

Doing Business in Guyana

By: Jack A. Alli, Sons & Co., Chartered Accountants

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General information is provided on areas of interest to investors including methods of establishing a business in Guyana, taxation issues, employment issues, investment protection and environmental considerations, among others.

I: Forms of Business

There are several options for establishing a business in Guyana including registering a new company, registering an established foreign company in Guyana, establishing a partnership or operating as a sole proprietorship.

Registering a New Company

Under the Companies Act, a company can be registered with submission of an application to the Registrar containing the following:

- Articles of incorporation giving details such as the name proposed for the company; the registered office in Guyana; the share capital – rights, privileges, restrictions, conditions, payment terms; and the size of the board of directors.
- Statutory declaration by an attorney-at-law on the suitability of signatories to the articles of incorporation.
- Details of the persons who are to be first director(s) and secretary, and their consent to serve.

A registration fee of G\$63,900 is required.

There is an obligation to file an annual return with the Registrar, along with the audited financial statements.

Registering a Foreign Company

A foreign company established under the laws of a country other than Guyana can register to carry on business in Guyana as an external company under the Companies Act. To register, the following documents should be submitted to the Registrar:

- Statement containing details such as the company name; the jurisdiction incorporated in; the date and manner of incorporation; the company's share capital; the extent of limited liability; the undertaking in Guyana and date of commencement; the full address outside Guyana and in Guyana; and the names, addresses and occupations of the directors of the company.
- Statutory declaration by two directors of the company attesting to the information submitted to the Registrar, along with a copy of the corporate instruments of the company.
- Statutory declaration by an attorney-at-law that the Companies Act has been complied with.
- A fully executed power of attorney that shall empower some person named in the power and resident in Guyana to act as attorney of the company.

A registration fee of between G\$80,000 to G\$300,000 is payable depending on the share capital of the company.

A registered external company is required to lodge audited accounts with the Registrar on an annual basis. A registered company is entitled to own land in Guyana as may be authorized by licence of the President.

Registering Sole Proprietorship or a Partnership

Under the Business Names (Registration) Act, a sole proprietorship or a partnership carrying on business under a business name other than the true surname of the proprietor (or names of partners), is required to be registered. The Partnership Act governs the workings of partnerships in Guyana.

Registration of a business name requires submission of an application to the Registrar containing the following details:

- The business name, general nature of the business and the principal place of business.
- The name, nationality, usual place of residence and other business occupation of the sole proprietor or every individual who is a partner.

A registration fee of G\$5,000 is payable.

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II: Tax Regime

Corporation Tax

Corporation tax is charged at a rate of 40% for commercial companies (except telephone companies) and at a rate of 27.5% in the case of any other company. Telephone companies pay corporation tax at a rate of 45%.

A commercial company means a company for which at least 75% of the gross income is derived from trading in goods not manufactured by it and includes any commission agency, any telecommunication company, any bank and any insurance company (other than a long-term insurance company). Where companies are engaged in both commercial and non-commercial activities, the commercial activity is taxed at 40% and the non-commercial activity is taxed at 27.5%.

Where the actual corporation tax liability of a commercial company as computed at 40% or 45% is less than 2% of the turnover of the company, the Corporation Tax Act provides for the payment of corporation tax at the rate of 2% of turnover - referred to as minimum tax. Insurance companies and any company exempt from corporation tax are exempt from minimum tax. Minimum tax paid in excess of the actual corporation tax liability is recoverable once proven to the satisfaction of the Commissioner-General and on the raising of an assessment.

Tax returns must be filed by April 30 of the year following the accounting year-end. Accounting year-ends that do not coincide with the calendar year-end must be approved by the tax authority. Tax returns are required to be submitted with audited financial statements.

Corporate bodies are required to pay corporation tax in quarterly installments on March 15, June 15, September 15, and December 15 of the year of income. Any shortfall of taxes after accounting for quarterly installments should be met by April 30 following the year of income.

Branch Profit

The corporation tax rates on branch profit are the same as for companies. Branch profit net of corporation tax is subject to withholding tax at 20%.

Tax Losses

Losses may be carried forward indefinitely to be set off against future profits. Brought forward tax losses cannot be used to reduce the tax payable of any year by more than 50%. Loss carrybacks are not permitted.

Payments to Foreign Affiliates

A company may claim a deduction for charges paid to foreign affiliates, provided such amounts are reasonable and necessary, having regard to the requirements of the trade. Deduction for head office expenses is restricted to the lesser of the charge and 1% of gross income of the company. Head office expenses include charges from a non-resident parent company, or a non-resident associate company of a company resident in Guyana, or a non-resident associate or subsidiary company of a non-resident company in respect of a branch or agency owned by the non-resident company in Guyana, or the head office of a non-resident company in respect of a branch or agency in Guyana, for any administrative, technical, professional or other like service of an essentially managerial nature.

Group Taxation

There are no group taxation provisions.

Income Tax

Income is taxable when it accrues in or is derived from Guyana, whether or not the individual is resident in Guyana, and whether or not the income is received in Guyana.

