



DOING BUSINESS IN SAINT-MARTIN

French West Indies



Business taxation



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INTRODUCTION

Let's start by stating what the name "*Collectivité* of Saint-Martin" or, more commonly, "Saint-Martin" actually refers to.

First of all, in terms of geography, our territory comprises the northern part of the island of Saint-Martin located in the archipelago formed by the Lesser Antilles, 240 km east of Puerto Rico. The southern part of the island, St. Maarten, belongs to the kingdom of the Netherlands.

From a statutory point of view, Saint-Martin is not a "country" but a sub-state of the French Republic and has a special status that allows it to decide its own tax legislation, which is now very different from the system in France.

Finally, Saint-Martin, despite its relative distance, is legally part of the European Union and the "euro zone".

In other words, when you choose Saint-Martin for your business location, you are actually investing in Europe and more specifically in France, and so benefit from all the advantages that are associated with those areas, particularly in terms of freedom of establishment, institutional stability,

legal environment, independence of the judiciary system, financial transparency, the fight against crime in all its forms, a high level of education and economic development.

In addition to these advantages, it is in a prime geographical location both at the heart of the Caribbean zone and on the doorstep of the USA, ensuring on the one hand, a highly favorable tax regime compared to various neighboring countries offering a favorable business environment and, on the other hand, real investment opportunities.

You will find that few territories offer a tax system that is as favorable to investment.

Beyond this guide which, I am sure, will convince you of the advantages of investing in Saint-Martin, be assured that the *Collectivité* public authorities, elected officials and administrative staff are ready to assist you in a climate of trust and transparency – a point that I would like to stress –, for the success of your business projects in Saint-Martin.

We look forward to welcoming you to our Friendly Island, and presenting all the advantages that our territory has to offer.

This "Doing Business in Saint-Martin - Business Taxation" guide provides a comprehensive overview of local tax rules and will help you understand the tax aspects of your business relocation.



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This guide aims to provide foreign companies with an outline of the tax system in Saint-Martin, in accordance with current regulations and for fiscal periods beginning on or after 1 September 2014. It does not constitute an official interpretation of those regulations.

ABOUT SAINT-MARTIN...

GEOGRAPHY

LOCATION

The island of Saint-Martin is located in the archipelago formed by the Lesser Antilles, 240 km east of Puerto Rico. The territory of the *Collectivité* of Saint-Martin corresponds to the northern part of the island.

SURFACE AREA

The French part of the island covers an area of approximately 53 km² out of a total area of 93 km². Its administrative center is based in Marigot.

BORDERING COUNTRIES

St. Maarten (a country belonging to the Kingdom of the Netherlands). There are no physical boundaries and therefore no obstacles to the movement of goods and people.

CLIMATE

Tropical; hurricane season from July to November

POPULATION

NATIONALITY

Mostly French, however also very cosmopolitan

NUMBER OF INHABITANTS

36,522

LANGUAGES

French, English, Spanish, Creole

ECONOMY

CURRENCY

euro (EUR official currency) or dollar (USD currency accepted by all traders)

GROSS DOMESTIC PRODUCT

14,700 (2010)

MAJOR ECONOMIC SECTORS

Tourism, services, construction and public works

STATUS AND MODE OF GOVERNMENT

Part of the French Republic, the *Collectivité* of Saint-Martin has, as of 15 July 2007, the status of "Overseas *Collectivité*" (COM) and hence benefits from a certain autonomy. As well as having the powers conferred on French regions, departments and communes, it also has specific powers that are in principle also those of the French State. Its deliberative assembly, the Territorial Council, is made up of 23 territorial councilors that are elected for a period of five years. The council was last elected on 1 April 2012.

DISTRIBUTION OF MAIN COMPETENCIES BETWEEN THE FRENCH STATE AND SAINT-MARTIN

COLLECTIVITÉ OF SAINT-MARTIN

- ▶ Tax Law
- ▶ Spatial planning, construction and housing
- ▶ Tourism
- ▶ Transport
- ▶ Creation, development of seaports

FRENCH STATE

- ▶ Civil law (nationality, property rights...)
- ▶ Commercial law, including accounting standards
- ▶ Labor law, employment law, criminal law
- ▶ Education, health, security, justice

The key advantages of Saint-Martin

All the advantages of a triple connection:
Caribbean, French Republic and European Union

CARIBBEAN

- ▶ **Strategic geographic location:** 3 ½ hours from Miami, 4 hours from New York, 4 ½ hours from Washington, 4 ½ hours from Montreal, 3 ½ hours from Panama, 8 hours from Paris...
- ▶ **A young population that is open,** motivated and often trilingual
- ▶ **A highly popular destination** for foreign tourists (USA, Canada...)
- ▶ **A territory that is globally renowned for its quality of life**

FRANCE

- ▶ **Territory where the Human Development Index is high** compared to other countries in the Caribbean due to:
 - a quality education system
 - a protective welfare system
 - a high-performing health system
- ▶ **Guarantee of stable institutions and the highest standards of quality** in terms of:

- legal security
- independence of the judiciary system; for example, *Collectivité* authorities are not responsible for the appointment of investigators and prosecutors in Saint-Martin
- financial transparency
- ▶ **Guarantee of property rights** that are protected by the Constitution of the French Republic; real estate ownership is supported by a land register and a real estate register that is updated by the French State
- ▶ Saint-Martin is not authorized to run an unbalanced budget (annual inspection by the State representative and, if necessary, a financial jurisdiction)
- ▶ **Guarantee of national solidarity** in the event of a natural disaster (hurricane in particular)
- ▶ **Guarantee of low energy costs** thanks to a system of fixed tariffs at the national level
- ▶ Assurance that environmental issues

are taken into consideration in public policy, as shown by the existence of many protected natural areas

EUROPE

- ▶ **Guarantee of respect of the major values upheld by the European Union:**
 - human rights, social solidarity
 - entrepreneurial freedom
 - the right to a protected environment
 - respect for cultural, linguistic and religious diversity...
- ▶ **Use of the euro** (EUR official currency) **or the US dollar** (currency commonly used) rather than a local currency
- ▶ **Absence of exchange controls**
- ▶ **Opportunity for investors to benefit from financial support from European funds**



© Collectivité of Saint-Martin



Fort Louis, © C. Cavallera



© Digital Vision



Port La Royale Marina, © idimweb.com

Access to quality infrastructure

IN ST. MAARTEN

- ▶ Princess Juliana International Airport
- ▶ Pointe Blanche deep sea port

IN SAINT-MARTIN

- ▶ Grande Case International Airport
- ▶ Galisbay commercial port
- ▶ Electricity power plants operated by an international utility company (EDF Group)
- ▶ Modern and ecological non-hazardous waste storage site
- ▶ Quarry producing high quality aggregates
- ▶ Access to broadband internet throughout the territory and, as of 2015, to high-speed broadband (Saint-Martin island is connected via three undersea fiber optic cable systems)

Available investment opportunities

TOURISM

- ▶ Existence of high-potential sites for luxury accommodation (boutique hotels and villas)
- ▶ Marigot waterfront development: large scale project that will include the development of commercial activities as well as luxury cruise stopover facilities
- ▶ Creation of structuring tourism infrastructures that are compatible with the territory's tourism strategy
- ▶ golf course
- ▶ institute of culinary arts
- ▶ art village...

For more information: see the tourism planning and development program

OTHER SECTORS

- ▶ Information technology
- ▶ Galisbay commercial port and logistics activities
- ▶ Call centers
- ▶ Financial services
- ▶ Healthcare



Grand Case Airport, © Jordane Ruzié

An attractive tax environment

HIGH LEVEL OF LEGAL SECURITY

- ▶ The *Collectivité* of Saint-Martin is not authorized to vote tax rules that are retroactive
- ▶ Possibility for companies to obtain an official ruling (*prise de position officielle*) regarding their situation, which guarantees that the tax system applied to them will not be changed in the future
- ▶ Existence of extensive jurisprudence rendered over a period of several decades by the French justice system, and which is nearly always transferable locally since local tax rules are, for the most part, based on concepts and definitions that are identical to those prescribed by tax laws in France

VERY FAVORABLE COMPANY INCOME TAX

- ▶ A tax base that is limited to profits made in Saint-Martin
- ▶ Almost total exemption for dividends and capital gains on the sale of shareholdings

- ▶ Low rates of taxation: 10% or 20%

- ▶ Carry-forward of losses that is unlimited in time and amount
- ▶ 10% tax rate for revenue from industrial property rights (patents, trademarks) and copyrights, as well as rights for the production of objects using 3D printing technology
- ▶ 10% tax rate for revenue from securities giving access to capital (convertible bonds, bonds with warrants...)

