stock treatment, the stock had to be acquired directly from a C-corporation involved in the active operation or a trade or business other than in banking, insurance, professional services, farming, mining or oil and gas development, hotels or restaurants. In addition, to qualify as Small Business Stock, the corporation generally had to have less than US$50 million in assets at all times before the stock was issued and the corporation’s assets had to be less than US$50 million after the issuance of the stock. The amount of capital gains recognized by an individual shareholder on the disposition of Small Business Stock qualifying for the 100% exclusion is limited to the greater of a total of US$10 million (for the individual with respect to that corporation for all years) or 10 times the individual’s cost basis in the stock disposed of during the year.

As of the date of publication, it is not clear if the exemption for gains on sales of Small Business Stock will be extended for investments made after 2013.

Tax-free rollover of qualified Small Business Stock. Individuals are also eligible for a special tax-free rollover provision with respect to Small Business Stock. The sales proceeds from the sale of qualified Small Business Stock (as defined above) which the individual has held for more than six months are not taxable if the proceeds are reinvested in the qualified Small Business Stock of another corporation.

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

While there have not been any significant changes over the last five years that would significantly increase or decrease the corporation income tax base, the US Congress is considering significant corporate tax reform that could involve both rate reduction and base expansion.
1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down). Please offer details.</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Personal allowance</td>
<td>Generally, the standard personal deduction is not claimed by high-income taxpayers because taxpayers may only claim the greater of the standard deduction or actual itemized deductions. For 2013, the standard deduction is US$6,100 for single filers and US$12,200 for married taxpayers filing jointly. Itemized deductions taxpayers may claim include state income taxes, charitable contributions, home mortgage interest, real estate taxes and other non-trade or business investment-related expenses. However, these deductions are subject to numerous limitations and phase outs. Personal exemptions for taxpayers and their dependents may be claimed in addition to any standard deduction or itemized deductions allowed. The 2013 amount is US$3,900 per exemption, but these amounts are phased out for high-income taxpayers. In 2013, the US$3,900 personal exemption is subject to a phase-out that begins with adjusted gross incomes of US$250,000 (US$300,000 for married couples filing jointly). It phases out completely at US$372,500 (US$422,500 for married couples filing jointly). Returning in 2013 is a limitation on itemized deductions for taxpayers with adjusted gross incomes of US$250,000 (US$300,000 married couples filing jointly). For taxpayers over these thresholds itemized deductions generally must exceed 3% of the taxpayer’s adjusted gross income before full deductibility is allowed.</td>
</tr>
<tr>
<td>• Minimum rate of personal income tax (PIT)</td>
<td>The current rate is 0%. N/A.</td>
</tr>
<tr>
<td>• Highest marginal rate of PIT</td>
<td>The current rate is 39.6%. The top state income tax rates range from 0% to 13.3%. The rate that applies will depend upon the taxpayer’s state of residence (or the state source of income) and the level of the taxpayer’s income. City/local income taxes may also apply. The top federal income tax rate on individuals was increased from 35% to 39.6% effective 2013. Several states increased their individual income tax rates over the last three years.</td>
</tr>
<tr>
<td>• Any special surtaxes</td>
<td>Beginning in 2013, a federal tax on net investment income applies to high-income US individual taxpayers. The tax is imposed at a rate of 3.8% on net investment income, which includes interest, dividends, rents, royalties, capital gains from investment assets and certain business income in which the individual does not actively participate in management. The tax took effect in 2013 and is permanent. N/A.</td>
</tr>
</tbody>
</table>

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

As discussed in Section 1.2, beginning in 2013, top federal individual tax rates have increased from 35% to 39.6%. The top rate on long-term capital gains and qualified dividends has also increased from 15% to 20%. The 3.8% net investment income tax and a 0.9% additional Medicare tax on earnings and self-employment income will apply to high-income taxpayers in 2013. Additionally, the limitation on itemized deductions and the phase-out of personal exemptions discussed above will apply. Depending on a taxpayer’s individual circumstances, the combination of these changes can lead to a significant increase in overall tax liability.
### 1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Standard rate</strong></td>
<td>The standard rate varies by state, but rates for sales tax range from 0% to over 12% if local jurisdiction rates are included in addition to the state rates. The rate of tax depends on the state and locality in which the sale/delivery takes place.</td>
<td>Small changes in state and local sales tax rates occur on a regular basis. State and local sales tax rates are rarely decreased.</td>
</tr>
<tr>
<td><strong>Are there any special reliefs or exemptions for a family business?</strong></td>
<td>Generally, no small/family business exemptions or relief are provided.</td>
<td>N/A.</td>
</tr>
</tbody>
</table>

### 1.4 Property taxes

- Does a family business receive any relief on property taxes not granted to other types of corporation?  
  Generally, there are no special benefits provided to family-owned businesses for property taxes.

### 1.5 Capital gains tax (CGT)

- **2013 rate – companies**  
  N/A.

- **2013 rate – individuals**  
  The top federal tax rate on long-term capital gains (capital assets held for more than one year) for an individual is 20%. The 3.8% net investment income tax may also apply. Most states do not differentiate between capital gains and ordinary income.

- **Reliefs/exemptions**  
  The reduced tax rate of 20% on long-term capital is the principal relief. The exemptions for sales of qualifying Small Business Stock are described above.

  Real and certain tangible personal property can be exchanged for like or similar property on a tax-deferred basis. Like-kind exchange treatment does not apply to exchanges of stock in a corporation; however, shareholders in a corporation can exchange stock on a tax-free basis if the exchange takes place in the context of a qualifying corporate reorganization.

  A taxpayer can exclude US$250,000 (US$500,000 in the case of a married couple) of the gain on the sale of a qualifying principal residence of the taxpayer. The exclusion is subject to limitation on the number sales to which it will apply.

### 1.6 Tax on dividends from ordinary shares

**A. For the business:** Generally, no deduction is allowed to the corporate payor on the payment of dividends to its shareholders.

**B. For the owners of the business:** Distributions from a C-corporation to another C-corporation may be totally exempt or qualify for a 70% exemption depending on the percentage of stock owned by the recipient corporation in the distributing corporation. As noted above, dividends from a US domestic C-corporation to an individual are generally subject to a top rate of 20% plus an additional 3.8% net investment income tax, plus state income taxes. Distributions from S-corporations to shareholders are generally tax-free.
### 1.7 Tax on dividends from preferential shares

**A. For the business:** Generally, the same as on ordinary shares — no deduction.

**B. For the owners of the business:** Generally, the same as on ordinary shares except that in some cases dividends on preferred stock may be taxed as ordinary income rather than at capital gains rates. S-corporations are not permitted to issue preferred stock.

