

# *Worldwide Tax Summaries*

## Corporate Taxes 2018/19

*Quick access  
to information  
about corporate  
tax systems in  
152 territories  
worldwide.*

*South America.*



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# ***Worldwide Tax Summaries***

## Corporate Taxes 2018/19

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All information in this book, unless otherwise stated, is up to date as of 1 June 2018.

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## Foreword

Welcome to the 2018/19 edition of *Worldwide Tax Summaries – Corporate Taxes*, one of the most comprehensive tax guides available. This year's edition provides detailed information on tax rates and rules in 152 territories worldwide.

As governments across the globe are looking for greater transparency and with the increase of cross-border activities, tax professionals often need access to the current tax rates and other major tax law features in a wide range of territories. The territory summaries, written by our local PwC tax specialists, include recent changes in tax legislation, as well as key information about income taxes, residency, income determination, deductions, group taxation, credits and incentives, withholding taxes, indirect taxes, and tax administration. All information in this book, unless otherwise stated, is up to date as of 1 June 2018.

Our online version of the summaries is available at [www.pwc.com/taxsummaries](http://www.pwc.com/taxsummaries). The Worldwide Tax Summaries (WWTs) website also covers the taxation of individuals and is fully mobile compatible, giving you quick and easy access to regularly updated information anytime on your mobile device.

Some of the enhanced features available online include Quick Charts to compare rates across jurisdictions. You may also access WWTs content through Tax Analysts at [www.taxnotes.com](http://www.taxnotes.com).

If you have any questions, or need more detailed advice on any aspect of tax, please get in touch with us. The PwC tax network has member firms throughout the world, and our specialist networks can provide both domestic and cross-border perspectives on today's critical tax challenges.



**Colm Kelly**  
Global Tax &  
Legal Services Leader



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# ***Territory chapters***

## South America

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# Argentina

## **PwC contact**

Ricardo D. Tavieres  
PwC Argentina  
Edificio Bouchard Plaza  
Bouchard 557  
C1106ABG Ciudad de Buenos Aires  
Argentina  
Tel: +54 11 4850 6714  
Email: [ricardo.d.tavieres@ar.pwc.com](mailto:ricardo.d.tavieres@ar.pwc.com)



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## **Significant developments**

### **The tax reform**

In its commitment to modernising the tax system, but also with an eye on monitoring the fiscal deficit, the Argentine Congress passed, on 27 December 2017, a large tax reform package that became effective on 1 January 2018.

### **Profits tax rate reduction**

The most significant change in the tax reform is a profits tax rate reduction that applies in two phases. For the first two taxable years starting on or after 1 January 2018, the profits tax rate is reduced from the prior 35% rate to 30%. For taxable years beginning on or after 1 January 2020 and on a going-forward basis, the tax rate is further reduced to 25%.

This measure is offset by the introduction of a withholding tax (WHT) on dividend distributions and branch profit remittances at rates of 7% (while the applicable profits tax rate is at 30%) and 13%, respectively, going forward. The WHT on dividends and branch profits can be reduced by tax treaties. The tax reform has also abolished the so-called 'equalisation tax' for profits generated in taxable years starting on or after 1 January 2018, although it remains applicable on dividend and branch profit distributions made out of earnings accumulated prior to 1 January 2018 and which were in excess of tax earnings as of the year-end prior to the relevant distribution.

### **Transfers of Argentine shares**

The tax reform has confirmed that the transfer of Argentine securities that occurred after 23 September 2013, including transfers of Argentine shares made between non-residents, is subject to tax. The tax, however, does not apply to the sale of shares and American Depositary Receipts (ADRs) made by non-residents through stock exchanges (whether local or foreign).

The tax reform now provides that it should be the seller, and not the buyer, that is the party responsible for withholding the tax. In this regard, Resolution No. 4227 has established a new mechanism regulating how non-resident sellers should pay the tax on the capital gain for transactions that have taken place on or after 1 January 2018. In summary, the non-resident seller should pay the tax directly through an international wire transfer unless there is a local withholding agent (i.e. local buyer or local custodial institution) involved in the payment.

Non-residents are now exempt from tax on capital gains realised on the sale of shares in publicly traded companies but only to the extent that the shares are actually sold

# Argentina

through the local stock exchange. Furthermore, non-residents continue to be exempt from tax on capital gains arising from the sale of sovereign bonds and corporate bonds issued in an initial public offering (IPO). Yields from those bonds are also exempt from Argentine tax. In all cases, the exemption is conditioned on the foreign seller being a resident in a jurisdiction having an exchange of information agreement with Argentina and the funds coming from these jurisdictions. Only yields and capital gains derived from specific securities issued by the Argentine Central Bank (LEBACs) do not benefit from this exemption. In these cases, both the income and the capital gain are subject to tax at a rate of 5% tax. If the tax cost cannot be determined in the case of a sale, the tax is levied at a rate of 4.5% over the sales proceeds.

Indirect transfers of Argentine assets (including shares) are now taxable under the tax reform, provided that (i) the value of the Argentine assets exceed 30% of the transaction's overall value, and (ii) the equity interest sold in the foreign entity exceeds 10%. The tax is also due if any of these thresholds were met during the 12-month period prior to the sale. The indirect transfer of Argentine assets, however, is only subject to tax to the extent those assets are acquired on or after 1 January 2018. Furthermore, indirect transfers of Argentine assets within the same economic group do not trigger taxation, provided the requirements to be set by regulations are met.

## Other income tax changes

In line with the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention on Income and Capital guidelines, the tax reform limits the concept of 'ancillary or preparatory' in order to limit the type of activities that are not deemed to constitute a permanent establishment (PE).

The tax reform has also replaced the 2:1 debt-to-equity thin capitalisation rule with the base erosion and profit shifting (BEPS)-based rule, where the deduction on interest expense and foreign exchange losses with local and foreign related parties is now limited to 30% of the taxpayer's taxable income before interest, foreign exchange losses, and depreciation. The taxpayer is entitled to carry forward excess non-deductible interest for five years and unutilised deduction capacity for three years.

Amendments have also been introduced to relax the so-called 'sixth method' for transfer pricing analysis in cases involving commodity transactions with foreign intermediaries.

The Argentine controlled foreign company (CFC) rules have also been amended. Thus, an Argentine taxpayer is immediately taxed on the passive income generated by a CFC that is directly or indirectly held by the Argentine taxpayer to the extent that more than 50% of that CFC's income is passive and is effectively subject to a tax that is lower than 75% of the applicable Argentine income tax rate.

The tax reform also confirms that ADRs generate Argentine-sourced income. However, as stated, a non-resident is exempt from the current 15% capital gains tax on the sale of ADRs if one resides in a jurisdiction having an exchange of information agreement with Argentina.

## Other tax changes

A new 10% excise tax has been introduced on drinks with caffeine and taurine. The excise tax rate on certain automobiles has been reduced.

The tax reform has also increased the tax on financial transactions that is creditable against the profits tax liability.

With respect to value-added tax (VAT), the tax reform provides for an expedient VAT recovery mechanism for VAT credit balances on certain infrastructure and investments in capital goods, to the extent that companies have not been able to recover the VAT within six months. VAT legislation has also been amended to include 'digital transactions' (e.g. digital services, hosting, on-line technical support, software services, Internet services) as a taxable event. Hence, these types of services are now subject to VAT at a 21% rate if they are supplied by a non-resident entity to an Argentine customer, provided that they are effectively used in Argentina.

The tax reform also updates the minimum thresholds to characterise a tax omission as tax fraud and introduces other amendments to the Tax Procedure Act.

### ***Tax on asset revaluations***

As part of the reform package, the Argentine Congress also approved a one-time tax aimed at offsetting the absence of inflation adjustments rules with an optional revaluation of assets for companies and individual entrepreneurs.

Under this revaluation tax, taxpayers are entitled to adjust their tax basis in fixed and movable assets (except automobiles), shares in Argentine companies, and intangible assets. Assets that have been fully depreciated are excluded. The revaluation has to be made by computing certain factors, although an external appraisal instead of those factors can be used for real estate that is not treated as inventory as well as for movable assets, provided that the revaluation does not exceed 1.5 times the revaluation that would have resulted had those factors been applied.

The tax is levied on the amount of the adjustment at a rate of 8% in the case of real estate (15% if it is considered inventory), 5% for shares if held by individuals, and 10% for other assets. The taxpayer can select which class of assets to adjust, but once the category has been selected, all of the assets included in that category have to be adjusted.

The basis adjustment is depreciable over the remaining useful life with a minimum of five years, except for basis adjustments in real estate and intangibles, where the depreciation must be made over the longer of either ten years or 50% of the remaining useful life. Going forward, for newly acquired assets as well as those whose bases have been adjusted, taxpayers are entitled to recover their lost value by adjusting the tax basis for inflation, as inflation adjustments have been reinstated for those assets.

Taxpayers opting to revalue their assets must withdraw judicial or administrative proceedings claiming inflation adjustments for past or future taxable years.

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## ***Taxes on corporate income***

### ***Profits tax***

According to the recent tax reform, the rate of profits tax on net taxable business profits has been reduced to 30% (formerly 35%) for fiscal years beginning on or after 1 January 2018. Such rate will be further reduced to 25% for fiscal years beginning on or after 1 January 2020. Legal entities resident in Argentina are subject to tax on Argentine and foreign-source income. Resident legal entities are able to claim any



# Argentina

similar taxes actually paid abroad on foreign-source income as a tax credit. The tax rate applies on net income determined on a worldwide basis.

The aforementioned tax reform also introduced a WHT on dividend distributions and branch profit remittances at rates of 7% (while the applicable profits tax rate is at 30%) and 13%, respectively, going forward.

The tax reform has also abolished the so-called ‘equalisation tax’ for profits generated in taxable years starting on or after 1 January 2018. The equalisation tax was a WHT levied at a 35% rate on dividend distributions in excess of tax earnings. The equalisation tax, however, remains applicable on dividend and branch profit distributions made out of earnings accumulated prior to 1 January 2018 and which were in excess of tax earnings as of the year-end prior to the relevant distribution.

Argentine-source income (e.g. royalties, interests) received by foreign entities is subject to WHT in full and final settlement at source (*see the Withholding taxes section*).

## **Tax on minimum notional income**

In addition to the profits tax, there is a tax on minimum notional income. The rate is 1% on the value of fixed and current assets. The presumed tax, imposed annually, is applied only in excess of the profits tax of the same fiscal year. In addition, payment of this presumed tax, not offset by the profits tax, will be treated as payment on account of profits tax chargeable during a maximum period of ten years.

Banking and insurance entities are only subject to this tax on 20% of the corresponding taxable assets.

This tax will be repealed as of 2019.

## **Local income taxes**

*For a description of the local (jurisdictional) tax on gross revenues from the sale of goods and services, see Turnover tax in the Other taxes section.*

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## **Corporate residence**

Corporate residence is determined on the basis of centres of activity, which may be the location of a company’s economic activity or management activity.

## **Permanent establishment (PE)**

Centres of activity in Argentina of non-Argentine corporations are treated as PEs.

As part of the 2017 tax reform, a PE definition has been introduced into the Income Tax Law. Such a definition is aligned to the one included in the OECD’s Model Tax Convention for the Avoidance of Double Taxation.

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## **Other taxes**

### **Value-added tax (VAT)**

VAT is assessable on the sales value of products (e.g. raw materials, produce, finished or partly finished merchandise) with few exemptions, most services (e.g. construction,

utilities, professional and personal services not derived from employment, rental), and on import of goods and services. The VAT rate is 21%, although certain specific items are subject to a 27% or 10.5% rate. VAT is payable by filing monthly tax returns.

The increased rate of 27% applies to 'utilities services' (e.g. telecommunications, household gas, running water, sewerage, and energy) not rendered to dwelling-purposes real estate.

A reduced rate of 10.5% applies to certain transactions, including (but not limited to) the following:

- Construction of housing.
- Interest and other costs on personal loans granted to final consumers by financial institutions.
- Sales and imports of living bovine animals.
- Supply of publicity and advertising in some specific cases.
- Any passenger transportation operating inside the country when the distance does not exceed 100 km.
- Medical assistance in some specific cases.
- Certain capital goods, depending on the Customs Duty Code.

VAT paid on purchases, final imports, and rental of automobiles not considered as inventory cannot be computed by the purchaser as a VAT credit. The same tax treatment applies to other services, such as those provided by restaurants, hotels, and garages.

As a result of the 2017 tax reform, VAT legislation has also been amended to include 'digital transactions' (e.g. digital services, hosting, on-line technical support, software services, Internet services) provided from abroad as a taxable event. Hence, these types of services are now subject to VAT at a 21% rate if they are supplied by a non-resident entity to an Argentine customer, provided that they are effectively used in Argentina.

### **VAT exemptions**

Among others, the following transactions are exempt from VAT:

- Sales of books, ordinary natural water, common bread, milk, medicine, postage stamps, aircraft used in commercial activities and for defence or internal safety, and ships or boats acquired by the national government.
- Supply of certain services, such as services rendered by the government (national, provincial, or local) or by public institutions; school or university education provided by private institutions subject to public educational programmes; cultural services supplied by religious institutions; hospital and medical care and related activities; transportation services for sick or injured persons in vehicles specially designed for the purpose; tickets for theatre, cinema, musical shows, and sport events; the production and distribution of motion picture films; local transport of passengers (e.g. taxis, buses) up to 100 km; and international transportation.
- Rental of real estate for housing purposes.

### **VAT exemption on importation**

The following import transactions are also exempted from VAT:

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- Final importation of goods qualifying for exemption from customs duties under special regimes for tourists, scientists and technicians, diplomatic agents, etc.
- Final importation of samples and parcels exempted from customs duties.

## VAT export reimbursement regime

Exports of goods and services are treated as zero-rated transactions. Nevertheless, input VAT related to these transactions can either be used as a credit against output VAT or refunded pursuant to a special procedure.

Services rendered within the country shall be deemed to be exports if they are effectively applied or economically utilised outside the country.

Exporters must file an export return with the tax authorities, reporting the VAT receivables related to their exports to be reimbursed on VAT paid in relation to the export operations. A report certified by a public accountant with respect to the value, registrations, and other characteristics related to the refund must be attached to the export return.

The tax credit related to exports and other taxable activities can only be refunded in proportion to the exports, and can be fully refunded to a cap of 21% of the freight on board (FOB) value of the exported products.

There is no specific method stated in the legislation for allocating the tax credit related to exports, but taxpayers are able to use any methods of calculation that would be suitable to their business model. This calculation has to be approved by the tax authorities.

Finally, it is important to highlight that the tax authorities have to approve the tax credit to be refunded.

## VAT reimbursement on investments in infrastructure projects and acquisition of capital goods

The 2017 tax reform established an expedient VAT recovery mechanism for VAT credit balances on certain infrastructure and investments in capital goods, to the extent that companies have not been able to recover the VAT within six months.

## Electronic invoicing

All VAT-registered taxpayers are compelled to use electronic invoices. In order to apply for this regime, an authorisation must be obtained from the tax authorities. As a result, the tax authorities will assign an Electronic Authorization Code (*Código de Autorización Electrónico* or CAE), which is included in every issued electronic invoice.

## Import and export duties

The levels of import duty currently range between 0% and 35%, except in cases where a specific minimum duty is applied or that involve merchandise with a specific treatment. These percentages were established considering the individual competitive conditions prevailing in different production sectors and the relative advantages of contributing to the introduction of equipment and technology for local industry. In general, merchandise originating from Latin America Integration Association (LAIA) countries is entitled to preferential duty.

In the case of export transactions, goods are valued based on the FOB clause, and the approach is based on their theoretical value rather than a positive basis as in the case of imports.

Definitive exports of certain goods are subject to export duties. The rates vary from 5% to 45%, depending on the tariff code of the merchandise. No export duties are levied on exports of most agricultural and industrial products.

## Excise taxes

Excise tax is assessable on a wide variety of items sold in Argentina (not on exports), principally on tobacco, wines, soft drinks, spirits, gasoline, lubricants, insurance premiums, automobile tyres, mobiles services, perfumes, jewellery, and precious stones. The bases of the assessment and tax rate of some items are as follows:

Products	Nominal rates (%)
Tobacco, cigars, and cigarettes	20/25/70
Alcoholic drinks	20/26
Beers	8/14
Soft drinks	4/8/10
Jewellery and precious stones	20
Automobiles, motor vehicles, motor vessels, motor homes, etc.	20

## Stamp tax

Stamp tax is levied by each of the 24 jurisdictions into which Argentina is divided, and applies principally to contracts and agreements, deeds, mortgages, and other obligations, agreements, and discharges of a civil, financial, or commercial nature of which there is written evidence or, in certain instances, that are the subject of entries in books of account. The average tax rate is 1% applicable on the economic value of the contract.

In the city of Buenos Aires, the standard tax rate is 1% of the aggregate amount of the transactions, contracts, and deeds that are subject to the stamp tax. Special rates of 0.5%, 1.2%, 3%, and 3.6% are also established; and, in the case of transactions involving uncertain consideration, a fixed tax of 2,500 Argentine pesos (ARS) is applicable (on the fulfilment of certain conditions).

## Turnover tax (gross income tax)

Each of the 24 jurisdictions into which Argentina is divided imposes a tax on gross revenues from the sale of goods and services. Exports of goods are exempt, and certain industries are subject to a reduced tax rate. Rates, rules, and assessment procedures are determined locally.

Information on tax rates of the economically largest jurisdictions is provided as follows:

Jurisdiction	General rate (%)	Commerce (%)	Services (%)	Industry (%)
Province of Buenos Aires	4.5	3 to 5	3.5 to 5.5	1.75 to 4
City of Buenos Aires	3 to 5	3 to 5	3 to 5	1 to 4
Córdoba	4	2 to 7.5	2 to 10.5	0.25 to 1.5
Mendoza	4	4 to 8	4 to 6	2/3 to 7

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Jurisdiction	General rate (%)	Commerce (%)	Services (%)	Industry (%)
Santa Cruz	3	3 to 5	3	1.75
Santa Fe	3.5/3.8 to 4.5	3 to 4.5	1 to 4.5	1.75 to 4.5

## **Real estate tax**

Similar to the turnover tax, real estate tax is imposed by each Argentine jurisdiction. It is levied on the ownership of real estate located in the territory of the jurisdiction.

Real estate tax is usually assessed by the local tax authority, considering the property's fiscal value and the tax rates established by the current year tax law.

## **Tax on financial transactions (on credits and debits on bank accounts)**

Bank account movements (deposits and withdrawals) are subject to a national tax on financial transactions at the following rates:

- 0.6% of deposits and withdrawals in bank accounts opened in local financial entities.
- 1.2% of any transactions made in a bank without using a bank account.

33% of the tax on financial transactions effectively paid on bank account transactions (0.6%) and movement of funds (1.2%) is creditable against profits tax and minimum notional income tax and/or respective tax advances.

## **Wealth tax**

An annual wealth tax is levied on the shares or holding in the capital of local companies owned by individuals or undivided estates domiciled in Argentina or abroad, and/or companies and/or any other type of legal person domiciled abroad. It shall be assessed and paid directly by the local company as a full and final payment on behalf of the shareholders (the issuing company has the right to recover from the shareholder the tax paid).

The applicable tax rate is 0.25% and is applicable on the value of the participation, which is generally calculated on the difference between assets and liabilities arising from the financial statements closed at 31 December or during the respective fiscal year.

Note that a Supreme Court decision has ruled on the non-applicability of this tax to Argentine branches of foreign companies.

## **Payroll taxes and social security contributions**

Foreign and local nationals working for a local company must be included on the local payroll and will be considered as local employees for local labour, tax, and social security purposes. Both the local company and the employees will be subject to the corresponding regulations.

All the compensation paid in Argentina or abroad for work performed for the local company will be considered as local compensation and should be reported to the tax and social security authorities, as the case may be, and included in the salary slips and recorded in the local labour books.

The local employer must withhold income tax on an actual and monthly basis and make the corresponding payments to the tax authorities through monthly WHT returns. Individual tax rates range from 5% to 35%, and personal deductions are available.

The local entity must issue salary slips every month for each employee included on its payroll, considering the total compensation mentioned above.

Employer social security contributions add between 23% and 27% to payroll costs. There is a compulsory 13th-month salary. There is no restriction regarding the employment of foreigners, provided they hold working visas.

Workers' (Employees') Compensation: Argentine labour regulations determine different forms of compensation for employees. These include, but are not limited to, the following:

- Vacation compensation.
- Compensation in a case of termination of employment contract with employee (prior notice of dismissal and to a severance payment, both based on seniority).

Main social taxes and contributions assessable on salaries are as follows:

	Percentage of gross monthly earnings (%)	
	(including 13th month salary)	
Social taxes and contributions	Employer (2, 3)	Employee (1)
Pension fund	17/21	11
National unemployment fund	-	-
Family allowances fund	-	-
Social services institute for pensioner	-	3
Social health care plan	6	3
Total	23/27	17

## Notes

1. Social security charges borne by employees are applicable up to a monthly salary cap, which currently amounts to ARS 86,596.10 as of March 2018. This cap is updated in March and September of each year.
2. Argentine employers are exempt to pay social security contributions for the first ARS 12,000 per month per employee. The exemption will be implemented gradually over a five-year period (from ARS 2,400 in 2018 to ARS 12,000 in 2022 and thereafter).
3. Employers' contributions to the national unemployment fund, family allowances fund, and social services institute for pensioners is paid at a unified rate of 17%. The rate is increased to 21% for companies whose main activity consists of rendering services or commerce, provided the amount of their average total annual sales for the last three years exceeds ARS 48 million.

## Branch income

The rate of profits tax on net taxable profits from Argentine sources and from activities performed abroad by the branch is currently 30% (for fiscal years beginning on or after 1 January 2018) and will be further reduced to 25% (for fiscal years beginning on or after 1 January 2020). Branches are also subject to minimum notional income tax.

# Argentina

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## **Income determination**

### **Inventory valuation**

Inventory valuation is based on the latest purchase. Thus, the last in first out (LIFO) method may not be elected for tax purposes. Conformity between book and tax reporting is not required.

### **Capital gains/losses**

Capital gains and losses attract normal profits tax treatment, except that losses from the sale of shares and other equity interests may be offset only against the same type of income.

### **Capital gains on equity**

Gains derived from the transfer of shares, bonds, and other securities are subject to tax at the regular 30% rate (to be reduced to 25% as of fiscal years beginning on or after 2020).

Non-residents are subject to capital gains tax on the disposal of Argentine equities at a 13.5% effective tax rate on gross proceeds or, alternatively, a 15% income tax on the actual capital gain if the seller's tax cost basis can be duly documented for Argentine tax purposes. Disposal of equities listed in the local stock exchange and ADRs/Global Depository Receipts (GDRs) are tax exempt, provided certain conditions are met.

### **Capital gains on debts**

Capital gains derived by foreign beneficiaries from the sale of corporate bonds placed by public offer (*obligaciones negociables*), notes issued by financial trusts (*títulos de deuda*), or government securities (except from LEBACs) should be exempt from profits tax, provided certain conditions are met.

### **Dividend income**

Dividends, including stock dividends, are not included in the tax base by the recipient if distributed by an Argentine company (see the *Withholding taxes section for additional information*). However, tax is levied if the dividends are distributed by a foreign company.

### **Royalty income**

Royalty income should be included as part of the taxpayer's taxable income and will be subject to the standard profits tax rate.

### **Foreign exchange gains/losses**

The general rule is that foreign exchange results (gain or losses) have to be recognised on an accrual basis. However, in some cases, the cash basis is applicable.

Foreign exchange losses can only be offset against foreign-source taxable income.

### **Foreign income**

Foreign income received or held undistributed abroad (in case of investments in non-stock companies) by resident corporations is subject to tax. Note that an Argentine taxpayer is immediately taxed on the passive income generated by a CFC that is directly or indirectly held by the Argentine taxpayer to the extent that more than 50% of that CFC's income is passive and is effectively subject to a tax that is lower than 75% of

the applicable Argentine income tax rate. Tax losses from a foreign source can only be offset against income from a foreign source.

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### ***Deductions***

Expenses necessary to generate, maintain, and preserve taxable income, and related to the company activity, are usually tax deductible, with a few exceptions, to the extent they are fair and reasonable.

### ***Depreciation and depletion***

Depreciation is generally computed on a straight-line basis over the technically estimated useful life of the assets or, alternatively, over the standard useful life (e.g. machinery and equipment: ten years; furniture: ten years). Depreciation of buildings and other construction of real estate is 2% *per annum* on cost (on a straight-line basis), unless it can be proved that useful life is less than 50 years.

Depreciation of automobiles whose original cost exceeds ARS 20,000 is not deductible. Related expenses (gasoline vouchers, insurance, rentals, repairs and maintenance, etc.) are deductible up to an amount of ARS 7,200 per automobile per year.

Conformity between book and tax depreciation is not required.

Profit or loss on the sale of depreciated property is determined with reference to cost less depreciation, and is included in ordinary taxable income.

Percentage depletion is available for natural resources (mines, quarries, woods).

### ***Goodwill***

The amortisation of goodwill cannot be deducted for profits tax purposes. At the moment of sale, the taxable gain will be calculated by deducting the cost expenses (purchase price).

With regards to self-developed goodwill, at the moment of sale the cost will be the amount of expenses incurred in obtaining it, provided it was not deducted for profits tax purposes before.

### ***Research and development (R&D)***

R&D expenditures (for the development of intangible assets) may be deducted when they are incurred or amortised over not more than five years, at the option of the taxpayer. Expenditures for R&D in connection with the creation of fixed assets form part of the assets' cost and are amortised over their useful lives.

The amortisation of brands and licences acquired can be deducted if they have a limited term of duration.

### ***Start-up expenses***

Start-up expenses may be deducted when incurred or amortised over not more than five years, at the option of the taxpayer.



# Argentina

## **Interest expenses**

The tax law establishes a restriction on the deductibility of interest and foreign exchange losses arising from debts of a financial nature contracted by taxpayers with controlling/related entities for profits tax purposes (*see Thin capitalisation in the Group taxation section*).

## **Bad debt**

The deduction of accounting bad debts is not allowed for tax purposes. However, if the debts fulfil certain characteristics (i.e. bankruptcy, prescription, among others), and with the corresponding supporting documentation, they can be deducted.

## **Charitable contributions**

When made to societies and associations expressly exempt from assessment of profits tax, donations are admissible deductions at up to a maximum of 5% of the donor's net taxable profits, provided certain requirements are fulfilled.

## **Representation expenses**

If adequately documented, representation expenses are permissible deductions at up to 1.5% of the amount of salaries accrued during the fiscal year. According to the Regulatory Decree, representation expenses are payments made in order to represent the company in the market, to improve and maintain its relationship with suppliers and clients, etc.

## **Directors' fees**

Amounts up to the greater of 25% of after-tax profit or ARS 12,500 per individual are deductible in the financial year to which they apply, provided they are approved and available for the director before the due date of the tax return or in a later year of payment.

## **Fines and penalties**

In relation to deductibility of penalties to determine net taxable income, taxpayers are not allowed to deduct sums paid on their own account corresponding to penalties, litigation costs, penalty interest, and other costs derived from tax obligations.

## **Taxes**

Except for profits tax and the tax on minimum notional income, all taxes are deductible.

## **Net operating losses**

Net operating losses may be carried forward for five years. Loss carrybacks are not permitted. Furthermore, foreign-source losses must be offset against income from similar sources.

Losses on derivatives transactions with speculative purposes can only be used to offset income from the same types of transactions.

## **Payments to foreign affiliates**

Transactions between related parties should be at arm's length (*see Transfer pricing in the Group taxation section for more information*). This principle is extended to transactions with companies that are not located in jurisdictions considered to be

'cooperative' for tax transparency purposes or located in a tax haven. Payments to foreign affiliates or related parties and companies located in a tax haven or a non-cooperative jurisdiction that represent income of Argentine source are tax deductible, provided they are paid before the due date for filing the tax return and the corresponding withholding is paid to the tax authorities. Otherwise, they would be deducted in the fiscal year in which they are paid.

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## **Group taxation**

Group taxation is not permitted in Argentina.

## **Transfer pricing**

The transfer pricing regulations governing inter-company transactions adopt principles similar to those of the OECD, pursuant to which companies must comply with the arm's-length principle in order to determine the value of goods and services in their transactions with foreign-related companies.

The following taxpayers, among others, must generally file, together with their annual profits tax return, a supplementary return (transactions encompassed by regulations governing transfer prices) and transfer pricing study:

- Taxpayers carrying out transactions with related individuals or legal entities set up, domiciled, or located abroad. Two or more persons are considered to be related parties when one of them takes part, either directly or indirectly, in the administration, control, or capital of the other, or when a person or group of persons takes part, either directly or indirectly, in the administration, control, or capital of those persons.
- Taxpayers carrying out transactions with related individuals or legal entities not set up, domiciled, or located in countries considered to be cooperative for tax transparency purposes, whether related or not.
- Argentine residents carrying out transactions with PEs located abroad and owned by them.
- Argentine residents, owners of PEs located abroad, for transactions carried out by the latter with persons or other type of related entities domiciled, set up, or located abroad.

The Regulatory Decree provides specific rules to determine the fairness of the transfer pricing methodology. These rules are similar to those set by the OECD and contemplate six methods, including the following:

- Comparable uncontrolled price (CUP).
- Resale price method (RPM).
- Cost plus.
- Profit split method (PSM).
- Transactional net margin method (TNMM).
- Special method for export of goods with prices quoted in transparent markets.

There is no specific hierarchy, as each particular transaction must be analysed based on the assets, functions, and risks involved and on information available. Regulations establish that the most appropriate method is that which reflects the economic reality of the transactions.

# Argentina

## **Country-by-country (CbC) reporting**

Through General Resolution (GR) 4130-E, the Federal Administration of Public Revenue (AFIP) established an annual information regime related to the submission of the CbC report and is aligned with Action 13 of the BEPS Action Plan regarding CbC reporting.

This obligation is applicable to those multinational enterprise (MNE) groups whose ultimate parent's total consolidated revenue is equal to or higher than 750 million euros (EUR), or its equivalent in the local currency converted to the exchange rate as of 31 January 2015, for the fiscal year prior to the one being reported. The CbC report will be filed annually, no later than the last business day of the 12th month following the end of the ultimate parent's reporting fiscal year.

Although mainly MNE groups whose ultimate parent is resident in Argentina have the obligation to submit the CbC report, other Argentine entities from MNE groups may also be required to file a CbC report if certain circumstances set forth in the aforementioned resolution take place (i.e. subrogated entities not designated, etc.).

In addition, and regardless of having the obligation or not to file the CbC report in Argentina, the provisions in Title II of said GR require all Argentine entities that are members of a MNE group to file with the AFIP information about the MNE group they belong to, including if the group is required to comply with the submission of the CbC report and, if so, which company will perform the filing on behalf of the group (i.e. the ultimate parent or a subrogate entity). The local entity must comply with this obligation no later than the last business day of the third month following the end of the ultimate parent's reporting fiscal year.

## **Thin capitalisation**

Thin capitalisation rules apply as a restriction on the deductibility of interest and foreign exchange losses arising from debts of a financial nature that are contracted by taxpayers with related entities (whether local or foreign).

According to the 2017 tax reform, the former 2:1 debt-to-equity thin capitalisation rule was replaced with the BEPS-based rule. The deduction on interest expense and foreign exchange losses with local and foreign related parties now is limited to 30% of the taxpayer's taxable income before interest, foreign exchange losses, and depreciation. The taxpayer is entitled to carry forward excess non-deductible interest for five years and unutilised deduction capacity for three years.

Certain exceptions to the above limitation are also available.

## **Controlled foreign companies (CFCs)**

Argentina does not have a CFC regime. However, an Argentine taxpayer would be required to immediately tax passive income generated by a CFC that is directly or indirectly held by the Argentine taxpayer to the extent that more than 50% of that CFC's income is passive and is effectively subject to a tax that is lower than 75% of the applicable Argentine income tax rate.

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## ***Tax credits and incentives***

### ***Foreign tax credit***

National taxpayers are entitled to recognise a tax credit for any taxes actually paid in the countries where they have obtained foreign-source income, in respect of similar national taxes, up to a cap, which is the increase in their Argentine tax liability due to the inclusion of the foreign income. Any excess not offset in a given fiscal year may be carried forward to the next five fiscal years.

### ***Province of Tierra del Fuego Regime***

Companies set up in the province of Tierra del Fuego enjoy a general tax exemption and important benefits in customs matters. Tax exemption includes profits tax, tax on minimum notional income, tax on personal wealth, and excise tax. The VAT benefit consists of the release from payment of the technical balance of the tax (VAT debits less VAT credits). Also, a reduction of the prevailing rate for tax on financial transactions and an exemption from taxation on the transfer of fuels is contemplated.

### ***Mining activity***

An investment regime for mining activity is applicable to natural and legal persons. Mining ventures included within this regime enjoy fiscal stability (i.e. tax rates will remain basically the same) for a term of 30 years, except for VAT, which will adjust to the general regime. Furthermore, the regime grants incentives for profits tax, tax on assets, import duties, and any other tax for introduction of certain assets. Additionally, this mining investment law established an exploration recovery regime for the mining investors, which allows the reimbursement of the VAT credit balances originated in the mining exploration activity.

This regime allows the reimbursement of such VAT credits after a 12-month period since the expenditure was incurred, and only if it has been paid.

Through specific regulations, the authorities established the requirements (e.g. filing a tax return, filing a report certified by a public accountant with respect to the VAT, a presentation to the Mining Secretary) to be followed by the taxpayers in order to apply for this benefit.

### ***Forestry***

There is an investment regime for plantation, protection, and maintenance of forests. It contains rules similar to those for mining activity tax incentives:

- Fiscal stability for a period of 30 years. The period may be extended to 50 years.
- Refund of VAT resulting from the purchase or final importation of goods, leases, or services effectively for forestry investment projects in a period of less than 365 days.

### ***Export incentives***

Exports of goods and services are exempt from VAT and excise taxes. The temporary importation of raw materials and intermediate and packaging goods for the manufacture of products for export is free from duties with the obligation of offering sufficient guarantees for the import. A reimbursement regime is in place for VAT credits paid to suppliers in relation to the export activity.

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## **Biotechnology industry**

A promotional tax regime for development and production of modern biotechnology has been introduced. Pursuant to this law, the beneficiaries of the projects that qualify for this regime are entitled to the following benefits:

- Profits tax: Accelerated depreciation of capital goods, special equipment, parts, or components of newly acquired goods destined for the promoted project.
- VAT: Early refund of the tax applicable to the assets acquired for the project.
- Social security contributions: The amount representing 50% of social security contributions actually paid on the payroll salaries involved in the project shall be converted into a tax credit bond that may be applied to payment of national taxes.

## **Software industry**

Under a software promotion regime, taxpayers carrying out software-related activities as their main purpose may qualify for the following benefits:

- Fiscal stability for a ten-year period covering national taxes.
- Reduction of social security charges (70% of these charges may be credited against certain national taxes).
- Profits tax relief (up to 60% of the applicable tax).

While most of the software-related activities qualify for the fiscal stability benefit, the remaining incentives only apply to software R&D, quality control procedures, and software exports.

Some changes were introduced in 2011, and the period of application was extended until 31 December 2019. The possibility of using a bond tax credit, given as an amount equal to 70% of contributions to the social security system paid by the employer, as an 'advance payment' of the profits tax was provided. There is also an increase in the control mechanisms.

## **Energy generation through renewable sources**

Through the enactment of Law 26,190, as amended by Law 27,191, and Regulatory Decree 562/2009 and 531/2016, the Argentine government launched and updated promotional measures for the energy sector with the aim of encouraging the use of renewable energy sources for the production of electricity.

According to this regime, certain tax benefits shall be granted upon request by filing the projects with the relevant authorities. Benefits include accelerated depreciation of project assets for profits tax purposes, a five-year extension on the loss carryforward, early recovery of VAT paid on the acquisition of new assets or infrastructure work, and a tax credit certificate to be applied against federal taxes.

Also, from a provincial tax perspective, Law 26,190 invites all Argentine provinces to adhere to the regime enacting local regulations with tax benefits aimed at promoting and encouraging the production of electric energy through renewable sources.

## **Province incentives on local taxes**

Most of the provinces have legislation establishing incentives for the development of industries within their boundaries, especially industries that utilise or develop their natural resources and provide work for their residents. The incentives, in general, consist of exemptions from provincial and municipal taxes.

Various provinces have investment promotion regimes. Even when there are certain differences among these regimes, generally they include the following incentives:

- Exemption from provincial taxes, such as turnover tax, stamp duty, real estate tax.
- Reduced public utility rates.
- Support for infrastructure and equipment projects.
- Facilities for purchase, rental, or lease without charge of public property.

These regimes are not automatically applied, and a special procedure should be followed to be entitled to the respective benefits.

## Free trade zones

The free trade zones offer exporters the possibility to import free from customs duties, statistics rate, and VAT all the necessary equipment for construction of a 'turnkey plant' within the zones. Furthermore, exporters manufacturing within the zones enjoy the benefit of buying supplies and raw materials from third countries, without having to pay duties or taxes that lead to increased prices.

Customs authority regulating these goods considers them as stored in a third country; consequently, incoming products are subject to inspection with the sole purpose of classifying quantity and type. In other words, goods enjoy a duty-free status until they enter the Argentine customs territory. Goods may remain in the free trade zone for a maximum period of five years.

## Withholding taxes

### WHT on dividend and profit distributions

As a result of the 2017 tax reform, a new WHT on dividend distributions and branch profit remittances has been introduced at a rate of 7% (while the applicable profits tax rate is at 30%) and 13% (when the profits tax rate lowers to 25%).

The tax reform also has abolished the so-called 'equalisation tax' for profits generated in taxable years starting on or after 1 January 2018. The equalisation tax was a WHT levied at a 35% rate on dividend distributions in excess of tax earnings. However, the equalisation tax still applies to dividend and branch profit distributions made out of earnings accumulated prior to 1 January 2018 that exceeded tax earnings as of the year-end prior to the relevant distribution.

### Other payments

Other payments to residents and to non-residents are subject to WHT rates as follows:

Recipient	WHT (%)	
	Interest (1)	Royalties (1, 2)
Resident corporations	6/28 (3)	6 (4)
Resident individuals	6/28 (3)	6 (4)
Non-resident corporations and individuals:		
Non-treaty	15.05/35	21/28
Treaty:		
Australia	12	10/15
Belgium	0/12 (5)	3/5/10/15

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Recipient	WHT (%)	
	Interest (1)	Royalties (1, 2)
Bolivia	15.05/35	21/28
Brazil	15.05/35	21/28
Canada	12.5	3/5/10/15
Chile	4/12/15	3/10/15
Denmark	12 (5)	3/5/10/15
Finland	15	3/5/10/15
France	15.05/20 (6)	18
Germany	10/15 (7)	15
Italy	15.05/20 (5)	10/18
Mexico	12	10/15
Netherlands	12	3/5/10/15
Norway	12.5 (8)	3/5/10/15
Russia	15	15
Spain	12	3/5/10/15
Sweden	12.5	3/5/10/15
Switzerland	12	3/5/10/15
United Arab Emirates (9)	12	10
United Kingdom	12 (5)	3/5/10/15

## Notes

- Withholding from payments of interest and royalties to non-residents is based on a flat rate of 35% applied to an assumed percentage gross profit margin. This margin is not contestable, but the resultant rate may be limited by bilateral treaty. Under the 1998 tax reform, the general margin for interest paid for credits obtained abroad is 100%. However, a margin of 43% is applicable (i) if the debtor is a local bank; (ii) if the creditor is a foreign financial institution located in a country not considered as a low or no tax jurisdiction, or in countries that have signed an agreement with Argentina for exchange of information and have no bank secrecy laws, which are under the supervision of the respective central bank; (iii) if the interest is paid on a loan dedicated to the purchase of tangible assets other than cars; (iv) if the interest is paid on debt certificates (private bonds) issued by local companies and registered in certain countries that have signed an agreement with Argentina for the protection of investments; and (v) on interest paid on time deposits with local banks. 'Royalties' covers a variety of concepts. The rates given in this column relate specifically to services derived from agreements ruled by the Foreign Technology Law, as follows:
  - Technical assistance, technology, and engineering not obtainable in Argentina: 21% (35% on assumed profit of 60%).
  - Cessation of rights or licences for invention patents exploitation and technical assistance obtainable in Argentina: 28% (35% on assumed profit of 80%). On non-registered agreements, the rate is 31.5% (profit of 90% is assumed) or 35% (profit of 100% is assumed), depending on the case.

Several other concepts of 'royalties' are subject to rates that, in turn, may be limited by treaty. A broad sample of these concepts and the non-treaty effective rates are set forth in Note 2.

- Payments to non-residents (only) for 'royalties', rentals, fees, commissions, and so on, in respect of the following, are subject to withholding at the rates given below on the basis of assumed gross profit margins (Note 1) unless limited by treaty. The treaty concerned should be consulted to determine any limitation in each case.

Payment	WHT (%)
Freight and passenger bookings (other than those covered by special treaties), news and feature services, insurance underwriting	3.50
Containers	7.00
Copyright	12.25
Rental of movable assets	14.00
Motion picture, video, and sound tape rentals and royalties; radio, television, telex and telefax transmissions; any other means for projection, reproduction, transmission, or diffusion of image or sound; sale of assets located in Argentina	17.50

Payment	WHT (%)
Rental of real estate	21.00
Any other Argentine-source income (unless the non-resident is or was temporarily resident)	31.50

- The higher tax rate is applicable on non-registered taxpayers. On interest paid to corporations by financial entities or stock exchange/open market brokers, income tax must be withheld at 3% (10% if not registered); individuals are tax exempt.
- Resident corporations and individuals who are registered for tax purposes are subject to 6% withholding (28% if not registered).
- Interest is exempt if paid on credit sales of machinery or other equipment, specific bank loans at preferential rate or loans by public entities.
- The treaty limits taxation of interest to 20% (registered).
- The 10% rate is applicable to interest on credit sales of capital equipment, any bank loan, or any financing of public works; otherwise, 15%.
- Interest paid on loans with guarantee of the Norwegian Institute for Credit Guarantees or paid in relation to imports of industrial equipment is tax exempt.
- The treaty was signed in December 2016 but is still pending ratification by both countries.

## Tax administration

### Taxable period

Tax is assessed on a fiscal-year, self-assessment basis, which may or may not match the calendar year.

### Tax returns

The due date for filing the profits and the minimum notional income tax return is during the second week of the fifth month after the fiscal year-end. Tax returns are filed electronically.

### Payment of tax

Instalment payments on account of both profits tax and minimum notional income tax must be made in the course of the tax year. The instalment payments must be made on a monthly basis, beginning in the first month after the due date of filing of the tax returns.

### Penalties

Penalties derived from tax infractions may be applied by tax authorities, as follows:

- Failing to file the tax return: Fines range between ARS 200 and ARS 400.
- Tax omission: Fine of 100% of unpaid taxes.
- Tax avoidance: Fines range between two and six times the avoided tax.
- Certain tax infractions may be penalised by closing the business premises for two to six days. In addition, fines ranging between ARS 3,000 and ARS 100,000 may be imposed.
- Simple evasion: Entities or individuals evading payment of social security contributions or withholdings, or both, payable to the tax authorities under the social security regime, through deceitful declarations, malicious concealment, or any fraudulent or deceitful procedure, either through action or omission, in excess of ARS 200,000 per fiscal period, shall be punished with two to six years' imprisonment. Such amount will be ARS 1,500,000 in the case of taxes, it being applied by tax and by fiscal year.
- If the infringement qualifies as aggravated evasion: Imprisonment could be extended from three years and six months to nine years in certain situations.



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## Interest on late payments

Late payment of taxes is subject to a monthly 3% interest rate. Interest will start accruing on the day after the filing due date.

## Tax audit process

The tax authorities are entitled to audit taxpayers within the statute of limitations period. Audits consist of revising the calculation of any national or provincial tax based on formal requirements. Where any assessment is issued by the tax authorities, the taxpayer is entitled to either accept it or file a claim. Assessments can be done under a real or estimated basis, depending on the specific case and the information that the taxpayers have on their transactions. In the case that the taxpayers do not accept the assessment during the administrative period, they can claim against Tax Courts before any judicial process.

There are no specific provisions about e-auditing.

## Statute of limitations

The actions and powers of the tax authorities to determine and require payment of federal taxes, and to implement and enforce fines and closures planned, prescribe:

- five years in the case of registered taxpayers, as well as in the case of unregistered taxpayers who are not legally required to register with the AFIP; or that, having that obligation, had not fulfilled them and, spontaneously, regularise their situation, and
- ten years in the case of unregistered taxpayers.

Note that a one-year suspension of the statute of limitations has taken place for tax obligations related to fiscal year 2013 and preceding years.

The statute of limitations may be extended to ten years in certain provinces with respect to provincial taxes.

## Topics of focus for tax authorities

Topics of focus for tax authorities include the following:

- Increasing cooperation: Tax information exchange.
- Tax treaty network still under review.
- Tax treaty benefits: Substance-over-form principle.
- High penalties and tax criminal law.
- Transfer pricing (inter-company charges and export of commodities to international intermediaries).
- Wealth tax: Applicability on branches.
- Corporate income tax: Application of inflationary adjustment.

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## Other issues

### Legal entities

Foreign companies in Argentina, carrying out their business or activity in Argentina, must have a local legal vehicle, of which the most common legal entity types are the following:

- Branch.

- Corporation (*Sociedad Anónima* or SA).
- Local Limited Liability Company (*Sociedad de Responsabilidad Limitada* or SRL).

Argentine corporations and limited liability partnerships (LLPs), as Argentine residents, are subject to the Argentine tax system. Branches of foreign companies, whatever the nature of their activities, are taxed under the same rules as those applicable to corporations and LLPs.

Several documents are required to register an entity with the relevant authorities. Some of said documentation must be filed in the original language, duly translated and certified with the Apostille issued pursuant to The Hague Convention or legalised by the Argentine Consulate of the company's place of origin.

At present, the minimum capital requirement to incorporate an SA is ARS 100,000. There are no special requirements regarding the minimum amount of capital for SRLs.

A branch does not require capital contributions unless it is engaged in certain specific activities (e.g. banking and financing). The branch must carry its financial statements separately from those of the foreign company.

The three legal types are subject, in general terms, to the same legal, tax, and accounting regulations.

## **Information regimes**

In the last few years, the AFIP has introduced several information regimes aimed principally to monitor transactions with local and foreign related parties.

By means of General Resolution (AFIP) 3572, a database in which local taxpayers must disclose their relationships with domestic and foreign related parties has been created. For purposes of this rule, the definition of 'related party' is broad and goes beyond economic or legal ownership.

Additionally, GR 3572 has introduced an information regime pursuant to which Argentine taxpayers are required to report, on a monthly basis, all their transactions with local related parties.

## **Intergovernmental agreements (IGAs)**

Argentina has been very prolific in relation to the signature of tax information exchange agreements (TIEAs) over the past few years.

The authorities have signed around 24 TIEAs, including those with Andorra, Aruba, Azerbaijan, The Bahamas, Bermuda, Brazil, Cayman Islands, Chile, China, Costa Rica, Curaçao, Ecuador, Guernsey, India, Isle of Man, Italy, Jersey, Macedonia, Monaco, Peru, San Marino, South Africa, Spain, and Uruguay.

Argentina has also taken an active part in the OECD's BEPS initiatives and tax transparency discussions. During Berlin's global forum on transparency and exchange of information for tax purposes, Argentina joined the list of 54 countries that agreed to implement an automatic financial information exchange in accordance to OECD's Common Reporting Standard (CRS) as of 2016.

In this respect, several Argentine regulatory authorities (i.e. Central Bank, Securities Exchange Commission, and Superintendence of Insurance Companies) have already

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issued a set of regulations compelling local financial institutions to implement the necessary procedures to be in compliance with OECD's CRS. The regulation establishing the CRS was issued in December 2015 and is effective as of 1 January 2016.

Notwithstanding the above, a Foreign Account Tax Compliance Act (FATCA) IGA with the United States (US) has not yet been signed. In this regard, it is to be noted that Argentina has recently entered into a TIEA with the United States that is expected to set the basis for the signature of an IGA in the near future.

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# Bolivia

## ***PwC contact***

Eduardo Aramayo  
PricewaterhouseCoopers S.R.L.  
Calle I, Esquina Viador Pinto Barrio Equipetrol Norte  
Edificio Omnia Dei, 1st floor  
Santa Cruz de la Sierra  
Bolivia  
Tel: +591 3 344 4311  
Email: eduardo.aramayo@bo.pwc.com



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## ***Significant developments***

In December 2017, the Bolivian Internal Revenue Services (IRS) approved Resolutions 10170000029 and 10170000030 in respect of applications of double tax treaties (DTTs).

Resolution 10170000029 establishes requirements and administrative procedures that Bolivian natural persons and legal entities must comply with to obtain the certificate of residence, certificate of tax domicile, and/or tax situation within the framework of the application of a DTT.

Resolution 10170000030 defines the obligations, procedures, and requirements that must be met by natural or legal entities in order to apply the provisions included in a DDT. In particular, this resolution establishes that the application of a DDT must be supported by a certificate of residence or a certificate of tax domicile of the involved party of the other contracting state; if not, tax withholding must be applied by the Bolivian entity, and the benefits of the DTT would not be applicable. If withholding taxes (WHTs) have not been applied despite not having the certificate of residence or certificate of tax domicile, then the expense would not be tax deductible for corporate income tax (CIT) purposes. Furthermore, taxpayers must keep the certificate of residence or certificate of tax domicile for the statute of limitation period.

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## ***Taxes on corporate income***

All companies in Bolivia are subject to CIT at a rate of 25%. The taxable base is the profit arising from financial statements prepared in accordance with Bolivian generally accepted accounting principles (GAAP), adjusted for tax purposes (i.e. by non-deductible and non-taxable items) as per the requirements established in the tax law and regulations.

Bolivia taxes the income generated by corporations following the ‘income source’ principle (i.e. on a territorial basis). Therefore, income arising from goods and assets located or utilised economically within Bolivian territory and from any activity carried out within the country is considered Bolivian income source. Hence, such income is subject to CIT, regardless of the nationality/residence of the parties involved in generating such income or the place where the contracts were subscribed.

## ***Additional income tax on certain financial institutions***

Financial institutions (except for development banks) with a return on equity index higher than 6% must pay an additional income tax of 25%. This additional income

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tax cannot be offset against the transaction tax (*see below*), nor can it be considered a deductible expense for CIT purposes.

## ***Surtax on extractive activities***

There is an additional 25% CIT that affects only extractive activities of non-renewable natural resources (mining and oil/gas). This additional tax is calculated on the same basis as the normal CIT, except that two additional deductions are allowed: (i) up to 33% of the accumulated investment as of 1991, and (ii) 45% of the gross revenue of each extractive operation (e.g. a field or a mining site), with a threshold of 250 million bolivianos (BOB) for each extractive operation.

## ***Special taxes on mining companies***

In addition to the general CIT of 25% and the 25% surtax on extractive activities, all mining companies are also subject to an additional tax, calculated on the taxable net profits, at the following rates:

- 12.5% if the mining company carries out exploitation activities.
- 7.5% if the mining company carries out manufacturing activities with raw minerals that add value.

Mining companies are also subject to mining royalties at a rate of between 1% and 7% (depending on the kind of mineral), calculated on the total sales price. Note that there is a 60% discount on the rates of mining royalties if minerals are sold within the Bolivian market. Mining royalties can be offset against CIT if official mineral prices are lower than the prices established by the tax law; however, in this case, mining royalties paid will not be deductible for CIT purposes. On the contrary, if official mineral prices are higher than the prices established by the tax law, then mining royalties will be considered a deductible expense for CIT purposes. Note that mining royalties paid on minerals and metals that are not included in the tax law can always be offset against CIT.

## ***Tax on gross income (transaction tax)***

The tax on gross income (also known as transaction tax) generally taxes gross income arising from the performance of any economic or commercial activity (including non-profitable activities) at a rate of 3% on a monthly basis. However, exceptions exist for the sale of investments (as defined by the Stock Exchange Law) and the sale of minerals, oil, and gas within the local market, as long as such sales will ultimately be exported.

Corporations pay either CIT or transaction tax, whichever is higher. From an administrative perspective, CIT is due and paid at the end of each tax year and is considered an advanced payment of transaction tax, while transaction tax is due monthly. If during the year the cumulative monthly transaction tax due exceeds the CIT prepayment, the taxpayer will be subject to transaction tax on a monthly basis until the end of the tax year. For example, a corporation pays CIT for the 2017 fiscal year in April 2018. This payment is considered a prepayment for the transaction tax due between May 2018 and April 2019.

## ***Local income taxes***

There are no departmental or local taxes on income in Bolivia.

## Corporate residence

A corporation is considered resident in Bolivia if it has been incorporated in Bolivia.

