

# **PANAMA**

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CORPORATE INCOME TAX	
Resident companies	25%
Offshore companies	Exempt for foreign source income
Trusts	Exempt if the property is abroad
OTHER TAXES	
Withholding taxes on dividends	10%; 5% if Colón Free Zone sourced
Registration tax and stamp taxes	Variable
Property tax	From 0% to 1% according to the property value
Annual tax on industrial and commercial licences	Varying according to the net worth of the company
Import and export duties	Imports: variable Exports: exempt, except for some products
REGISTRATION TIME	3 working days
REGISTRATION COSTS	Registration: US\$ 300 Professional costs: US\$ 600
MINIMUM CAPITAL	Not applied
ADVANCE RULINGS	Not applied
EXCHANGE CONTROLS	Nil
BANK SECRECY	Absolute confidentiality is guaranteed, except in cases of suspected fraud or criminal activity
LEGAL SYSTEM	Civil law
BILATERAL TAX AGREEMENTS	Bilateral tax agreements with 17 countries TIEAs with 10 countries

## **1- GENERAL INFORMATION**

### **I- Political system**

Panama is located in Central America, between Costa Rica and Colombia.

Until 1977, the United States had the jurisdiction of the Panama Canal, which joins the Atlantic Ocean to the Pacific. In 1990 the conventions sanctioned the abolition of the Panama Canal Zone and the total submission to Panamanian jurisdiction. As of December 31, 1999, Panama acquired jurisdiction over the canal and its areas, properties, assets and real estate from the United States, in compliance with the relevant treaties

The Republic of Panama is a sovereign independent State, with a centralised, democratic and representative government. The territory of Panama is divided into nine provinces and the area of Kuna Yala (formerly known as San Blas). Each province is in turn divided into electoral districts, which are represented in Parliament.

### **II- Legal system**

Panama is a civil law country, based upon the Roman law. The primary legal document is the Constitution. The Legislature issues the laws and the executive branch regulates them. The judicial branch is composed of the Supreme Court, the circuit courts and the municipal courts. Their jurisdiction depends on the nature of the action and/or its monetary value.

### **III- Language**

The official language is Spanish, although English is widely used. Other languages such as Chinese, Japanese, Hebrew and Hindi are also commonly spoken.

### **IV- Currency and exchange controls**

Panama's currency is the Balboa (PAB), divided into 100 cents. As a consequence of a bilateral agreement with the United States, the US dollar is a currency of legal tender in Panama.

There are no currency controls.

### **V- Economic policy**

Since independence from Colombia in 1903, Panamanian governments have traditionally welcomed foreign investments and promoted an environment to attract them. The only limitation is that retail business of any kind must be carried out by Panamanians only.

Some of the more important benefits and incentives are:

- there is no central bank that imposes monetary restrictions or currency controls
- there are no requirements for the registration of capital
- there are no taxes or restrictions on funds coming in or going out of Panama
- there is no mechanism to control the repatriation of capital or retained earnings
- secrecy is completely protected with respect to other jurisdictions

Although the Government has endeavoured to promote the manufacturing industry and agriculture, traditional interest has been placed mostly on the service sector because of Panama's infrastructure to provide international services.

#### **The Colón Free Zone and its advantages**

The Colón Free Zone was established in 1948 in the city of Colón at the Atlantic entrance to the Panama Canal.

It is the second largest free trade zone in the world (after Hong Kong) at 400 hectares. All kinds of processing and manufacturing are permitted within the zone, while administration can be conducted from inside or outside the zone.

An application to the tax authority is required to establish a company in the zone. New investment is particularly encouraged in high-tech companies, logistics services, environmental services, higher education establishments and research centres. The annual fee for companies

established in the zone ranges from US\$2,500 to US\$3,000. Monthly rental fees range from US\$0.40 to US\$4.00 per square metre.

Companies in the zone are exempt from tax on export-derived income, import and export duties, and VAT.

The Panama Pacifico special economic zone was created in 2004 and is currently under development over a 1,400 hectare site near the Panama Canal. It is managed by the Panama Pacifico Special Economic Zone Agency.

Benefits within the zone include no stamp duties and exemption from taxes and duties on corporate income, imports, exports and retail sales. From 1 January 2017, companies included in the Panama-Pacifico registry are subject to dividend withholding tax at 5% and to the annual net worth tax.

## **VI- Banking activity**

There is no central bank in Panama that imposes monetary restrictions or currency controls.

The Banking Law guarantees secrecy on any type of banking transaction and imposes sanctions on government servants who disclose information obtained in their official capacity to unauthorised persons. However, confidentiality is pierced when investigations for criminal actions under Panamanian law are conducted by government authorities of Panama.

The new banking law - in force since 1998 - replaces the National Banking Commission with the Superintendence of Banks as the entity responsible for control and surveillance of Panama's banking system. The Superintendence of Banks does not act as a central bank, but functions as an independent agency with its own identity. Banks are also required to report suspicious transactions to the newly created Unit of Financial Analysis for investigation as to whether the transactions are linked to drug trafficking or money laundering.

Some of the functions of the Superintendence of Banks are:

- to act as a consultant on banking matters and as a higher regulatory authority of the Government on banking, with the power to set the general policies of the Superintendence of Banks
- to approve the general rules used for the identification and supervision of economic groups to which banks belong
- to approve the rules and regulations which govern the determination of credits to be granted to related clients,
- to approve the regulations and standards used for the classification of high risk assets and for the determination of reserves to cover high risk loans
- to resolve appeals filed against resolutions rendered by the Superintendence of Banks
- to interpret banking law at an administrative level, and determine regulations under it
- to determine the procedure under which inspections of banks and related groups will be carried out,
- to determine the accounting principles and regulations that banks must follow, and to determine other requirements regarding the financial information that banks must provide to the Superintendence of Banks.