### 1.8 Tax treatment of interest on a loan from the shareholders

**A. For the business:** Generally, interest is deductible by the business paying the interest. A matching principle applies such that the business is generally entitled to the deduction at the time the shareholders are including the interest in income.

**B. For the owners of the business:** Generally, the recipient of the interest pays tax at the ordinary income tax rate.

### 1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

**A. For the business:** Generally, rental income is deductible against ordinary income to the business. The matching principle described above applies.

**B. For the owners of the business:** The shareholders report net rental income as income subject to the tax rates on ordinary income. Under certain circumstances, net losses on rental activities may not be currently deductible but will carryforward for use in future years against rental income and certain other types of passive business-related income.

### 1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

**A. For the business:** Generally, this income is deductible against ordinary income on an annual basis to the business if structured as an annual royalty and provided that it is reasonable in amount. A lump-sum payment for the acquisition of intangible property is generally amortized over the life of the property (or over 15 years in some cases).

**B. For the owners of the business:** Generally, annual royalty payments would be taxable to the owners as ordinary income, but lump-sum payments and periodic payments may qualify as capital gain in some situations.

### 1.11 Tax treatment of interest paid on bank debt by a family business

Generally, this tax is deductible to the business.

### 1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

Generally, deductible against ordinary income to the business either as an annual deduction as payments are made or amortized over the life of the asset (or 15 years in some cases).

### 1.13 Tax treatment of rental payments made by a family business to third parties for real estate

Generally, the rental payments are deductible against ordinary income.

### 1.14 Tax treatment of interest payments on A. inter-group loans or B. A financing company within the family-owned business group

Generally, the interest payments are deductible against ordinary income to the business. For loans between related parties a matching principle applies under which the payor's deduction generally may not be claimed before the income is reported by the related payee.

### 1.15 Does your country provide for a deemed deduction on equity and/or debt?

Interest payments on debt are generally deductible but distributions on equity are not deductible.
1.16 Is the retention of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

For C-corporations an accumulated earnings tax may apply if earnings are accumulated as investment/liquid assets beyond the reasonable current and future needs of the business. The tax is an additional tax of 20% on taxable income after reduction for federal income taxes for the year, but applies only to the extent net taxable income for the year is retained beyond reasonable business needs. Note that the 20% tax rate is essentially the same rate that applies at the individual level on dividends paid by a C-corporation to its individual shareholders.

1.17 Wealth tax

- 2013 characteristics and rate: N/A.
- Is there an exemption for shares owned by a family that owns a business?: N/A.

1.18 Inheritance tax/estate tax

The US imposes estate tax on its citizens and residents on their worldwide assets at death at a top rate of 40%. The tax is assessed against the fair market value of the assets.

US citizens and residents qualify for a lifetime exemption of US$5,250,000 per individual (which is a single amount that applies to transfers during life and at death). The lifetime exemption is indexed for inflation, and generally any amount unused at the death of the first spouse is available on the death of the second spouse. Estate transfers to a US citizen spouse are generally exempt from tax. Transfers to charity at death are generally exempt from tax.

Note that non-citizen/non-US residents are subject to the US estate tax on US sitused property at death. For these purposes, US sitused property generally includes US real estate; debts owed by US obligors; stock in US domestic corporations and may include equity interests in partnerships doing business in the US. Non-citizen/non-US residents are entitled only to a single US$60,000 exclusion at death, although a treaty provision may provide for more generous exemption amounts for residents of US treaty partners or provide that certain assets are exempt from US estate tax.

Transfers at death that skip a generation (e.g., from grandparent directly to a grandchild) may be subject to a “generation skipping transfer tax,” which is designed to impose the equivalent of the estate tax that was avoided by having the transfer skip the intervening generation. The tax may also apply transfers from trusts that have the effect of skipping generations relative to the settlor of the trust. The top generation skipping transfer tax rate is 40% and there is an exemption amount equal to US$5,250,000 (inflation adjusted). There is no carryover of unused generation-skipping tax exemption to surviving spouses.

The top estate tax rate was increased from 35% in 2012 to 40% for 2013. The US$5 million lifetime estate and gift tax exemption (now US$5,250,000 after indexing for inflation) was made permanent in 2013 as was the carryover of the unused exemption of a deceased spouse to the surviving spouse.

The top generation-skipping tax rate was increased from 35% in 2012 to 40% for 2013. The US$5 million (which is adjusted for inflation) lifetime generation-skipping tax exemption was made permanent in 2013.
1.19 Gift tax

The US imposes a gift tax at a top rate of 40% on gifts made by its citizens and residents regardless of the location of the property. Gifts to a US citizen spouse are exempt as are gifts to a qualifying charity. Gifts to others are subject to the tax to the extent they exceed US$14,000 per donee (US$143,000 for annual gifts to a non-US citizen spouse). The exemptions are adjusted annually for inflation. Special exemptions are provided for gifts made directly to qualifying educational institutions or medical service providers on behalf of another.

US citizens and residents are allowed a US$5,250,000 (indexed for inflation) lifetime gift and estate tax exemption, such that gifts (and transfers at death) by a person that is not covered by one of the exemptions discussed above will generate a tax liability only after they exceed US$5,250,000.

Non-citizen/non-US residents are subject to US gift tax on gifts of US situs property (generally US located real and tangible personal property) and do not qualify for the lifetime exclusion amount, but do qualify for the US$14,000 per donee amount, and the unlimited marital deduction for a gift to a US citizen spouse or the US$143,000 annual exemption for gifts to a non-US citizen spouse. US treaty provisions may apply and override these general rules.

In addition to the gift tax, a generation-skipping tax equal to 40% of the gift can be imposed on gifts to individuals more than one generation below the donor.

The top gift tax rate was increased from 35% in 2012 to 40% in 2014.

1.20 Real estate transfer tax

Real estate transfer taxes may apply and are determined at the level of the state and local jurisdiction of the property. For a non-US citizen/nonresident individual selling US real property or stock in a US real property holding company 10% gross federal income tax withholding may apply.

1.21 Endowment tax

N/A.

