COUNTRY
COMPARATIVE
GUIDES 2021

The Legal 500
Country Comparative Guides

Dominican Republic
TAX

Contributing firm

Pellerano Nadal

Caroline Bono

Partner | cbono@pellerano.com

This country-specific Q&A provides an overview of tax laws and regulations applicable in Dominican Republic.

For a full list of jurisdictional Q&As visit **legal500.com/guides**

DOMINICAN REPUBLIC
TAX

1. How often is tax law amended and what are the processes for such amendments?

There have been 6 tax reforms in the last 12 years. Currently, the government is seeking to implement a fiscal reform, which may include amendment to the tax legislation.

Tax law amendments shall first undergo Congress approval and then, for its implementation, the President of the Dominican Republic (DR) shall issue an executive order.

2. What are the principal procedural obligations of a taxpayer, that is, the maintenance of records over what period and how regularly must it file a return or accounts?

Accounting

Pursuant to DR laws, accounting books shall be kept in Spanish and in Dominican Pesos for 10 years. Consolidated accounts are not accepted by the authorities for tax purposes.

Tax compliance

Entities:

Tax obligations shall be satisfied on a monthly and annual basis regardless if the entity has operations or not. If the entity does not operate, it shall file monthly and annual returns with zero operations1.

The main tax obligations are:

Filing of monthly tax returns/reports, mainly:

- Withholding income tax returns (IR-17 form) by the 10th day of every month
- VAT (ITBIS for its acronym in Spanish) return (IT- form) by the 20th day of every month
- IR-3 return (withholding tax on salaries) by the 10th day of every month
- Tax receipts (NCF for its acronym in Spanish) reports 606 (purchases), 607 (sales of goods/services), 608 (null), 609 (payments abroad) by the 15th day of every month.
- Tax advance payments quotes by the 15th day. These are generated with the filing of IR-2 return (see below).

Filing of annual tax returns/reports:

- Corporate income/asset tax return (IR-2 form) during 120 days after year-end. Default year-end date is December 31. Other year-end dates exist but should be expressly requested: March 31, June 30, and September 30.
- Informative return for Operations between Related Entities during 180 days after year-end.

Individuals

Dominican source income generated by individuals, whether from a dependent or independent economic activity, is subject to income taxes. Tax Resident individuals will be subject to progressive tax rates as follows:

Income tax rates on salaries	
Annual Compensation (in cash)2	**Rate**
Income up to DOP$416,220.00	Exempt
Income from DOP$416,220.01 to DOP$ 624,329.00	15% of the surplus of DOP$416,220.01
Income from DOP$624,329.01 to DOP$867,123.00	DOP$31,216.00 plus 20% of the surplus of DOP$624,329.01.
Income from DOP$867,123.01 and excess	DOP$79,776.00 plus 25% of the surplus of DOP$867,123.01

Non-resident individuals are subject to an income tax rate of 25% flat3.

Employees will satisfy income taxes on their salaries via monthly withholding made by the employer, remitted to the DGII via IR-3. Individuals that generate DR source income from independent activities, shall pay income tax via the filing of an annual individual income tax return (IR-1) due 90 days after year-end (by March 30 or next business day). This will generate tax advance payments to be paid in three quotes during the year (by June 30, September 30, and December 31).

Although the DR follows a territoriality principle for tax purposes, it has an exception. Taxpayers are subject to tax on income generated abroad on financial gains and investments. Non-resident individuals are taxed on financial income after the third year of tax residency.

3. Who are the key regulatory authorities? How easy is it to deal with them and how long does it take to resolve standard issues?

The Dominican Tax Authority or *Dirección General de Impuestos Internos* (DGII) is the key regulatory authority for tax purposes.

Based on precedent, any issue may take at least one month to resolve; more complex issues, such as settlements or obtaining binding rulings on a particular case, may take much longer (six months to a year or more). Resolutions on tax appeals at the administrative phase may take even longer (more than 3 years). However, the opposing political party, which took office on August 2021, is striving to expedite all processes.

4. Are tax disputes capable of adjudication by a court, tribunal or body independent of the tax authority, and how long should a taxpayer expect such proceedings to take?

Tax disputes undergo different phases beginning at the administrative phase in which the taxpayer files before DGII a tax appeal on the claim made by such authorities. Once the DGII issues the corresponding Resolution, if the taxpayer is not satisfied, it may appeal before a higher instance: the Contentious Tax and Administrative Court. If the Resolution issued by this Court is not favorable for the taxpayer, it may appeal before the Supreme Court, the highest authority. However, if taxpayer considers that DGII violated its constitutional rights, in this case the highest authority is the Constitutional Court.

The complete process may take up to 8 years.