### Permanent establishment (PE)

Note that Bolivian commercial laws allow foreign corporations to carry out isolated commercial acts in Bolivia without the obligation to constitute a permanent representation in Bolivia; however, such corporations cannot carry out habitual commercial acts without fulfilling the requirements established to constitute a company in Bolivia (e.g. through either a subsidiary or a branch). Unfortunately, Bolivian legislation does not include provisions to regulate situations that could trigger PE nor does it define what should be understood by 'carrying out habitual commercial acts'.

## Other taxes

### Value-added tax (VAT)

VAT is levied on the sale of movable goods and provision of services carried out within Bolivian territory at a rate of 13%, including definitive importations. Since this tax is included in the final price, the effective tax rate amounts to 14.94% (13%/87%).

### Customs duties

Definitive importations are also subject to customs duties at the following rates: 0%, 5%, 10%, 15%, 20%, 30%, and 40%, depending on the product classification. Customs duties are calculated over the 'transaction value' of the merchandise valued as per Bolivian customs legislation, plus transportation and insurance costs.

### Taxes on specific goods for consumption (excise tax)

Specific goods are taxed at the following rates:

Product	Tax rate
Black cigarettes	BOB 74 per 1,000 cigarettes
Blond tobacco cigarettes and cigars	BOB 139 per 1,000 cigarettes
Other cigarettes and tobacco for pipes	50%
Diesel vehicles	15% to 80%
Other vehicles	0% to 40%
Vehicles for transportation of 18 or more persons, vehicles for heavy loads transportation, and health services vehicles	0%
Soft drinks (except natural water and fruit juices)	BOB 0.44/litre
Energising drinks	BOB 4.98/litre
Maize liquor	BOB 0.88/litre
Alcohol	BOB 1.69/litre
Beers with 0.5% or more volumetric degrees	BOB 3.73/litre + 1%
Wines	BOB 3.43/litre + 5%
Ciders and sparkling wines (except maize liquor)	BOB 3.43/litre + 5%
Liquors and creams in general	BOB 3.43/litre + 5%
Rum and vodka	BOB 3.43/litre + 10%
Other brandies/liquors	BOB 3.43/litre + 10%
Whiskey	BOB 14.30/litre + 10%

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## **Special tax on hydrocarbons and derived products**

A tax is charged on the commercialisation of hydrocarbons and their derived products within the local market, regardless of whether they are produced in Bolivia or imported. This tax is updated by the Hydrocarbon National Agency and has a threshold annually updated by the Bolivian IRS, which currently amounts to BOB 7.64/litre.

## **Direct tax on hydrocarbons**

A direct tax on hydrocarbons (IDH) is applied on the production of hydrocarbons, measured at the wellhead point, at a rate of 32%. To determine the taxable base for this tax, production of hydrocarbons must be valued taking into account the average sales price and considering the market (internal/external) where such hydrocarbons were sold.

## **Property tax on real estate and vehicles**

Real estate and vehicles are annually subject to municipal government property taxes at progressive rates that range from 0.35% to 1.5% and 1.5% to 5%, respectively. Regarding real estate, property values and tax bands are determined by each municipal government, thus real estate is taxed differently depending on its location.

## **Transfer taxes**

Transfer of property and real estate are subject to a transfer tax at a rate of 3%. This tax must be determined based on the provisions set forth for the transaction tax (tax on gross income; *see the Taxes on corporate income section*) and is collected by the municipal government where the property/real estate is registered.

## **Stamp taxes**

There are no stamp taxes in Bolivia.

## **Payroll taxes**

Employers are obligated to withhold and pay RC-IVA (*Regimen Complementario al Impuesto al Valor Agregado*) on gross salaries paid to employees on a monthly basis at a rate of 13% after labour contributions made to the pension fund administrators. Gross salary includes base salary, commission, bonuses, living allowance, and any other compensation in kind/cash granted to the employee.

## **Social contributions**

The Pension Law establishes employer social contribution obligations. Social tax charges for employers are equal to 16.71% of gross salary in general and 18.71% for the mining sector.

## **Financial Transaction Tax (FTT)**

An FTT is levied on bank transactions (deposit or transfer of funds), carried out within the domestic financial system, at a rate of 0.30% for fiscal year (FY) 2018 (previously 0.25%).

## **Special tax on lottery and gambling games**

A specific tax on lottery and gambling games is applied in Bolivia. The tax is also applicable to business promotions that involve a raffle or random activities in providing awards in order to increase sales or attract clients. The tax rate for lottery and gambling games is 30%, whereas the tax rate for business promotions is 10%.

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## **Branch income**

Branch income is subject to the same tax applicable to other types of Bolivian corporations (i.e. CIT of 25%). However, the net profits of Bolivian branches are deemed to be distributed to the head office at the annual filing due date for CIT (i.e. 120 days after the fiscal year-end); consequently, a Bolivian branch must withhold 12.5% on such deemed distributed profits. Note that this can be avoided as long as the head office decides to reinvest the Bolivian branch's net profits.

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## **Income determination**

Taxable income is determined based on the financial statements prepared under Bolivian GAAP, then the income is adjusted for tax purposes in accordance with guidelines provided with respect to non-deductible and non-taxable items.

## **Inventory valuation**

Inventories must be valued at replacement cost or market value for tax purposes, whichever is lower. Replacement cost is defined as the necessary costs incurred in acquiring or producing the assets as of the year-end, whereas market value is defined as the net value that the company would have obtained for the sale of assets in normal conditions as of the year-end, less commercialisation direct expenses.

## **Capital gains**

Bolivian legislation does not include specific regulations for capital gains. Capital gains must be included in annual CIT if they are considered Bolivian-source income and will be taxed at a rate of 25%.

## **Dividend income**

Dividend income obtained from domestic corporations subject to CIT must be excluded from the net taxable profits of the investor. Dividend income obtained from foreign corporations is not subject to CIT due to the fact that it is not considered Bolivian-source income.

## **Interest income**

Interest income is subject to annual CIT if loans have been economically utilised within Bolivian territory since associated interest is considered Bolivian-source income.

## **Rent/royalty income**

Rent/royalty income is subject to annual CIT as long as the income comes from an asset situated or economically utilised in Bolivian territory.

## **Foreign income**

Bolivian corporations are taxed only on income generated within Bolivian territory.

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## **Deductions**

As a general principle, expenses may be deducted for CIT purposes as long as they are necessary to generate Bolivian-sourced income and are properly documented.



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Apart from the above, the Bolivian Tax Code (BTC) has established minimum amounts (BOB 50,000) for which taxpayers must document their economic transactions through documents of payments recognised by the Bolivian financial system and regulated by the *Autoridad de Supervisión del Sistema Financiero* or ASFI (i.e. the bank regulator), including the possibility to document economic transactions through payments made via foreign financial institutions. Non-compliance with these requirements implies the lack of the possibility to compute input VAT and to deduct the associated expenses for CIT purposes.

## Depreciation

Depreciation of fixed assets is permitted for CIT purposes if fixed assets contribute to generate taxable income. Depreciation must be calculated based on a straight-line method and considering useful lives included in the tax law. Fixed assets that are not included in the tax law must be depreciated under a straight-line method in accordance with their useful lives, and this needs to be communicated to the tax authorities within ten working days following the incorporation of the affected fixed assets.

Some of the assets included in the tax law are as follows:

Asset	Useful life (years)	Depreciation rate (%)
Building	40	2.5
Fixture and furniture	10	10.0
Machinery	8	12.5
Equipment and facilities	8	12.5
Vehicles	5	20.0
Computer equipment	4	25.0
Tools	4	25.0
Processing plants for the oil/gas industry	8	12.5
Pipeline	10	10.0
Aircraft	5	20.0
Ships and motorboats	10	10.0

## Goodwill

Intangible assets (including goodwill) with a true cost can be deductible for tax purposes within a five-year period as long as taxpayers have paid a price for their acquisition.

## Start-up expenses

Taxpayers may choose to deduct start-up expenses within the first fiscal period or distribute proportionally their amortisation within a four-year period, commencing the first year of operation. Note that start-up expenses cannot exceed 10% of paid-in capital.

## Interest expense

Interest paid to owners or shareholders is not deductible to the extent the interest rate exceeds the London Interbank Offered Rate (LIBOR) plus 3% in the case of foreign owners/shareholders and to the extent the interest rate exceeds the official interest rate on loans published by the Central Bank of Bolivia for national owners/shareholders. Interest deductible on shareholder loans may not exceed 30% of the total interest paid to third parties.

### ***Bad debt***

Allowances for bad debt provisions are permitted if determined as required by law, which establishes an average method based on uncollectable receivables of the last three years. Uncollectable receivables are defined by current legislation as those that come from trade receivables and either: (i) remain unpaid for more than one year and have been sued without obtaining a seizure or (ii) when the receivables do not justify being sued due to the quantity of the receivables, remain unpaid for more than three years.

### ***Charitable contributions***

Donations are not deductible unless made to non-profit organisations that are not subject to CIT. These donations are deductible up to a maximum of 10% of the donor's net taxable profit.

### ***Compensation expenses***

Salaries, as well as associated compensations, paid to employees without the application of WHTs (i.e. RC-IVA) are not deductible.

Provisions for employees' severance payments are deductible. Provisions of other bonuses (e.g. holiday, productivity bonuses) accrued on behalf of employees are tax deductible as long as they are paid prior to the annual CIT filing due date and the company demonstrates it has withheld taxes (if applicable).

### ***Fines and penalties***

Fines and penalties arising from late tax payments are not tax deductible (except interest and restatement by inflation associated with tax obligations).

### ***Taxes***

Taxes effectively paid by the corporation as a direct taxpayer, other than CIT, are deductible for tax purposes. Any transaction tax (tax on gross income) that has been offset against CIT paid is not deductible for CIT purposes.

Taxes paid in the acquisition of fixed assets are not deductible. These taxes must be included in the cost of the asset and depreciated accordingly.

### ***Other significant items***

In broad terms, the following additional items are not deductible for tax purposes, according to current legislation:

- Owners' or shareholders' personal withdrawals and living expenses.
- Fees paid to individuals (i.e. acquisition of goods and services) for which no WHTs have been withheld.
- Amortisation of trademarks and other intangible assets, unless a price has been paid to acquire them.
- Provisions that are not specifically authorised by the tax law and regulations.
- Depreciation of fixed assets that include a revaluation reserve.
- Losses arising from illegal acts.

### ***Net operating losses***

Tax losses can be utilised over the following three fiscal years. New entrepreneurial productive projects with a minimum capital of BOB 1 million can utilise tax losses over

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the five fiscal years following the start-up of operations (including hydrocarbons and the mining sector).

Tax losses cannot be restated due to inflation in any case.

Bolivian legislation does not envisage carryback provision for tax losses.

## ***Payments to foreign affiliates***

Payments to foreign affiliates are subject to a 12.5% WHT with no restriction if the Bolivian company is remitting Bolivian-sourced income (e.g. interest on loans, provision of any kind of services, royalties).

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## ***Group taxation***

Bolivia does not include group taxation rules within its legislation.

## ***Transfer pricing***

### ***Arm's-length principle***

The value of commercial and/or financial transactions carried out between related parties must be the value that would have been agreed between independent parties if they had engaged in the same transaction under the same circumstances. In addition, domestic companies related to foreign companies must prepare their accounting records separately, so that their financial statements determine taxable net profits from Bolivian-source income.

### ***Existence of relationship***

There is a relationship when an individual or a corporate entity participates in the direction, control, administration, or has capital in the other company, or when a third party directly or indirectly participates in the direction, control, administration, or has capital in two or more companies.

When individuals or domestic companies directly or indirectly conduct commercial and/or financial transactions with individuals or companies domiciled in countries or regions with low or null taxation (tax havens), these transactions will be considered as if they were carried out between related parties. Note that the Bolivian legislation has recently approved Administrative Resolution 10170000001, which includes a reference list of countries/regions considered low or nil taxation jurisdictions based on guidelines set forth by Supreme Decree 2993.

### ***Requirement to submit a transfer pricing study***

Taxpayers must submit a transfer pricing study to the Bolivian IRS in regards to the transactions carried out between related parties, together with the statutory financial statements and the annual CIT return. The transfer pricing study must include, among others:

- Complete identification of the taxpayer and related parties.
- Description of the activity carried out.
- Description, characteristics, amounts, and volume of transactions carried out between related parties.
- Tax identification number and country of residence of related parties.

- Commercial strategies, including determination of prices and other special circumstances.
- Functions carried out by the taxpayer within the related transaction from a commercial and industrial perspective.

### Transfer pricing methods

Each of the following six methods may be used to determine the value of a commercial and/or financial transaction carried out between related parties:

- Comparable uncontrolled price.
- Resale price method.
- Cost plus method.
- Profit split method.
- Transactional net margin method.
- Evident price on transparent markets method.

The application of the above-mentioned methods will depend on the nature and the real economic situation of the transactions under analysis and the circumstances of each case (i.e. rule of the best method). Definitions of the methods are in line with international principles defined by the OECD, except for the sixth method, which comes from Argentinian legislation with some variations.

When it is not possible to determine the value of a transaction through one of the above-mentioned methods, taxpayers can apply other methods that are in accordance with the nature and real economic situation of the transaction.

### Thin capitalisation

Bolivian legislation does not include provisions for thin capitalisation apart from establishing restrictions on deductibility of interest when funding is provided by shareholders (*see Interest expense in the Deductions section*).

### Controlled foreign companies (CFCs)

There are no CFC provisions in Bolivia.

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## Tax credits and incentives

### Foreign tax credit

Bolivian legislation does not include provisions regarding recognition of foreign tax credits.

### Investment incentives

No incentives are granted in Bolivia for domestic or foreign investment; however, further provisions are expected in this regard due to incoming regulation of Law 516 (Promotion Investment Law).

### Export incentives

Export activities benefit from reimbursement of VAT and customs duties paid in the process of producing goods to be exported (with some limitations for oil/gas companies).

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## **Other incentives**

Foreign exchange transactions are legal in Bolivia, and a system of free-floating exchange rates exists.

Tourist and lodging services by hotels to foreign tourists without a residence or address in the country are exempt from VAT. In addition, importation of books, magazines, and newspapers are exempted from importation taxes (i.e. VAT), and the sale of produced or imported books are taxed at the zero VAT rate.

International transportation by highway is also exempt from VAT (or subject to 0% VAT rate).

## **Regional manufacturing tax incentives**

New investments in manufacturing in the states of Oruro and Potosi are entitled to the following tax exemptions:

<b>Exemption</b>	<b>Conditions of exemption</b>
Import tariffs and VAT on imported machinery	Machinery imported exclusively for the new industry until start-up of operations.
Import tariffs on imported inputs	They do not replace domestic inputs of the same kind and are destined to a transformation process. The exemption is granted for the first ten years of operation.
Transaction tax	For ten years from the start-up of operations.
CIT	For ten years from the start-up of operations if the amount exempt is reinvested in fixed assets in the following fiscal year.

## **Withholding taxes**

### **Payments made to Bolivian residents**

Dividends paid to Bolivian residents, either individuals or corporations, are not taxable.

Payments made by corporations to individuals with respect to the acquisition of goods or provision of services that are not supported with an invoice or fiscal receipt are subject to a WHT of 8% on goods and 15.5% on services.

### **Payments to non-residents**

Dividend payments, distributions of profits to the head office by Bolivian branches, interest payments, royalty payments, and fees paid for any type of services made to non-residents are subject to a WHT of 12.5%.

Activities considered partially performed within Bolivian territory (e.g. telecommunication services, insurance, transportation, production/distribution of cinematographic films, etc.) by non-residents are subject to a reduced WHT of 2.5%.

## **Tax treaties**

Bolivia currently has in force DTTs with the Andean Community (i.e. Colombia, Ecuador, and Peru), Argentina, France, Germany, Spain, Sweden, and the United Kingdom.

Beneficial WHT rates on dividend distributions are provided by DTT with Spain and Sweden at 10% and 0%, respectively, provided the Spanish or Swedish holding

company demonstrates it is the ultimate beneficial owner and holds more than a 25% interest in the Bolivian company.

## ***Tax administration***

### ***Taxable period***

The taxable year is the fiscal year. The fiscal year varies according to the activity of the corporation. Banks and commercial and other service activities have a fiscal year-end as of 31 December; industrial, oil, and gas companies as of 31 March; agribusiness and forestry companies as of 30 June; and mining companies as of 30 September.

### ***Tax returns***

CIT is assessed on a self-assessment basis every fiscal year, and the due date for submission is 120 days after the fiscal year-end. Tax returns must be accompanied by audited financial statements (if applicable) and ancillary tax information as requested by the tax authorities.

### ***Payment of tax***

CIT is payable in one annual payment 120 days after the fiscal year-end, except for mining companies, which are obligated to make advance payments on a monthly basis with respect to the additional tax (i.e. 12.5% and 7.5% for exploitation and manufacturing mining companies, respectively).

### ***Tax audit process***

The tax audit process starts with a formal notification from the tax authorities where they indicate fiscal periods and taxes to be reviewed, together with a requirement of information. Tax inspection may generally take a 12-month period. Shortly after the provision of the finalisation of the tax inspection, a preliminary report of the tax audit's results is provided to the taxpayer in which the total tax debt is described (i.e. tax due, restatement, interests, and penalties) together with the legal arguments supporting the tax enquires.

Taxpayers do have 30 days after receiving the preliminary report to present all supporting documentation and technical arguments if they consider that the tax enquires do not have grounds to be claimed. Tax authorities do have 60 days to review all documentation/arguments provided by the taxpayer and then issue the final report, which is the formal document that could be subject to tax litigation, either via administrative process or by a judicial court. Note that claimed taxes must be paid in advance if taxpayers decide to litigate directly through the judicial court.

### ***Statute of limitations***

According to the current BTC, tax authorities have up to eight years to review and recalculate taxes determined by taxpayers, and this period could be extended two years more if taxpayers do not register in the appropriate regime or if taxpayers have performed commercial and/or financial transactions with a person (corporate or individual) resident in a country/region considered a low or nil taxation jurisdiction. This period must be computed as of the first day of the following year in which the tax payment due date has occurred (e.g. if the tax payment deadline occurred in August 2018, the period that can be subject to tax review is 1 January 2019 to 31 December 2026).

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## ***Topics of focus for tax authorities***

There are not specific topics/taxes of focus in which the tax authorities address their review. This will generally depend on the nature of the taxpayer and the industry where they belong (e.g. a mining company could be more likely to be subject to tax inspections than an industrial company). There are no formal statistics to provide information in this regard.

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# Brazil

## **PwC contact**

Durval Portela  
PricewaterhouseCoopers  
Centro Empresarial Agua Branca  
Avenida Francisco Matarazzo 1400  
Torre Torino  
05001-903 São Paulo, SP  
Brazil  
Tel: +55 11 3674 2582  
Email: [durval.portela@pwc.com](mailto:durval.portela@pwc.com)



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## **Significant developments**

### ***Tax authorities issue new guidance on the disclosure of final beneficiaries in Brazilian corporate taxpayer register (CNPJ)***

On 15 August 2017, the Brazilian tax authorities (RFB) issued Normative Instruction (NI) 1,729/2017, which updates the obligation to disclose the final beneficiaries in the CNPJ.

By way of background, NI 1,634/2016 established the obligation to disclose information related to final beneficiaries in the CNPJ. According to the legislation, the term 'final beneficiary' refers to (i) an individual who ultimately, either directly or indirectly, holds, controls, or significantly influences an entity; or (ii) an individual on whose behalf a transaction is undertaken. A shareholder is deemed to have significant influence if the shareholder (i) owns more than direct or indirect 25% of the entity's capital stock or (ii) has the ability to influence the decision-making and elect or appoint members of the entity's management.

NI 1,729/2017 clarifies that the disclosure of the final beneficiaries can be made up to 90 days from the date of the register in the CNPJ (this term may be extended for another 90 days, upon request) and that the supporting documentation should be submitted online.

Foreign entities registered in Brazil before 1 July 2017 will have until 31 December 2018 to comply with the disclosure obligation and submit the supporting documents. Note that if an entity updates its CNPJ before 31 December 2018 for any other reason, the disclosure obligation will arise at the date of such change.

### ***Tax authorities issue guidance on taxation of capital gains***

On 29 August 2017, the RFB issued NI 1,732/2017, which confirms the application of increased tax rates on non-residents capital gains.

By way of background, Law 13,259/2016 introduced new rates for taxing capital gains on individuals (and non-residents) arising on the alienation of Brazilian assets and rights, varying from 15% to 22.5% (depending on the amount of the gain).

Although the new rules were intended to enter into force as of 1 January 2016, the RFB issued an Interpretative Declaratory Act 3/2016 (ADI 3/2016) on 29 April 2016, stating that the increased progressive tax rates in relation to capital gains derived by individuals (and non-residents) should apply from 1 January 2017.



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NI 1,732/2017 confirms the application of the new tax rates on capital gains, realised by non-residents legal entities, arising on the alienation of Brazilian assets and rights.

### ***Brazilian double tax convention (CDT) with Russia is now in force***

On 1 August 2017, the executive branch of the Brazilian government promulgated Decree 9,115/2017, which converts into internal legislation the CDT between Brazil and Russia, signed on 22 November 2004 and ratified by the Brazilian Senate on 25 May 2017.

As it has become usual in Brazilian CDT practice, the CDT between Brazil and Russia treats technical services and technical assistance as royalties. Further, it does not restrict the application of thin capitalisation and controlled foreign corporation (CFC) rules.

In contrast with other CDTs signed by Brazil, remittances of interest on net equity (*Juros sobre capital próprio* or JCP) are expressly regarded as interest, leaving no room to potential discussions on their characterisation for CDT purposes.

Finally, the CDT between Brazil and Russia includes a provision on limitation of benefits (LOB) aimed at preventing treaty abuse.

The CDT is in force for transactions from January 2018.

### ***New amendment protocol changes CDT with Argentina***

On 21 July 2017, a new amendment protocol to the CDT between Argentina and Brazil was signed. The subsequent exchange of instruments of ratification, which is expected to occur soon, will make it effective as of 1 January of the year following such ratification process.

The new protocol introduces reliefs on withholding on payments of (i) interest, (ii) royalties and technical assistance services, and (iii) dividends. It also includes other provisions aligned with the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention and the base erosion and profit shifting (BEPS) project, such as a new permanent establishment (PE) clause, LOB clause, required holding period for enjoying dividends relief, and minimum taxation threshold to enjoy CDT benefits if income were to be assigned to a third-country PE.

However, one of the most relevant changes is to fully leave behind the exemption method to avoid double taxation, now stating the foreign tax credit method.

### ***Brazil signed CDTs with Switzerland and Singapore***

In May 2018, Brazil has signed CDTs with Switzerland and Singapore with very similar provisions that deviate from the previous treaties signed by Brazil, which may indicate a new trend for future agreements. Broadly, the new treaties incorporate the new OECD Model Convention standards in relation to anti-abusive minimum rules, including the change in the title, preamble, and the inclusion of a principal purpose test (PPT) and LOB clauses.

Key common aspects of the treaties include: (i) reduction of the withholding tax (IRRF) to 10% on payments of interest if the beneficial owner is a bank for the financing of equipment or of investment projects and the loan was granted for a minimum period of five years, (ii) inclusion of a specific article for technical services that also reduces

the IRRF rate to 10% (the introduction of a specific Article for technical services is in line with the new UN Tax Model Convention), and (iii) reduction of the IRRF rate in relation to royalty payments other than trademarks to 10%.

The Brazil/Switzerland CDT also introduces a nine-month threshold period for characterisation of PE construction. Contrary to other CDTs signed with European countries, no tax-sparing clause has been agreed for this CDT, following OECD recommendations.

In line with Brazil's previous treaty practice, both treaties leave out Article 9(2) of the OECD Model Convention that grants credits in case of transfer pricing adjustments in the other contracting state.

The treaties still require Congress followed by Presidential approval in order to be enacted.

### ***Brazilian Congress approves amendment to CDTs with Norway, South Korea, and India***

From May 2017 to May 2018, the Brazilian National Congress approved several Protocols that amend the CDTs between Brazil and Norway, South Korea, and India in order to improve the exchange of information between the competent authorities of both contracting states.

Except for the case of the Protocol signed with India, which is already in force, the Protocols signed with Norway and South Korea have been submitted to Presidential approval in order to complete their ratification process in Brazil.

### ***Brazilian Congress approves Tax Information Exchange Agreement (TIEA) with Switzerland***

On 21 July 2017, the Brazilian National Congress approved the TIEA signed by Brazil and Switzerland in 2015. The TIEA, which will govern the exchange of tax-related information between the countries, was approved by the Senate Special Commission in April 2018 and submitted to the plenary for final approval.

### ***Brazilian presents a request for joining the OECD***

On 29 May 2017, Brazil presented an official request to become a member of the OECD.

Although it is a member of the G20 and has been an observer to the OECD for several years, Brazil is not a member of this organisation. However, this may change as Brazil has filed a formal request to join the OECD, which represents the first of a number of steps that must be taken before the country is accepted as a member of the organisation.

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## ***Taxes on corporate income***

Brazilian resident companies are taxed on worldwide income. Non-resident companies are generally taxed in Brazil through a registered subsidiary, branch, or PE, based on income generated locally. Other than that, non-resident companies can be subject to withholding tax (IRRF) on income derived from a Brazilian source.

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Corporate income tax (IRPJ) is assessed at the fixed rate of 15% on annual taxable income, using either the 'actual profits' method or the 'presumed profits' method (*see the Income determination section*).

### **Surcharge**

Corporate taxpayers are also subject to a surcharge of 10% on the annual taxable income in excess of 240,000 Brazilian reais (BRL).

### **Social Contribution on Net Income (CSLL)**

All legal entities are generally subject to CSLL at the rate of 9% (except for financial institutions, private insurance, as well as certain other prescribed entities, which are taxed at the rate of 20%), which is not deductible for IRPJ purposes. The tax base is the profit before income tax, after some adjustments.

### **Local income taxes**

Corporate income taxes are levied only at the federal level (i.e. there are no state or municipal income taxes).

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## **Corporate residence**

A legal entity is considered resident in Brazil if it has been incorporated in Brazil, and its tax domicile is where its head office is located.

### **Permanent establishment (PE)**

The specific term 'permanent establishment' is not included in the Brazilian legislation, rather there is a concept of 'taxable presence'.

In general, a non-resident company may be treated as having a taxable presence if it operates in Brazil either through: (i) a fixed place of business or (ii) an agent who has the power to enter into contracts in Brazil in the name of or on behalf of the non-resident.

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## **Other taxes**

### **Value-added tax (VAT)**

The Brazilian indirect taxes system is complex and has been subject to multiple changes during the past years. The text below contains general information applicable to each of the taxes herein mentioned. It is important to note that the respective legislation includes various exceptions to the general stated rules. In the case of the state VAT (ICMS), although a federal law should be followed, each state issues its own legislation, which brings certain differences when compared to the federal law.

The Brazilian indirect tax system comprises three key indirect taxes:

- VAT on Sales and certain Services (ICMS)
- Excise Tax (IPI), and
- Service Tax (ISS),

which are state, federal, and municipal taxes, respectively.

## VAT on Sales and Services (ICMS)

ICMS is a state tax on the circulation of merchandise, electric power, rendering of interstate and intermunicipal transportation services, and communications, even when the transaction and the rendering of services start in another country. It is not a cumulative tax, that is, the tax is only assessed on the increase in the price of the product in each part of the circulation process.

The calculation process involves a system where the taxpayer should check the amount of debits and credits related to the state VAT. In case the taxpayer upholds more debits than credits, the taxpayer will be required to pay tax on the difference between them.

In summary, the credits are calculated when the raw materials enter the taxpayer's premises and the debits are computed when the final products exit the establishment. Moreover, as a general rule, taxpayers are not allowed to account for credits on materials purchased that will be used on goods that will not be taxable when they exit the company.

Finally, VAT is collected in the state of São Paulo at an 18% rate. Certain products can attract a higher rate (usually 25%) or a lower rate (in most cases, 12%). The internal ICMS rates may vary according to each state of Brazil. Usually, the ICMS rates range from 17% to 19% for the most cases, but higher and lower rates may be applied as well.

Special rates apply to interstate sales, as shown in the chart below. A 4% rate applies on all interstate sales of imported goods.

From (shipper)	To (addressee)	Rate (%)
South and Southeast	South and Southeast	12
North, Northeast, and Midwest	Any Brazilian state	12
South and Southeast *	North, Northeast, and Midwest *	7

\* Including the state of Espírito Santo.

ICMS is due on a monthly basis, and exports are not subject to ICMS.

### *ICMS-ST regime*

In order to avoid illegal tax evasion, enhance the tax control processes, and facilitate tax collection, the legislation may appoint a single taxpayer of a product's chain as the sole liable party, who will collect the ICMS due by all parties until the final consumer. The so-called ICMS-ST regime is imposed for certain goods as listed by each state tax legislation.

### *ICMS due on interstate sales of goods to non-ICMS taxpayers*

As a general rule, ICMS is collected by the state where the supplier of the goods is located. ICMS is collected by most states at internal rates ranging from 17% to 19% (some products attract a lower/higher rate). As noted above, special rates apply to interstate sales, which will be equivalent to 4%, 7%, or 12%, depending on the location of the supplier and client, as well as whether the goods are imported, have a certain content of imported inputs, or are domestically sourced.

The legislation determines that on interstate transactions with final consumers, the 4%, 7%, or 12% rates shall be applied (instead of the internal rate), and the difference between the internal and interstate rates shall be paid by the acquirer (transactions

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between ICMS taxpayers) or supplier (transactions involving non-ICMS taxpayers) of the goods to the consumer's state. Note, however, there is a transition period (2015 to 2019) where the difference mentioned above will be progressively shared between the supplier's state and consumer's state until the whole difference is allocated to the latter.

### Excise Tax (IPI)

This Federal excise tax is paid by manufacturers on behalf of their customers at the time of sale, either to another manufacturer who will continue the manufacturing process or to the retailer who sells to the end user.

The tax paid is stated separately on the sales invoice, as is the nature of the goods involved. Certain exemptions are given to goods considered to be of basic necessity to the country's economy. The rates are defined by the product's tariff code (normally around 5% to 15%, but in certain cases ranging to over 300%) and are in accordance with the essentiality of each product, which generally means that essential products will attract lower tax rates.

As mentioned above, when manufactured products are sold between producers, the IPI is imposed. However, the subsequent manufacturer is allowed a credit against its IPI liability, on the amount of IPI paid to its suppliers (non-cumulative tax, similar to what happens with ICMS).

IPI is due on a monthly basis and is imposed on imports of goods, while exports are not subject to IPI.

### Municipal Service Tax (ISS)

The ISS is a municipal tax levied on the provision of services listed by Supplementary Law 116/2003. ISS is imposed on a cumulative basis (it is not creditable), and the rates may vary between 2% and 5%, depending on the type of service (rates to be stipulated on a municipal basis).

Service import is also subject to ISS, to be collected by the Brazilian entity that is contracting the services from a supplier located abroad.

ISS is not levied on export of services. However, if the result of a certain service is verified in Brazil, ISS is imposed, even if the payment for such service is made by a non-resident.

### Import tax

The import duty (II) is a federal tax levied on permanent import of goods into Brazil and is also referred to as import tax or customs duty. The rates vary according to the product's tariff code based on Mercosur Harmonised System (NCM/SH), usually ranging from 10% to 20% (there are some exceptions, but the maximum consolidated rate is 35%). As a general rule, the taxable basis consists of the cost, insurance, and freight (CIF) value of the product (i.e. cost, international insurance, and international freight), calculated pursuant to the World Trade Organization's (WTO's) Customs Valuation Agreement.

Import duty is not recoverable by the importer (i.e. it is considered a cost).

### ***Property taxes***

A municipal property tax (IPTU) is levied annually based on the fair market value of property in urban areas at rates that generally vary according to the municipality and location of the property. In the municipality of São Paulo, the basic IPTU rate is 1% for residential properties or 1.5% for commercial properties (both rates may be increased or decreased according to the market value of the property).

### ***Transfer taxes***

A municipal property transfer tax (ITBI) is levied on the transfer of immovable property, with rates also varying based on the municipality where the property is located. The ITBI rate in the municipality of São Paulo is currently 3%, applied over the market value of the property or the transaction price (whichever is higher).

A state property transfer tax (ITCMD) is normally payable at rates varying from state to state on inheritances and donations of goods and rights. In the state of São Paulo, ITCMD is charged at the rate of 4%.

### ***Tax on financial operations (IOF)***

IOF is a tax levied on certain financial operations, such as loans, foreign exchange operations, insurance, and securities, as well as operations with gold (as a financial asset) and foreign exchange instruments. The applicable rate will vary depending on the operation. The IOF rate may be reduced to 0% in some cases, such as: (i) exchange operations relating to the inflow of revenues in Brazil deriving from the export of goods and services; (ii) exchange operations relating to the inflow and outflow of resources in and from Brazil, stemming from foreign loans, with average term exceeding 180 days; and (iii) remittances of interest on net equity and dividends relating to foreign investment.

### ***Social Contribution on Billing (COFINS)***

COFINS, a monthly federal social assistance contribution calculated as a percentage of revenue, is levied at the rate of 7.6%. Under the non-cumulative method, a COFINS credit system is meant to ensure that the tax is applied only once on the final value of each transaction. However, some taxpayers (such as financial institutions, telecommunication companies, cooperatives, and companies that opt to calculate IRPJ and CSLL using a 'presumed profits' method) are subject to the cumulative method of COFINS system, which applies a rate of 3% with no credit system.

The general rates of COFINS may be reduced in certain circumstances (e.g. financial revenues may be subject to a rate of 0% or 4% depending on the nature of the transaction). Also, certain transactions are exempt from COFINS (e.g. exportation of services or assets are typically exempt where it results in funds entering Brazil).

### ***Contribution to the Social Integration Program (PIS)***

PIS, which is also a federal social contribution calculated as a percentage of revenue, is levied at the rate of 1.65%. Under the non-cumulative method, a PIS credit system is meant to ensure that the tax is applied only once on the final value of each transaction. However, some taxpayers (such as financial institutions, telecommunication companies, cooperatives, and companies that opt to calculate IRPJ and CSLL using a 'presumed profits' method) are still subject to the cumulative method of PIS system, which applies a rate of 0.65% with no credit system.

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The general rates of PIS may be reduced in certain circumstances (e.g. financial revenues may be subject to a rate of 0% or 0.65% depending on the nature of the transaction). Also, certain transactions are exempt from PIS (e.g. exportation of services or assets are typically exempt where it results in funds entering Brazil).

### ***PIS and COFINS on imports***

Importation of goods and services are also subject to PIS and COFINS (in addition to other taxes imposed on import transactions). PIS and COFINS are generally imposed on the Brazilian entity or individual (the importer of goods or services) and should apply to the import of services at the rates of 1.65% and 7.6%, respectively.

PIS/COFINS rates on importation of goods, however, are 2.1% (PIS) and 9.65% (COFINS), respectively. Accordingly, the combined general rate for the import of goods is 11.75%. There are also increased rates for PIS and COFINS on importations of certain specific products, including pharmaceutical products; perfumes, cosmetics, and toiletries; machinery; and vehicles (under these cases, specific rates were provided). For the import of certain goods listed in the legislation, an additional 1% for COFINS is also applicable.

The contributions paid upon import transactions may, in some instances, be creditable.

### ***Payroll taxes***

Legal entities incorporated in Brazil are subject to employer social costs, including: Social Security Contribution (INSS), Employees' Severance Indemnity Fund (FGTS), work accident insurance (RAT), and variable contribution destined to 'third parties' engaged in social development activities (e.g. SENAI, SESC, SESI). As a general rule, INSS is due by the companies at a 20% rate over the employees' payroll. However, certain entities may be eligible to calculate INSS at a range of 1% to 4.5%, applied on the company's gross revenue rather than being calculated upon the company's payroll (CPRB). In relation to FGTS, such contribution is levied on employee's salary at the rate of 8%.

The employer is responsible to withhold income tax and social security contribution on behalf of the employee on a monthly basis.

### ***Contribution for Intervention in the Economic Domain (CIDE)***

CIDE is a federal contribution levied at the rate of 10% on remittances made by corporate taxpayers for royalties and for administrative and technical services provided by non-residents. CIDE is payable by the local entity, and, therefore, not creditable to the non-resident. CIDE does not represent a liability to the foreign recipient. CIDE is not applied on the payments relating to the license to use, market, or sub-license software, provided that it does not involve transfer of technology.

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## ***Branch income***

Profits of branches of foreign corporations are taxable at the normal rates applicable to Brazilian legal entities.

## Income determination

Brazilian taxpayers are subject to IRPJ and CSLL using an ‘actual profits’ method (*‘Lucro Real’*), which is based on taxable income (book results before income taxes), adjusted by certain additions and exclusions as determined by the legislation.

Subject to certain restrictions (where gross income does not exceed BRL 78 million), Brazilian taxpayers have the option to calculate IRPJ and CSLL using a ‘presumed profits’ method (*‘Lucro Presumido’*). Under the ‘presumed profits’ method, the income is calculated on a quarterly basis on an amount equal to different percentages of gross revenue (based on the entity’s activities) and adjusted as determined by the prevailing legislation.

## Inventory valuation

Brazilian income tax regulations require that inventory may be valued at the actual average cost or by the cost of the most recently acquired or produced goods. Rulings to the effect that last in first out (LIFO) is not acceptable have been given. With the introduction of the public digital bookkeeping system (SPED), the RFB should have access to the productive process and inventory movement of companies (*see the Tax administration section for more information*).

## Capital gains

Capital gains derived from the sale of assets and rights, including shares/quotas, are generally taxed as ordinary income.

Carried forward capital losses may be offset only against capital gains. Unused capital losses are treated similarly to income tax losses with regard to limits on use and carryforward period. Capital losses may be used to offset other operating income in the year that they are incurred.

Capital gains derived by non-residents (including transactions carried out abroad between two non-resident investors, involving assets or rights located in Brazil) may be taxed in Brazil.

Such gains should be subject to progressive income tax rates, which range from 15% (for capital gain that does not exceed BRL 5 million) to 22.5% (for the portion of the gain that exceeds BRL 30 million), as per the table below:

Capital gain (BRL)		Income tax rate (%)
Over	Not over	
0	5 million	15.0
5 million	10 million	17.5
10 million	30 million	20.0
30 million		22.5

For beneficiaries residing in tax haven jurisdictions, the rate applicable remains at 25%, irrespective of the amount of the gain, due to an explicit provision in the law for these situations.

Exemptions from capital gains taxation may be available for specific transactions (e.g. certain regulated investments on the Brazilian stock market).



# Brazil

## **Dividend income**

In general terms, no IRRF is due on cash dividends or profits paid or credited to either corporate or individual shareholders. Brazilian resident beneficiaries are not subject to further income tax on receipt of dividends.

## **Financial income**

Fixed-rate interest income from short, medium, or long-term financial market transactions, including swap transactions, is subject to IRRF at rates ranging from 15% to 22.5%. Non-fixed financial gains related to stock/commodities exchange and/or futures market transactions are taxed at rates of 20% (day-trade) and 15% (all other cases). For legal entities, the total income or gain is considered taxable income, and the tax withheld may be offset against the total tax due by the corporate taxpayer.

Additionally, PIS/COFINS may be levied at a rate of up to 4.65%, depending on the type of transactions and taxation regime (i.e. non-cumulative method).

## **Royalty income**

Under Brazilian tax legislation, royalties are defined as the remuneration agreed between contracting parties for the use or exploration of:

- industrial property rights (i.e. patents, trademarks, brand names, and other rights of the same nature)
- know-how (sharing of technical information, necessary for the industrial manufacturing of a product or process, deriving from experience previously acquired), and
- copyrights.

Royalty income should be subject to regular corporate income taxation in Brazil.

Deductibility of royalty payments relating to registered intellectual property is conditioned to the proper registration with the National Institute of Intellectual Property of the contract and limited to a percentage varying from 1% to 5% of the corresponding net sales revenues.

The payment of royalties to companies abroad is generally subject to IRPJ (15%), CIDE (10%), and IOF (0.38%), as well as potentially ISS in certain cases.

## **Foreign currency exchange gain/loss**

With respect to foreign currency exchange gain/loss, which may arise from receivables or liabilities denominated in foreign currency, Brazilian tax legislation allows the local company to elect to consider the related effect, for tax computation purposes, either upon an accrual or cash basis (i.e. actual receipt/payment of funds).

## **Foreign income**

Brazilian resident companies are taxed on worldwide income. *See Controlled foreign companies (CFCs) in the Group taxation section for more information.*

## ***Deductions***

### ***Depreciation and depletion***

Depreciation is allowable on a straight-line basis over the useful life of the asset. The annual rates provided by the RFB normally allowable are 10% for machinery, equipment, furniture, and installations; 20% for vehicles; and 4% for buildings. Accelerated depreciation is allowed for companies with a two or three working shift operation by increasing normal rates by 50% and 100%, respectively.

Depletion allowances are allowed for natural resources on a useful-life basis. Special incentive depletion allowances are granted for mining and oil and gas operations.

For Brazilian accounting purposes, companies should generally perform or obtain a useful life study for fixed assets in order to determine the acceptable depreciation rates. For tax purposes, the depreciation considered deductible for the corporate income tax computation is generally determined based on the application of the annual depreciation rate for accounting purposes over the asset's acquisition cost. In cases where the depreciation registered in the books of the company is lower than that calculated based on the depreciation charts issued by the Brazilian Revenue Service, the difference can be excluded from the company's taxable income calculation made under the actual profits method.

### ***Goodwill***

Under certain requirements, goodwill paid upon the acquisition of the shares or quotas of a permanent investment may be amortised for tax purposes before realisation/impairment occurs (e.g. after a merger or a spin-off). It is important to note that the amortisation of goodwill is not permitted in Brazil for accounting purposes.

Whenever the cost of a share acquisition is higher than the net equity value of the acquired company, the acquisition cost of the investments should be segregated into:

- i. the net equity of the acquired company
- ii. the fair value of the net assets, and
- iii. the goodwill deriving from future profitability, which corresponds to the remaining balance from items (i) and (ii).

Upon a merger between buyer and acquired company (downstream or upstream), the amount of goodwill can be amortised for tax purposes over a period of not less than five years, provided certain conditions are complied with.

These conditions include the preparation of an independent appraisal report supporting the value referred to in (ii) above, which will need to be filed with the RFB or a summary with the Register of Deeds and Documents, and that the transaction has been carried out among unrelated parties.

Taxpayers wishing to continue to apply the previous rules for goodwill amortisation in relation to acquisitions made on or before 31 December 2014 had until 31 December 2017 to complete the merger of the target and the acquiring entity.

Amortisation of patents, trademarks, and copyrights, based on their useful life, is a deductible expense within approved limits.

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### **Start-up expenses**

As a general rule, for tax purposes, start-up/pre-operational expenses may be deferred and amortised on the straight-line basis over a period of not less than five years, beginning the month in which the business starts operating.

For purposes of corporate income tax calculation based on the actual profits method, the following expenses shall not be computed within the period in which they are incurred: (i) start-up organisation expenses, including from the initial operation phase, when the company only partially used its equipment or its installations and (ii) expenses for expansion of industrial activities.

The expenses mentioned above shall be excluded for purposes of computation under the actual profits method, based on a minimum period of five years, as of the beginning of the regular operations.

### **Research and development (R&D) expenditures**

At the option of the company, R&D expenditures may be deducted when incurred or deferred until termination of the project and then amortised over a period of not less than five years.

R&D expenses may be excluded, for purposes of computation based on the actual profits method, when registered as non-current asset intangibles, during the computation period in which they were incurred. To use this benefit, the taxpayer must add to the net income, for purposes of computation based on the actual profits method, any amount previously recognised for the relevant intangible asset, through amortisation, sale, or write-off.

### **Interest on net equity (INE)**

Companies can pay interest (calculated on a *pro rata* basis and up to a given rate, known as the 'long-term interest rate' [TJLP], which is currently set at 6.6%) to share/quota holders, based on the company's net equity. Such interest, which may not exceed the higher of 50% of the annual profits or 50% of the accumulated earnings and profits, is deductible for both IRPJ and CSLL purposes and is subject to 15% IRRF at the source (or 25% if the beneficiary is located in a tax haven jurisdiction). Whenever the beneficiary is a legal entity subject to normal income tax in Brazil, the tax withheld at the source may be taken by the recipient as a tax credit. If the beneficiary is a Brazilian resident individual, such interest will not become subject to any further taxation.

### **Interest and other payments to entities in a tax haven or under a privileged tax regime**

Provisions similar to those for thin capitalisation (*see the Group taxation section*) are also applicable to interest paid or credited by a Brazilian entity to an individual or legal entity (whether or not a related party) resident or domiciled in a tax haven or in a jurisdiction under a privileged tax regime. In these cases, the interest expense is only deductible for Brazilian income tax purposes if it is viewed as necessary to the company's activities and the total amount of the Brazilian entity's debt with any foreign party resident or domiciled in a tax haven or in a jurisdiction under a privileged tax regime does not exceed 30% of the Brazilian entity's net equity.

The Law also provides that amounts paid, credited, delivered, used, or remitted under any title, directly or indirectly, to related or unrelated individuals or legal entities that are resident or domiciled in a tax haven or in a jurisdiction under a privileged tax

regime will only be viewed as deductible for Brazilian income tax purposes if all of the following conditions are met: (i) the effective beneficiary of the payment is identified; (ii) there is evidence that the payment beneficiary has operational capacity (i.e. substance); and (iii) there is adequate documentation to support the relevant payments and the corresponding supply of goods, rights, or utilisation of services.

### Tax havens and privileged tax regime lists

The RFB has issued a list (i.e. 'black list') detailing the jurisdictions that are considered not to tax income or to tax it at a rate lower than 20%, or that deny access to information regarding shareholding and ownership of assets and rights.

Another list (i.e. 'grey list') contemplates jurisdictions that are considered to have 'privileged tax regimes', as set forth in Brazilian legislation. The following types of entities are included in the grey list:

- Holding companies incorporated under the law of Denmark, which do not carry out substantive economic activity.
- Holding companies incorporated under the law of the Netherlands, which do not carry out substantive economic activity.
- International trading companies (ITCs) incorporated under the law of Iceland.
- Holding company, domiciliary company, auxiliary company, mixed company, and administrative company incorporated in Switzerland and other legal entities subject to a ruling issued by the tax authorities that apply a combined tax rate lower than 20%.
- Limited liability companies (LLCs) incorporated under the state law of the United States, owned by non-residents and not subject to federal income tax.
- Holding companies (ETVEs) incorporated under the law of Spain. Note that inclusion has been temporarily suspended, pending a review requested by the Spanish government.
- ITCs and international holding companies (IHCs) incorporated under the law of Malta.
- Holding companies incorporated under the law of Austria that do not carry out substantive economic activities.
- Foreign Trade Zones located in Costa Rica.
- International Business Centre of Madeira (IBCM) in Portugal.
- 20 different regimes of companies incorporated in Singapore.

A foreign holding company is deemed to carry out substantive economic activities if it has, in its country of domicile, operating capacity to manage and make decisions regarding (i) activities with the purpose of generating income from its assets or (ii) management of equity interests with the purpose of generating income in the form of profit distributions and capital gains.

Operating capacity should be measured by (i) the existence of physical facilities and (ii) qualified employees to manage and make decisions according to the complexity of the tasks to be performed. It is important to note that the definition only expressly makes reference to Dutch and Danish holding companies although it also could be considered to apply to Austrian holding companies.

It is generally understood that the concept of a privileged tax regime is subject to stricter transfer pricing, thin capitalisation, and tax deduction rules. There are also a number of adverse implications from a Brazilian CFC perspective. For the jurisdictions

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considered as tax havens, in addition to the tax consequences applicable for privileged tax regimes above, the IRRF rate due on capital gains and cross-border payments, such as services fees, royalties, and interest, is generally 25%.

Jurisdictions that satisfy certain international transparency standards may apply for the rate (to be considered a tax haven/privileged tax regime) to be lowered from 20% to 17%.

### ***Bad debt***

Losses on bad debts are tax deductible, depending on the amounts, time overdue, and administrative and/or legal actions taken to recover losses. Losses arising from inter-company transactions are not tax deductible.

### ***Charitable contributions***

Donations are deductible, up to certain limits, if recipients are registered as charitable institutions.

### ***Travel expenses***

Travel expenses may only be considered deductible if they are incurred in connection with business activities, duly documented and substantiated.

### ***Medical and pension expenses***

Expenses of group medical care and health insurance programmes for employees and contributions to private supplementary pension schemes are generally considered deductible if supplied to all employees indiscriminately.

### ***Fines and penalties***

Punitive tax/contribution penalties are not deductible for tax purposes.

### ***Taxes/contributions***

Taxes, contributions, and related costs, such as late-payment interest, are generally deductible for tax purposes on an accrual basis. This rule does not apply to taxes/contributions being or to be challenged by the taxpayer at any level of litigation, which are deductible for tax purposes only on a cash basis.

### ***Tax losses carried forward***

Tax losses (i.e. for IRPJ and CSLL purposes) may be carried forward without any time limitation. However, the tax loss may not reduce taxable income by more than 30% of its amount prior to the compensation of the tax loss itself (and is subject to certain loss recoupment rules).

There is no carryback of tax losses or monetary restatement.

### ***Payments to foreign affiliates and related companies***

Royalties and technical service fees (with transfer of technology or know-how) payable to foreign companies with a direct or indirect controlling interest in the Brazilian company are deductible for tax purposes (observing applicable deduction limits), provided the contract has been duly registered with the National Institute of Industrial Property (*Instituto Nacional da Propriedade Industrial* or INPI) and approved by the Brazilian Central Bank.

The Brazilian Chamber of Federal Tax Appeals (CARF) considered that certain rights to distribute/commercialise software should be treated as a 'royalty' for Brazilian tax purposes. The decision issued by the first panel of the Higher Chamber of the Administrative Tribunal considered that such royalty remittances were not deductible when paid to shareholders.

### ***Payments under cost sharing arrangements***

Reimbursements paid under cost sharing arrangements can be considered deductible for IRPJ purposes, to the extent that certain requirements set forth by administrative decisions (especially tax ruling COSIT 8/2012) are met by the company performing such payments.

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### ***Group taxation***

Consolidated tax returns are not permitted in Brazil.

### ***Transfer pricing***

The Brazilian transfer pricing rules apply to import and export transactions of goods, services, and rights between related parties (the legislation provides a broad list of the parties considered as 'related' for transfer pricing purposes). Under such rules, the price determined between related parties shall be acceptable, for Brazilian tax purposes, if it is in accordance with one of the transfer pricing methods established by the legislation (no profit methods are available). Since there is no best method approach, taxpayers can choose the least onerous alternative for each good, service, or right on an annual basis (except in cases involving listed commodities). Moreover, all transactions with both tax havens and those subject to privileged tax regimes are subject to transfer pricing rules, whether involving related parties or not.

### ***Interest***

Brazilian transfer pricing rules are applicable to interest derived from/charged to inter-company loans and/or with entities situated in low-tax jurisdictions, and such interest must comply with the rates established below, in addition to a spread determined by the Ministry of Finance, in order to be acceptable for tax deductibility purposes:

- i. In case of transaction in US dollars, subject to a fixed interest rate: Rate of Brazilian sovereign bonds issued in US dollars in foreign markets.
- ii. In case of transaction in Brazilian reais, subject to a fixed interest rate: Rate of Brazilian sovereign bonds issued in Brazilian reais in foreign markets.
- iii. In all other cases (e.g. euros): LIBOR for the period of six months.

The additional spread is currently set at 3.5% per year, applicable to interest due to foreign-related parties or to low-tax jurisdictions, and 2.5% per year, in case of interest charged by the Brazilian entity.

For transactions covered in item (iii) above, in currencies for which there is no specific LIBOR, the LIBOR for deposits in US dollars shall be the one to be considered.

### ***Royalties***

Operations involving royalties registered with the National Institute of Intellectual Property should not generally be subject to transfer pricing rules.

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## Services/Goods/Rights

The adequacy of the price performed between related parties in any operations involving goods, services, and rights shall be supported by the application of one of the following transfer pricing methods, as determined in the Brazilian transfer pricing rules (the company may choose the most convenient method as there is no 'best method' rule).

Methods available for documenting the import transactions:

- Comparable independent price (PIC).
- Resale price less profit (PRL).
- Production cost plus profit (CPL).
- Imports of quoted commodities (PCI) - applicable only to commodities.

Methods available for documenting the export transactions:

- Export sales price (PVE<sub>x</sub>).
- Wholesale price in the country of destination less profit (PVA).
- Retail price in the country of destination less profit (PVV).
- Acquisition or production cost plus taxes and profit (CAP).
- Export of quoted commodities (PECEX) - applicable only to commodities.

Relief of proof rules (materiality and profitability safe harbours) for inter-company export transactions are available.