1.22 Social security

- National/social insurance contributions on employee income
  
  For 2013, Social Security tax of 6.2% is paid by the employee and 6.2% is paid by the employer on the employee's earnings up to US$113,700. The wage limit is adjusted for inflation annually. Self-employed individuals are assessed the equivalent amounts on net earnings from self-employment.

- Health/medical/dental care
  
  A Medicare tax of 1.45% paid by the employee and 1.45% paid by the employer is assessed on wages. There is no wage limit for the Medicare tax. Starting in 2013, high-income wage-earners owe an additional .9% Medicare tax on wages. The self-employment tax generally mirrors these rules for self-employed individuals.

- Retirement plans/pensions for employees
  
  Generally, no special taxes apply to retirement/pension payments to employees, except that an early withdrawal penalty of 10% may apply to certain distributions occurring before age 59½. Some states do not tax retirement pension payments.
1.23 Pensions and tax-efficient savings

- **Tax relief on pension contributions — standard**
  Subject to annual limitations on contributions to the plan, employers may make currently deductible contributions to qualified retirement plans for the benefit of employees and the employee will not owe income tax on the benefit they accrue under the plan until the amounts are distributed.
  Subject to an annual limitation of US$17,500 (US$23,000 for employees over age 50), employees can qualify to make pre-tax elective deferrals of salary into qualified plans of an employer.

- **Tax relief on pension contributions — any specific relief to family business?**
  Generally, there are no special rules that apply to family businesses.

1.24 Taxation of flow-through entities/partnerships/trust funds

Partnerships and LLCs are typically treated as fiscally transparent entities for US income tax purposes, such that the income of the entities is reported by their partners/members and no federal income tax is imposed on the entity. Instead, the partners or members pay tax on their respective shares of the income of the enterprise. Most states do not impose an entity-level tax on a partnership's or LLC's income, but there are some states that do.

A trust may be treated as fiscally transparent as to its settlor (i.e., the grantor) if the grantor has retained controls or a financial interest in the trust. Alternatively, a trust may be treated as a separate tax entity different from its settlor and will be taxed at the individual income tax rates on its taxable income except to the extent it distributes or is required to distribute its earnings to its beneficiaries for the year (in which case the beneficiaries pay tax on the income distributed or required to be distributed). This is generally true for ordinary income earned by a trust, but typically capital gains are taxed to the trust even if distributed to the beneficiary. Trusts pay income tax at the rates applicable to individuals on their retained income for a year; however, the top rate applies at a much lower level of income than it does for individuals.

1.25 Exemptions in the law that specifically relate to family businesses

Generally, there are no special exemptions for family-owned businesses.

1.26 Are there any business incentives in your country that are specific to

- **SMEs**
  Single member entities (other than those formed as corporations) are generally treated as fiscally transparent with respect to the owner.

- **Family businesses**
  Generally, no.

1.27 Tax treatment of losses made by a family business

- **Are there any available loss reliefs that are specific to family businesses?**
  As a general rule, the treatment of losses of family businesses follows that for non-family controlled business enterprises. In some cases the current deductibility of losses by members of a flow-through (i.e., fiscally transparent) entity are more restrictive than those that apply to C-corporations.

- **Are there any available loss reliefs that are specific to SMEs?**
  As a general rule, the treatment of losses of a small or medium-size business corporation follows that for larger corporation business enterprises.
Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

For both calculations, please also show the effective tax rate.

Calculation assumptions:
1. The calculations are done for both a C-corporation (taxable corporation) and a S-corporation (fiscally transparent corporate entity) and assume a single shareholder.
2. The calculations assume the shareholder’s other income is sufficient to cause the shareholder to be taxed at the top federal marginal rate of 39.6% on ordinary income and 20% on dividends. The effective federal corporate tax rate for corporations at the income levels in the examples below is 34%.
3. State income taxes (net of federal tax benefit for state taxes) are assumed to be 6% for the corporate tax computation and 8% for the shareholder tax computation.
4. The 2012 comparison calculations were run assuming a top federal individual marginal rate of 35% on ordinary income and 15% rate on dividends. They assume the same state tax rates net of federal benefit.
5. The computations assume that the shareholder of a S-corporation is materially participating in the trade of business of the corporation, and consequently the 3.8% Medicare tax does not apply to the S-corporation shareholder on the income of the S-corporation.
6. For calculation purposes, no allocable deductions have been considered for determining a reduction to net investment income on the shareholder dividend for purposes of the 3.8% Medicare tax.

- **Calculation 1:** The business makes a profit before tax of US$2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

<table>
<thead>
<tr>
<th>2013 100% shareholder</th>
<th>C-corporation</th>
<th>S-corporation/individual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business profit:</td>
<td>$2,000,000</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>Federal tax rate:</td>
<td>34%</td>
<td>39.6%</td>
</tr>
<tr>
<td>State tax rate (net of federal benefit):</td>
<td>6%</td>
<td>8%</td>
</tr>
<tr>
<td>Combined total tax:</td>
<td>$800,000</td>
<td>$952,000</td>
</tr>
<tr>
<td>Distribution to shareholder:</td>
<td>$1,200,000</td>
<td>$1,048,000</td>
</tr>
<tr>
<td>20% federal tax on dividend:</td>
<td>$240,000</td>
<td>N/A</td>
</tr>
<tr>
<td>8% state tax on dividend (net of federal benefit):</td>
<td>$96,000</td>
<td>N/A</td>
</tr>
<tr>
<td>3.8% NIIT (net investment income tax):</td>
<td>$45,600</td>
<td>N/A</td>
</tr>
<tr>
<td>Net cash to shareholder:</td>
<td>$818,400</td>
<td>$952,000</td>
</tr>
<tr>
<td>Total corp and individual tax:</td>
<td>$1,181,600</td>
<td>$952,000</td>
</tr>
<tr>
<td>Effective tax rate:</td>
<td>59.08%</td>
<td>47.60%</td>
</tr>
</tbody>
</table>

- **Calculation 2:** The business makes a profit before tax of US$500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

<table>
<thead>
<tr>
<th>2013 100% shareholder</th>
<th>C-corporation</th>
<th>S-corporation/individual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business profit:</td>
<td>$500,000</td>
<td>$500,000</td>
</tr>
<tr>
<td>Federal tax rate:</td>
<td>34%</td>
<td>39.6%</td>
</tr>
<tr>
<td>State tax rate (net of federal benefit):</td>
<td>6%</td>
<td>8%</td>
</tr>
</tbody>
</table>
Combined total tax: $200,000 $238,000

