



*Doing business in Peru
and the Pacific Alliance*

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Foreword

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Driven mainly by the production and export of commodities, Peru has achieved constant growth in its Gross Domestic Product (GDP) for over a decade. However, due to the decrease in the prices of metals, the slowdown of the Chinese economy and a stronger dollar, the country's growth rate decelerated, as has occurred in most of the region and other emerging economies. Most recently, the country was hit by the El Nino natural phenomenon, which left several casualties and injured, and which caused great infrastructure damages that will require an initial investment of PEN 21 billion (approximately USD 6.5 billion) to mend.

Nevertheless, Peru remains as one of the most stable and promising economies in the continent. Despite the challenges faced in the first quarter of the year due to El Nino, the country's GDP is expected grow 3.5% this year (according to the World Economic Outlook published by the International Monetary Fund – IMF in April 2017), second only to Bolivia (4%) in the region. Moreover, the government's plan for the rebuilding of the affected areas is expected to vitalize public and private investment in the country.

Furthermore, the Peruvian government aims to promote and simplify the processes for investing and setting up business in the country. During the first year of the new administration, several steps have been taken in this direction, especially regarding tax, labor and anti-corruption matters.

Doing business in Peru and the Pacific Alliance contains the most recent, reliable and detailed information on the major tax, corporate and labor matters about Peru, as well as an overview of the main considerations for doing business and investing in the country's Pacific Alliance partners: Chile, Colombia and Mexico. This publication is ideal for both investors looking to enter these markets and for those already present and who need to be up-to-date on the most relevant regulatory changes.

We are confident that the contents of this publication will be a very useful tool to help you in conducting a successful business in Peru and The Pacific Alliance.

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The background image is a composite. The top half shows a sunset over a body of water, with a city skyline visible on the horizon. The bottom half shows an aerial view of a coastal area with a highway interchange, a winding road, and some buildings. The text is overlaid on the bottom half.

1.

Foreign *investment* considerations

Peru



Under Peruvian legislation, foreign and local investors have the same rights over their investments, based on the principle of “national treatment”. No authority has the power to apply differentiated treatment concerning prices, exchange aspects, tariffs, non-custom duties, business information, or any other feature with equivalent effects based on nationality, types of economic activity, or geographic location in the country.

No specific restrictions or requirements apply to foreign investment in the vast majority of economic activities. Furthermore, they do not need prior authorization from the government. Investments that require approval are those involving weapons and/or explosives, private security and surveillance, investments in maritime or air transport, as well as those located within 50 kilometers of Peru’s frontier line or in natural protected areas.

Moreover, the acquisitions of shares belonging to local investors is freely permitted, both through the stock market and over the counter operations. Investors have the right to organize and carry out their business activities in any form envisaged by the law.

The authority responsible for promoting private investment in the country is the Private Investment Promotion Agency (Proinversion). Among its main duties are the proposal and execution of the national policy to promote private investment in infrastructure projects and public services; investor’s guidance in the stages of pre-establishment and post-establishment; the subscription of legal stability agreements and investment agreements; and foreign investment registration. Regional governments also promote private investment projects in their territorial jurisdictions and within the framework of their functions and competencies.



Tax credits and incentives

Foreign Tax Credit

Taxpayers may deduct the foreign income taxes paid due to the foreign-source income levied by the Peruvian Income Tax Law (PITL), provided that it doesn't exceed the amount which results from applying the average rate of the taxpayer to the income obtained abroad, or to the tax paid abroad. The amount that is not used in the corresponding fiscal year cannot be set off (or compensated) in others fiscal years, nor can it be refunded. It should be taken into account that (i) tax credit will be granted for the entire tax paid abroad that falls upon income taxed by the PITL; (ii) taxes paid abroad –whatever their denomination– shall bear the characteristics of income taxes; and (iii) tax credit will only be granted when the payment of the foreign income tax is supported by reliable documentation.

Special deduction regime for projects related to scientific research, technological development, and technological innovation

As of 2016, a special deduction regime has been established for projects related to scientific research, technological development, and technological innovation. According to this incentive, taxpayers investing in projects of this nature will be able to deduct 150 or 175% of the expenses incurred in them.

In that sense, the taxpayer may have the following deductions:

175%

of the expenses incurred if the project is executed directly by the taxpayer or through centers dedicated to scientific research, technological development, and technological innovation domiciled in Peru.

150%

of the expenses incurred if the project is executed by non-domiciled centers dedicated to scientific research, technological development, and technological innovation.

Early recovery of VAT

Companies in a preoperative stage with large projects in process may apply for early recovery of VAT prior to commencing operations. An investment agreement with the government (the Ministry of the sector involved) is required.

Stability agreements

Investors may enter into stability agreements with the government, either under the general regime or specific regimes (i.e. mining and oil).

Under the general regime, investors may enter into juridical stability agreements that guarantee the following advantages for a ten-year period:

- Stability of the income tax regime in force at the time the agreement is entered into, regarding dividends and profit distribution.
- Stability of the Peruvian government monetary policy, according to which there is a complete absence of exchange controls, foreign currency can be freely acquired or sold at whatever exchange rate the market offers, and funds can be remitted abroad without any previous authorization.
- Right of non-discrimination between foreign and local investors.

Under the mining regime, local mining companies may enter into stability agreements of guarantees and investment promotion measures that ensure the following for 10, 12, or 15 years:

- Stability of the overall tax regime.
- Stability of the overall administrative regime.
- Free disposition of funds (foreign currency) arising from export operations.
- No exchange rate discrimination.
- Free trade of products.
- Stability of special regimes for tax refunds, temporary import, etc.

Oil and gas companies may enter into stability agreements that guarantee the following for the term of the contract:

- Stability of the overall tax regime.
- Free disposition of funds (foreign currency) arising from export operations.
- Free convertibility of funds.
- Free trade of products.

Investment promotion in the Amazon

Certain tax benefits in relation to VAT and income tax have been established for taxpayers located in the area designated by the law as the 'Amazon', and who engage in the following activities:

- Agriculture and livestock enterprises.
- Aquaculture.
- Fishing.
- Tourism.
- Manufacturing activities linked to the processing, transformation, and commercialization of primary products originated from the aforementioned economic activities, and in forest transformation, provided these products are produced in the area.

Special zones - Centers of Export, Transformation, Industry, Commercialization, and Services (CETICOS)

CETICOS are duly delimited geographical areas with a customs primary zone status and special treatment destined for the generation of development poles through industrial, maquila, assembling, or storage activities. CETICOS are located in Paita (Piura), Ilo (Moquegua), and Matarani (Arequipa) cities.

Agribusiness and agro-exporting activities may be performed within a CETICOS. Agribusiness activity is primarily the transformation of agro-farming products produced in the country. Such transformation must be carried out at CETICOS.

Until 31 December 2022, companies engaged in industrial, maquila, or assembling activities, established or set up in the CETICOS are exempt from income tax, VAT, excise tax, municipal promotion tax, as well as from any other taxes, fees, contributions levied by the Central Administration, and even taxes that require express exempt regulation.



2.

Corporate considerations

Peru



In Peru no specific rules have been established to authorize percentages for foreign or domestic investment participations. However, the Peruvian Companies Act (PCA) establishes various requirements and conditions for the incorporation of a corporation or partnership. Within the main requirements established by the PCA, every corporation or partnership shall have at least two shareholders and/or partners. Such requirement is not applicable for branches since they are only recognized by their head office corporate development.

It is important to note shareholders, directors and managers do not have to fulfill the condition of being Peruvian nationals or residents of Peru; however, Peruvian regulation notes that all representatives for procedures before the Tax Authority must be Peruvian or have a Residence Card. In addition, all newly appointed directors shall formally accept their appointment in order to carry out the registration at the Peruvian Public Registry (SUNARP).



Stock capital

When incorporating a company in Peru, it is required for the enterprise to have capital stock (no minimum amount is specified) which must be deposited in a bank account before the incorporation of the company. It should be noted that some banks and financial entities usually request a minimum amount of PEN 1,000 (USD 307) for opening a bank account.

Shares are nominative and different classes are allowed –though bearer shares are prohibited. However, all shares must have the same face value, which cannot be zero. In addition, shares can be issued once they have been fully subscribed and paid-up at least in 25 percent. Depending on the share classes, shares can be issued with or without voting rights or even have a preferential right for obtaining dividends. Bylaws of the company may establish share classes, limitations and conditions on the transfer of shares, but may not prohibit them. A company may not grant loans or guarantees on its own shares, not even for the acquisition of the latter, under responsibility of the Board of Directors or the General Manager (in case there is no Board of Directors).



Corporate governance

The management of a company is formed by the Board of Directors and General Manager. Both corporate bodies are in charge of the company's day to day operations. Furthermore, shareholders exercise the control of a company through the General Shareholders Meeting and are entitled to take any corporate act such as capital increases, corporate reorganizations, appointment of proxies, or any other action necessary to fulfill the corporate purpose of the company.

Within the first three months of the year, shareholders must hold an annual mandatory shareholders meeting, in which matters such as the financial statements of the previous fiscal year, the distribution of dividends and the appointment of the Board of Directors are approved.

Likewise, a shareholders meeting must be held in order to execute an increase or reduction of capital stock and bylaws amendment, which should be decided by majority of shareholders. All shareholders representing no less than two-thirds of the subscribed shares with voting rights must be present or represented by proxy in the first summon, and no less than three-fifths in a second summon, in order to meet the required quorum. No agreed resolution will be valid if the required representation of shareholders is not present at either of these two meetings.

Certain supervised entities, such as banks and insurance companies are required to publish their balance sheets and profit and loss statements in the Peruvian Official Gazette El Peruano, as well as a second daily newspaper.

The PCA establishes that all companies must have corporate books in order to register of all the resolutions taken by their governing bodies. The corporate books are used for General Shareholders' Meetings resolutions, Board of Directors resolutions (if applicable), and Shares Registry.



Distribution of dividends

The rules for dividend distribution are as follows:

- Dividends are only to be paid based on profits or free reserves, and provided the company's net worth is not lower than the paid-up share capital.
- Unless otherwise stated in the bylaws or agreed on by the General Shareholders Meeting, all shares of the corporation (even if not fully paid-in) have the same right to dividends, regardless of when they were issued or paid.
- Distribution of dividends in advance is valid, except for corporations that have an explicit legal prohibition.



Annual audits

Annual audits by independent public accountants are mandatory in the following circumstances:

- For banks, insurance companies and, in general, entities listed on the Lima Stock Exchange Market.
- When established in the company's bylaws.
- When specifically requested by shareholders representing not less than 10 percent of the company's subscribed shares with voting rights.
- In a closed corporation, when it is requested by shareholders representing at least 50 percent of subscribed shares with voting rights.
- When the company qualifies as an open corporation.
- If the entity has either assets or revenue equal to or in excess of 3,000 Peruvian Tax Units (PEN 12'150,000), in a given year.