Please note that imports and exports of commodities, quoted in commodities exchange markets, must be tested by the use of specific methods called PCI and PECEX, respectively. Based on these methods, taxpayers shall compare the transaction amounts with the daily average quote for each product.

## Country-by-country (CbC) reporting

Although Brazil recently introduced the obligation to present the CbC report, it has not yet imposed the obligation to file either the Master or the Local file.

## Thin capitalisation

The Brazilian thin capitalisation rules establish that interest paid or credited by a Brazilian entity to a related party (individual or legal entity), resident or domiciled abroad, not constituted in a tax haven or in a jurisdiction with a privileged tax regime, may only be deducted for income tax purposes if the interest expense is viewed as necessary for the activities of the local entity and the following requirements are met:

- i. the amount of debt granted by the foreign-related party (which has participation in the Brazilian entity) does not exceed twice the amount of its participation in the net equity of the Brazilian entity
- ii. the amount of debt granted by a foreign-related party (which does not have participation in the Brazilian entity) does not exceed twice the amount of the net equity of the Brazilian entity
- iii. the total amount of debt granted by foreign-related parties as per (i) and (ii) does not exceed twice the sum of participation of all related parties in the net equity of the Brazilian entity, and

- iv. in case debt is only granted by related parties that do not have a participation in the Brazilian entity, the total amount of debt granted by all of these related parties does not exceed twice the amount of the Brazilian entity's net equity.

Consequently, if one of the mentioned 2:1 ratios is exceeded, the portion of interest related to the excess debt amount will not be deductible for Brazilian income tax purposes.

Similar provisions are also applicable to interest paid or credited by a Brazilian entity to an individual or legal entity (whether or not a related party) resident or domiciled in a tax haven or in a jurisdiction subject to a privileged tax regime. In these cases, the ratio reduces to 30% of the Brazilian entity's net equity (0.3:1 ratio).

### **Controlled foreign companies (CFCs)**

Law No. 12,973/2014 introduced rules for the treatment of controlled and affiliated companies for Brazilian CFC purposes.

For controlled companies, the law expressly applies to both directly and indirectly controlled entities individually ('top down look through approach'). As such, any investment in a controlled foreign entity must be adjusted yearly to reflect the change in the investment value corresponding to the profits or losses of the directly and/or indirectly controlled entity. The change in investment must be recognised in proportion to the Brazilian parent's participation in its equity, and any positive adjustment relating to profits earned, calculated under the local accounting standards of the jurisdiction of the controlled entity, must be subject to IRPJ and CSLL annually.

Taxpayers will be allowed to consolidate positive and negative adjustments until 2022, provided certain conditions are satisfied as defined by the legislation.

One of the requirements introduced by the legislation is related to the concept of the sub-taxation jurisdiction, which is defined as being a jurisdiction that has a nominal income tax rate of less than 20%. In order to be able to consolidate, a company cannot be subject to a sub-taxation regime, in addition to not being subject to a privileged tax regime or resident in a tax haven (or controlled, directly or indirectly, by such entities).

In case the taxpayer does not choose to consolidate its accounting losses, losses will only be compensated by the foreign controlled entity with its own future profits. Accumulated losses accrued before the above-mentioned law may also be used to offset profits without any time limitation, subject to appropriate disclosure.

Under certain conditions, taxpayers may choose to pay income tax due on the foreign profits proportionally to the profits actually distributed to the Brazilian entity, in subsequent periods to that in which such results were generated. However, in the first year, even where there is no distribution of profits, 12.5% of profits will be deemed to be distributed to the Brazilian parent. If no further profits are distributed, the remaining profits will be deemed to be distributed in the eighth subsequent year. Taxpayers choosing to postpone payment of income tax due should consider the impact of interest as well as foreign exchange rates.

In addition to corporate taxes paid, the law expressly extends foreign tax credits to withholding income tax paid abroad on the profits distributed to the Brazilian parent.



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For affiliated companies, the law does not require adjustments to the Brazilian entity's accounts but rather focuses on the profits distributed. Profits will be considered distributed to the parent when credited or paid or in other specific circumstances defined by the legislation. As such, any profits earned by a Brazilian entity through a foreign affiliate will generally only be taxable in Brazil on 31 December of the year in which they were actually distributed to the Brazilian entity, provided that the affiliate satisfies certain conditions defined by the legislation, including not being located in a low-tax jurisdiction.

The CFC rules will not apply for directly or indirectly controlled foreign entities and affiliates in case of activities related to the exploration of oil and gas in Brazil.

Until calendar year 2022, Brazilian parent companies may deduct up to 9% as a presumed/deemed credit on the CFC's taxable profit, generated by investments abroad that are engaged in the manufacture of food and beverage products and in the construction of building/infrastructure works.

This list of activities has been extended to include manufacturing, mineral extraction, exploitation, under public concession contracts, of public assets located in the country of residence of the CFC entity, as well as other general industry.

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## **Tax credits and incentives**

### **Foreign tax credit**

Brazilian resident companies are taxed on worldwide income, but they may compensate the income tax paid in the country of domicile of the branch, controlled, or associated company, and the tax paid on earnings and capital gains, against the corporate income tax due in Brazil. The amount of tax effectively paid abroad, to be compensated, may not exceed the amount of income tax and surtax due in Brazil on the amount of profits, earnings, and capital gains included in the calculation of taxable income.

*Please refer to Controlled foreign companies (CFCs) in the Group taxation section for a description of the use of foreign tax credits.*

### **Investment project incentives**

Total or partial exemption from duty, excise tax, and social contributions on imported equipment is granted on certain approved investment projects.

Approved investment projects are also granted accelerated depreciation on nationally produced equipment and access to low-cost financing. Sales of some capital equipment are exempt from state sales tax.

Brazilian corporate taxpayers can apply a percentage of their income tax liability on deposit for reinvestment and investment in their own approved investment projects. These approved investment projects are normally granted total or partial income tax exemption.

The Brazilian legislation also provides tax incentives for projects focusing on technological innovation.

### **Program for Investment Partnerships**

The Program for Investment Partnerships (*Programa de Parcerias de Investimentos* or PPI) intends to amplify and strengthen the interaction between the Brazilian state and private sector through partnership agreements to carry out public infrastructure projects.

PPIs can be used for (i) public infrastructure projects that are already under way or to be performed through partnership agreements to be signed by the direct or indirect bodies of the Brazilian federal government; (ii) public infrastructure projects to be performed through partnerships signed by the government of states or municipalities directly or indirectly, but delegated or fomented by the federal government; and (iii) other measures established by the National Privatization Plan, per law 9,491/97.

The Brazilian National Development Bank (BNDES) is authorised to support the PPIs through the Partnership Structuring Support Fund (*Fundo de Apoio à Estruturação de Parcerias* or FAEP), created specifically for such partnerships. The fund will be responsible for providing technical services to structure the aforementioned PPIs and the necessary privatisation measures, and shall have a ten-year period, renewable for an additional ten-year period if necessary.

### **Regional incentives**

Income tax exemptions or reductions are also available for companies set up in specified regions within Brazil, primarily the north and northeast regions. These incentives are designed to accelerate the development of certain less-developed regions and industries considered to be of importance to the economy.

### **ICMS incentives - State tax incentives/benefits**

According to the Federal legislation (Complementary Law 24/1975), the ICMS incentives or similar tax benefits granted by an individual state should be approved by all states through an agreement with the National Council of Fiscal Policy (CONFAZ). However, such tax incentives were usually granted by the states without this formal acceptance. As a result, ICMS incentives, granted in such terms, were or could be challenged by the other states, claiming the unconstitutionality of the incentive.

On 12 July 2017, the Brazilian Congress approved the validation of all ICMS incentives currently granted by the Brazilian states to the taxpayers. In practical terms, such validation will sort out the so-called ‘tax war’ in which any state would not be able to challenge going forward the unconstitutionality on any ICMS incentive already granted at the Supreme Court level.

In this sense, on March 2018, all states have listed their ICMS incentives in order to be valid as per the applicable tax legislation (Complementary Law 160/2017 and CONFAZ Agreement 190/2017). Until each of such incentives are valid, other states may grant similar tax incentive of any other state to their taxpayers in order to achieve tax equality.

### **Other incentives**

In addition, certain excise and sales tax exemptions are granted to exporters of manufactured goods.

# Brazil

## Withholding taxes

Profits/dividends distributed to resident or non-resident beneficiaries (individuals and/or legal entities) are generally not subject to IRRF (Brazilian term for withholding income tax) (*please see the Income determination section for more information*). This provision is also applicable to dividends paid to non-resident companies located in a tax haven jurisdiction.

The IRRF rate applicable to payments for services rendered by non-resident companies or individuals is generally 15% but can be increased to 25% in certain cases. Other transactional taxes also need to be considered on such payments.

Payments for services, royalties, and interest to non-resident companies located in a tax haven jurisdiction (black list only) are subject to IRRF at the rate of 25%.

The RFB issued guidance in relation to how they should treat certain service fees, which, in effect, allow certain payments to be exempt from IRRF in Brazil, under certain tax treaties.

Certain types of income paid by Brazilian companies to non-resident recipients are subject to IRRF as follows:

Recipient	IRRF (%) (3)		
	Dividends (1)	Interest	Royalties
Non-resident companies and individuals:			
Non-treaty	0	15	15
Tax haven	0	25	25
Treaty (2):			
Argentina	0	15	15
Austria	15	15	10/15/25
Belgium	10/15	10/15	10/15/20
Canada	15	10/15	15/25
Chile	10/15	15	15
China, People's Republic of	15	15	15/25
Czech Republic	15	10/15	15/25
Denmark	25	15	15/25
Ecuador	15	15	15/25
Finland	10	15	10/15/25
France	15	10/15	10/15/25
Hungary	15	10/15	15/25
India	15	15	15/25
Israel	10/15	15	10/15
Italy	15	15	15/25
Japan	12.5	12.5	12.5/15/25
Korea, Republic of	10/15	10/15	10/15/25
Luxembourg	15/25	10/15	15/25
Mexico	10/15	15	10/15
Netherlands	15	10/15	15/25
Norway	15	15	15/25
Peru	10/15	15	15
Philippines	15/25	10/15	15/25
Portugal	10/15	15	15

Recipient	IRRF (%) (3)		
	Dividends (1)	Interest	Royalties
Russia	10/15	15	15
Slovak Republic	15	10/15	15/25
South Africa	10/15	15	10/15
Spain	10/15	10/15	10/15
Sweden	25	25	25
Trinidad and Tobago	10/15	15	15
Turkey	10/15	15	10/15
Ukraine	10/15	15	15
Venezuela	10/15	15	15

#### Notes

- Note that the remittance of dividends is generally not subject to taxation in Brazil.
- Treaty rates in excess of those in force for non-treaty countries are automatically reduced. The relevant treaty should be consulted on a case-by-case basis to confirm that the tax reduction is applicable in each case.
- For treaties with multiple IRRF rates, the following rules generally apply:
  - Dividends: If there was IRRF on dividends, which is not the case according to Brazilian legislation, the 10% (or 15%) rate would generally apply if the beneficial owner is a company that directly holds a certain minimum participation in the capital of the company paying the dividends; the 15% (or 25%) rate is considered for all other cases.
  - Interest: The 10% rate generally applies to loans with a certain minimum term granted for specific purposes (e.g. acquisition of capital goods); the 15% rate is considered for all other cases.
  - Royalties: The 10% rate generally applies to royalties arising from the use of, or the right to use, cinematographic films, films or tapes for television or radio broadcasting, and any copyright of literary, artistic, or scientific work produced by a resident of a contracting state; the 25% (or 15%) rate generally applies to royalties arising from the use of, or the right to use, trademarks; and the 15% (or 10%) rate is considered for all other cases.

## Tax administration

### Taxable period

For tax purposes, a company's year-end is 31 December. A different year-end for corporate/accounting purposes is irrelevant.

### Tax returns

With few exceptions, corporate entities, including those that are foreign-controlled, must file an annual tax return consolidating the monthly results of the previous calendar year. This tax return must normally be filed by the end of July following the tax year ending on 31 December.

Supporting documentation must be retained for at least five years.

Please note that there are a number of other declarations/returns imposed by the RFB, for different taxes, at federal, municipal, and state levels, which make the tax administration in Brazil notably bureaucratic.

### Payment of tax

In the case of income tax, it is generally calculated monthly, and payments should generally be collected and paid by the last working day of the subsequent month. Any amounts of income tax due for the year (exceeding the payments performed) must be paid by the last working day of March of the subsequent year.

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There is an option to pay the tax due at the end of each quarter in three instalments, the first one starting from the subsequent month to the end of the quarter. When income tax is calculated quarterly, the taxpayer must perform the applicable payment by the last working day of the month subsequent to the end of the quarter.

There are many other taxes applied in Brazil with different due dates established by the domestic legislation.

### ***Tax audit process***

As all tax returns are digital (*please refer to public digital bookkeeping system [SPED] below*), they may be selected for audit by computer, according to various criteria, including type of business, unusually large or small amounts of income or deductions, and random sampling.

No corporate entity, whether a taxpayer or not, is excused from furnishing information or explanations required by the tax authorities.

When audits are conducted on the premises of taxpayers, tax inspectors have broad powers to inspect books and documents and to request information and any data deemed necessary. This is generally disrupting and, in practice, every effort is made to expedite the conclusion of these audits.

Whenever a violation is determined during a tax audit, the inspectors must draw up an infringement notification, which starts the administrative procedure for additional tax assessments.

It should be noted that, in case of doubts regarding the correct tax procedure to be adopted in a specific situation, taxpayers are allowed to consult with the RFB; however, the results of the consultations only bind the respective taxpayers.

### ***Statute of limitations***

The tax authorities may generally audit taxpayers up to five years after the close of the tax year. There is some debate about the moment this five-year period begins, depending on the type of tax considered and certain situations. Certain specific taxes and labour obligations have a longer statute of limitation period.

### ***Topic of focus for tax authorities***

It should be noted that, over the years, Brazil has applied a 'form-over-substance' approach. Nonetheless, as of 10 January 2001, Supplementary Law 104/2001 introduced a substantial modification in the Brazilian tax code (the so-called anti-avoidance rule). This law establishes a substance-over-form approach that, once regulated, may allow the RFB to disregard tax-driven transactions.

Although Supplementary Law 104/2001 has not yet been regulated, in our local practice we have seen that tax authorities are keen on ensuring taxpayers have economic substance in their operations (e.g. the use of special purpose entities to enable the amortisation of goodwill for tax purposes in Brazil).

### ***Public digital bookkeeping system (SPED)***

Brazil has implemented a public system of digital bookkeeping known as SPED, which aims at gradually replacing paper copies of invoices and tax records for electronic files. SPED can be defined as an instrument that unifies the activities of reception, validation,

storage, and legalisation of records and documents that are part of the commercial and tax bookkeeping of companies, through a single, computerised flow of data.

Comprised of three pillars (electronic invoice, digital fiscal bookkeeping, and digital accounting bookkeeping), the implementation of SPED requires adjustments to the relationship with tax authorities, clients, suppliers and, mainly, on the internal operational processes, which will demand an integrated action from different areas (tax, labour [eSocial], indirect tax [bloco K], accounting, information technology, supplies, production, commercial, and others). On the other hand, occasional inconsistencies from databases, as well as operational errors related to tax and accounting information to be generated, usually unknown to the companies' administration, are subject to increased visibility and monitoring by the RFB.

It is important to bear in mind that there are many more Brazilian ancillary obligations to fulfil, based on electronic frameworks established by the relevant federal, state, and municipal authorities, which may not be comprised within the SPED environment.

The RFB provide for so-called 'accounting tax bookkeeping' (ECF), which replaced the Brazilian corporate income tax return (DIPJ), where Brazilian taxpayers need to inform all transactions that impact the computation bases for IRPJ and CSLL purposes. The ECF shall be transmitted on an annual basis to the SPED system up to the last working day of July of the subsequent year to the calendar year it refers.

The Brazilian government is currently introducing two new ancillary obligations for reporting payroll taxes, contributions, and certain withholding taxes, referred to as 'eSocial' and 'EFD-Reinf'. The eSocial specifically relates to payroll taxes and contributions and started in waves in January 2018, and the launching will be concluded in June 2018 for companies with gross revenues exceeding BRL 78 million (in 2016). For the other companies, it is planned to start in the second semester of 2018. An additional group of information related to health and safety will be due in 2019.

EFD-Reinf is a spinoff of eSocial, and aside from the disclosure of certain withholding taxes information, it replaces the 'EFD-contribuições' module in relation to the social security contribution levied on gross revenue (CPRB). EFD-Reinf is also being implemented in steps, starting in June 2018 for companies with gross revenues exceeding BRL 78 million. Companies that should lodge the eSocial should also submit the EFD-Reinf.

### ***Ancillary obligations imposed on import and export of services***

The RFB issued regulations that imposed an ancillary obligation, called 'SISCOSERV', regarding transactions carried out between Brazilian residents and non-residents involving services, intangible assets, and other operations. Whenever one of the previous situations takes place, tax authorities must be informed. The type of information to be disclosed is detailed in complementary rules issued by the RFB.

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## **Other issues**

### ***Intergovernmental agreements (IGAs)***

In force as of August 2015, an IGA was signed between Brazil and the United States, aiming to exchange information related to Brazilian foreign financial institutions (FFIs), in an effort to mitigate tax evasion.

Such IGA is based on the tax information exchange agreement (TIEA) signed by Brazil and the United States in 2007 (although it only came into force in 2013). Both the TIEA and the IGA aim to improve compliance in relation to tax law.

### ***Base erosion and profit shifting (BEPS)***

Since June 2014, the RFB have closely followed the discussions of the G20/OECD BEPS project and adopted a series of measures in relation to the minimum standards proposed by the BEPS Action Plans.

### ***Multilateral Convention on Mutual Administrative Assistance (MCAA)***

Although not strictly developed under the BEPS project, the MCAA, signed by Brazil and in force since October 2016, provides a platform for automatic and on-demand exchange of information between tax authorities of different jurisdictions.

Under the umbrella of the MCAA, Brazil has signed two Multilateral Competent Authority Agreements, which will allow tax authorities to automatically exchange financial information (CRS MCAA) and country-by-country reportings (CbC MCAA).

### ***Common reporting standards (CRS)***

On 29 December 2016, the RFB issued the final regulations in relation to the implementation of the CRS in Brazil. The regulations define the relevant information that should be exchanged, including information on financial assets, as well as the specific procedures that should be followed by the financial institutions that will present the report starting in 2018.

### ***Country-by-country (CbC) reporting***

On 29 December 2016, the RFB issued the final regulations in relation to the implementation of CbC reporting, establishing the framework under which multinational enterprises (MNEs) are required to disclose information in Brazil related to their economic activities worldwide. The information has been disclosed on the Corporate Income Tax Return (ECF) since 2017.

### ***Mutual Agreement Procedure (MAP)***

RFB issued Normative Instruction 1669/2016 laying out the rules to allow taxpayers to access the MAP. Although Brazil had included Article 25 of the OECD Model Convention (related to MAP provision) in its Double Tax Treaties, before NI 1669/2016 there were no specific procedures to access this resource.

### ***Multilateral Convention to implement tax treaty related measures to prevent BEPS (MLI)***

Brazil has not signed the MLI, but has started to include the minimum anti-abusive standards in its newly negotiated treaties.

## Exchange of information of Brazilian Rulings

Normative Instruction 1689/2017 introduces the compulsorily exchange of information on tax rulings rule, which according to the RFB should include 'solução de consulta', 'solução de divergência', and 'ato declaratório interpretativo'. The exchange of information should be restricted to transfer pricing, PE, or the PADIS tax benefit.



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# Chile

## **PwC contact**

Francisco Selame  
PricewaterhouseCoopers  
Avenida Andrés Bello 2711  
Torre de la Costanera, Cuarto Piso  
Santiago, Chile  
Tel: +56 2 940 0460  
Email: francisco.selame@cl.pwc.com



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## **Significant developments**

### **Full entry into force of the Tax Reform**

As of 1 January 2017, the Tax Reform (Law N° 20,780, duly amended by Law N° 20,899) is fully in force. Please note that the 27% rate applicable under the partially integrated system (PIS) is in force as of commercial year 2018.

### **Most favoured nation clause on interest**

As of 1 January 2019, the general rule on interest will be a 10% withholding tax (WHT) due to the applicability of some provisions of the double tax treaties (DTTs) with China and Japan; since those DTTs will trigger several most favoured nation clauses. Note that some DTTs, like the DTT with Argentina, will reduce the rate to just 12%.

### **Extension of full First Category Tax (FCT) credit**

Countries that have signed a DTT that is not yet in force (i.e. United States and Uruguay) will have full FCT credit against their additional WHT on dividends until 31 December 2021. This rule will also be applicable to DTTs signed until 31 December 2018, but whose ratification is pending until 31 December 2021.

### **New definition of permanent establishment (PE)**

The Chilean Internal Revenue Service (IRS) issued a new definition of ‘permanent establishment’, which ‘does not take into consideration only the existence of a mandate agreement with power to conclude or close deals’. In this sense, this new broad definition applies the substance-over-form principle.

### **Low-tax jurisdiction list**

The Chilean IRS issued Resolution N° 124 of 2017, which contains a list of low-tax jurisdiction or preferential tax regimes. These jurisdictions meet the requirements of Article 41 H of the Chilean Income Tax Law.

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## **Taxes on corporate income**

### **First Category Tax (FCT)**

The basic tax on income of a legal entity domiciled or resident in Chile and engaged in commerce, mining, fishing, or industrial activities is the FCT, which is assessed at a 25% rate for entities subject to the attributed income system (AIS) and 27% rate for entities subject to the partially integrated system (PIS) on the entity’s worldwide income.

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Final taxation (i.e. at the Chilean final owner's level or at the foreign owner's level) will depend on the income tax regime to which the Chilean entity is subject to.

## ***Income taxation systems in force***

As of 1 January 2017, the 2014 Tax Reform replaced the former totally integrated income tax system with two new income tax systems, the co-existing AIS and PIS.

### ***Attributed income system (AIS)***

In general terms, under the AIS, companies have to attribute all the 'attributable income' (mainly the taxable basis for corporate purposes) up-stream to the final owners, subject to the Global Complementary Tax or the Additional WHT.

In this scenario, final owners are subject to the Global Complementary Tax (a progressive tax ranging from 0% to 35%) or Additional WHT (at 35%) regardless of whether a dividend was effectively distributed or not, with a 100% tax credit for the FCT paid at the attributing entity's level. The final owner is responsible for paying the difference between the FCT and the corresponding final tax.

Consequently, a foreign entity or individual subject to this regime is subject to a total Chilean tax burden of 35% (the Additional WHT rate), being able to credit the 25% FCT paid by the company.

For example:

Taxable income	100.00
FCT (25%)	25.00
Gross up amount	100.00
Additional WHT on attributed income (35%)	35.00
Tax credit (100% of FCT paid)	(25.00)
Difference to be paid	10.00
Total taxes paid in Chile (FCT plus difference to be paid)	35.00
Total tax burden	35%

As of 1 January 2017, taxpayers that may elect this system are companies whose owners are exclusively final taxpayers. In certain cases, companies by shares will be able to opt for this system, provided certain requirements are met. Additionally, the AIS is the default system to those taxpayers who do not expressly choose to be subject to the PIS and who have partners, owners, or co-owners who are exclusively individuals domiciled or resident in Chile.

Note that the Taxable Profits Fund (FUT for its Spanish acronym) ledger is replaced by a ledger that records the profits with an average tax credit rate for the FCT paid, creditable against final taxes. Also, as of 1 January 2017, ledgers that must be kept by taxpayers have been simplified and profit allocation order has also been modified. Now taxpayers need to keep the following ledgers and allocate accordingly: (i) own attributed income (including historic FUT); (ii) differences between normal and accelerated depreciation; and (iii) income not subject to final taxes and profits that are not considered income (this ledger includes the Non Taxable Profits Fund [FUNT for its Spanish acronym] determined on 31 December 2016). Any amount exceeding this allocation order will be subject to final taxes, unless it corresponds to paid-in capital.

## Partially integrated system (PIS)

Under the PIS, final income taxation is applied upon effective dividend disbursements or profit withdrawals. Consequently, Chilean final owners subject to the Global Complementary Tax or foreign owners subject to the 35% Additional WHT are levied with these final taxes upon effective distribution of profits, with a tax credit of 65% of the FCT paid at the entity level.

However, the tax credit for the FCT paid at the entity level is 100% if the final owner is domiciled or resident in a country with which Chile has a DTT in force.

Therefore, final owners subject to the Additional WHT, residents, or those domiciled in a DTT country will continue having a total Chilean tax burden of 35% (the Additional WHT rate), whilst other foreign investors' total Chilean tax burden will be 44.45% since the 27% FCT rate became applicable in commercial year 2018. This total tax burden of 44.45% is calculated as follows:

Taxable income	100.00
FCT (27%)	27.00
Distribution abroad	73.00
Gross up amount	100.00
Additional WHT on attributed income (35%)	35.00
Tax credit (65% of FCT paid)	(17.55)
Difference to be paid	17.45
Total taxes paid in Chile (FCT plus difference to be paid)	44.45
Total tax burden	44.45%

In general terms, stock corporations, limited joint-stock entities, and companies that at least have one shareholder who is not a final taxpayer will be mandatorily subject to this income taxation regime.

In this income tax system, there has also been a ledger simplification and modification of the allocation order: (i) income subject to taxation, determined according to the entity's tax equity (including historic FUT); (ii) differences between normal and accelerated depreciation; (iii) income not subject to final taxes and profits that are not considered income (this ledger includes the FUNT determined on 31 December 2016); and (iv) accumulated tax credits balance.

Additionally, the FUT ledger has been eliminated and an average rate is applicable; assigned credits from the historic FUT will be allocated according to an average tax credit rate, annually determined, according to the result from the division of the total accumulated tax credits for the FCT paid by the tax profits registered in the FUT.

## Common rules for both new taxation systems

- A voluntary payment of the FCT is established in case the entity attributing or distributing income has no corporate tax credits available for the use of the final owners. These voluntary FCT payments under the AIS will be deductible from net taxable income, whilst under the PIS, they will be considered as a tax credit against the FCT due.
- Taxpayer will have to be subject to one of the aforementioned systems for at least five years. After such period, they may change from one system to another. However,

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in order to change from one system to another, all FCTs due will need to be paid as if the entity had ceased in its activities.

- Additionally, Law N° 20,899 provides that entities subject to the AIS will change to PIS as of 1 January of the year in which one of its owners is an entity who is not a final taxpayer.
- Taxpayers will need to keep a registry regarding the ‘accumulated tax credit balance’ in order to control the available FCT credit.

## **Local income taxes**

Chilean legislation does not establish any provincial or local income taxes.

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## **Corporate residence**

Companies incorporated in Chile are considered to be domiciled in the country.

### **Permanent establishment (PE)**

An entity may be considered as a PE under DTT terms but not under domestic law. In this case, in principle, the corresponding WHT should apply over the gross basis of the remittance.

However, Chilean IRS rulings have interpreted the relation between the two different PE concepts, in the sense that, even though domestic requirements are not met, the taxpayer may choose to be treated as a local PE in order to be allowed to deduct the expenses incurred in the PE’s business.

For purposes of determining whether an entity is considered a PE, the substance-over-form principle will apply according to an administrative interpretation issued by the Chilean IRS in December 2017.

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## **Other taxes**

### **Value-added tax (VAT)**

VAT is payable on the transfer of goods and the provision of services at a 19% rate. In general terms, this tax is levied over the price of the following goods and services:

- Sales and other agreements used to transfer the ownership of tangible goods (movable and immovable), provided that said operations are customary. The law assumes that all sales made within the ordinary course of business are customary.
- Services that are commercial, industrial, or financial, or that are connected to mining, construction, insurance, advertising, data processing, and other commercial operations.
- Imports, customary or not.

The sale of fixed assets is subject to VAT, provided that the taxpayer was entitled to VAT credit for its acquisition, importation, or construction.

VAT works on a credit-debit system. The tax borne by a company or business in the acquisition of goods or services is called the ‘VAT credit’. The VAT charged on the goods and services sold to customers is called the ‘VAT debit’. As a general rule, the seller or service provider is obligated to withhold and pay the VAT. The tax amount is added to the invoice; consequently, the final consumer economically bears the VAT.

Exceptionally, when a seller or service provider is not domiciled in Chile or when, for other reasons, the Chilean IRS has difficulties assessing the correct payment of VAT, the responsibility to withhold and pay the tax is transferred to the buyer or beneficiary of the service.

The tax is paid every month by deducting the VAT credit from the VAT debit. The balance due (when the debit is greater than the credit) must be paid within the first 12 days of the month following the month in which the transaction took place.

If, in a given month, the VAT credit is greater than the VAT debit, the balance may be kept and carried forward to the following months.

Law N° 20,727 gradually establishes the compulsory use of electronic invoices and other tax documents, such as credit and debit notes, purchase invoices, etc. As of 1 February 2017, all taxpayers should be subject to it.

There are qualified exceptions to this electronic regime, such as zones where there is no public electricity, zones declared as a disaster area, and other exceptions authorised by the Chilean IRS.

Law N° 20,727 also established the express acknowledgement of the invoice receipt as an enabling requirement in order to use the fiscal credit.

Additionally, leasing agreements by a habitual seller are a taxable event. Notwithstanding that the above are exempted when the acquisition of the real estate property subject of the relevant leasing was not taxed with VAT and the aforementioned acquisition was performed to enter into the leasing agreement.

### **Customs duties**

As a general rule, the customs duty rate is 6%. However, as Chile has an extended network of free trade agreements (FTAs), reduced or zero-rate customs duties are available.

Duties on goods are imposed on the cost, insurance, and freight (CIF) price, without deducting special discounts.

In general, Chile has a very open economy, and there are no significant barriers to foreign trade.

### **Excise taxes**

Alcoholic beverages, certain non-alcoholic beverages (e.g. beverages high in sugar levels, hypertonic beverages), tobacco, and certain luxury items (e.g. jewels) are subject to an additional sales tax ranging from 10% to 50%.

A variable gasoline tax is also levied on the difference between a fixed amount and the sales price of gasoline and diesel oil.

The Tax Reform increased the taxes applicable to alcoholic and certain non-alcoholic beverages, as well as the specific tax applicable to tobacco (whilst reducing the excise tax, with an overall result of a tax increase).

Additionally, the Tax Reform gradually introduces 'green taxes', which are taxes that are levied on the issuance of certain pollutants by some non-eco-friendly assets, such

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as boilers or turbines that individually or jointly add a thermal power of 50MWt. It also establishes a corrective tax on the issuance of certain local pollutants connected to vehicles' performance.

## **Real Estate Tax**

Real Estate Tax is levied over an official valuation of real estate at an annual rate of 1.4% in case of non-farming real estate and 1% for farming real estate. Some real estate is exempt from this tax.

## **Transfer taxes**

Currently, Chilean law has not established any transfer taxes.

## **Stamp tax**

Stamp tax is levied mainly on documents that evidence money lending operations, and its rate varies depending on the executed document.

For documents subject to a specific date, stamp tax applies at 0.066% per month or fraction of a month. The maximum stamp tax rate is 0.8%. For documents payable on demand or without an expiration date, the tax rate is 0.332%.

## **Payroll taxes**

The income that the employer pays to the employee that provides personal services in a subordinate and dependent relationship under an employment contract is subject to payroll tax.

Payroll tax is characterised as a single tax that is based on a progressive scale of rates, ranging from 0% to 35%, applicable to income brackets. Only the income or remuneration received is subject to this tax. Whoever pays the taxable income must deduct and withhold the tax on a monthly basis.

## **Social security contributions**

Pursuant to Chilean legislation, affiliation to the Chilean social security system is mandatory from the moment that any individual starts rendering services due to an employment contract.

In order to contribute to the Chilean social security scheme, the assignee needs to be incorporated into the Chilean pension fund (AFP), the Chilean health insurance (private health insurance [ISAPRE] or public health insurance [FONASA]), death and disability insurance, work related accidents and professional illness insurance, and unemployment insurance.

An employer's obligation for social security is low, as it only assumes part of the unemployment insurance (2.4% calculated over the worker's gross salary). Whilst the employee assumes most of the social security contribution (approximately 20% of gross salary).

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## **Branch income**

Branches of foreign corporations operating in Chile are taxed on their worldwide income, subject to the FCT at the corresponding tax rate that varies depending on the income tax system to which the branch is subject to. If the branch is subject to the AIS,

the FCT rate is 25%. If the branch is subject to the PIS, it is subject to an FCT rate of 27%.

When attributing, distributing, remitting, or withdrawing amounts to abroad, the 35% WHT will levy such transaction. The FCT is creditable against the WHT according to the AIS or PIS rules, respectively.

## ***Income determination***

As a general rule, for purposes of the FCT, corporate income is determined on an accrual basis.

### ***Inventory valuation***

Inventories must be valued in accordance with monetary correction provisions, basically by adjusting raw material content and direct labour to replacement cost (which is generally the most recent cost), but excluding indirect costs. No conformity is required between book and tax reporting for income determination. Last in first out (LIFO) is not allowed for tax purposes.

### ***Capital gains***

Capital gains are subject to normal taxation unless special provisions, such as those pertaining to gains on the sale of shares/quotas or monetary correction on capital repayments, establish exemptions.

Under domestic laws, in certain circumstances, the capital gains derived from the following securities will be subject to a preferential tax treatment:

- Stock of listed local companies.
- Investment funds' quotas listed on an authorised stock exchange market.
- Mutual funds' quotas if the fund invests in stock trade values.
- Investment funds' quotas not participating in a stock exchange market or mutual funds, where at least 90% of the investment portfolio is in a stock exchange market.

Note that, due to indirect sales provisions, capital gains arising from the sale of foreign companies holding Chilean assets may be subject to Chilean taxation if certain requirements are met.

## ***Amendments to capital gains taxation***

### ***Shares or quotas capital gains***

The Tax Reform eliminated, as of 1 January 2017, the sole tax regime applicable to the capital gains derived from the alienation of shares or quotas of Chilean entities.

As a general rule, under the new regime, capital gains derived from the alienation of shares or quotas from Chilean entities are subject to the general tax regime.

In case of shares or quotas of entities subject to the AIS regime, the accumulated attributed income that has not been distributed will be considered as part of the shares' or quotas' cost basis for capital gains purposes.

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## **Real estate (property) alienation**

The exemption applicable to capital gains obtained upon the alienation of real estate is partially limited.

### *Real estate (property) acquired before 1 January 2004 and sold after 1 January 2017*

In the case of real estate (property) acquired before 1 January 2004 and sold after 1 January 2017, the capital gain exemption upon the alienation of real estate will apply without the limitations included in the Tax Reform.

### *Real estate (property) acquired after 1 January 2004 and sold after 1 January 2017*

For real estate (property) acquired as of 1 January 2004 and sold after 1 January 2017, capital gains obtained upon the alienation will be considered as non-taxable income as long as the following joint requirements are met: (i) the seller should be an individual domiciled in Chile; (ii) the acquirer must not be a related entity; (iii) more than one year must have elapsed between the acquisition date and the alienation date or four years in case of alienation of buildings per floors or apartments or in case of land subdivision; and (iv) the total capital gains obtained by the taxpayer upon the alienation of real estates, during its whole life, should not exceed 8,000 *unidades de fomento* (UF, which is a determined amount of Chilean pesos duly adjusted for inflation on a daily basis), regardless of the number of real estates owned by the taxpayer and the transfers performed.

If the requirements mentioned in (i), (ii), and (iii) above are not met, the total capital gain will be subject to the general taxation regime. If the above requirements are met, but the capital gain exceeds UF 8,000, the excess will be subject to: (i) surtax as a sole tax, on an accrued or cash basis, with the option of reassessment within ten years, or (ii) 10% sole and replacement tax, applied on a cash basis.

## **Dividend income**

As a general rule, dividends received by Chilean entities from other Chilean entities that have already been subject to FCT are not subject to the FCT again at an entity level. However, when these dividends are attributed or distributed (depending on the applicable income tax system) up-stream and the ownership chain reaches the final Chilean owners or the foreign owners, they will be taxed with the Global Complementary Tax or the Additional WHT, respectively.

## **Interest income**

No specific provision exists in Chile for interest income; consequently, interest income is subject to FCT.

## **Royalty income**

Royalties paid to a Chilean entity are subject to the general income taxation; consequently, royalty income is subject to FCT.

## **Foreign income**

Resident entities are subject to taxes on their worldwide income. In general terms, foreign income and dividends received by a domestic entity are subject to Chilean taxation in the commercial year when they are received (i.e. on a cash basis); however, certain foreign income needs to be recognised on an accrued basis (i.e. income from



foreign PEs and passive income from controlled foreign corporations [CFCs]). A tax credit for taxes paid abroad is granted, subject to the regulations of the Income Tax Law.

Branches of foreign corporations are taxed on their income without regard to the results of the head office.

## ***Deductions***

An FCT payer's net taxable income is calculated by deducting from gross income those expenses incurred to generate it that have not already been deducted as costs.

As a general rule, expenses are not deductible for income tax purpose if they are not incurred to generate taxable income.

## ***Depreciation and depletion***

Depreciation rates are calculated based on the asset's estimated useful life. The normal depreciation terms for new assets are as follows: heavy machinery, 15 years; trucks, 7 years; factory buildings, in general, 20 years to 40 years. At the request of the Foreign Investment Committee or the taxpayer, the Chilean IRS may reduce the normal useful life.

Annual depreciation is calculated based on the straight-line method. However, taxpayers may recover capitalised costs by using the accelerated depreciation method for up to one-third of the normal useful life regarding new or imported fixed assets, provided that the normal period of depreciation is at least three years.

Accelerated depreciation may be used only to reduce the taxable basis of the FCT. For the purpose of the tax applicable to distributions of dividends, accelerated depreciation is not considered.

No conformity is required between book and tax depreciation.

For tax purposes, depletion for natural mineral resources is allowed on a unit-of-production basis.

The Tax Reform, in order to benefit micro and small entities, establishes a faster depreciation method they can use, provided certain requirements are met.

## ***Goodwill***

Following a merger, the positive difference between the price paid for the shares of the absorbed entity (i.e. the acquisition cost of the shares) and its tax equity must be allocated proportionately among the non-monetary assets received from the absorbed entity, up to the fair market value (FMV) of those identifiable assets.

Any amount in excess of the FMV of those assets becomes an asset (i.e. goodwill) in the hands of the acquiring/surviving company that cannot be amortised. The change introduced by the recent Tax Reform qualifies this goodwill as an 'intangible' asset that can be deducted only upon the liquidation or termination of the company. This renders the goodwill a non-amortisable asset for Chilean tax purposes.

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## ***Start-up expenses***

Start-up expenses must be capitalised and considered as an asset for tax purposes. However, they can be amortised over a six-year period counted from the year in which they were incurred or the start-up of commercial activities.

Furthermore, they are usually deducted when the income is generated.

## ***Interest expenses***

As long as the interest paid meets the general requirements set forth by the Income Tax Law, interest expenses can be deducted.

## ***Bad debt***

In general, bad debts are deductible only if (i) they are a consequence of operations related to the business purpose, (ii) they have been timely written off into the accounting records, and (iii) the company has prudentially exhausted all reasonable means to collect them.

Determination of whether the company has prudentially exhausted all reasonable means to collect the bad debts varies according to the total amount of the debts. Consequently, a simple estimation or general provision for bad debts is not allowable.

## ***Charitable contributions***

Charitable contributions may be deducted from gross income, provided they are made to the institutions established by certain laws (i.e. primary and secondary educational institutions, universities, professional or technical education institutions, National Fire Brigade, National Solidarity Fund, etc.).

In case of charitable contributions, the total annual tax deduction for this purpose is limited, as the deductible amount may not exceed 5% of the company's net taxable income.

## ***Fines and penalties***

Fines and penalties imposed for breaching the law or a contract are not deductible, although a deduction is usually available for the legal costs incurred in defending such an action.

## ***Taxes***

Taxes imposed by Chilean laws are deductible, provided they are related to the company's normal activities. However, income taxes and special contributions for promotion or improvement are not deductible.

## ***Net operating losses***

An indefinite carryforward of losses is allowed. Consistent with monetary correction, losses carried forward are adjusted by a cost-of-living increase.

As of 1 January 2017, carryback losses are no longer allowed. Previously, they were allowed when the taxpayer had retained tax profits and had a subsequent tax loss.

## ***Payments to foreign affiliates***

The deductibility of payments made abroad for the use of trademarks, patents, formulas, and consulting and other similar services is limited to a maximum of 4%

of the income derived from sales and services in the corresponding year, unless the royalty is subject to an income tax with a rate of greater than 30% in the country of the beneficiary.

Deduction of payments made to foreign-related parties are allowed in the year in which they are effectively paid by the Chilean entity to the foreign-related party and only if the corresponding Additional WHT (if any) was paid.

Transfer pricing regulations in Chile are in line with general Organisation for Economic Co-operation and Development (OECD) principles (*see the Group taxation section*).

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## **Group taxation**

Consolidated returns are not allowed in Chile.

### **Transfer pricing**

The transfer pricing legislation generally adheres to the OECD in its Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines). The law establishes contemporaneous documentation requirements, filing of an informative return, and specific penalties for non-compliance.

Although the law does not explicitly mention the adoption of the methods established in the OECD Guidelines, the methods described therein are in line with them. The rules also adopt the best method rule and allow the use of other unspecified methods when the methods described in the Chilean Income Tax Law are deemed not appropriate to determine the arm's-length nature of the inter-company transactions.

Finally, the Income Tax Law includes the ability to enter into advance pricing agreements (APAs), unilateral or multilateral. The Chilean tax authority can reject, totally or partially, the request, and such decision is not subject to an administrative appeals procedure. APAs should be valid for four years and are subject to renewal or extension.

### **Country-by-country (CbC) report**

Chile, as an OECD member, applied Action 13 of the Base Erosion and Profit Shifting (BEPS) Project in order to require from 'multinational enterprises' the filing of a report that includes, among other things, the revenues, results, and taxes of the entities of the group in their relevant jurisdictions.

Provided that the consolidated revenues of the group in the last fiscal year were at least 750 million euros (EUR), the ultimate parent company or controller entity with Chilean residence of a group of 'multinational enterprises' has to file an annual sworn statement by 30 June.

### **Thin capitalisation**

The thin capitalisation rules apply to related-party loans at a 3:1 debt-to-equity ratio, and a 35% sole penalty tax is levied on interest, commissions, services, or any other financial disbursements associated to loans subject to the Additional WHT at a rate lower than 35%, or that have not been taxed under domestic law or due to the application of a reduced rate under a DTT, when the taxpayer is in an excess of indebtedness position.

## Chile

The excess of indebtedness is calculated on an annual basis, and, in order to determine if the taxpayer is in an excess of indebtedness position, its total annual indebtedness takes into consideration all loans, domestic or foreign, with related parties or not.

In case the company is in an excess of indebtedness position, the tax will apply only to cross-border loans granted by related parties and subject to the 4% Additional WHT, to a rate lower than 35%, or that have not been taxed under domestic law or due to the application of a reduced rate under a DTT.

### **Controlled foreign companies (CFCs)**

The CFC statute provides that taxpayers or affectation equities (*patrimonios de afectación*) incorporated, resident, or domiciled in Chile have to recognise passive income (dividend, interest, royalties, etc.) directly or indirectly derived from controlled foreign entities, as long as this passive income exceeds 10% of the controlled entity's total revenues, in the corresponding calendar year. A tax credit will be granted for taxes paid or due abroad no matter how many levels down the chain separate the controlled entity from the Chilean entity, as long as there is a DTT in force between Chile and the source country of the income.

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## **Tax credits and incentives**

### **Foreign tax credit**

In order to avoid double taxation, the Chilean Income Tax Law recognises a tax credit mechanism in which the tax effectively paid abroad may be deducted from the taxes to be paid in Chile.

In order to regulate this matter, the Chilean Income Tax Law distinguishes between those countries with which there is a DTT in force with Chile and those that do not have a DTT in force with Chile.

A foreign tax credit may be used even if the foreign tax was paid by an indirect subsidiary of the company remitting the funds to Chile, provided that all the entities are domiciled in the same country and that the remitting entity directly or indirectly participates in 10% or more of the equity of the company paying the foreign tax; and, as of 1 January 2017, it is possible to use a tax credit in Chile for taxes paid by a subsidiary domiciled in a third country if such subsidiary is domiciled in a country with which Chile has a DTT or an Exchange of Information Convention in force.

The foreign tax credit may be carried over for FCT purposes even if the company is in a tax loss situation or if the FCT is lower than the credit.

The total available foreign tax credit has a 35% cap in respect to income taxes paid in countries with which Chile has a DTT in force. In respect to those countries with which Chile has no DTT, the tax credit cap is 32%.

As of 1 January 2017, the tax credit for taxes paid abroad is allocable against Chilean-source income, as foreign-source income is considered Chilean-source income once it is included in the taxpayer's net taxable income and levied with Chilean taxes. Previously, as a general rule, the tax credit for taxes paid abroad was allocated only to foreign-source income.

## ***Investment incentives***

The principal investment incentives are the following:

- Tax benefits and other incentives for companies operating in the northernmost and southernmost parts of the country.
- Tax benefits to forestry companies, contracts for oil operation, and nuclear material operations.
- The Tax Reform introduced a series of tax benefits for micro and small entrepreneurs and companies, which are reinforced by Law N° 20,899.

## ***Inbound investment incentives under Law Decree N° 600 (Foreign Investment Statute)***

The principal incentives to encourage foreign capital contributions are statutory guarantees covering the repatriation of capital, remittance of profits, non-discrimination toward foreign investment, and access to the foreign exchange market for remittance purposes. In general, foreign investors are subject to the same legislation as national investors. A guaranteed income tax rate of 42% may be granted for ten years or, provided the capital investment project exceeds 50 million United States dollars (USD), 20 years for the development of industrial or extractive projects, under Law Decree N° 600, which contemplates the execution of a Foreign Investment Agreement between the foreign investor and the Chilean government.

Under Law Decree N° 600 and the corresponding Foreign Investment Agreement, the overall rate is comprised of the corporate tax on profits and WHT on dividend or branch profit distributions. The tax rate on dividend or profit distributions is the difference between 42% and the underlying tax paid at the corporate level. The option to be subject to an overall effective tax rate of 42% without change for ten or 20 years is usually not exercised by foreign investors because the current combined effective tax rate on profits and dividend distribution is 35% under the general tax regime.

Under the Foreign Investment Agreement, a foreign investor may request for tax stability with respect to VAT and customs duty regimes. With respect to customs duties, however, stability is granted only for the importation of certain machinery and equipment not available in Chile.

The Tax Reform established the elimination of Law Decree N° 600 as of 1 January 2016 with respect to new investment projects; however, Law N° 20,848, published in the Official Gazette on 25 June 2015, extended the enforceability of Law Decree N° 600 for four years more, counted as of 1 January 2016.

Foreign investors who have already entered into an investment agreement under Law Decree N° 600 with the Foreign Investment Committee will continue being subject to the laws applicable to such agreements according to current rules. On the contrary, new investments, as of 1 January 2016, will be able to opt between the foreign investment statute under Law Decree N° 600 and the new foreign investment statute established by Law N° 20,848.

Law N° 20,848 establishes the frame for ‘*direct foreign investment*’ in Chile and creates a Committee of Ministers for the promotion of foreign investment, as well as an Agency for the promotion of foreign investment.

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Please note that it is not mandatory for foreign investors to opt among one of these two foreign investment regimes, as they can freely invest in Chile as long as they do it through the formal exchange market.

## **Export incentives**

The principal incentives for exports can be summarised as follows:

- Taxes paid in the importation or acquisitions of goods required in the export activity are reimbursed.
- VAT on exports is zero-rated.
- The Productivity Law provides that the export of technical or engineering services duly qualified by the Customs Authority as 'export services' are not subject to Additional WHT in Chile.
- The Productivity Law establishes that the export of services rendered completely or partially in Chile are also subject to the corresponding VAT exemption if the services are qualified as 'export services' by the Customs Authority and are used abroad.

Chile has signed FTAs or Economic Association Agreements (EAAs) with Australia, Canada, Central America (i.e. Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua), China, Colombia, the European Free Trade Association (i.e. Iceland, Liechtenstein, Norway, and Switzerland; EFTA), the European Union (EU), Hong Kong, Japan, Malaysia, Mexico, the Pacific 4 (i.e. with Brunei, New Zealand, and Singapore; P4), Panama, Peru, Republic of South Korea, Thailand, Turkey, the United States, and Vietnam. All these agreements provide for reduced or zero-rate customs duties.

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## **Withholding taxes**

Dividends paid to a non-resident recipient are subject to a 35% withholding of 'additional' tax, with the FCT paid at the corporate level being totally or partially creditable against this WHT, depending on the income tax system to which the source entity is subject to. This credit is added to the amount that is distributed to form the taxable base for Additional WHT. Consequently, the tax burden for a non-resident recipient of dividends, including taxes at the company level, is 35% if subject to the AIS or resident in a DTT country and 44.45% in other cases.

If the entity is subject to the AIS, the foreign recipient of the dividends will be able to credit 100% of the FCT paid at the entity level. If the entity is subject to the PIS and the foreign recipient of the dividends is resident in a country with which Chile has a DTT in force, the foreign taxpayer will be able to credit 100% of the FCT paid at the entity level against its Additional WHT. Consequently, their total Chilean tax burden will be 35%.

On the contrary, if the entity distributing the dividend is subject to the PIS, but the foreign recipient of such dividends is not domiciled in a country with which Chile has a DTT in force, the taxpayer will be able to credit against its Additional WHT only 65% of the FCT paid at the entity level. Thus, foreign taxpayers in this situation will have a total Chilean tax burden of 44.45%, considering that the FCT rate will correspond to 27% from commercial year 2018 onwards, *as described in the Taxes on corporate income section*.

Branches are subject to a 35% WHT rate on amounts remitted or withdrawn, less the FCT credit. *See the Branch income section for more information.*

Interest paid to non-residents is subject to WHT at a general 35% rate. Interest on loans granted by foreign banks or financial institutions is subject to a sole 4% WHT. Thin capitalisation rules requesting a 3:1 debt-to-equity ratio become applicable when the debt generating interest subject to the lower than 35% rate is secured by related entities.

Royalties paid to non-residents are subject to the WHT at a 30% rate. Royalty payments in connection to software are subject to Additional WHT at a 15% rate. Such rate is increased in case the beneficiary of the payment is resident in a tax haven. The Productivity Law eliminated the rate increase in case software-related payments were made to related parties.

### ***Tax treaties***

The following table shows the higher and lower rates of WHT applicable by Chile and the countries with which DTTs exist. The application of one or the other rate will depend on the specific provisions of each treaty.

Please note that Chile has signed DTTs with the United States and Uruguay that are not yet in force.

Please note that Chile has in all its DTTs the so-called 'Chilean Clause', pursuant to which, Chile does not grant any remedy regarding WHT on dividends as long as the corporate tax can be fully creditable against the WHT on dividends. Consequently, WHT rules on dividends are fully applicable in DTT scenarios.