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Distribution to shareholder:</td>
<td>$30,000</td>
<td>$262,000</td>
</tr>
<tr>
<td>20% federal tax on dividend:</td>
<td>$60,000</td>
<td>N/A</td>
</tr>
<tr>
<td>8% State tax on dividend (net of federal benefit):</td>
<td>$24,000</td>
<td>N/A</td>
</tr>
<tr>
<td>3.8% NIIT:</td>
<td>$11,400</td>
<td>N/A</td>
</tr>
<tr>
<td>Net cash to shareholder:</td>
<td>$204,600</td>
<td>$262,000</td>
</tr>
<tr>
<td>Total corporation and individual tax:</td>
<td>$295,400</td>
<td>$238,000</td>
</tr>
<tr>
<td>Effective tax rate:</td>
<td>59.08%</td>
<td>47.60%</td>
</tr>
</tbody>
</table>

Has this effective tax rate increased, decreased or stayed the same in the last three years?

US income tax rates were increased in 2013. Compared to 2012, the effective tax rate of the C-corporation shareholder increased from 53.80% to 59.08%, or an increase of 5.28 percentage points, and the effective rate of the S-corporation shareholder increased from 43% to 47.60%, or an increase of 4.6 percentage points.

**Section 3: Tax treatment of family businesses and other issues**

**3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil**

Yes, as discussed above, the corporate tax rates are different than the individual tax rates and corporate dividends are subject to income tax when received by an individual shareholder. An individual operating a business as either a sole proprietorship, or through a fiscally transparent (i.e., flow-through) entity such as an S-corporation (discussed above), a partnership or an LLC, avoids the corporate-level income tax and the tax on dividends and instead pays tax at the somewhat higher individual income tax rates on the ordinary earnings of the business enterprise and the lower individual capital gains rate on long-term capital gains recognized by the business enterprise.

**3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.**

In the case of a US citizen or tax resident owning stock in a US C-corporation, a sale of the shares after they have been held for more than one year would generally be subject to a long-term capital gains rate of 20% (and may be subject to an additional tax in the form of the 3.8% Medicare tax depending on the level of income of the shareholder). The shareholder would be entitled to calculate the amount of gain on the sale by reducing the sales price by the cost of the stock sold. If instead, the C-corporation distributes the same amount to the shareholder as a dividend, the same tax rates would generally apply; however, no reduction would be available in the amount subject to tax for the shareholder’s investment in stock of the corporation.

**3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.**

Generally, C-corporation earnings can only be paid out as dividends to shareholders. Any attempt to benefit a shareholder without making the payment in the form of a dividend (for example paying personal expenses of the shareholder with corporate funds) would be treated as a dividend for US income tax purposes and subject to tax as a dividend.

**3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:**

A. Fully publicly listed? No.

B. Partly publicly listed? No.

**3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?**

Generally, there would be no difference.
Section 4: Succession planning

4.1 Life insurance
Life insurance has several tax benefits under US law. First, the “inside” accumulation of earnings and investment value in a qualified life insurance arrangement is generally not subject to income tax unless the policy is sold or distributions are taken in excess of the investment in the contract during the holder’s lifetime. Insurance proceeds received on the death of the insured are not subject to income tax and may avoid estate tax if the life insurance is not beneficially owned or controlled by the insured.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?
Shareholder agreements such as buy/sell or redemption agreements facilitate the succession of the business ownership, but these arrangements typically do not provide tax benefits to a family-owned enterprise as they are generally not taken into account in determining the value of shares held by family members for US federal gift or estate tax purposes.

4.3 Estate tax
Estate “freezing” structures are very useful in reducing the overall gift and estate tax cost in transferring shares in a family-owned enterprise from the older generation to the younger generation. The available techniques under US law include preferred equity recapitalizations, installment sales of equity interests to younger family members (or trusts for their benefit), and the use of annuity trusts (in which the older generation transfers shares to a trust for the benefit of the younger generation but retains a fixed annuity payment from the trust for a term of years). Properly structured the present value of the retained preferred stock interest, the installment sale obligation or the annuity retained by the older generation reduces (or eliminates) the amount of the gift to the younger generation associated with the transfer. The longer term goal of these arrangements is to freeze or limit the value of the asset in the hands of the older generation while shifting future appreciation in the value of the asset to the younger generation. These techniques are commonly used by owners of family businesses.

4.4 Pension plans
Qualified pension plans, which provide for currently deductible employer contributions (subject to annual limitations on amount), tax exempt build-up on earnings in the plan, and taxation to the employee only upon distribution, can provide significant after-tax benefits to the corporation and its employees, including shareholder-employees. However, to meet the definition of a qualified plan, plan benefits have to be provided on a non-discriminatory basis to most or all of the employees of the corporation; a qualified plan cannot be established that only benefits highly compensated individuals.

4.5 Trusts, foundations and private purpose funds
Family trusts, family-controlled charitable foundations (private foundations) and family-controlled private investment partnerships are well established and recognized planning vehicles for wealthy families in the US.

Family trusts are used to transfer assets for the benefit of younger generations in a family while vesting a trustee with investment and administrative powers over of the assets held in the trust. The trust instrument provides direction to the trustees as to the timing and circumstances under which distributions can be made to the beneficiaries. Trustees can be granted broad discretion in making decisions as to distributions or the trust instrument can provide for mandatory annual distributions of income or principal or on a predetermined date to some or all of the beneficiaries of the trust. Family members, trusted business associates or corporate trustees can be used as trustees; however, the relationship of the trustee to the settlor of the trust can affect the tax treatment of the trust. In some cases a settlor may be the trustee, but it is more difficult to accomplish estate and gift tax planning objectives when the settlor serves in that capacity. A trust can also be used to pass control of a family business to one or more designated family members.

A charitable foundation in the US is a trust or corporate organization established solely for charitable, religious, scientific, educational or other qualifying purposes, no part of the earnings or assets of which can benefit a non-charitable organization or person. In order for a charitable foundation to be tax exempt and for contributions to the foundation to be deductible for income tax purposes, the foundation must apply for and receive recognition of its exempt status from the US Internal Revenue Service (IRS). A private charitable foundation is a qualifying charity that is controlled by an individual or a family (rather than being broadly supported by the public). A private charitable foundation is subject to a 1% or 2% tax on investment income and generally must distribute 5% of its assets annually to qualifying public charities or face a penalty tax.

