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Americas tax policy update

Q2 2022

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Argentina

- ▶ The Argentine Central Bank (BCRA) exempted individuals and legal entities that export certain services (e.g., IT services, telecommunications services, charges for the use of intellectual property) from settling a portion of those proceeds (i.e., converting those funds into Argentine currency) through the official foreign exchange market. It also clarified that the funds collected from these exports must be credited in foreign currency accounts held in local financial institutions (i.e., the funds must be entered into Argentina but can be kept in foreign currency). Legal entities exporting those services will be exempt to the extent they obtain a “Certification of increase in the collection of funds from export of services in 2022” (the Certification) from a local financial institution. The BCRA establishes the requirements for obtaining the Certification in Communiqué A 7,518. See Tax Alert [2022-0915](#).
- ▶ The Argentine Government proposed a bill that would establish a one-time 15% “windfall income tax” for companies that obtained extraordinary income from the increase in international prices. The 15% rate would apply to the excess of the net taxable income resulting from the difference of the (1) net taxable income obtained in the first tax year ended on or after the month immediately following the month in which the bill enters into force, and (2) net taxable income from the previous tax year adjusted by the variation of the Consumer Price Index, published by the National Institute of Statistics and Census. See Tax Alert [2022-0935](#).

Brazil

- ▶ Brazil, in Public Notice 9/2022, is allowing taxpayers to settle debts arising from the amortization of goodwill under the tax regime preceding Law No. 12,973/2014. Taxpayers may settle debts (regardless of whether they are registered as overdue federal tax liabilities, including suspended liabilities) that are pending in administrative adjudication or judicial litigation as of 3 May 2022. The public notice also applies to cases involving the addition of goodwill amortization expenses to the calculation of the social contribution on net profit. Taxpayers have until 29 July 2022 to enter into a settlement agreement. See Tax Alert [2022-0719](#).
- ▶ The Brazilian tax authority and Organisation for Economic Co-operation and Development (OECD) met to discuss Brazil’s proposal for a new transfer pricing (TP) system. The Brazilian tax authority and Inter-American Development Bank held a TP seminar to discuss the proposal. The new TP system would have a significant impact on taxpayers not only because more transactions would be subject to a TP analysis but also because the current formulary TP approach would be replaced by the arm’s length principle. The full implementation of the arm’s length principle would be an important step for Brazil as it aligns its TP system with the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. See Tax Alert [2022-0612](#).

- ▶ Brazil increased the social contribution on net profits (CSLL) rate by one percentage point for banks, insurance companies and other financial institutions, until 31 December 2022. The CSLL rate increased from 20% to 21% for banks and from 15% to 16% for insurance companies, securities distributors, exchange and securities brokers, credit, financing and investment companies, real estate credit companies, card administrators, leasing companies and credit cooperatives. See Tax Alert [2022-0701](#).
- ▶ Through Decree 11,109, dated 29 June 2022, Brazil ratified its income tax treaty with Singapore. The treaty was already ratified by Singapore. For Brazilian taxpayers, the treaty applies to withholding taxes on income paid, remitted or credited on or after the first day of January following the date upon which the treaty enters into force. It also applies to other taxes on income arising in tax years beginning on or after the first day of January following the date upon which the treaty enters into force. The Brazilian decree's preamble considers 1 December 2021 to be the date the treaty enters into force for purposes of Article 30. Following this approach, controversy could arise over whether the treaty is effective in Brazil beginning 1 January 2023, 30 June 2022 or even retroactively to 1 January 2022, since Brazilian law only considers international tax treaties effective for domestic purposes following publication of a presidential decree. See Tax Alert [2022-1031](#).

Canada

- ▶ On 7 April 2022, the 2022 federal budget was tabled in the House of Commons. It contained a number of new tax measures including an increase in the general corporate income tax rate (from 15% to 16.5%) on certain banks and life insurers, effective for tax years ending after 7 April 2022. See Tax Alert [2022-0583](#).
- ▶ On 23 June 2022, Bill C-19, Budget Implementation Act, 2022, No. 1, received Royal Assent. Bill C-19 implements the measures contained in the detailed Notice of Ways and Means Motion that was tabled on 26 April 2022 and contains certain tax measures announced in the 2022 and 2021 federal budgets, as well as various other measures including the temporary expansion of immediate expensing of certain property that is acquired by a Canadian-controlled private corporation or certain individuals and partnerships for eligible capital cost allowance classes. See Tax Alerts [2022-0796](#) and [2022-0990](#).
- ▶ On 29 April 2022, the federal government released draft legislative proposals and accompanying explanatory notes to address certain hybrid mismatch arrangements. These rules are intended to implement the recommendations in, and be generally consistent with, the Final Report under Action 2 of the OECD/G20's Base Erosion and Profit Shifting Project. The rules will apply to payments made on or after 1 July 2022, with no grandfathering for existing arrangements. See Tax Alert [2022-0751](#).

