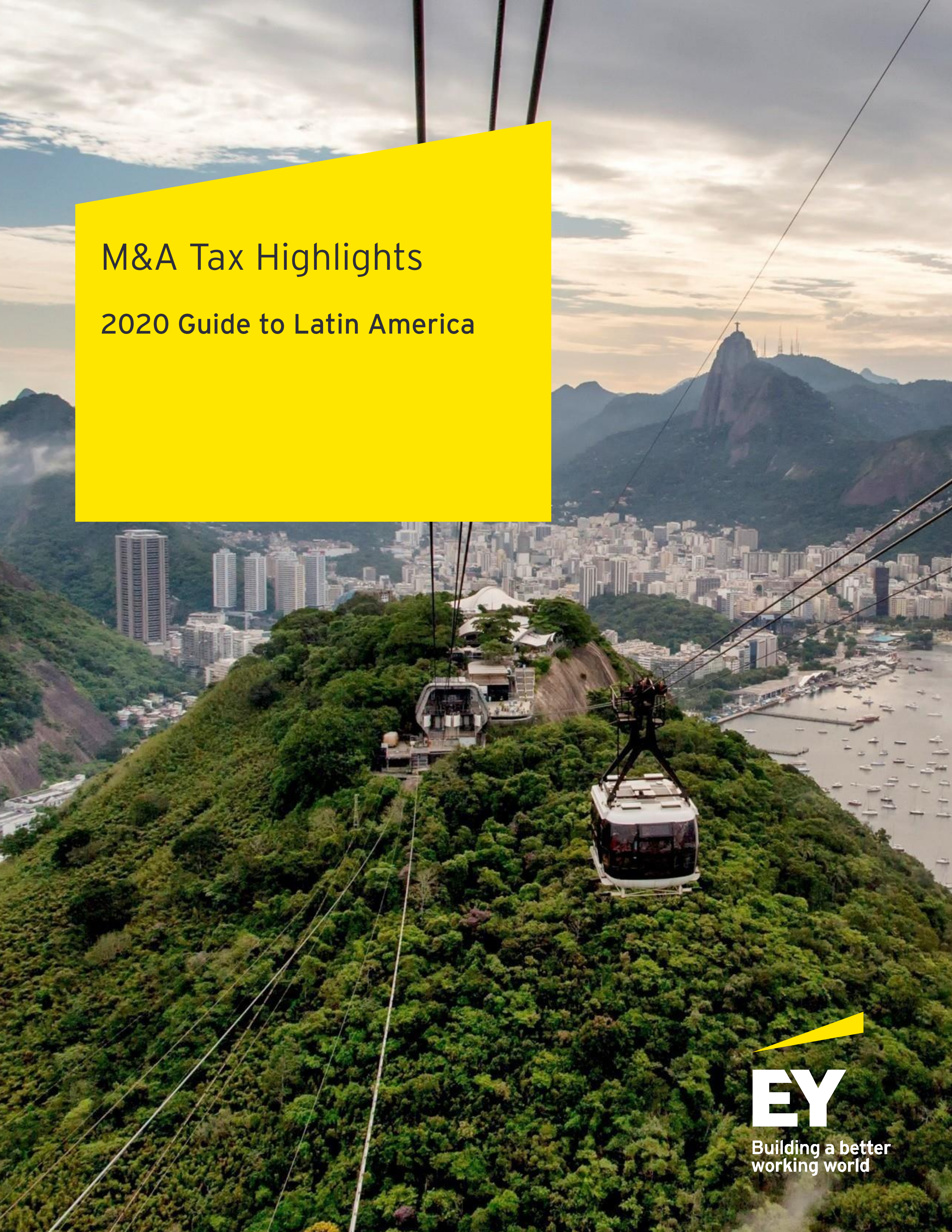
M&A Tax Highlights

2020 Guide to Latin America



Building a better working world

Preface

M&A Tax Highlights: 2020 Guide to Latin America

M&A tax rules and regulations in Latin America continue to grow in number and complexity. These rules must be understood for an entity to carry out successful transactions.

This *M&A Tax Highlights: 2020 Guide to Latin America* publication was created to provide at-a-glance M&A tax key highlights for eight of the major Latin American jurisdictions. Examples of the key highlights per jurisdiction are:

- The basics (i.e., tax authority, basis and year, corporate income, capital gains and withholding tax (WHT) rates, value-added tax (VAT) and statute of limitations)
- Asset purchase vs. share purchase
- Tax-free reorganizations
- Transfer pricing
- Net operating losses (NOLs)
- Foreign vs. Domestic holding companies
- Controlled foreign corporation (CFC) rules
- Restrictions on foreign investments
- Reporting requirements

The content provided in this guide is based on information current as of January 2020 unless otherwise indicated within the text of the chapter. This is the premier edition of the guide, and more jurisdictions will be added in future versions.

For more detailed discussion on any of the jurisdiction-specific M&A tax rules, or to obtain further assistance in addressing and resolving M&A tax rules, please contact your local EY member firm office or the relevant jurisdiction contact listed herein (page 48). A web-based version of this publication can be found at ey.com.

Table of contents

Argentina

What you need to know

The Argentine perspective

Tax incentives are available for legal entities incorporated in Argentina within certain industries such as mining, forestry, software production, auto parts, manufacture of capital goods, renewable energy, biotechnology, agricultural equipment and biofuel production.

Treaty benefits on withholding rates

Several of Argentina's tax treaties establish maximum withholding tax rates lower than those under general tax law. To benefit from a reduced treaty withholding tax rate, certain formal requirements must be met (e.g., certificate of residence).

Argentina does not currently maintain a tax treaty with the United States. Argentina currently maintains treaties with the following countries:

Argentina tax treaties		
Australia	Belgium	Bolivia
Brazil	Canada	Chile
Denmark	Finland	France
Germany	Italy	Mexico
Netherlands	Norway	Russia
Spain	Sweden	Switzerland
United Kingdom	United Arab Emirates	

In addition, Argentina has entered into exchange-of-information tax treaties with Andorra, Aruba, Bahamas, Costa Rica, Cayman Islands, Guernsey and Isle of Man, among others.

Asset purchase vs. share purchase

Argentina does not favor one deal structure over the other, as both offer benefits depending on the desired tax objectives.

Share acquisitions are more common given the overall tax neutral effect for buyers. A share sale is subject to income tax and potentially stamp tax (not a VAT for these purposes) and should also result in a step-up of the tax basis in the shares.

An asset purchase is subject to income tax and potentially indirect taxes (e.g., VAT, turnover tax) but generates a tax basis step-up in the assets, limited to their fair market value (FMV) and successor liability blockage under certain conditions. An asset sale may also be subject to other types of indirect taxes similar to a stamp tax depending on the specifics of the transaction.

Tax-free reorganizations

Tax-free reorganizations are available under Argentine law. The reorganization must be communicated to the tax authorities within six months of the reorganization date.

The basics

Tax authority –

Federal Administration of Public Revenue (AFIP)

Tax basis – worldwide income

Tax year – fiscal

Corporate income tax rate – 30% in 2019 and 25% in 2020 onward

Capital gains tax rate – 25%/30%/35% for residents

13.5% (based on gross income)/15% for nonresidents (based on net income)

Financial transaction tax – 0.6% per transaction ("credits" and "debits" in bank accounts)

33% of the tax paid for "credits" and "debits" can be offset against corporate income tax

Withholding tax rates –

- Dividends – 7% for FY19, 13% for FY20 onward
- Interest – 15.05%/35%
- Royalties – 21%/28%/31.5%
- Branch profits – 7% for FY19, 13% for FY20 onward

Participation exemption – none

VAT – 21%/10.5%

VAT grouping – none

Transfer tax rate – N/A

Stamp tax – 1%/1.5%

Tax loss carryforward/back – five years/none

Capital tax – none

Double tax relief – ordinary credit

Tax consolidation – none

Statute of limitations –

- 5years – general income taxes
- 10 years – social security taxes

Thin capitalization rules

Argentinian tax law establishes a new limit on the deduction of interest expense related to financial loans granted by a related party. The limit is subject to 30% of earnings before interest, taxes, depreciation and amortization (EBITDA), or a certain amount to be determined by the Executive Power, whichever is higher. The limit each year will be increased by the amount unused (to the extent applicable) within the prior three years.

In addition, any unused excess interest expense due to the limitation can be carried forward for five fiscal years. "Interest" includes foreign exchange differences. Argentine law provides exceptions from the deduction limit for certain situations (e.g., interest derived on loans obtained by Argentine banks and financial trusts or when the beneficiary of the interest has been subject to tax on such income, in accordance with Argentine income tax law). In addition, the limitation will not apply to situations where it can be proven that the ratio of interest to EBITDA of the Argentine borrower is equal to or lower than the same ratio for its economic group — regarding debt with unrelated lenders — for the same fiscal year.

Net operating losses (NOLs)

NOLs may be carried forward five years but cannot be carried back. Foreign-source losses and those derived from certain financial investments can only offset income of the same kind.

Generally, there are no restrictions on the use of NOLs acquired in a share deal. However, NOLs do not carry over to a purchaser in a taxable asset deal.

NOLs in a tax-free reorganization

Tax-free reorganizations may allow for continued use of NOLs to the extent the shareholders of the predecessor company held at least 80% of their capital contributions in such entities for at least two years prior to the date of the reorganization.

The reorganization must also meet the requirements for a tax-free reorganization.

Consolidated returns

Argentina does not allow for the filing of consolidated returns. Each company is required to file a separate return. There are no provisions for relief of group losses.

Foreign vs. domestic holding company

The disposition of an equity interest in an Argentine company by a foreign holding company is subject to a 15% income tax rate (based on net income) as opposed to an effective 13.5% rate (based on gross income) if the shares are held and sold by a nonresident holding company. Refer to the "Tax on exit" section for more details.

Controlled foreign corporation (CFC) rules

Income earned by resident shareholders in Argentina in connection with investments in CFCs will be subject to income tax in the fiscal year in which their investments' fiscal year ends, provided that the following requirements are met:

- The residents in Argentina have an interest equal to or exceeding 50% of equity, or whatever the percentage of participation the resident shareholder has when it meets certain conditions (e.g., possess the right to dispose of the assets)
- The foreign company:
    - Has no material or personal means to carry out its activity
    - Obtains passive income that accounts for at least 50% of income for the year
    - Earns revenues of any kind that generate, either directly or indirectly, expenses deductible for tax purposes for the parties residing in Argentina

- When the foreign company has paid in its country of origin a tax similar to income tax for less than 75% of the amount that would have been paid pursuant to Argentine regulations, or when a company resides in a non-cooperative country or low- or nil-taxation jurisdictions

The Argentine tax authorities have issued a list of countries, which continues to be updated, that they consider "cooperative" for tax transparency purposes. Any country or jurisdiction not included in the list of cooperative countries is deemed to be a non-cooperative country and is subject to all tax provisions that apply to low- or nil-taxation jurisdictions.

"Cooperative" countries

Among countries listed as "cooperatives" are: Bermuda, Brazil, Cayman Islands, Canada, Luxembourg, Netherlands, Spain and United Kingdom.

Deductions for acquisition costs

This section refers to a taxpayer's ability to deduct financing costs (other than interest expense) in connection with an acquisition. Financing costs incurred in connection with an acquisition of shares by a third party are not deductible. Conversely, financing and acquisition costs are generally deductible within the context of an asset transaction.

Amortization of intangible assets

Intangible assets without a definite life may not be amortized for income tax purposes. This includes intangibles such as goodwill and brand names.

Step-up in basis on asset or share purchase

The acquisition of assets provides for a stepped-up basis in the assets, limited to the fair market value of such assets. However, a stock purchase (while resulting in a step-up in the tax basis of the shares) will not give rise to a step-up in the basis of the underlying assets purchased. It should be noted that this step-up is obtained at the buyer's level and not at the target's level.

Restrictions on foreign investment

There are no significant restrictions on foreign investment in Argentina.

Transfer tax profile

A stamp tax (i.e., a tax based on a percentage of the total value of a contract or other instrument) applies to foreign beneficiaries upon transferring shares in Argentine Companies.

Transfer pricing

Under transfer pricing provisions, interest on borrowings between a local company and a foreign-related company must conform to normal market practices on an arm's-length basis.

Financing/debt push-down limitations

Asset purchases may be conducted via leveraged buyouts where pushing down debt on acquisition vehicles is a common strategy in Argentina. From a tax perspective, related-party financing should take the following topics into account: applicable withholding; thin capitalization rule; timing of the deduction; market rate — transfer pricing regulations; interest deduction — requirements; VAT; stamp tax; and tax on debits and credits.

Introducing debt into Argentine companies to purchase shares and subsequently deducting interest on such debt is allowed under Argentine law provided all proper requirements are met. A fact-specific analysis should be performed to determine limitations and potential risks as applicable.