A family investment partnership is a family-controlled investment entity through which family members can pool their investment assets to gain efficiencies in investment management, better access to external fund managers, and reduced investment management fees. These vehicles are generally established as fiscally transparent entities for US tax purposes and equity interests in the entity are often used by the older generation to make gifts to the younger generation.
4.6 Wills/intestacy/family charters

Wealthy individuals in the US almost always execute a will to direct the disposition of certain assets owned by the individual at death. The court-directed process of disposing of a decedent's assets under the terms of a will (or intestacy laws if no valid will has been executed) is referred to as probate. Certain assets will pass to a survivor outside of a will and thus will not be subject to the probate process. These non-probate assets usually include assets held in trust, assets held in a form of joint ownership with rights of survivorship in another person, and assets for which a beneficiary has been designated by contract (e.g., life insurance or retirement plan assets for which a beneficiary has been designated). Wealthy individuals often establish a “living” (or revocable) trust to hold title to assets to avoid the probate process and retain a level of confidentiality that might not be available with respect to assets disposed of under the terms of a will. If a living trust is established it is important that the trustee hold legal title to the assets intended to form the corpus of the trust in order to avoid the probate process.

Applicable state law determines the process for the disposition of assets subject to probate. The applicable state law generally is determined on the basis of the residency of the decedent at death, but may be designated under the provisions of the will, or determined on the basis of the location of real property. State law in the US does not have the concept of “forced heirship” as is the case in many countries. However, if an individual dies without having executed a valid will, state intestacy laws will determine which of the decedent's family members will receive the decedent's assets.

4.7 Passing on a business

Families members involved in a family business will often enter into agreements to restrict the ability of the equity owners to sell, gift or transfer equity interests in the business to non-family members. US laws generally do not limit the ability of family members to transfer interests in a family business to non-family members, so it is incumbent on the family shareholders to address the transfer of interests through a legally binding agreement. It is common for wealthy individuals and family business owners to enter into a prenuptial agreement to protect the family wealth and family business in the case of a divorce.

Stock or equity interests in a family controlled enterprise may qualify for several special gift or estate tax provisions and allowances. First, although legislative proposals have periodically been made to eliminate or curtail these allowances, discounts for minority interest and lack of marketability can be claimed for transfers of equity interests in privately owned enterprises when valuing the equity interests for gift and estate tax purposes even where a single family may own control of the enterprise. Second, where an equity interest in a privately owned active business enterprise makes up a significant portion of an individual's taxable estate, generally 35% or more, the US federal estate taxes owed on the equity interest may qualify for payment over a 10- or 14-year period rather than being due nine months after the date of death.

4.8 Private equity

Specific legislation/tax treatment of income derived from private equity (PE) activity

Under current US law a “carried interest” (i.e., an economic interest in the profits of a partnership or fiscally transparent LLC received by a managing member or partner of the entity in exchange for services but not for the investment of capital) can be received with no current income tax. Items of partnership income allocated to the carried interest retain their tax character and thus can result in income taxed at long-term capital gains rates. The US Congress has considered proposals to alter the tax treatment to carried interests to limit the ability of the holder to recognize capital gain income, but no legislative change has been made.

<table>
<thead>
<tr>
<th>Equivalent PE ratio</th>
<th>N/A.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Others</td>
<td>N/A.</td>
</tr>
</tbody>
</table>
Section 5: Tax policy environment

5.1 Policy environment relating to family business

Family-owned businesses are very influential in American business and tax policy. The issues most often addressed by family businesses are of a general economic and tax policy nature rather than issues strictly limited to family owned businesses. Family businesses influence policy discussions through involvement in trade associations (e.g., the American Chamber of Commerce), through contact with federal, state and local legislators, and through funding political action committees (PACs) which are focused on issues of interest to the family enterprise. Some of the most visible corporate organizations in American tax and economic policy discussions are family-owned enterprises.

5.2 Specify change in the direction of tax policy in the last three years

With a few exceptions, the issues that predominate US legislative policy discussions at this time, are not issues solely relevant to family businesses.

5.3 Besides provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners

See Section 4.7 regarding estate and gift tax valuation and the deferred payment allowance for equity interests in a family-owned business.

5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions

The estate tax is viewed as the principal federal tax provision that can impair the successful transition of a family business to younger generations. The momentum to change these provisions was at its height 12 years ago, but a permanent compromise was struck with the passage of tax legislation on 2 January 2013. The momentum to have the estate tax repealed in its entirety has slowed but will always be a topic of future legislation.

Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with:

- High net worth individuals (HNWIs)
  Yes. The US (IRS) has formed a separate HNWI group to focus on high net worth individuals.

- SMEs
  The IRS has two main divisions focused on income tax compliance matters, its Small Business/Self Employed Division (SBSE) and its Large Business and International Division (LB&I).

- Family businesses
  No.

- Large corporate taxpayers
  The LB&I Division focuses on all corporations and partnerships with assets in excess of US$10 million.

- Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses
  The GHW Industry is contained within the LB&I Division. LB&I contains numerous groups of specialist such as financial products, economists, engineers, etc. All of these specialties are used within the GHW program. In addition, certain specialists are within the SBSE Division such as excise tax and employment tax and these too, can be part of GHW audit. Responsibility for High Wealth audits was moved from the SBSE Division to LB&I in recognition of the significant complexity such audits present.
6.2 Specify enforcement focus areas or defined programs that might touch a family business

See Section 6.1 with respect to the HNWI group.

6.3 Specify tax enforcement focus on any particular industry or profession

Certain taxpayer segments such as the largest corporations are continually the focus of the IRS. For the remaining taxpayers, the IRS routinely initiates compliance projects to test compliance levels for specific taxpayer segments. Examination resources are then directed at those segments found to be the less compliant. In recent years, an IRS focus on foreign athletes and entertainers is an example. To the same end, examination resources spent on partnership returns have steadily increased. The IRS GHW program is but another example of initiative aimed at assessing the compliance risk of a specific taxpayer segment and then prioritizing available resources accordingly.