Chile

- ▶ The Executive Power submitted a tax reform proposal to Congress. The tax reform bill would prohibit certain domestic shareholders from claiming credits for taxes paid by companies and would also require them to apply a 22% corporate tax rate to profits distributed by the company. The bill would also decrease the corporate income tax rate from 27% to 25%, while increasing the 10% tax rate on gains from stock sales to 22% and introducing a 1.8% tax on the retained earnings of certain companies. Other changes include limits on certain tax benefits and loss deductibility, benefits for small and medium-sized businesses and introduction of a wealth tax for Chilean individuals.

Colombia

- ▶ The Colombian tax authority modified regulations on reporting ultimate beneficial owners (UBOs) (i.e., individuals who own, control or benefit from the relevant entity). The modified regulations limit UBO reporting to certain foreign entities and set forth new due dates for submitting the information. See Tax Alert [2022-0523](#).
- ▶ The Colombian tax authority issued [Resolution 085 of 2022](#), which establishes that electronic sales invoices may be registered as securities. In addition, the resolution establishes that sellers may use electronic invoices issued in a credit operation or in a transaction in which the payment must be made within a period of time as support for deducting expenses when the acquirer confirms it received the invoice and the goods or services purchased.
- ▶ Decree 678 modifies the regulations on Colombian tax identification numbers (TINs) (RUT in Colombia). The decree clarifies that foreign investors required to comply with tax obligations in Colombia must obtain a Colombian TIN. Also, the Colombian tax authority is authorized to (i) automatically update taxpayer information when there is a verified source for the information and (ii) suspend the TIN of taxpayers who have not updated their information accurately.

Costa Rica

- ▶ Costa Rica's General Customs Directorate announced sugar imports of Colombian origin corresponding to tariff codes 1701.99.00.00.10 and 1701.99.00.00.99 will be subject to the additional ad valorem duty. The additional ad valorem duty will apply because sugar imports from Colombia have exceeded the volume allowed for the exemption from the additional ad valorem duty, as established in Resolution RES-DGA-500-2020 of 25 November 2020. See Tax Alert [2022-0633](#).

Dominican Republic

- ▶ The Dominican Tax Authority (DTA) issued several pieces of guidance:
 - ▶ Informative Resolution No. DDG-DDG-AR1-2022-00004, establishing the inflation adjustment multiplier for the fiscal year ended 31 March 2022, which will be 9.05%, and the exchange rates for the treatment of exchange differences, among other things

- ▶ General Rule 08-22, defining the term “member entity” as an entity of the multinational group that (1) is included in the consolidated financial statements of the multinational group for purposes of presenting financial information, or (2) would be included if the shares in the capital of the entity were traded on the stock market
- ▶ Resolution DDG-AR1-2022-00005, establishing the third quarter (1 July to 30 September 2022) excise tax rates applicable to cigarettes and alcoholic beverages
- ▶ Announcement 18-22 on the country-by-country (CbC) report, establishing that the threshold for filing the CbC report is 750 million euros or an equivalent amount in national currency
- ▶ The DTA also announced the opening of digital forums for discussing drafts of future general rules on: 1) the granting of benefits contained in double tax treaties; and 2) mutual agreement procedures for the resolution of disputes.

Ecuador

- ▶ No tax policy developments to report.

El Salvador

- ▶ No tax policy developments to report.

Guatemala

- ▶ The tax authority indicated that it will propose changes to the value-added tax (VAT) regulations that will require taxpayers to issue invoices with the customer’s tax identification number or personal identification number. See details about this requirement in the Americas Tax Policy Update for Q1 ([2022-0573](#)). The tax authority issued Government Agreement 125-2022, which amends Section 30 of the Regulations of the VAT Law to allow the personal identification number or passport number to be included on invoices when the purchaser of the goods or services does not have or does not provide a tax identification number.
- ▶ Guatemala entered into the following customs agreements:
 - ▶ Agreement with Korea that allows for the exchange of information and training programs. The agreement also will strengthen the customs risk management system, as well as the transmission of manifests and tax returns in cross-border areas.
 - ▶ Customs Mutual Assistance Agreement with the United States that will strengthen assistance and cooperation between both countries, allow for the exchange of information and facilitate trade, among other things.
 - ▶ Mutual Recognition Agreement (MRA) on the Guatemalan Authorized Economic Operator (AEO-GT) with Colombia, which will facilitate and strengthen the international trade logistics chain. The MRA will benefit the parties of the international logistics chain, authorized as AEOs by both countries, by speeding up and facilitating the clearance of goods and reducing the number of verifications.