Dissolution and liquidation of a company

In the event of the dissolution of the company, the resolution must be approved by the General Shareholders Meeting and published three consecutive times in the Peruvian Official Gazette El Peruano, as well as a second daily newspaper. The registration of the resolution at SUNARP must be carried out within ten days following the last publication. A liquidator must be appointed in the resolution.

Once the resolution has been registered in SUNARP, a company will enter into a liquidation process. During this process, the liquidator is in charge of executing the company's assets in order to cancel its liabilities, due to the fact the administrative extinction process will only be possible if the company has no liabilities.

It is important to note a company is obliged to enter into a liquidation process if it incurs in losses that exceed two-thirds of its paid-in capital. In case the company continues to operate, it will be deemed as an "irregular" company and its shareholders, directors and managers assume personal and unlimited responsibility for all obligations incurred.

Bankruptcy System Law is also applicable, provided the creditors or the debtor request the beginning of a bankruptcy process at the Antitrust and Intellectual Property Institute (INDECOPI).



Forms of business enterprise

Corporation

This type of legal entity must be incorporated by two or more individuals or legal entities, by means of a public deed by a Notary Public and registered at SUNARP. Registration formalities take about 3-5 working days.

Bylaws of the corporation may establish limitations on the transfer of shares but may not prohibit them.

There are three main types of corporations:

- **Private Corporation:** Contributions to capital are represented by shares and liability is limited to the amount of the contribution. It must have a Board of Directors and a General Manager.
- **Private Closed Corporation:** No more than twenty shareholders are allowed, its shares are not listed on the stock exchange, and the transfer of shares is subject to restrictions. The Board of Directors is optional, but the corporation must have a General Manager.
- **Public Corporation:** Either (a) an initial public offering of shares or convertible bonds has been carried out, it has more than 750 shareholders, and/or over 35 percent of the share capital has to be distributed among 175 or more shareholders; or (b) all its shares are registered with the Stock Exchange. A Board of Directors and general manager are both mandatory.

Limited Liability Company

This type of company must be incorporated at least two and no more than twenty individuals or legal entities, by means of a public deed by a Notary Public, and registered at SUNARP. The capital of a Limited Liability Company is divided into equal, accumulative and non-divisible participations, which must not be treated as shares, and no title or document is issued to its holder. The partners of the companies are not liable for the company's obligations.

The incorporation public deed must contain the contribution of each partner, ancillary services to which the partners have committed, procedures and summoning partners meetings, requirements and other formalities for the modification of the articles of incorporation and the bylaws, formalities to be followed for the increase or reduction of capital, preparation and approval of financial statements, and other rules and procedures deemed convenient for the organization of the company. The articles of incorporation or bylaws may impose restrictions and conditions for the transfer of the company's participations, but they cannot prohibit transfers altogether.

The management of the company is entrusted to one or more managers, who may or may not be partners, and who represent the company in every matter related to its corporate purpose. As a consequence of their appointment, managers hold general and special representation powers.

Branch of a Foreign Company

A branch does not have legal independence or a different legal status from its head office. However, it is considered as an independent company for tax purposes. In that sense, a branch must be registered by means of a public deed issued by a legal representative of the head office in Peru. In case the document were to be in a foreign language, it must be translated to Spanish by a Peruvian official translator in order for it to be submitted to SUNARP.

The business of the branch is directed by a permanent legal representative appointed by the head office, whose powers of attorney must be registered at SUNARP. Such powers may be revoked only by the head office company or by the holder of an overriding power of attorney in Peru. The scope of the representative's powers of attorney may vary according to the head office's policy but should be sufficiently extensive to allow adequate representation in Peru. There is no regulation requiring filing of the financial statements of the parent company in Peru.



Participation Account Agreement

Pursuant to this agreement, two or more parties are able to carry out a particular business activity without incorporating a separate legal entity. One of the associates will act as the managing (active) partner, who agrees to share the results or profits of a particular business with another individual or legal entity –who will act as a silent partner (or partners)- in exchange for a contribution of assets or services to such business. The managing partner operates the business and is the sole responsible towards third parties. This agreement does not involve the incorporation of an entity different from the managing partner's.

Consortium or joint venture agreement

Two or more parties may associate to actively and directly participate in a certain business in which each party maintains its independence at all moment. In this type of agreement, each party will be individually liable to third parties for the activities that it carries out. When the consortium enters into agreements with third parties, there is joint liability for the partners if it is so stated in the agreement or when determined by law. The parties should determine the extent of their participation in the results, or otherwise it will be deemed to be equal for all parties. For tax purposes, a consortium or joint venture is considered as a separate taxable entity when independent accounting records are kept (in certain circumstances, one party can keep the accounting of its shares in the agreement).



3.

Labor
Legislation
Peru



There are two main forms of direct labor relation in Peru:

- ***Unlimited Term Agreements:*** Those entered into for an unlimited period of time.
- ***Fixed Term Agreements:*** Those signed for a limited period of time. They must be formalized in writing and the purpose of each one of them must be duly detailed in the contract.

Additionally, Peruvian labor legislation establishes two kinds of indirect labor agreements:

- ***Intermediation Agreements:*** They are meant for the rendering of temporary, complementary and highly specialized services. The intermediary entity assigns employees to a company in order to perform services under instructions of the latter, while their labor relationship continues to be responsibility of the intermediary entity.
- ***Outsourcing Agreements:*** Outsourcing companies are hired for the rendering of specialized services or work. Under these agreements, outsourcing companies are held

responsible for the financial, technical, material and human resources needed, and for the result of the activities, and employees remain under their subordination.

According to Peruvian legislation, once the labor relationship begins employees undergo a trial period of three months, during which they can be dismissed for any cause without indemnity. The trial period can be extended to six months or up to one year for skilled employees, positions of trust or those appointed for management positions.

Peruvian employers are obliged to use the Electronic Payroll System to register employees and comply with their monthly payments. This system is formed by T-Registro, which contains information on employees, professional services agreements, trainees, outsourced personnel, etc., and PLAME, which contains the monthly payments. Both registries must be submitted monthly to the Tax Administration.

With the purpose of simplifying certain formal labor obligations, Legislative Decree 1310, approved on 30 December 2016, allowed the use of electronic digital signature in labor documents, the delivery of payment certificates through technological means, and the use of the digital version of labor documents in audits performed by the Labor Authority. Additionally, it was established that employers must keep labor documents or certificates for five years after the corresponding payments.

Regarding the termination of employment, should an employee be terminated without fair cause, the employee will have the right to receive an indemnity for arbitrary dismissal that equals 1.5 monthly salaries for each year of service, up to a maximum of 12 salaries for indefinite term labor agreements, or 1.5 salaries for each month left in the contract for fixed term agreements. In case the employee does not accept the indemnity, they could file a judicial claim in order to request their reinstatement.



Labor benefits and obligations

● **Salaries**



Compensations are subject to statutory social contributions and employee's taxes. The current minimum monthly wage is PEN 850 (approximately USD 261). The employer may also agree with employees whose monthly compensation is not less than two Tax Units (equivalent to PEN 8,100 or approximately USD 2,491) that their compensation be paid as an annual package calculated on an annual basis, including all legal and conventional benefits, with the exception of profit sharing.

● **Legal bonuses**



Employers must pay a bonus equal to one monthly salary in July and December. According to Law 30334, as of 25 June 2015, this bonus is not subject to social or pension fund contributions (EsSalud or AFP/ONP). Instead, the amount of the social security health contribution should be paid to the employees as an extraordinary bonus.

● **Length of Services Compensation (CTS)**



Employees are entitled to a tax-free compensation that equals approximately one month's salary plus one-sixth of the legal bonus, deposited on a semi-annual basis in a banking or financial institution chosen by the employee.

● **Vacations**



Employees are entitled to paid annual vacations of one month upon completion of each year of service. Although the use of vacation days should be agreed between the employer and the employee, if an agreement is not reached, the employer must determine such vacation period on behalf of the employee. Companies must grant vacations in periods of not less than 7 days. In case employees do not spend their vacation within the following year they earn this benefit, they are entitled to the vacation salary plus an indemnity that equals a monthly salary. However, management personnel is not entitled to an indemnity considering they have the possibility to determine and choose to spend their vacations or not. Employer and employee may agree to accumulate up to two vacation periods as long as the employee enjoys at least seven days in the first period. A reduction of the vacation period could also be agreed, up to a maximum of 15 days, with the corresponding payment for those days. Any agreement must be in written form.

Profit sharing



Employees of companies which perform activities that generate corporate income are entitled to participate in the profits of the company, provided the company has more than 20 employees and they are subject to the labor regime for private company employees. Employees share the profits of the company through the distribution of a percentage of the company's net income before taxes. The percentage is 10% for fishing, telecommunications and industrial companies; 8% for mining, wholesale, retail and restaurants; and 5% for other activities.

Overtime



Overtime, including work on statutory holidays, is payable at a premium agreed on between the parties, with a minimum of 25% of the ordinary hourly rate for the first two hours, and 35% for the following. Employer and employee may agree, instead, to compensate overtime with rest periods. This agreement must be in written form.

Night shift additional payment



Employers with employees who earn the minimum salary and work between 10:00 p.m. and 6:00 a.m. are obliged to make an additional payment of 35% of the ordinary work hour wage.

Life insurance



Employees who have worked for the same employer for four years (consecutive or not) are entitled to a mandatory life insurance provided by the employer. This life insurance contract must be registered (online) before the Labor Authority.



Social Security and Pension Fund Contributions

Social security health contributions (EsSalud)

Employers must make a contribution for all their employees, including foreign employees registered on the payroll, based on the total monthly compensation, including compensation in kind, with certain exceptions such as profit sharing payments and extraordinary bonuses. The rate of this contribution is 9% of the employee's compensation.

National and Private Pension fund contributions (ONP/AFP)

The contribution for the National Pension System is 13% of the employee's compensation, and the contribution for the Private Pension System is 10% of the employee's compensation, plus commission for the pension fund administration and insurance premiums for handicap and burial coverage.

National Service for Training on Industrial Work (SENATI)

Individuals or legal entities that develop industrial activities included in Category D of the "International Standard Industrial Classification of all Economic Activities (CIIU)" are obliged to make contributions to SENATI, paying a percentage of 0.75% over all remunerations paid to the workers dedicated to such activities.



