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Americas tax policy update

Q4 2020

Country

Argentina

Brazil

Canada

Chile

Colombia

Costa Rica

Dominican Republic

Ecuador

El Salvador

Guatemala

Honduras

Mexico

Nicaragua

Panama

Paraguay

Peru

Puerto Rico

United States

Uruguay

Venezuela

Country summaries containing updated information are noted with +.

*Indicates a new development within each country summary.

+ Argentina

- ▶ *The Argentine federal tax authorities (AFIP) issued a resolution establishing a mandatory reporting regime for domestic and international arrangements (planificaciones fiscales, in Spanish) implemented since 1 January 2019 or implemented before that date but with effects that continue as of 20 October 2020. When reporting arrangements, taxpayers and tax advisors must include a complete description of the relevant facts, details on the parties involved, and any other relevant element or transaction regarding the tax-planning arrangement. They also must include a detailed analysis of the rules (including foreign legislation) that apply to the arrangements. The information must be reported electronically on the AFIP's website through the recently launched "Régimen IPF" service. Domestic tax-planning arrangements and international tax-planning arrangements that must be reported under Section 4(f) of General Resolution No. 4838/2020, however, cannot yet be reported. The Bar of the City of Buenos Aires and various professional councils of Economic Sciences have challenged the legality of this regime in court. Taxpayers should follow the progress of these challenges, as this regime may be found partially or entirely invalid. For more information, see Tax Alerts [2020-2526](#) and [2021-0038](#).
- ▶ *Law 27,605 establishes a one-time extraordinary emergency contribution on personal assets held by individuals as of 18 December 2020, when the value of those assets calculated under the personal asset tax rules exceeds ARS 200 million (approx. US\$ 2.4 million). The one-time extraordinary emergency contribution will range from 2% to 5.25% of the taxable assets. The Argentine tax authorities are expected to issue further guidance on the procedure for determining the emergency contribution, due dates, filings and payment methods for this contribution. For more information, see Tax Alert [2020-2919](#).
- ▶ *Argentina enacted Law 27,570, which amends the promotional regime for the knowledge-based economy by imposing new requirements for qualifying for the regime and modifying certain benefits, including reduced income tax rates, tax credit bonds and tax stability (i.e., the taxpayer's tax liability under the regime will be stable). The objective of the regime is to promote knowledge-based and digital activities in Argentina that result in the manufacturing of goods, the provision of services or the improvement of processes. Companies participating in the promotional regime will: (1) be subject to reporting obligations and audits conducted by the tax authorities, (2) have to maintain or increase their headcount and (3) be required to pay a fee that will not exceed 4% of the tax savings obtained from the regime. On 21 December 2020, the Executive Power issued Decree 1034/2020 to implement the provisions of the promotional regime. For more information about the regime, see Tax Alerts [2020-2576](#) and [2021-0018](#).
- ▶ The Argentine Central Bank (BCRA) issued several pieces of guidance on the foreign exchange regulations issued in September 2019. For more information, see Tax Alert [2020-2458](#). Specifically, the BCRA issued:

- Communique A 7,106, which established that Argentine entities (other than banks) with financial loans granted by non-related foreign entities that have principal payments due from 15 October 2020 to 31 March 2021 must present to the BCRA a refinancing plan of those loans.
- Communique A 7,094, which extended through 31 October 2020 the requirement for Argentine entities to obtain prior authorization from the BCRA for payments of: (1) financial loans with foreign related parties and (2) amounts that exceed the original amount due for goods imported since 1 January 2020.
- Communique A 7,079, which established that Argentine entities requiring access to the official foreign exchange market (i.e., purchasing foreign currency) to pay for imported goods or services, or to make any other payment abroad, must file an affidavit stating that in the past 90 days they did not sell bonds against foreign currency or transfer bonds to a foreign broker. They also must commit to not conduct those transactions over the next 90 days.
- Communique A 7,042, which established that Argentine entities requiring access to the official foreign exchange market to pay for imported goods or services, dividends, commercial interests and principal and interest of financial loans must file an affidavit stating that all their financial assets in foreign currency exceeding US\$ 100k are deposited in Argentine banks (certain exceptions may apply).
- General Resolution (GR) Nos. 4878 and 4879, clarifying the "final beneficiary" definition and expanding the "final beneficiary" reporting obligation to trusts. When the reporting entities' capital is listed on public stock markets, GR 4878 clarifies that the reporting entities (REs) only have to report as "final beneficiaries" those individuals who have an ownership value of more than ARS 50 million (approx. US\$ 590k) or directly or indirectly own at least 2% of the total shares/other participations issued by the REs, whichever is lower. GR 4879 establishes that trustees of Argentine trusts and Argentine trustees, trustors and/or beneficiaries of foreign trusts must report the "final beneficiary" of the trust, which is the individual who, by any means, directly or indirectly controls the trust. For more information, see Tax Alert [2020-2873](#).