- ▶ The tax authority issued a resolution requiring any taxpayers registered under the General VAT Regime to enroll in the Electronic Invoicing Regime (FEL) beginning 1 July 2022. From that date forward, FEL will be the only valid means to issue invoices in Guatemala to support income, expenses and other tax-related matters.
- ▶ According to a communication from the tax authority on 6 July 2022, the 10 main suppliers' report in Form SAT-2237 (VAT return) is no longer required for taxpayers subject to the General VAT Regime. This modification will be effective from June’s VAT return onwards.

Honduras

- ▶ No tax policy developments to report.

Mexico

- ▶ The Mexican Tax Administration (SAT) presented the “2022 Master Plan of Large Taxpayers.” The plan will increase the amount of information collected on large taxpayers by improving the audit process to have more open discussions with taxpayers and provide them with greater certainty. The plan includes provisions for more-focused audits, follow-up trials and administrative appeals, audits of refund requests and effective income tax rates.

Nicaragua

- ▶ No tax policy developments to report.

Panama

- ▶ The Panamanian tax authority modified the filing requirements for accounting records or copies applicable to legal entities that do not carry out operations in Panama. Under the modifications, legal entities incorporated before 31 December 2021 must deliver the accounting records or copies to resident agents no later than 31 October 2022. Resident agents must file the first affidavit with the tax authority no later than 31 December 2022. Previously, the filing had to be made on 15 July 2022.
- ▶ The Panamanian Ministry of Economy and Finance published the official list of reportable jurisdictions for 2022. The list, which includes 71 jurisdictions, was recently updated to include Andorra, Kazakhstan, Ecuador, Peru, and Nigeria.
- ▶ The Panamanian Ministry of Economy and Finance modified Articles 85 and 90 B of Executive Decree 170 of 1993 and established the criteria that a company must meet to apply for the special regime created for micro, small and medium-sized enterprises (MSMEs). Companies registered under the MSME regime are exempt from the complementary tax. To remain in the regime, companies must verify their eligibility annually. The Panamanian tax authority will oversee compliance with the regime.
- ▶ The filing due dates for the list of employees and accrued salaries in Form 03 have been established as follows:
 - ▶ Taxpayers must file Form 03 monthly beginning in FY2022, and the filing should occur within 60 calendar days of the last day of the month to be reported.

- ▶ Taxpayers must file Forms 03 for January, February, March, April, and May of FY2022 no later than 15 July 2022.
- ▶ Taxpayers must file Form 03 FY2021 no later than 31 May 2022.
- ▶ Form 03 for June 2022 and the other subsequent months, including the upcoming tax years, must be filed no later than 60 calendar days following the corresponding month.

Paraguay

- ▶ The Paraguayan tax authority established the requirements for preparing the TP technical-study report (TP report). It also announced the due date for the TP report for tax year 2021 is 31 October 2022. For tax years ending 30 April, 30 June or 31 December 2022 onwards, taxpayers must file the TP report with the tax authority in the seventh month after the company's tax year ends. See Tax Alert [2022-0603](#).
- ▶ The Paraguayan tax authority established the procedure nonresident digital service providers must use to register in Paraguay, as well as the mechanism for the settlement and payment of the nonresident tax.

Peru

- ▶ Peru's President enacted Legislative Decree 1540, amending the VAT Law to make it easier for taxpayers to claim VAT paid on imports as input VAT. Specifically, the legislative decree eliminates the requirements taxpayers must satisfy to use the VAT paid on imports as input VAT. The legislative decree also authorizes the Peruvian tax authority to open a sales-and-income registry on behalf of taxpayers and to issue payment orders if it determines through its verification of the electronic sales-and-income registry that the tax is unpaid. See Tax Alert [2022-0635](#).