TAX-FREE REPATRIATION OF PROFITS

Absence of any withholding tax for payments to beneficiaries resident outside Saint-Martin, on:

- ▶ dividends
- ▶ interest
- ▶ royalties

VERY ATTRACTIVE TAX INCENTIVES FOR INVESTORS

- ▶ "Tax exemption" scheme equivalent to a "tax holiday" system (exemption from corporate tax so long as the aggregate amount of taxable income is less than the amount of productive investments made)
- ▶ Exemption from property tax for five years for new commercial premises
- ▶ Reduced transfer tax on the acquisition of land for the purposes of priority activities

NO TAX ON IMPORTS

- ▶ Apart from a specific tax on petrol products, there is no duty charged on the introduction of goods into *Collectivité* territory
- ▶ Similarly, the TGCA tax (an indirect tax similar in some ways to VAT) is not levied on the imports of goods

Summary of corporate taxation

Economic and legal environment

Official currency: euro (EUR); Saint-Martin is also, in practice, an area where the US dollar (USD) is used on a daily basis.

Exchange controls, taxation of foreign exchange transactions: none

Accounting standards: French accounting standards that have been developed by ANC (*Autorité des Normes Comptables*), France's national accounting standards body, and which are characterized by their high level of stability.

Most common structure: limited liability companies (SA, SAS, SARL...) governed by commercial law in force in France.

Tax treaties: only one agreement has been signed (with the French State); non-implementation of tax treaty agreements signed by France. However, the tax rules in Saint-Martin enable all or part of the withholding tax applied by source of income territories to be offset, even in the absence of a tax agreement.

Taxation of company income

Residency: in principle, companies resident in Saint-Martin are companies that have their head office or effective management located there. Permanent establishments of foreign entities are also taxable.

Territoriality: only applies to company income from businesses operated in Saint-Martin; income received outside Saint-Martin (St. Maarten, countries in America...) is not taxable.

Tax base: for the fiscal year, taxable income is, in simple terms, equal to the difference between income and expenditure.

Taxation of dividends: full exemption subject to a 5% share for fees and expenses, if the investment represents at least 5% of the subsidiary's capital or if the cost of participation is equal to at least €1M, regardless of the location of the subsidiary's headquarters. The securities must be held for at least one year.

Taxation of capital gains on shareholdings: exemption providing that the shares are held for a period of at least two years plus a 5% share for fees and expenses.

Taxation of financial products: taxation at a rate of 10% of revenue from securities giving access to capital (convertible bonds, bonds with warrants...).

Losses: can be carried forward to subsequent years indefinitely and for unlimited amounts.

Rate of corporate tax:

- Standard rate of **20%** (fiscal years beginning on or after 1 September 2014).
- Reduced rate for SMEs (turnover of less than €7.63 M): **10%** up to a maximum of €40,000 of taxable income per twelve-month period.
- Reduced rate: **10%** for net income from the concession or sub-concession of licenses for industrial property rights (patents, patentable inventions, industrial manufacturing processes, trade marks, industrial designs, copyrights, rights for the production of objects using 3D printing technology).
- Reduced rate: **10%** for capital gains on the sale of the above, provided they have not been acquired against payment within the previous two years.

Tax incentives in favor of investment: in particular, a "tax exemption" scheme for investment programs approved by the Executive Council of the *Collectivité* of Saint-Martin (system equivalent to a "tax holiday" scheme) and total exemption from property tax for new commercial premises for a period of five years.

Withholding tax (payments made to persons or entities resident outside Saint-Martin)

Profits of establishments of foreign companies: no withholding tax

Dividends: no withholding tax

Interest: no withholding tax

Royalties, services and fees: no withholding tax

License fee (and additional tax)

Principle: annual tax payable by companies

Tax base: €300 flat rate plus a variable rate equal to €5/m² above 40m² and capped at €2,500

Additional tax: €100 and 2.81% of the variable amount

“Contribution des patentes” (and additional tax)

Principle: annual tax payable by companies

Tax base: rental value of buildings and equipment (offices, vehicles, computers...) used for the business activity. The rental value is set at 13% of the cost of these assets.

Tax Rate: 25.76%

Tax incentives for new businesses: not applied for the year in which the business is created or the following year; 50% tax deduction for the second year following the business creation

Cap: the *contribution des patentes* may not exceed 3% of the value added produced in N-1.

Additional tax: 2.81% of the amount of *contribution des patentes*

Import duties (or similar)

None. Only petrol products are subject to a tax of €0.06/liter (fuel intended for supplying ships and aircrafts), €0.12/liter (fuel intended for any other use) or €0.23/liter (“industrial use” diesel).

Property tax (business premises)

Principle: annual tax charged to the owners of property located in Saint-Martin

Tax Base: 50% of the amount of “cadastral rental value of the property” which depends in particular on the use of the property, its state of maintenance and its location.

Tax rate: unchanged since 2008, 47.30% for built-on property

Tax exemption: total exemption for a period of five years for new buildings

Examples:

Premises occupied by a bank branch (180 m²):
€4,600 / year

Office premises occupied by a legal professional
(300 m²): €4,500 / year

Supermarket (1,600 m² excluding parking):
€20,000 / year

Exemption: Total exemption for the year in which the building is completed and for the following five years.

Leasehold tax

Principle: tax charged to the owners of properties that are subject to long-term leasehold rental agreements (including commercial leases).

Tax base: rents collected 01/10/N-1 to 30/09/N; rate: 3%

Exemption: total exemption for 5 years for buildings financed under an eligible “tax exemption” investment program.

Registration fees: see page 34

Very favorable corporate tax

Corporate tax is only imposed on profits made in Saint-Martin. The normal rate is 20% while the reduced rate, which has a very wide scope of application (revenues from industrial property rights, trademarks, copyright...), is set at just 10%. Dividends are usually almost totally exempt and certain financial products are eligible for reduced rates. Finally, losses can be carried forward indefinitely and for unlimited amounts.

1. A narrow-base tax rate limited to profits made in Saint-Martin for all types of companies

Corporate tax is calculated only on the profits of businesses operating in Saint-Martin.

This rule applies generally: it applies equally to foreign companies that decide to do business in Saint-Martin through an establishment that does not have a separate legal identity (e.g. branch) and to foreign companies that choose to create a subsidiary in Saint-Martin.

In the first instance, the foreign company is taxed as a company "non-resident in Saint-Martin" on earnings from business activity in Saint-Martin only. In the second instance, the subsidiary is taxed as a company "resident in Saint-Martin" on the same earnings.

Hence, whatever the type of company doing business in Saint-Martin, only local earnings are taxable.

For the purposes of this rule for example, the following foreign companies are taxable in Saint-Martin:

- ▶ the operator of an establishment in Saint-Martin that does not have a separate legal identity such as a branch, agency, factory or any other facility of a permanent nature having its own autonomy
- ▶ or, failing such an establishment, a representative in Saint-Martin that does not have a separate professional legal identity (dependent agent).

Conversely, if the foreign company chooses to set up a branch in Saint-Martin, the latter is exempt in respect of profits derived from an establishment outside Saint-Martin or from the activity of a dependent agent located outside Saint-Martin.

⊕ SPECIAL CONDITIONS FOR "FRENCH" COMPANIES

A tax treaty between the French State and the *Collectivité* of Saint-Martin signed on 21 December 2010 lays down the relevant principles. Special rules also exist for companies that choose to transfer their registered office from a European or overseas territory of France to Saint-Martin.

2. Taxable earnings are calculated simply

Income subject to corporate tax (*impôt sur les sociétés - IS*) is calculated by deducting eligible expenses from income. Income comprises all of the proceeds from business, the sale of goods and the provision of services.

Deductible expenses are expenses related to the company's business. They include the purchase of goods, "overheads" (including employee salaries and contributions, financial expenses, outsourcing and other current operating expenses, taxes and duties...), depreciation and provisions.

In general, in order to be deductible from taxable profits, overhead costs must be incurred in the interest of the business, in other words, be related to normal management of the business, be regularly recorded and be supported by adequate documentation. These expenses are deductible from income in the year in which they are incurred, regardless of the date of actual payment.