The Superintendence of Banks has exclusive authority to decide on the following matters:

- the granting of banking licences
- the opening, closing or moving of banking offices or branches
- the voluntary dissolution and liquidation of banks
- intervention relating to the reorganisation, compulsory liquidation and dissolution of banks
- mergers and consolidation of banking and economic groups to which banks belong
- the assignment, transfer or acquisition of shares in banks or in economic groups to which banks belong
- the publication of financial statements, and the regularity and content of such statements

- the supervision of banks according to international agreements ratified by Panama and to general rules of international law
- the supervision of economic groups to which banks belong, including regular inspections, the analysis of audited financial statements, and obtaining information about the transactions executed among companies belonging to those groups
- the implementation of inspections of banks under the initiative of the Superintendent or by order of the Board
- the implementation of prevention programs that allow knowledge of the financial situation of the banks, as well as allowing verification of information provided to the Superintendence of Banks
- the establishment of relationships and cooperation with banking authorities of other countries to improve the existing mechanisms of control and exchange of information on the banking systems
- providing assistance to other government authorities to eliminate unfair trading practices in the banking industry
- the resolution of all other matters that the law does not explicitly assign to the Board of Directors of the Superintendence of Banks, and
- the application of the sanctions and fines provided under the banking law for violations of it.

There are three types of banking licences in Panama:

- (1) *general licence*, for banks (either a subsidiary or a branch) which are authorised to engage in banking business in Panama or abroad (both domestic and offshore business). Banks operating under a general licence must have a paid-up share capital of at least US\$10m
- (2) *international (restricted) licence*, for banks which are authorised to engage in banking business exclusively outside Panama (offshore business). Banks operating under an international licence must have a paid-up capital of at least US\$3m, of which US\$250,000 must be deposited free of any lien or encumbrances with the National Bank of Panama, and
- (3) *representation licence*, for banks organised under a foreign law, allowing them to establish a representative office in Panama.

Foreign banks have recently opened branches in Panama, even though the Government has required the banks to adopt and implement strict measures to discourage money laundering. The Superintendence of Banks has ordered banks to require references and proper identification from their clients. Banks are also required to make further investigation when a transaction of any kind exceeds US\$10,000.

#### **Bank secrecy**

Several steps have been taken to combat money laundering and drug trafficking. The Supreme Court of Justice has ruled that the corporate veil of a company can be lifted for criminal investigations in Panama when the corporate structure is used to cover drug trafficking and money laundering.

Law No 41 of 2 October 2000 was enacted to typify in the Criminal Code and sanction for the first time in Panama, acts and conducts that are considered to be criminal activities related to asset laundering. According to new Art 389 of the Criminal Code, a person who knowingly accepts, deposits, negotiates, converts or transfers goods, moneys, negotiable securities or other financial resources originating from drug trafficking, statutory fraud, illegal arms trading, smuggling of persons, kidnapping, extortion, misuse of official funds, corruption of public servants, acts of terrorism, theft and contraband trading of vehicles, penalised under Panamanian law, in order to hide or conceal their illegal origin, or who assists in evading the legal consequences of such acts, shall face a possible fine and imprisonment for 5 to 12 years.

The Unit of Financial Analysis has jurisdiction to investigate money and asset laundering activities, and to conduct searches with banks, insurance companies, credit unions, financial

institutions and any other entity that directly or indirectly could be involved in suspicious activities related to money or asset laundering. It operates in coordination with the General Attorney's Office.

The following entities are obliged to provide to the Unit of Financial Analysis currency transaction reports on cash and monetary instruments, for amounts above PAB10,000:

- (1) companies located in the Colón Free Zone, other free zones and processing zones
- (2) the National Welfare Lottery
- (3) casinos and other gambling and betting establishments
- (4) real estate promoting and broker companies, and
- (5) insurance, reinsurance and insurance brokerage companies, and
- (6) with effect from 28 April 2015, lawyers, certified public accountants and notaries involved in certain activities, such as account administration, company formations and the sale of real estate.

These entities must keep in their registries the names of clients, their addresses and identification document numbers.

## 2- PANAMA COMPANIES AND TRUSTS

BUSINESS ENTITY	MAIN TRAITS	FORMATION	GOVERNANCE
<i>Company</i>	<p>The Commercial Code of 1927, the General Corporation Law and the Limited Liability Partnership Law of 1966 establish the different types of legal entities that can be adopted to engage in business activities:</p> <ul style="list-style-type: none"> <li>• General Partnership</li> <li>• Simple Limited Partnership</li> <li>• Joint Stock Partnership</li> <li>• Civil Partnership</li> <li>• Limited Liability Company</li> <li>• Panamanian Corporation.</li> </ul> <p>There are no minimum authorised capital requirements to set up a corporation or to operate it. Nor is it required to have the authorised capital fully paid up and assessed. The authorised capital may be in any currency and may be represented by par value or no par value shares. Shares can be issued to the bearer.</p> <p>Companies are managed by the Board of Directors, appointed by the shareholders. The powers conferred on the Board are defined in the Articles of Association.</p>	<p>Two persons, either natural or juridical, either Panamanians or foreigners, who do not have to be domiciled in Panama, are required for the formation of a Panamanian corporation. The standard procedure is for 2 attorneys to subscribe the articles of incorporation and then assign their rights to the client.</p>	<p>Every commercial enterprise must sign an incorporation charter or articles of incorporation, executed by public deed. Such agreement must be presented to the Public Registry for registration.</p>
<i>Trust</i>	<p>A trust is formed by a person (the settlor) who surrenders ownership of their property to a trustee for the ultimate benefit of another person (the beneficiary).</p>	<p>A trust must be created in writing, and the trust deed must state the terms on which the trustee holds the assets and identifies the beneficiaries.</p>	

### I- Panama companies

Panama's Constitution treats Panamanians and foreigners equally under the law. Foreigners may organise and operate most types of business activities in Panama except retail trade, which is exclusively limited to Panamanians.

The Commercial Code of 1927, the General Corporation Law and the Limited Liability Partnership Law of 1966 establish the different types of legal entities that can be adopted to engage in business activities:

- General Partnership
- Simple Limited Partnership

- Joint Stock Partnership
- Civil Partnership
- Limited Liability Company
- Panamanian Corporation

This is the most commonly used type of business organisation. In fact it has displaced all the above-mentioned types of companies because of its benefits.