Puerto Rico

- ▶ Puerto Rico enacted Act 20-2022, establishing an annual sales and use tax (SUT) holiday during the last week of May for hurricane season purchases. Taxpayers may purchase certain items without the imposition of SUT during the SUT holiday, including water tanks and containers, shutters, hardware, untreated wood panels, generators, batteries, flashlights and emergency solar equipment, among other things. See Tax Alert [2022-0847](#).
- ▶ The Governor of Puerto Rico enacted Act 52 of 30 June 2022 (Act 52-2022), which allows companies to elect a 10.5% tax on industrial development income from sales of goods and services instead of the 4% excise tax on foreign corporations, which the latest US foreign tax credit rules do not consider creditable. Under Act 52-2022, taxpayers subject to the 4% excise tax may elect to amend their tax decree to subject themselves to the 10.5% income tax rate in lieu of the 4% excise tax. Also, Act 52-2022 provides that if at least a 15% minimum tax is imposed on global income in the United States before 1 January 2024, the tax rate will be 15%, instead of 10.5%. See Tax Alert [2022-9005](#).

- ▶ Puerto Rico's Treasury Secretary sent to the governor the preliminary report of the advisory group for the simplification and improvement of Puerto Rico's tax system. The group evaluated tax rates, corporate and individual passive income, municipal taxes, the SUT and licenses and permits, among other things.

United States

▶ Legislative developments.

- ▶ Senate Democratic leaders and President Joe Biden announced a deal on 27 July on a \$740 billion bill that includes climate/energy, health, tax and deficit reduction components. The bill would be funded with a 15% corporate alternative minimum tax on adjusted financial statement income for corporations with profits over \$1 billion, increased Internal Revenue Service enforcement funding, a carried interest holding period for capital gains treatment of five years (up from three) and federal government negotiation of certain prescription drug prices. International tax provisions to align global intangible low-taxed income (GILTI) with the OECD-led global minimum tax were not included in the bill. The legislation needs the votes of all Senate Democrats in order to pass because it is advancing under the budget reconciliation process. Sen. Joe Manchin (D-WV), who had expressed reservations about earlier versions, has pledged his support. At the time of publication, Sen. Kyrsten Sinema (D-AZ), whose vote will also be critical, was said to be reviewing the proposal. If the Senate approves the measure, it will then move to the House for consideration. See Tax Alert [2022-1147](#).
- ▶ The House on 28 July passed and sent to the President the CHIPS and Science Act (H.R. 4346), a \$280 billion bill that aims to build a domestic US supply chain for semiconductor chips in the face of foreign competition. The legislation includes \$52.7 billion in funding for semiconductor manufacturing subsidies, grants and loans and an "advanced manufacturing investment credit" of 25% for investments in semiconductor manufacturing. It includes incentives for the manufacturing of semiconductors, as well as for manufacturing of specialized tooling equipment required in the semiconductor manufacturing process, with taxpayers allowed to treat the credit as a payment against tax ("direct pay"). See Tax Alert [2022-1144](#).
- ▶ **Regulations.** The IRS issued the following regulations:
 - ▶ Proposed regulations ([REG-130675-17](#)) under IRC Section 1256 that confirm that over-the-counter foreign currency options are not subject to mark-to-market treatment under IRC Section 1256. The proposed regulations would explicitly overrule the Sixth Circuit's decision in *Wright v. Commissioner* and directly affect taxpayers relying on that decision to mark foreign currency options to market under IRC Section 1256. See Tax Alert [2022-1060](#).
 - ▶ Proposed regulations ([REG-114339-21](#)) under IRC Section 36B that would amend the determination of the premium tax credit to base the affordability of employer-

sponsored minimum essential coverage on the cost of covering the employee and covered family members. See Tax Alert [2022-0582](#).

- ▶ Clarifications to the foreign tax credit regulations ([TD 9959](#)) that were published on 4 January 2022. The clarifications, included in so-called technical corrections to the final regulations, (i) provide clarifications to the "cost recovery" requirement so as to narrow the scope somewhat of the rule; (ii) change the rules for allocating and apportioning foreign tax imposed on disregarded sales of property; and (iii) make several other technical changes to the foreign tax credit and GILTI high-tax exception regulations. See Tax Alert [2022-1132](#).

▶ Other updates.

