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Global Tax Alert

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Peru enacts new tax measures for 2021

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Throughout 2020, Peru enacted tax measures affecting its thin capitalization rules, the special depreciation regime for buildings and construction, and exemptions for income taxes and value-added taxes. Peru also enacted a regime allowing the tourism industry to defer payment of tax debts and apply to pay overdue taxes in installments. The measures are generally effective as of 1 January 2021.

Thin capitalization rules

Effective 1 January 2021, a new thin capitalization rule applies. The rule, which was published in the *Official Gazette* on 13 September 2018, in Legislative Decree 1424, limits corporate income tax deductions for "net interest" on all loans. Net interest equals the difference between interest expense and interest income. The interest expense limitation equals 30% of EBITDA (defined for Peruvian income tax purposes as net income after offsetting losses plus net interest, depreciation and amortization).

Special depreciation regime

In Law 31107, published in the *Official Gazette* on 31 December 2020, Peru permits taxpayers to elect to apply the 20% depreciation rate (rather than the 5% rate) under the special depreciation regime for buildings and construction. Under prior law (Legislative Decree 1488), the 20% rate automatically applied

if the following requirements were met: (i) the construction began 1 January 2020 and (ii) 80% or more of the work was completed by 31 December 2020. Once made on the annual tax return, the election to apply the 20% rate is irrevocable. The change is effective as of 1 January 2021.

Temporary tax on net assets (ITAN in Spanish)

Peruvian entities must pay ITAN equal to 0.4% of the value of total assets over PEN1 million (approx. US\$350,000). ITAN can be used as a credit against estimated payments of corporate income tax for the year in which ITAN is paid. It can also offset annual payments of corporate income tax. Taxpayers may claim a refund of ITAN if it is not fully used as a credit.

Law 31104, published in the *Official Gazette* on 31 December 2020, permits taxpayers to claim a refund of all ITAN for fiscal year 2020. The Peruvian tax authority has 30 working days to respond to the refund claim. If the tax authority fails to respond in that period, the refund claim is automatically approved. The change is effective as of 1 January 2021.

Income tax exemptions

Law 31106, published in the *Official Gazette* on 31 December 2020, extended the expiration dates of certain income tax exemptions three years, to 31 December 2023. The extended exemptions apply to the following:

- ▶ Income of non-profit foundations and associations
- ▶ Profits or interests in life insurance
- ▶ Interest income from deposits in the Peruvian financial system (excluding interest paid to corporations, which is subject to corporate income tax)
- ▶ Interest and other earnings from foreign loans made to the National Public Sector

The changes are effective as of 1 January 2021.

Exemptions for value-added tax (VAT)

Law 31105, published in the *Official Gazette* on 31 December 2020, extended the expiration dates of certain VAT exemptions one year, to 31 December 2021. The exemptions apply to activities and services listed in Appendix I and II of the VAT law, including the following:

- ▶ Interest from the collection of credits transferred by banks to securitization companies, trusts or investment funds
- ▶ Public transportation services within the country, except for public rail passenger transportation and air transportation
- ▶ Cargo transportation services from Peru to foreign countries and from foreign countries to Peru
- ▶ Live shows
- ▶ Sale or import of certain goods (fish, crustaceans, mollusks, fresh or refrigerated potatoes, beans, artichokes, among others)

The changes are effective as of 1 January 2021.

Deferral and installment payments for certain tax debts

In response to COVID-19's effects on the tourism sector, Law 31103 created a new tax deferral and installment payment regime for tourist service providers. Under the regime, providers may defer tax debts and apply to pay those debts in installments. Deferral and payment options include the following:

- ▶ Only deferral: 12 months
- ▶ Deferral and installment: 12 months of deferral and 24 for installments
- ▶ Installments: 36 months

The change was published in the *Official Gazette* on 30 December 2020, and effective as of 31 December 2020.

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