Panamanian corporations are considered to be “offshore” because of the tax benefits and advantages that the Panamanian Fiscal Code provides to Panamanians, both individual and legal entities, on income earned or produced outside the Republic of Panama.

The legal discipline on joint stock companies was adopted in 1927 with Law No. 32 of February 26, which conformed to the rules adopted for companies in the US state of Delaware.

Panamanian law clearly distinguishes between the legal personality of the shareholders and directors of a corporation and the corporation itself. In this regard, Panamanian courts have been consistent and have traditionally recognised this separation. This is particularly true with respect to taxation and the separation of assets and funds of the corporation and those of the shareholders and directors. There are no nationality or residence requirements which apply to the subscribers of the articles of incorporation, stockholders, directors or officers.

The domicile and the accounting books and records may be kept in any part of the world when the corporation does not do business in Panama.

There are no minimum paid-up capitalisation requirements.

No annual stockholders’ meeting or Board of Directors meetings are required. Meetings that are held may take place via telephone or any other electronic means.

Corporations may hold the stock or otherwise have an interest in other corporations (holding companies).

Corporations which do not conduct any business in Panama are under no obligation to pay either income or dividend taxes or to declare or furnish any information to the Panamanian authorities.

### **Incorporation**

Every commercial enterprise must sign an incorporation charter or articles of incorporation, executed by public deed. Such agreement must be presented to the Public Registry for registration.

Two persons, either Panamanians or foreigners, who do not have to be domiciled in Panama, are required for the formation of a Panamanian corporation. “Person” for these purposes includes both natural and juridical persons. The standard procedure is for 2 attorneys to subscribe the articles of incorporation and then assign their rights to the client.

The articles of incorporation must at least state the following basic information:

- (1) Name and domicile of the incorporators.
- (2) Name of the corporation, which can be in any language, including numbers.
- (3) Main purposes of the corporation, which may engage in any lawful business. The law does not require that a specific objective or purpose be stated. It is enough to indicate that the corporation will carry out any lawful activity allowed by the laws of Panama and, particularly, those approved by the Board of Directors.
- (4) Amount of authorised capital and the number of shares into which the capital is divided. Either the par value of the shares has to be indicated, or a statement must be included indicating that the shares are to have no par value. In the latter case, the price or value of the shares will be determined by the Board of Directors at the moment it approves the issuing of the no par value shares. The company may have common or preferred stock, or both. Shares may be of different classes, values and rights. They may be issued to the bearer or to a registered owner, or both.
- (5) The domicile of the corporation and the name and domicile of its resident agent, who must be a lawyer in Panama.
- (6) Term during which the company is to exist.



- (7) Name and address of the directors (there must be at least 3), and the name of the officers (at least a President, a Secretary and a Treasurer), who may be the same as the directors. One person may hold more than one office at the same time. Directors and officers may be non-Panamanians and they do not have to be domiciled in Panama.

- (8) Any other provision desired.

#### **Capital structure**

The law does not impose a minimum of authorised capital, which may be represented by common or preferred shares, with par or no par value, or both. Shares can be registered or issued to the bearer. In the former case, the shares do not need to be fully paid and assessed. Shares may be in registered or bearer form. Registered shares must be recorded in the record book of shares.

There are no restrictions as to the nationality or the residence of shareholders. Shares may be held by another company or through nominees. A company may have one shareholder.

#### **Management**

Companies are managed by a board of directors which is appointed by the shareholders. The board's powers are defined by the articles of incorporation. Every company must have at least 3 directors and officers, who can be the same persons and do not need to be shareholders, nor do they have to be Panamanians or reside in Panama.

The name of the directors and officers as well as their replacements must be made known to the Public Registrar.

#### **Local presence**

There must be a resident agent in Panama, usually the lawyer or the law firm that has incorporated the company. The resident agent has no powers to bind or compromise on behalf of the company. Their only power is to pay the annual tax of registration in the Public Registry. There is no requirement for the shareholders, directors or officers to be resident in Panama.

#### **Accounting and auditing requirements**

All companies operating in Panama are required to maintain accounting records according to generally accepted accounting principles in the Republic of Panama.

Tax regulations require taxpayers to maintain financial statements attested by certified public accountants according to generally accepted auditing standards in Panama. The accounting records can be kept by any legal means either in written or electronic form.

### **II- Branches of foreign corporations**

A foreign corporation can have branch offices or agencies in Panama and engage in business in Panama after presenting the following documents to the Public Registry for registration:

- notarised document of the articles of incorporation
- copy of the last balance sheet together with a declaration of the portion of the corporate capital utilised or to be utilised in business in Panama, and
- good standing certificate of the company in its country of origin, authenticated by the Panamanian consul.

### **III- Trusts**

#### **Incorporation and general information**

Panama's legislation on trusts was first enacted in 1925. In 1941 another law was adopted to include some principles of foreign legislation on trusts such as that of the United States and England. After 4 decades, the Trust Law 1984 was implemented to update the old-fashioned law and incorporate modern concepts.

A trust is formed by a person (the settlor) who surrenders ownership of their property to a trustee for the ultimate benefit of another person (the beneficiary). A trust must be created in writing, and the trust deed must state the terms on which the trustee holds the assets and identifies the beneficiaries. The document sets out the rights and obligations of the trustee as well as any other lawful clause agreed upon by the parties thereof. The only formality required

is that the signature of the settlor and the trustee be authenticated by a Notary Public from their respective domicile.

A Panamanian trust does not need to be registered in any public office. The trust is a private act between the settlor and the trustee and there is no requirement for the contents of the trust to be disclosed to any authority. If real property located in Panama is given in trust, then such circumstance must be recorded in the Public Registry where the real property is registered.

There are no limits on the amount of cash or other assets which can be settled into a Panamanian trust.