Employment compensation includes all benefits and allowances derived from employment, except allowances for medical or dental expenses or for any passage to or from Guyana and allowances for subsistence, travel, vacation, entertainment, or expenses if proven to the satisfaction of the tax authority.

There is a personal allowance equivalent to the higher of G\$60,000 per month or one-third of the employee's salary. Also, the employee's national insurance contributions are allowed as a deduction in determining taxable income. The rate of income tax is 28% on taxable income up to G\$120,000 per month and 40% on earnings beyond this level.

Doing Business in Guyana

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Self-employed persons make income tax payments in quarterly installments with any shortfall of taxes being made by 30 April following the year of income. Other employed persons have income taxes withheld under the pay-as-you-earn (PAYE) system.

Tax returns must be filed by April 30 of the year following the year of income.

National Insurance Scheme

National insurance contributions are required at a rate 14% of earnings, with 5.6% being deducted from employees' salaries and 8.4% being contributed by employers. Self-employed persons contribute 12.5% of earnings. There is a monthly earnings ceiling of G\$240,000.

Withholding Taxes

Withholding tax at 20% is deducted at source on gross distributions and other specified payments (e.g. royalties, management fees, rent) made to non-residents.

Payments disbursed to resident contractors in excess of G\$500,000 are subject to a withholding tax of 2%. Payments to non-resident companies on account of any contract undertakings are subject to withholding tax at 10%. These withholding taxes on contracts are a form of advance tax to be set-off against final tax liabilities.

Property Tax

Property tax is payable on net property of companies and individuals at the end of year of income. For a company, the first G\$10 million of net property is exempt, the next G\$15 million is taxed at 0.5% and thereafter a rate of 0.75% applies.

For an individual, the first G\$40 million is exempt and a rate of 0.75% is applied on net property in excess of G\$40 million.

Capital Gains Tax

Gains arising from disposal of capital assets held for between 1 and 25 years are subject to capital gains tax at a rate of 20%. Gains arising upon the disposal of capital assets within 12 months of acquisition are subject to corporation or income tax as appropriate. Capital assets held for more than 25 years are not subject to capital gains tax upon subsequent disposal. Capital losses are allowed as an offset to capital gains and may be carried forward for a period of 24 years.

Stamp Duty

Stamp duties are charged on various types of instruments. The rate applicable varies by type of instrument.

Custom Duties

Customs duty is charged on the importation of goods into Guyana. The rate applicable varies by type of good.

Excise Tax

Excise tax is charged on the importation or domestic manufacture of motor vehicles, petroleum products, tobacco products and alcoholic beverages. The rate of excise tax varies across and within these product groups.

Value-added Tax

Value-added Tax at a rate of 14% is charged on taxable supplies of goods and services. There are certain categories of supplies which are zero-rated or exempt.

Corporation Tax Holiday

Under the Income Tax (In Aid of Industry) Act, the Minister of Finance may grant an exemption from corporation tax with respect to new economic activity of a developmental and risk-bearing nature in one of the following fields:

- Non-Traditional Agriculture Development and Agro-Processing
- Information and Communications Technology
- Petroleum Exploration, Extraction, or Refining
- Mineral Exploration, Extraction or Refining
- Tourist Facilities
- Value-Added Wood Processing
- Textile Production
- Biotechnology

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- Development and Manufacturing of New Pharmaceutical Products, Chemical Compounds and the Processing of Raw Materials to Produce Injectables
- Infrastructural Development, Including the Production of Electricity Using Renewable Sources of Energy

New economic activity in one of the following administrative regions of Guyana may also qualify for exemption from corporation tax:

- Region 1: Barima / Waini
- Region 7: Cuyuni / Mazaruni
- Region 8: Potaro / Siparuni
- Region 9: Upper Takatu / Upper Essequibo
- Region 10: Upper Demerara / Upper Berbice

Exemption is granted for a period of up to 5 years but may be extended up to 10 years if the activity is in one of the specified economic fields. In the case of infrastructural development, the exemption may extend beyond 10 years.

In addition to the above provisions, the Minister may grant an exemption from corporation tax with respect to income from the following activities:

- Wind and Solar Energy
- Water Treatment and Water Recycling Facilities
- Waste Disposal and Recycling Facilities for Plastic Items

Exemption for corporation tax for these activities shall be for a period not exceeding 2 years.

Export Allowances

Companies that export sales of manufactured, processed or agricultural products are entitled to export allowances as a deduction from chargeable profits. The quantum of the allowance is dependent on the percentage of export sales to total sales. Products that do not qualify for this allowance are bauxite, gold, diamonds, petroleum, sugar, rum, molasses, rice, timber, lumber, and shrimp. Also, export sales to certain CARICOM countries do not qualify for the allowance.

Double Tax Treaties

Guyana has effective double taxation treaties with Canada, the United Kingdom and CARICOM Member States that have ratified the CARICOM Double Tax Treaty.