Tax indemnity

In a stock purchase, buyers become fully liable for the tax liabilities of the target company until the end of the statute-of-limitations period.

Although tax clearance certificates are generally not issued by Argentine tax authorities, the party acquiring the shares of a company in a stock acquisition will usually request a tax indemnity or escrow agreement.

Net wealth tax

An annual equity tax of 0.25% is applied to any equity interests in a company organized in Argentina and owned by either resident individuals or nonresidents. The Argentine company is responsible for the payment and has the right to be reimbursed by the owners for the tax paid. It should be noted that some tax treaties offer protection against this type of tax.

VAT

VAT is levied on goods and services, although goods and services exported from Argentina are zero-rated. The standard VAT rate is 21%. A reduced rate of 10.5% applies to the sale of certain capital goods and certain food items. Although goodwill is not subject to this tax, it may be taxed where it is tied to taxable services rendered as part of the general transaction.

Transfers of goods are exempt from VAT in the case of a tax-free reorganization.

VAT refunds may apply in certain situations. For example, the recent changes in Argentine tax law create a new system to reimburse VAT credits resulting from the purchase, manufacture, preparation or import of fixed assets (other than automobiles) that remain as a VAT credit for the taxpayer after six months. The regulations will establish the method, terms and conditions for this reimbursement.

Tax clearance certificate

The Argentine tax authorities do not grant clearance certificates stating that a particular taxpayer has no tax outstanding.

Tax on exit

A tax on exit for Argentine tax purposes refers to a tax obligation levied on the disposition of an investment held in the form of equity interests or assets. The transfer of shares of an Argentine company by a foreign beneficiary is a taxable transaction. Such transactions are generally subject to a 15% income tax rate on the net gain. Indirect transfers are also taxable under certain circumstances.

The net gain is presumed to be 90% of the gross sale price, which would mean an effective tax rate of 13.5% of the gross sale price (calculated by multiplying 15% capital gain rate by 90% presumed net income). Alternatively, the law allows the possibility of calculating the net income by deducting from the contribution value the actual costs under Argentine regulations. A 15% tax rate also applies under this methodology.

Argentina tax law also establishes an income tax on the indirect transfer of assets located in Argentina. The tax is triggered on the sale, or transfer of shares by nonresidents, or other participation in foreign entities when the following two conditions are met:

- At least 30% of the value of the foreign entity is derived from assets located in Argentina (either at the moment of the sale or during the 12-month pre-transaction period).
- The participation being transferred represents (either at the moment of the sale or during the 12-month pre-transaction period) at least 10% of the equity of the foreign entity.

The applicable tax rate for this purpose is 15% (calculated on the actual net gain or a presumed net gain equal to 90% of the sale price) of the proportional value that corresponds to the Argentine assets.

The tax on indirect transfers applies to participation in foreign entities acquired after 1 January 2018 (tax reform's effective date). In addition, indirect transfers are not taxable to the extent it can be proven that the transfer took place within the same economic group, in accordance with requirements established by regulatory decree.

Minimum capital requirements

Minimum capital requirements vary depending on the legal structure of the company and the business activities carried out by the company.

Upon a sale of share, capital gains obtained by an Argentine resident company or individual is also taxable at a rate of 25%/30%. A tax rate of 15% applies to individuals for these purposes.

Reporting requirements

Foreign companies investing in Argentine entities must be registered with the Superintendency of Corporations in the jurisdiction in which the Argentine company is located. Some foreign companies might also be required to provide information to the government about their shareholders.

Transactions involving companies with domestic revenue in excess of 200 million Argentine pesos are subject to approval by the National Antitrust Commission. However, this law does not apply to foreign firms that have had no previous presence in Argentina.

Brazil

What you need to know

The Brazilian perspective

Tax incentives are generally available for entities located in specific regions of the country or that perform specific qualified activities.

Treaty benefits on withholding rates

Brazil has a tax treaty network of roughly 30-plus countries.

Brazil does not currently maintain a tax treaty with the United States. Brazil currently maintains treaties with the following countries:

Brazil tax treaties		
Argentina	Austria	Belgium
Canada	Chile	China
Czech Republic	Denmark	Ecuador
Finland	France	Hungary
India	Israel	Italy
Japan	Korea (South)	Luxembourg
Mexico	Netherlands	Norway
Peru	Philippines	Portugal
Russia	Slovak Republic	South Africa
Spain	Sweden	Trinidad/Tobago
Turkey	Ukraine	Venezuela

Brazil has signed a tax treaty with the United Arab Emirates, but the treaty has not yet been ratified.

Asset purchase vs. share purchase

Neither asset nor equity deals are generally favored from a succession-of-past-contingencies perspective. Differences between asset and equity deals might, however, be substantial with respect to indirect taxation and transfer of employees, as well as regarding continuance of operational permits and tax incentives. Equity deals involving a direct acquisition of a third party are nevertheless more common because of the possibility to amortize goodwill of the shares acquired (subject to appropriate transaction structuring).

If acquiring both tangible and intangible assets and liabilities that can be organized as sufficient for operations of a business activity, the buyer could have a primary and/or secondary tax liability up to the date of the sale. The price paid by the buyer in excess of the cost of acquiring the assets and attributed to individual assets may provide depreciation and amortization expenses, which are generally deductible for corporate income tax purposes.

The sale of individual assets is a taxable event for corporate income tax purposes and could also result in indirect taxation thereon under certain facts and circumstances. Depending on the type of assets sold, certain indirect taxes could be credited for compensation against future taxable outputs.

The basics

Tax authority –

Receita Federal do Brasil (RFB)

Tax basis – worldwide income

Tax year – fiscal

Corporate income tax rate – 15% increased by an additional tax of 10% over all taxable income exceeding R$ 240,000 per year

Federal Social Contribution Tax on Profits (SCT) – 9%

Capital gains tax rate –

Ranges from 15%/17.5%/20%/22.5%/25%

Branch tax rate – 15%

Withholding tax rates –

- Dividends – 0%
- Interest – 15%/25%
- Royalties – 15%/25%
- Services – 15%/25%
- Branch profits – 0%

Social Contribution Tax (SCT) – Imposed on worldwide income and ranges from 9% to 15%

State VAT (ICMS) – 0%-25%

Exports – exempt

Federal VAT (IPI) – 0%-330%

Tax on Financial Operations (IOF) –

Varies depending on business model

Social Integration Program (PIS) – 0.65%/1.65% on gross income

Social security financing contribution (COFINS) –

Ranges from 3%/4% to 7.6% on gross income

Municipal Service Tax (ISS) –

Ranges from 2% to 5%

Social security contributions (INSS/CPRB) – 26.8%-28.8% (on

In a share purchase, the buyer is liable for all tax and labor liabilities attached to its respective taxpayer identification (primary tax and labor succession). If the buyer is a Brazilian legal entity and the purchase price exceeds the net equity of the acquired entity, the buyer is required to make a purchase price allocation (PPA), where any balance arising after allocations made to the fair value of net assets could be allocated to goodwill for possible tax amortization purposes.

Any capital gains earned on the sale of shares held by a Brazilian seller will be subject to corporate income taxes if the seller is a legal entity, and income tax if the seller is an individual.

Tax-free reorganizations

In general, Brazil allows tax-free reorganizations when conducted at book value. Otherwise, it could cause taxable built-in gain recognitions.

Anti-deferral rules

Profits of controlled and affiliated foreign companies are taxable in Brazil every 31 December, regardless of when profits are made available. Losses are not deductible. Optional specific consolidation rules for direct and indirect controlled foreign companies may apply, including relief for foreign losses subject to certain conditions and limitations.

Consolidated returns

Brazil does not allow for the filing of consolidated returns. Each company is required to file a separate return. There are no provisions for relief of group losses.

Foreign vs. domestic holding company

Acquisition vehicles are typically structured domestically to benefit from tax amortization of goodwill. The triggering event for amortization generally occurs after a domestic merger (with an unrelated third party) takes place since there are no tax consolidation rules in Brazil.

The direct transfer of shares of a Brazilian company by a nonresident is subject to nonresident capital gains. Indirect transfer could be subject to challenges if not well supported for business purposes.

Controlled foreign corporation rules

Profits realized by a CFC of a Brazilian company are subject to income taxation on 31 December of each year regardless of any actual distribution by the CFC. Law 12,973/2014 introduced a new CFC regime. Under the new regime, qualifying CFCs are taxed on an entity-by-entity basis (that is, individually regardless of the design of the corporate structure outside of Brazil). If certain conditions are met, tax consolidation of CFCs can be achieved at the level of the Brazilian shareholder, through which the accounting losses of a qualifying CFC may offset taxable income of another CFC.

The earnings of CFC entities whose business is connected to oil and gas activities are exempt from tax in Brazil. Foreign tax credits of CFCs can be used against Brazilian corporate income tax, limited to the Brazilian corporate income tax due on CFC income. Under regulations issued by the Brazilian tax authorities (Ordinance 1,520/2014), the Brazilian shareholder can elect which non-Brazilian entities are subject to tax consolidation. Qualifying non-CFC entities are subject to tax in Brazil on an actual or deemed dividend distribution to a Brazilian shareholder.

The Brazilian corporate income tax on CFC income may be subject to installment payments over a period of eight years (12.5% payment per year), but the deferred tax liability is subject to adjustment based on a London Interbank Offered Rate plus the US dollar currency exchange variation.

Exchange controls

The conversion into Brazilian reals of proceeds received in foreign currency by a Brazilian entity or the foreign currency conversion of funds held in reals is subject to a tax on foreign exchange transactions (IOF).

The general rate of IOF is 0.38%, which can be increased at any time up to 25% by the Brazilian Government (note that Brazil does not currently tax any operations at a 25% rate).

No preapproval is required for cash remittances overseas.

Deductions for acquisition costs

Deduction of financing and acquisition costs (incurred in connection with a transaction) are generally allowed for both asset and share deals to the extent the ordinary and necessary business expense proof, thin capitalization and transfer pricing rules, where applicable, are fulfilled. A case-by-case analysis is required.

Step-up in basis on asset or share purchase

Share purchases at a premium and the direct purchase of tangible and intangible assets may increase such assets' depreciable and amortizable value. Some exceptions apply.

Restrictions on foreign investment

All foreign investments, such as equity or debt investments, must be registered with the Central Bank of Brazil (BACEN) to assure the payment of dividends and interest or the repatriation of capital without penalties. Nonresidents holding assets and rights in Brazil, such as equity investments, portfolio investments and debt investments, must be registered with the Brazilian tax authorities. On registration, the nonresidents obtain a tax identification number (CNPJ). Failure to comply with the foreign-exchange regulations and associated requirements is subject to significant penalties. This particularly applies to evasion, false statements and private offsetting transactions.

Contracts for the supply of technology and technical services, and for the use of trademarks and patents between residents and nonresidents, must also be registered with BACEN and the National Institute of Industrial Property (INPI). The registrations allow Brazilian companies to pay and deduct the royalties up to the amounts prescribed by law.

Transfer tax profile

A 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.

A state gift 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%.

Transfer pricing

Brazilian transfer pricing rules apply only to cross-border transactions entered into between Brazilian companies and foreign related parties. A transaction entered into between a Brazilian company and a resident of a low-tax jurisdiction or a resident in a jurisdiction with a privileged tax regime is also subject to the transfer pricing rules, even if the parties are not related. In general, Brazilian transfer pricing rules do not follow the transfer pricing guidelines outlined in the Organisation for Economic Co-operation and Development (OECD) Model Convention and the US rules. For example, Brazilian transfer pricing rules adopt fixed-profit margins on transactions carried out between related parties. Safe-harbor measures may be applied to Brazilian exports.

Thin capitalization rules

Under thin capitalization rules, interest expense arising from a financial arrangement with a related party is deductible only if the related Brazilian borrower does not exceed a debt-to-net equity ratio of 2:1. In addition, interest expense arising from a financing arrangement executed with a party established in a low-tax jurisdiction or benefiting from a privileged tax regime (PTR) is deductible only if the Brazilian borrower does not have a debt-to-net equity ratio greater than 0.3:1.

Financing/debt push-down limitations

In most instances where the purchaser intends to push down debt on acquisitions, the entity that acts as the borrower is a Brazilian entity. Following the purchase, this entity is merged into the acquired entity.

Other structures may involve (1) back-to-back loans on the same terms and conditions or (2) obtaining a new loan at the level of the acquired company, transferring the proceeds to the parent company (e.g., via dividends, capital reduction or otherwise) so that it can pay off the original loan. These structures may be feasible if 100% of the entity's shares are purchased. Others may also be feasible subject to a case-by-case analysis.

Minimum capital requirements

Generally, there are no minimum capitalization rules, but there are certain limited exceptions.

Net operating losses

Tax losses may be carried forward indefinitely, but can only offset up to 30% of the company's taxable income for a tax period. No carryback is allowed.