According to the Trust Law, the trustee and their representatives or employees, as well as persons taking part in trust-related transactions by reason of their profession or trade, must keep secrecy in connection therewith.

Parties are allowed to bargain for any lawful clause. The trust may be created for any purpose not in conflict with moral principles, the law or public policy.

Trusts do not exist in perpetuity. The settlor shall determine its duration. A trust may also be revocable if the trust deed contains a provision to that effect.

*Arbitration* may be used in the resolution of conflicts. It may be established in the trust deed that any controversy arising from the trust shall be decided by arbitrators or referees. A trust deed may also stipulate the procedure by which arbitrators or referees must abide to settle disputes.

#### **Trustee and beneficiaries**

The trustee may be a corporate body or an individual, and anyone can act as a trustee. However, it is normal to appoint a local professional trustee (lawyer, accountant) or a trust corporation (generally a bank). The trustee is bound by their fiduciary duties to exercise utmost good faith, to keep confidentiality and to carry out their duties with due diligence to the best of their abilities and skill. The trust deed must contain provisions relating to the voluntary retirement of a trustee and the appointment of a new trustee.

Any person can be the beneficiary of a trust. The trust must set out the name of the beneficiaries and the circumstances in which those beneficiaries are to receive the trust income and assets.

#### **Residency rules**

A trust created in accordance with the laws of Panama shall be governed by Panamanian law. However, it may be subject to foreign law if the trust deed so provides. Panamanian trust law and tax provisions follow the concept of territoriality under which a trust is exempt from tax provided it involves:

- (1) real property located abroad;
- (2) money deposited by natural or juridical persons whose income is not derived from Panamanian sources or taxable in Panama; or
- (3) shares of stock or securities of any kind, issued by corporations whose income is not derived from Panamanian sources, although such moneys, shares of stock or securities are deposited in Panama.

#### **IV- Captive insurance companies**

Captive insurance companies are instruments for the international business community that complement the different services and products provided by Panama as an international financial centre. They are companies, either Panamanian or foreign, which are authorised by the Superintendent of Insurance and Reinsurance of the Ministry of Commerce and Industry of Panama (the Superintendent) to insure or reinsure foreign risks from an office in Panama. The authorisation by the Superintendent is granted to insure either: long-term risks, which include individual, collective or group lives for hospitalisation, pension or permanent rent; or general risks, ie any other risks not considered as long-term risks. Captive insurance companies may only insure or reinsure risks approved by the superintendent. They are not allowed to insure or reinsure local risks or risks within Panama.

Under Panamanian law, a captive insurance company is a legal entity, usually a corporation, which is organised, owned and managed usually by a company of the same economic group, whose sole purpose is to provide insurance for that company or the economic group, as an alternative to purchasing insurance from the conventional market. It is a closely-held insurance company whose insurance business is primarily supplied and controlled by its owners because they have direct participation over the captive's major operations, including investments, underwriting and claims management policy, and in which the insured are the principal beneficiaries.

It is obvious that not everyone needs a captive insurance company. However, for large companies which have to hire an important number of insurance policies it may be convenient to organise a captive insurance company, particularly to economic groups composed of several companies. In the latter case, since the captive insurance company belongs to the same corporate organisation it can get a number of benefits.

The law in Panama has been designed and structured to allow a number of benefits from the use of a captive insurance company. The most relevant benefits are:

- Lost costs because the company is part of the same economic group. Therefore the expenses and overheads can be controlled and the same group sets the premiums.
- The premiums paid by the insured are a source of income for the same economic group since they are earned by the corporate organisation. The premiums paid by the insured are received by the captive which is part of the same group of companies, therefore the organisation maintains the premiums.
- The management of a captive insurance company by the same economic group allows a better risk administration and gives flexibility to prepare policies and coverages tailored to the needs of the group, which also contributes to the reduction of costs. The insurance market sets its prices for insurance companies without discriminating for the performance of individual clients. Therefore, the losses experienced by certain clients affect the prices for those clients who have not had losses or have had less than the others. By insuring the risks of companies that belong to the same group, the captive insurance company has the potential capacity to obtain better premiums from the industry.

### **Incorporation**

Captive insurance companies require a licence issued by the Superintendent of Insurance and Reinsurance. Before the licence can be obtained, the Superintendent must first approve the organisational structure of the company (if it is a Panamanian company) or approve the company records (if it is a foreign company). The applicant company must submit the following documents:

- draft articles of incorporation (if the company is Panamanian) or a certified copy of the articles of association (if the company is foreign); a good standing certificate; a resolution issued by the board of directors of the company authorising the opening of an office in Panama, appointing a resident manager or "attorney-in-fact", and authorising the amount of capital to be used to carry out business in Panama
- banking and personal letters of reference for all shareholders and directors of the company
- the official address of the company's offices and the name of the resident manager or attorney-in-fact. This resident manager or attorney can be a company authorised by the Superintendent to act as managing company
- a technical report, which must state the types of risks to be insured or reinsured, and the insurance or reinsurance activities to be undertaken, and
- a certified cheque for US\$1,000 to cover administrative and due diligence expenses of the Superintendent

If the company intends to carry out the insurance of general risks, the required paid-up capital is US\$150,000. If the company intends to carry out the insurance of long-term risks, the required paid-up capital is US\$250,000.

The fee of the Superintendent of Insurance and Reinsurance for the granting of the licence is US\$1,000. The annual licence fee of the Superintendent is US\$2,000. In addition, the company must pay an annual fee of US\$300.

## **V- Foundations**

The Panamanian private interest foundation is regulated by the Private Foundation Law 1995. It is generally used for asset protection and estate holding purposes, but unlike trusts, a foundation is an independent legal entity, which does not have any shareholders.