6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners

The IRS has stated that its research unit provides GHW with an initial listing of the high wealth taxpayer population. Mathematical computations are then used to determine the examination potential. The computations are developed from IRS internal data and used as a preliminary point in assessing the compliance risk on filed returns. The returns with the highest risks are then further reviewed to arrive at those that are to be examined. The internal IRS data and subsequent manual review will take into account the complexity of the individual's affairs, amount of income, level of deductions and losses, engagement in self-employment activities, involvement with certain industries and extent of foreign activities and investment; but no single element would necessarily trigger an audit.

6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

Yes, over the last few years the IRS has provided for several different voluntary disclosure programs for US citizens and residents with unreported foreign source income or assets. The penalties under these programs have become progressively more punitive. The IRS has announced that it has collected more than US$5 billion from its offshore voluntary disclosure initiatives.

6.6 Are there any specific pre-filing processes that can be leveraged by:

- **HNWIs**: None specific to HNWIs, but the IRS does have pre-filing processes under which a taxpayer can request that issues related to completed transactions can be resolved before a tax return is filed. This procedure is generally used only by corporation taxpayers and not by HNWIs. A private letter ruling (PLR) can also be requested from the IRS to resolve the tax treatment of an issue or transaction before the arrangement or transaction is entered into. In the case of a PLR request, the taxpayer will request a written determination from the IRS as to the tax treatment of the transaction and provide the IRS with the taxpayer’s interpretation of the law. The IRS will issue a letter the taxpayer that only that taxpayer may rely on as to the tax consequences of the proposed transaction. The IRS will rule on issues of law but not on issues of fact. The PLR process is time consuming and costly and is generally only used in highly specialized cases or in situations in which significant amounts of tax are at stake and the taxpayer would like complete assurance as to the tax result.

- **Family businesses**: See comment regarding HNWIs directly above.

6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

Yes, as a founding member of the Global Forum on Transparency and Exchange of Information the US tax authorities are continually increasing the number of countries they can exchange information with and the volume of information exchanged. It is expected this will significantly increase with the implementation of Foreign Account Tax Compliance Act (FATCA).
Country name | Vietnam
---|---
EY contacts | Nhung Tran  
Ho Chi Minh City  
+84 8 3824 5252  
nhung.tran@vn.ey.com
 | Trang Pham  
Ha Noi City  
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 | Thinh Xuan Than  
Ho Chi Minh City  
+84 8 3824 5252  
thinh.xuan.than@vn.ey.com

Section 1: The accumulative tax burden on family business

2013 tax rates

<table>
<thead>
<tr>
<th>1.1 Corporate income tax (national and sub-national combined)</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Highest marginal rate</strong></td>
<td>Vietnam applies a flat rate on the corporate income. The standard tax rate is 25% unless the tax incentives apply.</td>
</tr>
<tr>
<td></td>
<td>The standard tax rate will be reduced to 22% from 1 January 2014 and 20% from 1 January 2016.</td>
</tr>
</tbody>
</table>
| **Highest rate for small and medium enterprises (SMEs)/ small business** | Vietnam applies a flat rate of 25%.  
The SMEs are defined based on the number of labor or the total resources (including equity and liabilities) in the company’s balance sheet, which vary depending on the business sector. The highest thresholds for SMEs are having no more than 300 employees or total resources up to VND100 billion (approximately US$4.76 million). |
| | The standard tax rate will be reduced to 22% from 1 January 2014 and to 20% from 1 January 2016.  
Tax rate of 20% is applied from 1 July 2013 if the enterprises have annual revenue no more than VND20 billion (approximately US$952,000). |
1.1 Corporate income tax (national and sub-national combined)

- Special treatment of SMEs/small business (other reliefs, etc.)  
  N/A. The Vietnamese Government provided an ad-hoc economy stimulus program in 2011 and 2012, entitling SMEs 30% reduction of income tax payable for tax year 2011 and 2012.

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the corporate income tax base?

The National Assembly has recently enacted the amended corporate income tax laws introducing the following significant changes:

- Reduce the standard tax rate to 22% from 1 January 2014 and further reduce to 20% from 1 January 2016
- Increase the cap of advertising and promotion expenses to 15% of total deductible expenses (compared to previous 10%) which expand the enterprise’s deductible expenses
- Reintroduce the tax incentive for expanded projects

1.2 Individual income tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal allowance</td>
<td>Effective from 1 July 2013:</td>
</tr>
<tr>
<td></td>
<td>- Personal relief: VND108 million/annum</td>
</tr>
<tr>
<td></td>
<td>- Dependent relief: VND3.6 million/person/month; the dependant allowance is not automatically granted, and the taxpayer needs to register qualifying dependents and provide supporting documents to the tax authority</td>
</tr>
<tr>
<td></td>
<td>From 1 July 2009 to 1 July 2013:</td>
</tr>
<tr>
<td></td>
<td>- The personal relief: VND48 million/annum</td>
</tr>
<tr>
<td></td>
<td>- Dependent relief: VND1.6 million/person/month</td>
</tr>
</tbody>
</table>

| Minimum rate of personal income tax (PIT) | The rate is 5%.  |
| High marginal rate of PIT                | The rate is 35%. |
| Any special surtaxes                     | No.              |

Have there been any specific legislative changes in the last five years that would either significantly increase or decrease the overall size of the individual income tax base?

Recent major changes in personal income tax regulations include:

- Provide more non-taxable incomes and benefits provided by an employer to the employee
- Increase tax relief and more deductions in relation to non-compulsory pension fund
- Provide deemed taxable income ratio for the business income of individuals not maintaining full accounting system
- Unify tax treatment on the share transfer in public and nonpublic joint stock company
1.3 VAT, GST and sales tax

<table>
<thead>
<tr>
<th>2013</th>
<th>Change in rate in the last three years (up or down).</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Standard rate</td>
<td>The current rate is 10% for general goods/services; 5% for essentials commodities/services; and 0% for exported goods/services. No.</td>
</tr>
<tr>
<td>• Are there any special reliefs or exemptions for a family business?</td>
<td>No. N/A.</td>
</tr>
</tbody>
</table>

1.4 Property taxes

- Does a family business receive any relief on property taxes not granted to other types of corporation? Municipal/provincial authorities levy tax on property (e.g., land rental, land use fee). On a time-to-time basis, each province/city may provide relief on property tax for SMEs.