Tax losses may be jeopardized if a company experiences a cumulative change in business activity and ownership control between the period in which losses were generated and the period in which losses would otherwise be used to offset taxable income. In general, non-operating tax losses can be offset only against non-operating gains. In a corporate restructuring involving a merger, the tax losses of the merged company must be written off (i.e., would not transfer to the surviving entity).

In spin-off transactions, the spun-off company's losses are canceled in the same proportion that the assets and liabilities transferred represent the total net asset value of the spun-off entity.

If there is a change in control and change in the acquired entity's line of business, its tax losses can no longer be used. There are no percentage thresholds to qualify for a change in control. A change in control may be deemed to occur even in instances where the purchaser buys less than 50% of the target company's total equity interest.

Notional interest payment

Companies can pay interest, based on the company's net equity (calculated on a pro rata basis and up to a given rate, known as the "long-term interest rate" (TJLP), to partners and/or share/quota holders. Such interest, which cannot exceed the higher of 50% of the annual profits or 50% of the accumulated earnings and profits, is generally deductible for both corporate income tax and CSLL purposes and is subject to 15% withholding (IRRF) (or 25% if the beneficiary is located in a tax haven jurisdiction). In instances where 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 against the normal corporate income tax due or the tax due at the source on distributions of interest. If the beneficiary is a Brazilian resident individual, such interest will not become subject to any further taxation.

VAT

VAT is payable on imports, sales and transfers of goods and products in the form of (1) federal excise tax (IPI) at various rates in accordance with the nature of the product (normally around 10%-15% but in certain cases ranging to over 300%) and (2) state sales and service tax (ICMS) with rates normally ranging from 0% to 25%.

Except for services related to freight and transportation, communications and electric energy, which are also subject to ICMS, revenues from services rendered are normally subject to a municipal service tax (ISS) — which is not a VAT, but rather another common indirect tax — with rates ranging from 2% to 5%.

Tax on exit

A tax on exit for Brazilian tax purposes refers to a tax obligation levied on the disposition of an investment held in the form of equity interest or assets. Upon exit of investment, amounts in excess of the cost of the nonresident's investments in Brazil are subject to capital gain taxation at a progressive rate of 15% to 22.5%, or 25% for tax havens.

Capital gains recognized upon exit of investment performed at the Brazilian level are taxed at the standard 34% combined rate for CIT and SCT.

No taxation should be levied upon remittances up to the investment of the foreign investor.

Reporting requirements

Brazilian companies are required to comply with some ancillary obligations with respect to M&A transactions.

For direct tax purposes, the ancillary obligations are:

- Tax Accounting Bookkeeping (formerly Corporate Income Tax Return) — ECF — the ECF is a compulsory tax return for private legal entities domiciled in Brazil, including branch offices or sales offices in Brazil of companies headquartered in foreign jurisdictions, subject or not to income tax payment.
- Digital Accounting Bookkeeping — ECD — the ECD is a digital file comprising the referred accounting books.
- Federal Tax Debt and Credit Return — DCTF — the DCTF contains federal tax debits and credits. It is compulsory for private legal entities in general to the extent there are debits to record. Even if there are no debts to inform, the company is required to file the DCTF in some specific situations.
- EFD — Reinf Assessment — the EFD Reinf is an obligation created by the Brazilian Government to substitute other obligations such as the DIRF (Withholding Income Tax Statement) and the GFIP (Social Security Contributions Statement). The information comprised within the EFD Reinf refers mostly to withholding taxes to be paid when hiring external services or to be offset when the taxpayer is being hired to perform services. Apart from WHT, every taxpayer that hires or renders services should also report information on federal VAT withholdings and Social Security contributions withholdings.

For indirect tax purposes, the ancillary obligations are:

- Digital Tax Bookkeeping — PIS and COFINS — EFD — PIS/COFINS — is a digital file to be used by private entities for statement of PIS and COFINS contributions, based on a set of documents and operations representing revenue earned, as well as costs, expenses, charges and non-cumulative credit acquisition.
- Digital Tax Bookkeeping — ICMS and IPI — Tax SPED (EFD-Fiscal) — is a digital file comprising a set of tax documents and other information pertaining to the State Tax Authorities and the RFB, as well as records of tax calculation referring to operations and services performed by taxpayers. It is compulsory for ICMS and IPI taxpayers whose main activities performed are listed by the government. Mandatory for all companies.

For labor purposes, the ancillary obligations are:

- Information regarding the calculation base for Social Security and FGTS purposes — GFIP — information regarding the calculation base for Social Security and FGTS purposes, as well as the FGTS payment voucher. Its preparation is mandatory, and it must be submitted electronically.
- Annual Statement of Social Information — RAIS — annual relation of the social information, such as compensation payments and turnover. Its preparation is mandatory on a yearly basis, and it should be submitted electronically.
- General Register of Employment and Unemployment — CAGED — labor accessory obligation prepared on a monthly basis by all companies to inform the admission, transfer and dismissal of employees.
- Social Security Digital Tax Bookkeeping — e-Social — digital files in which the company must register its labor information. Mandatory from 2018 onward.

Chile

What you need to know

The Chilean perspective

Chile has an extensive network of double tax treaties in place. Tax incentives are available for legal entities incorporated in specific regions of the country deemed as remote territories.

Treaty benefits on withholding rates

The Chilean treaty network includes more than 30 treaties that are currently in force and at least 2 additional treaties that have been signed, but they are not yet in force (including the US treaty) as of the date of this guide.

Chile tax treaties		
Argentina	Australia	Austria
Belgium	Brazil	Canada
China	Colombia	Croatia
Czech Republic	Denmark	Ecuador
France	Ireland	Italy
Japan	Malaysia	Mexico
New Zealand	Norway	Paraguay
Peru	Poland	Portugal
Russia	South Africa	South Korea
Spain	Sweden	Switzerland
Thailand	United Kingdom	

None of Chile's tax treaties provide a reduction of a withholding tax rate on dividends distributed abroad.

Asset purchase vs. share purchase

Share deals can be subject to the general income taxation regime, resulting in an overall tax burden equivalent to 35%-44.45%. In a stock deal, the historical liabilities, losses and credits remain within the company. It must be noted that an ownership change may affect the ability to carry forward losses (discussed further in this section) other than when related to a reorganization within the group.

Asset deals are subject to the general taxation regime and may cause VAT taxation. Generally, engaging in an asset deal extinguishes the historical tax attributes, but secondary tax liability can be claimed by the Chilean IRS under certain circumstances.

Tax-free reorganizations

To the extent a merger or demerger maintains the tax value of the assets, liabilities and equity involved, the transactions are considered tax-neutral (i.e., no capital gain taxation; no challenge by the Chilean IRS). NOLs of the absorbed company realized prior to the merger cannot be utilized post-merger. In case of a partial demerger, NOLs cannot be assigned to the NewCo created as a result of the demerger. In general, any personal tax attributes existing at the level of the absorbed company or demerged company may not be transferred to the absorbing entity or NewCo, respectively (i.e., special regimes of depreciation and VAT credits among others).

The basics

Tax authority –

Chilean Internal Revenue Service

Tax basis –

Worldwide income (for resident companies, territorial for non-resident companies)

Tax year –

Calendar (no exceptions)

Corporate income tax rate –

25%/27%

Capital gains tax rate –

25%/27%/35%

Withholding tax rates –

- Dividends – 35%/44.45%
- Interest – 4%/35%
- Royalties – 0%/15%/30%
- Branch profits – 35%
- Technical Services – 15%/20%

Participation exemption –

No taxation arises in case of dividend payment/profit distribution between two Chilean companies. Dividends received from abroad are taxable.

Net Wealth Tax –

Municipal License at rates ranging from 0.25% to 0.5% on tax equity

VAT –

19% (Certain items are exempt)

VAT Grouping – none

Transfer tax rate – N/A

Tax loss carryforward –

Indefinite carryforward, no carryback

As a general rule, contributions of assets must be performed at fair market value. However, it can be tax-neutral (i.e., performed at carryover basis) provided that: (a) the assets are transferred based on their tax value; (b) there is a legitimate business purpose; (c) the receiving entity is a Chilean entity that performs a capital increase; (d) no cash flow is received by the contributor; and (e) the contributor must not disappear as a result of the contribution.

Consolidated returns

Chilean entities cannot file consolidated returns. However, tax losses generated by a Chilean company may be used to offset dividends distributed by a subsidiary, whether they are imputed to tax or financial profits.

Foreign vs. domestic holding company

Foreign holding companies have been commonly used, mainly as exit vehicles, but since the indirect sale of Chilean assets can be subject to additional tax obligations, this is currently a less attractive form of investment. An indirect transfer tax of 35% is triggered where the shares or rights transferred represent at least a 10% interest in the foreign company (over the preceding 12-month period and taking into account the disposals by related persons) and:

- The underlying Chilean assets are worth at least 20% of the fair market value of the foreign holding company.
- OR
- The pro rata value of the underlying Chilean assets is CLP210,000 annual tax units (approximately USD187 million) or more.
- OR
- If the foreign shares being transferred are issued by a company incorporated or domiciled in a low-tax jurisdiction and such entity holds underlying Chilean assets (regardless of their fair market value).

Domestic holding companies have the advantage of not paying dividend tax on dividends received and maintained in Chile. They also facilitate the in-country deduction of financing costs.

Intercompany loans

Foreign loans are subject to a stamp tax, whether or not they are documented by a loan agreement. The rate is 0.066% for each month or fraction thereof between disbursement and maturity, capped at 0.8%. Loans payable on demand or without maturity are subject to a 0.332% tax.

Controlled foreign corporation rules

Passive income accrued or received by a controlled entity will be deemed as accrued or received by the Chilean controlling entity, with a credit for taxes paid or due in the country of origin. Generally, an entity is deemed as controlled by a Chilean entity when the latter holds more than 50% of the capital, rights to profits, voting rights or other rights in the former.

Passive income includes dividends (unless those dividends are from an active income entity), interest (unless earned by a bank or financial institution regulated as such), lease income, royalties, capital gains and others. CFC rules do not acknowledge passive losses.

Deductions for acquisition costs

Under certain conditions, the deduction of financing and acquisition costs are generally allowed in both asset and share deals.

Real property taxes

Chilean real property tax law establishes different annual rates depending on the kind of real estate, applicable over the cadastral value:

Rural 1%; non-rural 1.225%; and non-rural intended for residential use 0.98% of the cadastral value up to USD115,000 and 1.168% on the excess.

Amortization of intangible assets

No allowance is available for amortization of intangible assets such as patents, trademarks, etc. until the economic value is completely extinguished and such circumstance is duly evidenced before the IRS. Tax goodwill is not deductible.

Step-up in basis on asset or share purchase

The acquisition of assets provides for a stepped-up basis in the assets, limited to the purchase price of the assets. Purchasers of stock cannot obtain a step-up in the basis of the underlying assets, unless the acquired company is merged into the acquirer, provided that tax goodwill is determined. In that scenario, the value of non-monetary assets received by the absorbing entity is increased up to their fair market value, subject to certain value-assignment factors. Any unassigned goodwill balance should be considered as a non-amortizable intangible. The acquisition of shares provides for a stepped-up basis, limited to the purchase price of such. In any case, the Chilean IRS is entitled to challenge the purchase price if it is not agreed under fair market value conditions.

Restrictions on foreign investment

Generally, there are no significant restrictions on foreign investment in Chile, besides certain limitations of ownership of particular real estate near the country's borders.

The new foreign investment statute expressly states that foreign investors are subject to the same legal regime applicable to local investors, excluding any arbitrary discrimination.

Transfer tax profile

Chile does not levy a transfer tax.

Transfer pricing

Chile follows the OECD guidelines in its transfer pricing rules, expressly recognizing the following methods: comparable uncontrolled price, resale, cost plus, profit split, transactional net margin and residual methods.

Differences resulting from the application of transfer pricing rules are subject to a 40% tax. An additional 5% surtax may apply if such difference is determined as a consequence of an assessment, provided that certain conditions are met.

Thin capitalization rules

Thin capitalization rules require a 3:1 debt-to-equity ratio. The over-indebtedness situation is calculated annually including all debt (foreign and local, related or not).

Interest paid to related parties (as defined by law) in an over-indebtedness position will be subject to a 35% penalty tax; however, the tax already withheld (at a 4% rate or any other tax rate lower than 35%) can be used as credit and the penalty is deductible from the corporate tax basis.

Even though an over-indebtedness position is determined, the 35% tax will not apply if the "project finance" exemption applies, according to the requirements described by law.

General anti-avoidance rule (GAAR)

Substance-over-form rules are currently under effect. These rules give the Chilean IRS the authority to challenge, before court, a transaction when it is considered abusive or simulated, and to request payment of the relevant taxes that would have applied. GAARs do not prevent the Chilean IRS from exercising criminal actions.

Tax indemnity

In a stock purchase, purchasers become fully liable for the tax liabilities of the target company until the end of the statute of limitations period.