### **Incorporation and general information**

It takes up to five days to establish a private interest foundation in Panama. Creation procedures are similar to those of a Panamanian corporation. Any private person or corporate entity may establish a foundation. As a foundation does not have any shareholders or members, this structure is fully confidential. The following information must be filed when creating a Panamanian foundation:

- the name of the foundation, which must be different from other names already registered in Panama, and the word “Foundation” present in the name
- capital of the foundation (not less than US\$10,000)
- the names and addresses of all the members of the foundation council
- the registered address
- the name and address of the foundation’s resident agent
- the purpose of the foundation
- procedures for appointing beneficiaries of the foundation
- the right to modify the purpose or organisational elements of the foundation, if and when necessary
- duration
- instructions for managing the foundation’s assets on dissolution, and
- any additional legal information a founder wishes to include.

A Panamanian foundation must be registered in the Public Registry Office and subsequently its founder or any third party should transfer initial capital to the foundation. At this point the capital becomes an asset of the foundation and totally separated from the person or organisation which made the transfer.

On registration, the foundation council appoints a protector, who controls the foundation’s capital and defines its development strategy. Any person or organisation may be stated as a beneficiary of a foundation and its identity is fully confidential. A Panamanian foundation is administered by the council, which consists of at least three private persons or corporate entities. A foundation created in accordance with the laws of Panama must have a local registered agent, generally a lawyer or a law firm, and a registered address in Panama.

Foundations registered in Panama may be redomiciled to another jurisdiction. A foreign foundation may be registered in Panama by submitting a series of documents and information to the local authorities. Only the registered agent and members of the foundation council are mentioned in public records. All the other information regarding the foundation’s beneficiaries, protector and transactions are strictly confidential. Any donation or transfer of assets to a foundation is not subject to taxation. No taxes are payable on modification or dissolution of a foundation. Profits of a Panamanian foundation are not taxed if they arise from activities conducted, or assets located, abroad.

### 3- TAXATION SYSTEM

#### I- Resident entities

According to Panama's tax legislation, a taxpayer is any person or legal entity (corporation, partnership, etc), national or foreign, receiving any income that is produced from any source within the territory of Panama, regardless of where it is received. Panamanian-sourced income is subject to income tax unless specifically exempted, without regard to the nationality, domicile or residence of the taxpayer or the place where a contract is executed. Foreign source income is not subject to tax in Panama for either residents or non-residents. Taxable income of corporations is the balance of gross income less deductible disbursements and expenses.

Companies operating in the Colon Free Zone or the Panama Pacifico special economic zone enjoy numerous trade advantages along with special tax incentives

#### **Residency defined**

A company is resident in Panama if its principal business is in Panama, regardless of where it was incorporated. The distinction between resident and non-resident corporations is of less relevance than in some other countries. This is because of the concept of territoriality under which only income derived from Panamanian sources is taxable in Panama. Branches of foreign corporations are subject to Panamanian income tax if the income of the branch has its source in Panama.

For individual income tax purposes, an individual is treated as being a Panamanian tax resident if the individual spent at least 183 days in Panama during the calendar year, or has a permanent place of residence in Panama (unless the individual spends more than 183 days in another country during the calendar year and is resident in that country for tax purposes). Any person, individual or legal entity, national or foreign, who has to pay taxes for themselves or on the account of others must file a return on or before 15 or 31 March each year.

#### **Rates of tax**

##### Corporate income tax

Pursuant to the Fiscal code, the taxable rate payable by entities is maintained at a flat rate of 25% on net taxable income as of 1 January 2011. The net taxable income is calculated by deducting costs, expenses and incentives from gross income. From 2020, reduced income tax rates are available for entities considered to be micro, small and medium-sized companies. The reduced rates are as follows:

<i><b>Turnover (US\$)</b></i>	<i><b>Tax rate (%)</b></i>
Up to 11,000	7.5
11,000.01–36,000	10
36,000.01–90,000	12.5
90,000.01–150,000	15
150,000.01–350,000	20
350,000.01–500,000	22.5

An alternative minimum tax (AMT) applies for entities with taxable income exceeding US\$1.5 million. Such entities pay the higher of the sum resulting from:

- the headline tax rate applied to net taxable income calculated by deducting costs, expenses and allowable disbursements from gross income, or
- a rate (known as CAIR) of 4.67% of gross taxable income (excluding foreign and other exempt income).

A company may appeal against use of the AMT if this results in a loss, or if the effective rate exceeds the standard corporate income tax rate.

A limited liability corporation can carry forward losses and deduct them from profits arising in the following 5 consecutive tax periods, subject to some limitations.

#### Taxation of individuals

The territorial concept of income applies to individuals. Income tax on individuals is only charged on income derived from Panamanian sources. However, some income is exempt.

##### a) Residents

As a result of the reforms made to the tax legislation by the Fiscal Code, certain income is now also considered to have been earned within Panama if that income is received for services carried out by an individual for work performed outside the national territory, and:

- the individual has remained in Panama for at least 70% of the calendar year, and
- the work has an effect on the production of the individual's income.

Services rendered outside Panama that are not related to income-earning activities carried on inside Panama, and sporadic services such as consulting, conferences and similar, are exempt from income taxes.

Taxable income is the aggregate of all income from Panamanian sources after the deduction of allowable expenses and losses and the exclusion of exempt income. Taxable income includes income from employment, the rendering of independent personal services, business activities and investment income.

The following table provides the progressive tax rates for individuals applicable for 2023 (the same rates have applied since 2011):

<i><b>Taxable income</b></i> <i><b>(US\$)</b></i>	<i><b>Tax payable</b></i> <i><b>(US\$)</b></i>
Up to 11,000	0
11,000.01 – 50,000	15% of the amount exceeding 11,000
Over 50,000	5,850 + 25% of the amount exceeding 50,000

Fees earned by directors are subject to withholding at the rates of 10% (for fees up to US\$25,000) and 15% (for fees exceeding US\$25,000).

##### b) Non-residents

The gross income of non-resident individuals is subject to withholding tax at the rate of 12.5%. Payments made to artists and sportspeople are subject to a 15% withholding tax. Payments made to the providers of film, radio and television entertainment are subject to a 6% withholding tax.

#### **Capital gains**

Capital gains are considered taxable income, except those arising from the sale of securities in companies registered with the National Securities Commission or issued by the Panamanian Government.