III: Labour Laws in Guyana

Labour Regime

Guyana has several laws which govern the employment of labour. Some of the significant laws in this regard are as follows:

- Labour Act
- Termination of Employment and Severance Pay Act
- Wages Council Act
- Leave with Pay Act
- Shops (Consolidation) Act
- Prevention of Discrimination Act
- Occupational Safety and Health Act
- Labour (Conditions of Employment of Certain Workers) Act
- Trade Unions Recognition Act
- Employment of Young Persons and Children Act
- Licensed Premises Act
- Factories (Hours and Holidays) Act

Doing Business in Guyana

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January 2018

These laws address matters such as the treatment of wages and salaries, normal hours of work and overtime, leave with pay, safety, health and welfare, accidents and occupational diseases, termination of employment and severance pay, registration and regulation of industrial establishments, collective agreements, employment of young persons and duty of employers to keep records.

The normal work week is legislated as 40 hours over not more than 5 days. Any hours of work beyond normal hours are remunerated as overtime in accordance with applicable law.

The statutory minimum wage in Guyana is G\$44,200 per month; however, the public service minimum wage is \$60,000 per month.

Employment of Foreigners

Foreigners require a work permit issued by the Ministry of the Presidency to be employed in Guyana. Application for work permit requires information on both the employer and the intended non-national employee.

A CARICOM national holding a CSME Skilled National Certificate and his/her spouse are not required to obtain work permits to be employed in Guyana.

IV: Investment Protection

Rights and Guarantees

Under the Investment Act, the Government of Guyana provides various assurances to investors with respect to any investment made in Guyana, including the following:

- Not to compulsorily acquire or take possession of the investment unless for a purpose in law, on a non-discriminatory basis, with prompt payment of adequate compensation and with a right of access to the court system
- To allow investors to purchase or lease land in Guyana subject to existing laws
- Not to intervene in the management of investor's activities, nor impose conditions on the sale, pricing or distribution of associated products, except in the pricing of utilities
- Guarantee the right of investors to determine the distribution of all profits and dividends, and to receive their share of such profits or dividends subject to settlement of corresponding tax obligations
- To allow the employment of skilled and expert foreign personnel when necessary with the approval of the relevant authority and in accordance with applicable laws

Transfers of Funds Abroad

The Investment Act also allows investors to transfer funds, subject to payment of applicable taxes, for the following purposes:

- Repatriation of dividends, earnings and capital
 - Remittance of proceeds of sale or liquidation of an investment
 - Payment of interest on international loans
 - Payment for imports
 - Payment of fees for trademarks, royalties and management services
 - Payment of licensing fees for franchising agreements
- Transfers of funds may be prevented however in circumstances of bankruptcy, insolvency, criminal proceedings, court orders or judgements or when necessary for the protection of stockholders or creditors.

Dispute Resolution

The Investment Act provides that in cases where disputes arise among investors or with the Government of Guyana, the following avenues are available if the matter is not amicably settled through consultation or mediation:

- Submit the dispute to arbitration under the Arbitration Act
- Refer the matter to the competent courts in Guyana
- Submit the matter to the International Centre for the Settlement of Investment Disputes (ICSID) of which Guyana is a member

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V: Other Matters of Interest

Environmental Protection

Under the Environmental Protection Act, administered by the Environmental Protection Agency, a developer of any of the following types of project, or any other project that is likely to impact the environment is required to obtain an environmental permit.

- Construction of any hotel, guest house or inn above ten rooms
- Installation for hydro-electric energy production
- Construction of roads, harbours and airfields
- Dams and other installations designed to hold liquid or to store it on a long-term basis
- Installation for the treatment of waste water, industrial or domestic waste
- Importing of any waste matter whether hazardous or not
- Release, use or keeping of any genetically modified organisms
- Harvesting and utilization of forest resources
- Extraction and conversion of mineral resources

Currency Matters

The unit of currency in Guyana is the Guyana Dollar which is freely convertible into other currencies based on prevailing market conditions. All monetary obligations or transactions in Guyana are required to be expressed, recorded and settled in Guyana Dollars unless permission is obtained from the Bank of Guyana which is responsible for the regulation of the financial sector in Guyana.

Under the Investment Act investors may open accounts in Guyana Dollars and in foreign convertible currencies with licensed banks in Guyana.

Anti-money Laundering

The Anti-money Laundering and Countering the Financing of Terrorism Act is the primary legislation in this area. The Financial Intelligence Unit, provided for under the Act, is responsible for the handling of suspicious transaction reports and other information relating to money laundering, terrorist financing and the proceeds of crime.

Stock Exchange

The Guyana Association of Securities Companies and Intermediaries Inc. operates the Guyana Stock Exchange. There are presently sixteen companies on the Exchange.

Accounting Standards

The accountancy profession in Guyana is regulated by the Institute of Chartered Accountants of Guyana (ICAG). Accounting standards adopted for application in Guyana are the International Financial Reporting Standards. The ICAG is a member body of the International Federation of Accountants and the Institute of Chartered Accountants of the Caribbean. □

Author's note:

The information contained in this article is for general guidance on matters of interest only and is not meant to be comprehensive. It is recommended that you obtain advice specific to your circumstances from professional advisers before proceeding.