However, special rules apply to certain expenses:

- ▶ research and development costs: the company can decide whether operating expenses for scientific or technical research are immobilized or immediately

deducted from the results of the period in which they were incurred; the same rule applies to the cost of software design

- ▶ unless the purpose of the company is the lucrative exploitation of such property, the deduction of so-called “sumptuary” expenses is restricted. These include the acquisition or use of certain passenger vehicles or expenses of any kind resulting from the purchase, lease or other transaction made in order to obtain the provision of yachts or pleasure boats, sailing or motor-driven, and their maintenance costs
- ▶ as a general rule, fees of any nature between companies of the same group are deductible if the transactions invoiced are in line with market prices and actually take place. Amounts invoiced within an international group are subject to international rules on transfer pricing.

⊖ IMPORTANT

Tax legislation in Saint-Martin does not provide any mechanism to limit the deduction of financial expenses in the case of under-capitalization or in the case of acquisition of shareholdings.

Finally, in practice, taxable income is determined on the basis of the accounting income of the company after positive or negative non-accounting adjustments made to take into account specific tax rules.

3. Almost total tax exemption for dividends

Dividends paid to companies established in Saint-Martin, regardless of the location of the subsidiaries' headquarters (Saint-Martin, France, USA, other countries...) benefit from full exemption, subject to a “share for fees and expenses” equal to 5% (“parent-subsidiary” scheme).

In other words, dividends are taxed at only 5% of their value, not including foreign tax credits.

This share however may not exceed, for each tax period, the total amount of fees and expenses of any kind incurred by the participating company during the same period.

To benefit from this scheme, the company must hold a stake in the subsidiary representing at least 5% of capital or **having a cost of at least €1 M**. The company is also required to hold the securities in question for **at least one year**.

Tax credits corresponding to withholding tax potentially levied abroad during the distribution of dividends to the parent company based in Saint-Martin are neither deductible nor returnable.

4. Almost total tax exemption for capital gains on the sale of shareholdings held for at least two years

Capital gains on the sale of shareholdings held for at least two years are totally exempt except for a 5% share for fees and expenses (gains are therefore taxed only up to 5% of their amount).

This exemption applies regardless of where the subsidiaries' headquarters are based.

5. Generous depreciation rules

Fixed assets whose expected useful life for the business is limited in time due to various criteria, physical (wear...), technical (obsolescence...) or legal (protection period...) are depreciated.

This depreciation concerns tangible and, under certain conditions, intangible assets such as patents or trademarks, for example.

Fixed assets, potentially broken down into “components” within the meaning of French accounting regulations, are in principle depreciated over the actual duration of their use. Companies can, in some cases, rely on the useful life generally accepted in practice (commercial buildings: 2-5%; buildings for office use: 4%; equipment: 10%...).

Two depreciation methods are allowed for tax purposes: the common law system, in other words, the linear system (fixed annuities) and the declining balance system reserved for certain categories of goods (decreasing annuities).

The latter system, which is highly favorable, is characterized by the application of a “constant” (straight-line depreciation rate multiplied by a coefficient dependent on the useful life of the property) first to the original value then the residual book value of the property.

The acceleration coefficient is set at 1.25 (depreciation period of 3 or 4 years), 1.75 (period of 5 or 6 years) or 2.25 (period over 6 years).

Particularly likely to benefit from this scheme are investments in hotels, buildings and equipment, buildings intended exclusively for the purposes of hosting exhibitions and conferences and the equipment used for these buildings, as well as machinery and equipment used for manufacturing operations, processing or transport. Acceleration coefficients used for scientific and technical research operations are increased by 0.25 points.

6. Allowable provisions for depreciation

These must be justified and relate to clearly identified accounts, inventories, securities or tangible and intangible assets.

Allowable provisions include provisions for contingencies, claims, work in progress, paid leave, etc.

7. Low corporate tax rates: 10% or 20%

Corporate tax rates (Impôt sur les sociétés) are as follows:

- ▶ for large companies: standard rate of 20%
- ▶ for small and medium businesses (SMEs): a reduced corporate tax rate of 10% up to €40,000 of profits and a standard rate of 20% on the remainder
- ▶ for gains derived from certain intangible fees (sale, concession, sub-concession): 10% (see example on intellectual property management companies)
- ▶ for gains derived from financial securities giving access to capital: 10% (see page 17).

8. Losses can be carried forward indefinitely

Losses recorded during a given year may be carried forward indefinitely and for unlimited amounts against future profits.

In addition to this very generous scheme, there is an optional carry-back scheme that allows the current year's losses to be offset against taxable income in the previous three years. This results in a claim against the *collectivité* treasury for previously paid corporate tax. This debt is repaid after 5 years if the company fails to deduct it from their corporate tax bills in subsequent years.

Finally, the net taxable income at the reduced rate of 10% may optionally be used to offset the deficit for the year and carry-forwards (subject to the standard rate of 20%): deficits canceled in this way cease to be carried forward. This compensation, which operates euro for euro, is good for businesses that do not generate sufficient taxable profits at the rate of 20% to be able to offset their fiscal deficits.

⁽¹⁾ Intended for SMEs that have at least 75% of their shares held directly or indirectly by individuals, or for companies that satisfy the same conditions and report an annual turnover of less than €7,630,000, subject to having fully paid up share capital.

Holding company scheme

➔ DIVIDENDS ELIGIBLE UNDER THE PARENT-SUBSIDIARY SCHEME: ALMOST TOTALLY EXEMPT (TAX RATE ≤ 1%)

A holding company established in Saint-Martin for at least one year (or which has made a commitment to retain shares in this sense), holds a stake in its Saint-Martin, French or foreign subsidiaries. Each of these stakes is at least 5% of the capital of the issuer or represents a cost of at least €1 M.

During the year ended 31 December N, the company achieves a gross profit of €4,400,000 from, for up to €4,000,000 (gross), dividends eligible under the parent-subsidiary scheme. These dividends are assumed to have been subject to a withholding tax of 15% in the country where the subsidiaries are established, amounting to €600,000.

Expenses of any nature incurred during the year amount to €100,000, resulting in an accounting profit of €4,300,000.

Calculation of taxable income

Accounting profit:	€4,300,000
Non-accounting deduction of dividends:	- €4,000,000
Non-accounting reinstatement of a proportionate share for fees and expenses: Theoretical amount: $(4,000,000 - 600,000) \times 5\% = €170,000$. This sum being greater than the amount of expenses of any nature incurred by the company (€100,000), the proportionate share for fees and expenses is limited to €100,000.	+ €100,000
Taxable income:	€400,000
<i>including €100,000 for the proportionate share for fees and expenses on dividends</i>	
Amount of corporate income tax (400,000 x 20%):	€80,000
<i>of which corporate tax on dividends: €20,000</i>	

NB: withholding tax levied abroad cannot be offset on this tax.

➔ DIVIDENDS NOT ELIGIBLE UNDER THE PARENT-SUBSIDIARY SCHEME: POSSIBILITY OF OFFSETTING WITHHOLDING TAX LEVIED ABROAD EVEN IN THE ABSENCE OF A TAX TREATY

A holding company that receives during the year ended 31 December N dividends that are not eligible under the parent-subsidiary scheme according to the following table:

Country of origin	Gross amount ⁽¹⁾	Tax levied in the country of origin ⁽²⁾	Net income ⁽³⁾	Saint-Martin tax on income ⁽⁴⁾	Tax credit applied to corporate tax due in Saint-Martin	
					On corporate tax due for the year N ⁽⁵⁾	On corporate tax for the following years ⁽⁶⁾
Country A	€400 000	€60 000	€340 000	€80 000 (€400k x 20%)	€42 000	€18 000
Country B	€600 000	€120 000	€480 000	€100 000 (€600k - €100k) x 20%	€70 000	€30 000
Country C	€200 000	€10 000	€190 000	€30 000 (€200k - €50k) x 20%	€7 000	€3 000

Comments:

Column 4: the amount of tax credit is in any event capped at the amount of Saint-Martin tax levied on the taxable income in question (difference between, on the one hand, the gross amount mentioned in column 1 and, on the other hand, expenses deductible from income under Saint-Martin domestic legislation such as for example management expenses). For Country A such charges are negligible.

Column 5 et Column 6: Tax deducted at the source in the foreign country, capped if appropriate (see Col 4), is offset for up to 70% of the amount of corporate tax due under the year N; the balance (30%) increased, if appropriate, by the fraction that could not be offset under the year N, is carried over to following years indefinitely and for an unlimited amount.

FOCUS ON ●●●

➔ CAPITAL GAINS ON THE SALE OF SHAREHOLDINGS: ALMOST TOTALLY EXEMPT

Capital gains on the sale of shareholdings held for at least two years are totally exempt except for a 5% share corresponding to fees and expenses.