Sales of shares are subject to a 5% withholding tax which is credited against eventual capital gains tax liability, which is at a reduced rate of 10%.

Gains from real estate transactions are exempt as they have a separate basis of calculation which results in a different effective rate. If the taxpayer is not acting in the course of a business the tax rate is generally 10%.

## **II- Withholding taxes**

Income tax must be withheld from payment to all salaried persons, from dividends distributed and from payment of any income to non-residents.

#### **Withholding tax on dividends**

Income tax must be withheld from payments of dividends from Panamanian source income to both residents and non-residents. Where a tax treaty does not provide otherwise, dividend tax is set at 10%. A reduced dividend tax of 5% applies to companies located in the Colon Free Zone or other free zones subject to certain conditions. For foreign source income, income exempt

from income tax (eg interest from government bonds) and income derived from exportation activities, a 5% rate applies to dividend distributions.

Dividends paid by a corporation that does not produce or earn its income within Panama or from a Panamanian source, are not subject to withholding tax.

#### **Withholding tax on wages**

Every employer is obliged to withhold tax from the salaries and other remunerations paid to employees according to charts prepared by the Internal Revenue Service. Employees who receive salaries from more than one employer at the same time and/or obtain taxable income from other sources, except dividends which have been subjected to dividend withholding tax, must file a personal income tax return.

#### **Withholding tax on payments to non-residents**

Every company that remits payments abroad or credits the account of persons abroad for taxable income in Panama of any kind must withhold tax at the time of payment or credit.

### **III- Tax return requirements**

Any person, individual or legal entity, national or foreign, who has to pay taxes for themselves or on the account of others must file a return on or before 15 or 31 March each year. The return must include an affidavit of income obtained during the preceding taxable year, as well as dividends or earnings that were distributed to shareholders or partners, and interest paid to creditors. At the same time, a taxpayer must file an estimated tax return for the coming year. Estimated income on the return may not be less than the income appearing on the current year's return.

Non-residents with Panamanian source income other than dividends on which tax has been withheld must file a return personally or through an agent.

Failure to file a tax return on time may result in a fine of US\$10 to US\$1,000 depending on the amount of tax owing. Underpayments of tax are subject to a penalty of a 10% surcharge.

In addition, interest is charged per month or fraction thereof at an annual rate of 2 percentage points over the reference rate set by Panama's Superintendency of Banks. For the year 2023, the reference rate is 6.9%.

### **IV- Other Panamanian taxes**

In addition to income tax, there are a number of other taxes imposed on a national and municipal level. The taxes indicated below are national taxes except for the municipal motor vehicle tax.

#### **Public Registry**

Certain documents must be recorded in either the civil or the commercial Registry. Such registration is both legally required and necessary to validly assert such documents against third parties in a court of law. Registration fees vary with the nature and amount of the transaction.

#### **Stamp tax**

Fiscal stamps are required on all documents of a public nature. They are also required on receipts, invoices for credit sales, drafts, notes and cheques. Stamped paper is also required for presenting administrative pleas before government offices. International leases (if the leased assets are only used outside Panama) are exempt.

#### **Tax on air transportation**

Foreign travel is taxed when a ticket is purchased in Panama. An airport tax is levied on all departing passengers, except those in transit for less than 12 hours.

#### **Clearance certificate**

A clearance certificate indicates that the taxpayer has fulfilled all their income tax obligations. This certificate is required for the execution of certain transactions with the Government. Non-residents who stay in Panama for more than 90 days must obtain a clearance certificate to leave the country.

**Property tax**

Real estate is taxed at a progressive scale (0% up to 1%). The tax is based on assessed value, which is determined by the Land Commission.

**Liquor tax**

Importation and manufacture of liquor is taxed in Panama.

**Taxes on vessels**

Ship and title registration is taxed, depending on the tonnage of the vessel. No stamp duty applies.

**Import and export duties**

Panama levies import duties on all goods except those legally or contractually exempted. No duties are levied on exports except for bananas, sugar, certain natural resources, scrap metals and valuable metals.

**Commercial and industrial licences**

It is necessary to obtain a licence to carry out commercial or industrial activities in Panama. These licences are taxed annually upon the net worth of the company.

**Road tax**

Motor vehicles are subject to a national road tax and to a municipal licence tax that varies with the use, size and type of vehicle.

**Municipal tax**

Municipalities are authorised to tax many items. The tax rates vary from one city to another.

**Value added tax**

There is a consumers tax imposed on the transfer of personal property and goods by sale and purchase exchange, contribution to a corporation, cession, or any other act, contract or agreement that either implies or is aimed at transferring control of the personal property.

**Annual corporate tax**

All national and foreign corporations recorded in the Public Registry must pay an annual tax.

**Real Estate Transfer Tax**

A 2% tax applies on the cost price or official registry value of real estate being transferred for consideration. There is an exemption on the first transfer of residential property and commercial premises transferred within 2 years of the building being approved as fit for use.

**Telecommunications Tax**

Since April 2012, a 0.5% tax applies to consumers' monthly bills in respect of national and international telecommunication services and cable television.

**V- Dividends received from Panamanian companies**

Corporate dividends in cash or stock paid from Panamanian source income are subject to final tax in the form of a 10% withholding tax. The dividends are not included in the recipient's taxable income. Such tax is withheld by the paying corporation. Dividends may be subject to 5% or 20% in certain cases — see (f) above. Corporations that receive dividends on which tax has been withheld by the paying corporation, or dividends that were paid from exempt sources, need not withhold any tax when they distribute such dividends to their own shareholders.

**VI- Fiscal incentives, concessions and exemptions**

The Panamanian Fiscal Code expressly exempts from taxation the interest paid to either saving or time deposits as well as to any other types of banking accounts that are kept in banks domiciled in Panama. The Code also exempts from income tax the interest and commissions that such banks have to pay to other banks or other international financial institutions domiciled abroad for loans or any other type of instrument that provides funds (even if such funds are used by the borrower bank to produce productive assets defined by the Banking Law). Interest from government bonds is also exempt.