+ Brazil

- The Brazilian Supreme Court (STF) held that the state value-added tax does not apply to the licensing of, or right to use, software. The STF found, however, that the municipal service tax applies to the licensing of, or right to use, software because they are services. Although a majority of the STF agreed to this holding, the decision is not final. The decision, which will include a determination of whether it will apply retroactively or prospectively, has yet to be published. For more information, See Tax Alert [2020-2653](#).
- The tax authorities clarified that the payment of royalties by resident companies to local beneficiaries for the right to use trademarks and for the right to manufacture, distribute and commercialize licensed products does not generate credits of PIS (contribution to the social integration programme) and COFINS (contribution for the financing of social security). PIS and COFINS are federal contributions assessed on companies'

gross revenue. PIS and COFINS are calculated at the following rates: 3.65% under the "cumulative regime" or 9.25% under the "non-cumulative" regime. Although subject to a higher rate, entities under the "non-cumulative regime" are entitled to calculate credits on inputs.

- The Ministry of Economy has officially abolished the integrated system (SISCOSERV) for reporting (1) the foreign trade of services, (2) intangibles and (3) other transactions, which was an ancillary obligation for taxpayers reporting cross-border transactions involving the provision of services, intangibles and other similar transactions that may have an impact on their equity.
- The Superior Court of Justice ruled that withholding tax on payments made to companies abroad is triggered when the debt matures or the payment is made, whichever occurs first. The decision is an important landmark because the tax authorities have taken the position that resident companies must withhold income tax upon recognition of the debt in their accounts payable.
- According to joint statements from 9 October 2020, Brazil and the United Kingdom are considering opening negotiations for a tax treaty. In another joint statement issued on the same date, officials from Brazil and Germany also addressed the topic of negotiating a new tax treaty (years ago, Germany denounced the tax treaty entered into between these jurisdictions).
- *On 18 December 2020, the Uruguayan Senate approved the Brazil - Uruguay Income and Capital Tax Treaty (2019). The treaty has now been sent to Uruguay's Chamber of Representatives (lower house of the National Assembly) for further approval. Further developments will be reported as they occur.

Canada

- The federal government released its 2020 Fall Economic Statement on 30 November 2020. For a high-level overview, see Tax Alert [2020-2772](#). The statement extended and refined certain COVID-19-related economic support measures, including the Canada Emergency Wage Subsidy (CEWS) and the Canada Emergency Rent Subsidy (CERS), and contained a wide range of unrelated spending and tax measures, including the following income tax measures:
- A proposed "temporary" tax on "digital service corporations" to be implemented 1 January 2022 until an acceptable international common approach is adopted as proposed by the Organisation for Economic Co-operation and Development (OECD) in the context of its BEPS 2.0 Inclusive Framework project.
- A \$200,000 annual cap on the tax treatment of employee stock options that benefit from tax-preferred treatment. This measure had first been announced in the 2019 Budget but was postponed to allow further stakeholder input.
- For more details on the CEWS and CERS changes and a full list of income tax measures, see Tax Alerts [2020-2672](#) and [2020-2783](#).
- The following indirect tax measures were included in the statement:

- ▶ To ensure that the goods and services tax (GST)/harmonized sales tax (HST) applies fairly in an increasingly digital economy and levels the playing field for Canadian vendors, nonresident vendors supplying digital products and services to consumers in Canada will be required to register for, collect and remit GST/HST with respect to their taxable supplies to Canadian consumers, effective 1 July 2021.
- ▶ Similarly, GST/HST will apply to all sales to Canadians of goods that are located in Canadian fulfillment warehouses, to be collected and remitted by either the foreign-based vendor or the digital platform that facilitates the sale, effective 1 July 2021.
- ▶ GST/HST will also apply to all platform-based, short-term rental accommodations supplied in Canada, to be collected and remitted by either the property owner or the digital accommodation platform, effective 1 July 2021. For further details and the full list of indirect tax changes, see Tax Alert [2020-2793](#).
- ▶ The statement also announced the government is allocating an additional \$606 million over five years starting in 2021-2026 to the Canada Revenue Agency (CRA) to fund new initiatives targeting international tax evasion and aggressive tax avoidance. This new funding is in addition to the extra \$350 million per year it has allocated to the CRA "to crack down on tax evasion and combat international tax avoidance."
- ▶ Ontario Finance Minister Rod Phillips tabled the province's fiscal 2020–21 budget on 5 November 2020. It contained a number of tax changes affecting individuals and corporations but no new taxes or increases in tax rates. For more information, see Tax Alert [2020-2641](#).
- ▶ British Columbia filed a regulation on 30 September, bringing into force the *Land Owner Transparency Act* (LOTA), which establishes a registry of beneficial ownership of real property in British Columbia, administered by the Land Title and Survey Authority. The LOTA enters into force on 30 November, and the first transparency reports required from preexisting owners of land must be filed by 30 November 2021. For more information, see Tax Alert [2020-2409](#).
- ▶ Newfoundland and Labrador Finance Minister Siobhan Coady tabled the province's fiscal 2020-21 budget on 30 September. The budget contains no new income taxes and no income tax increases. For more information, see Tax Alert [2020-2348](#).

Chile

- ▶ The Chilean Internal Revenue Service published Resolution No. 101, establishing new Transfer Pricing Informative Sworn Statements No. 1950 (Annual Master File Affidavit) and No. 1951 (Annual Local File Affidavit). The new affidavits require the submission of a large volume of information. The due date for both affidavits is the last business day of June each year. The due date may be extended once for up to three months upon request. For more information, see Tax Alert [2020-2610](#).
- ▶ The Chilean tax authorities (CTA) issued Resolution Ex. No. 119 of 2020, amending rules on reporting indirect transfers of Chilean entities and assets. Currently, the instructions for reporting indirect transfers exempt acquirers and the Chilean companies subject to the transfers from the reporting requirement if the transferors report the transactions. The

resolution eliminates the exemption and requires all parties involved in the indirect transfer to report the indirect transfer to the CTA by filing Form 1921. The resolution went into effect 1 January 2021. For more information, see Tax Alert [2020-2385](#).

- ▶ Following the Chilean Congress's recent ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI), Chile deposited its instrument of approval with the OECD on 26 November 2020. It also submitted its MLI positions and reservations and the list of covered tax agreements. For more information, see Tax Alert [2020-2786](#).

Colombia

- ▶ On 22 October 2020, the Colombian Congress approved Law 2061-2020, which regulates the double taxation agreement signed between France and Colombia. This law is currently under the Constitutional Court's review. Once the Court declares the law constitutional, Colombia and France may exchange diplomatic notes and the treaty will enter into force.
- ▶ The Colombian Government issued Decree 1457 of 2020, which regulates the dividend tax on the distribution of profits that were generated after 1 December 2017 (including dividends declared before 31 December 2018). The decree also regulates the refund of dividend tax when a treaty to prevent double taxation applies.
- ▶ The Colombian Government issued Decree 1638 of 2020, which regulates the income tax exemption for taxpayers who perform agricultural and forestry activities. The decree defines certain terms and outlines the procedure for applying the exemption.
- ▶ The tax authorities issued Resolution 98 of 2020 to clarify which taxpayers are required to file a magnetic media report for tax year 2021 and the information that should be included in the report. The resolution also includes technical guidelines on the correct format taxpayers should use to provide magnetic media reports.

Costa Rica

- ▶ Costa Rica's President and the Minister of Finance published a regulation that updates the selection criteria for determining which people and items will be subject to customs control. Some of the operations subject to selection include goods or economic sectors with alleged inconsistencies in: (1) customs value, (2) the declaration of the royalty or license fee, or (3) tariff classification. Operations also may be selected when there is a relationship between the buyer and the seller, among other things. The regulation went into effect on 16 November 2020. For more information, see Tax Alert [2020-2733](#).

Dominican Republic

- ▶ No tax policy developments are available for this quarter.

Ecuador

- ▶ The Executive Power issued an Executive Decree to implement the Humanitarian Organic Law. The Executive Decree includes regulations for interest on voluntary advance payments of income tax. Under the Executive Decree, interest will be recognized on voluntary advance income tax payments from

the payment date until the filing date of the respective return. The accrued interest will be used exclusively to pay the income tax for the tax year to which the voluntary advance payments correspond. If a balance remains at the end of the tax year, it may be used to pay the income tax due in subsequent tax years for up to three years. The Executive Decree also allows Ecuadorian banking and financial entities to deduct 50% of the interest on loans of more than US \$25,000 granted from April 2020 to 31 December 2020. To qualify for the deduction, the loans must be for a period of at least 48 months, and the deduction may be claimed until the loans are paid off.