A holding company realizes a net gain of €2,000,000 due to the sale of shareholdings held for at least two years.

Accounting profit:	€2,300,000
Non-accounting deduction of capital gains:	- €2,000,000
Non-accounting reinstatement of a proportionate share for fees and expenses (€2 M x 5%):	+ €100,000
Taxable income:	+ €400,000
<i>including €100,000 for the proportionate share of fees and expenses</i>	
Amount of corporate income tax (100,000 x 20%):	€80,000
<i>of which corporate tax on capital gains: €20,000</i>	

➔ THE REDISTRIBUTION OF EARNINGS IS FREE FROM WITHHOLDING TAX

The amounts distributed by the company do not incur the payment of any withholding tax, regardless of the beneficiary (legal entity or individual person) and their residency or place of effective management.

Private equity investment company scheme

➔ TAXATION AT THE REDUCED RATE OF 10% ON INTEREST FROM SECURITIES GIVING ACCESS TO CAPITAL

In addition to the almost total exemption for dividends (see § holdings), private equity companies benefit from a reduced tax rate of 10% for financial earnings and capital gains from securities “giving access to capital”. Specifically concerned by this reduced tax rate are convertible bonds, bonds with warrants (OBSA), convertible bonds and/or exchangeable for new or existing shares (OCEANE), bonds redeemable in shares (ORA), bonds with redeemable share subscription warrants (OBSAAR)...

NB: the reduced rate of 10% applies to the gross amount of interest received; expenses (management fees, costs of refinancing...) remain deductible under ordinary law for determining taxable income at the standard rate of 20%.

➔ TOTAL DEDUCTION OF FINANCIAL EXPENSES

Saint-Martin tax regulations do not contain any provision to prevent the deduction of financial expenses related to the acquisition of shareholdings or securities.

➔ ABSENCE OF ANY WITHHOLDING TAX ON INTEREST FROM SAINT-MARTIN SOURCES PAID TO NON-RESIDENTS

Interest paid to beneficiaries resident outside Saint-Martin does not give rise to the application of any withholding tax at the time of payment.

➔ POSSIBILITY OF OFFSETTING WITHHOLDING TAX LEVIED ABROAD EVEN IN THE ABSENCE OF A TAX TREATY

A company is paid interest during the year ended 31 December N, some of which is eligible for the reduced rate of 10% (interest from countries A and B) according to the following table:

Country of origin	Gross amount ⁽¹⁾	Tax levied in the country of origin ⁽²⁾	Net income ⁽³⁾	Saint-Martin tax on income ⁽⁴⁾	Tax credit applied to corporate tax due in Saint-Martin	
					On corporate tax due for the year N ⁽⁵⁾	On corporate tax for the following years ⁽⁶⁾
Country A	€400 000	€60 000	€340 000	€40 000 (€400k x 10%)	€28 000	€12 000
Country B	€600 000	€120 000	€480 000	€60 000 (€600k x 10%)	€42 000	€18 000
Country C	€200 000	€10 000	€190 000	€30 000 (€200k - €50k) x 20%	€7 000	€3 000
Country D	€500 000	€100 000	€400 000	€60 000 (€500k - €200k) x 20%	€42 000	€18 000

Comments:

Column 4: the amount of tax credit is in any event capped at the amount of Saint-Martin tax on the taxable income in question (difference between, on the one hand, the gross amount mentioned in column 1 and, on the other hand, expenses deductible from income under Saint-Martin domestic legislation such as management expenses and refinancing charges). For shares eligible for the reduced rate of 10% (Country A and Country B) such charges are deemed to be nil.

Column 5 et Column 6: Tax deducted at the source in the foreign country, capped if appropriate (see Col 4), is offset for up to 70% of the amount of corporate tax due under the year N; the balance (30%) increased, if appropriate, by the fraction that could not be offset under the year N, is carried forward to following years indefinitely and for an unlimited amount.

FOCUS ON ●●●

Intellectual property rights company scheme

➔ TAXATION AT THE REDUCED RATE OF 10% FOR MOST REVENUES FROM INTELLECTUAL PROPERTY RIGHTS

The reduced rate of 10% is applicable to the net earnings from the concession or sub-concession of operating licenses for the following:

- Patents, patentable inventions;
- Improvements made to patents and patentable inventions;
- Manufacturing processes;
- Certificates of plant variety;
- Trademarks and service marks;
- Drawings and models;
- Copyright for literary, artistic or scientific works including cinema films;
- Copyright for objects produced using 3D printing technology

NB: This reduced rate applies irrespective of any dependencies between the parties or the holding period.

The reduced rate of 10% applies to capital gains from the disposal of these elements, with the exception however of items acquired against payment within a period of less than two years.

➔ TAXATION AT A FIXED RATE OF €125 FOR ACTS EVIDENCING THE SALE OR LICENSING OF SUCH INTANGIBLE RIGHTS

If these acts are subject to registration, the sale or concession of operating licenses mentioned above just gives rise to a fixed fee of €125.

➔ ABSENCE OF ANY WITHHOLDING TAX ON ROYALTIES FROM SAINT-MARTIN BASED SOURCES PAID TO NON-RESIDENTS

Royalties paid to beneficiaries resident outside Saint-Martin do not give rise to the application of any withholding tax at the time of payment.

➔ POSSIBILITY OF OFFSETTING WITHHOLDING TAX LEVIED ABROAD EVEN IN THE ABSENCE OF A TAX TREATY

A company collects during the year ended 31 December N royalties that are eligible for the reduced rate of 10%, according to the following table:

Country of origin	Gross amount ⁽¹⁾	Tax levied in the country of origin ⁽²⁾	Net income ⁽³⁾	Saint-Martin tax on income ⁽⁴⁾	Tax credit applied to corporate tax due in Saint-Martin	
					On corporate tax due for the year N ⁽⁵⁾	On corporate tax for the following years ⁽⁶⁾
Country A	€400 000	€60 000 €	€340 000 €	€40 000 (€400k x 10%)	€28 000	€12 000
Country B	€600 000 €	€120 000 €	€480 000 €	€50 000 (€600k - €100k) x 10%	€35 000	€15 000
Country C	€200 000 €	€10 000 €	€190 000 €	€5 000 (€200k - €150k) x 10%	€3 500	€1 500

Comments:

Column 4: the amount of tax credit is in any event capped at the amount of Saint-Martin tax levied on the taxable income in question (difference between, on the one hand, the gross amount mentioned in column 1 and, on the other hand, expenses deductible from income under Saint-Martin domestic legislation such as management expenses, the cost of studies, fees paid for sub-licensing, etc.).

Column 5 and Column 6: Tax deducted at the source in the foreign country, capped if appropriate (see Col 4), is offset for up to 70% of the amount of corporate tax due under the year N; the balance (30%) increased, if appropriate, by the fraction that could not be offset under the year N, is carried forward to following years indefinitely and for an unlimited amount

Tax-free repatriation of profits

In Saint-Martin, the very favorable corporate tax regime is combined with a series of specific provisions guaranteeing that companies can repatriate their profits tax-free.

1. No withholding tax on dividends

No withholding tax is applied by the *Collectivité* of Saint-Martin on **dividends** distributed by a company established in Saint-Martin to associates, legal entities or persons, resident for tax purposes outside Saint-Martin.

2. No withholding tax on interest

No withholding tax is applied by the *Collectivité* of Saint-Martin on **interest** paid by a company established in Saint-Martin to associates, **legal entities or persons**, resident for tax purposes outside Saint-Martin.

3. No withholding tax on certain incomes paid to beneficiaries that do not have a permanent business base in Saint-Martin

No withholding tax is applied to:

- ▶ sums paid as compensation for an activity carried out in Saint-Martin for non-commercial professions (lawyers, architects, auditors...);

- ▶ revenues received by inventors or from copyrights;
- ▶ revenues from industrial or commercial property and similar rights;
- ▶ sums paid as compensation for services of any kind provided in Saint-Martin (repair or maintenance of a building located in Saint-Martin, technical incentives in Saint-Martin, studies carried out in Saint-Martin...) or used in Saint-Martin (rental of equipment effectively used in Saint-Martin...);
- ▶ sums, including salaries, corresponding to artistic or sporting services provided or used in Saint-Martin.

4. No real tax barrier to the invoicing of interest, royalties or management fees

The amounts invoiced by a foreign company to its subsidiary located in Saint-Martin are simply required to be justified and in line with rates charged under normal management conditions between independent companies.