There are schemes to provide incentives to particular industries including tourism, exporting, forestry, shipping, the pharmaceutical sector, the film industry and technology.



- “Petroleum free zones” were set up in Panama in 2003 to encourage the transformation and distribution of crude oil and its by-products. Petroleum imported into a petroleum free zone is exempt from import duty or taxes and is exempt from sales tax if sold within the zone.
- Companies that engage in oil and gas exploration and production (hydrocarbon companies) are exempt from certain import duties, and benefit from special depreciation rates and carry-over provisions.
- A Technology Park was established in 1998 as an international centre to foster education and innovation. Its occupants are free from a wide range of taxes.
- Incentives are available for biofuel production and electricity generation from biomass, and for wind power generation.
- From 7 August 2012 a tax credit of up to 5% is available for direct investments in the construction of natural gas power plants. Exemptions from import duty are also available on equipment and materials for such projects.
- From 10 June 2013, taxpayers can benefit from a 5% tax credit for investments made for the construction of solar panels that generate electricity. Investors are also exempt from paying import duties on equipment, machinery, etc, required for constructing and maintaining solar panels. Accelerated depreciation may be used in connection with the acquisition of equipment used for the production or the consumption of solar electricity, but only if it is for business purposes.
- In 2007 Panama inaugurated a headquarters company regime (sedes de empresas multinacionales, or SEM) which offers tax breaks to encourage multinational companies to set up various types of service companies. SEM companies are exempt from VAT on services rendered to non-Panamanian taxpayers, and (from 1 January 2019) are subject to a reduced 5% income tax rate on profits from such services.
- Tourist development in certain nominated regions benefits from exemption from income tax for 15 years, and from import taxes and property taxes.
- The agrofishery sector is subject to the standard alternative minimum tax rate from 2013, at 4.67% of total taxable income .
- From 30 November 2020, legislation provides for a preferential tax regime (5%) for companies that provide manufacturing services to other companies within the same multinational group (empresas multinacionales para la prestación de servicios relacionados con la manufactura — EMMA).

## **VII- Taxation of foreign income**

Panama has a territorial tax system. There is therefore no tax on any corporate profits. However, dividends distributed from foreign source income are subject to a 5% dividends tax. Executive Decrees No 170 and 197 of 27 October and 15 December 1993 respectively reiterate Panama’s territorial concept of taxation. These provisions expressly exempt from income tax the income listed below, which is considered to be earned from offshore transactions:

1. the income earned from invoicing from an office established in Panama to a third party, the sales of goods and products for a price higher than that for which those goods and products were billed to the office established in Panama by the supplier, provided the goods and products are not delivered to Panama
2. the income earned by an office established in Panama for business or commercial transactions that are executed, consummated or take effect overseas
3. the dividends paid to partners and shareholders by a Panamanian company from income earned overseas, as well as the income earned from the activities indicated above
4. the interest, commissions and any other income of similar nature earned by an individual or corporation notwithstanding where they are domiciled or the country where the corporation has been organised, earned or collected from loans, lines of credit or any other financial transaction entered into with a borrower domiciled abroad, provided that

the use of the funds takes effect outside Panama even though the payment of capital and interest of such financial transactions is made in Panama

5. the interest, commissions and any other income of similar nature earned from loans, lines of credit or any other financial transactions granted to corporations notwithstanding their domicile or their country of organisation, provided these corporations earn their income from sources, activities or transactions that are executed or take effect outside the Republic of Panama
6. the income or interest earned by trusts organised in Panama according to Law No 1 of 1984 (known as the Trust Law of Panama) from assets located abroad and given in trust, saving accounts or time deposits of individuals or corporations whose income is not produced in Panama, as well as from shares or securities of any nature, even though those deposits, shares or assets are kept in the Republic of Panama
7. the premiums paid for insurance or reinsurance policies covering the risks of individuals, corporations or assets overseas
8. the income earned from the sale, assignment or conveyance of shares and participation in a Panamanian corporation whose assets are located abroad
9. the income earned from the sale, assignment or conveyance of shares and participation in a Panamanian corporation that owns a vessel registered under the Panamanian flag in the Panamanian Merchant Marine
10. the income earned by vessels registered under the Panamanian flag in the Panamanian Merchant Marine from international maritime commerce in certain circumstances
11. the income earned from the sale, assignment or conveyance of vessels and aeroplanes dedicated to international commerce registered under the Panamanian flag
12. the income earned from the exploitation of a vessel registered under the flag of a foreign country provided the said country, as reciprocity, exempts from taxation the income earned in that country by a vessel registered under the Panamanian flag
13. the income earned by any foreign individual or corporation, either with residence in Panama or abroad, from the exploitation of a vessel registered under the flag of any country, provided the country of origin of said individual or corporation grants the same exemption to Panamanians or corporations organised under Panamanian law or to those who have their domicile in Panama
14. the interest paid by local and foreign banks located in Panama to savings accounts or time deposits kept in this country
15. the interest paid by local and foreign banks located in Panama to international banks and financial institutions for loans, lines of credit, banking acceptances and any other instrument
16. the interest earned by local and foreign banks located in Panama for loans granted to finance either the construction of low-cost houses as defined by the Ministry of Housing, the sowing of rice, corn or beans, the development of the agricultural and cattle raising and agro-industrial sector, and investments in forestry
17. the premiums and royalties paid to individuals and corporations located abroad by individuals or corporations domiciled in the Colon Free Zone in Panama, and
18. the payments made to lessors from international leasing entered into according to Law No 7 of 1990, which regulates leasing contracts in Panama.

This law distinguishes between domestic and international leasing transactions. If the lessee of property uses the property in the Republic of Panama for the production of assessable income, the rent in respect of the property is treated as taxable income in Panama, irrespective of the nationality or residence of the lessor. Conversely, if leased property is not commercially used in Panama, the associated rentals are not subject to Panamanian income tax because they are regarded as not having a Panamanian source.

