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## *Peru bolsters its capital markets framework with measures that include tax provisions*

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### ***In brief***

Peru has enacted several measures under law no. 30,500 to bolster the country's capital markets. Foreign investors should evaluate how these measures affect their current Peruvian investment positions and prospective investments, particularly the rules that clarify certain tax-related matters.

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### ***In detail***

Enacted on June 26, 2013, law no. 30,500 grants the Peruvian securities regulator (SMV) the authority to promulgate regulations designed to relax requirements and obligations relating to the registration, preparation, and information regarding public offerings, and to waive otherwise applicable requirements and conditions under other laws – such as the securities exchange law and the investment funds law—when the offerings are made either to institutional investors or by new issuers (preferably small and medium-size enterprises).

Law no. 30,500 amends several provisions of the capital markets framework and also adds new provisions -- including the SMV law, securities exchange law and general corporate law. The

general purpose for the changes is to develop the Peruvian capital markets. Among these changes, law no. 30,500 addresses the following Peruvian tax matters:

#### ***Income tax exemption for interest on public treasury notes***

Effective January 1, 2014, interest payments on public treasury notes issued by the Peruvian government will be exempt from income tax. These interest payments currently are taxable since they are not included on the list of public debt instruments qualifying for an income tax exemption (e.g., Peruvian government bonds issued in foreign markets since 2002). The Peruvian government intends to create uniform tax treatment for public

debt instruments, including bonds and notes.

#### ***Withholding obligation for the Peruvian clearing house (CAVALI) on certain indirect transfers of Peruvian shares***

When an indirect transfer of Peruvian shares involves payment to a non-resident payee that CAVALI clears, law no. 30,500 requires that CAVALI deduct and withhold the corresponding capital gains tax when affecting the clearance in cash, provided that the non-resident payee provides CAVALI with information regarding the transaction, including the amount that should be deducted and withheld. Thus, CAVALI is required to withhold only if it has been provided with this information. This requirement will take effect on January 1, 2014.

Additionally, law no. 30,500 imposes joint and several liability on CAVALI with respect to the amount of the capital gains tax when CAVALI is required to deduct and withhold the tax; generally, the non-resident indirect seller has primary responsibility for the tax.

***Permanent VAT exemption for interest on publicly-traded debt securities***

For many years, interest on publicly-traded debt securities has been subject to a temporary VAT exemption (generally lasting for a three year period) which the Peruvian

government had repeatedly extended prior to its expiration. By contrast, interest on bank loans and bank deposits has been subject to a permanent VAT exemption. To provide consistent tax treatment for these two financing alternatives, law no. 30,500 grants a permanent VAT exemption for interest on debt securities, provided that:

- a) the securities are issued in a public or private offering by an entity incorporated in Peru or
- b) if the securities are not placed through a public offering, then the securities must be acquired

through a centralized mechanism of negotiation, such as the Peruvian securities exchange.

***The takeaway***

The Peruvian government estimates that, over the next five years, law no. 30,500 will give 178 issuers potential access to the Peruvian capital markets as well as a PEN 4 billion (approximately \$1.4 billion) increase in primary public offerings. Foreign investors should discuss with their financial and tax advisors the effects of law no. 30,500 on their current and prospective Peruvian investments.

***Let's talk***

For a deeper discussion, please contact:

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