Tax rulings are available to offset ambiguity of the tax treatment of a transaction. However, the party acquiring the shares of a company in a stock acquisition will usually request a guarantee that, by buying its shares, the buyer is also inheriting the company's tax history.

As a result, after the due diligence process — with a subsequent purchase audit — eventual tax liabilities are guaranteed via representations of the seller, escrows or price adjustments as may apply.

Financing/debt push-down limitations

The usual strategy for debt push-down is to incorporate a Chilean HoldCo to acquire the OpCo, followed by a merger between both companies. General limitations to financing relate to transfer pricing aspects, thin capitalization rules and necessity to incur in debt.

Minimum capital requirements

As a general rule, no minimum capital is required. However, depending on the specific business activities to be developed by the entity, special minimum capital requirements may apply.

Net operating losses

NOLs can be carried forward indefinitely, but no carryback is currently allowed. Tax losses, however, are not transferable and may only be used by the taxpayer who generated the losses.

Anti-NOL trading rules should also be considered in a deal context. In general, these rules restrict the utilization of NOLs when there is a change of ownership in the property transferred, or the entity changes its business purpose or does not have assets which allow it to perform business activities.

Net wealth tax

Chile does not currently have a net wealth tax.

Capital duty

While there is no taxable event upon the incorporation of a company, business entities must pay annual municipal license fees. The fees range from 0.25% to 0.5% on tax equity up to a maximum of approximately USD560,000. The cap is subject to indexation.

VAT

Transfers and other operations regarded as sales, as well as certain services, are subject to a 19% value-added tax. Importation of capital goods may be exempt from VAT, provided certain conditions are met, while exports are always VAT-exempt.

VAT taxpayers are allowed to deduct VAT credit from their VAT debit. If the VAT credit is greater than the VAT debit generated in a given month, no VAT is to be paid, and the balance can be carried forward by the taxpayer. Chilean law also allows requesting a VAT refund in two particular cases (VAT on acquisition of fixed assets and VAT related to export activities).

VAT paid on importation, acquisition or services received, when accessory to operations exempt from VAT (unless they are exports), or not related directly to the activities of the seller, are not recoverable.

Tax administration

Chile operates on a self-assessment regime. Companies are required to make provisional monthly payments of tax, determined as a percentage of gross proceeds, and the annual tax return filed in April of the year following the tax year. In addition, VAT must be declared on a monthly basis, and withholdings must be generally paid during the first 12 days of the month following the payment which causes the withholding. Penalties do apply for late filing, failure to file, the underpayment of tax and tax evasion.

In the situation where a company is unclear of the tax treatment of a transaction, the company can seek written guidance from the tax authorities on the consequences of the planned transaction. Moreover, a special procedure is established for purposes of obtaining Chilean IRS confirmation on whether a given transaction could be deemed abusive or simulated under GAAR provisions or not.

Tax clearance certificate

The Chilean tax authorities do not grant clearance certificates stating that a particular taxpayer has no tax outstanding.

Tax on exit

A tax on exit for Chilean tax purposes refers to a tax obligation levied on the disposition of an investment held in the form of equity interest or assets. Withholding tax is levied on the capital gains derived from the sale or disposition of a Chilean entity (or any other Chilean source income) made by a non-Chilean resident at 35% (with a possible reduction in rate under the applicable treaty).

Reporting requirements

Regardless of the investment vehicle utilized, if foreign investments brought into Chile exceed USD10,000 or its equivalent in another foreign currency, they must be registered with the Central Bank of Chile. Additionally, Central Bank regulations request that remittances of foreign currency abroad must be registered with the Central Bank.

Colombia

What you need to know

The Colombian perspective

Colombia's strategic location in Latin America offers access to a vast selection of natural resources. It is currently one of the main investment destinations in the region.

The country has demonstrated great economic stability and adequate control of its inflation rate over the last decade. Risk-rating agencies have given Colombia higher confidence indices compared with other countries in the region.

Colombia has entered into several international investment agreements, thus becoming an investor-friendly environment for foreign capital. As of 2018, Colombia became a member of the OECD.

Many of the rules discussed in this section were introduced in the Tax Reform of 2016, which was repealed by Colombia's Constitutional Court due to procedural flaws in Congress' approval process. However, the most recent tax reform enacted by Congress on 27 December 2019 preserved most of those rules and included new ones, which are applicable as of 1 January 2020.

Income tax

Companies and branches incorporated under Colombian law are taxed on their worldwide income.

For Colombian tax purposes, entity-level income tax is calculated based on ordinary taxable income (taxable revenues minus deductions and expenses) or presumptive income (i.e., an alternative minimum tax of 3.5% on net taxable equity as of 31 December of the preceding taxable year) – whichever is higher.

The current applicable tax rate is 33%, and it begins decreasing in FY20 to 32%, then 31% in FY21, and 30% for FY22 onward. Additionally, the presumptive income percentage was reduced to 0.5% for FY20, which then decreases to 0% in FY21 and subsequent years.

Statute of limitations

The general term for reviewing a tax return through 2015 was two years, counting from the expiration of the filing period or when the tax filing was received and approved by the tax authority. The statute of limitations may also be extended up to five years in the event of taxable loss determination or use of NOLs to offset taxable income.

Between 2016 and 2018, the law increased the general statute of limitations to three years; six years for returns where taxable income was offset by net operating losses; and 12 years for returns where operating losses were generated. The general statute of limitations for returns, including transactions subject to transfer-pricing regulations was six years.

As of 1 January 2020, returns filed will be covered by the general statute of limitations for three years, while the extended terms mentioned above are reduced and consolidated under a five-year statute of limitation.

For other national taxes, the statute of limitation is usually tied to the general income tax return's statute of limitations, which is three years.

The basics

Tax authority –

Dirección de Impuestos y Aduanas Nacionales (DIAN)

Tax system – worldwide income

Tax year – calendar

Corporate income tax rate –

33% for FY19, 32% for FY20, 31% for FY21 and 30% for FY22 onward

Capital gains tax rate – 10% (for assets held longer than two years)

Financial transaction tax –

0.4% per transaction

Withholding tax rates –

- Dividends – 7.5%/7,5% + 33% recapture tax
- Interest – 5%/15%/20%
- Royalties – 20%
- Management services – 33%
- Branch profits – 7.5%/7,5% + 32% recapture tax

Participation exemption – none

VAT – 0%/5%/19%

VAT grouping – none

Transfer tax rate – none

Tax loss carryforward/back: unlimited – 12 years/none depending on periods generated

Capital duty – none

Stamp duty – 0%

Registration tax – 0.3%-1%

Consumption tax – 4%/8%

Double tax relief – tax credit

Tax consolidation – none

Statute of limitations – three/five years

Treaty benefits on withholding rates

Colombia has tax treaties in force with the following countries:

Colombia tax treaties
Canada
Chile
Czech Republic
India
Mexico
Portugal
Republic of Korea
Spain
Switzerland
United Kingdom (in force as of 1 January 2020)

Treaties with France, Italy, Japan and United Arab Emirates have been signed, but have not been ratified as of the date of this guide. In addition, Colombia has double taxation agreements with Bolivia, Ecuador and Peru in accordance with Andean Community (CAN) provisions to avoid double taxation of income and wealth.

Profits earned by branches of Andean multinational corporations are only subject to tax in the foreign jurisdiction. Dividends distributed from a branch's profits in another Andean country will only be taxed in the branch's jurisdiction.

Colombia does not currently maintain a tax treaty with the United States.

Asset purchase vs. share purchase

Colombia does not favor one type of deal over the other.

Reporting requirements

Mergers involving companies under the control of any superintendence must be reported to the corresponding superintendence. Transactions involving a target with annual sales and/or assets that exceed 150,000 times the minimum monthly wages may require authorization of the corresponding superintendence for that Industry and Commerce (SIC). Full authorization is required for transactions involving companies with greater than 20% of market participation for any given industry. Notification is required for transactions involving companies with less than 20% of market participation.

Tax-free reorganizations

Provided that certain requirements are met, contributions, mergers and spin-offs between companies incorporated in Colombia can be carried out with no Colombian tax implications. Such transactions may still be subject to implementation costs.

Mergers or spin-offs of foreign entities that indirectly result in the transfer of Colombian assets would be subject to Colombian income tax, unless the relevant assets located in Colombia do not represent more than 20% of the assets of the economic group to which the merged or split entities belong. It should be noted that this rule is not limited to mergers and spin-offs, as it applies to all indirect transfers, with the exception of indirect sales, as further discussed below.

Main business entity forms

Joint capital stock corporation

A joint capital stock corporation is a corporate structure in which the shareholders are liable up to the amount of their contribution.

Simplified joint capital stock corporation

A simplified joint capital stock corporation is a corporation in which shareholders are liable up to the amount of their contribution under a more flexible standard than that applicable to a normal joint capital stock corporation.

Limited liability company (LLC)

Partners in an LLC are liable up to the amount of their contributions and they are jointly and severally liable for unpaid debts of the LLC.

Colombian M&A market

The Colombian M&A market is experiencing significant growth. M&A activity has traditionally been dominated by private transactions.

However, transactions involving public companies tend to be larger than even the largest private deals.

Consolidated returns

Colombia does not allow for the filing of consolidated returns. Each company is required to file a separate return. There are no provisions for relief of group losses.

Foreign vs. domestic holding company

Both foreign and domestic holding structures are generally used as acquisition vehicles, and are subject to intercompany restrictions (e.g., transfer-pricing rules).

Indirect sales regime

Following recent tax regulatory changes, the indirect transfer of shares or assets located in Colombia could be subject to tax as if the assets or shares were sold by the direct owner. The new rules cover both partial and full ownership transfers within related or non-related parties. Consideration is given to pre-existing cost basis for purposes of calculating gain when a future indirect transfer of the same asset occurs.

It is worth noting this rule does not apply in the following instances: (i) sales of shares listed in the stock market when the seller does not possess more than the 20%; and (ii) when the value of the assets located in Colombia represent less than the 20% of the book and commercial value over the total assets owned by the foreign entity making the transfer.

Controlled foreign corporation rules

Colombia enacted a CFC regime in 2016 and adjusted regulation in 2017. Under the CFC rules, passive income is subject to tax in Colombia under general rules upon accrual by the subsidiary that recognizes it. Accrual and tax implications are based on Colombian regulations. Tax credits on taxable revenue from CFC provisions are available, subject to general requirements.

CFC rules provide exceptions to the regime based on specific circumstances, such as active business income, and treaty provisions as a proportionality of income rule where, if a company has more than 80% active income, passive income will not be subject to CFC rules. On the other hand, if a company has more than 80% passive income, active income will be subject to CFC rules.

Deductions for acquisition costs

Financing expenses incurred in connection with an asset deal or stock deal are 100% tax deductible in the hands of a Colombian buyer as long as these expenses comply with the general requirements for deductibility, namely (a) necessity, (b) proportionality, (c) cause-effect relationship with the income-generating activity, (d) thin capitalization rules and (e) proper withholding (if applicable). It is important to note that tax expenses might be rejected by tax authorities if the acquired entity distributes non-taxable dividends or if the acquired business is not profitable as a whole; nevertheless, a case-by-case analysis should be performed.

Specific considerations should be evaluated for securing the deduction of interest expenses originated in acquisition debt, related or non-related.

Amortization of intangible assets

Generally, taxpayers can amortize the cost of acquired intangible assets over a period of five years, at a minimum, unless the taxpayer is able to prove that the amortization period should be less because of the specific nature or conditions of the business.

Goodwill is not amortizable for corporate income tax purposes and is also not amortizable within the context of an acquisition of shares or assets. Amortizable investments are those that, under normal accounting principles, are subject to impairment and should be recorded as assets subject to be amortized in a period exceeding one year.

Foreign investments

Foreign investments must be registered before the Central Bank, but there are no restrictions on such investments.

Step-up in basis on asset or share purchase

Generally, the tax basis in share deals is equal to the amount paid by the buyer (plus tax adjustments). The underlying assets of the company would preserve their historical tax basis. There is no basis step-up available in a share transaction.

In an asset transaction, the buyer's tax basis is equal to the amount paid and any surplus should be allocated to the relevant tangible/intangible assets and goodwill. However, for depreciation purposes, an acquisition does not extend the useful life period in the underlying assets. Please note that depreciation recapture could apply.

Transfer tax profile

Cash dispositions from bank accounts are levied with a financial transaction tax of 0.4% per transaction. The sale of immovable assets is subject to registration duties and notary fees.

Transfer pricing

Colombian tax law requires that transactions between Colombian taxpayers and foreign related parties follow arm's-length principles (i.e., such transactions are priced as if they were being conducted between unrelated parties). These rules also apply to related parties in free trade zones. The transactions between Colombian taxpayers and foreign-related parties must be valued based on terms, conditions and profit margins that would likely apply to similar transactions between independent parties.