Law No 7 of 1990 specifically excludes from taxation income generated by the leasing of vessels engaged in international commerce.

A Panamanian corporation wishing to engage in a tax-exempt international property leasing transaction is required to have a minimum paid-up capital of US\$100,000. It must then obtain a commercial licence, which is a relatively simple procedure, and register with the Ministry of the Treasury. The company must commence international leasing operations within six months of registration.

There is no tax on foreign source capital gains.

There are no restrictions on transfer of income abroad. It is important, though, to bear in mind that such income is subject to tax if it is generated in Panama.

#### **VIII- Taxation of Panamanian trusts**

Because of the territorial concept followed by Panamanian tax provisions and the Trust Law, the trust shall be exempted from all taxes, contributions, assessments or encumbrances, provided it involves:

- real property located abroad
- money deposited by natural or juridical persons whose income is not derived from Panamanian sources or taxable in Panama
- shares of stock or securities of any kind, issued by corporations whose income is not derived from Panamanian sources, although such moneys, shares of stock or securities are deposited in Panama, and
- interest accrued from time deposits or savings accounts in Panama.

The assets of a trust constitute a separate estate from the personal assets of the trustee for all legal purposes, and cannot be attached or embargoed, except for obligations incurred or damages caused by the performance of the trust, or by third parties if the property has been transferred fraudulently and in detriment of the rights of third persons.

### **4- OFFSHORE COMPANIES**

#### **I- General information**

Panama legislation on corporations does not define offshore corporations. However, the territorial concept of income followed by Panamanian legislation allows the execution of “offshore” operations, which are not subject to tax for types of income considered to be earned from offshore transactions and therefore exempt from Panamanian tax

Offshore companies are outside the scope of Panama’s income tax laws, apart from income arising in Panama, and can therefore make payments without accounting for withholding tax. Shareholders may be Panamanians or foreigners residing in Panama and are still not obliged to pay tax if they do not receive income from Panama.

Panamanian companies are widely used for offshore operations such as trading activities, particularly in those areas of the world where the formation of a local trading entity is impossible or undesirable. They are also used as holding companies and for a wide range of other business activities such as investment, real estate and patents or to provide financial services to a multinational group of companies. Panamanian “offshore” companies may be domiciled in Panama. Their nature as “offshore companies” is determined by their overseas operations.

A company not incorporated in Panama and whose control is outside the country will not be within the scope of Panama’s income tax, unless it is carrying out business in Panama through a permanent establishment or branch.

#### **II- Offshore holding companies**

Panama’s taxation concept is suitable for the execution of offshore transactions, which are exempt from income tax in Panama.

Panamanian companies may conduct any kind of business in third countries either directly or through a subsidiary or branch, and may also act as a clearing house for profits from foreign operations.

If income is not produced in Panama, no taxes have to be paid.

### **III- Offshore finance companies**

In Panama a domiciled company may be used as a finance company. It will not be subject to tax if its income is not produced in Panama.

### **IV- Offshore licencing companies**

A Panamanian company may act as a licensor of rights to a foreign subsidiary. Payments for the right to use industrial property such as patents, copyrights, trade marks, scientific information or industrial processes are not taxed in Panama if the profits or royalties are not generated in Panama or, if so, the company is domiciled in the Colon Free Zone.

### **V- Colon Free Zone trading companies**

The Colon Free Zone in Panama is a free trade zone suitable for the establishment of trading companies, which receive the following tax benefits:

- dividends to offshore stockholders are taxed at a 5% rate
- there is no capital investment tax
- local taxes (except for municipal tax) do not apply to free zone companies
- no Panamanian excise duties, consular fees nor any other charges are levied on shipments destined to the free zone or from the free zone to offshore consignees.

### **VI- Offshore administration companies**

A Panamanian company can carry out the management and control and the administration of a group of companies that executes operations overseas. The Panamanian company will not have to pay income tax for these operations.

### **VII- Offshore shipping companies**

The Panamanian Shipping Registry was founded in 1925 and has grown into one of the world's largest fleets of merchant vessels, with no restrictions on their type or tonnage.

Prior to the reform introduced by Law No 8 of 2010, Panama's Fiscal Code expressly exempted from taxation income earned from the international maritime commerce of Panamanian merchant vessels registered in Panama, even if the transportation contract was executed in Panama.

From 1 January 2011, taxable income includes income generated by international transport companies from freight services, fares, charges and other services for which Panama is the origin or final destination. Other income derived from international shipping companies remains exempt from income tax.

## 5- BILATERAL TAX AGREEMENTS

Panama has concluded tax treaties with a number of countries.

An entity intending to make a payment to a non-resident under the terms of a tax treaty must obtain notification from the tax authorities of the entitlement of the recipient to benefits under that treaty before making any payments. This will require the provision of detailed information concerning the nature of the payment and the identity of the recipient.

The following rates of Panamanian withholding tax apply to non-resident entities:

	<i>Dividends</i>	<i>Royalties</i>	<i>Interest</i>
	%	%	%
<i>Non-treaty countries</i>	5/10/20/40	12.5/25	12.5/25
<i>Treaty countries</i>			
Barbados	5/7.5	0/5/7.5	0/7.5
Czech Republic	10	0/5/10	10
France	5/10	0/5	5
Ireland	5	0/5	5
Israel	5/15	0/12.5	12.5
Italy	5/10	0/5/10	10
Korea	5/10	0/5	3/10
Luxembourg	5/10	0/5	5
Mexico	5/7.5	0/5/10	10
Netherlands	0/10	0/5	5
Portugal	10	0/10	10
Qatar	0/6	0/6	6
Singapore	4/5	0/5	5
Spain	0/5/10	0/5	5
United Arab Emirates	0/5	0/5	0/5
United Kingdom	0/10	0/5	5
Vietnam	5/7/12.5	0/10	10

Panama has signed the following TIEAs based on the OECD model convention: Canada, Denmark, Faroe Islands, Finland, Greenland, Iceland, Japan, Norway, Sweden and the United States.