1.5 Capital gains tax (CGT)

- 2013 rate – companies
  - Transfer of shares in a limited liability company or non-public joint stock company will be subject to 25% tax rate.
  - Transfer of shares in public joint stock company by nonresident entity will be subject to 0.1% tax rate on gross proceeds while that transaction by a tax resident will be subject to 25% on net gain.
  - In either situation, supporting documents are required to justify the net gain.

- 2013 rate – individuals
  - Transfer of capital in a limited liability company is 20% on net gain.
  - Transfer of shares in public or non-public joint stock company is 0.1% on the gross proceeds upon each transaction or 20% on net gain of all transactions of the year if the tax payer maintains sufficient supporting document to justify the net gain.

- Reliefs/exemptions None.

1.6 Tax on dividends from ordinary shares

A. For the business: No changes have been made.
B. For the owners of the business: The tax rate is 5% on total paid dividend.

1.7 Tax on dividends from preferential shares

A. For the business: No changes have been made.
B. For the owners of the business: The tax rate is 5% on total paid dividend.

1.8 Tax treatment of interest on a loan from the shareholders

We assume that the shareholders/owners provide a loan to the family company in return for interests.
A. For the business: The interest expenses will be deductible for corporate income tax purposes.
B. For the owners of the business: The interest income shall be taxable at flat rate of 5%.
1.9 Tax treatment of rental income on real estate owned by the shareholder(s) of a family business

We assume that the shareholders/owners rent out their real estate property to the family company in return for rentals.

A. For the business: The rental expenses will be deductible for corporate income tax purposes.

B. For the owners of the business: The rental income will be subject to progressive income tax rate ranging from 5% to 35%.

1.10 Tax treatment of income generated from the use of intellectual property owned by the shareholder(s) of a family business

We assume that the shareholders/owners allow the family company to use their intellectual property in return for a fee.

A. For the business: The royalty expenses will be deductible for corporate income tax purposes.

B. For the owners of the business: Royalty income shall be subject to income tax at 5%

1.11 Tax treatment of interest paid on bank debt by a family business

The interest expenses are deductible for corporate income tax purposes.

1.12 Tax treatment of payments made by a family business to third parties for the use of their intellectual property

The relevant expenses shall be deductible for corporate income tax purposes.

1.13 Tax treatment of rental payments made by a family business to third parties for real estate

This expense shall be deductible for corporate income tax purposes.

1.14 Tax treatment of interest payments on A. inter-group loans or B. a financing company within the family-owned business group

The interest expenses shall be deductible for corporate income tax purposes. If the loans are made between related parties, the interest rate should be at arm's length as required by laws.

1.15 Does your country provide for a deemed deduction on equity and/or debt?

No, Vietnam does not provide this kind of deduction.

1.16 Is the retention of earnings subject to any kind of limitation or restriction, or may earnings be retained indefinitely?

Currently, there is no limitation or restriction on the retained earnings.

1.17 Wealth tax

- 2013 characteristics and rate: N/A.
- Is there an exemption for shares owned by a family that owns a business: N/A.

1.18 Inheritance tax/estate tax

Inheritances of real estate property, vehicles and capital/shares in the company are subject to income tax at 10%. However, inheritance of real estate property from spouses, parents, parent-in-law, grand-parents, and sisters/brothers is tax exempt.

1.19 Gift tax

Same treatment as inheritance tax.
1.20 Real estate transfer tax

- For corporate entity, the transfer tax is subject to corporate income tax at standard tax rate.
- For tax resident individuals the transfer tax is 25% on net gain or 2% on gross proceeds if the tax payer does not maintain sufficient supporting documents to justify the net gain. However, the individual having unique ownership of the property shall be exempted from tax upon transfer of such property. For nonresident individuals, the transfer tax rate is 2% on sale proceeds upon the transfer.

1.21 Endowment tax

None.

1.22 Social security

- National/social insurance contributions on employee income
  The rate is 17% for employers and 7% for employees.
  From 1 January 2014, the rates are increased to 18% for employers and 8% for employees.
- Health/medical/dental care
  The rate is 3.5% for employers and 1.5% for employees.
- Retirement plans/pensions for employees
  In Vietnam, the social insurance contributions are also for retirement plans purpose.
  Other than the above, the employers and employees are required to contribute to unemployment insurance at 1% for each party.

1.23 Pensions and tax-efficient savings

- Tax relief on pension contributions – standard
  For individual:
  Prior to 1 July 2013, only the employee's contributions for the compulsory insurances are deducted from his/her taxable income for income tax calculation.
  From 1 July 2013, the individual's contribution to voluntary pension fund in accordance with the guidance of the Ministry of Finance, which is capped at VND1 million/month per individual (VND12 million/year) is deductible for tax purpose.
  For corporate:
  From 1 January 2014, expenses related to contributions to non-compulsory pension funds (subject to regulated amount) shall be deductible. The deductibility amount for corporate income tax purpose is limited to VND1 million/person/month

- Tax relief on pension contributions – any specific relief to family business?
  No.

1.24 Taxation of flow-through entities/partnerships/trust funds

After tax profits/dividend paid by enterprises/partnerships to its corporate investor(s) are tax exempted.

1.25 Exemptions in the law that specifically relate to family businesses

None.
### 1.26 Are there any business incentives in your country that are specific to

- SMEs
- Family businesses

The Vietnamese Government has mechanisms and plan to support the SMEs through a number of measures:

- Financial aids such as credit guarantee funds, SMEs Support Fund, technology development fund, etc., which expand the credit supply to SMEs that helps SMEs to apply the high/clean technology, investment, improve management capability, etc.
- Other supports for business location, technology renewal, market expansion, information supply, etc.
- Moving forward, the Vietnamese Government may provide ad-hoc stimulus programs to SMEs, such as income tax reduction, tax deferment, etc.

There are no regulations/policy on incentives specifically attend to family business.

### 1.27 Tax treatment of losses made by a family business

- Are there any available loss reliefs that are specific to family businesses?
  
  The accumulated losses are allowed to carryforward up to five consecutive years after the loss-making year.

- Are there any available loss reliefs that are specific to SMEs?
  
  There is no specific relief available to family businesses and SMEs.

### Section 2: Sample tax calculations for two typical family businesses

Please provide two sample calculations to show the net income of a private, individual shareholder who holds 100% of the shares of a family business.