Other labor obligations

- Safety and health at work obligations: Companies with 20 or more employees must prepare an occupational safety and health at work manual and establish an occupational safety and health committee, with participation of employees and company's representatives. In the case of workplaces with less than 20 employees, a supervisor must be designated. Companies must also implement registries for accidents, diseases, trainings, medical examinations, statistics, safety and health equipment, etc., and documentation pursuant to the occupational safety and health management system, through magnetic or physical means. For companies that perform risky activities, or depending on specific industry regulations, examinations need to be scheduled for the beginning, during and at the end of the labor relationship. If not, they are mandatory every two years, and at the end of the labor relationship –only if requested by the employee.
- Employers must ensure the presence of a doctor in the workplace. In any workplace with more than 500 employees, the doctor must remain for at least 6 hours a day, 5 days a week, and in any workplace with less than 500 employees, health supervision is conducted by a doctor, without the requirement of a minimum of hours as long as the company has an Occupational Health Annual Plan, and an Employee's Health Surveillance Program.
- The General Law of Disabled People –Law 29973- states that people with disabilities have the right to work in equal conditions to other employees. Hence, private employers with more than 50 workers are obliged to hire people with disabilities at a rate not lower than 3% of their payroll, with certain exemptions.
- Employees in construction, transportation and industrial companies commonly form the strongest unions, the most important being the Confederación General de Trabajadores del Perú (CGTP) and the Central de Trabajadores del Perú (CTP). In order to form a company union, a minimum of 20 workers is required, while other types of unions (activities, professions, specialties) require a minimum of 50. Agreements reached with unions that comprise more than one-half of a company's employees are applicable for all employees, even if they are not members of the union.





Labor Audit System

The labor authority is in charge of supervising and ensuring that employers fulfil labor and social security provisions. It also provides technical assistance to employers and employees, protecting their corresponding rights. The labor authority is entitled to impose fines on employers who infringe the Labor Law.

| Infringement | Slight infringement (50 Tax Units) | Serious infringement (100 Tax Units) | Very serious infringement (200 Tax Units) | Infringement accumulation |
|---------------------|---|---|--|--------------------------------------|
| Fine | PEN 202,500 | PEN 405,000 | PEN 810,000 | PEN 1'215,000 |

According to Law 30222, fines imposed by the National Superintendence of Labor Inspection (SUNAFIL) were capped up to 35% of the original amount after evaluation of each particular case, considering principles of reasonability and proportionality. This benefit will be applicable until 12 July 2017 but will not apply to very serious infringements, such as the ones that affect unionization, non-discrimination rules, prohibition of child labor, forced labor, infringements regarding rules on safety and health at work that lead to employees' death or permanent disability, labor inspection obstructions, and repeated infringements – understood as the commission of the same offense within a six month period after a prior infringement was confirmed.





4.

Foreign trade

Peru





Peru is a member of the World Trade Organization (WTO) and has various bilateral agreements based on most favored nation treatment on a reciprocal basis.

Trade agreements:

In recent years, Peru's foreign trade policy has promoted an aggressive trade liberalization to successfully insert Peru in the global economy. To that end, Peru has signed several trade agreements that aim to further access to the country's main trading partners:

| | Partner | Year of enactment |
|---------------------------------|--|-------------------|
| Multi-lateral agreements | • WTO | 1995 |
| | • APEC | 1998 |
| Regional agreements | • Andean Community: Bolivia, Colombia, Ecuador | 1969 |
| | • Mercosur: Argentina, Brazil, Paraguay, Uruguay and Venezuela | 2005 |
| | • EFTA: Switzerland, Iceland, Liechtenstein and Norway | 2011 |
| | • European Union | 2013 |
| | • US | 2009 |
| | • China | 2010 |
| | • Canada | 2009 |
| | • Japan | 2012 |
| | • Singapore | 2009 |
| | • South Korea | 2011 |
| | • Thailand | 2011 |
| | • Chile | 2009 |
| | • Mexico | 2012 |
| | • Costa Rica | 2013 |
| | • Panama | 2012 |
| | • Cuba | 2001 |
| | • Venezuela | 2013 |
| Bilateral agreements | • Pacific Alliance: Colombia, Chile and Mexico | 2011 |
| | • Honduras | 2017 |

Peru has also signed trade agreements soon to be effective with Guatemala, Brazil and the Trans Pacific Partnership (TPP), and is currently negotiating agreements with Turkey, El Salvador, India, the Trade in Services Agreement (TISA), and the Doha Development Round.

Customs duties

Customs duties applied to imports are linked to their classification under the Customs Tariff given by the Common Classification of the Andean Community Member Countries – NANDINA, and determined by the information provided by the importer through the invoice and other complementary information, as well as the physical recognition performed by the customs officer during customs clearance.

The taxes required are the following:

- *Ad valorem* customs duty (rates of 0.6, and 11%, as the case may be).
- VAT (16%, which may decrease to 15%).
- Municipal promotion tax (2%).

Depending on the equipment, other taxes may apply, including the following:

- Selective consumption tax.
- Specific duties.
- Antidumping and compensatory.
- VAT perception.



There are no restrictions on imports and exports, although there is a limited list of products that cannot be imported or exported. Exports are not subject to any taxes, and the import of most capital goods is subject to the 0% rate.

The government is empowered to grant duty exemptions under certain circumstances, as well as to temporarily suspend the assessment of duties on certain products. Customs duties are imposed on an *ad valorem* basis (the carriage, insurance, and freight - CIF value of the imported goods). Goods are classified for customs duty purposes under the Harmonized System.

Pursuant to the drawback regime, an exporter may apply for a refund of customs duties paid upon: (i) the import of goods contained in exported goods, or (ii) the import of goods consumed during the production of exported goods.

The refund rate is currently 4% of the freight on board (FOB) value of the exported good, provided such amount does not exceed 50% of the good's production cost. The refund will proceed for each type of good exported and for the first USD 20 million worth of goods exported per year (the excess will not be subject to refund).

For such purposes, the beneficiaries of the drawback regime are the manufacturer and exporter companies whose cost of production is increased by the customs duties paid upon the import of: (i) raw material, (ii) intermediate products, or (iii) pieces incorporated or consumed in the production of exported goods. Note that fuel or any other energy source used to generate heat or energy for the purpose of obtaining the exported good is not considered as raw material.





5.

Tax system

Peru





Main taxes:

Corporate Income Tax (CIT)

Companies incorporated in Peru are considered resident in Peru for tax purposes and thus, are subject to a CIT rate of 29.5% on their worldwide net income. Branches, agencies, and permanent establishments (PE) of non-resident companies or entities incorporated in Peru are subject to income tax on their Peruvian-source income, while subsidiaries are subject to income tax on their global-source income.

For the purpose of determining taxable income, such entities are allowed to deduct expenses to the extent necessary in order to generate or maintain the source of taxable income. Requirements, limitations, and/or caps may apply to the deduction of certain expenses (thin capitalization rules), bad debt provisions, salaries, travel expenses, gifts, donations, penalties, etc.

The PITL allows crediting for various payments against income tax, including income taxes paid in advance, amounts paid for certain other taxes, and income taxes paid in foreign tax jurisdictions, provided that the foreign country's tax rate is not higher than the Peruvian CIT rate and the taxable income qualifies as foreign-source income for Peruvian income tax purposes. Dividends and any other type of profit distributions are taxed at a rate of 5% upon

distribution when they are made to a non-resident entity (either individuals or legal) or to resident individuals, or when the distribution is agreed on by the shareholders; whichever happens first. The entity distributing dividends or profits is liable for withholding tax (WHT) at the aforementioned rates. Resident legal entities are not subject to WHT over dividends received from other Peruvian corporations.

Enterprises are subject to an additional tax rate of 5% on every amount or payment in kind that, as result of a tax audit, is construed as taxable income, to the extent that it is an indirect distribution of such income which escapes further control from the Tax Administration, including income that has not been declared.

On the other hand, companies incorporated abroad are considered as non-domiciled in Peru for tax purposes and thus, are in most cases subject to an income tax rate of 30% over their gross Peruvian-source income. As a general rule, foreign companies are not allowed to deduct expenses and are taxed on their gross income.

Corporate residence

For income tax purposes, the following entities –among others- are considered as resident entities in Peru:

- *Corporations duly incorporated in Peru.*
- *Partnerships and limited liability companies.*
- *Branches, agencies, and PE in Peru of non-resident individuals or entities.*

According to the PITL, a foreign company is considered a PE if (i) it has a fixed place of business through which it carries out business activities in whole or in part; (ii) an individual has a power of attorney of a foreign entity and uses it on a regular basis to sign agreements on behalf of the foreign entity; or (iii) the person with power of attorney of the foreign entity keeps within the country inventory and/or goods to be negotiated in Peru on behalf of the foreign entity. PEs are obligated to comply with all the formal and substantial tax obligations of any domiciled taxpayer. If a PE presence is determined, then the tax contingency will have to be quantified by calculating the taxes, fines, and interest accrued as from the moment in which the PE presence can be deemed, except for the period barred by statute of limitations.

Withholding taxes

Domestic corporations are required to withhold income tax with respect to income paid to non-resident entities at the following rates:

| Type of payment | WHT (%) |
|--|---------|
| Dividends or profit distributions | 5 |
| Interest on non-related party loans, provided certain requirements are fulfilled | 4.99 |
| Interest on related party loans | 30 |
| Interest paid by Peruvian financial entities or banks to foreign beneficiaries for credit lines used in Peru | 4.99 |
| Royalties | 30 |
| Digital services | 30 |
| Technical assistance | 15 |
| Lease of vessels or aircraft | 10 |
| Other income | 30 |
| Sale of securities within Peru (Lima Stock Exchange) | 5 or 0 |
| Sale of securities outside Peru | 30 |

Note that resident taxpayers may not deduct the WHT of a third party, except in the case of loans provided by non-resident creditors, to the extent that the debtor has contractually assumed the obligation of bearing the WHT cost.

If the retribution for technical assistance exceeds 140 Tax Units PEN 567,000, a report issued by an audit firm will be required, in which it must be stated that the technical assistance has been effectively rendered in order for the 15% WHT rate to apply; otherwise, a WHT rate of 30% will apply.

Capital gains derived from the sale of stocks issued by a Peruvian company through the Lima Stock Exchange are taxed at a 5 or 0% rate.