- ▶ The IRS allows ([Revenue Procedure 2022-23](#)) taxpayers to make late elections under the modified accelerated cost recovery system (MACRS) for qualified Indian reservation property under IRC Section 168(j) and qualified second-generation biofuel plant property under IRC Section 168(l). Revenue Procedure 2022-23 also allows taxpayers to make a late election under IRC Section 181 for certain film, television, or live theatrical productions. See Tax Alert [2022-0666](#).
- ▶ As of 1 July 2022, the Superfund excise taxes under IRC Sections 4661 and 4671 are reinstated and apply to all US-based operations, including those in Puerto Rico. These excise taxes were reinstated, with modifications, under the Infrastructure Investment and Jobs Act (IIJA). The reach of the expanded Superfund excise taxes potentially includes industrial and consumer product manufacturers, taxpayers that historically had not been subject to Superfund excise taxes. See Tax Alert [2022-1013](#).
- ▶ The IRS announced ([Notice 2022-15](#)) it will not impose penalties on taxpayers that fail to deposit Superfund chemical taxes required under IRC Section 6656 for the third and fourth calendar quarters of 2022 and the first calendar quarter of 2023. Superfund chemical taxes, with modifications, were reinstated by Section 80201 of the Infrastructure Investment and Jobs Act, effective 1 July 2022. See Tax Alert [2022-0688](#).
- ▶ The IRS provided detailed procedures ([Revenue Procedure 2022-26](#)) for requesting a determination to add or remove a substance from the list of taxable Superfund substances under IRC Section 4672(a) (List). In Notice 2021-66, the IRS had suspended the former determination procedures in Notice 89-61, as modified by Notice 95-39, and added new substances to the List. See Tax Alert [2022-1015](#).

Uruguay

- ▶ In [Decree No. 140/022](#), Uruguay's Executive Power extended the reduced 9% VAT rate (normally 22%) for certain tourism activities from 30 April 2022 to 30 September 2022. The Executive Power published the decree in the Official Gazette on 11 May 2022, and the decree is effective as of that date. See Tax Alert [2022-0840](#).

- ▶ The Administrative Contentious Court ruled that the construction of streets, sewers, potable water and sanitation facilities, and electric posts does not qualify as the "building of new real estate." As such, taxpayers may not fully deduct the acquisition cost for income tax purposes. See Tax Alert [2022-0843](#).
- ▶ The Uruguayan Ministry of Economy and Finance (*Ministerio de Economía y Finanzas, MEF*) extended the period to make investments in certain civil engineering projects of large economic dimension under the promotional regime regulated by Decree No. 329/016 from 31 December 2022 to 31 December 2023. It also extended the deadline from 31 December 2022 to 31 December 2023 for submitting projects (e.g., construction and "large-economic" projects) to the Application Council. See Tax Alerts [2022-0886](#) and [2022-0887](#).

Venezuela

- ▶ Administrative Order No. SNAT/2022/000023 increases the value of the Tax Unit (TU) from Bs. 0.02 to Bs. 0.40. The value of the TU may only be used as a unit of measure for determining taxes collected by and under the control of the National Tax Administration. Other government organizations and entities cannot use the TU to determine (1) labor benefits or (2) rates and special contributions derived from the services those organizations and entities provide.
- ▶ Venezuela published Decree No. 4,693, which exempts the following items from the payment of the import tax, VAT and customs duties until 31 December 2022:
 - ▶ Imports of new or used tangible movable property classified in the tariff codes indicated in Appendix I of the decree by organizations and entities of the National Public Administration, individuals or legal entities
 - ▶ Imports of tangible movable property classified under the tariff codes indicated in the decree, by National Public Administration agencies and entities to stop the spread of the COVID-19 pandemic
 - ▶ Imports of tangible movable goods classified in the tariff codes indicated in Appendix III of the decree by National Public Administration organizations and entities, individuals or legal entities, subject to the individuals, organizations and entities having a Certificate of No National Production or Insufficient National Production
- ▶ Venezuela published the Partial Amendment of the Decree with Rank, Value and Force of the Master Law of Science, Technology and Innovation. The amendment defines contributors as legal entities and public or private entities that carry out activities in Venezuela and have annual gross income of more than 150,000 times the official exchange rate of the highest-value currency established by the Venezuelan Central Bank in the previous tax year. The amendment requires contributors to pay on a monthly basis a percentage of the gross income obtained in the immediately preceding monthly tax period as follows: 2% when the economic activity falls under the Casino Law or is linked to ethyl alcohol and tobacco; 1% if the contributor is a private capital company and the economic activity falls under the Master Law of

Hydrocarbons; 0.5% if the contributor is a public capital company; 0.5% when contributors engage in any economic activity not previously mentioned. The exchange rate differential, income obtained from interest, and dividends are included as part of the income earned by the contributors for the activities they carry out.

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