Six transfer-pricing methods are used to determine prices or profit margins in controlled transactions. Under Colombian law, the comparable uncontrolled price, resale price, cost plus, profit split, residual profit split and transactional net margin methods are used to determine arm's-length compliance between related-party transactions.

Records of all transactions involving nonresident related parties must be maintained in the ordinary course of business for five years. Additionally, taxpayers must report all transactions with such parties that meet certain thresholds on an annual basis. Another option for taxpayers is to obtain an advance pricing agreement from the tax authorities.

Thin capitalization rules

The thin capitalization rules limit the deduction of interest expense on local and non-local intercompany debt that exceeds a debt-to-equity ratio of 2:1. Interest generated from indebtedness with related parties that exceeds this ratio may not be deducted for income tax purposes. The rules apply to domestic and foreign loans and include indirect financing, such as back-to-back structures, secured loans and similar instruments. Please note that thin capitalization rules do not apply on the financing of infrastructure projects related to transport and utilities projects carried out through a special purpose vehicle.

Financing/debt push-down limitations

Leveraged buyouts where debt is pushed down into a domestic acquisition vehicle is a rather standard financing methodology used in Colombia. Debt push-down is allowed in either an acquisition context or in connection with a reorganization process under Colombian tax law (subject to the same requirements noted above). Financing expenses are tax-deductible provided that certain requirements are met. Nevertheless, a case-by-case analysis should be performed.

Net operating losses

Tax losses generated from 2007 to 2016 may be carried forward indefinitely. NOLs generated from 2017 can be carried forward up to 12 years.

Certain restrictions apply to the transfer of losses in mergers or spin-offs (a tax-free transaction for Colombian tax purposes provided certain requirements are met). The surviving entity can offset losses originated in the merged entities, but only up to the percentage of its equity participation in the merged entity's equity. Similar rules apply to spin-offs of companies.

Minimum capital requirements

There is no minimum capital required; however, different provisions apply to each type of entity with regards to capital.

VAT

VAT is levied on the sale of tangible physical goods, certain intangible assets, the provision of services in Colombia and on the importation of tangible goods.

The general VAT rate is 19%, with a preferential rate of 0% applying to exports and some domestic supplies, provided the compliance of certain requirements. A 5% rate also applies to specific goods and services.

Generally, taxpayers must register with the local tax authorities for VAT purposes when registering as a taxpayer.

Withholding tax rates (outbound)

Concept	Rate
Royalties, fees, leases	20%
Technical services, technical assistance and advisory (consultancy) services	20%
Software licenses	20%
Management and direction fees	33%
Interest*	5%/15%/20%

* The applicable rates vary according to the following facts: (i) term of loan no longer than one year — 20%; (ii) term of loan equal or higher than one year — 15%; (iii) loans granted for infrastructure projects — 5%.

Net wealth tax

Colombia does not impose a charge on net wealth.

Tax clearance certificate

The Colombian tax authorities do not grant clearance certificates stating that a taxpayer has no outstanding tax liability.

Tax on exit

A tax on exit for Colombian tax purposes refers to a tax obligation levied on the disposition of an ownership interest in a legal entity held as an investment. If the acquirer is a Colombian resident, a 15% withholding tax is levied over the sale price to the foreign seller. To the extent a sale generates gains for the seller, the gains will be subject to the 33% income tax rate (FY19). This rate is reduced to 32% for FY20, 31% for FY21 and 30% for FY22. If the sale involves assets that have been held for two years or more, the rate is 10%. This rate applies both to residents and non-residents. Filing requirements apply in both scenarios.

As of 2019, the indirect transfer of Colombian assets or shares in Colombian companies is subject to tax. The (indirect) seller will be subject to tax under the same rules described above, considering the direct owner's tax basis in the shares or assets.

Safe harbor rules applicable to indirect taxation are available and should be evaluated in detail on a case-by-case basis to establish whether no tax is required. For further information about the tax effect of indirect sales, please refer to the "Indirect sales regime" section discussed above.

Mexico

What you need to know

The Mexican perspective

Mexico has one of the largest tax treaty networks in the region and enjoys a wide variety of natural resources, making it a top country to hold foreign investments.

Changes in legislation are expected in upcoming months as a consequence of the proposed 2020 tax reform. We note that any changes could materially impact the contents of this section.

Treaty benefits on withholding rates

Mexico has the most extensive tax treaty network in the Latin American region having ratified treaties with over 50 countries.

Mexico currently maintains a tax treaty with the United States. In addition, Mexico currently maintains tax treaties with the following countries:

Mexico tax treaties		
Argentina	Australia	Austria
Bahrain	Barbados	Belgium
Brazil	Canada	Chile
China	Colombia	Costa Rica
Czech Republic	Denmark	Ecuador
Estonia	Finland	France
Germany	Greece	Hong Kong
Hungary	Iceland	India
Indonesia	Ireland	Israel
Italy	Jamaica	Japan
Korea (South)	Kuwait	Latvia
Lithuania	Luxembourg	Malta
Netherlands	New Zealand	Norway
Panama	Peru	Philippines
Poland	Portugal	Qatar
Romania	Russia	Saudi Arabia
Singapore	Slovak Republic	South Africa
Spain	Sweden	Switzerland
Turkey	Ukraine	United Arab Emirates
United Kingdom	Uruguay	

The basics

Tax authority –

Servicio de Administración Tributaria (SAT)

Tax basis – worldwide income

Tax year – calendar

Corporate income tax rate –

30% generally

Capital gains tax rate –

30% on gain if transferred (i.e., sale or disposition of investments) to a buyer by Mexican residents

25% to gross proceeds if transferred by foreign shareholders or 35% on net gain, provided certain formal requirements are met

Branch tax rate – 30%

Withholding tax rates –

- Dividends – 10%
- Interest – 10%-35%
- Royalties – 5%-35%
- Branch profits – 0%

Federal VAT – 0%-16%

Excise tax – various

Real estate acquisition tax -

Ranges from 2% to 4.5%

State tax on salaries – 1.5%-3%

Residence tax (housing fund) – 5%

Employee profit sharing on taxable profits – 10%

Social security contributions, on salaries –

4%/15% (employee/employer)

Tax loss carryforward – 10 years

Asset purchase vs. stock purchase

In an asset deal, tax attributes do not carry over to a buyer. Similarly, liabilities of the Mexican seller entity do not transfer to the buyer. Assets acquired in an asset deal are generally depreciable for income tax purposes. It should be noted that goodwill is not deductible for tax purposes. A purchaser is typically entitled to deduct the financing costs incurred in connection with an acquisition against profits of the acquiring company.

Indirect taxes are usually triggered upon sale or disposition of assets, which include VAT as well as other local taxes. Likewise, in asset deals, consideration is given to the existence of goodwill, since such an item is non-deductible for Mexican tax purposes.

Stock deals are also common given the overall tax neutral effect on both parties and it also facilitates continuity of business in an efficient manner. In stock deals, tax attributes and liabilities remain with the Mexican company; however, certain limitations may be applicable with respect to the use of such attributes to the extent the buyer acquires more than 50% of the stock of the target company.

If a Mexican company acquires the stock of another Mexican entity, the value of the stock is not depreciable for income tax purposes or deductible for single-rate business tax purposes. A buyer will obtain a tax basis in the shares equal to the purchase price, which will form part of the buyer's tax basis in the shares for subsequent sales.

No transfer taxes are triggered in stock deals, nor is the buyer generally allowed to deduct financing costs. In cross-border deals, if the buyer is a foreign entity and acquires stock at a value that is at least 10% lower than its fair market value, the Mexican tax authorities may assess deemed income and a 30% tax to the foreign buyer on the difference between the purchase price and its fair market value.

Tax-free reorganizations

Mexican tax law allows tax-free or tax-deferred reorganizations to participating corporations and their shareholders. Tax-free reorganizations are subject to compliance with other rules (e.g., notices and filings before Mexican tax authorities, share-for-share consideration, corporate capital modification, average acquisition cost of shares). This generally requires that no property transfer was considered to occur and regulations or a private-letter ruling are obtained from the tax authorities.

Anti-deferral rules

Extensive anti-deferral rules are included within Mexican tax law and are based on an effective rate test for controlled foreign corporations or investments.

Foreign vs. domestic holding company

Mexico's tax legislation does not have domestic or foreign holding structures; however, it should be noted that there are adverse Mexican capital gains tax implications (40% taxation on gross proceeds) if a deemed "low-tax jurisdiction" is to transfer shares in a Mexican entity.

If the foreign resident is not subject to taxation in its country of residency or is subject to an income tax rate that represents less than 75% of the income tax that would be levied in Mexico, it is deemed to be subject to a "low-tax jurisdiction."

Controlled foreign corporation rules

Mexican corporations are taxed on foreign-source income when earned. Foreign tax credits can be used to reduce, or possibly eliminate, double taxation. If a Mexican corporation does not distribute its profits of a controlled foreign subsidiary, the tax liability on such profits is deferred until dividends are paid. An exception applies to companies with investments in entities located in a low-tax jurisdiction or income subject to preferred tax regimes (PTRs), in which case income is generally taxable even if no distributions are received from those entities.

Deductions for acquisition costs

Financing costs incurred in connection with an acquisition (commission-related expenses, professional fees, etc.) are generally deductible. Pre-transaction expenses may be invoiced to the local businesses provided certain requirements are met and can be justified as a strictly indispensable expense for the taxpayer claiming the expense deduction.

Step-up in basis on asset or share purchase

Mexican tax law does not contain provisions to allow a step-up in the value of assets in share deals. Tax basis step-up is allowed in asset deals.

Restrictions on foreign investment

Foreign investments in specific industry sectors, such as air transport and insurance, are subject to certain investment restrictions. The oil and gas sectors are no longer subject to investment restrictions as they relate to foreign activity in Mexico.

Transfer tax profile

No indirect transfer tax (stamp duty, duty tax, etc.) applies to the transfer of shares under Mexican tax law.

Transfer pricing

Mexico has specific transfer pricing rules that apply to particular intercompany or other related-party transactions. Acceptable transfer pricing methods include (i) the comparable uncontrolled price method, (ii) the resale price method, (iii) the cost plus method, (iv) the profit-split method, (v) the residual profit-split method and (vi) the transactional net margin method. In certain cases, specific appraisals are used.

It may be possible to reach transfer pricing arrangements in advance with the tax authorities. These agreements may apply for a period of up to five years.

Generally, contemporaneous transfer pricing studies must be maintained for transactions conducted with foreign related parties.

Under the 2016 tax reform, beginning in 2016, certain Mexican taxpayers must file additional transfer pricing documentation, including a local file, a master file and country-by-country reports, as inspired by Action 13 of the base erosion and profit shifting report.

Thin capitalization rules

Interest deductions may be disallowed if the debt-to-equity ratio exceeds 3:1. This restriction only affects interest associated with foreign related parties, even though the debt-to-equity ratio calculation takes all interest-bearing debt of a company into account.

Financing/debt push-down limitations

There are no restrictions on debt pushdown under Mexican tax law. Debt pushdown is usually achieved through mergers or the assignment of debt from a parent entity to Mexican acquisition vehicles. This type of financing methodolgy is usually subject to an economic substance analysis and additional limitations under Mexican tax law.

Net operating losses

Companies may carry forward NOLs for a period of 10 years after such losses were generated. The target company may only offset such tax losses against the profits corresponding to the same business lines as those in which the losses were generated. In addition, the purchaser must acquire more than 50% of the target's stock. Carryback of losses is not allowed under Mexico tax law.

VAT

The VAT rate in Mexico is generally 16% on the sales of goods (with the exception of medicines and most food products) and services, as well as on lease payments and imports of goods and services. VAT-exempt transactions include the sale of land, residential construction, interest paid by banks, credit instruments (including equity shares), medical services, education, salaries and wages, rentals of residential property and the sale of non-amortizable participation certificates on real estate investment trusts, provided specific requirements are satisfied. VAT is creditable on certain qualified activities.

Tax on exit

Gains resulting from the sale or disposition of stock of a Mexican entity are taxable in Mexico. Depending on the tax residency of a foreign entity, different tax rates and income recognition rules would apply in the event of a sale or disposition of a Mexican investment. There are no sales or turnover taxes on exit in Mexico. As discussed, VAT (and local taxes) may apply in the context of an asset transaction.

Proposed 2020 tax reform

- No new taxes or increases/decreases in existing tax rates
- New tax measures to combat tax evasion and profit shifting including far-reaching anti-abuse provision and disclosure requirements for tax advisors:
- Mexican tax authorities may re-characterize or declare the inexistence of transactions that lack business reason and generate a tax benefit in Mexico
- Tax advisors would be required to make mandatory disclosures on a wide range of transactions that generate a tax benefit in Mexico, including: transfer of tax losses; transfer pricing adjustments, changes in ownership; reorganizations and treaty applications
- International tax provisions — increased deductibility limitations and higher withholding taxes on many cross-border transactions:
- Potentially any payments made by Mexican companies to related parties in jurisdictions subjecting the related parties to a tax rate lower than 22.5% can become non-deductible
- Deductibility of net interest expense (accrued interest expense less taxable interest income) should not exceed 30% of the taxpayer "adjusted taxable income" (similar to EBITDA)
- Digital economy amendments to the VAT law to expand definition of services performed in Mexico to those performed through a digital platform, and as such would be subject to a 16% VAT rate

Minimum capital requirements

Generally, there are no minimum capitalization rules in Mexico.