5. Are there set dates for payment of tax, provisionally or in arrears, and what happens with amounts of tax in dispute with the regulatory authority?

Set dates for payments of total taxes due are indicated above (answer to question no. 2).

During a dispute, the tax amount is suspended until the taxpayer obtains a definite decision, in which case the tax due is subject to surcharges and interests from the date in which it became outstanding, as follows:

Surcharges: 10% first month plus 4% subsequent months or fraction, plus

Interests: 1.10% every month or fraction.

If the tax authorities consider that there is a risk of collecting the taxes due, it has the faculty to seize taxpayer's bank accounts and prohibit its clients from issuing payments to the taxpayer until the tax claim has been settled.

6. Is taxpayer data recognised as highly confidential and adequately safeguarded against disclosure to third parties, including other parts of the Government? Is it a signatory (or does it propose to become a signatory) to the Common Reporting Standard? And/or does it maintain (or intend to maintain) a public Register of beneficial ownership?

Yes, taxpayer's information is treated as highly confidential. However, since the Tax Authorities are also the regulatory authorities for non- financial legally bound entities to Anti-money Laundering Law No. 155-17, it may provide taxpayer's information to third parties, such as the Attorney's General Office in case such taxpayer has violated the aforementioned law.

No, however, it can share taxpayer's information with the jurisdictions with which the DR is signatory to information exchange treaties, such as USA, Spain, and Canada.

7. What are the tests for residence of the main business structures (including

transparent entities)?

Residence is determined, indistinctly, by:

a. the habitual residence,
b. the place where most activities are rendered,
c. the place of the headquarters of the business,
d. the place in which the taxable event occurs.

Additionally, juridical entities are considered to have a domicile in the DR when they are incorporated pursuant to DR laws, have its headquarters or the effective control in the DR.

Moreover, those that remain in the DR for more than 182 days become tax residents and therefore, in addition to paying taxes in the DR for Dominican source income, after the third year of tax residency in the DR, they shall pay taxes in the DR for income generated from financial gains and investments abroad.

8. Have you found the policing of cross border transactions within an international group to be a target of the tax authorities' attention and in what ways?

The Dominican Tax Code expressly taxes indirect transfer of rights and assets located, utilized or exploited in the DR. It is the taxpayer's responsibility to disclose corporate reorganizations occurring abroad that can affect the local entity.

9. Is there a CFC or Thin Cap regime? Is there a transfer pricing regime and is it possible to obtain an advance pricing agreement?

The DR tax legislation establishes thin capitalization rules. The deductible amount for this concept cannot exceed the amount of the result of the total amount of interests accrued in a fiscal period (I) by 3 times the quotient of the annual average balance of the equity account (C) and the annual average balance of all debts (D): (1*3(C/D)). Debts that exceed this ratio will not be deductible. Interests on loans from local banks and/or entities do not count for the purposes of this ratio, provided such interests are part of the taxable base for corporate income tax purposes.

The DR has effective transfer pricing rules that follows the OECD guidelines. Although Advance Pricing Agreements (APAs) are in place, only the tourism sector (hotels mainly) have been able to subscribe APAs.

10. Is there a general anti-avoidance rule (GAAR) and, if so, in your experience, how would you describe its application by the tax authority? Eg is the enforcement of the GAAR commonly litigated, is it raised by tax authorities in negotiations only etc?

Yes, based on the substance over form principle included in the Dominican Tax Code, the Tax Authorities may ignore the legal structure and/or transactions occurred if it was implemented to avoid or delay tax payments. This is usually raised and settled at the administrative level.

11. Have any of the OECD BEPs recommendations been implemented or are any planned to be implemented and if so, which ones?

In order to apply the best practices in tax transparency matter, the DR adhered to the BEPS inclusive framework; therefore, it is within the agenda to implement these actions4.

Please refer below to the status of the implementation in the DR of the BEPS actions as stated by the OECD:

- Existence of harmful tax regimes (BEPS Action 5): in the process of being amended/eliminated
- Exchange of information on tax rulings (Action 5): reviewed and recommendations made
- Preventing treaty abuse (Action 6): 2021 review ongoing.
- CbC5 – Domestic law (Action 13): pending implementation for fiscal year 20226.
- CbC – Information exchange network (Action 13): CbC MCAA7 not signed.
- Effective dispute resolution (Action 14): review to be scheduled and deferred.

12. In your view, how has BEPS impacted on the government's tax policies?

It has aided the government in becoming more transparent and more aligned to the tax trend designed by the G20 countries and OECD.

13. Does the tax system broadly follow the recognised OECD Model? Does it have taxation of; a) business profits, b) employment income and pensions, c) VAT

(or other indirect tax), d) savings income and royalties, e) income from land, f) capital gains, g) stamp and/or capital duties. If so, what are the current rates and are they flat or graduated?