In the case of the services that entail the execution of activities both in Peru and abroad, non-resident entities are subject to a 30% WHT (except for the lease of vessels and aircrafts, subject to a 10% WHT) on deemed Peru-source income determined by applying the following percentages to gross income:

| <i>Type of payment</i> | <i>Deemed Peruvian-source income (%)</i> |
|--|--|
|  <i>Insurance</i> | 7 |
|  <i>Lease of vessels</i> | 80 |
|  <i>Lease of aircraft</i> | 60 |
|  <i>Air transport</i> | 1 |
|  <i>Maritime transport</i> | 2 |
|  <i>Telecom services</i> | 5 |
|  <i>International news services</i> | 10 |
|  <i>Distribution of movies, records, and similar products</i> | 20 |
|  <i>Supply of containers</i> | 15 |
|  <i>Demurrage of containers</i> | 80 |
|  <i>Rights for broadcasting live foreign TV shows within Peru</i> | 20 |

For branches, the WHT on profit for distribution is applied on the date the annual income tax return is submitted. Subsidiaries are subject to the WHT on the date in which the corresponding shareholders agreement took place or the date when the beneficiary receives the dividends, whichever occurs first. For non-domiciled shareholders, the withholding will be applied whenever the dividend is actually paid, without taking into account the moment in which the shareholder agreement is executed.



Other taxes

Value-Added Tax (VAT)

The general rate of VAT is 18% (16% of VAT itself plus 2% of Municipal Promotion Tax). VAT is applicable to the following operations:

- Sale of goods within the country.
- Rendering or first use of services within the country.
- Construction contracts.
- The first sale of real estate made by constructors.
- Import of goods.

For all transactions, vendors are subject to VAT, except in the case of importation of goods or services rendered abroad but economically used within Peru, for which VAT is self-assessed by the importers and users, respectively.

The VAT law follows a debit/credit system, and input VAT may be offset by output VAT. Should excess input VAT be obtained in a particular month, it shall offset output VAT obtained during the following months, until it is exhausted.

The export of movable goods (including the sale of goods in the international zone of ports and airports) is not subject to VAT, nor is the exportation of certain services. Thus, VAT paid upon the acquisition of goods, rendering of services, construction agreements, and the importation of goods related to exported goods or services creates a positive VAT export balance. The positive balance may offset output VAT, income tax, or any other outstanding tax debt in favor of the central government. If the positive balance is not completely offset – as the amount of the aforementioned tax obligations is insufficient – the taxpayer may apply for a refund.

Tax Obligatory Payment System (SPOT)

The SPOT is applicable to the sale of certain goods and the rendering of services subject to Peruvian VAT. The main purpose of the SPOT is to generate funds to enable the payment of tax obligations by the VAT payer.

According to the SPOT, the sale of goods and services listed in the appendices of the Resolution that are levied with VAT will be subject to withholding, applying the rates established for each kind of good or service (1.5, 4, 9, 10, or 15%). Any service subject to VAT, except expressly excluded, will be subject to the SPOT with a withholding rate of 10%.

The purchaser or service recipient must withhold a percentage of the transaction price and deposit such amount within the seller's or service provider's State Bank (Banco de la Nación) account. It is important to note that the right of the purchaser or user of the service to offset input VAT related to such goods or services may be exercised only after the deposit to the State Bank account has been executed.

The amount deposited is applied towards the payment of the seller's or service provider's Peruvian tax obligations (not just VAT). If after three consecutive months such amount is not used, the seller or service provider may request a refund or use the amount to pay withholdings applicable to purchasers or services recipients.

Excise Tax

The sale of specific goods, including fuel, cigarettes, beer, liquor, and vehicles is subject to excise tax. Excise tax rates, and the manner on which the tax is applied, depend on the type of goods or services.



Real Estate Property Tax

The real estate property tax is levied on the value of urban and rural real estate property. Individuals and legal entities owners of real estate properties are considered taxpayers for such purposes. The taxable base is calculated taking into account the value of all the properties owned in a specific local district, as reflected in the internal records of the corresponding local authorities.

The tax is calculated and paid on an annual basis applying the following progressive cumulative scale:

| Real estate's value | Up to 15 Tax Units | Over 15 and up to 60 Tax Units | Over 60 Tax Units |
|--------------------------------------|-----------------------|--------------------------------------|----------------------|
| Real estate property tax rate (%) | 0.2 | 0.6 | 1.0 |

Real Estate Transfer Tax

The real estate transfer tax is levied on all transfers of urban and rural real estate property. The taxpayer is the purchaser of the property. The taxable base is equivalent to the consideration agreed upon by the parties involved in the transaction, provided it is higher than the property's value (in the relevant year for purposes of the real estate property tax), as reflected in the internal records of the corresponding local authorities. The tax rate is 3% and must be borne exclusively by the buyer, regardless of whatever the parties agree. The first ten Tax Units (PEN 40,500) of the taxable base are exempt from this tax.

Financial Transactions Tax (FTT)

FTT is applied at a rate of 0.005% on all debits and/or credits on bank accounts held by the taxpayers. Payments of FTT are deductible as expenses for income tax purposes.

The following operations –among others– are exempted from the FTT:

- Operations made between accounts of the same holder.
- Credits to bank accounts for the payment of salaries.
- Credits and debits to bank accounts of diplomatic representations and international organizations recognized in Peru.

Temporary Net Assets Tax (TNAT)

Companies subject to income tax are obligated to pay TNAT, except for companies that are in preoperative stages or that commenced business on 1 January of the fiscal year in which TNAT must be paid. The taxable basis is the value of the assets set forth in the taxpayer's balance sheet as of 31 December of the year prior to that of the tax payment, adjusted for deductions and amortizations accepted by the Peruvian law. The amount paid for TNAT may be credited against the taxpayer's income tax. If not totally used, the remaining TNAT may be refunded by the Tax Administration.

The amount of TNAT is determined by applying the following rates on the taxable basis:

- Up to PEN 1'000,000: 0%.
- Excess of PEN 1'000,000: 0.4%.

Special Taxation on Mining Industry

The new mining royalty (NMR) regime, special mining tax (SMT), and special mining contribution (SMC) are economic considerations paid to the Peruvian government for the exploitation of mineral resources. The NMR applies to metallic and non-metallic mineral resources, while the SMT and SMC only apply to metallic mineral resources.

The SMC is only applicable for mining companies with projects with tax stability agreements in force. Such companies have voluntarily entered into agreements with the Peruvian government with the purpose of paying this contribution. This special contribution is determined for each stability agreement entered into.

The amounts paid will be deductible for income tax purposes as long as they are actually paid during the fiscal year.



In all three cases, the tax basis is the operating profit of the company, and the special rates and considerations are explained below:

| | <i>New mining royalty (NMR)</i> | <i>Special mining tax (SMT)</i> | <i>Special mining contribution (SMC)</i> |
|---|----------------------------------|---------------------------------|--|
| Concept | No tax stability | No tax stability | With tax stability |
| Regime | Previous mining royalty modified | New | New |
| Cumulative progressive scale based on operating margin | 1 to 12% | 2 to 8.4% | 4 to 13.2% |
| Minimum payment | 1% of the sales revenue | N/A | N/A |

Energy and Mining Investment Regulatory Agency (OSINERGMIN) contribution

The basis for calculating the OSINERGMIN contribution is the monthly invoicing of activities directly related to OSINERGMIN's regulatory scope (mining activities), after deducting the VAT. The applicable rate is 0.15% in 2017.

Agency for Environmental Assessment and Enforcement (OEFA) contribution

The basis for calculating the OEFA contribution is the monthly invoicing of activities directly related to OEFA's regulatory scope (mining activities), after deducting the VAT. The applicable rate is 0.11% in 2017.





Deductions

Obligations that are fulfilled through cash payments exceeding PEN 3,500 (USD 1,076) must be made via bank deposits, wire transfers, payment orders, credit cards, non-negotiable checks, or other means of payment provided by entities of the Peruvian financial system. Failure to use one of these payment methods when such an obligation exists will result in the disallowance of deductions for any expenses or costs for income tax purposes and the disallowance of a credit for the corresponding VAT.







Certain expenses are not tax-deductible, including expenses incurred regarding transactions with (i) entities resident in tax havens, (ii) PEs located in tax havens, or (iii) entities that generate revenues or income through tax havens.

Nonetheless, expenses incurred from the following transactions are excluded from the aforementioned limitations, provided the consideration paid falls within market value:

- Interest on loans
- Insurance premiums
- Leases of aircraft or ships
- Maritime freight
- Fees for passing through the Panama Canal

Depreciation

Assets may be depreciated for tax purposes via the straight-line method, capped at the following rates –without exceeding the amount of the financial depreciation:

| Assets | Depreciation rate (%) |
|--|-----------------------|
|  Cattle (both labor and reproduction) and fishing nets | 25 |
|  Vehicles (except trains) and any kind of ovens | 20 |
|  Machines and equipment used for mining, oil and construction activities, excluding furniture, household, and office goods | 20 |
|  Equipment for data processing | 25 |
|  Machines and equipment acquired as of 1 January 1991 | 10 |
|  Other fixed assets | 10 |

Buildings must be subject to a flat 5% depreciation rate, regardless of the financial depreciation.



Amortization of intangible assets

The amortization of property rights, trademarks, patents, and manufacturing procedures, as well as other similar intangible assets are not deductible for income tax purposes. However, the price paid for intangible assets of a limited duration –at the taxpayer's choice– may be considered as an expense, and applied to the results in a single year or amortized proportionally over a ten-year term. The Peruvian Tax Administration –prior to an opinion from the corresponding technical organism– may determine the real value of intangible assets when the prices do not reflect the real ones.

Organizational and start-up expenses

Organization expenses, pre-operating expenses (including initial operations and further expansion of operations), and interest accrued during the pre-operating period may be expensed in the first period of operation or amortized using the straight-line method over a maximum of ten years. However, once a company has elected to recover start-up costs via the straight-line method, it may revoke such election only upon receiving approval of the tax authorities.

Interest expenses

In general terms, interest on loans and related expenses are deductible, provided they are related to the acquisition of goods or services incurred or to be incurred in order to obtain or produce taxable income or to maintain the source of such income. In the case of loans entered into between related parties, the amount of interest to be deducted is limited to interest from indebtedness not exceeding three times the net equity of the debtor as of the end of the previous fiscal year.

Bad debts

Write-offs of bad debts and equitable provisions are deductible, provided that the accounts to which they belong are determined. For the provisions of bad debts, there must be a debt due and a taxpayer who is able to provide evidence of the financial difficulties of the debtor that could indicate a risk in the collection of the debt. Additionally, the provision must be registered separately in the inventory and balance book at the fiscal year closing. In this sense, generic bad debt provision will not be deductible in the assessment of the net taxable income, nor will bad debts whose terms have not yet elapsed.