The authorities of Saint-Martin may require evidence that transfer prices are in line with actual market prices.

Tax incentives for investors equivalent to a “tax holiday” scheme

Companies subject to corporate tax that are resident in the Collectivité of Saint-Martin, may deduct from their taxable income the amount of productive investments they carry out in Saint-Martin in priority economic sectors as well as any investments in the capital of certain companies.

*The deduction is made on taxable income and in this way, as appropriate, reduces the amount of taxable income for the year, or creates or increases the company’s losses. Since the tax treatment of losses follows the rules of ordinary law on corporate tax of the Collectivité of Saint-Martin, the losses created or increased by the tax deduction can be carried forward to subsequent years **indefinitely and for unlimited amounts**.*

The result is that the tax deduction mechanism for investment is comparable to other tax investment incentives that apply particularly in the Caribbean region (“tax holiday”) where the company having made the investment only actually becomes taxable on its profits once the aggregate amount thereof exceeds the amount of the investment made.

*This system applies to investment and equity investments carried out up to **31 December 2020**.*

1. Tax Deduction for direct investment

A. DEDUCTIBLE INVESTMENTS

Types of investment

Only new productive investments qualify for tax incentives, in other words, the acquisition or creation of new, tangible and depreciable assets. These investments must of course be used in Saint-Martin.

Notwithstanding this rule, any software required for the use of these eligible investments forming an integral element of those assets can benefit from the scheme. The same applies for the sites of buildings and sites for outbuildings that are essential and contingent to those buildings.

Finally, works related to the renovation or rehabilitation of classified hotels, holiday residences or holiday villages that form part of the assets, are also eligible for

tax incentives. This includes in particular all expenses relating to the cost of those works (demolition costs, construction costs and fitting out).

Eligible sectors of activity

To qualify for tax incentives, the above productive investments must be made in certain sectors, notably:

- ▶ the hospitality sector;
- ▶ the tourism sector:
 - a. leisure activities: equipment for tourist sites, nautical centers, beach or sports centers...;
 - b. tourist accommodation: creation of tourist residences;
 - c. tourist services: organizing trips or tours, car and pleasure boat rental, restaurant services (under certain conditions);
- ▶ the transport sector, including auxiliary transport services (port and airport handling activities, particularly storage);
- ▶ the film and audiovisual production and distribution sector;

- ▶ **t**he business services sector on condition that the companies carry out their main business activity in Saint-Martin; this condition does not apply to call centers;
- ▶ **I**T services sector: IT management and maintenance, software design, providing internet access, hosting, creation of on-line services...
- ▶ **t**elecommunications;
- ▶ **c**oncessions and service concessions for local public services, terminal operating (as part of development of the commercial port) regardless of the nature of the goods and their final use;
- ▶ **f**ishing and agriculture;
- ▶ **o**ther sectors: new energies, including the production of photovoltaic electricity; building and public sector construction;
- ▶ **p**ersonal services sector: hairdressing, body treatments...
- ▶ **r**esearch and development sector, namely scientific and technical research, whether this is basic research, applied research or experimental development and regardless of scope;
- ▶ **v**arious other sectors: industry; extraction; crafts.

In contrast, the sectors mentioned below are specifically excluded from the tax incentives scheme: trade; restaurant services (with exceptions); cafés, tobacconists and bars; education, health and social work; banking, finance and insurance; real estate (including property development, property dealing activities, leasing activities); cruise navigation; business services for companies whose main business activity is located outside Saint-Martin (except call centers); leisure, sporting and cultural activities (other than those directly and principally integrated in a hotel or tourist activity); association activities and postal activities.

B. MECHANISM

Amount of tax deduction

Tax deduction for direct investment is equal to the cost of the fixed assets minus the fraction of the cost funded by a government subsidy.

Fiscal year in which the deduction is applied

The deduction is made on the results of the year in which the assets are delivered or completed before any other rebate or deduction. However, in the case of acquisition of a building on plan or building construction,

the deduction is applied for the year in which the foundations are completed.

⊖ The tax treatment of fiscal deficit follows *Collectivité of Saint-Martin* rules of ordinary law on corporate tax: it can be carried over to subsequent years indefinitely and for unlimited amounts, which guarantees exemption from corporate tax as long as accumulated profits from the exploitation of investments do not exceed their amount.

Who applies the tax deduction

The deduction is normally applied by the business owner who actually makes use of the investment.

However, the non-user owner can apply the deduction if the asset is leased under certain conditions for at least five years (or for the normal useful life of the asset if this is lower) to a user company. The owner must surrender to the user at least 50% of the tax advantage provided by the deduction applied to their investment and by offsetting the deficit from the lease of the asset and the depreciation incurred on disposal of this asset or securities of the leasing company.

⊖ IMPORTANT

When it comes to leased property, the approval decision (see § c below) may also provide an exemption for five years for leasehold rights, for the benefit of the owning company.

In the case of a property finance lease, it is the lessee who applies the tax deduction.

When the investment is made through a partnership (notably an SNC "société en nom collectif"), the deduction is applied by each member in proportion to their share in the profit for the year in which the investment is made.

C. APPROVAL PROCEDURE

To be entitled to a tax deduction, investments whose total amount per program per year exceed €500,000, must have been given prior approval from the Executive Council of the *Collectivité* of Saint-Martin.

This approval process applies regardless of the amount for investments in transportation, recreational boating, agriculture, sea fishing and aquaculture, the coal and steel industries, shipbuilding, synthetic fibers, the automotive industry or the renovation and rehabilitation of classified hotels, tourist residences and holiday villages, or which are necessary for the operating of an industrial or commercial local public service concession.

Approval is granted if the program presents an economic interest for the *Collectivité*, if it allows the creation or maintenance of jobs in Saint-Martin and is in line with spatial planning and environmental policy.

D. OBLIGATION TO RETAIN

Investments made with the benefit of the tax deduction must be retained and used for the purposes of operating the business for at least five years, or for the normal useful life whichever is lower. Otherwise, or if the recipient ceases trading, the amounts deducted are reported to the taxable income of the company that applied the deduction for the year in which this event occurs.

If the investment is made by a company or a group within the partnerships tax system, partners or members must also retain shares of the company or of the group for a period of five years from when the investment is made. Failing this, they must add the amount of deductions that they applied to their taxable income for the year of sale.

2. Tax deduction for financial investments (capital subscriptions)

A. SUBSCRIPTIONS ELIGIBLE FOR TAX DEDUCTION

Subscriptions eligible for tax deduction are as follows:

- ▶ subscriptions to the capital of other companies subject to corporate tax, having their place of effective management in Saint-Martin, and that engage in the twelve months following the close of the subscription in productive investment in Saint-Martin in the sectors eligible for tax incentives listed in § 1 above;
- ▶ subscriptions in the capital of companies engaged in the renovation and rehabilitation of classified hotels, tourist residences or holiday villages;

- ▶ subscriptions in the capital of concession companies making productive investments required to operate an industrial or commercial local public service concession or port terminal, whatever the nature of the assets and their final use.

B. MECHANISM

The amount of tax deduction

The amount of tax deduction is equal to the amount paid by the subscriber (including, where appropriate, the amount of the premium), in other words, the cost of the capital subscriptions.

Fiscal year in which the deduction is applied

The deduction is applied to the results of the year in which payment is made.

C. OBLIGATIONS OF SUBSCRIBERS AND BENEFICIARY COMPANIES

Companies that benefit from the deduction must retain the shares subscribed for a period of at least five years. In the event of non-compliance with this obligation, the amounts deducted must be reported to taxable income for the year of transfer and for the entire sale price.

Beneficiaries of the subscription must make the investment within twelve months following the end of the subscription period, it being understood that this requirement shall be considered satisfied if after this period the company has made firm and definitive commitments and corresponding down payments.

If the beneficiary of the subscriptions allocates all or part of the subscription to the construction of buildings for the exercise of an eligible activity, it must commit to completing the foundations within two years following the end of the subscription.

The beneficiary of the subscriptions must also commit to maintaining the allocation of assets to the eligible business for five years after their acquisition or during the normal useful life, whichever is lower.

In the event of non-compliance with this commitment, the amounts deducted are reported to the taxable income of the company that operated the deduction for the year in which non-compliance with the undertaking is established.

D. APPROVAL PROCEDURE

To be entitled to a tax deduction, subscriptions whose total amount per program per year exceed €500,000, must have been given prior approval from the Executive Council of the *Collectivité* of Saint-Martin.