- ▶ The Tax Administration has identified 47 new economic groups for income tax purposes in 2020. Accordingly, the Tax Administration updated the list of economic groups carrying out activities in the country, which numbered 300 in 2020.
- ▶ The Tax Administration issued new rules on the special tax regime for micro enterprises.
- ▶ The Tax Administration issued new regulations related to the withholding of value-added tax (VAT) and set the applicable withholding rates.

El Salvador

- ▶ No tax policy developments are available for this quarter.

Guatemala

- ▶ No tax policy developments are available for this quarter.

Honduras

- ▶ No tax policy developments are available for this quarter.

+ Mexico

- ▶ Taxpayers will have to disclose reportable transactions under the mandatory disclosure regime (MDR) enacted as part of the Mexican tax reform on 9 December 2019, on or before 15 February 2021. Although the primary obligation to report falls on the tax advisors for transaction plans made available/entered into from 1 January 2020, taxpayers are responsible for ensuring proper reporting and, in some cases, actually reporting. Taxpayers and tax advisors must report the following information for reportable transactions under the MDR rules:
 - ▶ Complete legal name of the person reporting and its Tax ID number
 - ▶ Complete name of the legal representative of the tax advisor and the taxpayer
 - ▶ Description of the reportable transaction and tax benefit obtained or expected
 - ▶ Tax year in which the reportable transaction was implemented
- ▶ Taxpayers and tax advisors may be required to report additional information about the reportable transactions. Because the first reporting due date is quickly approaching, taxpayers should consider actively assessing transactions performed in the past that may affect the 2020 tax position and determining whether a reporting obligation exists. Similar determinations should be considered for transactions that are

expected to be performed by year end. Proper evaluation of whether a transaction or advice gives rise to a reportable transaction in Mexico will be key to adequately complying with this new reporting obligation. Also, on 18 November 2020, the Mexican tax authority published in the Federal Official Gazette further regulations for the filing of the reports under the MDR. For more information, see Tax Alert [2020-2594](#).

- ▶ *On 12 November 2020, President Andrés Manuel López Obrador proposed a bill that would effectively eliminate, in most cases, the use of service companies in Mexico by prohibiting individuals and entities from outsourcing services. It also would prohibit taxpayers from deducting payments for outsourced services. Taxpayers, however, would be allowed to deduct payments for services of a specialized nature or the execution of specialized work if they maintain certain documentation. Please note that this proposal was postponed for discussion until Congress reconvenes for session in February 2021. For more information, see Tax Alert [2020-2697](#).
- ▶ The US IRS announced it reached an agreement with the Mexican tax authorities (SAT) to renew the competent authority agreement on maquiladoras. Under the agreement, a US taxpayer can avoid double taxation on its maquiladora contract manufacturing and assembly functions by entering into a unilateral advance pricing agreement (APA) with the SAT's large taxpayer division under terms agreed in advance by the US and Mexican competent authorities. The SAT is expected to issue a similar announcement with further details in the coming weeks. For more information, see Tax Alert [2020-2731](#).

Nicaragua

- ▶ No tax policy developments are available for this quarter.

Panama

- ▶ No tax policy developments are available for this quarter.

Paraguay

- ▶ No tax policy developments are available for this quarter.

+ Peru

- ▶ Peru's Executive Power issued Supreme Decree No. 285-2020-EF, extending from 30 September 2020 to 31 December 2020, the deadline for taxpayers to apply for the new deferral and installment payment regime for tax debts.
- ▶ Peru's tax authorities established the due date for the secondary filing of the country-by-country reports for 2017, 2018 and 2019 is 29 January 2021, in certain cases. For more information, see Tax Alert [2020-2861](#).
- ▶ The Peruvian tax authorities announced in a press conference a new project for the collection of tax debts, called the "Collaborative Compliance Plan," which will consist of new measures that would facilitate the collection of tax debts, including a mutual agreement procedure (MAP), and measures that would allow more taxpayers to apply for private rulings. The tax authorities indicated that they expect to adopt the new plan in the near future. For more information, see Tax Alert [2020-2375](#).