Panama

What you need to know

The Panamanian perspective

Tax incentives are available for legal entities incorporated in Panama. Panama has a number of Special Regimes and Special Economic Zones with tax incentives. VAT and duty exemption can be provided on certain importing activities for domestic manufacturers. Other incentives exist for tourism, petroleum, renewable energy and high-tech projects.

Treaty benefits on withholding rates

Panama has tax treaties currently with the following countries:

Panama tax treaties	
Barbados	Netherlands
Czech Republic	Portugal
France	Qatar
Ireland	Singapore
Israel	Spain
Korea (South)	United Arab Emirates
Italy	Vietnam
Luxembourg	United Kingdom
Mexico	

Taxation of dividends

Panama does not have a participation exemption or dividends-received deduction. However, dividend income received from foreign investments should not be subject to dividend tax in Panama at the time of redistribution, provided that such dividend income has been subject to taxes abroad or has been exempted in the jurisdiction of the company that has distributed the dividends.

Companies that have been issued a Notice of Operations[1] or otherwise carry out business in Panama must withhold tax at a rate of 10% on dividends distributed out of domestic profits. A reduced rate of 5% is levied on dividends from foreign-source income, export profits and certain types of exempt income including interest paid or credited on securities issued by the Republic of Panama and the profits from their sale; interest paid on deposits, savings accounts or any other deposits in banking institutions established in the Republic of Panama, whether foreign or local deposits; and the amounts received by persons abroad for royalties paid by companies established in the Colon Free Trade Zone. Companies located within certain Panama free-trade zones must withhold a 5% tax on all distributions. A 20% withholding tax is levied on dividends on bearer shares.

The subsequent distribution of a dividend for which tax has already been withheld will not be taxed.

The Basics

Tax authority –

- Ministry of Economy and Finance
- Revenue General Office
- Cadastral General Office
- Customs General Office

Tax basis – territorial

Tax year – fiscal (alternative can be requested)

Corporate income tax rate – 25% on net taxable income or applying the 25% to the 4.67% of the total income (alternative income tax calculation – CAIR)

Capital gains tax rate – 10%; the purchaser must withhold 5% as an advance payment to the authorities

Withholding tax rates –

- Dividends – 5%/10%/20%
- Interest – 12.5%
- Royalties – 12.5%
- Branch profits -10% (after-tax income)
- Technical services – 12.5%

Net wealth tax - none

VAT – 7% (10% for hotels and alcohol, 15% for tobacco)

Transfer tax rate – transfers of real property are subject to tax at a rate of 2%

Notice of Operations tax – 0.5%/2% with a cap of $60,000

Double tax relief – no foreign tax credit due to territorial system, unless otherwise provided by treaty

Tax consolidation – none

Statute of limitations – 3 years from filing date of income tax return and 15 years for withholding taxes

[1] Notice of Operations is a license that individuals and legal entities must obtain to perform industrial, commercial and services activities in the Republic of Panama. Individuals or legal entities that provide agricultural, artisanal, non-lucrative, non-commercial or non-industrial activities, and companies operating under special regimes due to international processes of adjudication, are exempt from obtaining the Notice of Operation.

If a corporation does not declare dividends in a particular year, there is a "retained earnings tax" which is a deemed dividend equal to 10% (or 20% in case of bearer shares) of 40% of corporation after-tax income.

Asset purchase vs. share purchase

Generally, sales of shares and assets are both subject to a 10% capital gain tax; however, in the case of the sale of assets it is necessary to evaluate their nature to determine the applicable tax rate. In Panama, most acquisitions are structured as share purchases because it usually results in lower taxes as a result of the buyer's obligation to withhold 5% of the total purchase price as an income tax advance. The seller can regard this advance as the final tax payment, which is often lower than the tax that would have been paid if the 10% rate were levied on the actual gain arising from the sale of shares or assets. In certain situations, the 10% capital gain tax on the sale of stock can be less than 5% of its purchase price. In this case, a tax refund may be available if certain conditions are met.

The 5% withholding tax will not be levied where a transfer of shares was for no consideration or when a transfer resulted in no capital gain. A "no-consideration" transfer or a transfer where no gain arises has to be supported by providing certain documentation to the Panamanian tax authority required by the applicable law.

When a transaction involves an indirect transfer of shares, only the portion of the total value of the transfer (purchase price) that is indirectly invested within Panama will be considered Panamanian source income and therefore subject to the 5% WHT.

Structuring an acquisition as an asset purchase could sometimes be preferable unless a treaty provides a lower capital gains tax on the sale of shares or exempts the transaction altogether. Special consideration should be given to asset transactions where real property is a significant asset, as taxpayers are required to pay a 3% income tax advance on the total value of the transfer. If the 3% tax advance is paid, gain derived from the sale is generally exempt from the taxable income of the corporation.

Tax-free reorganizations

Tax-free mergers or divestitures are available in Panama but require special accounting treatment. In the case of mergers, the shareholders of the extinguished company are not subject to income tax (including capital gain tax) on dividends or complementary tax[2] if they only receive shares of the surviving company in return for the shares they held in the extinguished company. Tax-free treatment will still be available where a small cash payment is received, as long as the payments do not exceed 1% of the value of the shares of the surviving company received by the shareholders in return for their shares in the extinguished company.

Tax-free demergers are also available in Panama if certain conditions are met by the taxpayer: (1) corporations involved in the demerger must be owned by the same shareholders; and (2) the transfer of any assets involved in the demerger procedure have to be made at book value (Law 85 of 2012).

Consolidated returns

There is no consolidated return regime in Panama. Each company must file a separate return. There are no provisions for relief of group losses.

[2] A complementary tax applies each tax year if the company distributes less than 40% of the net profits after income tax. The complementary tax is an advance payment of the dividend tax, calculated on the difference of the distributed dividends and 40% of the net profits after income tax, and applies the corresponding tax rate.

Foreign vs. domestic holding company

Domestic holding companies that have operations inside Panamanian territory and, therefore, generate taxable income in Panama have all the general tax obligations of a normal company under the ordinary regime which is strictly territorial.

Furthermore, companies incorporated in Panama which do not carry out any operations within the territory of the Republic of Panama and which, therefore, do not generate taxable income in the country (foreign companies) would be subject to the following treatment:

- **No corporate income tax:** Companies incorporated in Panama that only earn foreign-source income are not subject to income tax. Foreign-source income is the income derived from activities that are performed, perfected, consumed or have their effects abroad. Moreover, these companies do not have the obligation to file income tax returns for informative purposes.
- **No withholding tax on dividend distribution:** Companies that (1) do not require Notice of Operation to carry out commercial and industrial operations within the national territory of the Republic of Panama, as provided in Law 5 of 2007; (2) do not require an operating code to operate in the Colon Free Trade Zone; (3) do not operate in an Oil Free Zone under Cabinet Decree 36 of 2003, or in any other free or special zones; or (4) do not generate taxable income in the Republic of Panama will not be required to withhold dividend tax when they distribute profits to their partners or shareholders.
- **No capital gains tax on the sale of shares:** Panamanian entities that do not carry out operations in Panama, which do not generate Panamanian source taxable income and that do not maintain securities invested economically in the national territory are not subject to capital gains tax derived from the sale of their shares (Literal 1 (k) of article 10 of Executive Decree No. 170 of 1993).
- **Not subject to Notice of Operation tax:** Panamanian entities that do not carry out operations within the territory of the Republic of Panama and, therefore, do not require Notice of Operation will not be obliged to pay this tax.

Nevertheless, foreign companies are required to keep their accounting records and maintain the corresponding supporting documentation for a period of no less than five years (Law No. 52 of 2016).

Such documentation must be kept in an office of its resident agent located in the Republic of Panama. If such documentation is kept outside the Republic of Panama, information about the person in charge of keeping documentation must be provided to a Panamanian authority.

Foreign investments in local target companies

Mergers involving one or more foreign companies are governed by the Commercial Code, subject to the condition that those companies are registered with the Public Registry of Panama.

Where the surviving company is a foreign company, a five-year period of registration is required following the merger and the company is subject to a regulatory regime.

Controlled foreign corporation rules

There are no controlled foreign corporation rules in Panama.

Deductions for acquisition costs

Deductions of financing and acquisition costs are generally allowed in an asset deal, but they are generally disallowed in a share deal.

Stamp taxes in stock purchases

Stamp tax applies on documents executed and subject to the laws of the Republic of Panama containing an act, agreement or obligation valued at more than USD10.00 at a rate of USD0.10 per USD100 of the price stated in the agreement, whenever the transaction is not subject to another tax or duty.

Stamp tax may not apply where an agreement is signed abroad or if a transaction does not produce taxable income and is not reported to a Panamanian authority.

Amortization of intangible assets

Amortization of intangible assets (excluding goodwill) is allowable under Panamanian law if a taxpayer reports a transaction as a taxable event.

Restrictions on foreign investment

There are no significant restrictions on foreign investment in Panama, as it is a member of the World Trade Organization and has reduced protectionist policies in recent years.

Transfer tax profile

Panama levies a transfer tax on real estate subject to 2%, and the transfer of movable property is subject to VAT at 7%.

Transfer pricing

Transactions between related taxpayers must be valued according to the OECD guidelines at "arm's length." According to article 762-D of the Panamanian Fiscal Code, the transfer pricing rules would be applicable to transactions that meet the following three criteria:

- Transaction is carried between related parties.
- Transaction produces taxable income, or a deductible expense or cost.
- Transaction is a cross-border transaction.

A transfer pricing report regarding the transactions carried out with related parties is required to be annually disclosed within six months after the end of the fiscal year (Article 762-I of the Fiscal Code). Additionally, a company might be required by the tax authority to present a transfer pricing study within 45 days from the date of notification. The transfer pricing study can include a comparative analysis of transactions carried out by independent parties, taking into account operations, functions, activities, risks, market characteristics, and commercial and business strategies. Domestic Panamanian law provides specific measures on how to apply these methods in certain situations.

On 27 December 2018, Law 69 of 2018 was published in the Official Gazette. This law incorporates a transfer pricing provision to the Fiscal Code that establishes transfer pricing obligations for taxpayers that perform activities within a preferential tax regime,[3] including taxpayers that have operations with related parties that are located in Panama (operating under the general regime or under a preferential tax regime) and related parties located abroad. This provision is applicable as of fiscal year 2019.

Thin capitalization rules

Panama does not have thin capitalization rules and interest expense is generally deductible for tax purposes.

Financing/debt push-down limitations

There are no restrictions on debt pushdown under Panamanian tax law. Debt pushdown is usually achieved through mergers or the assignment of debt from parent to subsidiary companies. Depending on the type of lender, other restructuring and pushdown methods may also be available.

---

[3] The preferential tax regimes in Panama include: the Colon Free Trade Zone, the Oil Free Zone, the City of Knowledge, the Panama Pacifico Special Economic Area and the Multinational Headquarter (MHQ) Regime.

Minimum capital requirements

The Panamanian legislation does not require minimum authorized capital for formation and/or operation of a company in Panama, except in the case of bearer shares. Therefore, from a regulatory perspective, the authorized capital of a company does not have major importance. However, because registration expenses upon incorporation are based on the share capital value, it is common that companies are registered with just USD10,000. Please note that special requirements may apply depending on the business activity carried out by the entity; for example, entities dedicated to banking or financing.

Notice of Operation tax

All commercial and industrial businesses must have a Notice of Operations (similar to a commercial license) to engage in business within the Panamanian territory. An annual license tax is levied at a rate of 2% of a company's net worth, up to a maximum of USD60,000. Companies operating in a Free Zone or Special Economic Area (including companies operating in the Panama-Pacific Area enrolled after 1 January 2017) are subject to an annual operations tax of 0.5% on the net worth, up to a maximum of USD50,000.

Special exemptions apply for companies with the Multinational Headquarter[4] license and to companies registered in the Panama Pacific Area until 31 December 2016.

Net operating losses

NOLs may be carried forward for five years, and a maximum of 20% of an NOL may be deducted per year. The deduction of losses may not exceed 50% of taxable income of any year. NOL cannot be carried back.

Net wealth tax

Panama does not impose a tax on net wealth.

VAT

The tax base for VAT purposes is cost, insurance and freight price plus import duties for imported items, and sales prices for all other activities. VAT is levied at 7% for all movable goods and services. Alcoholic beverages are subject to a 10% VAT rate, and tobacco-derived products are taxed at 15%.