Charitable contributions

Donations made to entities of the public sector, except companies, and to non-profit associations with certain purposes are deductible, provided that the receiver of the donation is duly qualified by the Tax Administration. The deduction will be limited to 10% of the net income of the donor, and only during the fiscal year in which it is granted (carryforward of the donation is disallowed). This means that if the donor does not obtain taxable income in the fiscal year in which the donation is made, no deduction will be available.

Profit sharing

Entities with more than 20 employees, provided they obtain taxable income during the fiscal year, must distribute a percentage (5, 8, or 10% depending on the industry) of their profits (the basis is the tax profit of the fiscal year) among their employees. The amount of distribution for each employee depends on the employee's effective working days during the year and annual remuneration.

Employee's retributions and health insurance premiums

Employee's retributions paid during a fiscal year may be deducted in such year, provided the payments are made by the employer before the term to file its annual income tax return expires. Likewise, health insurance premiums for employees, their spouses, and children are deductible.

Vehicle expenses deductions

Vehicle expenses may be deducted, provided the vehicles are essential to a company's business activities and are continually used for such purpose. There is a limitation on the tax deductibility of car expenses used for administrative or representation purposes, depending on the amount of income generated by the company. The number of company cars assigned to directors, managers, and representatives of a company may not exceed five under any circumstances.

Taxes

Other taxes assessable on properties and activities generating taxable income are deductible for income tax purposes.

Net operating losses (NOLs)

Tax losses may be offset according to either of the following systems: (i) against net income generated within the following four fiscal years after the year in which the loss was incurred (any losses that are not offset within such period may not be carried forward to any future year); or (ii) against 50% of the net income generated in the following fiscal years after the year in which the loss was generated (under this system, there is no time limit for carrying the losses forward).

Payments to foreign affiliates

Payment of royalties to non-resident affiliates is permitted and deductible from gross income.



Group taxation

Group taxation is not permitted in Peru.

Transfer pricing

The rules related to market value and transfer pricing establish that, in any kind of transaction, the value assigned to the goods and services must be the market value for tax purposes. If such value differs from the market value, either by overvaluation or undervaluation, the Tax Administration will proceed to adjust it for both the purchaser and the seller, even when one of them is a non-domiciled entity, provided that the agreed value results in a lower tax than the one that would have applied had transfer pricing rules been used. The adjustment will be imputed in the taxable period in which the operations with related parties were performed.

In case of transactions between related parties or those entered into with tax havens, the market value will be equivalent to the value agreed with independent parties in similar transactions; in which case, a supporting transfer pricing study would be mandatory.

The law states that transfer pricing rules will not apply for VAT purposes.

Benefit test requirement

As from 2017, the benefit test must be accomplished for intercompany services. Such test is considered accomplished when the rendered service provides economic or commercial value to the recipient of the service, improving or maintaining its commercial position, which occurs if independent parties have satisfied the need for the service. The providers cost structure must be proved. Low value services must not exceed the margin of 5%.

Formal obligations

New formal obligations have been approved:

- **Informative tax return – Local report:** Mandatory for taxpayers with profits higher than 2,300 Tax Units (PEN 9'315,000 or USD 2'865,000). They must provide information of transactions which generate taxable income and deductible costs/expenses. In force as from 2017.
- **Informative tax return – Master report:** Mandatory for companies that are part of a group with profits higher than 20,000 Tax Units (PEN 81'000,000 or USD 24'912,000). They must give information regarding the organizational structure of the group, description of their business, their transfer pricing policies for intangibles and financing, and their financial and tax status. In force as from 2018.
- **Informative tax return – Country by country report:** Mandatory for companies within a multinational group. They must provide information of the global distribution of profits, and the taxes paid and business activities performed by each entity of the group in any country. In force as from 2018.

Tax price adjustments

Adjustments to prices are only required whenever the price paid generates a higher tax deduction or a lower income tax in Peru. Consequently, the existence of a tax prejudice will be required for an adjustment to be requested. Adjustments are performed individually (on each operation) and not in an overall or global manner.

The adjustment of the value assigned by the Tax Administration or the taxpayer will be effective for both the transferor and the purchaser or transferee, without any constraints. In the case of non-domiciled parties, the bilateral adjustment will only proceed on transactions that could trigger taxable income in Peru and/or deductions for determining the income tax in Peru.

The adjustments are attributed to the corresponding tax period, according to the attribution rules depicted in the PITL (accrual regime for corporate taxpayers). However, when under such rules the adjustment cannot be attributed to a particular period, the adjustment will be allocated among all tax periods where income or expense has been allocated, in proportion.

Operations where no consideration has been paid are subject to transfer pricing rules. In this kind of transaction, the adjustment shall be allocated to the period or periods in which revenue would have accrued if consideration had been paid and the income was to be acknowledged by a domiciled taxpayer. On the other hand, if the income was to be recognized by a non-domiciled taxpayer, it would be attributed to the period or periods where the expenses accrued, even if it was a non-deductible expense, and the domiciled taxpayer would be responsible of payment.

Commodities

For the purpose of determining prices in the sales of internationally traded commodities to tax havens or intermediaries, it is required to determine the price of the specified operation based on the international price, without taking into account the particularities of each case.

Thin capitalization

In the case of loans entered into between related parties, the amount of interest to be deducted is limited to the interest from indebtedness not exceeding three times the entities net equity as of the end of the previous fiscal year.

Controlled Foreign Companies (CFC)

CFC rules are in force in order to avoid the deferral of income tax on passive income obtained from CFCs (defined as at least 50% of ownership, voting rights, or gains) by domiciled taxpayers, provided such companies are situated in tax havens or jurisdictions with nil or reduced tax rates.

Taxation of indirect disposal of shares in Peruvian entities

The indirect transfer of Peruvian shares of a foreign entity which in turn owns –directly or indirectly– shares of a Peruvian entity is levied with income tax, provided that both of the following conditions are met: (i) during the 12 months prior to the transfer, the market value of the Peruvian entity's shares owned by the foreign entity equals 50% or more of the market value of the foreign entity's shares; and (ii) during any given 12-month period, shares representing 10% or more of the foreign entity's share capital are transferred.



Other issues

Foreign Account Tax Compliance Act (FATCA)

A Model 1 Intergovernmental agreement (IGA) is treated as 'in effect' by the United States (US) Treasury as of 1 May 2014. The US and Peruvian governments have reached an agreement in substance, and Peru has consented to disclose this status. In accordance with this status, the text of such IGA has not been released and financial institutions in Peru are allowed to register on the FATCA registration website consistent with the treatment of having an IGA in effect, provided that the jurisdiction continues to demonstrate firm resolve to sign the IGA as soon as possible.

New Peruvian income source event

In accordance with new regulation introduced in 2016, it is now considered as Peruvian source income the one obtained by the transfer of credits through factoring in which the factor or acquirer of the credit assumes the credit risk of the debtor, when the client or transferor of the credit is a domiciled subject in the country, or when the assigned debtor is domiciled in the country.

Mutual administrative assistance procedure

The mutual administrative assistance procedure has been established in the Peruvian Tax Code. According to this procedure, the Tax Administration can solicit financial institutions for taxpayers' financial information. Additionally, this mechanism provides assistance on information exchange and tax collection with authorities of countries with whom Peru has treaties that include information exchange and mutual assistance.





Tax treaties

Peru has entered into treaties with Brazil, Canada, Chile, Korea, Mexico, Portugal, and Switzerland regarding double taxation on income tax under the Organization for Economic Co-operation and Development (OECD) model. Double taxation treaties (DTTs) with Spain and Thailand are not in force, as ratification by the Peruvian Congress is still pending. In addition, Peru, as a member of the Andean Community, which also includes Bolivia, Colombia, and Ecuador, is subject to a double-taxation standard (based on source income; not on the OECD model).

Please see the chart below for the reduced WHT rates that apply under DTTs in force.

| Recipient | Dividends (%) | Interest (%) | Royalties (%) | Technical assistance (%) | Digital services (%) |
|--------------------|----------------------|---------------------|----------------------|---------------------------------|-----------------------------|
| Non-treaty | 6.8 | 4.99/30 | 30 | 15 | 30 |
| Treaty: | | | | | |
| Brazil | 10/15 (1) | 15 | 15 | 15 | 15 |
| Canada | 10/15 (1) | 15 | 15 | N/A | N/A |
| Chile | 10/15 (1) | 15 | 15 | N/A | N/A |
| Korea | 10 | 15 | 15 | 10 | N/A |
| Mexico | 10/15 (1) | 15 | 15 | N/A | N/A |
| Portugal | 10/15 (1) | 10/15 (2) | 15 | 10 (3) | N/A |
| Switzerland | 10/15 (1) | 10/15 (2) | 15 | 10 | 10 |

- (1) The lower rate applies in case the beneficial owner is a company that controls at least 20% (Brazil), 10% (Canada, Portugal, and Switzerland), or 25% (Chile and Mexico) of the voting power in the company paying the dividends.
- (2) The lower rate applies to loans from banks (Portugal and Switzerland) and sale on credit of industrial, commercial, and scientific equipment (Switzerland).
- (3) The treaty rate applies to technical assistance in connection to copyrights, goods, or rights that generate royalties.



6.

The Pacific Alliance



The Pacific Alliance

Latin America is at a critical moment in its economic and political history. The long period of steep growth –fueled in large part by China's unstoppable demand for commodities– is coming to an end. And given that the recent economic boom in the region has not gone hand in hand with an increase in productivity or the introduction of new technologies, Latin American countries face two alternatives: resign themselves to another cycle of ups and downs or embark on a path that leads their citizens to sustained prosperity through increased productivity and integrated growth. Chile, Colombia, Mexico and Peru have opted for the latter, by choosing to work as partners rather than as competitors under the framework of the Pacific Alliance.

Given the commitment to democracy and free market principles of the governments of the four countries, there were no major difficulties for the foundation of this significant economic and trade bloc. In Latin America, the four member nations account for more than 35% of the region's GDP and 50% of the total trade, and attract 45% of foreign investment. If they were a single country they would be the eighth largest economy in the world, with a combined GDP of more than 2 trillion dollars.

Since the start of negotiations in 2011, the

Pacific Alliance agreement has generated considerable enthusiasm, both in member countries and globally. The Inter-American Development Bank (IDB) characterized it as "one of the most important and dynamic initiatives in the region." Panama, Costa Rica, Canada and New Zealand have already shown interest in joining as members, and the number of observer countries is greater than 40.

Since the negotiation of the Alliance began, its member countries have taken concrete steps towards integration, such as visas, scholarships, cooperation projects, joint embassies and economic and investment fairs. As of 1 May 2016, the Additional Protocol to the Framework Agreement of the Pacific Alliance entered into force, resulting in the elimination of more than 92% of tariffs between the countries. In addition, they have unified their securities markets in the Latin American Integrated Market (MILA), demonstrating that they are aware of the need of having available financing for companies through the expansion of their capital markets.

