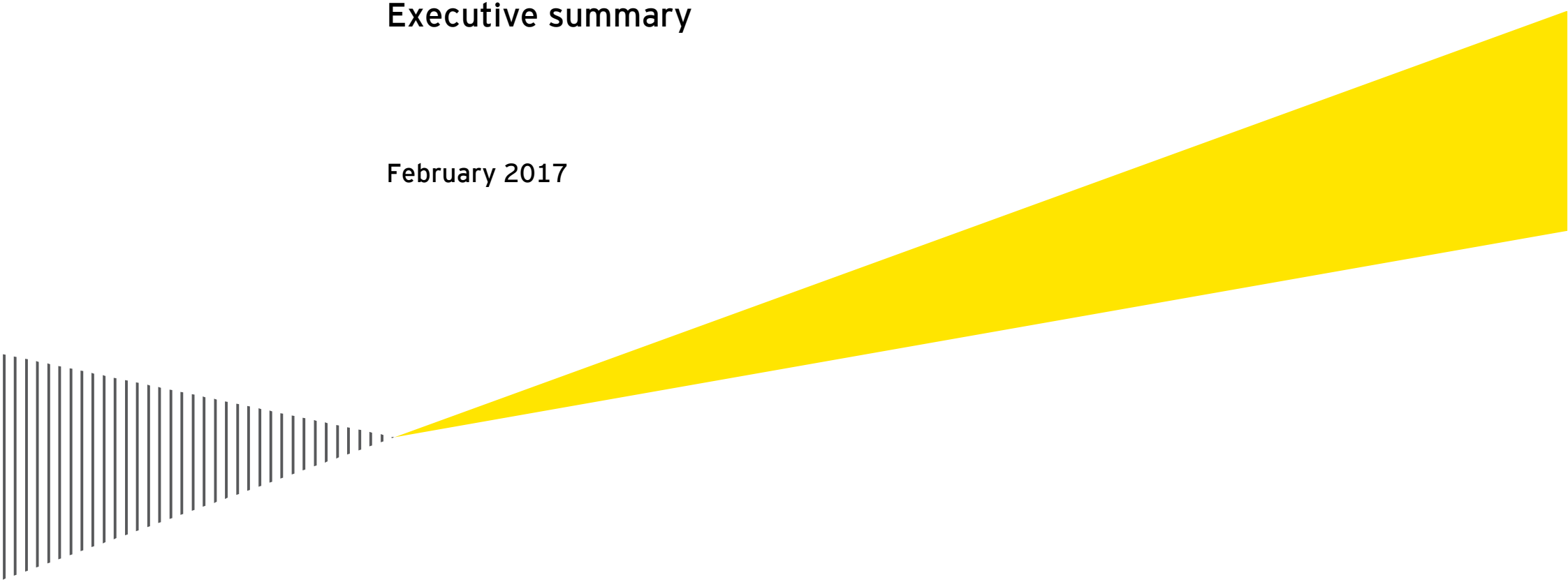
Doing business in Iraq

Executive summary

February 2017



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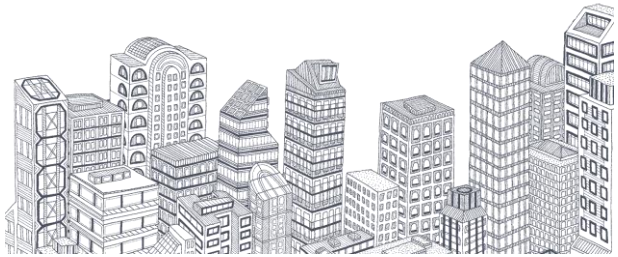
Building a better working world

Doing business in Iraq: Executive summary



This executive summary aims to provide high-level information on doing business in Iraq from an Iraqi tax perspective. In particular, it provides high-level comments on:

1. The pros and cons of selling to an Iraqi client in Iraq or outside of Iraq.
2. Most commonly used ownership structures for doing business in Iraq.
3. Current types and levels of taxation in Iraq.
4. Importing to and exporting from Iraq.

The information found herein is based on our understanding and interpretation of the Iraqi tax laws and instructions currently in force, and the current practice of the Iraqi General Commission for Taxes ("GCT"). We note that Iraq is a developing country whose tax policy and tax administration environment revolve around a tax law that dates back to the early nineteen eighties. The risk that more aggressive positions on taxation will be asserted in the future as compared to historical practice cannot be ruled out.

Any English translations of Iraqi tax laws and regulations are provided for reference purposes only and the original legislation drafted in Arabic should be used in the context of proper tax advice to be obtained from a qualified Iraqi tax advisor.

This document is for informational purposes only and is not intended, and should not be relied upon, as tax advice. Readers should seek advice based on their particular circumstances from their Iraqi tax advisors. While the information provided should be correct at the date of this document, changes in circumstances after such date may affect the accuracy of the information.

The pros and cons of selling to an Iraqi client in Iraq or outside of Iraq

A foreign company's decision whether to sell goods or services to an Iraqi client from within Iraq or from outside Iraq must take into account the commercial and tax consequences that the sale structure will create. Working in country will require the establishment of a commercial presence in country that also leads to a taxable presence in Iraq.

The creation of a taxable presence in Iraq, thus being subject to tax in Iraq, does not depend on permanent establishment ("PE") principles as there is currently no definition of a PE under Iraqi law. Iraq's tax legislation differentiates between whether a foreign company has created a taxable presence in Iraq based on whether the foreign company has business "in Iraq" or business "with Iraq." To the extent that the foreign company has business in Iraq, then it will be required to establish a commercial presence in country and will be subject to tax in Iraq.