Generally, exports are not subject to VAT and there may be a refund for VAT paid up to the point of export. Additionally, the sale of goods such as medicines, foods and certain products for infants are not subject to VAT.

The Tax Authority of Panama (the General Directorate of Revenue) grants clearance certificates (Paz y Salvo) stating that taxpayers have no outstanding VAT liability. The tax clearance certificate can be obtained electronically through the website of the tax authority.

Tax on exit

A tax on exit for Panama tax purposes refers to a tax obligation levied on the disposition of an investment held in the form of equity interest or assets. There are no specific exit tax rules in Panama. Nevertheless, capital gains tax on the transfer of assets could apply. If a seller ceases to carry on business, a final income tax return will need to be filed. Please refer to the capital gains discussion above for more details.

---

[4] The Multinational Headquarter Regime established by Law No. 41 of 2007 and amended by a bill on 15 August 2018 applies to regional or headquarters offices of companies which carry out operations or services from Panama to their main offices or subsidiaries in other countries.

Reporting requirements

M&A transactions in Panama are regulated by the Executive Decree 18 of 1994, and the following reporting requirements must be met:

- To effectuate the merger, the merger agreement between the merging parties must be registered at the Public Registry.
- All registered properties of the merging companies should be registered under the name of the surviving or merged company, according to the merger agreement and subject only to the payment of the applicable public registry fees.
- The General Directorate of Revenue should be informed of the merger within 30 days of its registration at the public registry. The surviving or merged company inherits the tax obligations (e.g., Notice of Operation tax, corporate income tax, withholding tax, VAT) of the merging companies but will not succeed to the merging company's NOL.

Furthermore, M&A transactions involving companies under the control or supervision of any superintendence must be reported to the relevant superintendence.

Tax administration

Companies operating in Panama must file a tax return within 90 days after the end of the fiscal year. A one-month extension may be obtained. Estimated tax payments are due in June, September and December, with a final payment of tax due at the time the annual return is filed. Interest and penalties may be levied on late or no filings. Panama does not have rules regarding a disclosure of uncertain tax position.

Peru

What you need to know

The Peruvian perspective

The Peruvian Government may grant legal stability to domestic or foreign investors for a 10-year period, with regard to:

- Income tax and, specifically, on dividend distributions
- Monetary policy, according to which there are no restrictions on the repatriation of earnings, international capital transfers or foreign exchange practices
- No discrimination between domestic companies and foreign investors

More comprehensive stability agreements exist for specific markets (i.e., oil and gas).

Treaty benefits on withholding rates

Peru currently maintains tax treaties with the following countries:

Peru tax treaties
Brazil
Canada
Chile
Republic of Korea
Mexico
Portugal
Switzerland

Asset purchase vs. share purchase

One type is not favorable over the other for Peruvian tax purposes. Additional considerations should be given with respect to indirect and local taxes, including VAT and local tax on the transfer of immovable property. Moreover, the tax basis rules regarding the transfer of shares could differ from the rules related to transfer of assets.

Tax-free reorganizations

The transfer of assets or rights in connection with a reorganization is tax-free (i.e., not a taxable event) provided it is carried out at book value. Therefore, assets and liabilities can be transferred to the acquiring company without generating gain recognition.

In addition, it should be noted that: (1) neither any additional consideration nor any formal obligation (i.e., prior authorization) is necessary to be satisfied before the tax authority; and (2) there are no limitations to merge entities which develop their business in different sectors (mining, construction and services, among others).

The General Anti-Avoidance Rules (GAAR) and other specific anti-avoidance regimes should be considered in certain types of tax-free reorganizations.

- Consolidated returns

Peru does not allow the filing of consolidated returns. Each company is required to file a separate return. There are no provisions for relief related to group losses.

The basics

Tax authority –

Superintendencia Nacional de Administración Tributaria (SUNAT)

Tax basis – Worldwide income

Tax year – Calendar (no exceptions)

Corporate income tax rate – 29.5% (FY17 onward)

Capital gains tax rate – Nonresidents (individuals or entities) – 0%/5% (through the Peruvian Stock Exchange)/30%

Resident – 5% for individuals, 29.5% for entities

Financial transaction tax – 0.005% per transaction

Withholding tax rates –

- Dividends –

  For dividends connected to earnings generated as of FY 2014, 4.1% rate

  For dividends connected to earnings generated in FY 2015 and FY 2016, 6.8% rate

  For dividends connected to earnings generated in FY 2017 and onward, 5% rate

- Interest – 4.99%/30%
- Royalties – 30%
- Branch profits – 5%
- Technical service fee – 15%

Net assets tax – 0.4%

Participation exemption – None

Net wealth tax – None

VAT – 18%

Real estate transfer tax rate – 3%

Capital tax – None

Double tax relief – Direct and indirect credit

Tax consolidation – None

Statute of limitations –

- 4 – If returned properly filed
- 6 – If returned not properly filed
- 10 – Only applicable to WHT agents

Foreign vs. domestic holding company

The tax treatment of dividends and other attributes may vary depending on the specific holding structure. However, note that dividends distributed between resident entities are exempt from withholding.

Controlled foreign corporation rules

To qualify as a CFC, the ownership threshold is set at more than 50% of the outstanding equity, economic value or voting rights of a nonresident entity.

In addition, a CFC will be subject to tax on passive income provided the nonresident entity is a resident of either of the following:

- A tax-haven jurisdiction
- Or
- A country in which passive income is either not subject to income tax or is subject to an income tax that is equal to or less than 75% of the income tax that would have applied in Peru

The CFC rules also provide a list of passive income that must be recognized by the Peruvian resident (such as dividends, interest, royalties and capital gains).

Deductions for acquisition costs

Interest expense is deductible to the extent there is evidence supporting the loan was used in connection with an acquisition that would increase taxable income or maintain the source of income.

Amortization of intangible assets

The amortization of intangibles (excluding goodwill) is deductible to the extent the intangible asset is deemed to be a limited useful life intangible (e.g., software, patents and copyrights).

Special tax treatment applies to specific sectors (i.e., reduced amortization rates for oil and gas).

The price paid for shares is not amortizable in any scenario.

Step-up in basis on asset or share purchase

The acquisition of assets provides for a step-up in tax basis of the assets, limited to the market value of the assets. However, purchasers of stock cannot obtain a step-up in the basis of the target's assets.

Restrictions on foreign investment

Prior authorization is not required for foreign investment. Nonresidents are able to conduct share transactions of a Peruvian entity through the stock exchange or other mechanism. Generally, foreign investors are treated with respect to rights and obligations like local investors. Foreign investors are precluded, however, from acquiring mines, land, forests, water, fuel and energy sources within 50 kilometers of the Peruvian border.

Transfer tax profile

There is no transfer tax on purchases of shares. The transfer of real estate is subject to a 3% transfer tax, subject to certain exemptions.

No tax-deferred business asset rollover

There are no Peruvian tax law provisions allowing for the deferral of capital gains taxes on the disposal of business assets by way of acquisition of new business assets.

Legal stability agreements

Local and foreign investors, as well as domestic subsidiaries that receive eligible investments, may enter into legal stability agreements (LSAs) with the Peruvian Government.

Protectionist policies, such as the income tax regime, foreign exchange and no discrimination regulations (among other guarantees) in force at the time the LSA is executed remain valid and in full force for a term of up to 10 years.

Under such guarantee, any future amendments of such regulations cannot be applied to the investors or recipient companies during the maturity of their respective LSA, irrespective of whether such amendments are favorable or adverse to their interests.

However, investors or recipient companies may voluntarily relinquish the LSA protection.

Transfer pricing

Peruvian transfer pricing rules are based on the arm's-length principle, as interpreted by the OECD. They apply to transactions between related parties and transactions involving companies domiciled in tax havens.

The Peruvian company will be obliged to support these transactions with a local/master report as long as certain requirements are specifically met.

Thin capitalization rules

From January 2019, the thin capitalization rules apply for all types of borrowings between related and unrelated parties by using a debt-to-equity ratio of 3:1 (during FYs 2019 and 2020), and 30% of EBITDA beginning in FY 2021. EBITDA is defined as the net income (taxable base) after offsetting NOLs plus the net interest, depreciation and amortization.

Interest that is not deducted from FY21 may be carried forward up to four years, but it will always be subject to the 30% of EBITDA limitation.

Financing/debt push-down limitations

There are no rules allowing debt push-down under Peruvian tax laws. However, it may be possible to make a debt push-down after the merger with the domestic target acquired.

Minimum capital requirements

There are no minimum capital requirements for a Peruvian company.

Net operating losses

A taxpayer has the option to carry forward all Peruvian-generated NOLs for four years, or to carry the losses forward indefinitely, subject to a limitation of 50% of the taxpayer's taxable income generated for each subsequent year. The carryback of losses is not allowed.

Net wealth tax

Peru does not impose a tax on net wealth.

VAT

Stock purchase transactions are not subject to VAT. Transfers of assets are subject to an 18% VAT. Input VAT can be offset against the output VAT.

If the acquirer is a nonresident, the VAT paid will be considered as part of the cost of the assets.

A transfer of assets located in Peru by a nonresident individual or entity is subject to VAT. The acquirer and vendor are jointly liable for paying VAT to the tax authority.

Tax clearance

Only resident taxpayers can request the issuance of a "tax debt report" (Estado de Adeudos Tributario) from the Peruvian tax authority to confirm all, if any, outstanding tax. Such a report includes the outstanding updated tax liability and the date and nature of such an omission.

Tax on exit

A tax on exit for Peruvian tax purposes refers to a tax obligation levied on the disposition of an investment held in the form of equity interest or assets. No substantial sales/turnover taxes generally apply upon exit. Withholding taxes may be applicable if the seller is a nonresident company and the acquirer is a resident company or if the sale is conducted through the Lima stock exchange. The acquirer or Cavali S.A. (Peru's Central Securities Depository) would be responsible for paying the withholding tax.

The indirect transfer of shares regime should be observed upon exit (i.e., whether 50% or more of the FMV of the nonresident target derives from the FMV of the Peruvian entity — "50% threshold test"). In the event the 50% threshold test is not met, but the "total value" of Peruvian shares — indirectly transferred — is equal or exceeds 40,000 Peruvian tax units (approximately USD51 million), an indirect transfer of Peruvian shares would be triggered.

If the exit is executed by a nonresident seller: (1) a tax basis certificate should be obtained before completion; and (2) Peruvian joint liability rules may apply.

Reporting requirements

Peruvian merger notification requirements vary depending on the economic sector. Generally, Peruvian legal provisions do not establish an obligation to register merger agreements with the authorities prior to implementation. However, as best practice, reorganizations should be communicated to the Peruvian tax authority as of the effective date.

Venezuela

What you need to know

The Venezuelan perspective

Generally, foreign investors do not need to seek authorization before investing in a new or existing Venezuelan company. The foreign investor must only give notice to the Foreign Investment Agency (SIEX).

Treaty Benefits on Withholding Rates

Venezuela currently has tax treaties in effect with the following countries, including a treaty with the United States.

Venezuela tax treaties		
Austria	Barbados	Belarus
Belgium	Brazil	Canada
China	Cuba	Czech Republic
Denmark	France	Germany
Indonesia	Iran	Italy
Korea	Kuwait	Malaysia
Mexico	Netherlands	Norway
Portugal	Qatar	Russia
Saudi Arabia	Spain	Sweden
Switzerland	Trinidad/Tobago	United Arab Emirates
United Kingdom	United States	Vietnam

Asset purchase vs. share purchase

For Venezuelan purposes, the choice between conducting an asset purchase or a stock purchase is predominantly influenced by business and legal considerations within an investment context.

One type of transaction is not favorable over the other for Venezuelan tax purposes. Additional consideration should be given with respect to indirect and local taxes, including VAT and local tax on the transfer of immovable property. Both type of transactions provide unique benefits depending on the investment thesis (e.g. stock acquisitions facilitate continuity of business, asset acquisitions usually allow for amortization of intangible assets, etc.)

Reporting requirements

Foreign investments do not require prior authorization by local government agencies but do require subsequent registration to the SIEX or the corresponding agency in the sector, generally within 60 days of the date of the company's entry into the commercial registry. Note that due to recent regulations applicable to foreign investments (Law on Foreign Investment), additional rules are expected to be implemented to complement such regulations.

Foreign investors and technology transfer agreements must be registered and updated with the SIEX to have the right of repatriation of profits, remittance of dividends, and fair and equal treatment on domestic capital.