Mexico



Colombia



Peru



Chile



Chile

Chile



Foreign investment considerations

According to Chilean legislation, the transfer of foreign capitals or assets for an amount of USD 5'000,000 or more (or the equivalent value in other currencies) is considered as foreign direct investment (FDI). Moreover, FDIs are classified as such when they transfer assets to the country and are materialized through the acquisition or purchase of ownership interests of a company or in the capital stock of the company receiving the investment incorporated in Chile directly or indirectly, which gives control of at least 10% of the voting shares of the referred company.

All foreign investors in the country have the right to remit the capital transferred and the net profits generated by their investment abroad, the right of access to the formal exchange market in order to settle or obtain foreign currency, the right of non-discrimination regarding the applicable legal system for domestic investors, and the right of the exemption of VAT on imported capital assets.

Aiming to facilitate foreign investment, a new regulatory framework –in force since 2016–eliminated the deadline for the entry of foreign capital to the country as well as the restriction to transfer the previous capital in less than one year from the date of entry. Additionally, it established a simpler and quicker procedure for foreign investors to request tax exemption from sales and services in the import of capital goods, and eliminated the need for additional authorizations to reap the benefits of this act.

In case an investor does not fit the classification of FDI, they may conduct foreign exchange transactions according to the regulations established in the Compendium of Foreign Exchange Regulations of the Central Bank of Chile.



Corporate considerations

Starting a business or incorporating a company in Chile is a simple task which should not take over 15 days. However, it is necessary to carry out a series of formal procedures. First, if the founding partner or shareholder is a foreign resident, they will have to process a Taxpayer ID Number. Then, the articles of incorporation must be prepared and executed before a notary public. After this document has been put into the form of a public deed, it will be necessary to register an extract of the articles of incorporation in the respective Registry of Companies and to publish it in the Official Gazette; which should take, as a general rule, 60 days (except in the case of joint stock companies, for which the deadline is one month). Subsequently, the incorporators must request the company's Tax Payer's ID Number from the Internal Revenue Service. This set of procedures marks the beginning of the obligations of the company as a taxpayer subject to the Chilean tax system.

Forms of business enterprise:

- **Limited Liability Company:** Members are liable for the amount of their investment contributions. A minimum of two and a maximum of fifty members are required. Its incorporation is made through formal procedures; i.e., it must be recorded in a public deed executed before a Chilean notary public, an extract of which must be filed with the Registry of Companies and published in the Official Gazette.
- **General Stock Corporation:** Legal entity incorporated by the establishment of a common fund, provided by shareholders who are liable for their respective contributions only. It is administered by a Board of Directors composed of members subject to revocation. Corporations with more than 500 shareholders must be regulated by the Superintendency of Securities and Insurance, as they resemble publicly traded companies. Rights of shareholders are represented by shares, which are contained in freely transferable certificates. The management is composed of two governance bodies: the Shareholders' Meeting and the Board of Directors, which appoints a Manager. Its formation is formal in nature.

- **Joint Stock Company (SpA):** Legal entity whose equity interest is represented by shares. It may be established and exist with a single shareholder. This type of company is very flexible: its bylaws may provide different series of shares that can participate separately in the results of different businesses. When this type of company has 500 or more shareholders for a period of 90 days, or when at least 10% of its subscribed capital is owned by at least 100 shareholders, it becomes a general stock corporation. The SpA is incorporated by means of written articles of incorporation, duly recorded in the Registry of Companies and published in the Official Gazette. This corporate form can be incorporated by a public deed or by a private instrument signed by the parties, whose signatures must be authorized by a Chilean notary public and the referred instrument must be registered in the notarial record book of said authenticating officer.
- **General Partnership:** This legal entity, incorporated through formal procedures, has at least two members. Partners are liable jointly and severable for the corporate liabilities under the corporate name. It is established by means of a public deed, an extract of which is recorded in the Registry of Companies. A publication in the Official Gazette is not required.
- **Limited Partnership:** There are two types of limited partnerships: the Limited Partnership, in which limited partners have the same rights of a general partnership, and Limited Partnership by Shares, in which shares representing the rights of partners are issued as in General Stock Corporations. Non-commercial limited partnerships are consensual, while commercial limited partnerships by shares are formal in nature.
- **Non-commercial General Partnership:** The partners are liable for their personal assets, and the share of the insolvent partner is charged on the other partners. In this type of partnership resolutions are adopted by unanimous consent. It requires a minimum of two partners or shareholders. The dissolution of these companies –as well as its incorporation– is consensual.
- **Non-commercial Limited Partnership:** General partners are liable for their personal assets and limited partners are liable for their contribution. A minimum of two partners or shareholders is required. The dissolution of these companies, as well as its incorporation, is consensual.
- **Foreign Corporations Branches:** While it is not a type of corporation, foreign branches in Chile are governed by the Business Corporations' Act. When a general stock corporation seeks to establish a branch in Chile, it shall appoint an agent or representative who –for practical and tax purposes– is domiciled in the country or is a Chilean resident, and is in charge of requesting the formal notarial registration.





Labor legislation

All forms of dependent employment relationship begin by means of an employment contract governed by the Labor Code, which may be consensual or in writing. The most common types of employment contracts are the following:

- **Fixed-term Employment Contract:** It establishes the commencement and termination date of the contract, which may be renewed for another fixed period.
- **Indefinite-term Employment Contract:** It does not establish the term of the employment relationship.
- **Per working time:** Used for specific tasks, in which the employment relationship concludes after completing the work. It may not be renewed and the person may execute a new contract with the same company for another job.

Chilean labor legislation also contemplates the employment relationship by subcontracting, which is governed by Law 20.123; as well as independent work, in which the benefits of the person hired shall be as the parties agree upon in the respective service contract.

With regard to labor costs, contributions are deducted from worker's remuneration, except for the occupational life and disability insurance, which is paid by the employer:



Employee contributions:

Retirement Pension:

10% of worker's remuneration or taxable base plus an administration fee, which varies depending on the Private Pension Fund Management Company (AFP). The maximum threshold of the taxable base is 75.7 UF which is CLP 1'968,200 (approximately USD 2,977).

Health:

A 7% deduction is applied on the worker's remuneration or taxable base in favor of Private Health Insurance Companies (ISAPRE) or the National Health Fund (FONASA).

Unemployment Insurance:

Up to 0.6% of the worker's remuneration or taxable base for Indefinite-term Employment Contract workers. No contributions are deducted for workers under Fixed-term Employment Contract.



Employers contributions:

Occupational Life and Disability Insurance:

It is paid by the employer and it amounts to 1.41% of the worker's remuneration taxable base.

Occupational Accidents and Diseases (Mutual):

There is a 0.95% minimum. The percentage increases depending on the loss ratio of the company.

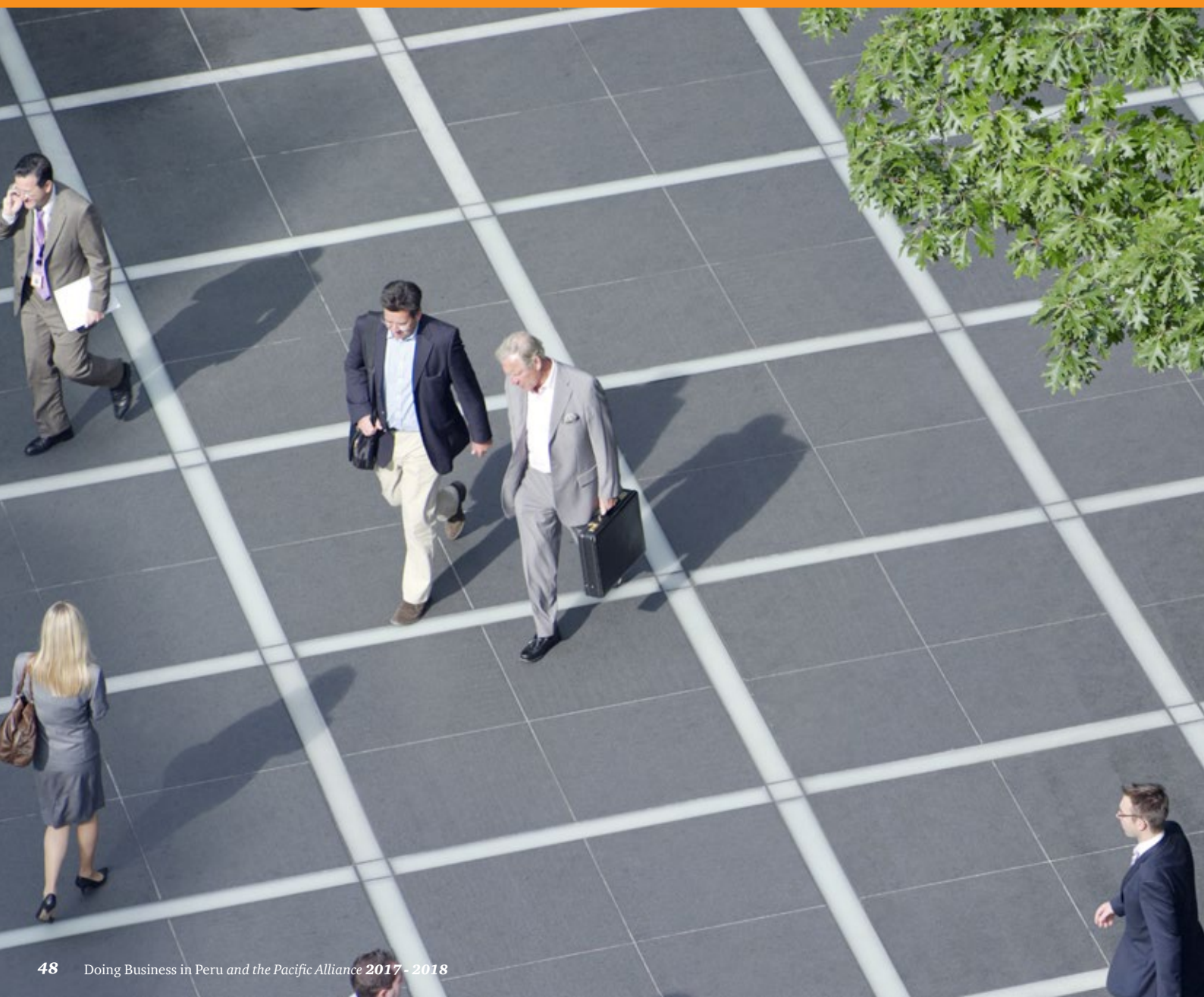


Foreign trade

In Chile, the National Customs Service is responsible for monitoring and controlling the passage of goods along the coasts, borders and airports of the country, intervening in international traffic for the purpose of collecting taxes on the import, export and other taxes as determined by the laws, and generating border traffic statistics.