**Calculation 1:** The business makes a profit before tax of VND2 million and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

**Scenario 1: Private enterprise (unlimited liability enterprise) and one-member limited liability company, which are incorporated under the Law on Enterprise of Vietnam**

Corporate income tax payable = VND2,000,000 x 25% = VND500,000

Net income of the owner = After-tax profit of the company = VND2 million - 500,000 = VND1,500,000

Tax on the distributed profits of the individual = VND1,500,000 x 5% = VND75,000

Net income of the shareholder = VND1,500,000 - VND75,000 = VND1,425,000

The effective tax rate = (VND75,000 + VND500,000) / VND2 million = 28.75%

**Calculation 2:** The business makes a profit before tax of VND500,000 and pays taxes on this profit. The after-tax amount is then distributed to the same shareholder in the same tax year.

Same calculation methodology and effective tax rate with the above example as Vietnam flat tax rate.

Please note that the effective tax rate of the company may be higher than 25% given there are certain nondeductible expenses under Vietnam tax regulations such as gifts, over-cap advertising and promotion expenses, staff welfare, etc. which adversely affect the effective tax rate of the shareholder.

Has this effective tax rate increased, decreased or stayed the same in the last three years?

The effective tax rate can fluctuate depending on the expense structure of the company in the year.
Section 3: Tax treatment of family businesses and other issues

3.1 Differences in the tax treatment of a family business that is run as a corporation as compared to a family business that is run as a private business without a corporate veil

Where the family run a business in form of corporation, tax is imposed on the company itself, subject to corporate income tax at standard flat rate of 25%, while the family members run a private business without a corporate veil, they will be subject to individual income tax for business income which are progressive rates ranging from 5% to 35%.

3.2 Using the most current rates, describe the differences (if any exist) between the taxation of capital gains made by a 100% shareholding in a family business and the taxation of dividends paid to the same shareholder.

Capital gain of an individual is subject to tax as describe in Section 1.5. Dividend paid by a company to an individual is taxed at 5% of total paid-out amount.

3.3 Imposition of penalties where profits of a family business are paid out in any way other than as a dividend.

The distribution of profit in form of dividend is the only way legally provided under Vietnam regulations. In addition, there are certain restrictions on the distribution of profits/paying out dividend under Vietnam regulations. Any profits paid out in forms other than dividend may be challenged from competence authorities.

3.4 Would answers to Sections 3.1, 3.2 and 3.3 be different if the family business was either:

A. Fully publicly listed? No.

B. Partly publicly listed? No.

3.5 In relation to questions 3.1, 3.2 and 3.3 above, would the answers be any different if an individual shareholder held less than 100% of the total shares?

The percentage of shareholding does not impact the tax treatments in the above questions.

Section 4: Succession planning

4.1 Life insurance

No tax incentives related to life insurance policies is provided under Vietnam regulations.

4.2 Are there any tax consequences for dealing with shares, such as, shareholder agreements or buy/sell agreements?

The use of shareholders' agreement is not common in Vietnam, especially in a domestic company. The term “shareholders' agreement” is not regularly used in the Vietnam. Instead, the rights and obligations, relationship of shareholders, dealing with shareholders' conflicts, principle of profit distribution, etc. are usually regulated in the company's charter and legally governed by the Laws on Enterprise. The shareholders may enter into private agreements if it is not contradictory to the laws.

4.3 Estate tax

Real property may be transferred to the next generation via inheritance or gifts between immediate family members. This is tax free as described in Sections 1.18 and 1.19.

4.4 Pension plans

N/A.

4.5 Trusts, foundations and private purpose funds

N/A.
4.6 Wills/intestacy/family charters
N/A.

4.7 Passing on a business
N/A.

4.8 Private equity
Specific legislation/tax treatment of income derived from private equity (PE) activity: No.
Equivalent PE ratio: No.
Others: No.

Section 5: Tax policy environment

5.1 Policy environment relating to family business
Vietnamese family businesses play an important role in the country's economy, accounting for a considerable portion of Vietnam's GDP; including job creation and adding stability to a balanced economy. However, there is currently no association/organization representing family business's interest in Vietnam (except the SMEs) that may have systematic impacts to policy discussions.

The major family business groups may have members participating into the enterprise associations/Congress and have certain influences on the policy, however, this does not represent for the whole family business's voice.

5.2 Specify change in the direction of tax policy in the last three years
No, there is not.

5.3 Besides data provided in Section 1.4, are there any specific tax provisions available that are designed to support family businesses/family business owners
No, there is not.

5.4 Specify tax provisions that are perceived to actively impair family businesses and any momentum to change these provisions
No, there is not.

Section 6: Tax administration and enforcement issues

6.1 Is there a specific unit within your tax administration that deals specifically with:
- High net worth individuals (HNWIs): No.
- SMEs: The tax authorities in Vietnam are organized by power hierarchy from central level to provincial/municipal level. Each provincial tax authority will manage enterprises located in their locality including all types and scale of enterprises. There is no specialized unit to deal with the mentioned groups.
- Family businesses
- Large corporate taxpayers
- Closer integration between the HNWI and any of the corporate units in order to focus more specifically on family businesses

6.2 Specify enforcement focus areas or defined programs that might touch a family business

We are not aware of such a program.

6.3 Specify tax enforcement focus on any particular industry or profession

No, it does not.

6.4 Specify commonly occurring audit triggers related to HNWIs or family business owners

The tax audits in Vietnam generally target to the corporate taxpayers only, not to the individual level. As the withholding obligation is shifted to the income paying bodies, the individual income tax shall be combined during the corporate tax audits.

Of note, Vietnamese tax authorities have recently conducted extensive tax audits under determination to enforce tax compliance and budget pressure. They commonly focus on the large taxpayer or the companies which repeatedly report losses.

6.5 Specify voluntary disclosure opportunities in the last three years and available data available on their perceived success

N/A.

6.6 Are there any specific pre-filing processes that can be leveraged by:

- HNWIs: There is currently no pre-filing process applied in Vietnam except for the advance pricing agreement in transfer pricing area, which was recently introduced in Vietnam.
- Family businesses: Same as above.

6.7 Are there any specific distinct focuses on increasing the international sharing of taxpayer data specifically relating to HNWI? Specify any growth in tax information exchange agreements (TIEAs) use or agreements between your country and another country relating to HNWI

We are not aware of any above-mentioned developments in Vietnam recent tax practice.
Foreign currencies

Listed below are the currency names and symbols that have been used in this publication.

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## Contacts

### Privacy Clients Services area contacts

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## Jurisdiction contacts

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