The basics

Tax authority –

Servicio Nacional Integrado de Administración Aduanera y Tributaria (SENIAT)

Tax basis – Worldwide income

Tax year – Calendar

Corporate income tax rate –

34% (40% on banking and insurance companies)

Capital gains tax rate – 34%

Withholding tax rates –

- Dividends – 0%/34%
- Interest – 4.95%/30.6%
- Royalties – 30.6%
- Branch profits – 34%

Participation exemption – none

Net Wealth Tax - None

VAT – From 8% to 16%; currently 16%

Additional VAT rate on luxury consumption (goods and services) 15%

VAT Grouping – None

Transfer tax rate – None

Tax on Financial transactions – 2%

Tax loss carryforward/back – Carryforward – three years*

Carryback – 0 years

*Attribution may not exceed 25% of income obtained in subsequent periods.

Capital Duty – 1%-2% levied on the formation of a company and on additional contributions to capital

Stamp Duty – Yes, varies

Double tax relief – Ordinary credit

Tax consolidation – None

Statute of limitations - 6-10 years

Tax-free reorganizations

Tax-free mergers and reorganizations are possible under Venezuelan tax law.

Mergers are mostly governed by the Code of Commerce, which stipulates that the surviving entity assumes the rights and obligations of dissolved entities in the merger process. A merger is defined as a legal operation consisting of an agreement between two or more legally independent companies to combine operations into a single entity. Venezuelan law provides for two types of mergers:

- Merger by absorption, which occurs when two or more companies merge into a single, previously existing company
- Two or more companies merge to establish a new company that did not exist at the time the merger took place

Venezuelan tax law does not provide for a tax-free separation of a business, commonly referred to as a demerger. In such cases, a sale of the business (transfer of the ongoing concern) is conducted.

Consolidated returns

Venezuela tax law does not allow for the filing of consolidated returns. Each company is required to file a separate return. There are no provisions for relief of group losses.

Foreign vs. domestic holding company

A 34% tax rate applies on dividends regarding transactions with domestic holdings (i.e., dividends paid by a Venezuelan entity to a Venezuelan holding entity). To the extent a Venezuelan entity distributes a dividend outside of Venezuela, the 34% tax rate only applies if the distribution is made out of untaxed earnings. Tax benefits from Venezuela's treaties and bilateral investment agreements may be available for foreign holding structures. Alternatively, the domestic rules on domestic holding structures apply.

Controlled foreign corporation rules

Under CFC rules, income derived by a CFC domiciled in a low-income tax jurisdiction is taxable to its Venezuelan shareholders. Tax authorities have issued a list of low-income tax jurisdictions for purposes of this rule.

Amortization of intangible assets

Amortization of goodwill and other intangibles may be deducted as long as they are associated to registered intangibles (i.e., trademarks).

Step-up in basis on asset or share purchase

The tax effect of an asset purchase is that the purchased assets have a cost basis (i.e., the asset's basis reset for tax purposes) for the buyer equal to the amount paid which is determined at FMV. The same rules are applicable regarding a transfer of shares.

Restrictions on foreign investment

Certain restrictions apply to the holding of shares in particular industries, such as the banking and insurance sectors as well as the hydrocarbon industry, among others.

Additional restrictions on the free trade of foreign currency were established in 2003 (e.g., the Exchange Control Regime) to regulate the mechanism used in connection with the purchase and offering of foreign currency.

Although modifications of the FX control regime were made in 2018 indicating a "free convertibility" of the Venezuelan currency, limitations in the access to foreign currency are still applicable.

Payments to foreign affiliates

Venezuelan corporations can generally claim a deduction for technical assistance and technical service fees paid to foreign affiliates so long as: (1) transfer pricing requirements are met; (2) the recipient's income tax payable is withheld at the source; and (3) the services cannot otherwise be provided in Venezuela.

Foreign entities domiciled in Venezuela can generally deduct royalties paid to parent companies or foreign affiliates.

However, branches of foreign companies cannot deduct such payments made to their head offices or related parties.

Transfer tax profile

Venezuela does not generally levy a specific transfer tax.

However, a "tax on financial transactions" was established in February 2016 which applies to all payments or equivalent payments made by taxpayers qualified as "special taxpayers" (e.g., taxpayers that have a high level of income) made with and without a Venezuelan financial system involvement.

The tax rate was originally set at 0.75% over the value of the transaction. On 1 September 2018, the tax rate was increased to 1% and beginning on 1 November 2018, the tax rate was increased to 2%.

In addition, where a document is issued for the transfer of goods/shares, the competent office/public notary will levy a stamp tax for registration of the document at rates that vary by location and by transaction.

Transfer pricing

Under both the Venezuelan income tax law and the OECD guidelines, the arm's-length principle is adopted as the standard for the evaluation of international intercompany pricing. Generally, intercompany transactions comply with the arm's-length principle where conditions imposed are comparable to those imposed by independent enterprises dealing with comparable transactions in similar circumstances.

The pricing methods allowed by tax law are: comparable uncontrolled price method; re-sale price method; cost plus method; profit-split method; and transactional net margin method.

Transfer pricing on imports and exports

Venezuelan income tax law provides that transfer pricing methodologies are only applicable to transactions involving imports and exports of goods and services.

Thin capitalization rules

The thin capitalization rules limit the deduction of interest on debts with foreign-related parties. For interest on borrowings from related entities to be deductible, total debt should not exceed the net equity (1:1 ratio). Venezuelan law employs the concepts of average net equity and average unrelated debts.

Financing/debt push-down limitations

Main restrictions for financing/debt push-down are derived from the Exchange Control Regime discussed above.

Minimum capital requirements

As a general rule, there are no minimum capital requirements in Venezuela established by law. However, in specific industries a minimum level of capital is required (i.e., banking and insurance).

Mandatory profit sharing

Employers are generally required to share with each of their employees at least 15% of their annual net profits. This includes permanent establishments of foreign corporations.

Annual profit-sharing distributions per employee may not be less than the equivalent of 30 days of salary and no more than 4 months of salary.

Net operating losses

In principle, NOL carryforwards generated by a Venezuelan target company are transferred along with the equity of the company and available to buyers to offset future taxable income, subject to certain limitations described below in more detail.

A company's income-type losses (such as trading losses) that are transferred to a buyer cannot be offset against the profits of other companies through group relief (assuming there is a consolidated group in place) because Venezuela does not allow consolidated tax returns.

Where a Venezuela loss target (i.e., a target entity with available NOLs) is acquired, whether directly or by the acquisition of its immediate or ultimate parent company, it may use those NOLs against its own future trading profits for a period of three years after the loss was generated.

Venezuela income tax law stipulates that carried-forward net operating losses are authorized up to three years after the year in which the losses were generated, but the attribution may not exceed 25% of income generated in subsequent periods. No carryback is allowed.

Any losses from a foreign source may only be offset with income generated from foreign sources, based on the same terms previously discussed.

VAT

VAT is based on the invoiced price for domestic and imported goods and the provision of services. The standard rate is currently 16%. However, an additional rate of 15% applies for transactions relating to certain goods and services considered to be of luxury consumption.

Taxpayers must obtain a tax number from the tax registry and update their information every three years. Note that this tax number is the identification number valid for all national taxes.

The procedure related to VAT and IT withholdings for special taxpayers designated by the Tax Administration is carried out according to the formalities and calendar established in Administrative Order N° SNAT/2018/0189 published in Official Gazette N° 41.546 dated 14 December 2018, where the special taxpayers have weekly obligations to advance VAT, IT, and VAT and IT withholdings.

Exports

Exports are zero-rated for VAT purposes. Therefore, VAT is not payable on exports.

Equity tax

In Official Gazette N° 41.696, on 16 August 2019, constitutional law creating the equity tax was published. The standard rate is set at 0.25% on the net equity of individuals and entities qualified as special taxpayers by the National Tax Administration whose equity has a value equal to or greater than 150,000,000 T.U. The Executive can modify said tax rate up to 1.5%.

Tax clearance certificate

The Venezuelan tax authorities do not grant clearance certificates stating that a particular taxpayer has no tax outstanding.

Tax on exit

A tax on exit for Venezuelan tax purposes refers to a tax obligation levied on the disposition of an investment held in the form of an equity interest or assets. Withholding tax is levied on the sale or disposition of shares of a company at 1% for listed companies and 5% for unlisted companies. Tax is levied on capital gains at the level of the seller at 34% (with a possible reduction in rate under the applicable treaty).

EY contacts

Latin America Business Center

Ana Mingramm
Principal, Ernst & Young LLP
Direct: +1 212 773 9190
ana.mingramm@ey.com

Jesus Castilla
Principal, Ernst & Young LLP
Direct: +1 305 415 1416
jesus.castilla@ey.com

Pablo Wejcman
Managing Director, Ernst & Young LLP
Direct: +1 212 773 5129
pablo.wejcman@ey.com

Alejandra Sanchez
Principal, Ernst & Young LLP
+1 312 879 3597
alejandra.sanchez@ey.com

Americas International Tax and Transaction Services (ITTS)

Craig Hillier
Principal, Ernst & Young LLP
EY Americas ITTS Leader
Direct: +1 617 375 1283
craig.hillier@ey.com

Jose E. Murillo
Partner, Ernst & Young LLP
EY Americas ITTS NTD Leader
Direct: +1 202 327 6044
jose.murillo@ey.com

James Keim
Principal, Ernst & Young LLP
EY Americas Transaction Tax Advisory Leader
Direct: +1 212 773 9447
james.keim@ey.com

Tracee Fultz
Partner, Ernst & Young LLP
EY Americas Transfer Pricing Leader
Direct: +1 212 773 2690
tracee.fultz@ey.com

Local-country contacts

Argentina

Sergio Caveggia
Partner — ITTS, Pistrelli, Henry Martin y Asociados S.R.L.
Direct: +54 114 515 2651
sergio.caveggia@ar.ey.com

Marina Kulik
Managing Director — ITTS, Pistrelli, Henry Martin y Asociados S.R.L.
Direct: +54 114 510 2350
marina.kulik@ar.ey.com

Brazil

Sergio Fontenelle
Brazil Tax Managing Partner, Ernst & Young Assessoria Empresarial Ltda.
Direct: +55 112 573 3169
sergio.fontenelle@br.ey.com

Gustavo Carmona
South America Region — ITTS Brazil Leader, Ernst & Young Assessoria Empresarial Ltda.
Direct: +55 11 2573 5523
gustavo.carmona@br.ey.com

Chile

Cristián Sepúlveda
Partner — ITTS, EY Chile SpA
Direct: +56 226 761 687
cristian.e.sepulveda@cl.ey.com

Darío Romero
Partner — ITTS, EY Chile SpA
Direct: +56 226 761 699
dario.romero@cl.ey.com

Maria Javiera Contreras Abarca
Chile Tax Managing Partner - ITTS, EY Chile SpA
Direct: +56 226 761 492
maria.javiera.contreras@cl.ey.com

Colombia

Aleksan Oundjian
Partner — ITTS, Ernst & Young S.A.S.
Direct: +57 148 472 97
aleksan.oundjian@co.ey.com

Luis Sánchez
Partner — ITTS, Ernst & Young S.A.S.
Direct: +57 160 821 12
luis.sanchez.n@co.ey.com

Mexico

Koen Vant Hek Koot
Partner — ITTS, E-DEAS EMPRESARIALES Y DE NEGOCIO, S.A. DE C.V.
Direct: +52 551 101 6439
koen.van-t-hek@mx.ey.com

Enrique E Rios Rippa
LATAM ITTS Managing Partner — ITTS, E-DEAS EMPRESARIALES Y DE NEGOCIO, S.A. DE C.V.
Direct: +52 818 152 1800
enrique.rios@mx.ey.com

Panama

Rafael Sayagues Arguello
Managing Partner – Tax, Ernst & Young Panama, S.A.
Direct: +50 622 089 880
rafael.sayagues@cr.ey.com

Luis Eduardo Ocando Bustamante
Partner – Tax | Tax Policy Leader LATAM North,
Ernst & Young Panama, S.A.
Direct: +507 208 0144
luis.ocando@pa.ey.com

Peru

Fernando Tori
Partner — ITTS, Ernst & Young Asesores Empresariales
Sociedad Civil de Responsabilidad Limitada
Direct: +511 411 4479
fernando.tori@pe.ey.com

Claudia Plasencia
Managing Director — ITTS, Ernst & Young Asesores
Empresariales Sociedad Civil de Responsabilidad Limitada
Direct: +51 141 144 83
claudia.plasencia@pe.ey.com

Edwin Sarmiento
Senior Manager — ITTS, Ernst & Young Asesores
Empresariales Sociedad Civil de Responsabilidad Limitada
Direct: +511 411 5332
edwin.sarmiento@pe.ey.com

Venezuela

Saul Medina
Partner — BTA, Mendoza, Delgado, Labrador & Asociados
Direct: +58 212 905 6716
saul.medina@ve.ey.com

José Velázquez
Partner – ITTS, Mendoza, Delgado, Labrador & Asociados
Direct: +58 212 905 6659
jose.a.velazquez@ve.ey.com

EY | Assurance | Tax | Transactions | Advisory

EYG no. 000626-20Gbl

1911-3313050
ED None