Importing into Chile requires following a series of stages. First, during the negotiation stage, agreements are reached on the type of contract to be signed, the goods or services covered by such contract, liability, etc. Subsequently, there is a shipment stage, in which some issues such as the route of transfer of goods, the possibility of effecting insurance, among others, are discussed. Finally, the transfer and receipt of goods, customs clearance and taxation are completed.

Chile has signed a number of treaties aimed at fostering international relations and business. The current customs duty amounts to 6%, but due to import privileges from several free trade agreements, most imports can enter with a 0% tariff.






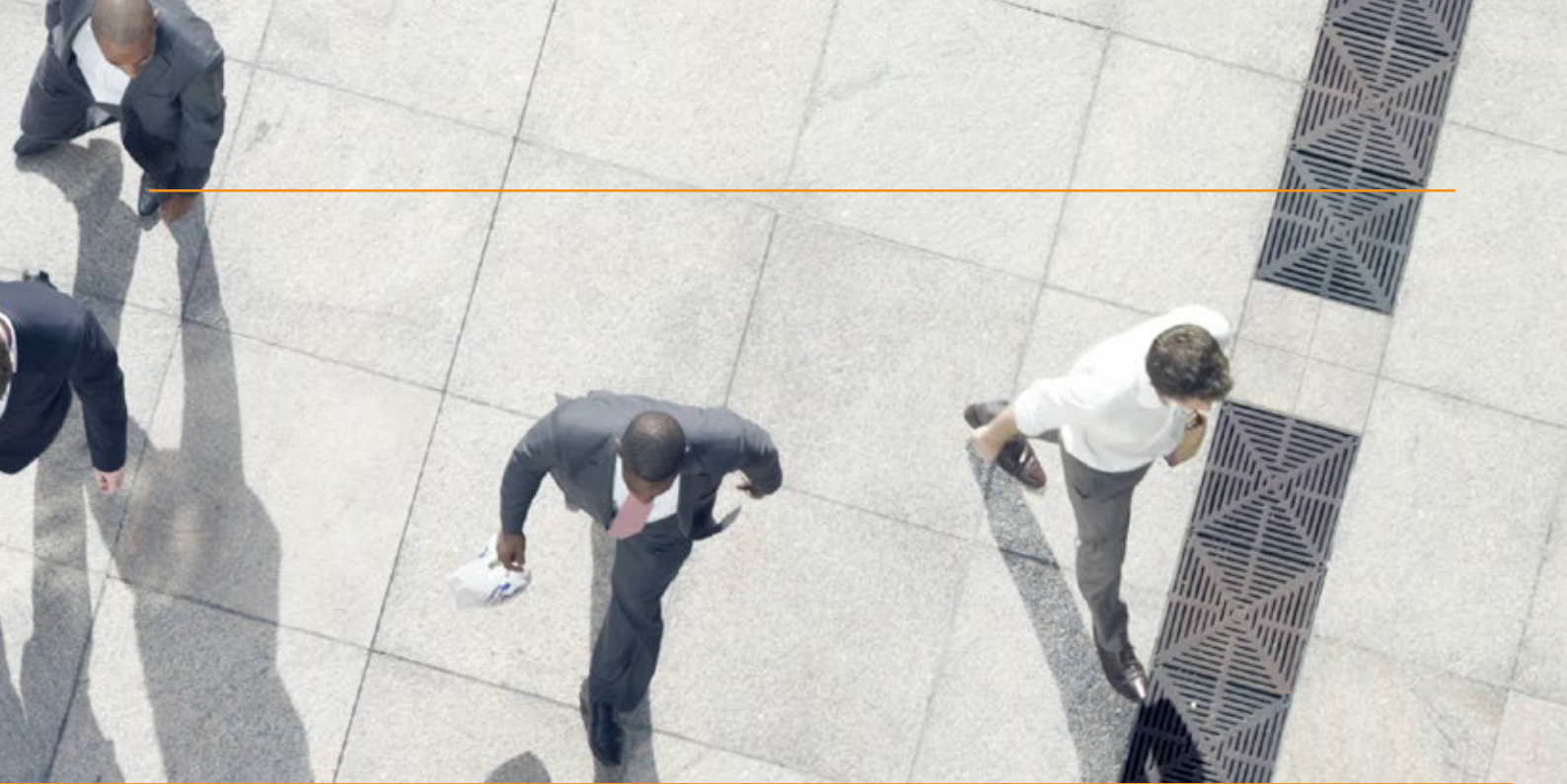
Tax system

A tax reform introduced in 2014 changed much of the Chilean tax legislation, particularly with regard to the Income Tax Law. This reform gradually modifies the tax regulations of the country.

Main taxes:

- **Income Tax:** Individuals and legal entities domiciled or resident in Chile are taxed on their foreign-source income. By contrast, individuals or entities not domiciled or resident in Chile are taxed only on their Chilean-source income.
- **First Category Tax (IDPC):** Levied on income produced by commercial, industrial, mining, service companies, etc. Tax returns must be submitted on an annual basis. From the financial year 2017 onwards, two tax systems were established: the "Attributed Income System" and the "Partially Integrated System". Under the Attributed Income System, income must –at the end of each financial year– be attributed to the partners or shareholders of companies paying the IDPC. The rate is 25% for 2017 and subsequent years. The owners of companies under this system may use as available credit 100% of the IDPC paid by the company. On the other hand, under the Partially Integrated System, company owners are levied with the Global Complementary Tax (GCT) or Additional Tax (IA) –as appropriate– on all amounts withdrawn, transferred or distributed from the company. The IDPC rate for this system is 25.5% in 2017, and will be 27% in 2018 and subsequent years. When paying their final taxes (GCT or IA), company owners may use as credit 65% of the IDPC paid by the company. The IGC or IA taxpayer must repay an amount equal to 35% of the credit corresponding to the IDPC on withdrawals or dividends received. If the taxpayer is a foreign company domiciled in a country with which Chile maintains in force an agreement to avoid double taxation, the IA taxpayer may use as credit 100% of the IDPC paid by the company.
- **Second Category Tax:** Levies income from dependent employment. It is withheld by employers on a monthly basis. The rate is progressive and ranges from 0 to 35%. Second category taxpayers are not taxed by other income, unless the source of this income is other than wages or salaries.
- **Global Complementary Tax (IGC):** It is a personal, global, progressive and complementary tax that is determined and paid on an annual basis by individuals domiciled or resident in Chile, on taxable income determined under the rules of the first and second category. Its rate gradually increases as the tax base increases. As of 2017, its maximum marginal rate is 35%.
- **Additional Tax (IA):** It is a tax levied on individuals or legal entities not domiciled or resident in Chile. Its general rate stands at 35% and operates on the basis of attributed income, withdrawals, distributions or remittances of Chilean-source income abroad. IA taxpayers are entitled to a credit equal to the IDPC paid by companies on attributed and distributed income and withdrawals. From 2017 onwards, such credit is determined according to the tax system chosen by the company.

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- **Value Added Tax (VAT):** The main consumption tax in Chile has a 19% rate that levies sales of tangible movable property and real estate property located within national territory, as long as sales are made by a regular seller. It is a tax also levied on the provision of certain services provided or used within the country. This tax must be declared and paid on a monthly basis, and its amount is determined by the difference between the tax credit and tax debit. As an incentive for investment in capital assets – pursuant to recent legal amendments– since January 2016, the import of capital assets for the development, exploration and exploitation of projects of diverse types, including industrial projects, for an amount equal to or higher than USD 5'000,000, may be exempted of VAT, provided that a resolution is requested to the Chilean Finance Ministry and certain requirements are met:
 - Assets must be capital assets, which for this purpose consist of machines, vehicles, equipment and tools, assigned directly or indirectly for the development of projects such as mining, industry, forestry, energy, infrastructure, telecommunications, among others; and whose production capacity does not vanish with its first use, and has a useful life of 3 years or more.
 - The projects for which these assets are assigned require investments higher than USD 5'000,000.
 - Projects shall generate income after at least 12 months following the accomplishment of these milestones: (i) the import of the capital asset; (ii) Environmental Qualification Resolution; or (iii) granting of land by the National Property Ministry.
 - The relevant form is submitted to the Ministry of Finance.
 - The Ministry of Finance will have a term of 60 days to rule whether to grant or deny the exemption.



- **Stamp Tax (ITE):** Tax primarily levied on documented credit operations, such as bills of exchange, bonds, notes, simple or documentary credits, and any other documents – including those that are issued in a dematerialized form and contain a credit transaction. The applicable ITE rate varies depending on whether the payment obligation is a fixed-term obligation (from 0.066 to 0.8% of the credit transaction's amount per month between the issuance of the document and the expiration date thereof) or at sight (0.332%).
- **Municipal License:** Necessary permit to undertake any commercial activity at a given address. The local municipality where the business will be established grants a business, professional or industrial license depending on the activity that is intended to be carried out. Business licenses are paid on an annual basis, but payment is allowed to be made in two semiannual installments. The price varies depending on each municipality. The amount to be paid ranges between 1 Tax Unit (UTM) (USD 68) and 8,000 UTM (USD 545,000) per year.
- **Territorial Tax:** Tax is levied over official valuation of the real estate. Annual rates will depend on the type of real estate. For farming real estate, the tax has a rate of 1%; however, values lower than CLP 8'587,000 (USD 13,000) are exempt. In the case of non-farming real estate destined for housing, the rate amounts to 0.98% for the first CLP 79'260,000 (USD 120,000), and 1.143% for the excess. Values lower than CLP 22'457,000 (USD 34,000) are exempt. An additional rate of 0.025% to real estate that was subject to foregoing rate of 1.143% is applied. For non-farming real estate not destined for housing, the tax rate is 1.2%, plus an additional rate of 0.025%. And in the case of non-farming real estate located in urban areas considered abandoned real estate or an excavation, a surtax of 100% is applied.
- **Other taxes:** There are also other independent taxes such as the tax on inheritance and donations, and taxes on municipal benefits. Additionally, there are taxes such as those levied on alcoholic, non-alcoholic beverages, the luxury tax and other taxes imposed on casinos, gambling, etc.