This approval process applies regardless of the amount for investments in transportation, recreational boating, agriculture, sea fishing and aquaculture, the coal and steel industries, shipbuilding, synthetic fibers, the automotive industry or the renovation and rehabilitation of classified hotels, tourist residences and holiday villages or firms in difficulty, or which are necessary for the operating of an industrial or commercial local public service concession.

Approval is granted if the program presents an economic interest for the *Collectivité*, if it allows the creation or maintenance of jobs in Saint-Martin and is in line with spatial planning and environmental policy.

⊖ These fiscal arrangements apply to investments and sales made up to 31 December 2020.

⊖ COMPLIANCE WITH EU REGULATIONS ON STATE AID.

Eligibility for these tax assistance schemes, registered by the Commission under reference SA.39295 (2014 / X) and exempt from the notification requirement concerning regional aid by virtue of the possibilities offered by the General Block Exemption Regulation N° 651/2014 of 17 June 2014, is subject to compliance with that regulation.

Very low license fee and “contribution des patentes” that favor business start-ups

The license fee (*droit de licence*) and contribution des patentes (*local tax*) are payable each year by companies that carry out a regular business activity in Saint-Martin.

1. Taxable entities and activities

Subject to certain exemptions that have a limited scope, the license fee and *contribution des patentes* are payable each year by individuals or legal entities that regularly carry on a non-salaried business activity in Saint-Martin.

2. License fee base and tariff

The license fee is made up of two elements:

- ▶ a fixed fee, generally €300 per company;
- ▶ a variable fee linked to the surface area of premises used for the business activity (€5 per square meter, beyond an area of 40 m²).

The total amount of variable duty linked to the surface area of business premises used by a single taxpayer in respect of the same activity is capped at €2,500.

⊖ The maximum amount of license fee is therefore €2,800 / year.

3. “Contribution des patentes” base

For companies subject to corporate tax, the base for the *contribution des patentes* is equal to:

- ▶ for companies in general (subject to cases indicated below): **13% of the cost of equipment and moveable assets** (furniture, vehicles, computers...)
- ▶ for companies exercising a “non-commercial” activity

(medical sector, lawyers, accountants, auditors, architects, consulting engineers, software designers, surveyors...): **5% of revenue.**

⊕ IMPORTANT

The *contribution des patentes* is hence in no way dependent on the value of the premises used for business purposes, which considerably limits the amount for the operators of tourist residences or hotels.

4. Calculation of the tax

The rate of *contribution des patentes* is voted annually by the Territorial Council. Since the introduction of this contribution, the rate has remained unchanged at **25.76%**.

5. Cap and deductions

A cap on *contribution des patentes*, set at 3% of the value added produced in the previous year, may be requested by the company.

⊕ SPECIAL MEASURES FOR NEW BUSINESSES

Companies set up during the year are normally not subject to this tax for the year of their creation.

“New” companies also benefit from **total exemption in the year following their creation and a deduction of 50% in the second year following their creation.**

6. Minimum tax for large companies

A minimum contribution is also provided. This is as follows:

- ▶ 1.50% of the value added produced by the company for companies whose turnover is between €6 and €8 million;
- ▶ 1.75% of the value added for companies whose turnover is between €8 and €10 million;
- ▶ 2% of the value added for companies whose turnover is between €10 and €15 million;
- ▶ 2.25% of the value added for companies whose turnover exceeds €15 million.

- ▶ an additional tax to the variable license fee, expressed as a percentage of the amount of the variable license fee (2,81%).

The additional tax to the *contribution des patentes* is expressed as a percentage of the amount of the *contribution des patentes* (2.81%).

7. Reporting and payment obligations

Subscription to an annual return before July 1 of the year of taxation.

The filing of the return must be accompanied by payment for the amount of the license fee and a down payment for the amount of *contribution des patentes*, equal to half of that tax.

A receipt is provided to the debtor in exchange for filing the return and the corresponding payment, along with a placard conforming to a model established by the Executive Council, marked “*licence/patente Saint-Martin*” and the year in question, that the business must subsequently display on its premises so that it is visible to the public.

The full amount of the *contribution des patentes* must be paid by the taxpayer on or before 30 November of the tax year.

8. Additional taxes

In addition to the license fee and *contribution des patentes*, other taxes are provided to finance the chamber of commerce of Saint-Martin.

The additional license fee includes:

- ▶ an additional fee of €100 over and above the fixed license fee;

Tax incentives for your employees that are tax resident in Saint-Martin

As a general rule, taxpayers domiciled in the Collectivité of Saint-Martin are taxed on the basis of a comprehensive income equal to the sum of their “worldwide” revenue regardless of its territorial source. A tax credit enables any potential double taxation to be offset.

Taxpayers that are not resident in the Collectivité are not however subject to unlimited tax liability. They only pay income tax, according to a special scheme, on their revenue from sources located in the Collectivité.

A special scheme exists for employees coming from abroad to work in Saint-Martin.

1. Determining tax residency

Are considered to be resident for tax purposes in Saint-Martin:

- a. persons who have their household or principal place of residence in Saint-Martin;
- b. **persons engaged in a professional activity, salaried or otherwise**, in Saint-Martin, unless they can show that this activity is carried out on a secondary basis;
- c. persons who have the center of their economic interests in Saint-Martin.

There exists a hierarchy between the personal criteria stated in (a) above: the taxpayer who can establish that they have their household in a place other than the territory of the *Collectivité* cannot be considered to have tax residency in Saint-Martin based only on the criteria of principle place of residence. For the purposes of these personal criteria, the household is essentially the primary of place of residence of the taxpayer, or that of their spouse or children. The principle place of residence is where the taxpayer resides for more than 183 days in the year.

Personal criteria, professional criteria (b) and economic criteria (c) apply alternately. A person who has neither

household nor principle place of residence in Saint-Martin, would still be considered tax resident in Saint-Martin if they exercised their main occupation there, salaried or otherwise, or if this was the center of their economic interests, meaning the place where they carry out their business, or make their main investments, or where most of their revenue is generated.

⊕ SPECIAL CONDITIONS FOR PERSONS PREVIOUSLY RESIDENT FOR TAX PURPOSES IN FRANCE

Individuals whose residence for tax purposes was, during the five years prior to their establishment in Saint-Martin, in a department of France or its overseas territories can only be considered as having their tax residence in Saint-Martin once they have resided there for at least five years (CGCT, art. L06314-4).

Persons having their tax residence in Saint-Martin are taxed on all their income from Saint-Martin and from foreign sources.

If foreign source income is taxed in the country of origin, double taxation is avoided by applying a specific tax credit.

2. Income tax system for residents of Saint-Martin

Principle

Saint-Martin tax regulations identify several categories of income or profits such as “property income” (income from rental properties) or “wages and salaries” (remuneration derived from employment).

The determination of net income for each category is made according to rules specific to each category.

Hence, the gross income of employees is reduced by compulsory social security contributions, plus any benefits in kind. Net income for that category is then obtained after deducting professional expenses that are either fixed at a flat rate of 10%, or determined on the basis of a statement of actual justified costs.

Category outcomes are then aggregated to determine the total net income, which can potentially be reduced by certain expenses such as alimony.

Income tax is calculated by application to total net **household** taxable income of the progressive scale **adjusted according to the family quotient**.

The calculated income tax can then be reduced by a set of tax deductions or tax credits; the effects of the family quotient may also be capped.

Family quotient

The family quotient takes into account the family situation of taxpayers and consequently reduces the progressive impact of income tax.

It works by assigning to each tax household a number of units depending on the number of people associated with the household.

The single taxpayer, divorced or widowed, without dependent children has a single unit.

The married taxpayer without dependent children has two units.

The married taxpayer with a dependent child has two and a half units; two children entitle them to three units; and they are entitled to four units for three children, and so on, each dependent from the third one on qualifying them for an additional unit.

The effective tax rate is calculated based on the **taxable income of the tax household divided by the number of units corresponding to the family quotient** of the taxpayer. The progressive scale of tax for one

unit of income is then applied to the amount of each unit of income.

The resulting figure is then multiplied by the number of units to obtain the total amount of gross tax.

Calculation of the tax

For the purposes of income tax for the year 2015, the progressive rate of income tax of the *Collectivité* of Saint-Martin for one unit is as follows:

Fraction of taxable income	Rate
Not exceeding €6,047	0%
From €6,047 to €12,063	5.5%
From €12,063 to €26,791	14%
From €26,791 to €71,826	30%
More than €71,826	41%

Gross tax can be adjusted by application of the capping effects of the family quotient, the tax benefit cap per half-unit being added to the two units for married taxpayers, hence amounting to €2,369 for 2015 incomes.