Recipient	WHT (%)	
	Interest	Royalties
Non-treaty	4/35	30
Treaty:		
Argentina	4/12/15 (1)	3/10/15 (17)
Australia	5/10/15 (2)	5/10 (18)
Austria	5/15 (3)	5/10 (19)
Belgium	5/15 (3)	5/10 (19)
Brazil	15	15
Canada	10/15 (4)	15 (20)
China	4/15 (5)	2/10 (32)
Colombia	5/15 (6)	10 (21)
Croatia	5/15 (6)	5/10 (28)
Czech Republic	5/15 (6)	5/10 (28)
Denmark	5/15 (7)	5/10 (19)
Ecuador	10/15 (8)	10 (21)
France	5/15 (3)	5/10 (19)
Ireland	5/15 (3)	5/10 (19)
Italy	5/15 (3)	5/10 (19)
Japan	4/15 (9)	2/10 (22)
Malaysia	15 (10)	10
Mexico	5/10/15 (11)	15 (23)
New Zealand	10/15 (12)	10 (24)
Norway	15 (7)	5/10 (19)
Paraguay	10/15 (13)	15 (25)

Recipient	WHT (%)	
	Interest	Royalties
Peru	15	15 (26)
Poland	5/15 (7)	5/15 (27)
Portugal	5/10/15 (14)	5/10 (28)
Russia	15	5/10 (28)
South Africa	5/15 (31)	5/10 (28)
South Korea	5/15 (15)	10/15 (29)
Spain	5/15 (3)	5/10 (19)
Sweden	5/15 (3)	5/10 (19)
Switzerland	5/15 (3)	5/10 (19)
Thailand	10/15 (16)	10/15 (30)
United Kingdom	5/15 (3)	5/10 (19)

## Notes

- 15% as a general rule. 4% or 12%, depending on the interest source. If the most favoured nation clause applies, the general rule rate of 15% cannot be reduced further than 12%.
- 5% if the interest is paid to a financial institution. 10% in all other cases. However, Chile may tax interest arising in the country at a 15% rate. Most favoured nation clause just commands to start negotiations.
- 15% as a general rule. Interest arising from bank or insurance company loans, bonds, some securities that are regularly negotiated on stock markets, and credit sales of industrial equipment is taxed at a 5% tax rate. Most favoured nation clause with OECD members.
- 15% as a general rule. If the most favoured nation clause applies, the rate cannot be reduced further than 10%.
- 4% if the beneficiary is a bank or an insurance company. 15% in all other cases. Please note that, as of 2019, a 10% rate will apply, which will trigger the application of several most favoured nation clauses.
- 5% if the beneficiary is a bank or an insurance company. 15% in all other cases.
- 15% as a general rule. It could be 5% by the application of the most favoured nation clause.
- 10% by the application of the most favoured nation clause. 15% in all other cases.
- 4% if the beneficiary is a bank, an insurance company, a financial institution, or arising from indebtedness arising as part of the sale on credit of machinery or equipment. 15% in all other cases. Please note that, as of 2019, a 10% rate will apply, which will trigger the application of several most favoured nation clauses.
- The most favoured nation clause applies only if the other country decides to exempt interests.
- 15% as a general rule. If the most favoured nation clause applies, 10% as a general rule, 5% if interest is paid to a bank.
- 15% as a general rule. 10% if interest is paid to banks or insurance companies, or if the most favoured nation clause applies. If the most favoured nation clause applies, rate cannot be reduced further than 10%.
- 10% if the beneficiary is a bank or an insurance company. 15% in all other cases. Most favoured nation clause is applicable with some restrictions.
- 15% as a general rule. 5% for interests derived from bonds and some securities that are regularly negotiated on stock markets. 10% for interest arising from bank or insurance company loans and credit sale of machinery or equipment. The foregoing is reduced to 5% by most favoured nation clause when Portugal applies a Directive of the EU Council.
- 5% if the beneficiary is a bank or an insurance company. 15% in all other cases. Most favoured nation clause applies.
- 10% if the beneficiary is a bank or an insurance company. 15% in all other cases.
- 15% as a general rule. 3% for the use of, or right to use, news. 10% for the use of, or the right to use, any copyright of literary, artistic, or scientific work, or for the use of, or the right to use, a patent, brand, design or model, blueprint, formula or secret procedure, or for the use of, or the right to use, industrial, commercial, or scientific equipment, the foregoing just in case the beneficiary is the author or the author's heirs.
- 10% as a general rule. 5% is applicable for the use of, or the right to use, some equipment. Most favoured nation clause just commands to start negotiations.
- 10% as a general rule. 5% is applicable for the use of, or the right to use, some equipment. Most favoured nation clause with OECD members.
- 15% as a general rule. If the most favoured nation clause applies, rate cannot be reduced further than 10%.
- 10%. Most favoured nation clause applies.
- 10% as a general rule. 2% is applicable for the use of, or the right to use, some equipment. Most favoured nation clause (doesn't apply automatically).
- 15%. Most favoured nation clause may reduce rates until 10%.



24. 15%. Most favoured nation clause may reduce rates until 5%.
25. 15%. Most favoured nation clause applies.
26. Most favoured nation clause applies with limitations.
27. 15% as a general rule. 5% is applicable for the use of, or the right to use, some equipment. Most favoured nation clause with OECD members.
28. 10% as general rule. 5% is applicable for the use of, or the right to use, some equipment.
29. 15% as a general rule. 10% is applicable for the use of, or the right to use, some equipment. Most favoured nation clause with OECD members.
30. 15% as general rule. 10% for the use of, or the right to use, any copyright of literary, artistic, or scientific work, or for the use of, or the right to use, industrial, commercial, or scientific equipment.
31. 15% as a general rule. Interest arising from bank or insurance company loans, bonds, some securities that are regularly negotiated on stock markets, and credit sales of industrial equipment is taxed at a 5% tax rate.
32. 10% as general rule. 2% is applicable for the use of, or the right to use, some equipment.

Please note that notwithstanding most DTTs provide that interest paid to a bank or financial institution will be subject to a 5% or 10% WHT, as Chile applies a 4% Additional WHT rate to interest paid to foreign banks or financial institutions, the local tax rate is applied instead of the treaty rate, as local law is more favourable.

Please also note that an Exchange of Information Convention with Guernsey and Uruguay and a Multilateral Convention is in force. On the other hand, Exchange of Information Conventions signed with Bermuda and Jersey are not yet in force.

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## ***Tax administration***

### ***Taxable period***

The tax year coincides with the calendar year.

### ***Tax returns***

The tax system is one of self-assessment by the taxpayer, with occasional auditing by the tax authorities. Annual tax returns must be filed with the Chilean IRS before 30 April of each year with respect to the operations of the previous calendar year.

Note that there are many other sworn statements with different deadlines, from March until June of each year.

### ***Payment of tax***

Taxes are payable when the annual tax return is submitted in April of each year. Taxpayers, in general, are subject to monthly advance payments on account of their annual income taxes. The difference between the advance payments and the final tax bill is payable in cash at the time the tax return is filed. If prepayments exceed the final tax bill, the excess is reimbursed by the Treasury.

### ***Tax audit process***

Generally, the Chilean tax system is based on self-assessment; however, many large businesses are under continuous audit by the Chilean IRS. Businesses and individuals are also generally subject to audit on a random basis.

### ***Statute of limitations***

As a general rule, the statute of limitations is three years. However, it can be extended to six years if no tax return was filed or if the tax return was maliciously false.

# Chile

## ***Topics of focus for tax authorities***

The tax authority is currently focused on transfer pricing issues, the implementation of the 2014 Tax Reform, and the issuance of materially false invoices for politic financing purposes.

## ***General Anti-Avoidance Rule (GAAR) provisions***

The GAAR provisions grant the Chilean IRS the power to request to the corresponding Tax Court the disallowance of the tax benefits obtained from abusive tax planning. If the tax judge considers that the taxpayer has acted in an abusive way or is simulating a conduct in order to obtain certain tax benefits, the taxpayer will have the obligation to pay the corresponding taxes, interest, and penalties as if the abusive or simulated conduct never existed (substance-over-form principle).

A consultation procedure is available pursuant to which taxpayers may ask the Chilean IRS to determine whether or not a transaction may fall under the GAAR provisions.

According to Law N° 20,899, GAARs will not apply to those transactions whose main elements have been set before the entry into force of these rules (i.e. 30 September 2015), whilst they will apply to transactions executed or concluded before the entry into force of the GAAR provisions but that are amended after such date.

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## ***Other issues***

### ***Reporting on investments in Chile and abroad***

As of 1 January 2017, FCT payers, regardless of the tax system they choose, have the duty to report their local and foreign investment to the Chilean IRS.

### ***Chilean foreign investment***

The taxpayer has to file an annual affidavit, informing all the investments performed during the previous year, pointing out the amount, kind of investment, country, purpose, and any other additional information the Chilean IRS may require.

If the affidavit is not filed, the Chilean IRS will presume (except where the taxpayer proves otherwise) that such amounts constitute withdrawals of assets or amounts subject to the penalty tax established in Article 21, not being entitled to deduct the disbursement as expense for FCT purposes.

### ***Investment in Chile***

Companies or entities incorporated, resident, or domiciled in Chile and obtaining passive income are not entitled to use such investments in an abusive manner in order to reduce or defer final taxation of their owners, partners, or shareholders.

If the Chilean IRS determines the existence of abusive conduct, such investments will be subject to the penalty tax established in Article 21 of the Chilean Income Tax Law.

### ***Low-tax jurisdictions***

In order to qualify as a low-tax jurisdiction or preferential tax regime, the relevant territory must comply with two or more of the requirements set forth in new Article 41 H of the amended Income Tax Law. The Chilean IRS issued Resolution N° 124 of 2017,

which provides a list of countries considered as low-tax jurisdictions or preferential tax regimes that fall under Article 41 H.

Please note that OECD member countries will never be considered as low-tax jurisdictions or preferential tax regimes.

### ***Foreign Account Tax Compliance Act (FATCA) agreement***

On 5 March 2014, Chile entered into a bilateral intergovernmental agreement (IGA) with the United States (US) in order to comply with FATCA.

Chile signed a Model 2 IGA, which is a non-reciprocal exchange of information agreement. The execution of this agreement will imply that Chilean financial institutions with US account holders, in order to avoid paying the 30% rate WHT that FATCA establishes, will have to register with the US Treasury and US IRS and sign a Foreign Financial Institutions Agreement with them in order to be FATCA compliant.

In this context, each Chilean financial institution that enters into these agreements with the US tax authorities will be required to report to the US IRS directly the individual US account holder's information.

In accordance with the Chilean Bank Secrecy Law, Chilean financial institutions, in respect to those account holders that do not authorise them to disclose their account information to the US IRS, will only be able to disclose their information in aggregate. This will mean that the US IRS, in order to obtain the specific information of those US account holders, will need to request it directly from the Chilean IRS, under the terms of the treaty between both countries.

### ***Taxation applicable to funds***

Investment funds and mutual funds are not considered as FCT payers, but their managing entities need to keep a number of registries in order to determine the taxation applicable to their quota holders regarding the amounts attributed or distributed by the fund.

Taxation of funds is similar to taxation of shares of a stock corporation. In this sense, dividends distribution would be treated as a distribution from a stock corporation subject to PIS. In case of capital gains, it would be considered as an alienation of shares of a stock corporation, in this sense, alienation could be tax exempted if funds are regularly traded or 90% or more of their portfolio is invested in regularly traded securities.

Please bear in mind that quota holders that are not domiciled or resident in Chile are just subject to a sole tax rated 10% or tax exempted in case they invest in funds that have 80% of their assets located abroad.

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# Colombia

## ***PwC contact***

Carlos Chaparro  
PricewaterhouseCoopers Servicios Legales y Tributarios  
Calle 100 #11A-35 Piso 3  
Bogotá, Cudinamarca  
Colombia  
Tel: +57 1 634 0555  
Email: carlos.chaparro@co.pwc.com



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## ***Significant developments***

### ***Electronic invoices***

Section 616-1 of the Colombian Tax Code, added by Law 1819 of 2016, provides that 'taxpayers obliged to file and pay VAT and or excise tax are obliged to issue electronic invoices as of 1 January 2019'.

However, during fiscal year (FY) 2017 and FY 2018, the Tax Office can require taxpayers that represent a high risk of evasion to implement the electronic invoice system before 1 January 2019.

In this sense, the Tax Office, through Resolutions 072 of 2017 and 010 of 2018, established that large taxpayers and those who had already implemented electronic invoicing in the last five years have to issue electronic invoices as of June 2018 (taxpayers can request an extension up to September 2018).

According to section 2 of the Executive Order 2242 of 2015, electronic invoices are 'documents that support transactions for the sale of goods or services that are issued through computer systems and/or computer solutions and allow compliance with the characteristics and conditions established in this Executive Order in relation to the issuance, receipt, rejection, and conservation of it'.

The issuance (generation and delivery) of the electronic invoices must comply with the technology and tax conditions set in section 3 of the Executive Order 2242 of 2015.

Electronic invoices must be delivered or made available to the customer in the electronic generation format, provided that the purchaser also issues its invoices through electronic system or it accepts to receive the invoices in such format.

If the customer does not accept electronic invoices, it must be delivered in a graphic representation printed or in digital format (invoices must be sent to the email address or address indicated by the customer).

Electronic invoices must be transmitted simultaneously to their issuance to the Tax Office. The Tax Office will review the documents, and if they cannot be opened, it will notify the taxpayer, who will have a term of 48 hours to verify their content. If the taxpayer does not amend the invoices, the Tax Office will impose a penalty for not sending information, which may be up to 15,000 tax value units (TVU) (497,340,000 Colombian pesos [COP] for FY 2018).

In order to issue electronic invoices, companies can develop their own technology program and obtain the approval of the Tax Office or contract one of the technological providers authorised by the Colombian Tax Office.

# Colombia

## ***Executive Order 1915 of 2017 - Payment of Corporate Income Tax (CIT) by investments in civil works***

Taxpayers with gross income in the year equal to or greater than 33,610 TVU (COP 1,114,473,990 for FY 2018) may choose to pay their income tax through civil works.

Two modalities are foreseen: (i) destination in civil works up to 50% of the income tax charged in the taxable year, and (ii) investment as discount in cash payment of the income tax.

### **Destination in civil works up to 50% of the income tax**

Through this modality, the taxpayer will make a direct investment of the tax charged for the execution of viable and prioritised projects of social importance in the different municipalities located in the areas most affected by the armed conflict.

### **Investment as discount in cash payment of the income tax**

This modality consists of investing with the taxpayer's own resources in investment projects of social importance in the different municipalities located in the areas most affected by the armed conflict, whose value exceeds 50% of the income tax charged in the respective period.

The projects for this modality should aim to provide infrastructure for the supply of drinking water, sewerage, energy, public health, public education, and the construction and/or repair of road infrastructure in the municipalities defined as areas most affected by the armed conflict.

For purposes of establishing the projects that can be used as payment of CIT by investment in civil works, the National Government will publish through the Territorial Renewal Agency (ART) a bank of projects that may be selected by the taxpayers. Additionally, taxpayers may submit their own projects, which must be approved by the ART.

## ***Executive Order 2253 of 2017 - Tax refund certificate (CERT)***

Through Law 1819 of 2016, the government established the possibility to refund as a tax certificate part of the investment performed by taxpayers in hydrocarbon and mining sectors. The investments applicable for the CERT are those:

- That have as their object the discovery of new hydrocarbon/mining reserves, the addition of proven reserves, or the incorporation of new recoverable reserves, either through exploration activities or through activities aimed at increasing the recovery factor in watershed projects on the mainland, including in the latter case the respective pilot tests.
- Whose purpose is to maintain or increase the production of current projects.
- That accelerate projects that are in transition (from construction and assembly to exploitation) and increase mining exploration projects.

The CERT corresponds to a percentage of the value of the increase in investments whose quota will be defined annually by the Ministry of Mines and Energy, which will designate the amount of the CERT that will correspond to mining and hydrocarbons sectors.

Distribution of the CERT will be given among all the contracts that are presented annually. The annual quota established shall be affected by the amounts of the CERT

distributed in previous years to projects with more than one year of investment execution. Therefore, the availability for the distribution made in each subsequent year of the CERT quota will correspond to the subtraction between the specific annual CERT quota and the amounts committed in previous years for projects of more than one year (projects of up to four years can be submitted).

The CERT incentive will be granted in Colombian pesos. Taxpayer interested in the CERT should be submitted to the National Hydrocarbons Agency (ANH) or the National Mining Agency (ANM) as appropriate, between 1 August and 30 September of the previous year, for the investments that will give rise to the CERT of their investment projects.

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## ***Taxes on corporate income***

National companies (i.e. incorporated in Colombia under Colombian law) are taxed on worldwide income. Foreign non-resident companies and local branches of foreign companies are taxed on their Colombian-source income only. The current general CIT rate is 33%. This rate is applied upon taxable income.

Taxable income is generally defined as the excess of all operating and non-operating revenue over deductible costs and expenses. The customary costs and expenses of a business are generally acceptable as deductible expenditure for CIT purposes, provided they are necessary, reasonable, and have been realised during the relevant tax year under the accrual or cash method of accounting, as the case may be.

The current general capital gains tax rate is 10%.

Qualifying businesses located in Free Trade Zones (FTZs) enjoy a reduced rate of 20% (while subject to capital gains tax at 10%, where applicable).

Domestic income earned by non-resident entities that is not attributable to branches and PEs will be taxed at 33%, provided the non-resident entity must file an income tax return in Colombia.

Upon the CIT rate there is a surcharge that is applicable when the taxpayer's net taxable income equals or exceeds COP 800 million. The surcharge is applicable for FY 2018 at the rate of 4%. This surcharge is not applicable for qualifying businesses located in FTZs.

If the taxpayer is obligated to pay the income tax surcharge, it will be liable for making an anticipated payment of 100% of the surcharge, wherein the base will be the income tax liability paid in the previous year.

## ***Minimum presumptive tax***

CIT payers are required to pay a minimum amount of income tax, which is determined based on the presumptive income method. Under this method, presumptive taxable income is measured at 3.5% of net equity as of 31 December of the previous year, in accordance with the information provided by the taxpayer on such year's CIT return. The nominal CIT rate is then applied to the greater of regular taxable income (revenue less allowable costs and expenses) or presumptive taxable income (exempting certain business activities).

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In order to determine the taxable base for presumptive income purposes, it is necessary to subtract from the total amount of net assets, which is the base to calculate presumptive income, the following amounts:

- The net asset value of the shares owned in national companies.
- The net asset value of the assets affected by *force majeure*.
- The net asset value of assets associated with operations in unproductive periods.
- The net asset value of assets destined exclusively to sport activities of social clubs or sport clubs.

Each year, taxpayers must compare the value resulting from the application of the foregoing two systems. The income tax for the taxable year will be calculated on the higher value resulting from this comparison. If presumptive income is higher than the ordinary net income, the difference constitutes an excess of presumptive income, which can be carried forward (adjusted for inflation) to any of the following five taxable years and offset against the net income determined by the taxpayer.

## **Income tax for equality (CREE)**

CREE was repealed with the tax bill of 2016; nevertheless, there are some minimum base excesses (CREE taxable income less CREE minimum base) that can be offset during FY 2017 and following years, respecting a cap of five years from the moment in which the excess was generated. CREE tax losses can also be offset during FY 2017 and following years without a time limitation.

In 2018, the Constitutional Court established that the excesses of minimum tax bases established in FY 2012 can be offset in FY 2013 and FY 2014.

## **Stability Agreement Regime**

As of 1 January 2013, the Legal and Tax Stability Framework was repealed. Applications under consideration will be grandfathered and approved if they meet the applicable requirement. Any already executed Legal Stability Agreements will continue to apply until expiration.

## **Local income taxes**

In addition to CIT, there is a local (municipal) tax, known as industry and trade tax. *For more information, see Industry and trade tax in the Other taxes section.*

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## **Corporate residence**

Corporate residence is determined by the place of incorporation of any given company.

For CIT purposes, companies incorporated under foreign laws that have their main domicile abroad are considered 'foreign companies', whereas any company incorporated in Colombia under Colombian law qualifies as a 'national company' even if fully owned by foreign shareholders.

Rules on effective place of management are in place (*see below*).

## **Permanent establishment (PE)**

The Colombian internal legislation incorporates the concept of PE. This concept follows the Organisation for Economic Co-operation and Development (OECD) criteria and

means a fixed place of business through which an entity carries out its activity, whether partially or totally.

A PE will also be incorporated when a person (other than an independent agent) has the capacity to conclude contracts on behalf of the foreign entity, except for preparatory and auxiliary activities.

In order to define what should be understood as preparatory and auxiliary activities, local regulations have adopted the OECD criteria.

Colombian law upholds the triggering of a PE upon the presence of a fixed place of business that is located in a given place and features a certain degree of permanence (no cut-off timeline is provided) where a non-resident entity conducts part or the whole of its business.

Auxiliary and preparatory activities that do not cause a PE to exist are listed out. The regulations reiterate that a PE is subject to income tax on domestic income attributable to its course of business as well as on any domestic income directly earned.

Also, a PE will be subject to domestic withholding tax (WHT) rates whenever engaged with resident parties.

However, payments or accruals to non-residents having a PE may continue to be subject to rates set out for non-residents if the underlying transaction is unrelated to the PE's purpose. A PE will be required to make annual CIT filings. PEs are given the capacity to withhold and remit taxes as well as to charge and collect value-added tax (VAT) to the extent of taxable transactions.

Requisites for registration of a PE are set out and include, *inter alia*, good standing documentation or proof of existence as well as an active account at a local bank or financial institution.

A PE is required to prepare contemporaneous documentation (in addition to transfer pricing compliance requirements) with a functional and technical analysis of the assets, liabilities, capital, risks income, costs, and expenses attributable to its business in Colombia. In addition, a PE must, for tax purposes, prepare separate accounts for purposes of the attribution of income and capital gains.

### **Effective place of management**

Guidance is available (Regulation 3028 of 27 December 2013) on how to register a non-resident entity that is effectively managed in Colombia and treated as a resident for tax purposes.

The process requires submission of a good standing documentation, proof of identity of the legal representative (or attorney if a mandate to register exists), and availability of an active bank account at a resident bank or financial institution.

The rules require a non-resident entity effectively managed in Colombia to carry local books under International Financial Reporting Standards (IFRS) as well as to satisfy tax compliance requirements upon completion of the tax registration.

Non-resident entities effectively managed in Colombia are obligated to withhold and remit taxes as well as to charge and collect VAT to the extent of taxable transactions.



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No effective place of management will be deemed to exist in Colombia for (i) non-resident issuers listed on the Colombian stock exchange, or any other internationally reputed exchange, nor (ii) non-resident entities when 80% or more of its revenue is sourced in the country where the entity is domiciled.

## ***Tax havens***

One of the following criteria must be complied with to determine if a jurisdiction must be deemed as non-cooperative or as a place of null or minimum taxation:

- Inexistence of taxation or existence of nominal taxation under the nominal rate used in Colombia.
- Absence of an effective exchange of information or existence rules or administrative practices hindering it.
- Lack of transparency on a legislative, administrative, or regulatory level.
- Inexistence of substantive local presence, development of a real activity, or economic substance.

In addition to the four bullets listed above, there is an extra requisite to define preferential tax regimes, which refers to jurisdictions that ring-fence their benefits for their residents and offer them only to non-resident entities or individuals. If two out of these five rules are met, the jurisdiction under analysis will be deemed as a preferential tax regime.

Aside from these criteria, the Colombian government is enabled to use the accepted international criteria in this matter.

In accordance with the above, the Colombian government will be entitled to adopt a tax haven list; such a list exists currently and can be updated from time to time.

Any payment or accrual, regardless of its nature, that constitutes taxable income for a beneficiary that is deemed as resident, established, located, or functioning in a tax haven jurisdiction is subject to a 33% WHT.

Transactions with entities that are tax haven residents are subject to the transfer pricing regime. As a result, Colombian taxpayers must file a transfer pricing report and a transfer pricing informative return for such transactions, regardless of whether or not the entity's equity or gross income is lower than the threshold established by Colombian law for applying such compliance obligations.

In addition, if the transaction occurs with a related party, the resident taxpayer is required to prepare and submit an additional supporting study, proving the details of the functions performed, along with any assets used or risks assumed, and the full costs and expenses incurred by the tax haven resident while rendering the service or in the overall conduct of the activity to which the deduction relates.

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## ***Other taxes***

### ***Value-added tax (VAT)***

VAT is applicable in the following cases:

- Sale of movable or immovable assets, except those expressly excluded.

- Sale or assignment of rights upon intangible assets, related exclusively with industrial property.
- Provision of services in Colombia or from abroad (if the beneficiary is located in Colombia), unless there is an exception available.
- Import of assets or goods that have not been expressly excluded.
- Operation, circulation, or sale of games of chance or gambling, except the lotteries or chance games operated online.

This tax is not applicable to the sale of fixed assets unless they are included in the exceptions provided for immovable goods of residential use, vehicles and other fixed assets to be sold on a regular basis on behalf of third parties, and aeroplanes.

Services provided from abroad will be taxed through a reverse-charge mechanism, hence the beneficiary of the service will be liable to file the corresponding return and pay the tax before the Colombian Tax Authority if the beneficiary is registered for VAT. Otherwise, as the law is currently written, no VAT can be effectively collected and remitted.

Nevertheless, the latest Colombian tax reform, Law 1819 of 2016, established that the Colombian Tax Office might establish that non-resident service providers rendering services from abroad must register for VAT purposes from 1 July 2018 when they sell taxable services to customers who are not registered for VAT purposes. Registration for VAT purposes does not necessarily mean the triggering of a PE. No regulation has been enacted yet.

Additionally, there are some facts that are considered as a sale, which are the following:

- All acts implying the transference of domain, freely or onerously, of movable or immovable assets and intangible assets related with industrial property.
- Withdrawing movable or immovable assets from the inventory in order to use them or to use them to improve fixed assets recognised by the taxpayer within its equity.
- Incorporation of movable or immovable goods, incorporation of non-taxed services, or transformation of taxed and untaxed goods, when those have been created, built, elaborated, or processed by the same entity or individual performing the incorporation or transformation.

The Colombian VAT is based on a credit-debit system throughout the entire chain of a business. However, certain products are only taxed at the manufacturer level (one-phase VAT). For purposes of VAT calculation, the VAT payer may credit the VAT (input) paid to vendors (certain limitations apply) against any VAT (output) collected from customers.

## VAT rates

The general VAT rate is 19%. However, certain services and goods are taxed at 5% and 0%.

The following are the most significant goods and services taxed at 5%:

- Corn for industrial use and other grains (look for the list of Section 185 of Law 1819 of 2016).
- Raw oil from palm trees, sunflowers, palm trees almond, soy, corn, among others.

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- Vegetal material, waste or residues, sub-products, and pellets used for nurturing animals.
- Agricultural equipment pertaining to the sub tariff 82.01.
- Electric or hybrid vehicles destined for diverse uses (further consideration must be given towards the list of Section 185 of Law 1819 of 2016).

The following are the most significant goods and services taxed at 0%:

- Meat, fresh eggs, and dairy products.
- Vegetal or animal biofuel destined to be used in diesel engines nationally produced to be mixed with *Acéite Combustible para Motor* (ACPM or motor oil).
- Services to be exported (some requirements are needed).
- Internet services for low to mid-income residential customers.
- Manufactured goods to be exported.
- Tourism services to be supplied to non-resident individuals.

## VAT exemptions

Under current law, there are VAT exemptions available for the following items, among others:

- Equipment and materials for the construction, installation, assembly, and operation of environmental monitoring and control systems.
- Imports of raw materials and supplies made under the so-called 'Vallejo Plan' for further processing and incorporation into products that are to be subsequently exported (*see the Tax credits and incentives section for more information on the Vallejo Plan*).
- Temporary importation of heavy machinery and equipment for basic industries (i.e. mining, hydrocarbons, heavy chemistry, the iron and steel industry, metallurgy, power generation and transmission, and the water industry).
- Importation of machinery and equipment, which is not produced in the country, for recycling and processing of waste and refuse.
- Regular imports by major exporters of industrial equipment, which is not produced in the country, for the transformation of raw material.
- Freight transportation.
- Public transportation of passengers in the national territory by water or land.
- Transportation of gas and hydrocarbons.
- Interest and other financial income from credit operations.
- Public utilities.

## Withholding VAT

VAT withholding on the purchase of goods and services for most domestic transactions is 15% of the tax due (effective rate 2.85%).

A non-resident supplier of VAT-subject services does not require VAT registration. Services provided from abroad will be taxed through a reverse-charge mechanism (*see above*).

## VAT compliance

Filing frequency depends on taxpayer's annual gross revenue as of 31 December of the previous taxable year. For businesses with annual revenue equal to or higher than 92,000 TVU (approximately COP 3 billion), the frequency is bimonthly. If annual revenue is not in excess of TVU 92,000, the filing frequency is every four months.

No VAT filings are required for periods where no inputs or outputs exist.

Additionally, the tax reform of 2016 allows enterprises, branches, or businesses where the main activity is the exploration of hydrocarbons to file a VAT return from the moment in which the enterprise initiates its exploration activity in order to recognise the input VAT paid in acquisition or import of goods and services to be invested in the exploration phase and to be taken as part of the cost of development of their amortisable assets or investments in offshore projects. The balances in favour generated via VAT return during the exploration phases can be claimed during the next year of its generation.

## **VAT credit**

VAT paid to vendors is creditable even if paid at rates higher than those at which taxable sales are made. Where a receivable arises above that credit, a refund will be available upon request, subject to certain circumstances (e.g. zero-rate sales or taxed sales).

Input VAT is to be creditable over eight months, subject to applicable filing frequency.

## **Deduction of VAT paid on capital assets**

Deduction of the VAT paid in the acquisition or importation of capital assets, which are taxed at the general VAT rate of 19%, is now available (Section 67 of the Colombian Tax Code).

This benefit may not be used concurrently with Section 258-2 of the Colombian Tax Code (VAT credit in the acquisition or importation of heavy machinery for basic industries, such as mining, hydrocarbons, generation, and transmission of electric energy, among others).

## **Consumption tax**

A national consumption tax is levied on the following select services and goods:

- Mobile phone services at 4%.
- Certain vehicles, aircraft, and other goods at 8% or at 16%.
- Restaurant and cafeteria services at 8%.

Consumption tax cannot be credited against VAT. Consequently, the tax will be treated as a higher cost of the acquired asset or product and will be treated as a deductible cost for income tax purposes.

## **Customs duties**

Imports, according to customs rules, consist of the entry of goods to the 'national customs territory' from the rest of the world, or from an FTZ, with the purpose of remaining permanently or temporarily in it for the achievement of a specific purpose.

As a general rule, the importation processes before the Colombian Internal Revenue and Customs Service (DIAN) can be carried out only by users registered in the Customs Information System, either as Customs Agencies (previously called Customs Intermediation Companies) or Permanent Customs Users (UAPs). The latter may file their customs declarations.

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According to the Harmonized System of Designation and Coding of Goods approved by the World Trade Organization (WTO), imported goods are classified into subentries composed of six digits. Also, two digits are added, which are for exclusive use of the Andean Community (CAN), and two final digits, which correspond to the digits for use of Colombia. The customs subentry or harmonized tariff schedule (HTS) code, which is the ten-digit result, is exposed in the Colombian Customs Tariff, which is governed by Decree 4927 of 2011, which also reflects the applicable tariff of each duty. VAT, which is also part of the customs duties, is regulated in the Colombian Tax Code.

The general VAT rate for the importation of goods is 19%, and the customs duties range between 0% and 20%.

## **Excise taxes**

There are some excise taxes for the consumption of beer and its derivatives, wine, liquor and its derivatives, and cigarettes and similar products.

Tax rates are defined by law, although the tax is collected by regional authorities:

- Liquor: Between 20% and 40%.
- Beer and similar: Between 20% and 48%.
- Cigarettes and tobacco: 55%.

## **Property tax**

The property tax is a municipal tax that is imposed annually on real estate property located in urban, suburban, or rural areas. It is levied on both improved and unimproved real estate; consequently, the taxpayers of this tax are the owners or holders of the real estate property.

The taxable base of this tax is the current cadastral value of the property, as adjusted for inflation. In some cities, such as Bogotá, the taxable base is the value of the property as appraised by the taxpayer directly.

Property tax rates depend upon the nature and usage of the property, and generally range between 0.5% and 1.2%.

This tax is fully deductible for CIT purposes, provided the same has a causal nexus with the income-producing activity of the taxpayer (e.g. where the tax is paid on rental property).

## **Stamp tax**

The stamp tax rate is 0%.

## **Capital gains tax**

The capital gains tax rate is 10%.

## **Financial transactions tax**

The financial transactions tax is a permanent tax on financial transactions, the collection of which is the responsibility of regulated financial institutions and the Central Bank (*Banco de la República*).

The tax rate is 0.4%, and the taxable event is the carrying out of financial transactions that involve the disposal of resources deposited in checking or savings accounts as well as in deposit accounts with *Banco de la República* and the issuance of cashier's checks.

50% of the total tax paid is deductible for CIT purposes, regardless of whether or not the transactions have a causal nexus with the income-producing activity of the taxpayer.

The law establishes a series of operations and transactions that are exempted from this tax.

## ***Payroll taxes and social security contributions***

There are three major payroll taxes and contributions.

- General pensions system.
- Health social security system.
- General system of professional risks.

The basis for contributions is determined by the monthly salary (excluding non-salary items) earned by the employee, which may not be, for ordinary salaried employees, less than the minimum legal monthly salary (COP 781,242 in FY 2018) and may not exceed 25 minimum legal monthly salaries (COP 19,531,050 in FY 2018).

For employees who earn an integral salary, the basis for pension contributions will be the lower of 25 minimum legal monthly salaries or 70% of such integral salary.

## ***Amounts of contributions***

In the two regimes (public and private), the amounts of contributions are currently 28.5% of the monthly salary.

Out of this percentage, 75% (approximately 20.5% of the monthly salary) must be borne by the employer and 25% (approximately 8% of the monthly salary) must be borne by the employee.

However, employees who earn more than four minimum legal monthly salaries must contribute an additional 1%, which will be destined to the pension solidarity fund, created by law to cover the risks of workers with scarce resources. Also, employees who earn more than 16 minimum monthly salaries must contribute an additional percentage (between 0.2% and 1%), depending on the amount of salary received.

For professional risks (*Aportes de Riesgos Profesionales*), the employer must pay a contribution ranging from 0.522% to 6.96% of the monthly salary, which is an insurance that covers risks of labour-related illnesses or accidents, permanent disability, death, and incapacity also derived from the employee's activity.

In addition, for employees with salaries higher than ten minimum monthly wages, employers must pay a payroll tax of 9% on salary items only, the basis of which is 100% for ordinary salaried employees and 70% for integral salaried employees.

## ***Plastic bags tax***

The triggering event for the plastic bags tax is the use of plastic bags, and the collections must be made by the commercial establishments selling the goods or

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products to be carried in the bags. During 2018, each plastic bag will cost COP 30, and this rate will increase to COP 40 in 2019 and COP 50 in 2020.

This tax cannot be treated as a cost, deduction, or credit for any other tax.

### ***Medicinal cannabis tax***

Medicinal cannabis tax is applicable to the sale, freely or onerously, of transformed products based on psychoactive or non-psychoactive cannabis. The rate to be applied is 16%, and this tax cannot be credited against VAT.

### ***Industry and trade tax***

The industry and trade tax is a municipal tax that is imposed on revenue obtained from the exercise of industrial, commercial, or service activities in any Colombian municipal jurisdiction. It can be viewed as a special form of a turnover tax.

The industry and trade tax rates are determined by each municipality, and, as a rule, they range between 0.2% and 1%. All of this tax can be deducted for CIT purposes when it is effectively accrued and as long as it is paid before the submission of the income tax return.

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### ***Branch income***

Branch income is taxed at 33%. Additional income tax surcharge is applicable for FY 2018 at a rate of 4% when the taxpayer's net taxable income is equal to or higher than COP 800 million.

The branch taxable base is limited to domestic income.

Branches are required to prepare an attribution study (in addition to transfer pricing compliance requirements) with a functional and technical analysis of the assets, liabilities, capital, risks, income, cost, and expenses attributable to its business in Colombia.

In addition, the branch must, for tax purposes, prepare separate accounts for purposes of the attribution of income and capital gains.

Branch profit distribution is categorised as a dividend; consequently, if profits are taxed at the branch level, only 5% dividend tax is applicable. If not, 35% and 5% rates are applicable upon dividend distribution. The above-mentioned treatment could be changed if treaty relief is available (to be reviewed on a case-by-case basis).

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### ***Income determination***

#### ***Inventory valuation***

The value of inventories, which includes all expenses and direct and indirect charges necessary to put an item in a position to use or sell, must be determined using one of the methods allowed under IFRS rules. For goods of a similar nature, the allowed methods are first in first out (FIFO) or weighted average. For inventories of diverse natures or usages, a different methodology can be used, as long as such has a recognised technical value.

## Capital gains

Capital gains are taxed separately from income. *See Capital gains tax in the Other taxes section for more information.*

## Dividend income

According to Law 1819 of 2016, shareholders of Colombian companies (except other Colombian resident companies) are subject to a dividend tax.

From FY 2017 onwards, dividend distribution is taxed; this means that only dividends paid out of profits obtained in FY 2017 onwards should be subject to the dividend tax.

This tax is applied regardless of the profits being taxed or not at the distributing company level, and the rates differ depending on the residence of the beneficiary, as follows:

### For Colombian resident beneficiaries

A 0% to 10% rate is applicable if the dividend is distributed out of taxed or untaxed profits. The distribution will be taxed to a greater extent if the dividend was paid out from non-taxed profits, as the Colombian beneficiary will assume an income tax withholding of 35%, which will be applied before the dividend tax rate.

The before-mentioned treatment could be changed if treaty relief is available (to be reviewed on a case-by-case basis).

### For non-resident beneficiaries

A 5% rate is applicable if the dividend is distributed out of taxed or untaxed profits. On the other hand, the applicable rate for dividends distributed out of non-taxed profits is 35%, which will be applied before the dividend tax rate.

The before-mentioned treatment could be changed if treaty relief is available (to be reviewed on a case-by-case basis).

## Interest income

Interest income derived from activities in Colombia is considered part of the CIT base for Colombian entities; however, if interest is paid or accrued to a non-resident that is not compelled to file CIT in Colombia, a WHT is accrued over the payment or deposit at a rate of 15%. Note that there are some special conditions derived from double tax treaties (DTTs) that may decrease the WHT rate.

An exemption is in place for principal, interest, and commissions related to lending, insurance, re-insurance, and other finance trade by governmental financial entities for countries with which cooperation agreements have been executed over these areas.

A reduced 5% WHT rate is available for interest income earned by non-residents on loans or bond-like instruments with terms of eight years or longer, the proceeds of which are used for certain government/private-run infrastructure projects.

Interest on government external debt is exempted from Colombian taxes. It is not clear whether this exemption will remain after FY 2018 since the wording on exempt income rules established that as from that year the only exempt income accepted is indicated in Section 235-2 of the Colombian Tax Code and government external debt interest is included in Section 218 of the Colombian Tax Code.



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## Royalty income

Royalties paid in favour of a Colombian entity are subject to taxes in Colombia; consequently, such royalty payments are part of the CIT base. If royalties are paid in favour of a non-resident (i.e. in favour of an entity that is not compelled to file CIT in Colombia), WHT is generally accrued over the payment or deposit at a rate of 15%, except in the case of software licensing, which will be taxed at a 33% rate upon 80% of the total royalty payment.

Certain DTTs offer limited relief for the WHT on royalties (e.g. 10%).

## Foreign income

The following cases, among others, qualify as foreign-source income:

- Income from certain loans, such as short-term loans emerging from import of goods or those disbursed to Colombian financial entities. Additionally, the expense derived from this concept will be 100% deductible.
- Income from the sale of goods stored in certain logistic spots aimed exclusively for international distribution.
- Income derived from technical services of repair and maintenance of equipment carried out abroad.
- Income arising from air and sea international transport rendered by Colombian-resident companies.

It should be noted that income triggered by other technical services, as well as consulting services, technical assistance, and administrative services rendered by a related party in the last case, will be regarded as Colombian-source income, regardless if rendered in Colombia or abroad, and subject to a 15% WHT.

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## Deductions

In Colombia, the customary costs and expenses of a business are generally acceptable as deductible expenditure for CIT purposes, provided they are necessary, reasonable, and have been realised during the relevant tax year under the accrual method of accounting. Examples of common (and not so common) deductions include the items below.

## Depreciation

### Assets held during 2016 and previous years

Assets acquired and reported as of 31 December 2016 will be depreciated following the fiscally accepted methodologies for 2016 and previous years. In regard to those assets, the normal estimated useful lives are as follows:

Asset	Useful life (years)
Buildings and pipelines	20
Machinery and equipment, office furniture, and fixtures	10
Vehicles and computer equipment	5

The acceptable methods for depreciation are:

- **Straight-line:** The straight-line method is the easiest and most commonly used method of depreciation by companies; it is calculated by dividing the value of the asset by the asset's useful life.
- **Declining-balance:** This method takes into consideration an accelerated rate of depreciation and is useful for those assets in which a higher value is lost during the beginning years of usage. Under the declining-balance tax depreciation method, in no case will a residual value lower than 10% of the asset's cost be allowed nor will accelerated depreciation based on additional shifts be deductible.
- Any other method of recognised value in accordance with the opinion of the tax authorities.

Depreciation rates can be increased by 25% for each additional eight-hour shift of asset use (and *pro rata* for fractions thereof). When tax depreciation exceeds book depreciation, the taxpayer is required to establish a reserve equivalent to 70% of the difference. Recapture of depreciation on the sale of depreciated property is taxable for CIT.

### Assets acquired during 2017 onwards

For assets acquired after 31 December 2016, IFRS rules apply. In accordance, such assets will be depreciated in consideration with the effective benefits that are expected to be obtained. Under IFRS rules, equipment will not only be seen as a whole; instead, each part of it could be recognised as unique, and its depreciation may vary as well.

Note that for fiscal purposes, both regulations (depreciation for 2016 and IFRS) will be valid at the same time depending on whether the asset was acquired in FY 2016 or FY 2017 onwards. Therefore, depreciation outstanding balances of fixed assets held as of 31 December 2016 must be depreciated during the lifespan of the asset using one of the accounting methodologies applicable before the tax bill enactment (*please see Assets held during 2016 and previous years above*).

For assets acquired from 2017 onwards, the depreciation rules under IFRS are accepted. For income tax purposes, taxpayers obligated to have accounting books are allowed to deduct the reasonable depreciation quantities recognised for assets used in businesses or activities yielding income during the taxable period. Nevertheless, the deduction for depreciation of assets is limited to the following percentages:

Depreciable assets	Annual fiscal rate for depreciation (%)
Constructions and buildings	2.22
Pipelines, plants, and networks	2.50
Communication routes	2.50
Fleet and airborne equipment	3.33
Fleet and iron equipment	5.00
Fleet and fluvial equipment	6.67
Weapon and surveillance equipment	10.00
Electrical equipment	10.00
Fleet and terrestrial transport equipment	10.00
Machinery and equipment	10.00
Movable goods and belongings	10.00
Scientific medical equipment	12.50
Bottles or recipients, packages, and tools	20.00
Computer equipment or hardware	20.00
Data processing network	20.00

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Depreciable assets	Annual fiscal rate for depreciation (%)
Communication equipment	20.00

Note that depreciation rates can be increased by 25% for each additional 16 hour shift of asset use.

### **Amortisation of intangible assets**

As a general rule, taxpayers can amortise, for CIT purposes, the cost of any acquired intangible asset over a period of five years using the straight-line method. The factor allowed per year as deductible is 20% of the fiscal cost.

Amortisation is available for intangible assets complying with the following requirements:

- The asset has a defined lifespan.
- The asset can be properly identified and measured in accordance with the accounting methodology.
- The asset acquisition generated taxable income complying with the commercial appraisal for its seller, whether Colombian resident or foreign.

### **Goodwill**

Goodwill pending balances generated before 1 January 2017 will be deductible for CIT purposes, provided they are related to the business activity or income-producing activity. Goodwill must be amortised using the straight-line methodology within five years from 1 January 2017 onwards.

Goodwill generated from 2017 onwards will not be deductible for CIT purposes. Goodwill has been acknowledged as an intangible asset when formed or created by the enterprise. However, its tax basis will be zero.

### **Goodwill on share purchases**

Goodwill on share purchases cannot be deducted via amortisation from 2017 onwards.

### **Start-up expenses**

Start-up expenses are deductible for CIT purposes, provided they are necessary, reasonable, and have been realised during the relevant tax year under the accrual method of accounting.

### **Interest expenses**

Taxpayers are generally entitled to deduct any interest paid to financial institutions or to third parties, provided certain requirements are met.

The Colombian Tax Regime has incorporated thin capitalisation rules (*see Thin capitalisation in the Group taxation section*).

### **Bad debt**

Bad debt is deductible for CIT purposes, provided the debt is originated as a result of the development of an income-producing activity and complies with the quantities accepted by the regulation. Additionally, debts incurred between related parties, associated individuals, or between entities and its shareholders will not be allowed as deductible bad debts.

Provision of bad debt credits and provision of risk ratios generated during the taxable year by entities subject to surveillance of the Financial Superintendence can be deducted for CIT purposes. Additionally, provisions generated during the taxable year regarding assets received via payment in kind and leasing agreements to be developed in accordance with the current laws will be deductible.

Nevertheless, no deduction will be allowed for bad debt if:

- they exceed the limits required by law and the corresponding regulation in regard to entities subject to inspection and surveillance of the Financial Superintendence, or
- bad debt provisions were created willingly, even if suggested by the Financial Superintendence. Bear in mind that these provisions are mandatory for financial institutions.

### ***Charitable contributions***

Donations and charitable expenses are now creditable instead of deductible. To allow the credit, the taxpayer must be able to prove that the donation or charitable expense was made to certain institutions dedicated to development of health, education, culture, religion, sports, scientific and technological research, ecology and the protection of the environment, or to social development programs of general interest.

### ***Expenses incurred abroad***

As a general rule, the deduction of expenses incurred abroad for yielding national-source income is limited to 15% of the taxpayer's net income, when such expenses were not subject to WHT. The following exceptions are applicable:

- Payments where the WHT is mandatory and was applied.
- Expenses generating foreign-source income in accordance with Section 25 of the Colombian Tax Code.
- Payments or accruals performed in the acquisition of movable goods.
- Payments or accruals performed complying with a legal burden, such as payments for custom certification services.
- Interests upon credits granted to Colombian resident taxpayers by credit multilateral organisations, which act of establishment has been approved by Colombia, remains in force, and an income tax exception has been granted for the multilateral organisation.

### ***Fines and penalties***

Fines and penalties are not deductible for CIT purposes.

### ***Taxes***

It is important to mention that the current tax regulations state the following as the only taxes that can be claimed as a deductible expense:

- 100% of the industry and trade tax.
- 50% of the financial transactions tax.
- 100% of the property tax.
- The VAT that cannot be treated as output.
- Some local stamp taxes.

# Colombia

## ***Special deductible items***

Colombian income tax laws have established certain special deductible items, which include the following:

- 100% of acquisition costs are available as a tax amortisation or depreciation base.
- 100% of the investments made in certain scientific and/or technological projects or in professional training projects of governmental, public, or private institutions of higher education are deductible. Additionally, these taxpayers will be allowed to credit 25% of the investment against income tax to be paid in the period in which the investment took place.
- 25% of the investments made for the control and improvement of the environment are creditable.

## ***Net operating losses***

Net tax losses generated from 2017 onwards can be carried forward within the following 12-year period. Recovery of tax loss is uncertain for long-time projects.

Net tax losses generated through the end of 2016 and previous years can be carried forward without limitation. The value of such losses must be adjusted for inflation as of 31 December 2016, as no further adjustments are allowed.

In order to find out the total value of losses generated before 31 December 2016 that can be carried forward, a simple calculation must be made. In this calculation, CREE tax losses and CIT losses will be merged to define the final value to be carried forward (Section 123 of Law 1819 of 2016 explains further considerations in this regard).

## ***Payments to foreign related parties***

### ***Royalties and similar charges***

Royalties and the costs of exploitation or acquisition of all kinds of intangible property that are charged by foreign related parties are allowable as CIT deduction, provided that the corresponding WHT is collected at generally 15% (10% in the case of most DTTs). Other types of payments are subject to the general rules for expenses incurred abroad.

Royalties recognised to non-resident (or FTZ-located) related parties are not deductible if connected with an intangible created locally. Additionally, royalties paid for finished products are non-deductible.

### ***Management overhead expenses***

Management overhead expenses paid to a foreign related party (e.g. the parent company) are deductible, provided they meet the arm's-length test under transfer pricing regulations and provided the management services are duly substantiated and are specifically related to the income-producing activity of the local subsidiary that pays them. These expenses must also be carefully documented such that the local subsidiary can provide evidence to the authority of the fact that they are specifically related to its Colombian operations (i.e. to the planning and direction of the operations, the setting and implementation of management controls, the measurement of progress made toward specific business goals, the related financial results, etc.). Where these services are supplied outside or inside Colombia, a 15% WHT is also required to ensure deductibility.

## Interest

Interest and related financial costs (including foreign exchange losses) paid to foreign related parties are deductible, provided they meet the arm's-length test under transfer pricing regulations and the thin capitalisation rules (*see the Group taxation section*). Furthermore, interest and the related financial costs paid on short-term financing relating to imports of merchandise and raw materials directly supplied by foreign related parties are also deductible for CIT purposes. Interest paid or accrued to a non-resident triggers WHT over the payment or accrual at a rate of 15%.

Financial and non-financial institutions registered with the Colombian Central Bank are permitted to extend loans into Colombia. *For further information, see Interest income in the Income determination section.*

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## Group taxation

Group taxation or group consolidation is not allowed for CIT purposes in Colombia.

## Transfer pricing

In Colombia, transfer pricing rules are applicable to the transactions performed by local taxpayers with foreign related parties. Thus, for CIT purposes, Colombian taxpayers must determine their income, costs, expenses, assets, and liabilities on the basis of prices and profit margins used in comparable transactions entered into with or between independent or unrelated parties.

In general terms, the rules related to comparability criteria, supporting documents, and advanced pricing agreements (APAs) follow OECD transfer pricing standards. However, they introduce a wide definition of 'related companies' for transfer pricing purposes, including subordination and individual or joint control exercised by a foreign parent company or by individuals located in Colombia or abroad.

Transactions with foreign non-domiciled entities located in non-cooperative jurisdictions or places of null or minimum taxation (known also as 'tax havens') are subject to transfer pricing rules (*see Tax havens in the Corporate residence section*).

If (i) the gross equity (assets) of the local taxpayer on 31 December of each year is equal to or higher than the equivalent to TVU 100,000 (COP 3,315,900,000 for FY 2018) or (ii) the gross income obtained by the local taxpayer in a given year is equal to or higher than the equivalent to TVU 61,000 (COP 2,022,699,000 for FY 2018), it shall be required to prepare transfer pricing supporting documents (i.e. a transfer pricing study) and to file with the tax authority an informative return in connection with the transactions performed, during the corresponding year, with the foreign related parties.

If the local taxpayer does not file the transfer pricing return, there will be a penalty of 4% of the total value of operations subject to the transfer pricing regime developed during the taxable period, up to TVU 20,000 (COP 663,180,000 for FY 2018). There are other applicable penalties depending on the nature of the omission; all penalties impose costly burdens for the taxpayer.

# Colombia

## **Country-by-country (CbC) reporting**

The CbC report contains information relative to the global allocation of income and taxes paid for a multinational group (MG), with certain indicators relative to its economic activity on a global scale.

It is an obligation that has to be submitted by the:

- parent company of an MG:
  - resident in Colombia
  - with foreign related parties or PEs abroad
  - not be subsidiaries
  - that consolidates financial statements, and
  - had income of the previous year of TVU 81,000,000 (approximately COP 2.7 trillion in FY 2018)
- the company designated by the Main House residing at the outside, or
- the Main House residing at the outside where:
  - the Main House owns 20% or more of the MG's consolidated income
  - the Main House has not filed the CbC report
  - the group has revenues equal to or greater than TVU 81,000,000 (approximately COP 2.7 trillion in FY 2018), and
  - if more than one MG entity complies with the requirements, it will present the report that possesses the largest equity at 31 December in Colombia.

## **Notification**

Entity resident in Colombia belonging to the MG must inform to the DIAN if it is the controlling or designated entity. If not, the taxpayer must notify the identity and tax residence of the reporting entity.

## **Estimated delivery**

2017: Second semester of 2018

## **Thin capitalisation**

Thin capitalisation rules for CIT purposes are applied on a 3:1 basis to related or unrelated party debt, regardless of domestic or cross-border transactions.

Debt exceeding the ratio is any total average interest bearing debt for the year less three times the net (tax) equity as of 31 December of the preceding year.

The proportion of non-deductible interest is debt in excess of three times such net equity. That proportion is then applied to the total interest accrued or paid in the taxable year.

Thin capitalisation rules do not apply to taxpayers engaged in the factoring business.

## **Controlled foreign companies (CFCs)**

An entity will be considered a CFC if it is controlled by a Colombian entity and also considered as a non-resident for tax purposes in Colombia.

Requirements to be considered a CFC:

- To be controlled by Colombian residents under the following terms:

- If considered a subsidiary, according to local legislation. The considerations to be fulfilled to acknowledge a company as a subsidiary are included in the transfer pricing rules; such regulations are applicable for CFC purposes.
- If it is a foreign economical related party, according to local legislation and transfer pricing regulations.
- The CFC has no fiscal residency in Colombia.

Investment vehicles are considered as CFCs in Colombia.

CFC rules will apply fully if the controlled entity is located in a tax haven. This consideration is set as a legal presumption.

If a CFC is proven to be controlled by Colombian tax residents, these will be obligated to comply with these rules if they directly or indirectly own shares equal to or higher than 10% of the entity's equity or its results.

Dividends, interests, rental income, gains from assets that generate passive income, technical services, etc. will be considered as passive income.

It is presumed that in case the passive income from the CFC represents 80% or more of its total income, all of the CFC income, costs, and deductions are passive income.

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## ***Tax credits and incentives***

### ***Foreign tax credit***

Foreign income taxes are creditable against CIT, subject to certain limitations. Generally, the amount of the credit cannot exceed the sum of Colombian taxes imposed over the same income. DTTs provide for more comprehensive credit systems as well.

