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Global Tax Alert

News from EY Americas Tax

Ecuador's National Assembly to consider tax reform bill

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The Ecuadorian National Assembly will discuss a tax reform bill, the Fiscal Transparency, Tax Expenditure Optimization, Jobs Creation, Strengthening of the Monetary and Financial Systems, and Sustainable Public Finance Management Bill (the bill), which would affect several bodies of law if enacted. This Tax Alert focuses only on the items relevant for companies or individuals with cross-border operations.

Income tax

Exemptions

The bill would repeal the tax exemption for dividends, except for dividends paid to other Ecuadorian entities. The bill also would repeal the tax exemption for gains derived from the sale of real estate.

Thin-capitalization rules

Additionally, the bill would set the thin-capitalization threshold for cross-border, intercompany loans at 20% of income, before mandatory employee profit-sharing, interest, depreciation and amortization.

Expenses

The bill would repeal the deductibility of related-party indirect expense allocations (currently deductible with a 5% cap). The bill also would repeal the cap for deducting promotional and advertising costs and expenses.

The bill would cap certain additional expense deductions at 50% of the amounts incurred for: (i) implementing cleaner production mechanisms, (ii) increasing jobs (i.e., hiring more people), (iii) providing private medical and/or prepaid medical insurance, (iv) providing technical training and productivity improvement, and (v) paying certain travel expenses.

Transfer pricing

The transfer pricing regime would apply regardless of whether other regimes and principles apply, such as economic substance and general or specific anti-avoidance rules.

Income tax for agricultural activities

The bill would create a single income tax for agricultural activities (i.e., domestic production and commercialization and export).

The income tax on the production, sale and export of bananas would be amended.

Value-added tax (VAT)

The bill would add certain goods to the list of transferred or imported goods that are taxed with a 0% VAT rate.

The bill also would amend the list of VAT withholding agents.

In addition, the bill would impose a 12% VAT rate on digital services. The import of digital services also would be taxed. Credit card companies would act as withholding agents. Import VAT on digital services would be treated as a cost by the importer.

Currency transfer tax

The bill would reduce the tax on transfers of currency from 5% to 2.5% only for cross-border payments for imports of raw materials, supplies and capital goods listed by the Tax Policy Committee.

Unique and temporary taxes

The bill would impose a single temporary tax on companies that carry out economic activities with gross income of US\$1 million or more in tax year 2018. The tax will be paid for tax years 2020, 2021 and 2022, according to the following table:

Gross taxable income from	Gross taxable income to	Rate
1,000,000	5,000,000	0.10%
5,000,001	10,000,000	0.15%
10,000,001	Onward	0.20%

Voluntary disclosure regime

The bill would establish a voluntary disclosure regime that would apply to Ecuadorian tax residents that, as of 31 December 2018, have earned income or carried out operations subject to income tax.

It also would apply to taxpayers that, as of 31 December 2018, maintained assets abroad that were not reported on their income tax returns.

Those that benefit from this regime would not be subject to sanctions, notices of deficiency or criminal investigation.

The regime would apply until 31 December 2020.

Taxpayers that want to take part in the voluntary disclosure regime would be subject to the following tax rates:

- ▶ 2% if the tax is paid on or before 31 March 2020
- ▶ 3% if the tax is paid from 1 April 2020 to 30 June 2020
- ▶ 4% if the tax is paid from 1 July 2020 to 31 December 2020
- ▶ 8% if the taxpayer simply declares the income, assets, currencies or foreign investments, without repatriation and investment of those items into Ecuador

Transitional provisions

The voluntary disclosure regime would apply from 1 January 2020.

The VAT on digital services would apply three months from the date of publication of the law (if enacted) in the Official Registry.

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