- ▶ Peru's tax authorities have issued guidance (Ruling 109-2020-SUNAT/7T0000), clarifying how to calculate whether more than 10% of a company's shares have been transferred to determine if the capital gains tax exemption applies to the capital gains derived from transfers of shares on the Lima Stock Exchange (LSE). To calculate 10% of the shares, the second transfer of the same shares within 12 months is not considered in the calculation. For more information, see Tax Alert [2020-2845](#).
- ▶ The Peruvian tax authorities published Public Ruling 061-2020-SUNAT/7T0000, addressing the merger of two nonresident entities when the absorbed entity has a permanent establishment (PE) in Peru. If two nonresident entities merge and the absorbed entity has a PE in Peru, the absorbed entity will have to pay tax on the income from the transfer of the PE. For more information, see Tax Alert [2020-2471](#).
- ▶ The Peruvian Tax Court held (Resolution 5934-5-2019) that for a Peruvian payor to apply double tax treaty benefits when determining the withholding tax on a transaction, the nonresident must submit a Certificate of Residency when withholding is triggered, not retroactively. If the certificate is submitted retroactively, the nonresident may request a refund directly from the Peruvian tax authorities. For more information, see Tax Alert [2020-2469](#). The Tax Court also held (Resolution 3701-9-2020) that, to apply the benefits of a tax treaty for purposes of the withholding tax, a service provider does not have to submit a Certificate of Residence to the tax authorities when the client registers expenses or costs in ledgers.
- ▶ *On 30 December 2020, the Peruvian President ratified the double tax treaty with Japan through Supreme Decree No. 060-2020-RE. Peru's Congress approved the treaty on 28 December 2020, through Legislative Resolution No. 6267. The treaty, however, has not yet entered into force. For more information, see Tax Alert [2021-0024](#).
- ▶ After passing the confidential protocols evaluation performed by the OECD, the Peruvian tax authorities announced on 21 October 2020 that they will start to exchange taxpayers' financial and tax information with more than 130 countries beginning in 2021. For more information, see Tax Alert [2020-2564](#).
- ▶ Peru enacted Law 31087, which repeals the special rules to promote agribusiness (i.e., agrarian regime) established in both Law 27360 and Urgency Decree 043-2019. With the repeal of Law 27360 and Urgency Decree 043-2019, agribusiness entities will be subject to the general tax regime beginning January 1, 2021. Under that regime, agribusiness entities will be subject to: (1) a 29.5% corporate income tax rate and (2) a 10% depreciation rate on investments in hydraulic infrastructure and irrigation works. For more information, see Tax Alert [2020-2847](#).
- ▶ Administrative Guidance No. 113-2020-SUNAT/7T0000 states that gains of a company resident in Mexico that renders internet, technical support and maintenance of software qualify as business income, in accordance with Article 7 of the tax treaty between Mexico and Peru.
- ▶ Administrative Guidance No. 111-2020-SUNAT/7T0000 states that a company resident in Chile that is part of a consortium without independent accounting will not be subject to income tax on payments for services provided by the consortium in Peru, as long as the income from the services qualifies as business income under Article 7 of the tax treaty between Peru and Chile.
- ▶ *On 15 December 2020, Peru established that the value of a Tax Unit will be 4,400 PEN or approx. US\$ 1,223 for tax year 2021.
- ▶ *The Third Final Complementary Provision of Supreme Decree No. 432-2020-EF established that taxpayers that are formed or begin business activities in tax year 2021 must consider earnings before interest, taxes, depreciation and amortization when deducting interest expenses under Article 37 of the Peruvian Income Tax Law.
- ▶ *Law No. 31107, published on 31 December 2020, modified Legislative Decree No. 1488 to:
 - ▶ Establish that the following maximum annual depreciation percentages will apply for tax year 2021:
 - ▶ Data processing equipment (except slot machines), 50%
 - ▶ Machinery and equipment, 20%
 - ▶ Land transport vehicles (except railways), with EURO IV, Tier II and EPA 2007 technology or more demanding technology (for which the provisions of Supreme Decree 010-2017-MINAM apply), that are used by authorized companies to transport people or goods at the provincial, regional and national levels, 33.3%
 - ▶ Land transport vehicles (except railways), hybrids (with electric motor) or natural gas vehicles, 50%
 - ▶ Allow an annual depreciation rate of 20% for buildings and construction either until they are completely depreciated or only during tax years 2021 and 2022. The taxpayer may choose one of the two depreciation options when it submits its tax return. Once elected, the election cannot be revoked.
- ▶ *Law No. 31108 modified Article 65 of the Peruvian Income Tax Law to establish that domiciled individuals are not required to keep books and accounting records if they solely have corporate income or losses generated by investment funds, trust assets from securitization companies and/or bank trusts.
- ▶ *Supreme Decree No. 425-2020-EF modified Article 39-A of the Peruvian Income Tax Law to indicate that withholding tax does not apply when management companies of mutual funds pay the income from investments in securities through a credit in the bank accounts that the distributors of participation quotas have set up on behalf of the participants of the funds.
- ▶ *Law No. 31104 states that the Tax Administration — SUNAT — will refund the temporary tax on net assets for 2020 through a credit granted to taxpayers that request the refund of that tax. SUNAT will grant the credit within 30 business days of the refund request.
- ▶ *Administrative Guidance No. 123-2020-SUNAT/7T0000 established that donors of donated goods do not have to prove the destination given by the receiving entity to deduct the donation as an expense.