The foreign tax credit on dividend income is enhanced to include a third-tier of credit availability, subject to specific ownership requirements. A third-tier of credit means that Colombian entities can claim a tax credit not only for taxes paid by a company in which it has a direct investment, but also for taxes paid by a company in which it has an indirect investment.

The tax credit can be claimed in the year of payment or in any of the following four years.

### ***CIT exemptions***

As items of exempt income, the law has established the following:

- The principal and interest (as well as related commissions and fees) paid pursuant to public foreign debt operations.
- Income from the sale of electric power generated from wind, biomass, or agricultural waste, for a period of 15 years, provided the seller issues and negotiates Greenhouse Gas Reduction Certificates in accordance with Kyoto's Protocol and that 50% of the income obtained in the sale of the certificates is invested in social projects benefiting the region in which the generator operates.
- Income obtained from ecotourism services, for 20 years. This benefit has been repealed as of 1 January 2018 but is still in effect for those that qualified prior to 1 January 2018. The taxpayer will be subject to CIT at a 9% rate during the benefit period.



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- The gain obtained from the sale of shares registered in the Colombian stock exchange is not subject to CIT or capital gain as long as the sale does not exceed 10% of the shares in circulation of the respective company during the same taxable year.
- The gain in trading derivatives that are qualified as securities is not subject to CIT, provided that the underlying asset is stock traded in the Colombian stock exchange, indexes, or participations in funds tracking such stock.

### **Special CIT rate (9%)**

A special CIT rate of 9% applies in the following cases:

- Income obtained from hotel services offered in new hotels that are built within 15 years counted from 2017, for a term of 30 years.
- Income obtained from hotel services offered in refurbished or enlarged hotel facilities, where the related work is started within 15 years counted from 2017, for a term of 30 years.

### **Special CIT rate for free trade zones (FTZs)**

FTZ industrial users enjoy a special CIT rate. The FTZ industrial goods users and industrial service users pay CIT at a reduced rate of 20% on income earned from their FTZ operations. No surcharge will apply.

Note that capital gains are taxed at the standard capital gains tax rate of 10%.

Commercial users will apply the general CIT rate, which is 33%, and income tax surcharge will apply.

### **Reduction to the statutory CIT rate for small companies (grandfathered rules for small/medium-size companies)**

Small companies (not exceeding approximately COP 3.4 trillion in total assets or 50 employees for FY 2018) are subject to CIT at the following reduced rates for five years from the moment in which they started their operation or from the moment in which they obtain taxable income:

Years	Income tax rate **
1	$9\% + (GT - 9\%) * 0$
2	$9\% + (GT - 9\%) * 0$
3	$9\% + (GT - 9\%) * 0.25$
4	$9\% + (GT - 9\%) * 0.50$
5	$9\% + (GT - 9\%) * 0.75$
6 and on	GT

\*\* GT: General income tax tariff for fiscal year.

### **Tax credit on payroll fees paid**

A tax credit is granted to employers hiring employees under 28 years old; women above 40 years old that have not been legally employed in the previous year; low-income workers earning less than 1.5 times the minimum monthly wage (approximately COP 1,171,863 for FY 2018); and disabled, reintegrated (from armed conflict), or displaced (as victims of armed conflict) workers, subject to certain requisites and time limitations (two to three years).

### **Vallejo Plan for raw materials**

The Vallejo Plan (drawback) allows for the total or partial suspension of customs duties upon receipt, within the national customs territory, of specific goods destined to be totally or partially exported within a certain period of time, after having undergone transformation, manufacture, or repair, including the materials needed for these operations. As of 20 January 2017, Ruling 108 included a total of 636 new custom tariffs that can be awarded with the Vallejo Plan benefits.

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### **Withholding taxes**

The Colombian tax system provides for WHT as a general mechanism of advance tax collection. Under the law, as a general rule, all corporate entities are required to collect or withhold taxes from payments made to third parties. The WHT collection agents must collect the applicable WHT amounts, deposit the withheld amounts with the authority, file monthly WHT returns, and issue WHT certificates to the payees. The payees who are also CIT return filers credit the withheld taxes against the annual CIT liability computed on their returns.

Foreign non-resident persons are taxed on their Colombian-source income only. Generally, the full tax liability accruing on payments made to foreign non-resident persons is satisfied via the collection of the applicable WHT. The WHT rate on payments made to foreign non-resident persons for overhead, royalties, and taxable interest is 15%. On payments made for consulting, technical assistance, and technical services, the WHT rate is 15% (whether supplied inside or outside Colombia). On payments made for software licences, the WHT rate is 26.4% (33% upon 80% of the total amount to be paid). *For the WHT rate on dividends, see the description of Dividend income in the Income determination section.*

However, domestic income earned by non-resident entities that is not attributable to branches and PEs will be taxed at 33% + 4% surcharge in FY 2018, and 33% in future years. Also, for foreign individuals obtaining national-source income not subject to WHT, the general rate will be 35%.

On other types of payments that give rise to Colombian-source income, the general WHT rate is 15%, with the foreign non-resident payee being required to file a CIT return in Colombia to report the final CIT liability, at the rates mentioned before on net income (and being entitled to a refund where the final liability is less than the amount withheld at the 15% rate or being required to pay the deficit should the case be the opposite).

WHT returns do not need to be filed where there are no taxes to declare or pay.

### **Offsetting of WHT**

WHT returns filed on a non-payment basis will be treated as not filed, except if the filer has a refundable tax credit balance equal to or higher than two times the outstanding payment. A six-month deadline applies for the taxpayer to apply the offsetting of the credit balance. Otherwise, late filing penalties will apply.

The WHT return that has been filed without full payment before the expiration of the due date to be submitted will have legal effects, as long as the total payment of the

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withholding is made within the two following months counted as from the due date to submission of the tax return.

## **Self-withholding on some exports**

There is a 1% self-withholding tax on exports for the mining, oil, and gas industry. The self-withholding is creditable against the CIT liability.

## **WHT on interest**

Interest payments made abroad on loans or cross-border leasing agreements are subject to a 15% WHT. If the loan or cross-border agreement has a term equal to or greater than eight years and it is destined to financing government/private-run infrastructure projects under the conditions set in Law 1508 of 2012, a 5% WHT is triggered.

However, lease agreements for aircraft, ships, and the like, or parts thereof, are subject to a 1% WHT.

## **Summary WHT chart for payments to non-Colombian entities**

Type of payment	WHT rate (%)
Dividends (if paid out of untaxed earnings)	35 plus 5
Taxable interest	5 or 15
Royalties	15
Royalties on software licences	26.4
Technical assistance, consulting, and technical services	15
Other types of payments	10 or 15

## **DTT rates**

Recipient	WHT (%)		
	Dividends (1)	Interest (2)	Royalties (3)
Non-treaty	5/35 plus 5 (8)	5/15 (9)	15/26.4 (10)
Treaty:			
Canada	5/15	10	10
Chile	0/7/35	5/15	10
Czech Republic	5/25	0/10	10
France (4)	0/5/15	0/10	10 (6)
India	5/15	0/10	10
Mexico	0/33	5/10	10
Portugal	5/33	10	10
South Korea	0/5/15	0/10	10
Spain	0/5/35	0/10	10
Switzerland	0/15/35	0/10	10 (7)
United Arab Emirates (5)	0/5/35	0/10	10
United Kingdom (4)	0/5/15	0/10	10

### Notes

1. The treaty rate depends on the participation of the shareholder in the Colombian company that distributed the dividends and some other requirements.
2. The rate depends on whether the lender is a financial entity or not.
3. If services are locally untaxed, there is no WHT; otherwise, a 10% WHT will apply.
4. Both treaties (France and the United Kingdom) will presumably apply from 2019 onwards. The internal approval phases are not completed yet.

5. The treaty (United Arab Emirates) will presumably apply from 2020 onwards. The internal approval phases are not completed yet.
6. In the treaty with France, the definition of royalties does not include technical services and consulting services, which might be considered as business profits not subject to withholding. This consideration might be applied in other DTTs as it triggers the 'most favoured nation' clause.
7. In the treaty with Switzerland, the rental/leasing of technical equipment is considered as a royalty; however, it might, under the most favoured nation clause, be considered as a business profit based on the tax treatment provided in the DTT.
8. 5% for profits taxed at the level of the entity making the distribution. 35% + 5% for profits untaxed at the level of the entity making the distribution.
9. 15% in general or 5% for interest income earned by non-residents on loans or bond-like instruments with terms of eight years or longer, the proceeds of which are used for certain government/private-run infrastructure projects.
10. 15% in general or 26.4% for software licences.

## ***Tax administration***

### ***Taxable period***

For CIT purposes, the taxable period is the calendar year, with no exceptions being admissible.

### ***Tax returns***

CIT return filing due dates are set by the government every year. Usually, they fall in the month of April.

### ***Payment of tax***

For CIT purposes, corporate taxpayers are divided into 'large taxpayers' and 'other taxpayers'. Large taxpayers pay their estimated outstanding CIT liability (outstanding after deducting applicable WHT from the estimated final liability) in three instalments over the year in which they file their annual CIT return (usually in February, April, and June). The due date varies according to the last digits of its NIT (Number of Tax Identification).

Other taxpayers pay their estimated outstanding CIT liability in two instalments over the year in which they file their annual CIT return (usually in April and June). The due date varies according to the last digit of its NIT.

### ***Tax audit process***

The audit cycle corresponds to the taxable period, which for the case of CIT is one year.

### ***Statute of limitations***

The standard statute of limitations is three years (up from two years), from the due date or the date in which the return has been filed if extemporary.

Returns where losses are incurred will have a statute of limitations of 12 years (up from five years). An additional three years statute of limitations is applicable if losses are used in the last two years (loss used in the 11th or 12th year). Returns where losses are used will have a statute of limitations of six years.

The statute of limitations of returns filed by taxpayers subject to the transfer pricing regime will be six years from its filing due date.

The new statute of limitations (three years, six years, or more) should not impact filings made prior to the end of 2016.

# Colombia

## ***Topics of focus for tax authorities***

While there are no specific topics to be observed by the tax authorities when performing an audit, usually they look at the formal compliance requirements, the correct application and deductibility of cost and expenses, and the inclusion of all assets of the taxpayer.

Note that income taxpayers subject to taxation on a worldwide basis are required to present an annual return to disclose and identify any form of assets held outside Colombia.

## ***Anti-abuse regulations***

Colombian regulations establish some anti-abuse provisions, which allow the tax authority to disregard the transactions considered not to have a valid commercial or business purpose and which tend to modify, reduce, eliminate, or defer the applicable tax consequences.

Under the anti-abuse provisions, the tax authority is allowed to re-classify the nature of the transaction performed by the taxpayer and to assign the tax consequences applicable to the 'real' transaction.

There are special proceeding rules that must be applied if the Colombian Tax Authority defines that a taxpayer has incurred abusive practices. Such proceeding includes issuing an official requirement stating the reasons why the administration considers the taxpayer's practice as abusive and it will only require at least summary/slight/hint evidence. The taxpayer will have a term of three months to reply to the assessment. If the argument is not satisfactory for the administration, another official statement must be issued where the Colombian Tax Authority explains the amendments that must be made to the taxpayer returns and which is, in the authorities opinion, the 'real' transaction.

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## ***Other issues***

### ***International treaties***

Colombia has entered into OECD-modelled tax conventions with Canada, Chile, Czech Republic, France, India, Mexico, Portugal, South Korea, Spain, Switzerland, the United Arab Emirates, and the United Kingdom (the treaties with France, the United Arab Emirates, and the United Kingdom are not yet in force).

Colombia has also entered into an intergovernmental agreement (IGA) for the implementation of the Foreign Account Tax Compliance Act (FATCA) with the United States. Agreements for the interchange of tax information have also been entered into with other nations.

### ***Base Erosion and Profit Shifting (BEPS)***

#### ***Action 1***

Import of services rules expanded to be in scope, including all services (save for exception established by law), provided that the purchaser or beneficiary of the service is a Colombian tax resident, or has a domicile, PE, or place of economic activity in Colombia.

From 1 July 2018, purchasers of digital services should be registered before the Colombian Tax Office, enact invoices, and pay VAT. Otherwise, VAT WHT should be made by the financial institutions over the payments made with debit or credit card or another prepayment method.

### Action 3

A CFC regime was introduced in the last tax reform. This regime pretends to have a tax control on the income generated by foreign entities, which are managed by one or more tax residents in Colombia, that also meet the requirements to be considered as a controlled company: (i) Is a subordinated or controlled company according to the commercial regulations and (ii) is considered a foreign related party.

The CFC applies if the Colombian tax resident owns at least a 10% participation, directly or indirectly, in the company abroad.

If a Colombian tax residents owns a CFC, it will be taxed currently on their proportionate share of the CFC's income (including passive income), costs, expenses, and deductions.

### Action 5

Colombia has signed both the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC) and the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (MCAA). It is intended that automatic exchange of tax information in Colombia began in September 2017.

Also, according to Section 631-4 of the Colombian Tax Code, the Tax Office must issue a Resolution to identify the entities subject to reporting to fulfil the international commitments towards the Automatic Exchange of Information (AEOI) agreements currently in force. Resolution 119 of 2015 set the requirements to be met by the local financial institutions for AEOI purposes.

### Actions 8 to 10

Colombian transfer pricing rules are based on OECD Transfer Pricing Guidelines. In the Colombian Tax Code, the following were introduced: (i) rules regarding transactions re-characterisation (Section 260-4), and (ii) best method rule (comparable uncontrolled price or CUP) for commodities and raw materials (Section 260-3 (1)). No further changes are foreseeable in the future.

### Action 13

Transfer pricing informative return: If caps are exceeded, all transactions (no materiality applicable) are subject to disclosure.

Master File: Mandatory if caps are exceeded, it follows the suggested contents issue by the OECD and is generally prepared by the ultimate parent company. At the date of this summary, it is estimated that it may be filed in English; however, if required by the tax authority, an official translations should be provided within the following 20 working days of said request.

Local File: There is an obligation to prepare and file the Local File for transactions per type of transaction (not on a stand-alone basis) exceeding approximately 494,000 United States dollars (USD) per type of transaction.

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Country-by-country (CbC) report: Not applicable for subsidiaries; however, it will be required to present a form disclosing if parent is obligated to CbC reporting in its domicile country (*see Country-by-country [CbC] reporting in the Group taxation section*).

## **Multilateral Instrument (MLI)**

In July 2017, Colombia signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) aimed to amend its DTTs aligned to the BEPS recommendations. The MLI will be enforceable when the internal procedures have been completed by the Colombian Congress, Constitutional Court, and the government (expected in FY 2020).

Colombia included as Covered Tax Agreements whole of the DTTs in force and the DTTs signed with France.

## **Common Reporting Standard (CRS)**

The CRS is the standard for AEOI developed by the OECD.

CRS is a very broad reporting regime that relies extensively on the intergovernmental exchange used for the implementation of FATCA.

Similar to FATCA, the CRS requires financial institutions resident in participating jurisdictions to implement due diligence processes to document and identify accounts that must be reported according to the CRS, as well as establish a wide-ranging reporting process.

Colombia has signed both the MAC and the MCAA. Automatic exchange of tax information in Colombia started in September 2017.

## **Choice of business entity**

The most common type of company used in Colombia is the simplified stock company or simplified corporation, known as an SAS (*sociedad por acciones simplificada*). Besides SAS, foreign investors also use branch offices of an offshore entity as their investment vehicles in Colombia.

As a general rule, from a high-level perspective, there are no major differences between a branch office and a subsidiary (such as an SAS) as far as Colombian taxation is concerned.

All the taxes discussed in this summary would apply equally to a branch operation or a subsidiary operation. However, from a commercial perspective, and specifically from the perspective of corporate liability, operating through a branch office means that the head office is exposed to direct liability for all the obligations of the branch, tax obligations included. Operating through a subsidiary means that only the subsidiary is liable for its obligations as a general rule, that is to say that the shareholders are not liable for company obligations. Of corporations, the advisable choice would be an SAS, which is very flexible in nature, easy to incorporate, and can be held by one single shareholder (regular corporations require a minimum of five shareholders).

## **Mergers/De-mergers**

Mergers and de-mergers are tax free, subject to limitations as follows:

- The surviving or the beneficiary entity must be a resident.

- De-mergers must be over units of business/going concern (substance requirement).
- If merger/de-merger participants are unrelated, shareholders owning at least 75% (85% where participants are related) must receive, as a result, shares proportional in value to what they had prior to the merger or de-merger.
- Shareholders must receive at least 90% of value in shares (99% if participants are related).
- Shareholders selling shares received within two years of the merger/de-merger must increase any income tax due on the sale by 30%.

Mergers/de-mergers failing to meet these standards will be treated as taxable dispositions. Where participants are not residents, the tax-free status is available if assets held in Colombia represent 20% or less of the worldwide aggregate of assets of the group.



# Ecuador

## PwC contact

Pablo Aguirre  
PwC Asesores Empresariales Cia.Ltda.  
Diego de Almagro N 32-48 & Whympner 1st. Floor  
Quito, Pichincha  
Ecuador  
Tel: +593 2 382 9351  
Email: pablo.aguirre@ec.pwc.com



## Significant developments

On 29 December 2017, the Ecuadorean government enacted the Law for the Reactivation of the Economy. The main corporate tax measures derived from this Law are as follows:

- Increase in the corporate income tax (CIT) rate from 22% to 25%, and from 25% to 28% in the case of companies with foreign shareholders located in jurisdictions qualified as tax havens, effective from 2018.
- CIT exemptions and benefits for small businesses and companies qualified as usual exporters.
- Limitations to the deduction of expenses related to accruals of employer's pension and eviction plans.

On 24 May 2018, the Ecuadorean government presented the project of law named 'Law for the incentive of production, attraction of investment, generation of employment and fiscal stability'. Broadly, the project of law includes several tax measures and reforms, including an amnesty program upon interests and fines before the Tax and Social Security Authorities, exemptions of CIT and remittance for new investments, and reforms on capital gains tax. The final and approved version of the Law is expected to be available by July 2018.

## Taxes on corporate income

Resident entities are taxed on their worldwide income. Non-resident entities are subject to tax on Ecuadorian-source income only.

International Financial Reporting Standards (IFRS) are in force for all entities. Local tax authorities have established that for CIT purposes, and corresponding pre-payments, companies are obligated to follow these accounting principles.

Taxes on corporate income are levied at the following rates:

Type of income	CIT rate (%)
Distributed or undistributed profits of local corporations and branches	22 to 28
Reinvested profits of local corporations and branches	12 to 18

Ecuadorian companies owned by residents or non-residents located in non-tax-haven jurisdictions are subject to a 22% to 25% CIT rate. Companies with direct or indirect ownership/participation located in jurisdictions qualified as tax havens are subject

## Ecuador

to an increased CIT rate of 3%. Such increase is also applicable when the company's ownership structure is not duly disclosed before the Ecuadorian tax authorities.

*See the Branch income section for a list of countries and territories considered as tax havens by the tax authorities.*

### **Local income taxes**

No local or provincial government taxes on income are imposed on companies.

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## **Corporate residence**

Corporate residence is determined by the place of incorporation. For foreign branches, it is the place stated in the domiciliary deed.

### **Permanent establishment (PE)**

According to the local tax legislation, a company can be deemed to have a PE in Ecuador if it maintains any place or fixed centre, within the country, in which a foreign company develops all or part of its activities.

The corresponding regulations point out that a PE also exists when a foreign company maintains, within the country, a person or an entity that acts on its behalf and habitually exercises an economic activity. It contemplates several instances where this is applicable, among them:

- A person with legal representation, which is normally granted through a power of attorney or through a legalised decision by the company and includes the capacity to legally act on behalf of the company.
- A person working under a contractual relationship for a foreign company to carry out economic activities on behalf of that company.
- A centre for the direction of the activities of the foreign company.
- A branch, agency, or office that acts on behalf of the foreign company.
- An office for the provision of technical consultancy services related to contracts that are executed in the country.

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## **Other taxes**

### **Value-added tax (VAT)**

VAT is levied at the rates of either 12% or 0% on the transfer of goods, import of goods, and the rendering of services, as well as on services rendered within the country or imported. Royalties and intangible property, imported or locally paid, are also levied with a 12% VAT.

The following transactions are exempt from VAT:

- In-kind contributions to capital of companies.
- Inheritance and assets obtained from liquidation of companies.
- Transfer of business as a whole, amalgamations, mergers, takeovers, and spin-offs.
- Donations to public entities and non-profit organisations.
- Transfers of shares and securities.

Goods and services that are subject to the 0% rate are explicitly listed in the law.

Among others, the following goods are taxed at a 0% rate upon either importation or local transfer of ownership:

- Most agricultural goods and foodstuff, when these remain in their natural state; this includes refrigerated or packaged goods that have not undergone further processing. Also included in this category are milk, meats, sugar, salt, bread, butter and margarine, flour, and cooking oil.
- Drugs, medicines, and other pharmaceutical products, including raw materials for their production.
- Fertilisers, insecticides, animal foods, and similar products, including the raw materials required for processing such goods.
- Agricultural machinery and equipment.
- Goods that are exported.
- Paper, books, magazines, and newspapers.

Among others, the following services are taxed at a 0% rate:

- Transportation of persons and cargo, except air transportation of persons and local air transportation of cargo.
- Book printing services.
- Housing rental.
- Water, electric, sewage, and other public services, including garbage collection.
- Exported services.

The 12% VAT paid on imports and local purchases can be deducted from the 12% VAT charged on sales or services rendered. VAT paid on raw materials, fixed assets, or components required for the production of goods or rendering of services is also creditable when the final product is considered taxable at 12%. On the other hand, VAT paid on raw materials, services, components, or fixed assets necessary for production of export goods is recoverable.

The 12% VAT paid in the acquisition of goods and services utilised for the production or rendering of services levied at 0% VAT is not creditable. Therefore, it should be considered as part of the cost.

Companies appointed as ‘special taxpayers’ are required to withhold 30% and 70% of VAT paid on the purchase of goods and services, respectively. On purchases made to professionals, 100% VAT must be withheld.

When the transaction is carried out between two ‘special taxpayers’, VAT withholding rates are reduced to 10% (goods) and 20% (services).

For importation of services, 12% VAT must be self-assessed and withheld at 100% by the local entity. This VAT is creditable.

### **Customs duties**

Since Ecuador is a member of the Andean Community, goods to be imported are classified under the Common Nomenclature of the Andean Countries participating in the Cartagena’s Agreement (NANDINA) Pact, which is based on the Customs Cooperation Council Nomenclature (also known as the Brussels tariff nomenclature). Most consumer good imports pay 25%, while intermediate goods are usually imported at a 10% or 15% rate. Raw materials and capital goods generally pay 0% to 5%. Ecuador has negotiated exceptions under the Andean common tariff that allow lower

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duties on certain capital goods and industrial inputs. There is duty-free import of agricultural goods and equipment.

The price listed on the commercial bill or invoice is the basis for the assessment of duties, except when the Central Bank of Ecuador (CBE) considers the listed price unreasonable, in which case market prices in arm's-length transactions will be used. The burden of proof lies with the importer.

In addition to import duties, all imports are subject to 12% VAT and other minor taxes that do not exceed 1%. Charges are based on the cost, insurance, and freight (CIF) value of the merchandise.

All Ecuadorian imports and exports are subject to inspection by authorised international verification companies operating in the country (there are some imports exempt from verification). Goods are appraised for value, quantity, quality, and weight at the port of origin.

### ***Special consumption tax (Impuesto a los Consumos Especiales or ICE)***

ICE is imposed on domestic and imported goods that are explicitly listed in the law, including sugared, non-alcoholic and carbonated drinks. This tax is levied at a progressive rate from 5% to 35% on certain automobiles and 15% on airplanes, helicopters, and boats. The taxable basis on cigarettes and alcoholic beverages is obtained by the number of produced or imported cigarettes or degrees of alcohol, respectively.

### ***Foreign assets tax (Impuesto a los Activos en el Exterior)***

The tax base for the foreign assets tax is the average monthly balance of cash deposits held in foreign entities by private entities registered in the stock market and regulated by the Superintendent of Banks and Companies. The monthly tax rate is 0.25% (0.35% for assets held in tax haven jurisdictions).

### ***Remittance tax (Impuesto a la Salida de Divisas)***

Remittance tax of 5% is imposed on the transfer of money abroad in cash or through cheques, transfers, or courier of any nature carried out with or without the mediation of the Ecuadorian financial system, including transfer from foreign bank accounts. Dividends are exempt from this tax, under certain considerations.

### ***Stamp taxes***

No stamp taxes are levied in Ecuador.

### ***Payroll taxes***

There are no additional payroll taxes applicable other than Social Security contributions (*see below*).

### ***Social Security contributions***

Employers and employees pay contributions to the Social Security at the rates of 12.15% and 9.45%, respectively, on the minimum monthly taxable wages as established for the different contributing categories by the Social Security. Such categories are revised annually.

### ***Labour profit sharing***

Although it is not considered a tax, companies are obligated to pay 15% of their pre-tax earnings to their employees. This payment is considered a deductible expense for CIT computation purposes.

### ***Redeemable Tax on Non-Returnable Plastic Bottles***

A tax is levied on the bottling of beverages in non-returnable plastic bottles utilised for containing alcoholic and non-alcoholic drinks, beverages, soft drinks, and water. In the case of imported beverages, this tax is levied upon their customs clearance for home use.

For each plastic bottle levied with this tax, the rate is up to 0.02 United States dollars (USD). This amount is fully reimbursed to whoever collects, delivers, and returns the bottles.

Taxpayers of this tax are the bottlers of drinks contained in plastic bottles and importers of drinks in plastic bottles.

Milk products and medicines filled in plastic bottles are exempt from this tax.

This tax is not considered as a deductible expense for CIT purposes.

### ***Environmental Tax on Vehicle Pollution (ETVP)***

ETVP is levied to offset environmental pollution caused by the use of ground transportation motor vehicles.

Taxpayers of ETVP are individuals, undivided inheritances, and national or foreign corporations who are proprietors of ground transportation motor vehicles.

There are several vehicles exempt from this tax, including government vehicles, public transportation of passengers, school buses, taxis, ambulances, moving hospitals, vehicles regarded as 'classical', electric vehicles, and those destined for the use and transportation of handicapped individuals.

The taxable base of the ETVP corresponds to the cylinder capacity of the vehicle motor, expressed in cubic centimetres, and a percentage related to the potential level of environmental pollution provoked by motorised vehicles in connection with the vehicle's motor's years of antiquity.

### ***Municipal taxes***

#### ***Municipal asset tax***

The municipal asset tax is levied on all individuals and companies required to keep accounting records in accordance with Ecuadorian tax legislation. This tax is levied annually at a rate of 1.5 per thousand (or 0.15%) of total assets less current and contingent liabilities, as shown on the balance sheet.

#### ***Municipal real estate tax***

The city governments assess an annual municipal property tax, which ranges between 0.25 per thousand and 5 per thousand (0.025% to 0.5%) of the commercial value of the property, as determined by valuation carried out by the city government, for both urban and rural properties (rural property is taxed at a maximum of 0.3%).

## Branch income

Distributed or retained branch profits are taxed at a rate between 22% and 28% (see the *Taxes on corporate income section*). No further taxes are payable when profits are remitted to headquarters, except if located in a tax haven country. Re-invested profits are levied at a 12% or 18% CIT rate. Companies must increase their share capital within the following fiscal year to be beneficiaries of the CIT rate reduction.

## Countries and territories considered as tax havens by tax authorities

Besides the tax haven list published by the tax authorities shown below, 'low-tax jurisdictions' shall be subject to the same tax treatment. 'Low-tax jurisdictions' are defined as a territory where the effective rate of income tax or taxes of an identical or similar nature is less than 60% of the applicable rate in Ecuador. Additional considerations are also taken by the tax authorities for determination of low-tax jurisdictions/preferential tax regimes.

- |                           |                      |                            |
|---------------------------|----------------------|----------------------------|
| • Albania                 | • Gibraltar          | • Qeshm Islands            |
| • American Samoa          | • Granada            | • Saint Kitts and Nevis    |
| • Andorra                 | • Greenland          | Islands                    |
| • Angola                  | • Guam               | • Saint Lucia              |
| • Anguilla                | • Guyana             | • Saint Martin             |
| • Antigua and Barbuda     | • Hong Kong          | • Saint Pierre and         |
| • Aruba                   | • Isle of Man        | Miquelon                   |
| • Ascension Island        | • Jordan             | • Saint Vincent and the    |
| • Azores Islands          | • Kiribati           | Grenadines                 |
| • Bahamas                 | • Kuwait             | • San Marino               |
| • Bahrain                 | • Labuan             | • Santa Elena              |
| • Barbados                | • Liberia            | • Serbia                   |
| • Belize                  | • Liechtenstein      | • Seychelles               |
| • Bermuda                 | • Luxembourg         | • Solomon Islands          |
| • Bonaire, Saba, and St.  | • Macao              | • Sri Lanka                |
| Eustatius                 | • Macedonia          | • Svalbard Islands         |
| • Brunei Darussalam       | • Madeira (Portugal) | • Swaziland                |
| • Bulgaria                | • Maldives           | • Tokelau                  |
| • Cabo Verde              | • Malta              | • Tonga                    |
| • Campione D'italia       | • Marshall Islands   | • Trieste (Italy)          |
| • Cayman Islands          | • Mauritius          | • Trinidad and Tobago      |
| • Channel Islands         | • Monaco             | • Tristan Da Cunha         |
| (Guernsey, Jersey,        | • Montenegro         | • Tunisia                  |
| Alderney, Greater Sark,   | • Montserrat (UK)    | • Turks and Caicos         |
| Herm, Little Sark,        | • Myanmar            | Islands                    |
| Brechou, Jethou, Lihou)   | • Nauru              | • Tuvalu                   |
| • Christmas Islands       | • Nigeria            | • United Arab Emirates     |
| • Cocos (Keeling) Islands | • Niue               | • Vanuatu                  |
| • Cook Islands            | • Norfolk Islands    | • Virgin Islands (British) |
| • Curaçao                 | • Oman               | • Virgin Islands of the    |
| • Cyprus                  | • Ostrava            | United States              |
| • Djibouti                | • Palau              | • Western Samoa            |
| • Dominica,               | • Panama             | • Yemen                    |
| Commonwealth of           | • Pitcairn           |                            |
| • French Polynesia        | • Puerto Rico        |                            |

Certain tax regimes from Costa Rica, the Netherlands, New Zealand, and the United Kingdom may be considered as preferential tax regimes.

## ***Income determination***

### ***Inventory valuation***

The valuation of inventories is not specifically treated in the tax law. IFRS must be applied.

### ***Capital gains***

Gains from stock/shares sales and gains from investment funds and investment trusts are levied with income tax. Gains on the sale of fixed assets are added to the taxable base and levied at regular CIT rates, except gains derived from occasional sales of real estate, which are tax exempt.

### ***Dividend income***

Dividends received by a resident company or foreign company, not domiciled in a tax haven, from a resident company are tax exempt.

### ***Interest income***

In general terms, interest income is considered as part of the CIT base for Ecuadorian entities.

### ***Royalty income***

In general terms, royalty income is considered as part of the CIT base for Ecuadorian entities.

### ***Foreign income***

Foreign-source income is considered exempt for tax purposes if the company demonstrates that the income tax was paid abroad. Income generated in tax haven jurisdictions is not considered to be part of this exemption and should be added to regular income.

## ***Deductions***

As a general rule, payments on operations that exceed USD 1,000 should be made through an institution of the financial system; otherwise, such operations will become non-deductible.

### ***Depreciation and amortisation***

Straight-line depreciation applies at rates specified by law. The director of the Internal Revenue Service (*Servicio de Rentas Internas*) of Ecuador can authorise higher rates of depreciation in cases such as obsolescence, excessive use, and faster than expected wear-out of assets.

Annual depreciation rates are as follows:

<b>Asset</b>	<b>Depreciation rate (%)</b>
Real estate (except land), aircraft, naval crafts, and similar property	5

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Asset	Depreciation rate (%)
Facilities, machinery, equipment, and furniture	10
Vehicles, trucks, and tractors used for construction	20
Computer equipment and software	33.33

Depreciation rates apply to the cost of assets.

In the case of vehicles, if, at the time of purchase of the vehicle, its appraisal exceeds USD 35,000, the deductibility on the excess will not apply, unless it is an armoured car or a vehicle exempt from the tax on vehicles. The limitation on the deductibility will also not apply in the cases of taxpayers that have car rental business as their only activity.

Intangible assets are amortised either within the terms specified in the contract or over a 20-year period.

## Goodwill

Goodwill cannot be amortised in Ecuador, but there are limited exceptions.

## Organisational and start-up expenses

Organisation, experimentation, and preoperational expenses can be amortised over five years at the rate of 20% per year.

## Interest expenses

Interest on debts incurred for business purposes are deductible.

In general, foreign loan interests are deductible for CIT purposes to the extent that the credits are registered before the CBE and the interest rates do not exceed the referential rates established by the CBE.

If the above-mentioned criteria are not met at the moment of the registration of the loan before the CBE, the excess will not be deductible for CIT purposes.

Interest paid on loans obtained from non-resident financial institutions and other approved entities is deductible and not subject to withholding tax (WHT) unless the interest rate is higher than the referential interest rate established by the CBE. In such cases, the excess is subject to 25% WHT (*in all cases where a 25% WHT is applicable, please refer to the Withholding taxes section for more information*).

Interest paid for loans granted by a related party are subject to WHT at 25% over the gross amount.

## Bad debt

If the bad debt provision is less than 1% of the portfolio granted in the year, it will be deductible. Any excess will be non-deductible.

## Charitable contributions

Payments for charitable contributions are non-deductible for CIT purposes.



***Fines and penalties***

Interest and fines paid as penalties imposed on late payments of tax obligations and on CIT payments are not deductible for CIT calculation purposes.

***Taxes***

Taxes, rates, and levies related to the generation of taxable income, as well as contributions to the Social Security system, are deductible.

***Other significant items***

Advertising, pension plans, travel, and foreign related-party expenses are subject to deductibility limits.

***Net operating losses***

The carryforward of losses is allowed to a maximum of five years, with an amortisation limit of 25% per year over the taxable base. There is no loss carryback.

***Payments to foreign affiliates***

In most cases, payments made abroad are deductible, as long as income taxes have been withheld (at the rate of 25% or 35% over the taxable base) and do not exceed some maximum limits. Professional fees, royalties, commissions, or any payment made abroad is subject to WHT at a rate of 25% or 35% over the taxable base. Payments on imports are deductible and not subject to WHT.

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***Group taxation***

Group taxation is not permitted in Ecuador.

***Transfer pricing***

The transfer pricing regime in Ecuador is based on the Organisation for Economic Co-operation and Development (OECD) guidelines. Related-party transactions must be carried out at arm's length. Formal documentation requirements exist.

A regulation has established the procedures to follow in order to apply for an advance pricing agreement (APA) from the tax authorities in regards to transfer pricing methods for related-party transactions. Accordingly, the taxpayer may submit a formal application for a binding rule.

***Thin capitalisation***

A thin capitalisation rule on foreign loans granted by related parties at a 3:1 ratio over equity must be considered. For branches of a foreign corporation, only capital must be taken into account.

***Controlled foreign companies (CFCs)***

There are no CFC provisions in Ecuador.

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## ***Tax credits and incentives***

### ***Foreign tax credit***

There are no provisions in Ecuador for a foreign tax credit. In general terms, income taxed abroad is considered as exempt income, with some special exceptions.

### ***Handicapped employee and new employee hiring incentives***

An amount equivalent to 150% and 100% of remunerations of handicapped and new employees, respectively, can be considered as an additional deduction for income tax calculation purposes. In the case of handicapped employees, the deduction will apply over the excess of the minimum handicapped employees that the employer is obligated to hire. New employees must work with the company for at least six months.

### ***Environmental-friendly investments***

Additional deductions can be applicable to investments in environmental-friendly assets.

### ***CIT exemptions***

Investments made by new companies located outside the cities of Quito and Guayaquil, in specific sectors determined by law, will have a five-year CIT exemption.

### ***Tax credit on remittance tax paid***

5% remittance tax paid on imports of raw material and goods included in a list issued by the authorities and used for the production of other goods and services can be considered as a tax credit for CIT computation purposes.

Other exemptions to payments of capital and interests derived from foreign loans are applicable under certain conditions.

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## ***Withholding taxes***

Dividends paid to non-resident entities generally are not subject to WHT. However, dividends paid to non-resident entities in tax haven countries are subject to WHT.

Revenues from occasional services provided by non-resident individuals are levied at 25% WHT. Payments made abroad to non-resident individuals and companies are subject to a 25% WHT. Other payments made abroad, other than dividends or profits to neutral jurisdictions, are subject to a 25% WHT.

The Internal Revenue Service of Ecuador establishes WHT percentages on local payments, which are not greater than 10%. Current rates are 1%, 2%, 8%, and 10% withholding. Specifically:

- Dividend payments to resident companies are subject to a 0% WHT.
- Dividend payments to resident individuals are subject to a 0% to 35% WHT.
- Interest payments to resident companies are subject to a 0% to 2% WHT.
- Interest payments to resident individuals are subject to a 2% WHT.
- Royalty payments to resident companies are subject to an 8% WHT.
- Royalty payments to resident individuals are subject to an 8% WHT.

## Tax treaties

There are limitations to the application of tax treaties up to USD 225,400. The excess will be subjected to tax withholding, with further refund by the tax authorities. As a member of the Andean Community, Ecuador has adopted Decision 578, which provides relief from double taxation for individual or company members. Furthermore, Ecuador has similar tax treaties with the countries provided in the table below.

Recipient	WHT (%)		
	Dividends	Interest	Royalties
Resident corporations	0	0 to 2	8
Resident individuals	marginal rate	2	8
Non-resident corporations and individuals:			
Non-treaty	0/10	0/25	0/25/35 (1)
Treaty:			
Andean Community	0	25	25
Belarus	0	10	10
Belgium	0	10	10
Brazil	0	15	15/25 (2)
Canada	0	15	10/15 (3)
Chile	0	15	10/15 (3)
China	0	10	10
France	0	10/15 (5)	15
Germany	0	10/15 (5)	15
Italy	0	10	5
Korea, Republic of	0	12	5/12 (3)
Mexico	0	10/15 (6)	10
Romania	0	10	10
Singapore	0	10	10
Spain	0	5/10 (5)	5/10 (4)
Switzerland	0	10	10
Uruguay	0	15	10/15 (3)

### Notes

- 35% WHT may be applied where the payment's beneficiary is domiciled in a tax haven jurisdiction.
- The higher rate is applicable to payments for the use of or right to use trademarks.
- The lower rate is applicable to payments for the use of or right to use industrial, commercial, or scientific equipment.
- The lower rate is applicable to payments made for copyrights.
- The lower rate is applicable to interests derived from loans granted for the sale of industrial, commercial, or scientific equipment.
- The lower rate is applicable to interest payments made to banks.

## Tax administration

### Taxable period

The fiscal year is the calendar year.

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## ***Tax returns***

The tax system operates on the basis of self-assessment, with subsequent inspection by the tax authorities.

Tax filing deadlines begin on 10 April and continue up to 28 April. The tax return due dates are determined by the ninth digit of the company's Tax Identification Number (TIN).

## ***Payment of tax***

Local tax authorities have established that for CIT purposes, and its corresponding pre-payments, companies are obligated to follow IFRS accounting principles.

In general terms, most companies are required to keep accounting records and must make CIT prepayments in two equal instalments in July and September, based on the following calculation:

The sum of 0.4% of the taxable income, 0.4% of total assets, 0.2% of total equity, and 0.2% of deductible expenses from the last fiscal year. Some special considerations might apply depending on the economic activity of the company.

The final CIT obligation cannot be lower than the total amount of the tax prepayment calculated; there are minimum exceptions to this rule. The final CIT payment is due between 10 April and 28 April.

## ***Tax audit process***

In general terms, tax authorities look at the consistency of the information delivered by the taxpayers and information reported by third parties. Tax authorities can issue communications in order to require explanations on any detected inconsistency. Additionally, accounting inspections can be performed.

## ***Statute of limitations***

Fiscal authorities have three years from the date of filing to start proceedings for tax audits or assessment and collection of taxes.

The statute of limitations is extended from three to six years if the corresponding tax returns have not been filed or are incompletely filed. A tax audit can be reopened, verified, or amended within one year from the date of completion.

## ***Topics of focus for tax authorities***

Tax authorities usually focus on substance, formal compliance requirements, and consistency of information filed.

# Guyana

## PwC contact

Fanny Ursulet Headley  
PricewaterhouseCoopers  
11 - 13 Victoria Avenue, Port of Spain,  
Trinidad & Tobago  
Tel: +1 868 299 0700  
Email: fanny.ursulet-headley@tt.pwc.com



## Significant developments

On 27 November 2017, the Minister of Finance presented the National Budget 2018. The following measures were proposed and will come into effect after the relevant Enactment has been passed:

- A reduction in the Tributor's Tax from 20% to 10%.
- Replacement of the current 2% of the gross proceeds regime with a sliding scale percentage that is based on the price of gold.
- Removal of the value-added tax (VAT) on the provision of all educational services.
- Full deduction for employers and businesses of capital costs and expenses related to provisions of day care services to employees and the construction of handicap facilities.
- Tax amnesty.
- Filing of corporate tax returns without audited financial statements.
- Exemption from VAT on supply of logs and rough lumber to the sawmilling industry.
- Reduction in the rates of excise tax on the importation of overland transportation used for tourism purposes in Regions 1, 7, 8, and 9.
- Removal of VAT on vehicles that are less than four-years old, which are used to transport more than 21 persons.
- Removal of excise tax flat rate of 6,900 United States dollars (USD) and replacement with a VAT of 14% on vehicles four-years old and older that carry between 22 and 29 passengers.
- Exemption of excise tax on vehicles principally designed to accommodate liquefied petroleum gas (LPG) with an engine capacity not exceeding 2000 cc and not exceeding four years of age from the date of manufacture to the date of importation.
- Exemption of machinery and equipment from the payment of customs duties to set up 75 refilling stations for such vehicles, as determined by the Commissioner General.

## Taxes on corporate income

Resident companies are liable to tax on their worldwide income. Non-resident companies that carry on a trade or business in Guyana are subject to tax on the income that is derived from Guyana.

The current rates of corporate tax are as follows:

Type of company	Corporate tax rate (%)
Telephone companies	45
Commercial companies *	40
Other companies (non-commercial)	27.5

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Type of company	Corporate tax rate (%)
Both non-commercial and commercial	27.5/40

\* A commercial company means any company carrying out commercial activities solely. Where dual activities are carried out by a company, the portion of the activity relative to commercial activities shall be so deemed. 'Commercial activity' means an activity carried out by a company trading in goods not manufactured by it and includes an activity of a commission agency, a telecommunications company, a body corporate licensed to carry on banking business in Guyana, and an insurance company carrying on in Guyana insurance business, other than long-term insurance, as defined in section 2 of the Insurance Act.

## **Minimum Corporation Tax (MCT)**

Commercial companies (other than insurance companies) are subject to tax at the rate of 40% of chargeable profits or 2% MCT of turnover, whichever is higher. Any excess MCT over tax at the normal rate is carried forward for setoff against corporate tax payable in subsequent years, provided that in no year is the tax payable reduced to less than 2% of turnover.

## **Local income taxes**

There are no additional income taxes imposed on companies.

## **Corporate residence**

Corporate residence is determined by reference to the location of the central management and control of the business of a company. There are no specific provisions within the law, and, as such, common law principles established by the courts are generally applied in determining residence. The place of incorporation is regarded as merely one of the factors to be taken into account in determining where central management and control are located.

## **Permanent establishment (PE)**

There are no specific provisions in the legislation dealing with PE, so common law principles are applied.

## **Other taxes**

### **Value-added tax (VAT)**

VAT is charged at the rates of 14% or 0% on the taxable supply of goods and services within Guyana by a registered person.

Zero-rated supplies include goods for export and international travel. Exempt supplies include educational services, residential rent, and financial services.

### **Customs duties**

Customs duty is paid on all goods imported into Guyana. The rates of duty vary between 5% and 150%, depending on the classification of the item in question. Rates of duty are highest on 'luxury items', which include perfumes.

### **Excise taxes**

Excise tax is imposed on specific imported or home-produced products. These products include alcoholic beverages, tobacco products, petroleum products, and motor vehicles.

### Property taxes

Property tax is an annual tax charged on the net property of a person at the end of each year. 'Property' for the purpose of this tax refers to movable or immovable rights of any kind and effects of any kind. Net property is the amount by which the total value of the property exceeds the total value of all debt owned by the person at that time.

The tax is payable on 30 April at the following rates:

Net property of a company (GYD*)	Property tax rate (%)
On the first 1.5 million	0
On every dollar of the next 5 million	$\frac{1}{2}$
On every dollar of the remainder	$\frac{3}{4}$

\* Guyanese dollars (GYD)

### Stamp taxes

Stamp duty is levied at various rates on several instruments, including affidavits, statutory declarations, deeds of conveyance, mortgages, share transfers, awards of arbitrator, powers of attorney, agreements, bills of exchange, receipts, and policies of insurance.

### Capital gains taxes

Capital gains tax is imposed at the rate of 20% on the net chargeable gains derived from the disposal of capital assets. Gains derived from the disposal of an asset within 12 months of its acquisition are treated as ordinary income and subject to corporate tax at the applicable rates. Gains derived from the disposal of assets held for more than 25 years are exempt from tax.

### Payroll taxes

Employers are required to deduct and remit pay-as-you-earn (PAYE) to the tax authority by the 14th day of the month following that in which the employment income was paid. The rate of tax is 28% for persons earning less than GYD 180,000 per month and 40% for persons earning in excess of GYD 180,000 per month.

Employment income includes salaries, wages, overtime pay, leave pay, sick bonus, stipends, commissions, compensation for termination of service, and the estimated value of any accommodation provided.

### Social security contributions

As an employer, a company is also required to deduct and remit social security contributions on behalf of employees. Social security contributions are due on monthly earnings of employees up to GYD 240,000 and weekly earnings up to GYD 50,385. The rates of contribution are 8.4% for employers and 5.6% for employees.

### Branch income

A branch is subject to tax in Guyana on all income directly or indirectly accruing in or derived from its operations in Guyana. The tax rates applicable on branch profits are the same as on corporate profits. In addition, branch profits, after deduction of corporate tax and reinvestments, are subject to withholding tax (WHT) at the rate of

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20%. The position noted may be varied by the provisions of any applicable double tax treaties (DTTs).

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## Income determination

### Inventory valuation

Inventory is valued at the lower of cost and net realisable value. Cost is generally determined using the average cost method for accounting and tax purposes, but the first in first out (FIFO) method is also acceptable.

### Capital gains

Gains derived from the disposal of an asset within 12 months of its acquisition are treated as ordinary income and subject to corporate tax at the applicable rates. Gains derived from the disposal of assets held for more than 25 years are exempt from tax. Otherwise, gains are subject to capital gains tax. *See Capital gains taxes in the Other taxes section for more information.*

### Dividend income

Corporate tax is payable on dividends received by resident companies from non-resident companies. However, dividends paid by resident companies to other resident companies are exempt from tax.

### Interest income

Interest income is taxed at the applicable rate of corporate tax.

### Royalty income

Royalty income is taxed at the applicable rate of corporate tax.

### Foreign income

Income earned by a non-resident company in Guyana is subject to tax in the year the income was earned. There is no deferral regime in Guyana.

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## Deductions

All revenue expenses wholly and exclusively incurred in the production of income are generally deductible.

### Depreciation

Tax depreciation rates (wear and tear allowances) apply to the following classes of assets, as follows:

Class of assets	Depreciation rate (%)
Aircraft	33 $\frac{1}{3}$
Boats	10
Buildings (housing and industrial)	5
Furniture and fittings	10
Motor vehicles	20
Office equipment, including computers and computer software	50
Other	15



<b>Class of assets</b>	<b>Depreciation rate (%)</b>
Plant and machinery	20

Buildings that house machinery are depreciated using the straight-line method. Other assets may be depreciated using the declining-balance or straight-line methods.

### ***Goodwill***

Goodwill expense is generally not allowable in arriving at chargeable income.

### ***Start-up expenses***

No specific rules exist in respect of start-up expenses, but such expenses are generally not deductible.

### ***Interest expenses***

Interest expense incurred in the production of income is deductible. There is no restriction to the deductibility of this expense.

### ***Bad debt***

A bad debt is deductible where it has been incurred in the trade in which the company is engaged and has been respectively estimated to the satisfaction of the tax authority to have become bad in the year of income when the claim is made.

### ***Charitable contributions***

Charitable donations are not deductible unless they are made under a deed of covenant.

### ***Fines and penalties***

Fines and penalties are not generally deductible.

### ***Taxes***

Taxes are not generally deductible in arriving at taxable profit.

### ***Net operating losses***

Companies may carry forward losses for an unlimited number of years, but the losses may not reduce the taxable income in any year by more than 50%. Loss carrybacks are not permitted.

### ***Payments to foreign affiliates***

A corporation engaged in business in Guyana may claim a deduction for royalties and interest charges paid to foreign affiliates, provided the appropriate WHT is deducted and properly accounted for. Deductions for administrative, technical, professional, or other management services fees paid to a non-resident company or branch, referred to as 'head office expenses', are restricted to 1% of the annual turnover.

## ***Group taxation***

There is no provision under the legislation for group taxation in Guyana. All companies are taxed separately.

# Guyana

## ***Transfer pricing***

There is no transfer pricing legislation or rules in Guyana, although the issue has been discussed and is expected to be more formally considered in the future. However, the current Act contains a general anti-avoidance provision, and the tax authority monitors multinationals to ensure that their transactions are conducted at arm's length and in conformance with the applicable tax legislation.

## ***Thin capitalisation***

There are no thin capitalisation rules in Guyana.

## ***Controlled foreign companies (CFCs)***

CFCs are not covered under Guyana tax laws.

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## ***Tax credits and incentives***

Various tax incentives are available, depending on the nature of the industry that the companies are engaged in, including the following:

- Customs duty and VAT exemption on most plant, machinery, and equipment.
- Customs duty and VAT exemption on raw materials and packaging materials used in the production of goods by manufacturers and small businesses.
- Unlimited carryover of losses from previous years.
- Accelerated depreciation on plant and equipment.
- Full and unrestricted repatriation of capital, profits, and dividends.
- Tax deduction for scientific research expenses.
- Initial and annual allowances.
- Tax holidays.

Tax holidays are granted in respect of pioneering activities, that is, to companies whose trade or business are wholly of a developmental and risk-bearing nature and likely to be instrumental to the development of the resources of and beneficial to Guyana.

This does not include trade or business carried on by a gold or diamond mining company or a company carrying on petroleum operations.

Tax holidays are granted for a period of up to ten years.

## ***Foreign tax credit***

Foreign tax relief is available under DTTs with Canada, the United Kingdom, and Caribbean Common Market (CARICOM) countries.

Unilateral relief is also available for foreign taxes paid in non-treaty countries with tax systems and legislation similar to those in Guyana. For British Commonwealth countries, the relief is 50% of the relief that would be available if the foreign country were a treaty country. For other countries, the relief is 25% of such available relief. The available relief is the lower of the tax rate in Guyana and the tax rate in the other country.

## **Withholding taxes**

WHT is chargeable on gross payments to non-residents and must be remitted to the tax authority within 30 days of making the payment. In cases where the treaty rate is higher than the statutory rate, the lower statutory rate applies. The rates of WHT for various payments are shown in the table below.

Recipient	WHT (%)		
	Dividends	Interest	Royalties
Non-treaty	20	20	20
Treaty:			
Canada	15	15	10
United Kingdom	10	15	10
CARICOM	0	15	15

## **Tax administration**

### **Taxable period**

The tax year is the calendar year. Tax is assessed during a tax year on income earned during the year of assessment, which is generally the calendar year preceding the tax year. Companies with an accounting year other than a calendar year may, however, be allowed to account for taxes by adopting their accounting year as their income year.

### **Tax returns**

Tax returns must be filed by 30 April of the tax year.

### **Payment of tax**

Corporate tax is payable in advance quarterly instalments on the preceding year's tax liability. Advance tax payments are due on 15 March, 15 June, 15 September, and 15 December of the calendar year prior to the tax year. However, the Commissioner of Inland Revenue may require the company to calculate the payments based on estimated income for the current year.

Any balance of tax due must be paid by 30 April of the tax year.

### **Penalties**

Failure to file a tax return and pay the balance due by 30 April of the tax year incurs a further charge of 10% on the outstanding tax. A flat fee of GYD 50,000 will be applied to each loss/deficit return submitted after the prescribed time.

### **Tax audit process**

Companies are generally selected at random for audits, and the frequency is usually every three years. Companies are generally required to provide financial information and supporting documentation to the tax personnel.

The tax authority is the Guyana Revenue Authority.

# Guyana

## ***Statute of limitations***

A company carrying on business in Guyana is required to keep proper accounts and records and is required to retain these accounts for a period of at least eight years after the completion of the transactions, acts, or operations to which they relate.