In making this determination, the GCT relies on Article 21 (7) of the current Iraqi Income Tax Law No. 113 of 1982 (as amended) (the "Income Tax Law"), which explains that a foreign company may be subject to tax in Iraq if the activities are performed in Iraq. Instructions No. 2 of 2008, which were later amended by Instructions No. 1 of 2014 (the "Instructions"), were issued to clarify the practical application of the language of Article 21 (7) of the Income Tax Law and included factors that aid in the determination of whether a foreign company has created a taxable presence in Iraq.

A foreign company intending to sell goods or services in Iraq should aim to structure its business in such a way to avoid triggering the factors which causes one to be doing business in Iraq. Failing to do so would create an obligation for the foreign company to register a legal presence in Iraq and comply with the applicable laws and regulations of the country, including registering with the GCT; attending to the periodical filing requirements; and paying the applicable taxes, duties, and social security contributions, as applicable.

Any structuring considerations with respect to potential contracts in Iraq or with Iraq should be studied holistically to take into account commercial and legal considerations in conjunction with the tax considerations.

Most commonly used ownership structures for doing business in Iraq

In order to legally carry out work in Iraq, it is a requirement under Iraq's companies' law that a company must be registered with the Iraqi Ministry of Trade. Depending on the contemplated activities, additional or alternative registrations may be required; *e.g.*, with the Iraqi Central Bank or with the Communications and Media Commission.

The most common legal forms of business used by foreign companies planning to operate in Iraq are Iraqi private limited liability companies ("LLC") that are subsidiaries of foreign companies (100% foreign ownership is allowed) or branches that are set up under a foreign Head Office ("HO"). From an Iraqi tax perspective, there are very few differences in the treatment of a branch or a subsidiary. It is typically overriding commercial or legal reasons that dictate a foreign company's decision whether to establish a subsidiary or a branch in Iraq. In practice, the vast majority of foreign companies working in Iraq prefer to do so through a branch, which is easier and faster to establish and requires adherence to less on going compliance requirements as compared to LLCs. There are, however, conditions that must be met before a branch may be established and restrictions on the activities it may undertake; therefore, the establishment of a branch is not always available as an option.

There is usually no preference on the choice of holding jurisdiction for the branch or the subsidiary as Iraq does not have a large double tax treaty network in place. Furthermore, in practice, it is not recommended to rely on a position based on a tax treaty between Iraq and another country as the Iraqi tax authorities do not look to apply treaty provisions. The country of choice ultimately depends on the foreign company's organizational perspective, and what best suits the foreign company in terms of legal, corporate, tax, and risk at the overall organizational level.

Current types and levels of taxation in Iraq

Tax/duty	Rates	Commentary
Corporate income tax ("CIT")	15% or 35%	In general, CIT is imposed on taxable profit from all sources arising, or deemed to arise, in Iraq. CIT is applied at 35% to oil and gas related activities and 15% to all other activities. The GCT almost always imputes a deemed profit. Audited financial statements prepared under the Iraqi Unified Accounting System form the key component of the CIT filing in Iraq, which is required within five months of the end of the fiscal year.
Tax retention/withholding regime	Various rates – up to 10%	All contracts in Iraq must be registered with the GCT. Payments on contracts are subject to the tax retention/withholding mechanism at rates which typically range from 1.8%-10%, in accordance with the GCT's published annual indicators.
Withholding tax on payments to non-residents	15%	There is no withholding tax on dividends. A 15% withholding tax is applied to payments of royalties and interest paid or accrued to non-residents.
Real estate rent tax	10.8%	Rental income is subject to a 10.8% effective tax rate. In practice, the landlord is responsible for the payment of this tax.
Sales tax/ Value Added Tax ("VAT")	Various rates – up to 300%	Iraq does not have VAT. Sales taxes are levied on first-class hotels, restaurants, and tourism-related sales at 10%, mobile and internet plans at 20%, importation of cars and airplane ticket sales at 15%, and on cigarette and alcoholic beverages sales at 300%.
Stamp duty	0.2%	Iraq generally imposes a stamp duty at 0.2% of the contract value.
Personal income tax ("PIT")	Progressive 3%-15%	PIT must be withheld by the employer at rates which graduate from 3%-15%, and the employer must remit the withheld amounts to the GCT's Direct Deductions Department by the 15th day of each month following the month of deduction. An annual filing is also due by 31 March following the fiscal year-end. No filing is required by the employee.
Social security	17%	Social security contributions must be withheld by the employer from the employees' income for each month of the fiscal year for both Iraqis and non-Iraqis, unless non-Iraqis can obtain an exemption from the Iraqi Department of Retirement and Social Security. Employer contribution is 12% (25% for oil and gas companies); the employee contribution is 5%.

Importing to and exporting from Iraq

The application of the official import/export rules in Iraq have generally been inconsistent and postponed on many occasions due to the security situation affecting the country, which has resulted in porous borders and highly inconsistent practices by relevant government personnel at the official ports of entry.

The applicable laws are the Customs Law No. 23 of 1984 and the Customs Duty Law No. 22 of 2010. The latter law includes rates from 5%-40% on the value of the imported goods. Since its introduction in 2010, the application of the Customs Duty Law has been postponed on numerous occasions.

A company looking to export goods outside of Iraq must first obtain an export license for each shipment. There are currently no export duties applicable upon the exportation of goods. However, a modest fee is charged when applying for an export license.

For the latest available information on importing to and exporting from Iraq, the advice of a specialized Iraqi customs advisor or legal counsel should be sought.

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