Puerto Rico

- ▶ The Assistant Secretary for Tax Policy for the US Department of Treasury (Treasury), David J. Kautter, and Puerto Rico's Treasury Secretary, Francisco Parés Alicea, recently discussed the impact of the proposed foreign tax credit regulations on the excise tax paid to Puerto Rico under Act 154. Act 154, enacted in October 2010, established a special 4% excise tax on the sale of products manufactured in Puerto Rico and acquired by a member of the manufacturer's controlled group. The special excise tax applies when the sum of the gross receipts from sales of personal property manufactured in Puerto Rico or services performed by a group member in Puerto Rico exceeds \$75 million for any of the preceding three years. According to a [press release](#) from Secretary Parés Alicea following the meeting, Assistant Secretary Kautter indicated that the proposed regulations were not intended to affect taxpayers' ability to claim a foreign income tax credit under federal income tax law for Puerto Rico's excise tax under the Act 154 regime. For more information, see Tax Alert [2020-2482](#).

+ United States

- ▶ ***US elections.** Former Vice President Joe Biden was sworn in as President and Senator Kamala Harris (D-CA) is Vice President. Democrats have 50-50 split control of the Senate, with the Vice President able to break tie votes. With Democrats controlling both the Senate and the House of Representatives, President Biden may be more likely to be able to advance his proposals on economic stimulus, climate change, health care, education, and tax policy. However, with such narrow margins, legislation will have to win over both progressive and moderate Democrats or some Republicans to pass. Biden pledged during the campaign to pay for some of his policy initiatives with increased taxes. However, he faces a Congress that may be reluctant to raise taxes or increase spending. Because of their narrow Senate majority, Democrats are likely to use the budget reconciliation process to advance significant policy items. This process, which can only be used for measures that affect revenue, spending or the debt limit, requires only a simple majority vote in each chamber to pass, unlike other legislation, which must overcome a 60-vote filibuster threshold. A first reconciliation bill, if that approach is pursued, may focus on pandemic relief and health care. Congress is likely to have to raise the debt ceiling in the fall, which presents another opportunity to consider revenue and spending legislation.
- ▶ ***Legislative developments.** Congress enacted \$900 billion in COVID-19 relief in the final days of the legislative session along with a \$1.4 trillion government funding package. The year-end "Consolidated Appropriations Act, 2021" included a significant "tax extenders" package that addressed expiring tax provisions, making several provisions permanent and aligning others with the scheduled expiration of tax cuts under the Tax Cuts and Jobs Act (TCJA). Among many energy and non-energy related tax provisions, the legislation extended the controlled foreign corporation (CFC) look-through rule, the New Markets Tax Credit and the Work Opportunity Tax Credit through 2025. See Tax Alert [2020-2913](#).
- ▶ The year-end legislation also modified and extended some measures enacted earlier as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Key tax provisions in the legislation:

- ▶ Allow tax deductions for forgiven loans provided under the CARES Act's Paycheck Protection Program (PPP)
- ▶ Extend the employee retention tax credit until 1 July 2021 and broaden the scope of the credit
- ▶ Allow a 100% meals deduction for 2021-2022
- ▶ Extend the payroll tax deferral payback period through the end of 2021
- ▶ Extend the CARES Act charitable deduction through 2021 and set the amount at \$600 for married couples filing jointly
- ▶ Allow taxpayers to carry over unused Flexible Spending Account benefits from 2020 into 2021
- ▶ TCJA updates. The US Treasury Department issued the following significant TCJA regulations:
 - ▶ Final regulations ([TD 9908](#)) and proposed regulations ([REG-110059-20](#)) on the repeal of IRC Section 958(b)(4) by the TCJA. The regulations do not undo the repeal of IRC Section 958(b)(4). Instead, the regulations modify certain provisions so they apply in a manner consistent with their application before the repeal of IRC Section 958(b)(4). See Tax Alert [2020-2362](#).
 - ▶ Final regulations ([TD 9925](#)) clarifying business expense deduction disallowances under IRC Section 274 for entertainment and food or beverage expenses after the TCJA eliminated the deduction for entertainment expenses. The final regulations generally adopt the proposed regulations (REG-100814-19; see Tax Alert [2020-0442](#)) issued in February 2020, with some changes made in response to public comments. See Tax Alert [2020-2412](#).
 - ▶ Final regulations ([TD 9921](#)) on sourcing income from sales of personal property, including inventory, generally retaining the basic approach of the proposed regulations ([REG-100956-19](#)) that were released in December 2019 to address changes made to IRC Section 863(b)(2) by the TCJA. The final regulations also revise the proposed regulations' guidance on sourcing income from sales of personal property under IRC Section 865(e)(2), as well as other provisions of former Treas. Reg. Sections 1.863-3 and 1.864-5 that were not amended by the proposed regulations. See Tax Alert [2020-2435](#).
 - ▶ Final regulations ([TD 9926](#)) under IRC Section 1446(f), which impose a new withholding tax on transfers by non-US persons of interests in partnerships that are engaged in a US trade or business. The final regulations retain the basic approach of the proposed regulations issued in May 2019 but make numerous changes to specific rules in response to comments received. See Tax Alert [2020-2481](#).
 - ▶ Final regulations under IRC Section 1502 ([TD 9927](#)), implementing changes to IRC Section 172 under the TCJA and CARES Act on the absorption by a US federal consolidated group of net operating loss and

consolidated net operating loss carryovers and carrybacks. The final regulations apply to tax years beginning in 2021 but can be applied to prior tax years if they are applied consistently. See Tax Alert [2020-2491](#).

- ▶ Procedural guidance ([Revenue Procedure 2020-50](#)) for taxpayers to implement the 2020 final bonus depreciation regulations, the 2019 final bonus depreciation regulations, or both the 2019 final and proposed bonus depreciation regulations, for property acquired and placed in service by the taxpayer after 27 September 2017. See Tax Alert [2020-2719](#).
- ▶ Final regulations ([TD 9935](#)) on IRC Section 1031 like-kind exchanges, addressing the definition of real property and providing a rule addressing the receipt of personal property that is incidental to real property received in a like-kind exchange.
- ▶ *Final regulations ([TD 9936](#)) and proposed regulations ([REG-111950-20](#)) under the passive foreign investment company rules. The final regulations generally follow proposed regulations issued on 10 July 2019 but make certain significant changes. See Tax Alert [2020-2865](#)
- ▶ *Final regulations ([TD 9932](#)) implementing changes made by the TCJA to IRC Section 162(m), which limits the deduction for certain compensation over \$1 million for federal income tax purposes. The final regulations retain the basic approach of the proposed regulations with certain revisions. See Tax Alert [2020-2923](#).
- ▶ *Final regulations on income recognition under IRC Section 451 ([TD 9941](#)). These final regulations interpret IRC Section 451 as amended by the TCJA.
- ▶ *Additional final regulations ([TD 9943](#)) with guidance on the business interest expense limitation under IRC Section 163(j), which was modified in December 2017 by the TJCA, and in March 2020 by the CARES Act. The 2021 final regulations adopt (with some revisions) the proposed regulations on the IRC Section 163(j) limitation that were published in September 2020. They also clarify and reserve on certain aspects of the proposed regulations. The 2020 proposed regulations were issued concurrently with 2020 final regulations on the IRC Section 163(j) limitation.
- ▶ *Final regulations ([TD 9945](#)) under IRC Section 1061, which recharacterizes certain net long-term capital gains of a partner holding one or more applicable partnership interests as short-term capital gains. The final regulations will affect many investment funds, including private equity and alternative asset funds, and the managers and general partners of these funds. The final regulations adopt with some revisions the proposed regulations under IRC Section 1061 issued on 31 July 2020.
- ▶ Other updates.
 - ▶ The IRS issued final regulations ([TD 9922](#)) providing guidance for determining the foreign tax credit allowed under IRC Section 901. The final regulations adopt

proposed regulations that were issued on 2 December 2019, with some modifications. See Tax Alert [2020-2497](#).