The Commissioner is empowered to raise an assessment for tax or additional tax within seven years after the expiration of the year of assessment.

## ***Topics of focus for tax authorities***

The following issues are currently being focused on by the tax authorities:

- Tax evasion and corruption.
- Strengthening tax administration.
- Creation of tax policies and forecasting analysis capability.
- Business registrations and compliance.

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## ***Other issues***

### ***Intergovernmental agreements (IGAs)***

Guyana has entered into the following IGAs:

- United States (US) Foreign Account Tax Compliance Act (FATCA).
- Income Tax (Exchange of Information) (United States of American) Order.

### ***Foreign investment restrictions***

There are no restrictions on the repatriation of capital and investment income, and residents and non-residents have unlimited access to foreign exchange markets and to repatriate funds.

### ***Exchange controls***

There are no exchange control rules in place in Guyana.

### ***Choice of business entity***

Businesses operating in Guyana may establish a local company or register an external company. Additionally, companies may operate through a joint venture.

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# Paraguay

## PwC contact

César Lora Moretto Riso  
PricewaterhouseCoopers  
Av. Santa Teresa 1827 y Aviadores del Chaco,  
Paseo La Galería, Torre 2, Piso 24°,  
Asunción, Paraguay  
Tel: +595 21 418 8000  
Email: lora.cesar@py.pwc.com



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## Significant developments

The tax authority (SET) issued a Decree on 27 September 2017 (N° 7795/17) including the creation of the National Electronic Invoicing System (SIFEN). This means that in the short-term the issuance of electronic invoices will be mandatory for local companies.

The SET will issue electronic invoicing regulations during the first semester of 2018, outlining the conditions and requirements to start the pilot project to implement the SIFEN. Further developments will be reported as they occur.

In addition to this, the Chamber of Senators approved the Law proposal regarding the elimination of bearer shares (equities without owner identification). According to this law, the companies' shares must be nominated within two years from the date of the law be acted by the government.

The government has announced the start of the process to apply to the Organisation for Economic Co-operation and Development (OECD) as a full member. This means that there is a significant trend towards establishing transfer pricing rules in the short term in Paraguay since it would be one of the OECD application requirements. In this context, Paraguay signed an Agreement to avoid Double Taxation with Uruguay on 8 September 2017. However, it is not enacted yet because it is pending approval by Congress.

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## Taxes on corporate income

Income is taxed in Paraguay according to the resource principle (i.e. the territorial system of taxation).

There are three tax systems in Paraguay, depending on the type of taxpayer, as follows:

- Commercial income tax (CIT): For income from commercial, industrial, and service activities, the general income tax rate of 10% applies. *See Capital gains and Dividend income in the Income determination section for a description of how such income is taxed.* Note that dividend distributions require an additional 5% tax that must be paid on the amount of dividend approved for distribution at the shareholder meeting.
- Agriculture income tax (AIT): For income from agricultural and cattle activities, the tax rate is 10% (determined by annual income).
- Little taxpayer income tax (LTIT): For those taxpayers with annual income of less than 100 million Paraguayan guaraníes (PYG), a single tax at a rate of 10% applies.

# Paraguay

## **Local income taxes**

There are no other income taxes (i.e. municipal tax on income, etc.) or patrimony taxes in Paraguay.

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## **Corporate residence**

Corporate legal residence is determined as the place where direction or central management takes place, unless the corporation's charter states otherwise.

## **Permanent establishment (PE)**

The Paraguayan Tax Law establishes the definition of a PE.

The following activities may be considered as a PE in the country:

- Branches or agencies.
- A factory, industrial plant, or cattle ranch entity.
- Mine activities, or any other natural resources extraction activities.
- Civil construction or assemble activities that exceed 12 months.

If a person provides instructions related to the agreement of certain operations on behalf of a foreign entity, this operation may be considered as a PE in the country, except in cases where the mentioned instructions are related to the purchase of goods.

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## **Other taxes**

### **Value-added tax (VAT)**

VAT applies to all corporations and to individuals or associations of individuals rendering personal services.

The general VAT rate is 10%, but a special VAT rate of 5% applies for selling and leasing real estate, basic groceries, farming products, and pharmaceutical products.

### **Customs taxes**

As products are introduced into Paraguay directly by the local importer, the importer is responsible for payment of the related taxes (VAT on imports) before clearing the goods from Paraguayan customs, apart from customs tariffs. The other expenses involved in the import of products are the following:

- Port rates (between 0.65% and 1.50% of customs valuation).
- Customs valuation service (0.5% of customs valuation).
- Consular fee (approximately 50 United States dollars [USD] for each commercial document receiving a visa or legalisation from the Paraguayan consulate at the originating country).
- Indian contribution fee (7% on consular fee).
- IT system utilisation fee (between USD 15 and USD 50 according to importation value).

Other expenses should be added to the above, such as photocopying, handling fees, customs agent fees, etc.

### Excise taxes

The excise tax, called the selective tax on consumption, is assessed on local goods and imported products listed, either specifically or generically, in the legislation. The importation of goods listed and the first sale of goods produced in Paraguay are taxed. The selective tax on consumption is collected independently of customs duty.

Some goods subject to this tax include whiskey and other alcoholic beverages, beer, tobacco products, petroleum, etc.

### Real estate tax

Real estate tax is levied annually at 1% of the fiscal value of the property, which is generally less than actual value (or market value). A tax rate of 0.5% applies if the area of rural property is smaller than five hectares and is used for agricultural or cattle ranching. In certain areas, an additional tax is levied on the fiscal value of vacant and semi-vacant land when the area of the built-up portion falls within certain determined percentage limits. Large tracts of land in rural areas are subject to an additional tax determined on a percentage basis and to a proportional tax of 0.5% to 1% on the fiscal value of tracts with areas ranging from 10,000 to 60,000 or more hectares.

The 1992 Paraguayan Constitution established that municipalities and departments are entitled to the tax revenues directly related to real estate. Collection of these taxes is the responsibility of municipal governments.

### Stamp taxes

There are no stamp taxes in Paraguay.

### Payroll taxes

There are no payroll taxes other than social security contributions (*see below*).

However, although it is determined by Individual Income Tax Regulation (Decree 6560/16) Law that the employer must withhold the personal income tax (PIT) of employees, the application of this provision is not in force yet

### Social security contributions

In Paraguay, there is a compulsory social security system through which it is required that the employers register their employees.

The calculation basis constitutes every wage item, in cash or goods, except the annual mandatory bonus and family allowance.

The monthly rates are as follows:

Contribution	Commercial entity (%)	Financial entity (%)
Employee	9.0	11
Employer	16.5	17
Total	25.5	28

The employee's contribution is withheld from salary by the employer, which is a designated withholding agent. The employer's contributions are computed on total payroll and are paid together with the employee's withholding to the Social Security Institute.

# Paraguay

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## **Branch income**

Branches are taxed at the same rate as domestic corporations. Profits transferred or credited to the head office are subject to a 15% withholding tax (WHT) when remitted to the head office abroad.

Additionally, the payment of dividends (by the head office's instructions) is subject to a tax rate of 5%, which has to be paid at the time of the remittance and charged to the local entity.

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## **Income determination**

### **Inventory valuation**

Taxpayers may adopt any method of inventory valuation, provided it is technically acceptable according to tax administration criteria (e.g. first in first out [FIFO], average cost). The valuation must be applied consistently and may be changed only with the prior approval of the Treasury Ministry.

Damaged, deteriorated, and obsolete inventories may be written down to fixed values by the taxpayer. The tax administration can reject valuations that are not realistic.

### **Capital gains**

Gains on all assets, tangible and intangible, are taxable as part of profits and subject to income tax at a rate of 10%. Foreign currency exchange gains are also taxable at the same tax rate.

### **Dividend income**

Dividends are taxable income when the recipient (or shareholder) is a non-resident, in which case a 15% WHT applies. An additional 5% tax is charged to local entities when the income or dividend is distributed to a local (resident) or foreign (non-resident) shareholder.

### **Stock dividends**

Stock dividends are not taxable income, except when dividends represent more than 30% of the taxable income of an investor.

The mentioned exemption is not applicable in relation to the 15% WHT (in case of foreign shareholders) and 5% additional tax for dividend distribution (charged to the local entity that made the distribution).

### **Interest income**

Interest income of a Paraguayan resident from capital abroad is subject to income tax. This case is the only exception to the resource principle rules enacted under Paraguayan Tax Law.

### **Royalty income**

It should be highlighted that the criterion to determine the source of royalties' income is the place where the rights are used, based on the terms agreed between the parties. Thus, in case of royalties' income from a registered trademark where the use of it is in Paraguay, the royalties' income would be taxable.



However, royalties' income of a local taxpayer paid by a foreign entity would not be subject to tax in Paraguay as long as the goods commercialised are being sold abroad, in which case this income is considered as foreign-source income.

### **Foreign income**

Foreign-source income is not taxable. However, interest, commissions, and capital gains are considered Paraguayan-source income and subject to CIT when the investor is resident in Paraguay.

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## **Deductions**

### **Depreciation and depletion**

The maximum allowable depreciation rates range from 2.5% for urban buildings to 25% for computer equipment. Depreciation is calculated using the straight-line method based on the useful life of assets as determined by the Treasurer. The Treasurer may also authorise the use of other depreciation or depletion methods that are deemed to be technically justified and generally accepted.

Fixed assets must be revalued annually based on the increase of the price index. Capital gains derived from the revaluation of fixed assets are not taxable income.

### **Goodwill**

Amortisation of goodwill is not deductible.

### **Start-up expenses**

Amortisation of start-up expenses may occur over three to five years, depending on the taxpayer's decision.

### **Interest expenses**

The interest expenses on loans taken for Paraguayan residents or Paraguayan taxpayers may be considered as deductible expenses.

Additionally, it is important to mention that certain investment projects may be subject to a special exemption of the taxes on the interest, commission, and other expenses for loans taken for banking entities abroad (*see Investment incentives in the Tax credits and incentives section*).

### **Extraordinary losses/bad debts**

The deduction of extraordinary losses (theft and damage) and bad debts require the meeting of certain conditions (e.g. communication to the tax authority, evaluation of the actual loss in monetary terms, audit review). Regarding bad debts, they can be deductible three years from the date from which they arise.

### **Charitable contributions**

The deduction of a donation is subject to formal registration of the beneficiary entity as a public benefactor before the Treasury Ministry.

# Paraguay

## **Executive remuneration**

The deduction of executive remuneration is limited to a percentage defined according to the enterprise's profits. However, in the event that the executive employees are subject to PIT, the deduction of their salaries is not limited for CIT purpose.

## **Fines and penalties**

Fines and penalties are considered as non-deductible expenses for income tax purposes.

## **Taxes**

In general, all taxes mentioned in the *Other taxes section* are deductible. *Income tax and any fiscal surcharges or fines are not deductible.*

## **Other significant items**

General provisions for expenses or other potential losses are not deductible.

Other specific non-deductible items include:

- Interest on capital, loans, or any other investment by an owner, partner, or shareholder in a business.
- Personal expenses of an owner, partner, or shareholder, except when they are subject to PIT.
- Money drawn on account of future earnings.
- Direct expenses incurred in earning non-taxable income.
- Earnings from any fiscal period that are retained in the business as capital increases or reserve accounts.

## **Net operating losses**

Net operating losses are not permitted to be carried forward and applied against future years.

Losses may not be carried back in Paraguay. However, a taxpayer may modify one's tax returns at a later date.

## **Payments to foreign affiliates**

There are no limits on the deductibility of payments to foreign affiliates, including management fees, royalties, research and development (R&D), and general and administrative expenses, provided that the taxpayer maintains corresponding legal documentation that includes the country of origin and applies appropriate WHT. *See the Withholding taxes section for the applicable WHT rates.*

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## **Group taxation**

Group taxation is not permitted in Paraguay.

## **Transfer pricing**

There are no transfer pricing rules in current Paraguayan legislation requiring compliance with certain conditions or minimum prices for the purpose of fiscal deductions, except for the following regulation applicable to importations and exportations:

“In the case of importers, it will be assumed that, in the absence of proof to the contrary, the cost of goods introduced to the country may not exceed the wholesalers price ruling in their place of origin plus freight and insurance costs and expenses to Paraguayan territory, and therefore, the excess of such value will constitute taxable income for the importers.

In the case of exporters, where a price has been fixed or the price declared is lower than the wholesalers price in Paraguay plus the freight and insurance costs and expenses to point of destination, this latter aggregate value shall be taken as the basis for determining the exporter's taxable income.

To this effect, the nature of the goods and the transaction mode adopted will be taken into account.” (Section 16 of Law No. 2421/04).

### ***Thin capitalisation***

There are no thin capitalisation rules in Paraguay.

### ***Controlled foreign companies (CFCs)***

There are no provisions in Paraguay for CFCs.

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## ***Tax credits and incentives***

### ***Foreign tax credit***

Foreign tax credits are not applied to local tax payments in Paraguay.

### ***Investment incentives***

The framework of economic investment was established in the Law No. 60/90, which offers some special tax exemption benefits to foreign and local investors.

The benefits of the Law No. 60/90 may be available for the following investments:

- Cash, financing, provision of credit, or other financial instruments, under the conditions established by the administration of the President of Paraguay and the corresponding ministries.
- Capital goods, raw materials, and inputs for local industry for the fabrication of capital goods.
- Transfers of licensing rights with respect to trademarks, industrial processes and models, and other technologies.
- Technically specialised services.
- Capital leases.
- Other forms that the administration of the President of Paraguay and the corresponding ministries determined by law.

The investment incentives included in Law No. 60/90 that remain enacted after tax law modification (Law No. 2421/04) are the exemptions from certain fiscal, municipal, and customs duties taxes.

When the amount of financing for an investment is equal to or greater than USD 5 million, it will be exempt from WHTs on interest, commissions, and capital that have to be paid to financial or banking entities abroad. This benefit is for five years.

## Paraguay

If the investment is at least USD 5 million and the project is approved by the tax authorities, the dividends and profits derived from the project are tax exempt. The mentioned exemption is granted for five years and may be extended to ten years.

### **Maquila tax exemptions (Law No. 1064/97)**

Under the 'Maquila' Regime, investors may import goods or products to be assembled, repaired, improved, worked on, or processed with the purpose of exporting such goods or products, prior to the addition of value or the 'Paraguayan component'. This regime is subject to a special tax treatment: a 1% tax rate applies to the value added within Paraguayan territory.

Innovative regulations allow for virtual commerce between *maquila* factories, which improve the utilisation of goods imported under the temporary regime (called 'virtual maquila').

This regime also establishes the service *maquila*, which enjoys the same tax benefits, and its main purpose is to provide support to entities abroad (currently, there are call centres that benefit from this regime).

Paraguayan legislation does not impose restrictions in terms of the types of products and services that the *maquila* industry may comprise. The *maquila* activity's national policy is regulated and supervised by the National Council of the *Maquila* Industry for Export (CNIME). Both individuals and legal entities domiciled in Paraguay, whether national or foreign, may take advantage of these regulatory benefits.

This industry has been receiving broad government support, given that it is considered an element of social interest in the strive to combat unemployment. There are currently over 130 *maquila* companies in the country.

### **Free trade zones (called 'zona franca' Law No. 523/95)**

Free trade zones, where all types of commercial, industrial, and service activities may be carried out, constitute a relevant incentive for business.

The legal framework governing such zones offer several advantages in terms of tax exemptions, as well as a special tax regime with an income tax rate of 0.5%.

The main purpose of free trade zones is the development of activities in connection with foreign markets; however, operations within the country are also allowed.

Law No. 523/95, 'which authorises and establishes the Free Trade Zone Regime', and its regulatory Decree No. 15,554/96, 'which regulates the Free Trade Zone Law', among others, establish the guidelines related to activities within free trade zones.

The aforementioned regulation establishes two main entities, the 'concessionaire', responsible for providing the necessary infrastructure for freight operational management, and the user, responsible for carrying out the commercial, industrial, or service activity. The regulation therefore establishes the administrative measures that enable operations in free trade zones and its supervision, control, and development.

There are currently two free trade zones located in the Alto Paraná region (northeastern region, in close proximity to the border with Brazil and Argentina), in which national and international companies actively operate.

## Other incentives

- Exports are exempt from certain customs duties and from VAT.
- A Capital Market Law (No. 1,284/98) established incentives for issuance of bonds abroad.
- Under the Export Incentives Regime, exports are VAT exempt. The legislation recognises a tax credit for pre-production stages. A Temporary or Provisional Admission Regime is also in place, which exempts imports from import tariffs and VAT.

## Withholding taxes

In accordance with the regulations in force, foreign entities may be subject to income tax withholdings in respect of services rendered to them deemed to be of Paraguayan source, including payments made by the branch or affiliate of a foreign home office.

Business income tax regulations consider that branches, agencies, or PEs of foreign entities are taxpayers, independently from the foreign home office status.

The withholdings are to be made from the payments made by local entities for such services.

## WHT on payments made by a domestic corporation

		WHT (%)				
Recipient	Dividends (1)		Interest (2)	Royalties (2)	Fees (2)	
	Portfolio	Substantial holdings				
Non-resident corporations	15	15	6/15/30 (3)	15/30 (4)	15/30 (5, 6)	
Non-resident individuals	10	10	10 (3)	10 (6)	10 (6)	
Tax treaty with Chile:						
Non-resident corporations	10	10	10/15 (7)			
Non-resident individuals	10	10				

### Notes

1. Local entities are required to pay an additional 5% WHT when the income or dividend is distributed.
2. In the case of financing operations (loans), royalties, and other services provided for non-resident corporations or individuals, the local taxpayer must withhold the VAT at a rate of 10%.
3. The WHT on interest is based on 100% of the amount paid when remitted to the head office abroad. The tax rate is 30%. In other cases, when the payment is not directly made to the head office or shareholders that have control of the local subsidiary, the WHT is based on 50% of the amount paid. The 'effective' tax rate is 15%. For financing loans, the WHT effective tax rate is 6%. Regarding individuals, considering that they will obtain income from Paraguayan sources, whether they will be subject to PIT or CIT depends on the kind of operations.
4. The WHT on royalties is based on 100% of the amount paid when remitted to the head office abroad. The tax rate is 30%. In other cases, when the payment is not directly made to the head office or shareholders that have control of the local subsidiary, the WHT is based on 50% of the amount paid. The 'effective' tax rate is 15%.
5. The WHT on fees is based on 100% of the amount paid when remitted to the head office abroad. The tax rate is 30%. In other cases, it is based on 50% of the amount paid. The 'effective' tax rate is 15%.
6. Fees for technical assistance services rendered by non-resident corporations are subject to WHT at a rate of 15% on the amount paid. In case the mentioned services are rendered by the head offices or direct shareholder, the tax rate is increased to 30%.

# Paraguay

Fees for personal services rendered by non-resident individuals are subject to PIT. The withholding of PIT has to be made on 50% of the amount paid. The tax rate is 20% (effective tax rate of 10%).

7. In case of a loan to Chile, the WHT on the interest is 15% if the loan is provided by a bank or insurance company. On the other hand, if the loan is provided by an associated company or head office, the tax rate is 10%. Regarding VAT WHT, see Note 2.

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## **Tax administration**

### **Taxable period**

For the CIT and LTIT, the taxable period is the calendar year. Regarding the AIT, the taxable period is as follows:

- In the event a taxpayer is subject to AIT exclusively, the tax period is from 1 July to 30 June of the following year.
- If a taxpayer is subject to AIT and CIT according to the activities performed, the taxable period is the calendar year.

### **Tax returns**

Income tax returns are submitted on a fiscal-year basis as a self-assessment and must be filed by the fourth month following the end of the fiscal year.

### **Payment of tax**

Income tax is due on varying days in the fourth month following the end of the fiscal year, depending on the taxpayer ID number, according to a calendar established by the Treasury Ministry. Four equal advance payments are made throughout the year, calculated based on 100% of the tax due in the previous year. Payments must be made in May, July, September, and November of each year after the due date for filing the income tax return, according to the calendar established by the tax authorities.

### **Penalties**

Tax legislation provides the following penalties:

- Late payment of income tax is penalised by a fine varying from 4% to a maximum of 14%, plus interest at 0.116% per day.
- Tax fraud is punished by a charge of from one to three times the value of the tax in default.
- Tax law infringements are penalised through fines varying from the equivalent of USD 10 to USD 250.
- Omission of payment incurs a fine of 50% of the tax pending.

### **Tax audit process**

The auditing process is performed by the tax authorities when there is a certainty or suspicion of tax evasion. Additionally, the taxpayer may be audited according to a draw process that is made by the tax authority.

The tax law also establishes an obligatory tax audit, which has to be made by external auditors, when the taxpayer obtains PYG 6 billion of gross income during the year. An annual audit report on tax compliance rules is presented to and reviewed by the tax authorities. When a tax issue is identified, the tax authority may apply a penalty to the taxpayer.

## ***Statute of limitations***

The tax authority may audit the last five fiscal years.

## ***Topics of focus for tax authorities***

The tax authority is focusing on purchases invoices. It is important to note, that in order to consider an expense as deductible for tax purposes, it must comply with the formal requirements established by Law.

In addition to this, these vouchers must also comply with the mentioned formal requirements in order to consider them as a part of the VAT credit.

While there are not transfer pricing rules in force in Paraguay, the government has announced the start of the process to apply to the OECD as a full member. This means that there is a significant trend towards establishing transfer pricing rules in the short term in Paraguay since it is one of the OECD application requirements.

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# Peru

## **PwC contact**

Arturo Tuesta  
PricewaterhouseCoopers Sociedad Civil de Responsabilidad Limitada  
Av. Santo Toribio No. 143  
Piso 8  
Lima 27  
Peru  
Tel: +51 1 211 6500  
Email: [arturo.tuesta@pe.pwc.com](mailto:arturo.tuesta@pe.pwc.com)



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## **Significant developments**

On 25 October 2017, Peru signed the Multilateral Convention on Mutual Administrative Assistance.

In March 2018, the official launch of the 'program of implementation of the recommendations of the Public governance study' was carried out. The aforementioned program aims to make progress in efficiency and effectiveness in public management, decentralisation, multilevel governance, open government, citizen participation, and accountability.

On 3 May 2018, the executive branch requested the Congress to delegate legislative faculties to legislate on tax and financial matters.

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## **Taxes on corporate income**

Companies incorporated in Peru are considered resident in Peru for tax purposes and thus subject to a corporate income tax (CIT) rate of 29.5% on worldwide net income.

For purpose of determining taxable income, such entities are allowed to deduct expenses to the extent that they are necessary to generate or maintain the source of taxable income. Requirements, limitations, and/or caps may apply to the deduction of certain expenses (thin capitalisation rules), bad debt provisions, salaries, travel expenses, gifts, donations, penalties, etc.

The Peruvian Income Tax Law (PITL) allows crediting for various payments against income tax, including income taxes paid in advance, amounts paid for certain other taxes, and income taxes paid in foreign tax jurisdictions, provided that the foreign country's tax rate is not higher than the Peruvian CIT rate and the taxable income qualifies as foreign-source income for Peruvian income tax purposes.

Dividends and any other type of profit distributions are taxed at a rate of 5% upon distribution, when the distribution is made to a non-resident entity (either individuals or legal entities) and to resident individuals, or when the distribution is agreed to by the shareholders, whichever happens first (resident legal entities are not subject to withholding tax [WHT] over dividends received from other Peruvian corporations). The entity distributing dividends or profits is liable for WHT at the aforementioned rates.



# Peru

Nevertheless, enterprises are subject to an additional tax rate of 5% on every amount or payment in kind that, as result of a tax audit, is construed as taxable income to the extent that it is an indirect distribution of such income that escapes further control from the tax administration, including income that has not been declared.

On the other hand, companies incorporated abroad are considered as non-domiciled in Peru for tax purposes and thus subject, in most cases, to an income tax rate of 30% over the gross Peruvian-source income. As a general rule, foreign companies are not allowed to deduct expenses and are taxed on gross income.

## **Local income taxes**

There are no local or provincial taxes on income in Peru.

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## **Corporate residence**

For income tax purposes, the following entities, among others, are considered as resident entities in Peru:

- Corporations duly incorporated in Peru.
- Branches, agencies, and permanent establishments (PEs) in Peru of non-resident individuals or entities.
- Partnerships and limited liability companies.

## **Permanent establishment (PE)**

According to the PITL, a foreign company is considered to have a PE (i) if it has a fixed place of business through which it carries out business activities in whole or in part; (ii) if an individual has a power of attorney of a foreign entity and uses it on a regular basis to sign agreements on behalf of the foreign entity; and (iii) if the person with powers of attorney of the foreign entity keeps in Peru inventory and/or goods to be negotiated in Peru on behalf of the foreign entity.

The consequence of a PE presence in Peru is that the PE will be obligated to comply with all the formal and substantial tax obligations of any domiciled taxpayer, meaning that it will have to be registered before the tax administration (get a tax identification [RUC] number), issue/receive invoices, keep full accounting books, file monthly and yearly tax returns, withhold taxes, allocate a reasonable income for its Peruvian source activities, etc. If a PE presence is determined, then the tax contingency will have to be quantified by calculating the taxes, fines, and interest accrued as from the moment in which the PE presence can be deemed, except for the period barred by statute of limitations.

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## **Other taxes**

### **Value-added tax (VAT)**

The general rate of VAT is 18% (16% of VAT itself plus 2% of municipal promotion tax). VAT is applicable to the following operations:

- Sale of goods within the country.
- Rendering or first use of services within the country.
- Construction contracts.

- The first sale of real estate made by constructors.
- Import of goods.

For all transactions, the vendor is subject to VAT, except in the case of importation of goods or services rendered abroad, but economically used within Peru, for which VAT is self-assessed by the importers and users, respectively.

The VAT law follows a debit/credit system, and input VAT may be offset by output VAT. Should excess input VAT be obtained in a particular month, it shall offset output VAT obtained during the following months, until it is exhausted.

The export of movable goods (including the sale of goods in the international zone of ports and airports) is not subject to VAT, nor is the exportation of the services that meet concurrently with the four requirements that the VAT law states. Thus, VAT paid upon the acquisition of goods, rendering of services, construction agreements, and the importation of goods related to exported goods or services creates a positive VAT export balance.

The positive balance may offset output VAT, income tax, or any other outstanding tax debt in favour of the central government. If the positive balance is not completely offset, as the amount of the aforementioned tax obligations is insufficient, the taxpayer may apply for a refund.

### **Tax Obligatory Payment System (SPOT)**

The SPOT is applicable to the sale of certain goods and the rendering of services subject to Peruvian VAT. The main purpose of the SPOT is to generate funds to enable the payment of tax obligations by the VAT payer.

According to the SPOT, all the sales of goods listed in the appendices of the Resolution that are levied with VAT will be subject to withholding, applying the rates established for each kind of good (1.5%, 4%, 10%, or 15%).

Since 1 April 2018, the services subject to VAT are subject to the SPOT with a withholding rate of 4%, 10%, or 12%.

The purchaser or service recipient must withhold a percentage of the transaction price and deposit such amount within the seller's or service provider's State Bank (*Banco de la Nación*) account. It is important to note that the right of the purchaser or user of the service to offset input VAT related to such goods and services may be exercised only after the deposit with the State Bank has been executed.

The amount deposited is applied towards the payment of the seller's or service provider's Peruvian tax obligations (not just VAT). If after three consecutive months such amount is not used, the seller or service provider may request a refund or use the amount to pay withholdings applicable to purchasers or services recipients.

### **Customs duties**

Customs duties applied to imports are linked to their classification under the Customs Tariff, given by NANDINA subheading that is determined by the information provided by the importer (through the invoice and other complementary information), as well as the physical recognition by the Customs Officer at the time of customs clearance.

As such, the taxes required are:

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- *Ad valorem* customs duty (rates of 0%, 6%, and 11%, as the case may be).
- VAT (16%).
- Municipal promotion tax (2%).

Other taxes that may apply, depending on the equipment, include the following:

- Selective consumption tax.
- Specific duties.
- Antidumping and compensatory.
- VAT perception.

There are no restrictions on imports and exports, although there is a limited list of products that cannot be imported or exported. Exports are not subject to any taxes. The importation of most capital goods is subject to the 0% rate.

The government is empowered to grant duty exemptions under certain circumstances and also to temporarily suspend the assessment of duties on certain products. Customs duties are imposed on an *ad valorem* basis (the carriage, insurance, and freight [CIF] value of the imported goods). Goods are classified for customs duty purposes under the Harmonized System.

Pursuant to the drawback regime, an exporter may apply for a refund of customs duties paid upon: (i) the importation of goods contained in exported goods or (ii) the importation of goods that are consumed during the production of exported goods.

The refund rate is currently 4% of the freight on board (FOB) value of the exported good, provided such amount does not exceed 50% of the good's production cost. The refund will proceed for each type of good exported and for the first 20 million United States dollars (USD) worth of goods exported per year (the excess will not be subject to refund).

For such purposes, the beneficiaries of the drawback regime are the manufacturer/exporter companies whose cost of production has been increased by the customs duties paid upon the importation of: (i) raw material, (ii) intermediate products, or (iii) pieces incorporated or consumed in the production of exported goods. Note that fuel or any other energy source used to generate heat or energy for purposes of obtaining the exported good is not considered as raw material.

### **Excise tax**

The sale of specific goods, including fuel, cigarettes, beer, liquor, and vehicles, is subject to excise tax.

Excise tax rates, and the manner on which the tax is applied, depend on the type of goods or services.

Since May 2018, the tax rate for the aforementioned products has increased, based on the argument that their production has the highest negative incidence on health and on the environment. For example, liquors with 20% or more alcohol have a new tax rate of 40%. In addition, sugary drinks, such as soda, with 6 grams or more per 100 millilitres are subject to a rate of 25%.

### **Real estate property tax**

The real estate property tax is levied on the value of urban and rural real estate property. Individuals and legal entities owning the referred real estate properties are considered taxpayers for such purposes. The taxable base is calculated taking into account the value of all the properties owned in a specific local district, as reflected in the internal records of the corresponding local authorities.

The tax is calculated and paid on an annual basis applying the following progressive cumulative scale:

<b>Real estate's value</b>	<b>Real estate property tax rate (%)</b>
Up to 15 tax units	0.2
For the excess of 15 tax units and up to 60 tax units	0.6
Over 60 tax units	1.0

### **Real estate transfer tax**

The real estate transfer tax is levied on all transfers of urban and rural real estate property. The taxpayer is the purchaser of the property. The taxable base is equivalent to the consideration agreed upon by the parties to the transaction, provided it is higher than the property's value (in the relevant year for purposes of the real estate property tax) as reflected in the internal records of the corresponding local authorities.

The tax rate is 3% and must be borne exclusively by the buyer, regardless of whatever the parties agree. The first ten tax units (approximately USD 12,461) of the taxable base are exempt from this tax.

### **Stamp taxes**

There are no stamp taxes in Peru.

### **Payroll taxes**

Payroll taxes in Peru are only those characterised as social security contributions (*see below*).

### **Social security contributions**

#### **Health contributions**

Employers shall make monthly health contribution payments equal to 9% of the compensation paid to employees.

Employees shall be affiliated either to the National Health System (EsSalud) or the Private Health System (EPS), according to what option they choose. In the latter, a portion (25%) of the amount paid to the EPS may be used by the employer as a credit to be offset against EsSalud contributions.

#### **Insurance for high-risk work**

Employees who perform high-risk activities established in Law 26790, such as mineral extraction and iron and steel smelting, among others, must have a complementary insurance for high-risk work, which provides coverage such as health care, temporary or permanent disability pensions, and burial expenses relating to work accidents or professional diseases. This insurance is compulsory and must be paid for by the employer.

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## **Pension funds contributions**

Employers shall apply monthly withholdings for pension funds contributions equal to 13% of the remuneration received by the employee in cases where the employee is affiliated with the National Pension System (ONP) or approximately 12.4% in cases where the employee is affiliated with the Private Pension System (AFP). In this last case, 10% corresponds to the personal pension account and almost 2.4% to insurance and commissions for managing the fund.

Regarding the termination of employment of foreign individuals who leave the country, their pension funds in an AFP may be wired to an account of the employee in a foreign bank (the aforementioned 10%).

## **Financial transactions tax (FTT)**

FTT is applied at a rate of 0.005% on all debits and/or credits on bank accounts held by the taxpayers.

The following operations, among others, are exempted from the FTT:

- Operations made between accounts of the same holder.
- Credits to bank accounts for payment of salaries.
- Credits and debits to bank accounts of diplomatic representations and international organisations recognised in Peru.

Payments of FTT are deductible as expenses for income tax purposes.

## **Temporary net assets tax (TNAT)**

Companies subject to income tax are obligated to pay TNAT, except for companies that are in preoperative stages or that commenced business on 1 January of the fiscal year in which TNAT must be paid.

The taxable basis is the value of the assets set forth in the taxpayer's balance sheet as of 31 December of the year prior to that of the tax payment, adjusted for deductions and amortisations accepted by the Peruvian law.

The amount of TNAT is determined by applying the following rates on the taxable basis:

- Up to 1 million Peruvian soles (PEN): 0%.
- Excess of PEN 1 million: 0.4%.

The amount paid for TNAT may be credited against the taxpayer's income tax. If not totally used, the remaining TNAT may be refunded by the tax administration.

## **Special taxation on mining industry**

The new mining royalty (NMR) regime, special mining tax (SMT), and special mining contribution (SMC) are economic considerations paid to the Peruvian government for the exploitation of mineral resources. The NMR applies to metallic and non-metallic mineral resources, while the SMT and SMC only apply to metallic mineral resources.

The SMC is only applicable to mining companies with projects with tax stability agreements in force. Such companies have voluntarily entered into agreements with

the Peruvian government with the purpose of paying this contribution. This special contribution is determined for each stability agreement entered into.

In all three cases, the tax basis is the operating profit of the company, and the special rates and considerations are explained below:

	<b>New mining royalty (NMR)</b>	<b>Special mining tax (SMT)</b>	<b>Special mining contribution (SMC)</b>
<b>Concept</b>	No tax stability	No tax stability	With tax stability
<b>Regime</b>	Previous mining royalty modified	New	New
<b>Cumulative progressive scale based on operating margin</b>	1% to 12%	2% to 8.4%	4% to 13.2%
<b>Minimum payment</b>	1% of the sales revenue	N/A	N/A

The amounts paid will be deductible for income tax purposes as long as they are actually paid during the fiscal year.

### **Energy and Mining Investment Regulatory Agency (OSINERGMIN) contribution**

The basis for calculating the OSINERGMIN contribution is the monthly invoicing of activities directly related to OSINERGMIN's regulatory scope (mining activities), after deducting the VAT. The applicable rate is 0.14% in 2018.

### **Agency for Environmental Assessment and Enforcement (OEFA) contribution**

The basis for calculating the OEFA contribution is the monthly invoicing of activities directly related to OEFA's regulatory scope (mining activities), after deducting the VAT. The applicable rate is 0.11% in 2018.

## **Branch income**

Branches, agencies, and PEs of non-resident companies or entities incorporated in Peru are subject to income tax at a rate of 29.5% on their Peruvian-source income.

For tax purposes, branches or subsidiaries are subject to the same obligations applicable to all companies in Peru, including income tax, VAT, FTT, filing of the corresponding income tax and VAT returns, issuance of invoices, etc.

Nevertheless, the following important differences between subsidiaries and branches resident in Peru must be taken into account:

- Branches are subject to income tax only for their Peruvian-source income, while subsidiaries are subject to income tax on their global-source income (both Peruvian and foreign income).
- For branches, the WHT on profit for distribution is applied on the date the annual income tax return is submitted. Subsidiaries are subject to the WHT on the date in which the corresponding shareholders agreement took place or the date when the beneficiary receives the dividends, whichever occurs first. For non-domiciled shareholders, the withholding will be applied whenever the dividend is actually

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paid, without taking into account the moment in which the shareholder agreement is executed.

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### ***Income determination***

#### ***Inventory valuation***

The first in first out (FIFO), average, specific-identification, retail, and normal or base-stock methods are allowed for inventory valuation. The last in first out (LIFO) method is not permitted.

#### ***Capital gains***

Capital gains are taxed as ordinary income. However, capital gains derived from the sale of stock issued by a Peruvian company through the Lima Stock Exchange are taxed at a 5% rate, provided that the seller is a non-domiciled party.

An exemption has been granted as of January 2016 until December 2019 for the sale of shares performed through the Lima Stock Exchange as long as these requirements are met:

- No more than 10% interest is transferred.
- The stock has market presence.

#### ***Dividend income***

Cash dividends distributed to resident corporations are not subject to any taxes.

#### ***Interest income***

The PITL establishes that the WHT rate on interest arising from loans for non-resident corporations is 4.99%, provided the following requirements are met:

- In case of cash loans, the entrance into Peru of the foreign currency must be duly accredited.
- The credit must not accrue an effective interest that surpasses the preferential rate prevailing in the place where it comes from, plus three points.
- If the credit proceeds from the United States or from Europe, the company shall apply the preferential rate to the London Interbank Offered Rate (LIBOR) plus four points.
- The loan must be destined to finance business or taxable activities.
- The parties involved must not qualify as related parties for tax purposes.

#### ***Royalty income***

Royalties paid to non-domiciled parties are subject to a 30% withholding rate, to the extent that the goods or rights generating royalties are economically used in the country or the royalties are paid by a domiciled taxpayer.

#### ***Foreign income***

A Peruvian corporation is taxed on Peruvian and foreign-source income. For active income of foreign source, the company must pay taxes in the fiscal year in which the earned income is accrued. For passive income, the company must pay taxes in the fiscal year in which the income is perceived.

## **Deductions**

### **Acceptable payment methods**

Obligations that are fulfilled through cash payments exceeding PEN 3,500 must be made via bank account deposits, wire transfers, payment orders, credit cards, non-negotiable cheques, or other means of payment provided by entities of the Peruvian financial system. Failure to use one of these payment methods when such an obligation exists will result in the disallowance of deductions for any expenses or costs for income tax purposes and the disallowance of a credit for the corresponding VAT.

### **Expenses derived from transactions entered into with entities resident in tax havens**

Certain expenses are not tax-deductible, including expenses incurred with respect to transactions with (i) entities resident in tax havens on the list attached to the PITL regulations, (ii) PEs located in tax havens, or (iii) entities that generate revenues or income through tax havens.

Nonetheless, expenses incurred from the following transactions are excluded from the above-mentioned limitations, provided the consideration paid falls within market value:

- Interest on loans.
- Insurance premiums.
- Leases of aircraft or ships.
- Maritime freight.
- Fees for passing through the Panama Canal.

### **Depreciation**

Assets may be depreciated for tax purposes via the straight-line method, capped at the following rates, but without exceeding the amount of the financial depreciation:

<b>Assets</b>	<b>Depreciation rate (%)</b>
Cattle (both labour and reproduction) and fishing nets	25
Vehicles (except trains) and any kind of ovens	20
Machines and equipment used for mining, oil and construction activities, excluding furniture, household, and office goods	20
Equipment for data processing	25
Machines and equipment acquired as of 1 January 1991	10
Other fixed assets	10

Buildings must be subject to a flat 5% depreciation rate, regardless of the financial depreciation.

### **Amortisation of intangible assets**

The amortisation of property rights, trademarks, patents, and manufacturing procedures, as well as other similar intangible assets, are not deductible for income tax purposes. However, the price paid for intangible assets of a limited duration, at the taxpayer's choice, may be considered as an expense and applied to the results in a single year or amortised proportionally over a ten-year term.



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The Peruvian tax administration, prior to an opinion from the corresponding technical organism, is permitted to determine the real value of those intangible assets for tax purposes when the price does not reflect the real one.

### **Organisational and start-up expenses**

Organisation expenses, pre-operating expenses (including initial operations and further expansion of operations), and interest accrued during the pre-operating period may be expensed in the first period of operation or amortised using the straight-line method over a maximum of ten years. However, once a company has elected to recover start-up costs via the straight-line method, it may revoke such election only upon receiving approval of the tax authorities.

### **Interest expenses**

In general terms, interest on loans and related expenses are deductible, provided they are related to the acquisition of goods or services incurred, or to be incurred, in order to obtain or produce taxable income or to maintain the source of such income.

In the case of loans entered into between related parties, the amount of interest to be deducted is limited to interest from indebtedness not exceeding three times the net equity of the debtor as of the end of the previous fiscal year (*see Thin capitalisation in the Group taxation section*).

### **Bad debts**

Write-offs of bad debts and equitable provisions are deductible, provided that the accounts to which they belong are determined. For the provisions of bad debts, it is necessary that:

- there is a debt due and the taxpayer can provide evidence of the financial difficulties of the debtor that could foresee a risk in the collection of the debt, and
- the provision is registered separately in the inventory and balance book at the fiscal year closing. In this sense, a generic bad debt provision will not be deductible in the assessment of the net taxable income, nor will bad debts whose terms have not yet elapsed.

Bear in mind that the following debts are not considered bad debts:

- Debts incurred between related parties.
- Debts guaranteed by banks or financial companies by means of rights over real property, money deposits, or purchase-sale agreements with reservation of right of legal ownership.
- Debts that have been subject to renewal or express extension.

### **Charitable contributions**

Donations made to entities of the public sector, except companies, and to non-profit associations with certain purposes are deductible, provided that the receiver of the donation is duly qualified by the tax administration.

The deduction will be limited to 10% of the net income of the donor and only during the fiscal year in which it is granted (carryforward of the donation is disallowed). This means that if the donor does not obtain taxable income in the fiscal year in which the donation is made, no deduction will be available.

In addition, companies can deduct the expenses for the food they donate. This donation requires the food to no longer have commercial value and be apt for human consumption. The deduction cannot exceed 1.5% of the total sales that the donor makes.

### ***Profit sharing***

Entities with more than 20 employees, provided they obtain taxable income during the fiscal year, must distribute a percentage (5%, 8%, or 10% depending on the industry) of their profits (the basis is the tax profit of the fiscal year) among their employees. The amount of distribution for each employee depends on the effective working days during the year and annual remuneration.

### ***Employee's retributions and health insurance premiums***

Employee's retributions paid during a fiscal year may be deducted in such year, provided the payments are made by the employer before the term to file its annual income tax return expires. Likewise, health insurance premiums for employees, their spouses, and children are deductible.

### ***Vehicle expenses deductions***

Vehicle expenses may be deducted, provided the vehicles are essential to a company's business activities and are continually used for such purpose. There is a limitation on the tax deductibility of car expenses used for administrative or representation purposes, depending on the amount of income generated by the company. The number of company cars assigned to directors, managers, and representatives of a company may not exceed five under any circumstances.

### ***Fines and penalties***

Fines and penalties are not deductible for income tax purposes.

### ***Taxes***

Other taxes assessable on properties and activities generating taxable income are deductible for income tax purposes.

### ***Net operating losses (NOLs)***

Tax losses may be offset according to either of the following systems:

- Against net income generated within the following four fiscal years after the year in which the loss is incurred. Any losses that are not offset within such period may not be carried forward to any future year.
- Against 50% of the net income generated in the following fiscal years after the year in which the loss was generated. Under this system, there is no time limitation for carrying forward the losses.

After choosing one of the aforementioned systems, the taxpayer will not be able to change the system until the accumulated tax losses from prior fiscal years are exhausted. Losses will not be carried back to years prior to the year in which the loss is generated.

### ***Payments to foreign affiliates***

Payment of royalties to non-resident affiliates is permitted and deductible from gross income.

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## **Group taxation**

Group taxation is prohibited in Peru.

### **Transfer pricing**

The rules related to market value and transfer pricing establish that, in any kind of transaction, the value assigned to the goods and services must be the market value for tax purposes. If such value differs from the market value, either by overvaluation or sub-valuation, the tax administration will proceed to adjust it for both the purchaser and the seller, even when one of them is a non-domiciled entity, provided that the value agreed to results in a lower tax than the one that would have applied if transfer pricing rules had been applied. The adjustment will be imputed in the taxable period in which the operations with related parties were performed.

In case of transactions between related parties or those entered with tax havens, the market value will be equivalent to the value agreed with independent parties in similar transactions, being mandatory to support such value with a transfer pricing study.

The law states that transfer pricing rules will not apply for VAT purposes.

### **Benefit test requirement**

For inter-company services, the benefit test must be accomplished as of 2017. Such test is considered accomplished when the service rendered provides economic or commercial value to the recipient of the service, improving or maintaining its commercial position.

The providers cost structure must be proved. Low-value services must not exceed a margin of 5%.

### **Formal obligations**

New formal obligations have been approved. Such obligations are the following:

- Informative tax return - Local report: Mandatory for taxpayers with profits higher than 2,300 tax units. They must report their transactions that generate taxable income and deductible costs/expenses. In force as of 2017.
- Informative tax return - Master report: Mandatory for companies that are part of a group with profits higher than 20,000 tax units. They must report the organisational structure of the group, description of their business, their transfer pricing policies for intangibles and financing, and their financial and tax status. In force as of 2018.
- Informative tax return - Country-by-country (CbC) report: Mandatory for companies within a multinational group. They must report the global distribution of profits, taxes paid, and their business activities for each entity in the group in any country. In force as of 2018.

### **Tax price adjustments**

Adjustments to prices are only required whenever the price paid generates a higher tax deduction or a lower income tax in Peru; consequently, the existence of a tax prejudice will be required for an adjustment to be requested.

Adjustments are performed individually (on each operation) and not in an overall or global manner.

The adjustment of the value assigned by the tax administration or the taxpayer will be effective for both the transferor and the purchaser or transferee, without any constraints. In the case of non-domiciled parties, the bilateral adjustment will only proceed on transactions that could trigger taxable income in Peru and/or deductions for determining the income tax in Peru.

The adjustments are attributed to the corresponding tax period, according to the attribution rules depicted in the PITL (accrual regime for corporate taxpayers). However, when, under such rules, the adjustment cannot be attributed to a particular period, the adjustment will be allocated among all tax periods where income or expense has been allocated, in proportion.

Operations where no consideration has been paid are subject to transfer pricing rules. In this kind of transaction, the adjustment shall be allocated to the period or periods in which revenue would have accrued if consideration had been paid and the income was to be acknowledged by a domiciled taxpayer. On the other hand, if the income were to be recognised by a non-domiciled taxpayer, it would be attributed to the period or periods where the expenses accrued, even if it was a non-deductible expense, and the domiciled taxpayer would be responsible for payment.

## **Commodities**

There is a specific methodology for determining prices in the sales of internationally traded commodities to tax havens or intermediaries.

In this methodology, it is required to determine the price of the specified operation based on the international price without taking into account the particularities of each case.

## **Thin capitalisation**

In the case of loans entered into between related parties, the amount of interest to be deducted is limited to interest from indebtedness not exceeding three times the entities net equity as of the end of the previous fiscal year. In this connection, even though Peruvian corporate law has no requirements as to a minimum amount of share capital to incorporate a legal entity, it should be noted that having a small share capital may jeopardise the deductibility of interest payable for loans granted by related entities since, in case of newly incorporated entities, the share capital (equity) to be considered for calculating the thin capitalisation limit is the original one (this is, the one with which the entity was incorporated). In any case, this will only trigger a deductibility problem for the fiscal year in which the entity is incorporated, since for the following fiscal year the thin capitalisation rule will be calculated on the basis of the net equity at the end of the prior fiscal year (which, at that moment, may have already been increased through new contributions or capitalisations).

## **Controlled foreign companies (CFCs)**

CFC rules are in force in order to avoid the deferral of income tax on passive income obtained from CFCs (defined as at least 50% of ownership, voting rights, or gains) by domiciled taxpayers, provided such companies are situated in tax havens or jurisdictions with nil or reduced tax rates.

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## ***Taxation of indirect disposal of shares in Peruvian entities***

The indirect transfer of Peruvian shares of a foreign entity that, in turn, owns (directly or indirectly through other entities) shares of a Peruvian entity is levied with income tax, provided that both of the following conditions are met:

- During the 12 months prior to the transfer, the market value of the Peruvian entity's shares owned by the foreign entity equals 50% or more of the market value of the foreign entity's shares.
- During any given 12-month period, shares representing 10% or more of the foreign entity's share capital are transferred.

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## ***Tax credits and incentives***

### ***Foreign tax credit***

Pursuant to the PITL, taxpayers may deduct the foreign income taxes paid due to their foreign-source income levied by the PITL, provided that it doesn't exceed the amount that results from applying the average rate of the taxpayer to the incomes obtained abroad, or the tax paid abroad. The amount that, for any circumstance, is not used in the corresponding fiscal year cannot be set off (or compensated) in others fiscal years or be refunded.

Also, the following will be taken into account:

- Tax credit will be granted for the entire tax paid abroad that falls upon income taxed by the PITL.
- Taxes paid abroad, whatever its denomination, shall bear the characteristics of income taxes.
- Tax credit will only be granted when the payment of the foreign income tax is supported by reliable documentation.

### ***Special deduction regime for projects related to scientific research, technological development, and technological innovation***

A special deduction regime has been established for projects related to scientific research, technological development, and technological innovation. According to this incentive, taxpayers investing in these projects will be able to deduct 175% or 150% of the expenses incurred in them.

In that sense, the taxpayer may have the following deductions:

- 175% of the expenses incurred if the project is executed directly by the taxpayer or through centres of scientific research, technological development, and technological innovation domiciled in Peru.
- 150% of the expenses incurred if the project is executed by non-domiciled centres of scientific research, technological development, and technological innovation.

There are some requirements that must be fulfilled in order to access the benefit.

### **Early recovery of VAT**

Companies in a preoperative stage with large projects in process may apply for early recovery of VAT prior to commencing operations. An investment agreement with the government (the Ministry of its sector) is required.

### **Stability agreement**

Investors may enter into stability agreements with the government, either under the general regime or specific regimes (i.e. mining and petroleum).

Under the general regime, investors may enter into Juridical Stability Agreements that guarantee the following advantages for a ten-year period:

- Stability of the income tax regime in force at the time the agreement is entered into with respect to dividends and profit distribution.
- Stability of the Peruvian government monetary policy, according to which there is a complete absence of exchange controls, foreign currency can be freely acquired or sold at whatever exchange rate the market offers, and funds can be remitted abroad without any previous authorisation.
- Right of non-discrimination between foreign and local investors.

Under the mining regime, local mining companies may enter into stability agreements of guarantees and investment promotion measures that guarantee the following for 10, 12, or 15 years:

- Stability of the overall tax regime.
- Stability of the overall administrative regime.
- Free disposition of funds (foreign currency) arising from export operations.
- No exchange rate discrimination.
- Free trade of products.
- Stability of special regimes for tax refunds, temporary importation, etc.

Oil and gas companies may enter into stability agreements that guarantee the following for the term of the contract:

- Stability of the overall tax regime.
- Free disposition of funds (foreign currency) arising from export operations.
- Free convertibility of its funds.
- Free trade of products.

### **Investment promotion in the Amazon**

Certain tax benefits with regard to VAT and income tax have been established for taxpayers located in the area designated by the law as the 'Amazon' and that are engaged in the following activities:

- Agriculture and livestock enterprises.
- Aquaculture.
- Fishing.
- Tourism.
- Manufacturing activities linked to the processing, transformation, and commercialisation of primary products originating in the activities listed above and in forest transformation, provided these products are produced in the area.

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### **Special zones - Centres of Export, Transformation, Industry, Commercialisation, and Services (CETICOS)**

CETICOS are geographical areas duly delimited with customs primary zone status and special treatment, destined to generate development poles through industrial, *maquila*, assembling, or storage activities. CETICOS are located in Paita, Ilo, and Matarani cities.

Agribusiness and agro-exporting activities may be performed within a CETICOS. Agribusiness activity is primarily the transformation of agro-farming products produced in the country. Such transformation must be carried out at CETICOS.

Companies engaged in industrial, *maquila*, or assembling activities, established or set up in the CETICOS, until 31 December 2022, are exempt from income tax, VAT, excise tax, municipal promotion tax, as well as from any other taxes, fees, contributions levied by the Central Administration, and even taxes that require express exempt regulation.

### **Withholding taxes**

Domestic corporations are required to withhold income tax with respect to income paid to non-resident entities at the following rates:

Type of payment	WHT (%)
Dividends or profit distributions	5
Interest on non-related party loans, provided certain requirements are fulfilled	4.99
Interest on related party loans	30
Interest paid by Peruvian financial entities or banks to foreign beneficiaries for credit lines used in Peru	4.99
Royalties	30
Digital services	30
Technical assistance	15
Lease of vessels or aircraft	10
Other income	30
Sale of securities within Peru (Lima Stock Exchange)	0 or 5
Sale of securities outside Peru	30

Note that resident taxpayers may not deduct the WHT of a third party, except in the case of loans provided by non-resident creditors, to the extent that the debtor has contractually assumed the obligation of bearing the WHT cost.