Gross tax gives rise to an overall deduction of 40%, up to a maximum of €6,700.

Other tax deductions

The amount of tax calculated can also be further reduced by a set of special tax deductions such as:

- ▶ tax credit for amounts paid to an employee in the home;
- ▶ or tax credit for childcare costs.

Tax credit enabling double taxation to be offset, even in the absence of a tax treaty

The *Collectivité* of Saint-Martin has not entered into any treaties against double taxation with States or territories other than the French State, even though tax residents in Saint-Martin may receive their income from a source outside the *Collectivité* and may be taxed by the territory or State in which the income is derived (this is the case for revenue originating in the United States, etc.).

In order to avoid double taxation of these incomes that have to be included in the tax base in Saint-Martin and declared as such, **Saint-Martin tax rules provide a unilateral tax credit mechanism** (not treaty) with respect to tax paid by a taxpayer living in Saint-Martin to a State or territory outside Saint-Martin under a positive income that has its source in that State or territory.

This tax credit is equal to the amount of tax paid in the State or territory outside Saint-Martin, but cannot exceed the amount of Saint-Martin tax attributable to such income.

Examples of calculating the income tax payable by tax residents in Saint-Martin

a. A single person with no children receiving €50,000 in salaries from sources based in Saint-Martin

Number of units: **1**

Taxable Income: **45,000** (after applying the 10% deduction for professional expenses)

Gross tax: **€7,856**

40% discount: **€3,142**

Tax payable: **€4,713**
(average tax rate: 9.4%)

b. Same situation but a with a salary of €100,000

Number of units: **1**

Taxable income: **90,000**

Gross tax: **€23,355**

40% capped discount: **€6,700**

Tax payable: **€16,655**
(average tax rate: 16.7%)

c. Couple with no children receiving a total of €50,000 in salaries from sources based in Saint-Martin

Number of units: **2**

Taxable Income: **45,000** (after applying the 10% deduction for professional expenses)

Gross tax: **€3,584**

40% discount: **€1,434**

Tax payable: **€2,150**
(average tax rate: 4.3%)

d. Couple with no children receiving a total of €100,000 in salaries from sources based in Saint-Martin

Number of units: **2**

Taxable Income: **90,000** (after applying the 10% deduction for professional expenses)

Gross tax: **€15,711**

40% discount: **€6,284**

Tax payable: **€9,427**
(average tax rate: 9.4%)

e. Couple with one child receiving a total of € 100,000 in salaries from sources based in Saint-Martin

Number of units: **2.5**

Taxable Income: **90,000** (after applying the 10% deduction for professional expenses)

Gross tax: **€13,342**

40% discount: **€5,337**

Tax payable: **€8,005**
(average tax rate: 8%)

f. Couple with two children receiving a total of €140,000 in salaries from sources based in Saint-Martin

Number of units: **3**

Taxable Income: **126,000** (after applying the 10% deduction for professional expenses)

Gross tax: **€21,773**

40% capped discount: **€6,700**

Tax payable: **€15,073**
(average tax rate: 10,8%)

3. Special exemption scheme for expatriate employees

The tax regime for expatriates is open to any person resident for tax purposes in Saint-Martin, regardless of nationality, coming to work in Saint-Martin and who has not been a tax resident in Saint-Martin during the five calendar years prior to taking up their position.

The person must have been called to work in a company in Saint-Martin (regardless of the nationality of the host company). To immediately benefit from this exemption, the person must fix their tax residence in Saint-Martin by 31 December of the year following the year they take up their position (i.e. no later than 31 December 2016, for a position taken up in Saint-Martin during 2015).

This exemption scheme for expatriates applies for up to five years starting from the year following the year they take up their position.

Expatriates benefit from tax exemption:

- ▶ firstly, on any addition to remuneration directly related to the exercise of their professional activity in Saint-Martin (expatriation bonus) for the actual amount or, as an option and only for persons directly recruited abroad, for a fixed amount corresponding to 30% of the total net pay;
- ▶ secondly, the fraction of compensation (base salary and potentially supplements to earnings) corresponding to activity carried out abroad, if any, provided that trips abroad are in the direct interest and for the exclusive benefit of the employer.

Exemptions are capped at 50% of total remuneration.

Working example

A skilled employee, employed by a company based in the United States is seconded by his employer to a company based in Saint-Martin with effect from 1 January 2016. They regularly travel abroad for professional reasons.

Their net annual remuneration for 2016 is **€200,000** including an "expatriation bonus" of **€60,000**;

Their remuneration related to work carried out abroad amounts to **€33,000**.

The following are exempt from income tax for the year 2016:

- ▶ the "expatriation bonus" (€60,000);
- ▶ the remuneration corresponding to work carried out abroad (€33,000).

Total exemption: **€93,000**.

This amount being less than 50% of total remuneration, which is **€100,000** (200,000 x 50%), the amount exempt is not capped.

Absence of customs duties or equivalent charges

Although part of the customs territory of the European Union, the Collectivité of Saint-Martin has a special "free port" status. In other words, goods imported into the territory are not subject to any customs duty.

Example: import/export company based in Saint-Martin

A logistics company based in Saint-Martin receives goods (excluding petrol products) in Saint-Martin via the commercial port of Galisbay located on the French side, with a view to adding value (unbundling, bundling, packaging, assembly...) and then shipping them back out of Saint-Martin.

This company benefits from a very favorable business environment characterized by:

- ▶ **The absence of any customs duty or any tax on the importation of the goods**
- ▶ **Very competitive port prices**
- ▶ **Access to high quality electricity services supplied at a very competitive cost**
Electricity utility company site: www.guadeloupe.edf.com
- ▶ **Exemption from property tax for five years for new buildings required for the business**
- ▶ **Forwarding of goods free of indirect taxation (TGCA exemption)**
- ▶ **Reduced labor costs due to exemption from social security contributions for lower wages**
Useful Information: www.urssaf.fr

List of main indirect taxes in Saint-Martin

The term indirect tax signifies a tax paid by consumers but collected and returned to the Collectivité of Saint-Martin by the company that sells the goods or services.

TGCA tax on turnover (“Taxe générale sur le chiffre d’affaires”)

Principle: tax paid by customers, must appear on invoices

Scope: supply of goods and services

Territoriality: TGCA taxation if the place of business operations is located in Saint-Martin:

- ▶ sales: place of departure of the goods
- ▶ services provided by a service provider based in Saint-Martin: place of use of service or place where the recipient is based
- ▶ services provided by a supplier established outside Saint-Martin: place where the service is provided

Rate: 4%

Transactions that are non-taxable or exempt: in particular, the sale of goods to be resold or used to provide a service (the TGCA tax only applies to the final stage of the production chain); exports (excluding sales to St. Maarten); various financial transactions, etc.

Reporting system: monthly pay out of the tax collected

Visitor’s tax

Principle: tax paid by hotel customers, must appear on invoices (not cumulative with TGCA)

Scope: hotels, tourist residences, rental villas...

Rate: 4%

Reporting system: monthly pay out of the tax collected

Tax on vehicle rentals

Principle: tax paid by clients for short-term vehicle rentals, must appear on invoices (not cumulative with TGCA)

Scope: short-term rental of vehicles

Rate: 4%

Reporting system: monthly pay out of the tax collected

TGCA tax on turnover

The system of value added tax (VAT) that exists within the European Union is not applicable to Saint-Martin. There is however a tax on turnover, namely the TGCA "Taxe générale sur le chiffre d'affaires", whose rate is very low (4%), and which is levied in practice on the retail sale of goods as well as all types of services.

This tax is neutral for companies working in retail sales (which alone are taxable). Companies collect the tax from their customers and return it to the Collectivité of Saint-Martin.

The same applies for services invoiced to individuals. In contrast, firms that use service providers (accountants, telephone operators...) or that acquire fixed assets, pay the TGCA invoiced by their suppliers. The rate is however very low (4%) and it is deductible from taxable income subject to corporate tax (in the form of expense or allowance for depreciation).

1. Scope

A. TAXABLE TRANSACTIONS

General rules

The TGCA is levied in principle on all supplies of goods, namely the sale of goods and services provided in exchange for payment within the territory of the *Collectivité* of Saint-Martin by persons that act independently as producers, traders or persons supplying services.