Although some concepts are aligned, the territorial tax system in the DR has yet to be amended pursuant to the recommendations made by the OECD. Territoriality tax systems, as in most OECD member jurisdictions, are not perfect and need to balance between three goals, as recommended by the OECD:

a. Providing exemption of local taxation to foreign business activities
b. Protecting the local tax base, and
c. Implementing simple tax rules.

Yes, but taxation on capital duties does not exist.

a. business profits: 27% flat on taxable base8 (annual corporate tax).
b. employment income and pensions: for employment income, please refer to graduated tax rates in answer to question 2) above. Pension, health insurance and professional training (INFOTEP) contributions have the following rates:

Social Charges Contributions on Wages		
Social Charges	**Values in %**	
	Employee	**Employer**
Social Security (Pensions)9	2.87	7.10
Social Security (Health)10	3.04	7.09
INFOTEP11	0.50 (if yearly profit sharing applies)	1.00
Social Security (Labor Risk)	N/A	1.10-1.60

c. VAT (or other indirect tax): 18% flat
d. royalties: 27%
e. income from land: 27%12
f. capital gains: 27% or 25%13

14. Is the charge to business tax levied on, broadly, the revenue profits of a business as computed according to the principles of commercial accountancy?

Corporate tax is levied on the revenue profits of a business as computed in accordance to the standard accounting principles approved by the Institute of Certified Public Accountants of the DR, which are IFRS. Exceptions to this rule may be granted upon approval from the Tax Authorities.

15. Are different vehicles for carrying on business, such as companies, partnerships, trusts, etc, recognised as taxable entities? What entities are transparent for tax purposes and why are they used?

These vehicles, as well as undivided estates and joint ventures, are taxable. The concept of fiscally transparent entities does not exist in the DR.

16. Is liability to business taxation based upon a concepts of fiscal residence or registration? Is so what are the tests?

Business is taxed based on registration, mainly. In case of lack of registration, taxation is applicable if the activities carried out in the DR generate DR source income.

17. Are there any special taxation regimes, such as enterprise zones or favourable tax regimes for financial services or co-ordination centres, etc?

Special tax regimes exist on free trade zones. Other industries benefited with favorable tax regimes include renewable energy, tourism, national priority industries (textile chain, apparel and accessories; fur, manufacture of footwear and leather Goods), manufacturing entities located at the country's border with Haiti, cinematographic activities, nonprofit organizations, trusts, public-private partnerships.

18. Are there any particular tax regimes applicable to intellectual property, such as patent box?

None.

19. Is fiscal consolidation employed or a recognition of groups of corporates for tax purposes and are there any jurisdictional limitations on what can constitute a group

for tax purposes? Is a group contribution system employed or how can losses be relieved across group companies otherwise?

Fiscal consolidation is not allowed by the DR Tax Authorities. Losses across group companies may be relieved with cost sharing agreements between the entities, which shall be remitted to the DR Tax Authorities and should comply with transfer pricing rules.

20. Are there any withholding taxes?

Yes. Withholding taxes apply mainly to payments made on/to:

- Interests
- Royalties
- Services
- Technical assistance
- Dividend distribution/profit remittance
- Property lease payments when the owner is an individual
- Non-DR tax residents
- Prizes
- Payroll

Any other income not mentioned aboved

21. Are there any recognised environmental taxes payable by businesses?

A specific environmental tax payable by businesses does not exist in the DR.

However, and depending on the industry, environmental permits and licenses shall be obtained and maintained, resulting in the payment of an environmental levy. In addition, a levy is imposed on motor vehicle's emission of CO_2 and an excise tax on hydrocarbon consumption, which in some jurisdictions is considered as an environmental tax type (although it has not been classified as such in the DR).

Moreover, a bill was recently introduced into congress for the implementation of a "green tax" on solid waste.

22. Is dividend income received from resident and/or non-resident companies exempt from tax? If not how is it taxed?

No, dividend distribution or profit remittance, made by a resident entity to a resident or non-resident entity, is subject to 10% withholding income tax (participation exemption type regime does not exist in the DR). If the local entity received income on account of dividends from a non-DR resident entity, these amounts should be part of the taxable base for income tax payment in the DR.

If dividend is received by a resident individual from a non-resident (financial income exception mentioned above), it is taxable in the DR after the 3rd year of tax residency.

23. If you were advising an international group seeking to re-locate activities from the UK as a result of Brexit, what are the advantages and disadvantages offered by your jurisdiction?

The Dominican Republic has tax incentives laws for certain industries or type of operations. Tourism and free zones are the two most popular ones.

Contributors

Caroline Bono
Partner

cbono@pellerano.com