If the retribution for technical assistance exceeds 140 tax units, a report issued by an audit firm will be required, in which is stated that the technical assistance has been effectively rendered in order to apply the 15% WHT rate; otherwise, a WHT rate of 30% will apply.

Capital gains derived from the sale of stocks issued by a Peruvian company through the Lima Stock Exchange are taxed at a 0% or 5% rate. *See Capital gains in the Income determination section for a description of an exemption granted as of January 2016 until December 2019.*

In the case of the services mentioned below that entail the execution of activities both in Peru and abroad, non-resident entities are subject to a 30% WHT (except for the

lease of vessels and aircraft, which are subject to a 10% WHT) on deemed Peru-source income determined by applying the following percentages to gross income:

Type of payment	Deemed Peruvian-source income (%)
Insurance	7
Lease of vessels	80
Lease of aircraft	60
Air transport	1
Maritime transport	2
Telecom services	5
International news services	10
Distribution of movies, records, and similar products	20
Supply of containers	15
Demurrage of containers	80
Rights for broadcasting live foreign TV shows within Peru	20

## Tax treaties

Peru has entered into treaties with Brazil, Canada, Chile, Korea, Mexico, Portugal, and Switzerland regarding double taxation on income tax under the Organisation for Economic Co-operation and Development (OECD) Model. Double taxation treaties (DTTs) with Spain and Thailand are not in force, as ratification by the Peruvian Congress is still pending. In addition, Peru, as a member of the Andean Community, which also includes Bolivia, Colombia, and Ecuador, is subject to a double-taxation standard (based in source income and not on the OECD Model).

*Please see the chart below for the reduced WHT rates that apply under DTTs in force.*

Recipient	WHT (%)				
	Dividends	Interest	Royalties	Technical assistance	Digital services
Non-treaty	5	4.99/30	30	15	30
Treaty:					
Brazil	10/15 (1)	15	15	15	15
Canada	10/15 (1)	15	15	N/A	N/A
Chile	10/15 (1)	15	15	N/A	N/A
Korea	10	15	15	10	N/A
Mexico	10/15 (1)	15	15	N/A	N/A
Portugal	10/15 (1)	10/15 (2)	15	10 (3)	N/A
Switzerland	10/15 (1)	10/15 (2)	15	10	10

### Notes

1. The lower rate applies in case the beneficial owner is a company that controls at least 20% (Brazil), 10% (Canada, Portugal, and Switzerland), or 25% (Chile and Mexico) of the voting power in the company paying the dividends.
2. The lower rate applies to loans from banks (Portugal and Switzerland) and sale on credit of industrial, commercial, and scientific equipment (Switzerland).
3. The treaty rate applies to technical assistance in connection with copyrights, goods, or rights that generate royalties.



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## ***Tax administration***

### ***Taxable period***

According to law, the fiscal year is the calendar year.

### ***Tax returns***

The filing deadline for the income tax return is generally the first week of April. The system is one of self-assessment, but the tax return filed with the tax authorities is subject to review.

### ***Payment of tax***

Income tax payments are due in 12 monthly instalments. The due date for the final income tax payment for a year is generally the first week of April.

The estimated payment calculation system has been established, and the amount of the estimated payment will be the greater of the result of multiplying the net revenue of the month by (i) 1.5% or (ii) the applicable coefficient. The coefficient is calculated by dividing the income generated in the previous fiscal year by the income tax that was determined.

### ***Tax authority***

The National Superintendency of Customs and Tax Administration (SUNAT) is responsible for administering all of the aforementioned taxes (income tax, VAT, etc.). Companies resident in Peru must be registered with the tax administration (Taxpayer's Registry).

The Tax Court is a specialised administrative tribunal, which depends on the Ministry of Economy and Finance, but is otherwise autonomous regarding its specific functions. Its mission is to rule over tax controversies that may arise between the tax administration and the taxpayers, by interpreting and applying the corresponding tax legislation, issuing mandatory observance jurisprudence, and establishing homogenous criteria that continue to support the progress of the tax system.

Finally, taxpayers are entitled to file an appeal before the Judiciary (Court) against resolutions issued by the Tax Court, but payment of the tax debt must be performed or guarantees must be provided.

### ***Tax audit process***

The tax audit performed by the SUNAT includes all the aspects of the tax and period being subject to review. The tax audit is formal, and the process is fully regulated.

The SUNAT is also able to conduct partial audits of limited scope.

### ***Statute of limitations***

Pursuant to the Peruvian tax legislation, the SUNAT is entitled to audit taxpayers in order to assess their tax liabilities, request the payment of any due tax, and assess any applicable penalty for up to (i) four years from 1 January of the year following the date the corresponding tax return had to be filed, (ii) six years to the extent that the corresponding tax return was not filed, and (iii) ten years when the tax withheld by the taxpayer has not been paid to the SUNAT.

## ***Topics of focus for tax authorities***

The SUNAT mainly focuses on the following topics:

- Deduction of expenses, including cost share expenses.
- Market value of transactions between related parties.
- Peruvian source income WHT.
- Income tax advance payments.

## ***General Anti-avoidance Rule (GAAR)***

The GAAR (provision XVI of the Tax Code) allows the SUNAT to consider the acts, situations, and economic activities performed, established, or desired by the taxpayers in order to determine the real nature of the taxable event. To this extent, provision XVI establishes that when tax evasion is detected, the SUNAT is entitled to collect the tax debt and fines; reduce the amount of balances due, NOLs, or tax credits; or eliminate any tax advantage, without prejudice, to recover any amount that was wrongfully reimbursed.

While interpreting the tax legislation, substance should be selected over a legal form. The fact that a taxpayer's transactions are legal does not imply that they are acceptable with reference to the underlying meaning embedded in the tax rules. Thus, where there is no business purpose except to obtain a tax benefit, the SUNAT should challenge such transactions as artificial and apply the corresponding tax rules.

However, the faculty of the SUNAT to apply provision XVI of the Tax Code has been suspended, with the exception of the first and last paragraphs of said provision.

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## ***Other issues***

### ***Foreign Account Tax Compliance Act (FATCA)***

A Model 1 Intergovernmental agreement (IGA) is treated as 'in effect' by the United States (US) Treasury as of 1 May 2014. The US and Peruvian governments have reached an agreement in substance, and Peru has consented to disclose this status. In accordance with this status, the text of such IGA has not been released, and financial institutions in Peru are allowed to register on the FATCA registration website consistent with the treatment of having an IGA in effect, provided that the jurisdiction continues to demonstrate firm resolve to sign the IGA as soon as possible.

### ***Peru as a full member of the OECD***

Victor Shinguiyama, the national Superintendent of the Peruvian tributary administration, pointed out that Peru will initiate the exchange of financial and tributary information with more than 100 countries from 2020.

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# Uruguay

## **PwC contact**

Sergio Franco  
PricewaterhouseCoopers  
Cerrito 461  
1st floor  
Montevideo 11000  
Uruguay  
Tel: +598 2 916 0463  
Email: [sergio.franco@uy.pwc.com](mailto:sergio.franco@uy.pwc.com)



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## **Significant developments**

### **2016 Law of Accountability**

In September 2017, the Uruguayan Congress passed the law for the accountability of the national budget for the year 2016. The law includes tax amendments that became effective from 1 January 2018. The most relevant tax provisions refer to the following matters:

#### **Taxation of Internet-related services**

The law provides new rules on the taxation of the following cross-border activities that take place at least partially in Uruguay:

- Income derived from production, distribution, or intermediation of cinematographic films and tapes, as well as income derived from direct TV broadcasting, will be considered entirely Uruguayan-sourced and fully subject to corporate income tax (CIT) or non-resident income tax (NRIT).
- Services provided by non-resident entities directly through the Internet, technology platforms, computer applications (apps), or similar means will be considered entirely Uruguayan-sourced to the extent the service user is located in Uruguay.
- Income derived from mediation and intermediation in the supply or demand of services provided through the Internet, technology platforms, apps, or similar means will be considered entirely sourced in Uruguay when both the supplier and user of the service are located in Uruguay, and considered 50% sourced in Uruguay if either the supplier or the user are located outside Uruguay.

Unless otherwise proved, the user would be deemed located in Uruguay when the service fees are paid through electronic means managed in Uruguay (e.g. bank accounts, debit/credit cards, e-money).

For value-added tax (VAT) purposes, services used in Uruguay and provided directly through the Internet, technological platforms, apps, or similar means will be considered entirely rendered in Uruguay and subject to VAT. Services will be deemed used in the country if they have Uruguay as the destination or are consumed or economically used in Uruguay. Services mentioned in the third bullet above will be considered entirely rendered within Uruguay when both parties are located in the country.

The Executive Branch will shortly issue regulatory provisions.

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## Software

Software amortisation will continue to be deductible for CIT purposes to the extent the following new conditions are met: (i) income derived from the software must be subject to local or foreign taxation and (ii) the amortisation deduction is proportional to the effective tax rate applicable to the income if the effective tax rate is lower than 25% (the CIT statutory rate).

The CIT exemption for income from software production and related services is widened and does not require the services to be used/destined abroad. When used/destined abroad, it will be exempted exclusively in the proportion of direct software development expenses to total direct expenses.

## Amendments to Free Zone (FZ) regime

Enacted Law N° 19,566 became effective on 8 March 2018 and includes the following measures to improve and amend the Uruguayan FZ regime, without affecting the rights acquired by FZ users (as guaranteed by the Uruguayan government):

- FZ users now may provide all types of services, under the broad tax exemption, from an FZ to Uruguayan non-FZ territory entities subject to Uruguayan CIT. Additionally, certain services activities could reduce the Uruguayan-citizens-over-total-staff ratio from 75% to 50%.
- Income from intellectual property (IP) rights and other intangibles will be tax exempt if derived from research and development (R&D) activities performed within the FZ.
- The Law introduces maximum term limits for FZ contracts, generally up to 5, 10, or 15 years (depending on the activity and type), and filing will be required to FZ users with existing agreements not complying with such limits.
- The new provisions clarify that: (i) activities developed outside national territory must be necessary or complementary to the FZ user activities, and (ii) auxiliary activities could be exceptionally developed in Uruguayan territory outside the FZ.
- Additionally, the Law establishes exemptions for thematic zones for the provision of audio-visual, leisure, and entertainment services outside the metropolitan area.

The Executive Branch will shortly issue regulatory provisions.

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## Taxes on corporate income

Net income derived from business activities conducted in Uruguay, obtained by legal entities resident in Uruguay and non-residents operating through a permanent establishment (PE) in Uruguay, is taxed at a CIT rate of 25% under the source principle (i.e. the territorial system of taxation). Accordingly, Uruguay taxes only income that is derived from activities conducted within its borders, income generated from property located in Uruguayan territory, or income derived from the economic use of rights within its territory (*see Foreign income in the Income determination section for an exception to this principle*).

In order to determine the net taxable income, all accrued expenses that are necessary for the generation of Uruguayan-source income and that are duly documented are allowed as deductions. Additionally, taxpayers are able to deduct expenses from their gross income if such expenses are subject to taxation (either foreign or local taxation) in the hands of their counterpart. A compulsory proportional deduction must be

calculated when the taxation in the hands of their counterpart is lower than 25% (CIT rate).

A 12% withholding tax (WHT) is imposed on Uruguayan-sourced income obtained by non-residents, except in cases where the income is obtained through the operations of a PE in Uruguay (*see the Withholding taxes section for more information*).

## **Trading companies**

Uruguayan corporations that sell and buy foreign goods and/or services from Uruguay (which are not physically introduced to the country, in the case of goods; or which are not economically used in Uruguay, in the case of services) may determine the net Uruguayan-source income on a notional basis of 3% of the gross margin (difference between the selling price and the purchase price). This gross margin has to be compliant with transfer pricing rules (in line with Organisation for Economic Co-operation and Development [OECD] guidelines). The applicable effective CIT rate is 0.75% (25% x 3%).

## **Local income taxes**

No taxes on corporate income may be levied by municipal authorities or other local governments.

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## **Corporate residence**

Legal entities are deemed to be resident in Uruguay when they are incorporated according to the local legislation.

## **Permanent establishment (PE)**

The concept of PE in the Uruguayan tax legislation follows, in general terms, the definition provided in the OECD Model Tax Convention, although it has some special clauses that may be found in the United Nations (UN) Model Tax Convention. From a Uruguayan law perspective, the term PE means a fixed place of business through which the business of an enterprise is wholly or partly carried on in Uruguay. The term PE especially includes: (i) places of management; (ii) branches; (iii) offices; (iv) factories; (v) workshops; (vi) mines, oil or gas wells, quarries, or any other place of extraction of natural resources; (vii) buildings, constructions, installation projects, or the management activities associated to them, when they last more than three months; and (viii) services, including consultancy services, rendered by a non-resident through employees or other hired personnel by the company for that purpose, to the extent that such activities are developed (in relation with the same or a connected project) during a period or periods exceeding, in total, six months within any 12-month period. Please note that item (viii) constitutes an exception to the OECD model and is based on the provisions of the UN model.

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## **Other taxes**

### **Value-added tax (VAT)**

Uruguayan VAT is levied at a general rate of 22% on the provision of services and on the circulation of goods within the limits of the Uruguayan territory. The import of goods and value-added in regard to the construction of immovable assets are also within the scope of this tax.

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The following items are either subject to a reduced 10% VAT rate or exempt from VAT entirely.

Items subject to the 10% VAT rate:

- Food and medicines.
- Hotel services.
- Health services.
- The first sale of immovable assets.

Items exempt from VAT:

- Milk.
- Books.
- Magazines.
- Agricultural machinery.
- Certain bank services.
- Accessories.

Exports are zero rated for VAT purposes. VAT on purchases of the exporters can be recovered in the form of credit certificates that can be (i) used to pay other taxes, (ii) used to pay social security contributions, or (iii) endorsed to suppliers who can pay their own national taxes or their own social security contributions.

According to Law N° 19,210 of financial inclusion and electronic payment means and its regulations, the VAT rate has been reduced for the disposal of goods and services made to final consumers, provided that payment is made through debit cards or electronic money instruments. The current rate reduction results in a VAT rate of 18% when the transaction does not exceed approximately 14,000 Uruguayan pesos (UYU), and a 20% rate for operations above this value.

VAT requires monthly payments and may require monthly or annual tax returns, depending on the qualification of the taxpayer.

## **Customs duties**

- **Consular Duty:** 2%. Capital goods with a destination in the industrial, agricultural, and fisheries sectors are exempt. From January 2018 and onwards, the rate is 3% for products with Mercosur Origin and 5% for products originated in the rest of the world. The rate applicable to automobiles is 5%, regardless of their origin. Products originated in Mexico, as well as products introduced to Uruguay in the framework of the Temporary Admission regime, and capital goods are exempt from the Consular Duty.
- **Customs Services Duty:** 0.2%, with a maximum of 50 United States dollars (USD).
- **Customs Extraordinary Duty:** A scale flat duty, with a limit of USD 600.
- **Global Customs Duty (TGA):** Depends on the origin of goods. If the products are originated in a Mercosur member country, the TGA is generally zero (in particular cases, the payment of the TGA still applies). If not (i.e. not Mercosur origin), it varies depending on the type of product, with a maximum rate of 35%. For goods classified as 'fixed assets' and 'information and telecommunication goods', there is a special regime that, in general terms, foresees lower TGAs.

All imports and exports duties are applied on the 'customs value' (in general, in imports it is considered as cost, insurance, and freight [CIF] and in exports as free on board [FOB]).

On imports, VAT is also applicable according to the following detail:

- Goods subject to the general VAT rate (22%):
  - 'Import VAT' at the rate of 22%.
  - 'Advanced payment import VAT' at a rate of 10%.
- Goods subject to the reduced VAT rate (10%):
  - 'Import VAT' at the rate of 10%.
  - 'Advanced payment import VAT' at a rate of 3%.

The tax base of VAT on imports is the customs value plus the customs duties.

Additionally, some goods are also subject to an 'advanced payment import on account of CIT' at a rate of 4% or 15%, depending on the type of good, which can be deducted from the amount of CIT for the fiscal year.

## **Export duties**

Exports are not subject to any taxes, and there are almost no prohibitions regarding the type of goods to be exported. On the contrary, several instruments are offered to promote exports, such as the reimbursement of taxes. *For VAT on exports, please see VAT above.*

The exporter may also recover internal taxes that are added to the cost of the products exported. The amount to be reimbursed is a percentage of the FOB value set by the Executive Power for each product.

Additionally, temporary admission consists of the import of raw materials, pieces, motors, package material, and other industrial input without import duties or taxes. To be subject to this customs duties exemption, the company has to export the finished goods within 18 months from the introduction of the exempt goods or materials. The subsequent local sale of such finished goods is not entitled to this benefit.

## **Excise tax (IMESI)**

In general, excise tax applies on the first transaction effected in the domestic market by manufacturers or importers of goods. Exports are not taxable.

Excise tax rates vary for each item, and they are generally fixed by the government within maximum parameters established by law.

Goods subject to the highest rates are alcoholic beverages (from 20.20% to 80%, depending on the alcohol degree), tobacco (from 28% to 70%), lubricants (from 5% to 39%), and gasoline, fuel, and other petroleum products (from 5% to 133%).

This tax requires monthly payments and/or tax returns.

## **Net wealth tax (NWT)**

All types of legal entities and business enterprise owners are subject to an annual NWT at a rate of 1.5% on the value of net assets. This tax also follows the source principle, whereby only assets located or economically used in Uruguay are taxable. Taxpayers

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may deduct from the NWT the CIT of the same fiscal year; however, the deduction is currently capped at 1% of the NWT.

The deduction of liabilities from the amount of taxable assets to determine the NWT basis is limited to: (i) the average of debts with local financial institutions, (ii) debts with suppliers of goods (except imports) and services, (iii) taxes not yet due, (iv) debts with governments, international credit offices of which Uruguay is a member and with foreign state financial institutions that lend funds for long-term productive projects, and (v) debts documented in debentures and obligations if their emission is done in a public offering and such papers are quoted in a stock exchange.

## **Property taxes**

Regarding taxes of relevance for those doing business in Uruguay, *please see Net wealth tax (NWT) above*. There are additional property taxes of less significance, levied by Municipal authorities (e.g. *Contribución Inmobiliaria*) and by National authorities (e.g. Primary School Tax [*Impuesto de Primaria*]).

Note that the Primary School Tax levied on rural assets has been re-established.

## **Tax on real estate transfer (ITP)**

A tax on real estate transfer applies to the transfer of immovable assets. Transfer is defined in an ample sense, as a sale, a cession of the right to use, a transfer of inheritance rights, etc.

Both parties to the transfer contract are subject to this tax at a rate of 2% on the property's tax value (according to a National Register, a value generally lower than market value). When the property is transferred without payment, the beneficiary pays tax at a rate of 4% on the property tax valuation, except in instances where the property is transferred to direct heirs or legatees, who pay this tax at a rate of 3%.

The transmissions of taxable assets that take place as a result of the replacement or removal of trustees is excluded from this tax.

## **Stamp taxes**

Stamp taxes are not applicable in Uruguay.

## **Tax of control of corporations (ICOSA)**

Upon the set-up of a corporation, a tax is payable at a 1.5% rate on a notional basis amount, which is determined annually by the authorities. For fiscal year 2018, the amount of this tax (lump sum) is UYU 32,341.

This tax is also due annually for corporations at the end of each fiscal year, at a rate of 0.75% on said notional amount. Even though this tax can be deducted from the NWT, the excess cannot be refunded, acting as a minimum NWT payment. For fiscal year 2018, the amount of this tax (lump sum) is UYU 16,171.

## **Payroll taxes**

Individual income taxes applicable on employees' remunerations must be withheld by the employer.



## Social security contributions

The Uruguayan Social Security regime states that hiring personnel under a dependency relationship implicates the obligation (both for employer and employee) of making contributions over the compensations that constitute the taxable basis.

Taxable basis consists of all earning that in a regular and permanent basis, in cash or kind, susceptible to pecuniary appreciation, is perceived by the dependant personnel, in concept of remuneration and product of its personal activity, in the frame of the working relationship. As a general rule, any compensation originated in activities carried out in Uruguay is subject to social security contributions.

The social security contribution rates are applicable on gross remunerations, according to the following percentages:

Contribution	Employer contributions (%)	Employee contributions (%)
Retirement contributions *	7.5	15
Health insurance	5	3/4.5/5/6/6.5/8 **
Labour restructuring fund	0.125	0.125
Total social security contributions	12.625	18.125 to 23.125

\* Both employer and employee retirement contributions rates are applicable, up to the monthly amount of UYU 160,121 (until 31 December 2018); the exceeding amount will be exempt.

\*\* May vary depending on whether the employee is married and whether they have children.

## Branch income

CIT is imposed at a rate of 25% on net income derived from business activities carried out in Uruguay. A 7% WHT is imposed on profits remitted or credited to a home office. Profits paid or credited to a non-resident home office will not be subject to WHT when they are paid out of non-taxable income for CIT purposes.

Furthermore, those profits and/or losses derived from financial operations between the branch and its home office will be disregarded for Uruguayan tax purposes (i.e. not taxed in case of income or not deductible in case of costs and/or expenses).

## Income determination

### Inventory valuation

Replacement cost is permitted for tax purposes, as well as the first in first out (FIFO), last in first out (LIFO), or average cost methods, irrespective of the inventory valuation method used for accounting purposes.

### Capital gains

Capital gains are treated as ordinary income for CIT purposes.

As a general rule, capital gains are calculated as the selling price minus the fiscal cost (usually acquisition cost updated by certain inflationary indexes) of goods being sold. In certain cases, not all the fiscal cost may be deductible, depending on the application or not of the compulsory proportional deduction *mentioned previously in the Taxes on corporate income section*.

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Furthermore, for certain capital gains, there are special ways of determining the taxable income (e.g. based on notional income).

Bearer title transfer capital gains are subject to a 12% tax rate, applicable to a notional 20% of the transfer price (or 20% of market value of the titles transferred if there is no price). The same tax treatment applies to capital gains derived from the transfer of nominative titles.

## ***Dividend income***

Dividends received from local subsidiaries are exempt. Dividends received from foreign subsidiaries are out of the scope of this tax since they are considered foreign-sourced, thus non-taxable, income.

## ***Interest income***

Uruguayan-sourced interest income, derived by companies resident in the country, is subject to CIT under the general regime (i.e. taxed at 25%).

## ***Royalty income***

Uruguayan-sourced royalty income, obtained by companies resident in the country, is subject to CIT under the general regime (i.e. taxed at 25%).

## ***Foreign income***

Uruguayan legal entities (CIT payers) and non-residents operating through a PE in Uruguay are only subject to tax on income from Uruguayan sources under the territorial system of taxation. Hence, foreign-source income is not subject to tax.

However, there is an exception to this principle, as follows. When a CIT payer obtains income as a consequence of rendering technical services outside the limits of Uruguayan territory to another CIT payer and such technical services are used by the recipient to obtain its income subject to CIT, the income obtained by the company rendering the services will be subject to CIT, even when foreign sourced. Technical services are those rendered in the fields of management, technical administration, or advice of any kind.

The following will also be considered Uruguayan-source income:

- Advertising services rendered from outside Uruguay to CIT payers.
- Mediation, leasing, use, transfer of use, or transfer of federate rights, image rights, and similar of athletes registered in resident sports entities, regardless of the registration period or permanence in Uruguay.

Income derived from activities performed, assets located, or rights utilised outside Uruguay, regardless of the nationality, domicile, or residence of the parties participating in the transactions and the place where the transaction agreements are subscribed, is not subject to CIT.

## ***Income adjustment for inflation***

An income adjustment for inflation has been in force since 1 January 1981 and is calculated by multiplying the variation in the consumer price index (CPI) for the financial year by the difference between:

1. total assets at the beginning of the year (excluding fixed assets) and
2. total liabilities at the beginning of the year.

Under an inflation scenario, if (1) is higher than (2), then an inflation loss adjustment is deducted from gross income. However, if (2) is higher than (1), then an inflation gain adjustment is added.

Tax regulations disallow Uruguayan taxpayers to calculate tax inflation adjustment in their CIT return if inflation is below 100% (variation of the CPI accumulated in the 36 months prior to the close of the fiscal year end).

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## **Deductions**

As a general rule, accrued and duly documented expenses that are necessary to obtain and preserve gross taxable income are tax deductible. On the contrary, those expenses associated with deriving or preserving income not subject to CIT are not deductible from the taxable basis. Furthermore, for CIT purposes, all costs and expenses will be subject to the compulsory proportional deduction *mentioned in the Taxes on corporate income section* (with some exceptions).

## **Depreciation and depletion**

Straight-line depreciation over useful life is mandatory. Specific rates exist for the following cases: (i) 2% per year for urban buildings, (ii) 3% per year for rural buildings, and (iii) not less than 10% per year for new vehicles. Other rates are accepted if economically justified. No conformity between book and tax depreciation is required.

Percentages for depletion computed on the cost of natural resource properties are allowed in accordance with generally accepted criteria.

Depreciation and depletion percentages are computed on the historical cost of fixed assets revaluated at year-end, based on the variation of the CPI. Capital gains derived from the revaluation of fixed assets are not taxable income.

## **Goodwill**

When transferring a business or a business unit, the difference between selling price and fiscal costs of the assets being transferred constitutes 'goodwill'. This goodwill constitutes an asset for the buyer and must not be depreciated, neither for CIT nor NWT purposes.

## **Start-up expenses**

Start-up expenses should be depreciated within a period of three to five years. The taxpayer may elect the number of years to depreciate those expenses within those period limits.

## **Interests expenses**

Interests expenses, as well as other costs and expenses, are subject to the compulsory proportional deduction *mentioned in the Taxes on corporate income section*.

When companies derive both income subject to CIT and either income exempt or not included in CIT (e.g. from a foreign source), interest expenses associated to the former (i.e. deductible interest) will be determined by applying a proportion based on assets.

# Uruguay

## ***Bad debt***

As a general rule, only those debts that are at least 18 months old will be deductible as 'bad debts'. However, national rules allow deductions under some other special situations.

## ***Charitable contributions***

Deductibility of charitable contributions will depend on the organisations receiving them.

Furthermore, there is a special regime to certain charitable contributions under which the contributor may deduct 25% of the contribution and the other 75% will be recovered through credit certificates that may be used to pay taxes (with certain limitations).

## ***Fines and penalties***

Fines and penalties generated from unduly paid taxes are not deductible for CIT purposes.

## ***Taxes***

CIT and NWT are not deductible.

## ***Net operating losses***

Losses may be carried forward and deducted from the net taxable income of the following five years, once adjusted for inflation. For fiscal years initiated on or after 1 January 2017, this deduction will be capped at 50% of net annual taxable income.

There is no loss carryback.

## ***Payments to foreign affiliates***

All accrued expenses that are necessary for the generation of Uruguayan-source income and that are duly documented are allowed as deductions. Additionally, a taxpayer may deduct expenses from its gross income if such expenses are subject to taxation (either via foreign or local taxation) in the hands of the other party. A compulsory proportional deduction must be calculated when the taxation in the hands of the counterpart is lower than 25% (CIT rate).

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## ***Group taxation***

Group taxation is not permitted in Uruguay.

Specific dispositions regarding the existence of an 'administrative economic unit' are included in NWT law, but only for agricultural and/or farming investments for determining the application of NWT exemption and corresponding NWT rates (i.e. group taxation is still not permitted).

Tax Transparency Law N° 19,484 introduced a set of provisions aimed to enhance the achievement of international standards on tax transparency and prevention of money laundering. The Law introduces the following:

- Provisions that regulate the automatic information that the financial entities must submit to the Uruguayan Tax Office.

- Provisions that seek the identification of final beneficiaries of local and foreign entities with a relevant nexus with the country.
- Tax rules aimed to discourage the use of entities resident, domiciled, or located in low or no-tax jurisdictions (LNTJs):
  - The bill introduces a change from the 'exhaustive list' approach by which a jurisdiction is considered a tax haven towards a substantive criterion. The rules to be issued by the Ministry of Finance will determine the conditions (minimum effective CIT rate, minimum levels of cooperation and transparency) that countries, jurisdictions, or entities must meet to be considered as LNTJ.
  - Income derived from the transfer of shares or participations in entities from LNTJs whose assets located in Uruguay exceed 50% of their total investments is deemed to be Uruguayan sourced (thus taxable) for CIT purposes. Similar provisions apply to resident individuals and to non-resident taxpayers.
  - Discouraging the use of intermediary entities that reside in LNTJs, when a resident individual participates in their capital, passive income and/or capital gains received by these entities will be assigned as deemed dividend, thus taxed in the hands of the individual beneficiaries.
  - In line with this through the 2015 Tax Accountability Law, rates are increased from 12% to 25% for Uruguayan-sourced income obtained by entities resident in LNTJs.
- Adjustments to the transfer pricing regime (*see below*).

## Transfer pricing

As a general principle, transfer pricing rules are applicable to international transactions between related parties. However, Uruguayan legislation has extended the scope of these regulations to transactions carried out with LNTJs (either international or domestic) and to certain operations through third-party intermediaries. Domestic transactions with Uruguayan FZ users fall under this category.

The definition adopted by the law for related parties is quite broad. Such a relationship is configured when both parties are subject (directly or indirectly) to the management or control of the same individuals or legal entities, or when they have power of decision to direct or define the taxpayer's activities due either to their participation in capital interest, the level of their credit rights, or their functional or any other type of influence (whether contractual or not).

Regarding transfer pricing administration rules, the Executive Power can enter into advance pricing agreements (APAs) with taxpayers, which cannot cover more than three fiscal years. Furthermore, strong penalties are provided for failure of compliance with transfer pricing formal duties and with other formal documentation requirements.

As to transfer pricing, the Tax Transparency Law includes the adoption of the OECD's recommendations for a country-by-country (CbC) report (*see below*) and the Master File concept for transfer pricing documentation. It also introduces the possibility that taxpayers obtain bilateral and multilateral APAs.

## Country-by-country (CbC) report

A CbC report is required in Uruguay for fiscal years commencing after 1 January 2017. Legislation contemplates an annual obligation for Uruguayan taxpayers that integrate a multinational enterprise (MNE) of large economic dimensions and verify the related party assumptions to file the CbC report.

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Taxpayers referred to above shall notify the local tax authorities of the identity and tax residence of the reporting entity.

Taxpayers will not be subject to file a CbC report when the return is submitted by an entity that integrates the MNE to a foreign tax administration of a jurisdiction with whom Uruguay has an exchange of information agreement in force, and the report can be effectively exchanged with the tax authorities of the jurisdictions of the MNE.

## ***Thin capitalisation***

There are no thin capitalisation rules in Uruguay.

## ***Controlled foreign companies (CFCs)***

There are no CFC rules in Uruguay other than those applicable to individuals.

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## ***Tax credits and incentives***

### ***Foreign tax credit***

There is no foreign tax credit regime in Uruguay for CIT purposes, except for that provided in the double tax treaties (DTTs) currently in force.

### ***CIT reduction for income reinvested in fixed assets***

40% of income reinvested in the purchase of (i) industrial and agricultural machinery, (ii) vehicles and installations, (iii) computers, (iv) telecommunications equipment, and (v) some assets for the tourism industry is exempt from CIT.

20% of income reinvested in the construction and expansion of industrial, agricultural, and tourism buildings is exempt from CIT (limited to 40% of net taxable income in the year of expenditure).

The joint amount of said investments can be deducted from the taxable basis, with a limit of 40% of the annual net profit, once the amount of other exemptions has been deducted. The excess can be deducted (with the same limitations) in the following two tax periods. It is important to mention that income exempt by these provisions cannot be distributed and must be retained as a reserve account, which ultimately can only be capitalised.

Note that the above-mentioned CIT benefit will be exclusively applicable to taxpayers whose income in the immediately preceding fiscal year to which the investment is executed does not exceed approximately UYU 30 million. This limitation is not applicable to professional cargo transport companies.

### ***NWT exemption***

Movable fixed assets directly connected to the industrial cycle and equipment for data processing are exempt from NWT.

All assets directly associated to the development of agricultural and/or farming activities will be exempt from NWT as long as the owners are individuals or companies with nominative shares also owned by individuals. As a consequence of the elimination of the Rural Real Estate Concentration Tax (ICIR), this NWT exemption has been modified. According to Law N° 19,088, this exemption will apply only in cases

where the referred assets do not exceed 12 million ‘index units’ (approximately UYU 44,500,000).

## **Investment Law (IL) - Law N° 16,906**

Uruguay has modified the IL, achieving a better framework for local and foreign investments carried out in the country. To obtain tax benefits, the IL requires that enterprises obtain a government statement in this regard. The Bureau of Investor Assistance is in charge of monitoring the correct compliance of these projects.

The IL grants two types of benefits:

### **Automatic benefits**

This kind of benefit is only for manufacturing, extractive, or farming/ranching activities, and includes:

- Exemption from NWT for chattel property directly engaged in the production cycle and data-processing equipment.
- Exemption from VAT and CIT paid on the importation of such goods, and reimbursement of VAT in the case of locally purchased items.

### **Discretionary benefits**

Benefits that may be obtained at the discretion of the Executive Power for any type of business activity (not cumulative with automatic benefits) include:

- VAT and CIT exemptions (among other taxes) on importation of fixed assets items.
- NWT exemptions: Permanent for chattel property items, for a period of eight years for construction work in Montevideo (capital city), and for a period of ten years in the rest of the country.
- VAT reimbursement on local purchase of goods and services for civil construction work.
- Increased deductions for CIT in respect of fees and remunerations related to technological developments.
- Exemption from CIT, depending on the nature and size of the project to be carried out. The Executive Power takes into account the following criteria to grant this benefit:
  - Addition of technology to improve competitiveness.
  - Contribution to export growth and diversification.
  - Contribution to geographic decentralisation.
  - Improvement of technological investigation, innovation, and development.
  - Generation of employment.

### **Auto-saving ‘direction’ benefit**

The auto-saving ‘direction’ benefit allows a company to deduct from the CIT basis the amount of the capital increase that occurred as a consequence of the reserves capitalisation or of the in-kind distribution of shares, for an amount equivalent to the investment carried out with the investor’s own funds. The amount of the CIT deduction and the period(s) to which said exemption will apply is granted by the government through a statement issued by the Executive Power.

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## **Free zones (FZs)**

Following the approval of the FZ law in 1987, this system has become an important tool for attracting investments to Uruguay.

It has been utilised for carrying out traditional activities in the FZs (warehousing, logistics, and distribution), for the provision of services (software, finance, call centres, etc.), and for manufacturing activities such as cellulose pulp and leather production. In a clear sign of stability, none of the administrations in office over the last three decades has modified the basics of the FZ system.

The law defines FZs as privately or publicly owned isolated and fenced off areas of Uruguayan territory determined by the Executive Branch with the purpose of carrying out all types of manufacturing, commercial, and service activities within the zone, while enjoying tax exemptions and other benefits envisaged in the law.

Companies in these areas cannot carry out industrial, trading, or service activities in the non-FZ Uruguayan territory (Law N° 19,566 introduces modifications in this regard; *see below*), except for services expressly authorised by the government (listed below), but are allowed to render all types of services within the FZs or to third countries.

FZ users are allowed to render the following services to the non-FZ Uruguayan territory:

- International call centres, except for those whose main destination is the non-FZ Uruguayan territory.
- E-mail, distance learning, electronic signature certificate issuance.
- Software production, technology consulting, and related training services. (\*)
- Accounting, administration, and management services rendered to related companies, provided these services do not exceed 5% of the total income of the fiscal year, granted by Decree 330/016. (\*)
- Processing of film material and data. (\*)

(\*) The provision of these services is subject to the general tax system, not to the tax holidays.

In order to operate in/from the FZ, certain requirements must be fulfilled from an 'economic substance' perspective (i.e. there must be an actual economic activity developed in the FZ). In this sense, some modifications were introduced to the FZ Law to determine which substantial activities can be developed outside the FZ.

FZ users are exempt from all current and future national taxes, including those taxes for which a specific legal exemption is required, in connection with the activities performed within the FZs. The Uruguayan government guarantees all the exemptions and benefits granted by the law for the term of their contracts. FZs can be located outside or inside the cities; it depends on the kind of FZ.

Social security taxes, as well as certain WHTs, are excluded from the exemption. WHT on payments of dividends made by these companies to their non-resident shareholders are exempt.



Effective from 8 March 2018, Law N° 19,566 included measures to improve and amend the Uruguayan FZ regime, without affecting the rights acquired by FZ users (as guaranteed by the Uruguayan government).

- FZ users can provide all types of services, under the broad tax exemption, from an FZ to Uruguayan non-FZ territory entities subject to Uruguayan CIT. Additionally, certain services activities could reduce the Uruguayan-citizens-over-total-staff ratio from 75% to 50%.
- Income from IP rights and other intangibles will be tax exempt if derived from R&D activities performed within the FZ.
- The Law introduces maximum term limits for FZ contracts, generally up to 5, 10, or 15 years (depending on the activity and type), and filing will be required to FZ users with existing agreements not complying with such limits.
- The new provisions clarify that: (i) activities developed outside national territory must be necessary or complementary to the FZ user activities, and (ii) auxiliary activities could be exceptionally developed in Uruguayan territory outside the FZ.
- Additionally, the Law establishes exemptions for thematic zones for the provision of audio-visual, leisure, and entertainment services outside the metropolitan area.

The Executive Branch will shortly issue regulatory provisions in relation to Law N° 19,566.

## ***CIT exemption widened for trading activities with transit of goods through Uruguay***

The CIT Act establishes a tax exemption for non-residents on income derived from activities performed in Uruguayan customs areas, port customs areas, customs deposits, and FZs, with goods of foreign origin declared in transit or stored in the referred areas. This exemption applies to the extent that such goods are in transit (not having as origin or as destination the Uruguayan customs territory). This exemption also applies on a percentage of the sales that have as final destination the Uruguayan internal market. This tax benefit has been widened and, while originally applicable only to non-residents, is now available for tax residents in Uruguay. In addition, these activities with goods deposited in the country can be performed from outside Uruguay.

## ***Industrial park incentives***

Individuals or legal entities that establish industrial parks within Uruguayan territory, as well as companies located within such industrial parks, are entitled to CIT exemption for their industrial equipment, excise tax and VAT exemption on the acquisitions of such goods, and other benefits.

## ***Holding companies***

Uruguayan legal entities holding shares in non-resident entities or investing in assets not located in Uruguay are not subject to tax (due to the application of the source principle).

## ***Tax benefits for Shared Service Centre (SSC) activities***

Activities carried out by SSCs are granted relevant tax benefits under certain conditions.

For these purposes, an SSC is defined as a subsidiary of a multinational group that provides to its related parties, on an exclusive basis, advisory and data processing services, management or administration (strategic planning, business development,

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advertising, management, and staff training), logistics and storage, financial management, and R&D support used exclusively outside Uruguay.

Tax benefits granted include the exemption of CIT of 90% of the income derived from the promoted activities and exemption of NWT on the assets involved for five or ten fiscal year-ends, depending on specific compulsory requirements that must be fulfilled. To have access to the five year-end tax benefits, an SSC must comply simultaneously with the following conditions:

- Generate at least 150 new direct qualified jobs at the end of the first three year-ends, jobs that must be preserved until the end of the fifth year-end.
- Implement a training plan with a minimum budget of 10 million ‘index units’ (approximately UYU 38,000,000) for the Uruguayan citizen employees during the whole first three year-ends, which must be for new projects.

The tax exemption period will be extended to ten years when (i) the minimum number of jobs exceeds 300 at the end of the first five year-ends and remains until the end of the exemption period and (ii) the referred training expense exceeds twice the aforementioned amount in the course of the first six year-ends.

Tax benefits under the SSC regime have been extended through Decree Nbr. 330/016. Making benefits more accessible, a CIT exemption of 70% of the income derived from the promoted activities by complying with the following conditions is available:

- Generate at least 100 new direct qualified jobs at the end of the first three year-ends (fulfilling the same conditions that are required for the original benefits).
- Implement a training plan with a minimum budget of five million ‘index units’ (approximately UYU 18,550,000) for the Uruguayan citizen employees during the whole first three year-ends (fulfilling the same conditions that are required for the original benefits).

The possibility of providing services to related residents is maintained with the ceiling of 5% of the total amount of services. Although they are not included in the exoneration, they do not affect the applicability of the exemption on the promoted activities.

Regarding NWT, the exoneration of the assets affected by the activity promoted by the CIT exemption period remains unchanged.

## **Industry-specific incentives**

### **Printing industry incentives**

Companies that print books and educational material are exempt from the NWT and VAT.

### **Long distance services and call centres**

Companies developing long distance services and call centre activities have special benefits regarding CIT (from 70% to 100% exemption).

### **Condo Hotels**

Companies running a Condo Hotel have special benefits regarding CIT (from 70% to 100% exemption), among other taxes. There are also exemptions and other tax benefits granted on behalf of the promoting company.

## Electric power industry incentives

Companies that generate electric power from non-traditional energy sources have special benefits regarding CIT (from 40% to 90% exemption).

## Machinery industry incentives

Companies that build and/or assemble (under certain conditions) machinery with agricultural purposes have special benefits regarding CIT (from 50% to 90% exemption).

## Shipping industry incentives

Imports of material, supplies, and equipment required for the construction, maintenance, and repair of shipyards or vessels are exempt from VAT. The shipbuilding industry has special benefits regarding CIT (from 50% to 100% exemption).

## Water and air transportation incentives

The income of water and air transportation companies is tax exempt. In the case of foreign companies, the exemption is subject to reciprocal treatment. The government may exempt from CIT companies engaged in transportation by land, subject also to the conditions of reciprocal treatment.

## Forestry plantation incentives

Income derived from forestry plantations made before July 2007 is tax exempted. For income derived from forestry plantations made since July 2007, stricter conditions, such as 'quality wood', are required to be exempted from CIT.

## Software industry incentives

Software production and related services are exempt from CIT. When used/destined abroad, it will be exempted exclusively in the proportion of direct software development expenses to total direct expenses.

## Electronic industry incentives

The production of electronic devices has special benefits regarding CIT (from 50% to 100% exemption).

## Tourism industry incentives

Investments in the tourism industry have tax benefits related to CIT, VAT, and NWT, as follows:

- Deduction of up to 40% of CIT in investments made in the fiscal year in hotel equipment and equipment for improving entertainment and information services to tourists and deduction of up to 20% of CIT in investments made in construction and expansion of hotel buildings, with the limits mentioned in previous sections (40% of the annual net profit, once the amount of other exemptions has been deducted).
- VAT refund included in local acquisitions of goods and services for construction, improvement, or expansion of tourist complexes.
- VAT exemption on import of goods for construction, improvement, or expansion of tourist complexes.
- The list of operations included in the concept of exports of services for VAT purposes (thus zero-rated and with the possibility to recover input VAT) was broadened to include, among others, services related to accommodation that hotels, apartments,

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and rural tourism establishments provide to tourists, as well as for international event organisation services.

- NWT exemption for ten years on investments in infrastructure and civil work for construction, improvement, or expansion of tourist complexes.
- NWT exemption for four years on fixed assets investment for tourist complexes.
- 50% exemption of import duties on materials and goods for construction, improvement, or expansion, as well as fixed assets, of tourist complexes.

## Withholding taxes

All Uruguayan-sourced income obtained by non-residents (other than those obtained through a PE in Uruguay) is taxed at flat rates of up to 12% on gross income, with some exceptions. This tax is basically collected by way of WHT.

The exceptions are as follows:

- Interest on deposits in local currency for terms exceeding one year is taxed at 7%.
- Interest on public bonds is not taxed.
- Dividends paid or credited by CIT payers are taxed at 7%, provided they are derived from taxable income (under certain circumstances, non-distributed earnings will also be subject to 7% dividend WHT after three years of being generated).
- Income obtained by entities resident, domiciled, or located in LNTJs is taxed at 25%.

Although the Uruguayan tax law follows the source principle, technical services (defined as services rendered in the fields of management, technical administration, or advice of any kind) rendered in another country by non-residents but associated with taxable income obtained by the local user in Uruguay are considered to be Uruguayan sourced for tax purposes and subject to WHT. However, when the taxable income obtained by the local user of the service does not exceed 10% of its total income, then only 5% of the service fee paid or credited abroad will be subject to non-resident WHT. Therefore, in these cases, the effective WHT rate is only 0.6% (5% x 12%). In those cases where the local taxpayer receiving the service does not obtain any taxable income, the service received will be entirely associated to foreign-source income and thus not subject to WHT.

This WHT should be declared and paid to the Tax Office on the month following the one in which the tax is withheld.

For those countries with which Uruguay has entered DTTs, the maximum WHT rates are the following (in those cases where the maximum WHT provided by the DTT is higher than the internal law WHT, the latter will be applicable):

Recipient	WHT (%)		
	Dividends	Interest	Royalties
Under internal law	0/7	0/7/12	0/12
Treaty:			
Belgium	5/15 (4)	0/10	10
Ecuador	10/15 (7)	15	10/15 (2)
Finland	5/15 (3)	0/10	5/10 (2)
Germany	5/15 (4)	0/10	10
Hungary	15	15	15

Recipient	WHT (%)		
	Dividends	Interest	Royalties
India	5	0/10	10
Korea	5/15 (8)	0/10	10
Liechtenstein	5/10 (5)	0/10	10
Luxembourg	5/15 (4)	0/10	5/10 (2)
Malta	5/15 (3)	10	5/10 (2)
Mexico	5	0/10	10
Portugal	5/10 (6)	10	10
Romania	5/10 (9)	0/10	10
Singapore	5/10 (4)	0/10	5/10 (2)
Spain	0/5 (1)	0/10	5/10 (2)
Switzerland	5/15 (3)	0/10	10
United Arab Emirates	5/7 (10)	0/10	5/10 (2)
United Kingdom	5/15 (4)	0/10	10
Vietnam	5/10 (11)	10	10

#### Notes

- Source country may tax at a rate not higher than 5%. However, if the beneficial owner is a company resident in the other contracting state and holds at least 75% of the capital of the company distributing dividends, then the WHT will be 0%.
- Will depend on the kind of royalty paid.
- Source country may tax at a rate not higher than 15%. However, if the beneficial owner is a company resident in the other contracting state and holds at least 25% of the capital of the company distributing dividends, then the WHT will be 5%.
- Source country may tax at a rate not higher than 15%. However, if the beneficial owner is a company resident in the other contracting state and holds at least 10% of the capital of the company distributing dividends, then the WHT will be 5%.
- Source country may tax at a rate not higher than 10%. However, if the beneficial owner is an entity, other than an individual, resident in the other contracting state and holds at least 10% of the capital of the company distributing dividends, then the WHT will be 5%.
- Source country may tax at a rate not higher than 10%. However, if the beneficial owner is a company resident in the other contracting state and holds at least 25% of the capital of the company distributing dividends, then the WHT will be 5%.
- Source country may tax at a rate not higher than 15%. However, if the beneficial owner is a company resident in the other contracting state and directly holds at least 25% of the capital of the company distributing dividends, then the WHT will be 10%.
- Source country may tax at a rate not higher than 15%. However, if the beneficial owner is a company resident in the other contracting state and holds at least 20% of the capital of the company distributing dividends, then the WHT will be 5%.
- Source country may tax at a rate not higher than 10%. However, if the beneficial owner is an entity, other than partnerships, resident in the other contracting state and holds at least 25% of the capital of the company distributing dividends, then the WHT will be 5%.
- Source country may tax at a rate not higher than 7%. In some special cases mentioned in the DTT, the source country may tax at a rate not higher than 5%.
- Source country may tax at a rate not higher than 10%. However, if the beneficial owner is an entity, other than partnerships, resident in the other contracting state and holds at least 70% of the capital of the company distributing dividends, then the WHT will be 5%.

## Tax administration

### Taxable period

The taxable period may be chosen by the company. However, certain sectors or industries have mandatory fiscal year closing dates.

### Tax returns

CIT and NWT are self-assessed and their tax returns are filed by the end of the fourth month following the date of the year-end.

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## ***Payment of tax***

Income and capital taxes are paid monthly by way of advanced payments, which are calculated on the basis of the previous year's tax. The difference between the advanced tax payments and the total annual tax calculated at fiscal year-end is paid by the end of the fourth month after the fiscal year-end.

## ***Tax audit process***

The taxpayer has the right to appeal an Administrative Act to the Tax Bureau and, simultaneously, to the Executive Branch in an administrative process. Both appeals must be filed jointly within ten days from the notification of the administrative act. If both appeals are tacitly (not expressly resolved within a period of 150 days) or expressly rejected, the taxpayer has the right to appeal to a special court through a judicial proceeding.

## ***Statute of limitations***

The statute of limitations in Uruguay is five years, which can be extended to ten years in the case of: (i) tax fraud, (ii) not complying with Tax Office registration, (iii) lack of communication of a taxable event, or (iv) not submitting a tax return (among other cases).

## ***Topics of focus for tax authorities***

There are several topics the tax authorities are currently focusing on.

One of the newest topics of interest for the tax authorities concerns 'transfer pricing' rules and their impact on multinational companies operating in Uruguay.

During the last few years, important investments have been made by the government to automate processes and improve assistance to taxpayers.

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## ***Other issues***

### ***Bank secrecy and identification of title holders***

The inclusion of the request of information by a treaty partner is approved as one of the hypotheses under which banking secrecy can be lifted.

The identification of holders of bearer titles representing the capital of entities domiciled or doing business in Uruguay is mandatory. In this regard, Law N° 18,930 includes the compliance of certain obligations for identification purposes. This obligation relies on the holders, who must identify themselves with the Central Bank of Uruguay, providing not only their identity but also the percentage of their participations in the entity.

Information shall be kept by the Central Bank of Uruguay and subject to secrecy, although the National Tax Office, anti-money laundering authorities, penal and family courts, and related entities may access them in certain cases.

The duty of identification applies to all entities domiciled in Uruguay and to companies incorporated abroad, provided that they act in Uruguay through a PE or if their management is carried out in Uruguay.

### Ultimate beneficial ownership

According to Law N° 18,930 and 19,484, entities whose share capital is represented through bearer or nominative certificates, as well as partnerships and other entities, must identify and communicate to the Central Bank of Uruguay the ownership of those participations as well as the ownership chain until reaching its ultimate beneficial owners.

In this regard, the law considers as ‘beneficial owners’ those natural people who directly or indirectly hold at least 15% of the paid-in capital or its equivalent, the rights to vote, or who otherwise exercise the final control of the company.

The law foresees exemptions to the obligation of communicating the mentioned information, such (i) those particular cases where beneficial owners do not hold at least 15% of the paid-in capital; (ii) companies whose titles are listed on a stock exchange of recognised prestige (national or international); or (iii) when in the ownership chain exists an investment fund or trust, also with their participations contributed publicly in the stock exchange. It is worth mentioning that qualifying for this exception does not necessarily consist in not requesting information from those companies since the form must be filled anyway but with less information requested.

### Tax treaties

Tax information exchange agreements (TIEAs) with Guernsey and South Africa entered into force as of October 2017.

Furthermore, a TIEA with Brazil is ratified by the Uruguayan government.

As for DTTs, the DTT with Chile was ratified by the Parliament (October 2017). In February 2018, the Executive Power submitted to Parliament the bill of law regarding the DTT with Paraguay (signed in 2017).

# Venezuela

## PwC contact

Elys Enrique Aray O.  
Espiñeira, Pacheco y Asociados  
Avenida Principal de Chuao  
Edificio Del Río, Apartado 1789  
Caracas 1010-A, Estado Miranda  
Venezuela  
Tel: +58 212 7006124  
Email: elys.aray@ve.pwc.com



## Significant developments

### Sanctioning Tax Unit

The Constitutional Law of creation of the Sanctioning Tax Unit was enacted on 21 December 2017 as published in Official Gazette N° 41,305. The Sanctioning Tax Unit shall be used exclusively to determine the value of fines expressed in Tax Units in the corresponding regulations. The Sanctioning Tax Unit value must be established by the Executive Branch on the basis of the variation of the Consumer Price Index (CPI) of the Caracas Metropolitan area in the previous year. To date, the basis for the calculation has not been published.

### Currency reconversion

According to a Decree dated 1 June 2018, as of 4 August 2018, the Venezuela new unitary currency value shall be restructured at a value equivalent to current 1,000 bolívar fuerte (VEF). Consequently, obligations in national currency shall be expressed on the basis of the new currency unit as of the date of enforcement.

### Exchange Agreement N° 39

Exchange Agreement N° 39 was enacted on 26 January 2018. The aforesaid agreement sets forth the terms of a new auction-based DICOM system for the offer and purchase of foreign currency and abrogates the protected exchange rate (DIPRO) and the previously in force auction-based system as provided in Exchange Agreement N° 38.

## Taxes on corporate income

Corporations resident in Venezuela are subject to corporate income tax (CIT) on their Venezuelan and foreign-source income, whereas corporations resident abroad with a permanent establishment (PE) in Venezuela are levied CIT on only their Venezuelan and foreign-source income attributable to said PE. Corporations are able to claim any similar taxes paid abroad on foreign-source income as a tax credit. Non-resident corporations without a PE are subject to CIT only on Venezuela-source income.