Transactions excluded from the scope of the TGCA

The following operations are outside the scope of the TGCA:

- ▶ imports of goods into *Collectivité* territory;
- ▶ deliveries to taxable persons of goods produced in Saint-Martin. Considered as production activities are those operations related to the manufacturing or processing of goods, except those leading to the delivery of electricity, water, gas, heat or cold distributed via a network. Also regarded as production activities are mining operations, agriculture, fishing and aquaculture;
- ▶ supplies of goods for resale or supplies to be used by the company, either for purchase / resale transactions, or for the purposes of providing a service.

⊖ Purchases of goods from wholesalers are therefore not subject to the tax as long as the goods are to be sold as is or to be used to provide services (catering sector, construction sector...).

This rule avoids the accumulation of taxes on the supply of goods and ensures the neutrality of the TGCA tax whatever the distribution network may be (whether or not there are intermediaries). The tax burden lies only on the sale to the final user.

In contrast, the supply of services other than those specifically exempt (see below) are systematically subject to TGCA.

The buyer, if it is a company, can of course include in its deductible expenses from taxable income the tax-included price of the services that it has received for the performance of its business.

Exemptions

The following are exempt in particular:

- ▶ exports, in other words, the supply of goods to buyers domiciled or based outside Saint-Martin or St. Maarten;
- ▶ road, air or sea transport services;
- ▶ health services;
- ▶ education services;
- ▶ most banking and financial transactions.

Other exemptions are intended to avoid multiple charges for business operations that are subject to another form of taxation. Hence are mainly exempt: accommodation services subject to the visitor's tax (hotel...), fuel deliveries that have already been subject to the tax on petrol products...

B. RULES OF TERRITORIALITY

In order for the supply of goods and services to be subject to the TGCA tax, they need to be located in Saint-Martin.

Supply of goods

Except in special cases, the place of delivery of goods is deemed to be in Saint-Martin when they are located in Saint-Martin:

- a. At the time of dispatch or shipping by the seller, the buyer, or on their behalf, to the buyer;
- b. During assembly or installation by the seller or on their behalf;
- c. When handed over to the buyer, in the event of no dispatch or shipping;
- d. At the time of departure of shipping to destinations outside Saint-Martin, when delivery is carried out by means of ship or aircraft.

Notwithstanding the provisions of (a) and (b), if the place of dispatch or transport lies outside Saint-Martin, the place of supply by the importer or for his account following the subsequent import is deemed to be in Saint-Martin.

Supply of services

The place of supply of services is deemed to be in Saint-Martin:

- a. When the service provider has their head office or a fixed place of business from which the service is rendered or, failing that, their household or usual residence and the lessee is based in Saint-Martin or the service is used Saint-Martin;
- b. If the service provider does not have a head office or fixed place of business from which the service is rendered or, failing that, their household or usual residence, but the service is used in Saint-Martin.

A self-assessment tax system is in place for when the service provider is located outside Saint-Martin and the services provided are subject to the TGCA.

This system is likely to apply in particular to services provided by a parent company headquartered outside Saint-Martin to a subsidiary based in Saint-Martin.

2. Tax base, operable event, chargeability and rates

Subject to specific provisions and clarifications provided in legislation, the tax base for the TGCA is the price for the acquisition of goods or services from the merchant or service provider.

In general, the event giving rise to the tax occurs when the goods are delivered or the services are performed.

In principle, however, the tax is payable only when payment or down payments are made, the taxpayer being able to opt for payment according to flow.

The TGCA rate is 4%.

3. Taxpayer obligations

In general, the TGCA tax must be paid to the *Collectivité* by persons who supply taxable goods and services (commercial businesses or service providers).

Each taxpayer, who must declare themselves to the business formalities center or tax office, is identified by an individual number.

Taxpayers must file monthly TGCA returns showing transactions, to the public accounting office of the *Collectivité*, and pay the corresponding amount of tax.

Returns and payments are on a quarterly basis only, for taxpayers whose annual tax is less than €1,000.

Taxpayers are also subject to invoicing obligations.

Nil or very low registration fees for everyday transactions

Rates applicable to main transactions

A. CONSTITUTION - ARTICLES

1. Outright contributions

- a. of buildings, property rights, goodwill, customers, rights to lease or lease agreement:

Exempt

- ▶ to a company subject to corporate tax by a company also subject to corporate tax

Exempt

- ▶ to a company subject to corporate tax by a person (individual or legal entity) not subject to this tax:

– buildings

8% or exempt

– goodwill and similar

6% beyond €25,000 or exempt

- b. goods other than those listed above (including cash contributions)

Exempt

2. Contributions in return for payment

- ▶ buildings

8%

- ▶ other property

basic transfer duty depending on the nature of the property or €125 (art. 680)

B. CAPITAL INCREASE

1. Outright contributions:

- a. buildings, property rights, goodwill (unless new goods), customers, rights to lease or lease agreement:

- ▶ to a company not subject to corporate tax:

Fixed rate of €500

- ▶ to a company subject to corporate

tax by a company also subject to corporate tax:

Fixed rate of €500

- ▶ to a company not subject to corporate tax by a person (individual or legal entity) not subject to this tax:

– buildings

8% or fixed rate of €500

– goodwill and similar

6% beyond €25,000 or fixed rate of €500

- b. goods other than those listed above (e.g. cash)

Fixed rate of €500

2. Contributions in return for payment:

- ▶ resulting from assumed liabilities in the event of contributions to a sole proprietorship company

– buildings

8% or fixed rate of €500

– goodwill and similar

6% beyond €25,000 or fixed rate of €500

- ▶ buildings

8%

- ▶ other property

basic transfer duty depending on the nature of the property or €125 (art. 680)

3. Capitalization of reserves

Fixed rate of €500

C. DEDUCTION OF FIXED CAPITAL

Fixed rate of €125 for unnamed acts

D. DISSOLUTION

Fixed rate of €500

E. CLOSURE OF LIQUIDATION PROCEEDINGS

Without dividend sharing between partners)

Fixed rate of €125 for unnamed acts

F. TRANSFER OF STOCKS OR SHARES

1. Transfer of shares:

- a. of listed companies:

- ▶ not recognized by an act

Exemption

- ▶ recognized by an act

3% capped at €5,000 per transfer

- b. unlisted companies:

- ▶ general case

3% capped at €5,000 per transfer

- ▶ real estate companies

8%

2. Transfer of shares: Registration fee

- ▶ general case:

3% after applying a deduction (€23,000 / total number of shares)

- ▶ real estate companies:

8% without any deduction



USEFUL CONTACTS

Collectivité of Saint-Martin

Taxation:

- ▶ David Girardot
david.girardot@com-saint-martin.fr
- ▶ Odile Vainqueur
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Spatial planning and tourism development program:

- ▶ Stéphanie Bessière
stephanie.bessiere@com-saint-martin.fr

Economic Development:

- ▶ Pierre Brangé
pierre.brangé@com-saint-martin.fr

Paris Office

- ▶ Junisa Gumbs
junisa.gumbs@com-saint-martin.fr
54, rue de Varenne - 75007 Paris
00 33 (0)1 40 48 29 60

Other institutions:

- ▶ Website of the Prefecture of Saint-Martin (representing the French State):
www.saint-barth-saint-martin.pref.gouv.fr
- ▶ Inter-profession economic section of Saint-Martin
Legal information (in particular company formation)
www.ccism.com

Finding a notary:

www.notaires.fr

Details of notaries based in Saint-Martin

- ▶ SCP Gérard MOUIAL, Nadia JACQUES, Renaud HERBERT and Thierry COLLANGES
4 rue Charles Height
97054 ST MARTIN CEDEX
scpmouial.stmartin@notaires.fr
- ▶ SELARL Isabelle BIAUX-ALTMANN
21 rue du Général de Gaulle
97151 ST MARTIN CEDEX
biaux-altmann.notaire@notaires.fr

Finding an accountant based in Saint-Martin:

www.experts-comptables-guadeloupe.fr

General Documentation:

La législation sociale en France (Social legislation in France) includes Saint-Martin

L'entrée et le séjour d'un collaborateur étranger en France (The entry and stay of foreign collaborator in France) includes Saint-Martin

La protection sociale de vos collaborateurs en France (Social protection for employees in France) includes Saint-Martin

Les formes juridiques susceptibles d'être utilisées en France (Legal forms that may be used in France) includes Saint-Martin

See the guide to "Doing Business in France" available on the website of the Invest in France Agency:
www.invest-in-france.org

Other information:

Princess Juliana International Airport
www.sxmairport.com

Grande Case International Airport
www.saintmartin-airport.com



DOING BUSINESS IN SAINT-MARTIN

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