- ▶ The IRS announced it has reached an agreement with the SAT to renew the competent authority agreement arrangement known as the Qualified Maquiladora Approach Agreement (QMA). Under the QMA, a US taxpayer can avoid double taxation on its maquiladora contract manufacturing and assembly functions by entering a unilateral APA with SAT's large taxpayer division under terms agreed to in advance by the US and Mexican competent authorities. See Tax Alert [2020-2731](#).
- ▶ The IRS's Advance Pricing and Mutual Agreement program [announced](#) it was updating the parameters that it follows in MAP and APA cases. The updates are expected to significantly restrict the use of "telescoping" of results in MAPs and APAs. Telescoping refers to reflecting an income tax adjustment in a year different from the year to which the adjustment relates. See Tax Alert [2020-2585](#).

Uruguay

- ▶ Uruguay's tax authorities issued Resolution No. 1,716, expanding the corporate income tax exemption for income from software development services. Under the general regime, income derived from software development services is exempt from corporate income tax, provided, among other things, that more than 50% of the direct costs and expenses necessary to render the software services is incurred in Uruguay. The resolution expands the corporate income tax exemption for income from software development services by allowing 30% of the direct costs and expenses incurred outside Uruguay to be treated as incurred in Uruguay. This benefit applies only to tax years beginning from 1 January 2020 to 31 December 2020. For more information, see Tax Alert [2020-2511](#).
- ▶ The Uruguayan tax authorities extended to December 2020 the deadline for making estimated tax payments of corporate income tax, net wealth tax and corporation control tax previously due in October 2020. For more information, see Tax Alert [2020-2523](#).

+ Venezuela

- ▶ *Venezuela will exempt (Decree No. 4,412) the following transactions, among others, from the imposition of the VAT until 30 April 2021:
 - ▶ Imports of tangible movable property classified under the tariff codes indicated in the decree, by corporations in the automotive sector
 - ▶ Imports of tangible movable property, classified under the tariff codes indicated in the Decree, by the agencies and entities of the National Public Administration to stop the spread of the COVID-19 pandemic
 - ▶ Imports of new movable capital assets and computer and telecommunications assets, as well as their parts, pieces and accessories, not produced, or with insufficient production, in the country, that are identified as capital goods (BK) or information technology and

telecommunications goods (BIT) in the Customs Tariff Code, under the terms and conditions provided in the respective "Certificate of Exemption of BK or BIT," administered by the Ministry of People's Power that is dedicated to the industry sector. The 2% or 0% tariff rate will be applied ad valorem, depending on the type of asset.

To qualify for the exemption, the beneficiaries must satisfy the general and specific requirements established in the decree.

- ▶ *Venezuela published Decree No. 4,411, which exempts until 15 January 2021, from VAT, import tax and customs tariffs, definitive imports of tangible movable property, new or used, as applicable, carried out by the bodies and entities of the National Public Administration, as well as those imports of tangible movable property carried out by individuals or corporations. The definitive imports must be classified under tariff code 8421.29.90.00. That tariff code refers to other hemodialyzers other than those established in code 84.21 named "Centrifuges, including Centrifugal Dryers." The exemption will apply regardless of whether the goods are imported or acquired in complete or disassembled pieces.

To qualify for the exemption, the beneficiaries, at the time of registering their import declaration, must present the following items to the corresponding customs office:

- ▶ A descriptive list of tangible movable property to be imported
- ▶ A commercial invoice issued in the name of the beneficiary responsible for the acquisition of tangible movable property

The decree entered into force as of its date of publication in the Official Gazette on 29 December 2020.

- ▶ *Venezuela published Administrative Order No. SNAT/2020/000078 establishing the calendar for special taxpayers and withholding agents to follow for fulfilling their obligations in 2021. Taxpayers' tax returns for VAT, income tax (IT) (including advance payments), tax on gaming activities of luck and chance, equity tax, tax on large financial transactions, as well as withholding by IT and VAT withholding agents, and the contribution of 70% of the income from certain public entities, must be filed on the date established in the calendar, which is based on the last digit of the taxpayer identification number. Individuals and corporations with tax years that are different from the calendar year must file income tax returns and pay the tax due on or before the due date established in this order. Individuals and corporations should divide the tax payment into three parts, with the first one due when the return is filed. The second payment is due 20 days after the expiration of the period set for the filing of the income tax return, and the third payment is due 40 days after the expiration of the period established in the administrative order. The administrative order entered into force as of its publication in the Official Gazette on 30 December 2020.

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