Corporate income is taxed at the following progressive rates based on tax units (TU) (see below) (i.e. Tariff 2):

Taxable income (TU)		Rate (%)	Subtract (TU)
Over	Not over		
0	2,000	15	0
2,000	3,000	22	140



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Taxable income (TU)		Rate (%)	Subtract (TU)
Over	Not over		
3,000	-	34	500

## Tax units (TU)

The 1994 Income Tax Law reform established the concept of a taxable unit as an element that reduces the negative effects created by inflation on the determination of the tax rates. The tax code established the initial TU at VEF 1, with annual basis adjustments according to the variation on the CPI from the previous year. For 2017, TU was VEF 300. For 2018, TU is VEF 500.

## Additional rates and considerations

Income for oil exploitation and certain related activities is taxed at a flat rate of 50%. Related activities are comprised of those such as refinery, transportation, and purchases for the exports of hydrocarbons and by-products for exploitation. Joint venture corporations are also subject to a 50% CIT rate.

The above-indicated regime does not apply to corporations engaged in the exploration and exploitation of non-associated gas (and the processing, refining, transportation, distribution, commercialisation, and exportation of the gas and its components) or companies exclusively engaged in the refining of hydrocarbons or improvement of extra heavy oil, which are subject to Tariff 2.

Net income from banking, financial, insurance, and re-insurance activities carried out by entities domiciled in Venezuela is subject to a 40% flat rate.

## Local income taxes

See *Municipal business licence tax* in the *Other taxes* section for a description of local taxes on income.

## Corporate residence

According to the Venezuelan tax code, the following companies are regarded as resident:

- Companies incorporated in Venezuela and registered with the Mercantile Registry as established by commercial law.
- Foreign companies registered to be domiciled in Venezuela as branches duly registered with the Mercantile Registry.

The following companies are non-residents but subject to Venezuelan taxes:

- Foreign companies that provide technical assistance, technological services, royalty items, and professional services from abroad.
- Foreign banks granting loans to local companies.
- Foreign companies leasing goods to local companies.
- Foreign companies deriving income from economic activities carried out in Venezuela or from assets in Venezuela.

## **Permanent establishment (PE)**

According to the Venezuelan Income Tax Law (VITL), generally, a passive party is deemed to be carrying out operations in Venezuela through a PE when:

- The passive party owns, directly or through an agent, employee, or representative in the Venezuelan territory,
  - an office, fixed place of business, or an activity centre where its activities are totally or partially carried on
  - management headquarters, branches, offices, factories, shops, facilities, warehouses, stores, construction, installations, or assembling works, when the duration thereof exceeds six months, or
  - agencies or representatives authorised (according to the VITL) to contract in the name of or on behalf of the passive party.
- The passive party performs, directly or through an agent, employee, or representative in the Venezuelan territory, professional, artistic activities.
- The passive party possesses, directly or through an agent, employee, representative, or other contracted personnel in the Venezuelan territory, other work places where the operations are wholly or partially performed.

Any agent acting independently shall be excluded from this definition, except if such representative has the power to conclude contracts in the name of the principal.

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## **Other taxes**

### **Value-added tax (VAT)**

Federal VAT (*Impuesto al Valor Agregado* or IVA) is a one-time tax payable by the ultimate consumer of all types of products and services. However, each business entity involved in the process, from the sale of raw materials to the production and distribution of finished products to the ultimate consumer, is required to include the tax on its products to customers (output tax) and to pay the tax on its purchases or imports of goods and services (input tax), crediting the amounts paid against the amounts due on its own activities. The net amount payable by each entity is considered to represent a tax on the value added.

In general, VAT does not represent an additional cost to business enterprises because even though all types of business enterprises, including government departments and agencies (with some exceptions), are required to accept charges of the tax by suppliers on their purchases of goods and services, such amounts are normally deductible from the liability of the business enterprises for the tax on their bills to customers.

There are exceptions, principally when the sales of an enterprise are exempt from VAT, in which case the enterprise is treated as the final consumer and must absorb any VAT charges on its purchases except insofar as its activities are subject to the zero rate (*see below*). However, input tax paid on goods or services used to produce items that are exempt from VAT may be deducted for CIT purposes.

### **Taxable transactions**

In general, VAT is payable on all sales, rental, and importation of goods, and rendering of services executed or used in the country, although a number of significant exceptions are provided by law.

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## Sales of goods

The law defines a sale as any transmission of tangible goods, including those made on a conditional basis or through an irrevocable trust. The taxable amount of a sale includes the sale price as well as other amounts charged to the purchaser for other taxes, duties, interest, or surcharges of whatever nature. VAT becomes payable when the goods are invoiced or shipped to the customers or when the price is paid in full or in part.

Exempt sales include the following:

- Certain foods and other products for human consumption.
- Fertilisers, as well as any natural gas used in the manufacturing thereof.
- Some products for animal consumption.
- Medicine.
- Products derived from hydrocarbons and some raw materials intended to improve the quality of gasoline.
- Wheelchairs.
- Books, magazines, newspapers, and the paper used in producing these products.
- Vehicles, aircraft, and trains for passenger transport.
- Machinery and equipment for agribusiness.
- Scientific equipment purchased by the government.

## Services

Taxable services are those rendered within Venezuela by one person to another on an independent basis, transportation of passengers or goods, agency activities, technical assistance, and transfer of technology. VAT is payable to service providers at the time the invoice is issued, the service is rendered, or the fee becomes demandable, whichever comes first. The taxable amount includes not only the price of services, but also charges to the customers for other taxes, interest, etc.

Exempt services include the following:

- Domestic land and maritime transportation of passengers.
- Educational services.
- Accommodations for students and persons with disabilities.
- Healthcare and dental services, surgery, and hospitalisation.
- Theatres, sports, and cultural events.
- Food services for employees and students.
- Certain utilities (e.g. electricity, water).
- Housecleaning.
- Transport services for hydrocarbon-derived fuels.
- Services involving livestock, poultry, and other minor species, including breeding and production.

## Exports

Exports are zero-rated. Consequently, VAT is not payable on exports, including exports of in-bond processing companies, technical fees to foreign residents, and sales to in-bond processing companies and companies that export their entire production. Sale of natural hydrocarbon by joint ventures regulated by the Hydrocarbon Law to the National Oil Company (PDVSA) and affiliated companies are also taxable at 0%. Though exporters do not collect VAT on export sales, they may recover VAT charges on their purchases of goods and services by means of a refund certificate. This certificate

may be used to pay other tax obligations. If such exporters carry out sales in the country, they will be entitled to recover only input VAT related to foreign sales.

Additionally, a zero rate applies to independent personal services provided by residents in Venezuela that are used solely by and for the benefit of persons abroad without a PE or fixed base in Venezuela.

## Tax rates

The rate may change every year, within the range of 8% to 16.5%. Currently, the general VAT rate is 12%.

A 15% VAT applies to the sale and imports of luxury products (e.g. vehicles valued at 40,000 United States dollars [USD] or more, motorcycles valued at USD 20,000 or more, nickel or token game machines, aircraft used for recreational or sport purposes, jewellery valued at TU 2,500 or more).

An 8% VAT applies to the following transactions:

- Goats, sheep, and minor species for slaughter or breeding.
- Meats in their natural state, or refrigerated, frozen, or salted meats, or meats in brine of goats, sheep, and poultry.
- Shortening.
- Rendering of professional services to any government entity, in any level or branch of government, provided such services do not involve any commercial transactions but rather predominantly intellectual work or efforts.
- Domestic air passenger transportation.

## Payment and collection

Excess VAT charged or chargeable to customers over VAT paid to vendors or customs authorities (*Servicio Nacional Integrado de Administración, Aduanera y Tributaria* or SENIAT), including the correspondent payment, must be remitted to SENIAT within the first 15 days of the following month.

## Customs duties

As a general rule, the importation of goods into Venezuela is subject to customs duties. These duties are generally levied on the cost, insurance, and freight (CIF) value of the product being imported, excluding VAT.

Customs duty rates generally range from 5% to 35%. The duty rates vary depending on the product involved. In general, import tariffs are 5% for capital goods, 10% to 15% for raw materials and intermediate goods, and 15% to 35% for finished products. In addition, all imports are subject to customs handling charge, a duty import, and VAT.

With regard to procedural aspects, the Master Customs Law establishes two modes of customs declaration: (i) the anticipated informative declaration, only applicable to imports, and (ii) the definitive declaration for customs regime, also known as the single customs declaration. In this regard, it establishes that entities with competence for the issuance of permits and licences are to issue the corresponding documents, at least 25 business days in advance to the arrival of the merchandise, in order for importers to register the advanced informative customs declaration.

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Additionally, an element has been created, named Authorised Economic Operator, who will be the company domiciled in the country, involved in the international logistic chain, which will serve as the substitute of simplified control procedures and customs clearance. With regard to the sanctioning system, pecuniary penalties applicable to transporters, porters, consolidating companies, and customs agents, as well as those applicable to infringements committed in the customs declaration of merchandise, have been increased.

## **Excise taxes**

### **Tax on alcohol and alcoholic beverages**

In general terms, the manufacture, commercialisation, and importation of alcohol and alcoholic beverages are subject to excise taxes. The Law of Tax on Alcohol and Alcoholic Beverages provides for three main types of excise taxes:

- Tax on the national production and importation of alcohol and alcoholic beverages, which is established on the basis of TU per litre and varies depending on the type of product.
- Additional excise tax per litre for national and imported beer and for other alcoholic beverages is levied on the sale of those products to the public, which is also provided on the basis of TU per litre, depending on the type of product.
- In addition to the above, another excise tax is imposed on the importation or local sale of national and imported alcoholic beverages to the public, which is levied on the sales price and provided on the basis of a percentage on the price of sale to the public depending on the type of product, as follows: 15% for beer, 35% for natural wines, and 50% for other beverages up to 50 grade on the Gay-Lussac scale.

The Alcohol and Alcoholic Species Tax Law specifies the time of payment of the tax as follows: (i) for importers, at the moment the merchandise is nationalised and (ii) for producers, upon withdrawal of the products from the establishment.

### **Tax on cigarettes and manufacturing of tobacco**

The importation and national production of cigarettes and tobacco, fine cuts, and other tobacco derivatives to be consumed in Venezuela is subject to an excise tax. This proportional tax is levied at a rate of 70% on the retail price of cigarettes, tobacco, and its derivatives. As per the Cigarette and Tobacco Manufacturing Tax Law, produced and imported taxable products for zones under the Territorial Customs Regime, duty free shops, and special development regions shall also be subject to tax.

The time of payment of tax on cigarettes and manufacturing of tobacco is as follows: (i) for national production, before the products are removed from the manufacturing establishments and (ii) for imports, at the time of customs declaration.

## **Urban Property Tax**

The Urban Property Tax is a local or municipal tax payable by any person who owns property rights or any other real rights on urban real estates. The taxable basis is the value of the urban real estate. For these purposes, the fair market value of the real estate is provided as a point of reference. The applicable rate varies according to each municipality.

### **Public registry tax**

Commercial companies are registered with the Mercantile Registry Office and are subject to a tax levied upon incorporation of a company and registration of capital increases. The tax is 1% of the amounts of subscribed or increased capital.

The sale of a going concern is also registered in the Mercantile Registry Office and is subject to a tax levied upon the total amount of the sell. The tax is 2% of the amount.

### **Stamp duties**

The Stamp Duties Law establishes a number of stamp duties on the issuance of official documents (e.g. certificates, permits, authorisations, registrations). Stamp duties may be levied at fixed amounts (ranging from TU 0.01 to TU 10,000) or at a rate based on the value of the transaction or work in question and vary depending on the jurisdiction.

### **District Capital stamp tax**

The District Capital stamp tax on subscribed or increased capital of companies is 2%.

### **Tax on Large Financial Transactions**

Taxpayers for the purposes of the Tax on Large Financial Transactions comprise:

- Entities qualified as ‘special taxpayers’ by the tax authorities, for payments made from their accounts in banks or financial institutions and payments that do not involve financial institutions (debt offsetting, debtor or creditor substitution, and debt forgiveness).
- Entities related to those qualified as ‘special taxpayers’ for the above-indicated transactions.
- Individuals and entities acting on behalf of ‘special taxpayers’ for the above-indicated transactions.

Special taxpayers are comprised of individuals and entities with specific characteristics with regard to income level or type of activity and have been designated as such by the tax authorities by notification.

The tax applies, among others, to the following transactions:

- Debits made in bank accounts, or any other deposit instrument, held in financial entities.
- Transfer of securities as of the second endorsement.
- Acquisition of cashier’s check.
- Cross-border payments
- Payments of debts obligations (even if not executed through the formal financial system).

The applicable rate is 0.75% on the total bank debit or taxable transaction.

Certain transactions involving state-issued securities, payments of taxes, and transfer of funds among same-holder accounts are exempted from this tax.

The tax is not deductible for Venezuelan income tax purposes.

The tax due shall be determined on a daily basis.

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## Gift tax

Overall, the Inheritance and Donations Tax Law, published on 1999, stipulates the taxes attributable to inheritances left by individuals. Nonetheless, this Law provides regulation about donations, which are significant to corporations. Subject to payment of the gift tax are the beneficiaries of gifts in the form of movable or real property, rights, or shares located in the country.

For tax calculation purposes, the progressive tax rate (up to 55%) set forth in the Law will be applied to the donated good. Both donors and donees are jointly liable for the tax generated from the gift.

The gift tax is applicable from the time in which the donors manifest before the National Treasury their will to donate and must be paid before the registration of any document formalising or evidencing the authenticity of the gift. Should the donation not be perfected due to express will of the donor or rejection on the part of the donee, the obligation to pay the tax will be eliminated and reimbursement may be requested of the amounts paid in this connection.

Under the transfer pricing rules contained in the VITL, the tax authorities are empowered to impute income in inter-company transactions at a price reflecting the fair market value of the property being transferred.

Before the introduction of transfer pricing rules, under the Inheritance and Donations Tax Law, the tax authorities could and still can presume in transactions involving a sale, assignment, barter, or transfer, the existence of a donation if, for instance, the price stipulated in such transaction does not reflect the real value of the property being transacted. In such a case, a gift tax may be imposed on the difference between the fair market value of the property being transacted and the consideration received in return.

Also, a cancellation of a debt gives rise to gift tax issues. In this regard, the Inheritance and Donations Tax Law provides that the total or partial forgiveness or cancellation of a loan must be viewed as a gift and, as such, is subject to gift tax.

## Windfall tax on oil production

The windfall tax on oil companies is provided in the following terms:

- The contribution on extraordinary oil prices is a 20% tax on the difference in price when the internationally quoted price per barrel exceeds the budgeted price per barrel (for purposes of the Venezuelan Annual Budget Law), provided that the quoted price per barrel is equivalent or lower than USD 80 per barrel (i.e. the maximum basis is the difference between USD 80 per barrel and the current budgeted price of USD 55).
- The contribution on exorbitant oil prices is comprised of the following:
  - 80% tax on income generated by quoted oil prices between USD 80 and USD 100 per barrel (i.e. 80% on the range from USD 80 to USD 100 quoted price per barrel).
  - 90% tax on the difference in the quoted oil prices between USD 100 and USD 110 per barrel.
  - 95% tax on the difference over the threshold of USD 110 per barrel.

The tax is payable by oil companies exporting with sale purposes. Also, the mixed companies (*empresas mixtas*) created in accordance with the Master Hydrocarbons Law

that sell oil and by-products to PDVSA, or any of its affiliates, are also obligated to pay the above-described tax.

On the other hand, tax exemption is provided for the following cases:

- For mixed companies when their activities are the result of the performance of projects for new developments of reservoirs, enhanced production, or projects to remediate production, declared as such by the Ministry of the Popular Power for Petroleum and Mining, until they have recovered their total investment. Parameters to determine the volumes exempted are to be separately established by the aforesaid Ministry by Resolution.
- Exports executed in connection with cooperation or financing international agreements.

The tax is payable on a monthly basis in foreign currency. Other terms of payments are to be regulated by Resolution.

Additionally, USD 80 per barrel is the maximum price to be used as the calculation basis for the payment of royalties, extraction tax, and export registration tax provided for in the Master Hydrocarbons Law.

### **Hydrocarbons Organic Law**

The state is entitled to 30% of the volume of hydrocarbons extracted from any deposit, by way of royalties. The National Executive can reduce this within certain limits, when it is shown that certain types of deposits are not economically exploitable.

Persons conducting activities related to hydrocarbons must pay the following taxes:

#### **Surface tax**

For the portion of the surface area granted that is not under development, the equivalent of TU 100 for each square kilometre or portion of a square kilometre for every elapsed year is due as a surface tax. This tax will increase annually by 2% during the first five years and 5% during the following years.

#### **Tax on own consumption**

10% of the value of each cubic metre of hydrocarbon by-products produced and consumed as fuel in wholly-owned operations, based on the price of the end consumer, is due as a tax. In the case that said product fails to be sold in a domestic market, the Ministry of Energy and Mines shall provide the price.

#### **General consumption tax**

For every litre of hydrocarbon by-products sold in the domestic market, a tax is due at the rate of between 30% and 50% of the price paid by the end consumer, whose aliquot should be implemented annually between the two extremes under the Budget Law. This levy to be paid by the end consumer should be withheld at the supply source, to be handed over to the National Treasury on a monthly basis.

The National Executive may waive, in whole or in part, by the time specified, the general consumption tax, in order to encourage certain activities of public or general interest. The National Executive can also reinstate this levy to its original level when the causes for the waiver cease to exist.



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## ***Gaseous Hydrocarbons Organic Law***

The Gaseous Hydrocarbons Organic Law establishes a system of royalties, determinable by the volumes of gaseous hydrocarbons extracted from any deposit and not re-injected. The state is also entitled to a 20% share for this item.

The Law also provides that additional legislation may obligate these entities to pay taxes on hydrocarbons consumed, such as fuel. However, no additional regulations have been enacted for enforcement of this obligation.

Additional taxes are provided for in the licence agreements, which vary for each particular case.

## ***Science, technology, and innovation contribution***

The Law on Science, Technology, and Innovation (LOCTI), establishes a mandatory contribution to be paid by companies that obtained, in the previous fiscal year, over TU 100,000 in gross income.

The kind of companies that are required to pay this contribution are stock companies, limited liability companies, partnerships, communities, irregular associations, associations, foundations, and PEs or fixed bases located inside or outside the national territory with current activities in Venezuela.

Contributions established in the LOCTI are as follows:

- Contributions made from companies related to bingos and casinos activities, alcoholic drinks, or tobacco: The companies engaged in activities related to bingos and casinos, alcoholic drinks, or tobacco must contribute annually the equivalent of 2% of gross income.
- Contributions made by private companies engaged in hydrocarbon or mining activities: The companies that are engaged in hydrocarbon activities, including gaseous hydrocarbons, or mining activities, must contribute the equivalent amount of 1% of gross income.
- Contributions made by companies engaged in other economic activities: These companies must contribute annually the equivalent of 0.5% of gross income.
- The company that performs activities with two different percentages will apply the highest one.

The National Fund for Science, Technology, and Innovation (FONACIT) is the entity responsible for the administration, collection, control, verification, and qualitative and quantitative determination of the contributions.

The contribution must be paid to FONACIT during the second quarter after the end of the corresponding fiscal year.

## ***Contribution to support Organic Law on Sports, Physical Activity, and Physical Education***

The purpose of the Organic Law on Sports, Physical Activity, and Physical Education (Sports Law) is to establish the public service nature of physical education and the promotion, organisation, and administration of sports and physical activity, as well as their organisation as an economic activity with social aims.

The provision of the Sports Law are of a public nature and are applicable to the public national, state, and municipal administration and organisations, and also to individuals and legal entities that conduct any activity related to the practice, promotion, organisation, sponsorship, administration, or any economic activity associated with sports or physical activities and education.

The Sports Law creates the National Fund for the Development of Sports, Physical Activity, and Physical Education, which will be constituted with the contributions made by companies or other public or private organisations that perform economic activities for profit in the country; by donations, gifts, or any other special contribution made by the Republic, the states, the municipalities, or any other public or private entity; and by the revenue produced by such funds.

The contribution is 1% of the annual net of accounting profit and is payable by all companies or other public or private organisations that perform economic activities within the country and obtain an annual net or accounting profit of more than TU 20,000. Up to 50% of the contribution can be for the implementation of the taxpayer's own projects, provided the respective project follows the guidelines to be issued by the National Sports Institute, which will be updated every two years.

### **Anti-drugs contribution**

The Organic Drug Law stipulates that any company employing 50 or more employees must make an annual contribution from their operating profit equivalent to 1%. On the other hand, corporations with the specifications mentioned before but that are dedicated to the manufacture or import of alcohol beverages, tobacco, or their mixtures are required to make a contribution equivalent of 2% from their operating profit. Under the definitions established by this Law, operating profit can be understood as the result from subtracting the operating expenses from the income profit in accordance with the accepted Venezuelan general accounting principles.

This contribution will be collected by the National Anti-Drug Fund (FONA) within 60 continuous days counted from the end of the fiscal year.

Note that this contribution can be retrieved if the company performs:

- prevention programs and projects intended for the company employees and their family environment
- prevention programs for children and adolescents, or
- programs to fight drug trafficking.

### **Payroll taxes and other contributions**

Contributions applicable to resident companies in Venezuela:

Contributions	Basis	Contribution basis (cap)	Employer contributions (%)	Employee contributions (%)	Notes
Mandatory social security regime contribution	Wages (normal or regular wages)	Up to five minimum salaries for urban workers	9/10/11	4	(1, 2, 5)
Employment benefit regime contribution	Wages (normal or regular wages)	Up to ten minimum salaries for urban workers	2	0.5	(1)

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Contributions	Basis	Contribution basis (cap)	Employer contributions (%)	Employee contributions (%)	Notes
Housing regime contribution	Total monthly (or integral) salary	No cap (5, 6)	2	1	(5, 6)
Employee training contribution (INCES)	Total salaries paid by the employer for purposes of the employer's contribution.	No cap	2	0.5 (4)	(3, 4)
Workplace prevention, conditions, and environment contribution (LOPCYMAT)	Total salaries paid to employees	No cap is established	From 0.75 to 10	N/A	(7, 8)

## Notes

- As of 30 April 2018, the minimum monthly salary amount is VEF 1 million.
- The employer's contribution to social security depends on the company's risk qualification (minimum risk, middle risk, or maximum risk).
- Regarding *Instituto Nacional de Capacitación y Educación Socialista* (INCES) contribution, the employer must contribute 2% of the total wages and salaries paid to employees.
- Employers are also required to withhold 0.5% of the annual profit-sharing bonus paid to employees.
- According to the *Ley Orgánica del Sistema de Seguridad Social* (LOSSS), the general rule for contribution basis for the new systems may not exceed ten minimum salaries. The transition rules establish a contribution basis of five metropolitan minimum salaries for urban workers for social security purposes. No cap is expressly established in the transition rules for the housing system and work, security, and health regime.
- The basis of calculation of the housing contributions is the 'Integral Salary'. The Integral Salary is a concept established in the Organic Labour Law, and it comprises the following payments: commissions, gratifications, profit sharing bonuses, vacation bonus as well as surcharges for holidays, overtime, night shifts, among others, all of which are made to the employee and correspond to the services rendered by the individual.
- Contributions to be made to this regime are exclusively for the employer and vary depending on the risk associated to the company. A company's risk is to be determined by the *Instituto Nacional de Prevención, Salud y Seguridad Laborales* (INPSASEL).
- Ley Orgánica de Prevención, Condiciones y Medio Ambiente de Trabajo* (LOPCYMAT) regulations do not establish a cap for the contribution. However, as mentioned, the LOSSS establishes a maximum of the minimum urban salaries. For this reason, there are several contrary interpretations on whether a cap should be applied in this case.

Other contributions (see above)	Basis	Contribution basis (cap)	Employer contributions (%)	Employee contributions (%)
Science, technology, and innovation contribution (LOCTI) (1)	Total annual income	N/A	0.50/1/2	N/A
Anti-drug contribution (LOD) (2)	Operating profit	N/A	1/2 (3)	N/A

## Notes

- Ley Orgánica de Ciencia, Tecnología e Innovación* (LOCTI).
- Ley Orgánica de Drogas* (LOD).
- 2% in the case of companies that manufacture or import alcohol beverages or tobacco. 1% for companies that employ 50 or more employees.

## Municipal business licence tax

Companies and business entities, as well as individuals and unincorporated companies, are subject to municipal tax on gross income from industrial or trade activities carried

on in the municipality during the fiscal year. The rates range from 0.1% to 10.0%, depending on the activity and the municipality.

## **Other municipal taxes**

Municipalities also tax vehicles, public entertainment, legal bets, and commercial advertisements. There are also various municipal tariffs and fees.

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## **Branch income**

Branches of foreign corporations are subject to the same tax rules as Venezuelan corporations. Inter-branch income and deductions must be eliminated. The positive difference between a branch's annual book and taxable income is deemed to be remitted to the branch's head office (branch profits tax). Such remittances are subject to the 34% flat dividend tax (*see Dividend tax in the Income determination section for more information*) regardless of whether there is an actual payment unless the branch can provide proof of reinvestment of its profits for a five-year period. If such proof is established, no deemed remittance is assumed.

A Venezuelan taxpayer has to recognise, annually on an accrual basis, income generated in a company or other legal entity it controls that is located in a jurisdiction with low fiscal taxation (JLFT). Further, investments in a JLFT must be declared to the SENIAT.

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## **Income determination**

### **Inventory valuation**

Inventories may be valued at cost or the lower of cost or market value. Any method generally accepted for accounting purposes can be accepted for tax purposes.

### **Capital gains**

Capital gains are taxable as ordinary income, and capital losses are deductible from ordinary income. Note that capital losses resulting from the sale of stock, capital reduction, or liquidation of a company are only deductible if they meet one of the following conditions:

- The cost of the capital stock was not in excess of the price quoted on a stock exchange or an amount with a reasonable relationship to the book value of the capital stock.
- The holding period of the investment was for at least two years immediately preceding the date of the sale.
- The stockholder proves that the company selling the shares carried on economic activities for at least two years preceding the date of sale.

At present, the tax law contains two different rulings relevant to the deductibility of losses incurred through operations on the Venezuelan Stock Market, one of which has been described above. The second ruling pertains to income obtained from operations on the local market. This income is subject to a final 1% tax that is withheld at the source. Losses in this kind of operation are not deductible against other income. Corporate shareholders not domiciled in Venezuela may not deduct such losses from other taxable income other than dividends arising from Venezuelan sources.

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Gains upon liquidation or reduction of capital are taxable to the liquidating entity.

## **Dividend income**

A dividend tax is levied at a flat rate of 34% on the positive difference between book income and tax income generated after 2000. Book income is understood to be that approved at a shareholders' meeting and based on the financial statements prepared pursuant to generally accepted accounting principles (GAAP). To determine the applicable difference, a last in first out (LIFO) method applies. The tax is triggered when a dividend is paid and shall be remitted via withholding. Withholding is to be made at the moment a dividend is declared or credited to the account of a recipient. The 34% (domestic) rate can be mitigated under tax treaties.

Dividends obtained from companies incorporated or resident abroad or incorporated abroad and resident in Venezuela are taxed at a flat 34% rate.

## **Stock dividends**

Dividends of stock are subject to payment of the aforementioned dividend tax. Moreover, stock dividends are subject to an advanced payment of dividend tax equivalent to 1% of the dividend distributed. Stock dividends have no cost for tax purposes.

## **Interest income**

Unless the debtor can prove otherwise, any sum paid by a debtor in excess of the principal is deemed to be interest. As a general rule, interest is sourced in Venezuela if it is derived from activities carried out in Venezuela or from property located in Venezuela. Specifically, interest is deemed to be derived from activities carried out in Venezuela if the loan principal is used or enjoyed in the country. Interest received by non-resident corporations is therefore subject to Venezuelan income tax if the loan is granted or invested in Venezuela.

Interest paid on loans granted by non-resident financial institutions is subject to a final withholding tax (WHT) at source at a rate of 4.95% on gross income. Interest paid to other non-resident legal entities is subject to tax at a rate of 34% applied to 95% of the gross income.

## **Royalty income**

Royalties derived by non-residents are subject to income tax on 90% of gross receipts in the case of royalties and similar payments, other than those derived from mining activities, resulting in an effective WHT rate of 30.6%.

## **Foreign income**

Extraterritorial income is subject to Venezuelan CIT based on the concept of worldwide income taxation, according to which:

- Resident companies must pay a tax on total income whether from national or foreign source.
- Non-resident companies with PE in Venezuela will pay tax on their income, whether of national or foreign source, attributable to the Venezuelan PE.
- Non-resident companies will pay taxes on their income originated or caused in Venezuela.

- Resident companies as well as non-resident companies with PE in Venezuela may credit the tax paid abroad for earnings of an extraterritorial source against the income tax payable in Venezuela, subject to limitations.
- In general terms, taxation of foreign-source income is ruled by domestic provisions on taxation of territorial-source income. Foreign-source dividends are taxable when dividends are received. However, in case of investments located in a JLFT, anti-deferral rules in the international fiscal transparency regime apply (*see below*).

## Foreign technical assistance and services

Taxable income of foreign taxpayers providing technical assistance or technological services from abroad to individuals or entities that use them in Venezuela or assign them to third parties is presumed to be 30% of gross income for technical assistance fees and 50% of gross income for technological service fees. If the contract does not specify the proportion in which the services are rendered, the law provides that 60% of the technical assistance and technological service fees are deemed to be rendered abroad (i.e. foreign-source), with the other 40% deemed to be rendered in Venezuela. The law also provides that 75% of the entire income related to technological services and 25% of that related to technological assistance is rendered abroad if not otherwise specified in the contract. *See the Withholding taxes section for more information.*

## International fiscal transparency regime

A regime of international fiscal transparency is created for the purpose of establishing special standards of fiscal control, governing capital investments in countries classified as a JLFT, or tax havens. Under certain conditions, a Venezuelan taxpayer may be required to recognise income generated in its JLFT subsidiary on an accrual basis in its tax return.

## Inflation adjustment

A system for the adjustment of non-monetary assets, non-monetary liabilities, and shareholder's equity has been established. 'Non-monetary assets' include land, construction, machinery, vehicles, installations, inventories, and investments other than in securities (e.g. bonds and stocks).

There are two phases to the adjustments: (i) initial adjustments and (ii) annual adjustments. Both phases are mandatory adjustments for taxpayers engaged in commercial and industrial operations, and in the exploitation of mines and hydrocarbons. The annual adjustment is optional for taxpayers performing non-business activities.

The following taxpayers are excluded from the inflation adjustment: (i) taxpayers engaged in banking, financial, insurance, and reinsurance activities and (ii) taxpayers designated by the tax authorities as 'special taxpayers'.

For those taxpayers subject to inflation accounting for tax purposes, the inflation adjustment is based on the National Consumer Price Index (NCPI).

## Initial adjustment

The initial adjustment on depreciable fixed assets requires a registration tax of 3% on the amount of the adjustment.

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The initial adjustment must be filed at the closing date of any fiscal year ending after 1 January 1993. This adjustment is applicable to all non-monetary assets and non-monetary liabilities.

The initial adjustment is calculated by applying the variations between the NCPI prevailing in the month in which the non-monetary assets were acquired and the month corresponding to the initial adjustment. Assets acquired before 1950 are deemed to have been acquired in January 1950.

A registry tax of 3% is applied exclusively to the initial revaluation adjustment of depreciable fixed assets. For payment, taxpayers must be registered with the Asset Revaluation Registry, maintained by the tax administration. The resulting tax may be paid in three consecutive annual instalments, beginning on the date of registration.

Companies in the pre-operating stage, deemed to end with the first invoice, must determine and pay a 3% tax once the pre-operating period has ended.

Depreciation or amortisation on the revaluation adjustment is allowed, based on the original estimated life of the asset.

### Annual adjustment

The annual adjustment is applied each year in determining taxable income. The adjustment factor must be applied to the following balance sheet items at the closing date of the fiscal year. The resulting adjustment will increase or decrease taxable income.

Balance sheet items	Adjustment factor	Tax effect
Non-monetary assets:		
Inventories (including inventories in transit) (2)	Annual variation of the NCPI	Increase taxable income
Fixed assets (3)	Annual variation of the NCPI	Increase taxable income
Other assets, trademarks, patents, production licences, other rights, and investments in stock not registered in the <i>Superintendencia Nacional de Valores</i> (SNV) and deferred charges (except interest).	Annual variation of the NCPI	Increase taxable income
Investments in shares registered in the SNV	Adjusted to the share market value at the end of the year	Increase taxable income
Non-monetary liabilities:		
Deferred credits (except interest)	Annual variation of the NCPI	Decrease taxable income
Equity:		
Tax initial equity (1)	Annual variation of the NCPI	Decrease taxable income

#### Notes

1. Tax initial equity is defined as the difference between assets and liabilities at the beginning of the tax year, less accounts receivable from administrators, affiliated companies, and related companies. In order to determine the initial tax equity, assets not located in the country, as well as goods, debts, and liabilities entirely applied to the production of deemed, exempt, or exonerated income, are excluded.
2. Inventories are to be valued at historical cost for purposes of applying the NCPI. The provisions of the VITL detail the procedures for applying the NCPI. The revaluation of inventories in the tax year is included as part of the initial inventories of the following year.

3. The annual revaluation adjustment of fixed assets is considered part of the cost when the assets are sold.

More recently, there has been a delay in publishing the NCPI. To date, the last NCPI published is that corresponding to December 2015.

Net losses arising from the annual adjustment that have not been offset cannot be carried forward.

Gains or losses originating from the adjustment of accounts receivable or investments, as well as debts and liabilities in foreign currency or with a re-adjustability clause, are deemed to be carried out during the fiscal year in which they become demandable, collected, or paid, whichever comes first.

## ***Deductions***

### ***Depreciation and amortisation***

Companies may deduct depreciation of tangible fixed assets and amortisation of intangible fixed assets that are used in the production of income. Depreciation is generally computed on a straight-line basis although any other generally accepted method for accounting purposes is also accepted. Depreciation is not allowed on real estate used as rental property. Depreciation on the stepped-up portion of assets revalued by any method other than the inflation adjustments (*see the Income determination section*) is not permitted. In principle, useful lives of assets shall be consistent with the parameters used in accordance with accounting principles. Although domestic standards provide that tables with depreciation and amortisation rates to be applied by taxpayers may be provided via the Income Tax Rules, such a table has not been provided to date.

### ***Goodwill***

Deduction of the amortisation of goodwill is allowed for income tax purposes. Deduction of the cost basis for purposes of calculating the capital gain on the sale is also allowed for income tax purposes.

### ***Organisational and pre-operating expenses***

Domestic income tax regulations do not provide for specific guidance as to the treatment of organisational and pre-operating expenses. The accepted practice is to follow GAAP.

### ***Interest expenses***

Interest paid on a loan, the principal of which is invested to generate income, is deductible.

### ***Bad debt***

Losses arising from bad debts are deductible, provided:

- the loan concerned was granted as part of the taxpayer's business
- the amount of the debt was previously included in the taxpayer's gross revenue (except in the case of loans granted by financial institutions or by employers to their employees), and



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- either the debtor and the debtor's guarantors are insolvent or the amount of the loan does not justify collection expenses.

### **Charitable contributions**

Deductions for allowable charitable contributions are limited to 10% of taxable income (before deducting contributions) when taxable income does not exceed TU 10,000. When taxable income exceeds TU 10,000, charitable contributions are limited to 8% of taxable income. For oil extraction companies, the deduction is limited to 1% of the pre-contribution tax amount.

### **Fines and penalties**

Income tax regulations do not expressly provide for the treatment of fines and penalties; however, such expenses are not deductible as they do not meet the normality and necessity requirements.

### **Taxes**

Municipal, state, and local taxes are deductible in determining taxable income. Corporate taxes are not deductible.

### **Other significant items**

Payments required by the labour law, such as profit sharing (generally between 15 days and four months' salary) and severance indemnity accruals, are also deductible. In cases of unjustified dismissals, double severance indemnities must be paid. However, accruals for such additional indemnities are generally not deductible until paid.

Corporate tax deduction of employees' compensation and professional fees is subject to compliance with the taxpayer's obligations as employer as provided for in the Law, which entail, among others, withholding obligations.

### **Net operating losses**

Losses may be carried forward for three years. During the three-year term, the amount of losses available to carry forward cannot exceed 25% of the tax period's taxable income. Carryforward losses derived from the inflation adjustment have been eliminated. Losses may not be carried back. Foreign losses may be offset only against foreign profits.

### **Payments to foreign affiliates**

A Venezuelan corporation may claim a deduction for royalties and technical assistance and for technical service fees paid to foreign affiliates, subject to the following conditions:

- Income tax payable by the recipient is withheld at the source.
- Transfer pricing requirements are met.
- In the case of technical assistance and technological services fees, the expenses may be deducted if such services cannot be otherwise provided in Venezuela.

Foreign companies domiciled in Venezuela are allowed to deduct royalties paid to parent companies or foreign affiliates (*see the Withholding taxes section for more information*). Branches of foreign companies, however, may not deduct such payments to head offices or related parties.

## Group taxation

Group taxation is not possible in Venezuela.

## Transfer pricing

Taxpayers that carry out operations with related parties abroad must calculate their income, costs, and deductions by applying a defined methodology of transfer pricing. This regime is applicable to imports, exports, and interest paid to recipients abroad as well as technical assistance, technological services, and royalty fees.

## Thin capitalisation

Thin capitalisation rules limit the deduction of interest from debt with related parties in excess of a 1:1 debt-to-equity ratio. Under these rules, if the average of a taxpayer's debt (with related and unrelated parties) exceeds the average amount of its equity for the respective fiscal year, the excess debt is treated as equity for income tax purposes. Consequently, the ability to deduct interest on related-party loans may be affected.

## Controlled foreign companies (CFCs)

Venezuelan tax legislation does not provide for CFC rules but does provide for international fiscal transparency rules where income from investments in a JLFT must be recognised on an accrual basis (see *Foreign income in the Income determination section*).

## Tax credits and incentives

### Foreign tax credit

Foreign income tax paid on taxable foreign income may be offset by the payable Venezuelan tax, up to the proportion of Venezuelan payable tax related to foreign-source income. Taxpayers must keep documentation of foreign tax. No carryforward rules are provided for in domestic regulations.

### Other incentives

Customs duty incentives are also available, such as drawbacks on the import of materials used for exporting products. This may take the form of a tax refund certificate issued by the Ministry of Finance. The certificate is a negotiable bond and will be accepted by the Treasury Funds Office for payment of national taxes. Determination of the amount of the refund will take into account the import duties effectively paid at the time the materials used in the manufacture of the exported product were received in Venezuela.

## Withholding taxes

Resident corporations making certain types of payments must withhold taxes. T2 refers to Tariff 2. These include the following:

Type of payment	Resident (%) (1)		Non-resident (%)	
	Corporation	Individual	Corporation	Individual
Commissions (2)	5	3	5	34

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Type of payment	Resident (%) (1)		Non-resident (%)	
	Corporation	Individual	Corporation	Individual
Dividends (5)	34	34	34	34
Royalties (3)	5	3	T2 on 90	34 on 90
Interest to foreign financial institutions	N/A	N/A	4.95	N/A
Other interest	5	3	T2 on 95	34 on 95
Professional fees	5	3	T2 on 90	34 on 90
Technical assistance fees (3)	5	3	T2 on 30	34 on 30
Technological service fees (3)	5	3	T2 on 50	34 on 50
Real estate rentals	5	3	5	34
Tangible personal property rentals	5	3	5	34
Contractor and subcontractor services	2	1	T2	34
Film and television exhibition rights	5	3	T2 on 25	34 on 25
Insurance and reinsurance premiums	N/A	N/A	10 on 30	N/A
Payments to international media organisations	5	3	T2 on 15	N/A
Acquisition of Venezuela commercial funds	5	3	5	34
Payments to non-domiciled international transportation companies (4)	N/A	N/A	T2 on 5	N/A

## Notes

1. WHTs constitute prepayments against final tax liabilities as determined by the income tax return when filed.
2. Includes commissions earned in instances other than through a dependent relationship (e.g. employer/employee). Commissions are subject to withholdings in the same manner as salaries and wages.
3. The rates for non-residents are similar to those rates applicable for payments to a non-domiciled corporation not resident in a treaty country and rendering services from abroad with no PE in Venezuela.
4. Excludes payments exempted under international shipping agreements.
5. Withholding applicable only on the excess on profits taxed at the corporate level (see *Dividend income in the Income determination section*).

## Tax treaties

There are currently comprehensive treaties for the avoidance of double taxation with the following countries:

Recipient	WHT (%)		
	Dividends	Interest	Royalties
Non-treaty (1)	34	4.95/T2 on 95 (2)	T2 on 90
Treaty:			
Austria	5/15 (3)	4.95/10 (4)	5
Barbados	5/10 (5)	5/15 (6)	10
Belarus	5/15 (7)	5	5/10 (8)
Belgium	5/15 (7)	10	5
Brazil	10/15 (9)	15	15
Canada	10/15 (10)	10	5/10 (11)
China	5/10 (12)	5/10 (13)	10
Cuba	10/15 (10)	10	5
Czech Republic	5/10 (14)	10	12
Denmark	5/15 (7)	5	5/10 (15)
France	0/5/15 (16)	5	5

Recipient	WHT (%)		
	Dividends	Interest	Royalties
Germany	5/15 (3)	5	5
Indonesia	10/15 (17)	10	10/20 (18)
Iran	5/10 (14)	5	5
Italy	10	10	7/10 (19)
Korea	5/10 (12)	5/10 (20)	5/10 (21)
Kuwait	5/10 (12)	5	20
Malaysia	5/10 (12)	15	10
Mexico (not in force)	5	4.95/10/15 (22)	10
Netherlands	0/10 (23)	5	5/7/10 (24)
Norway	5/10 (25)	5/15 (6)	9/12 (26)
Portugal	10	10	10/12 (27)
Qatar	5/10 (40)	5	5
Russia	10/15 (28)	5/10 (20)	10/15 (29)
Saudi Arabia	5	5	8
Spain	0/10 (30)	4.95/10 (31)	5
Sweden	5/10 (32)	10	7/10 (33)
Switzerland	0/10 (34)	5	5
Trinidad and Tobago	5/10 (32)	15	10
United Arab Emirates	5/10 (40)	10	10 (41)
United Kingdom	0/10 (35)	5	5/7 (36)
United States	5/15 (37)	4.95/10 (38)	5/10 (39)
Vietnam	5/10 (40)	10	10

#### Notes

- Domestic rate applicable to payments to non-resident corporations.
- The 4.95% rate applies to non-resident financial institutions, and the Tariff 2 on 90% on the gross income in all other cases of non-resident entities.
- The 5% rate applies when the beneficial owner is a company that holds at least 15% of the capital of the company paying the dividends, and the 15% rate applies in all other cases.
- The 4.95% rate applies to interest paid to banks, and the 10% rate applies in other cases.
- The 5% rate applies when the beneficial owner is a company that holds at least 5% of the capital of the company paying the dividends, and the 10% rate applies in all other cases.
- The 5% rate applies to interest paid to banks, and the 15% rate applies in other cases.
- The 5% rate applies when the beneficial owner is a company that holds at least 25% of the capital of the company paying the dividends, and the 15% rate applies in all other cases.
- The 5% rate applies to payments for the use or the right to use copyrights on scientific work, software, trademarks or for the use or the right to use any type of equipment or transportation vehicles. The 10% rate applies in all other cases.
- The 10% rate applies when the beneficial owner is a company that holds at least 20% of the capital of the company paying the dividends, and the 15% rate applies in all other cases.
- The 10% rate applies when the beneficial owner is a company that holds at least 25% of the capital of the company paying the dividends, and the 15% rate applies in all other cases.
- The 5% rate applies to artistic copyright, computer software, patent, and industrial, commercial, and scientific royalties. The 10% rate applies in all other cases.
- The 5% rate applies when the beneficial owner is a company that holds at least 10% of the capital of the company paying the dividends, and the 10% rate applies in all other cases.
- The 5% rate applies to interest paid to banks, and the 10% rate applies in other cases.
- The 5% rate applies when the beneficial owner is a company that holds at least 15% of the capital of the company paying the dividends, and the 10% rate applies in all other cases.
- The 10% rate applies to royalties, and the 5% rate applies to technical assistance.
- No withholding applies when the beneficial owner is a company that holds at least 10% of the capital of the company paying the dividends. The 5% rate applies in all other cases. The 15% rate applies to a resident of Venezuela who receives from a company that is a resident of France dividends that would give the right to a tax credit (avoir fiscal) if they were received by a resident of France and shall have the right to a payment from the French Treasury of an amount equal to this tax credit (avoir fiscal), subject to deduction of the tax.
- The 10% rate applies when the beneficial owner is a company that holds at least 10% of the capital of the company paying the dividends, and the 15% rate applies in all other cases.

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18. The 20% rate applies to royalties, and the 10% rate applies to technical assistance.
19. The 7% rate applies to literary, artistic, and scientific work copyright royalties, and the 10% rate applies in other cases.
20. The 5% rate applies to interest in the case of banks, and the 10% rate in other cases.
21. The 5% rate applies to royalties paid for the use of industrial, commercial, or scientific equipment. The 10% rate applies in other cases.
22. The 4.95% rate applies to interest in the case of banks and insurance companies. The 10% rate applies to the aforesaid entities when the payment is carried out by banks. The 15% applies in other cases.
23. No withholding applies when the beneficial owner is a company whose capital is totally or partially divided into shares and controls at least 25% of the capital of the company paying the dividends. The 10% rate applies in other cases.
24. The 5% rate applies to patent royalties and to industrial, commercial, and scientific equipment royalties, the 7% rate applies to trademark royalties, and the 10% rate applies to literary, artistic, and scientific work copyright royalties.
25. The 5% rate applies if the beneficial owner is a company that directly controls at least 10% of the company paying the dividends.
26. The 12% rate applies in the case of royalties, and the 9% rate applies to technical assistance.
27. The 12% rate applies in the case of royalties, and the 10% rate applies to technical assistance.
28. The 10% rate applies when the beneficial owner is a company that holds at least 10% of the capital of the company paying the dividends and has invested in this company not less than the equivalent to USD 100,000. The 15% rate applies in all other cases.
29. The 15% rate applies to royalties, and the 10% rate applies to technical assistance.
30. No withholding applies when the beneficial owner is a company whose capital is totally or partially divided into shares and controls at least 25% of the capital of the company paying the dividends. The 10% rate applies in other cases.
31. The 4.95% rate applies to interest in the case of banks. The 10% rate applies in other cases.
32. The 5% rate applies when the beneficial owner is a company that holds at least 25% of the capital of the company paying the dividends. The 10% rate applies in all other cases.
33. The 10% rate applies to literary, artistic, and scientific work copyright royalties, and the 7% rate applies in other cases.
34. No withholding applies when the beneficial owner is a company that controls at least 25% of the capital of the company paying the dividends. The 10% rate applies in other cases.
35. No withholding applies when the beneficial owner is a company that controls at least 10% of the capital of the company paying the dividends. The 10% rate applies in other cases.
36. The 5% rate applies to patent and trademark literary, artistic, or scientific work copyrights, including films, and the 7% rate applies in other cases.
37. The 5% rate applies if the beneficial owner is a company that owns at least 10% of the voting stock of the company paying the dividends. The 15% rate applies in other cases.
38. The 4.95% rate applies to interest to financial institutions (including insurance companies), and the 10% applies in other cases.
39. The 5% rate applies to industrial, commercial, and scientific equipment royalties, and the 10% rate applies in other cases.
40. The 5% rate applies if the beneficial owner is a company that controls at least 10% of the capital of the company paying the dividends. The 10% rate applies in other cases.
41. The Article also includes technical assistance.

The treaty with Mexico has been published in the Official Gazette and signed by the contracting parties but has not entered into force since diplomatic notes have not been exchanged.

Treaties with additional countries are being negotiated.

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## **Tax administration**

### ***Taxable period***

Taxable years may not exceed 12 months, but the first year may be less than 12 months. Taxpayers engaged in commercial, industrial, or service activities may choose a taxable year that does not coincide with the calendar year. A taxpayer that makes such an election may only change it after obtaining prior authorisation from the tax authorities. All other taxpayers are required to conform their taxable year to the calendar year.

## ***Tax returns***

Final tax returns must be filed within three months following the end of the tax year or at the date indicated on the corresponding calendar for those designated as a 'special taxpayer' by the tax authorities. The system is one of self-assessment.

## ***Payment of tax***

The total amount of tax due must be paid at the time of filing the annual return. Estimated tax payments must be paid consecutively in six monthly instalments. Companies engaged in mining, hydrocarbon exploitation, and related activities must make 12 equal monthly estimated tax payments.

## ***Penalties***

Fines for omitted taxes when assessed as a result of tax audits range from 100% to 300% of the omitted tax. The tax authorities generally assess the average fine (200%) unless aggravating or mitigating circumstances apply.

Fines are reduced to 30% if assessment is accepted within a specific timeframe.

Fines are adjusted according to the value of the Tax Unit.

Late payment interest is 1.2 times the average banking lending rate considering the six major banks.

## ***Tax audit process***

According to the Master Tax Code, the tax administration is entitled to review the existence of a taxpayer's liability, whether it has been reported or not. In exercising this power, the tax administration is entitled to obtain and verify information in connection with a determined tax liability. Verifications may be carried out on the basis of available information or on a presumptive basis if concrete information is not available.

## ***Statute of limitations***

According to the Master Tax Code, the statute of limitations for tax liabilities is six years starting to run on 1 January of the year following the tax period involved. Regarding taxes that are assessed by periods (e.g. income tax and VAT), it is understood that the taxable event occurs at the end of such period. Exceptionally, the statute of limitations is extended to ten years in any of the following circumstances: (i) the taxpayer fails to declare the taxable event or submit the relevant returns; (ii) the taxpayer does not comply with its obligation to register with the tax administration; (iii) the tax administration was not able to become aware of the taxable event; (iv) the taxpayer has extracted from the country property that is subject to the payment of the tax liability or if the tax liability is related to taxable events occurring abroad; or (v) the taxpayer does not keep its accounting in accordance with the relevant standards.

## ***Topics of focus for tax authorities***

Tax audits are generally focused on 'special taxpayers'. The main subjects of focus of tax audits on corporate taxpayers are related to compliance of formal obligations for direct and indirect taxes and transfer pricing.

## Other issues

### Sample corporate tax calculation

Taxable income (manufacturing company)	VEF	1,500,000.00
Divided by the value of the TU (VEF 500/1 TU)	VEF	500
Taxable income in TU	TU	3,000.00
Tax thereon:		
Tariff 2: 34%	TU	1,020.00
Subtract (per tax table)	TU	(500.00)
Total tax	TU	520.00
Less: Withholding taxes	TU	(100.00)
Less: Advance payments	TU	(50.00)
Net income tax payable in TU	TU	370.00
Net Income tax payable in VEF *	VEF	185,000.00

\* Multiplied by the TU value, (i.e. VEF 500/1 TU)

### Exchange control

In January 2003, the Venezuelan government and the Venezuelan Central Bank (VCB) restricted the free trade of foreign currency and established an Exchange Control Regime, which is currently administered by the VCB and the National Center of Foreign Commerce (CENCOEX). Nowadays, the main mechanism for the offer and purchase of foreign currency is that provided in Exchange Agreement N° 39 enacted on 26 January 2018 (and reprinted on 14 February 2018), which provides an auction-based mechanism for the Complementary Floating Exchange Market System (DICOM as per its Spanish Acronym). Main considerations of Exchange Agreement N° 39 may be summarised as follows:

- The applicable exchange rate reference resulting from the auctions will be the lowest rate awarded to legal persons. The DIPRO, or protected exchange rate, as provided in Exchange Agreement N° 35 has been abrogated.
- Individuals are allowed to purchase a maximum of 420 euros (EUR) per quarter, and legal persons must calculate the maximum allowed amount per month on the basis of gross income reported in the CIT return, with a limit of EUR 340,000.
- The auction-based system provided in Exchange Agreement N° 38 has been abrogated.

The Law on the Currency Exchange Regime and Currency Exchange Violations is in effect, thereby establishing the actions that constitute exchange crimes and their respective penalties. Said penalties may be both criminal and pecuniary.

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# **Worldwide Tax Summaries**

## **Editorial Team**

### **Worldwide Tax Summaries Operations Director and Executive Editor**

**Chris Wooley**

PwC US

+1 813 222 7097

[christopher.j.wooley@pwc.com](mailto:christopher.j.wooley@pwc.com)

### **Director, Global Tax Knowledge Management**

**Jim Calderon**

PwC US

+1 202 414 1612

[james.d.calderon@pwc.com](mailto:james.d.calderon@pwc.com)

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