Colombia



Foreign investment considerations

According to the Colombian legal system, there are two types of foreign investments:

- **Direct Foreign Investment:**
Carried out through the acquisition of (a) interests, shares or any kind of contribution representing a company's capital stock; (b) rights in autonomous equities created through a merchant trust contract as a means to establish a company or for the purchase, sale and management of interests in other companies; (c) real estate, as well as equity securities issued as a result of a real estate securitization process or through real estate funds; (d) investments to the assigned capital stock or investments supplementary to the assigned capital stock of branches established in Colombia by foreign legal entities; or (e) interests in private equity funds.
- **Portfolio Investment:**
Carried out through foreign equity investment funds in shares, bonds mandatorily convertible into shares and other securities registered with the National Registry of Securities and Issuers (RNVE).

Investments are carried out by means of a currency transfer through the foreign exchange market in order to make a direct contribution to a company's capital stock or to acquire the rights or shares of third parties in existing corporations. Said transfer may be made in kind or through national currency resources resulting from local credit operations entered into with credit institutions and intended for the acquisition of shares through the public stock market. All foreign investments must be registered with the Bank of the Republic of Colombia in order for foreign investors to exercise the exchange rights vested in them by law. The registration process for the foreign investment is simple and may be directly carried out before the Bank of the Republic or through an authorized intermediary or compensation account, provided that it is performed by the foreign investor, their attorney-in-fact or whomever represents their interests.

The filing of Income and Supplementary Tax Returns must be made for each transaction, including those events in which no payable tax is generated for the corresponding transaction. It must be noted that foreign investments made in Colombia must be



updated annually within the terms and in accordance with the procedures defined by the Bank of the Republic.

The strategy for the improvement of commercial relations implemented by Colombia comprises the negotiation and execution of Agreements for the Reciprocal Promotion and Protection of Investments (APPRIs), as well as Free Trade Agreements (FTAs), which include chapters about foreign investment.

Once investments are registered, the holder has the right to remit abroad 100% of the proven net profits regularly generated by its investments; to reinvest profits or to retain transferable undistributed profits in the surplus account; to capitalize transferable amounts resulting from obligations derived from investments; and to remit abroad, in freely convertible currency, the proceeds received from the sale of the investment held in the country, the winding-up of the company or of a portfolio, or the reduction of its capital stock.



Corporate considerations

In Colombia, the two most used vehicles for investment are the Simplified Joint Stock Companies and the Branches of a Foreign Corporation. In both cases, the incorporation procedure has three stages: First, investors must file the articles of incorporation –by means of a private document in the case of Simplified Joint Stock Companies, or public deed for Branches of Foreign Corporations. Then, articles of incorporation must be registered before the Registry of Companies, administered by the chambers of commerce. Finally, the investor must register the company before the National Tax Registry (RUT) and obtain a Tax Identification Number (NIT).

Once the duly authenticated supporting documentation is in Colombia, the incorporation process lasts between one week and ten days. In the case of Branches of Foreign Corporations, the process may take a few more days.

Forms of business enterprise:

- **Simplified Joint Stock Company (S.A.S.):** It may be incorporated by one or more individuals or legal entities (either Colombian or foreign), whose liability is limited to the amount of their respective contributions. It should be noted that both its incorporation as well as the amendments made to its bylaws may be carried out by means of a private document. Its name must be always followed by the initials "S.A.S."
- **Joint Stock Company (S.A.):** This type of company must have at least five shareholders (either Colombian or foreign individuals or legal entities), whose liability is limited to the amount of their respective contributions. Its incorporation is carried out by means of a public deed authenticated by a Notary Public. This procedure also applies for the amendments made to their bylaws. Its name must always be followed by the initials "S.A." and it is mandatory to appoint a statutory auditor (external auditor).
- **Limited Liability Company (Ltda.):** It must be incorporated by means of a public deed, authenticated by a Notary Public. Additionally, it must have at least two members and no more than twenty-five members (either Colombian or foreign individuals or legal entities), whose liability is limited to the amount of their contributions, except for labor or tax obligations, in which case the liability shall be joint and several. Any amendment to the bylaws or any transfer of units of interest (membership interests) must be also carried out by means of a public deed. Its name must be always followed by the abbreviation "Ltda."
- **Branch of a Foreign Corporation:** From a legal point of view, the branch of the foreign corporation and its main office are considered as the same legal entity, and therefore, the main office is completely responsible for all the obligations of its branch. The branch must be incorporated by means of a public deed, and both its bylaws and its corporate bodies are those of its main office. It is mandatory for the branch to appoint a statutory auditor (external auditor).



Labor legislation

Depending on their duration, employment contracts are classified as follows:

- **Fixed-term Contract:** The duration of this type of contract may not exceed three years. It may be extended for an indefinite period.
- **Contract According to the Duration of the Contracted Work or Task.**
- **Accidental or Transitory Contract:** The duration of this type of contract may not exceed one month and it is entered into for the performance of tasks other than the company's regular activities.
- **Indefinite Term Contract:** It has no established termination date.

Payroll costs:

- **Salary:** In 2017, the Current Legal Monthly Minimum Salary (SMMLV) amounts to COP 737,717 (approximately USD 242). The comprehensive salary is comprised of the ordinary salary, fringe benefits, surcharges and other benefits, statutory and additional bonuses, severance pay, allowances, etc., but does not include vacations. The comprehensive salary must be established in writing in the employment contract.
- **Fringe Benefits:** In Colombia, the severance pay amounts to a monthly salary for each year of service. The interest on severance pay is equivalent to 12% of the annual severance pay's value. There is also a service bonus equivalent to 15 days of salary per six months of service. For employees who earn no more than twice the SMMLV, there is a transportation allowance of COP 72,000 (approximately USD 24.60), and a payment of COP 1,288,700 (approximately USD 439.40) made every four months for work footwear and clothes.
- **Statutory Rest Periods:** If an employee works up to two Sundays per calendar month, they shall be entitled to receive a surcharge equivalent to 75% of the ordinary salary in proportion to the worked hours, or a whole rest day. If the employee works more than three Sundays, they are entitled to receive a 75% surcharge in addition to a rest day. Employees are entitled to a 15-day-business-day paid vacation per year of services.
- **Termination Benefits:** In the event of a unilateral contract termination without just cause, termination benefits are equivalent to the remaining time until the agreed termination of the contract or the completion of the works in the case of fixed-term contracts or contracts according to the duration of the works, respectively. As for indefinite term contracts, the termination benefits depend on the salary received by the employee and on the amount of years for which the employment relationship was maintained. Indemnity for the failure to pay the salary and the fringe benefits is equivalent to one day of salary per day of default for the first 24 months.
- **Contributions to the Comprehensive Social Security System:** Contributions to the General Pension System amount to 16% of the employee's monthly salary (12% paid by the employer and 4% by the employee). Employees who earn more than four SMMLV shall pay an additional 1% allocated to the solidarity fund; and employees earning 16 or more SMMLV shall make an additional contribution between 0.2% and 1%. Other contributions under Colombian law are those intended for the Health Social Security System, which amount to 12.5% of the employee's monthly salary (8.5% paid by the employer and 4% by the employee), and contributions to the Labor Risks System (paid by the employer), which vary between 0.348% and 8.7%, depending on the company's level of risk.
- **Parafiscal Contributions:** Payments made by employees to the Colombian Institute of Family Welfare (ICBF), to the National Apprenticeship Service (SENA), and to the Family Compensation Funds.



Foreign trade

The Colombian legal system focuses on facilitating customs-related import, export and transportation operations through the control of the application of several forms of foreign trade. In that sense, in 2005, Colombia implemented the Single Foreign Trade Counter (VUCE), an electronic system that consolidates every government procedure in relation to trade operations at an international level.

Tax authorities acknowledge Permanent Customs Users (UAPs) as such during a 5-year period if they have carried out foreign trade operations during the previous 12 months for a FOB value equivalent to USD 5'000,000, or for such a value equivalent to the annual mean during the last 3 years, and if they have filed at least 100 import or export declarations during the last 12 months.

UAPs are entitled to the automatic release of imported goods; the possibility to import raw materials or supplies according to the temporary import regime for industrial processing (in such a way as to allow the import of said raw materials or supplies without the payment of customs duties, taking into account that these shall be used for the manufacture of exported goods), and the grant of a global guarantee that covers all the foreign trade operations before the Colombian customs authority (National Bureau of Taxes and Customs - DIAN).

In the case of imports, any person registered with the RUT and the DIAN may carry out import-related activities in Colombia. However, only those authorized by the DIAN may submit import declarations through the Customs Information System. On the other hand, ordinary import is the most used method in Colombia. By applying this method, a Colombian importer receives freely disposable goods once the Customs Authority has electronically or manually approved and cleared them. The obligations of the importer include the declaration of goods through the electronic system, compliance with the labelling requirements, payment of all the applicable customs duties and obtainment of the approval for each import declaration.

Regarding the export of goods, the process starts with the submittal and approval of a shipment authorization (Request for Shipment Authorization - SAE), observing the procedures established in the customs regulations. Once the shipment has been authorized, the goods have been loaded and the carrier has issued the corresponding bill of lading, the request for shipment authorization shall be deemed as the respective export declaration. In Colombia, exports are not subject to customs duties. Also, there is no general drawback program implemented for the export of previously imported goods.

If the registered importer needs to export products or pieces that must be repaired or replaced outside Colombia, they may resort to the temporary export regime in order to reimport them without paying customs duties or VAT. The DIAN may request the Registered Exporter to submit import declarations for the products or pieces that are being exported so as to prove their legal entry to the Colombian territory.



Tax system

Recently, the Colombian Congress enacted the Law 1819 of 2016, reforming the Colombian tax code. The reform became enforceable as of 1 January 2017.

Main national and territorial taxes:

- **Income tax and Taxes Levied on Occasional Income:** Both corporations and individuals domiciled in Colombia are levied on their income (both regular and occasional) regardless of whether it is of national or foreign source. On the other hand, non-domiciled foreign corporations –as well as branches and permanent establishments of foreign corporations located in Colombia– are only levied on their national-source income (both regular and occasional). It should be noted that administrative services rendered from abroad are considered Colombian-source income, and are subject to taxation.

As a general rule, income tax is levied on an annual basis, and it coincides with the calendar year. The general income tax rate is 34% for 2017 and will be 33% since 2018, plus an additional surtax of 6% for 2017 and 4% for 2018. In the case of industrial users that manufacture and offer goods and services in the Free Trade Zone, the income tax rate is equivalent to 15%. As of December 2016, a new income tax withholding on dividends has been introduced, which rate varies between 5% and 38.25%, depending on whether profits are taxed at the corporate level. For branches, a deemed dividend also applies upon the transferring of profits to the head office. Additionally, presumptive income has been increased from 3% to 3.5% of the taxpayer's net equity determined by 31 December of the previous year.

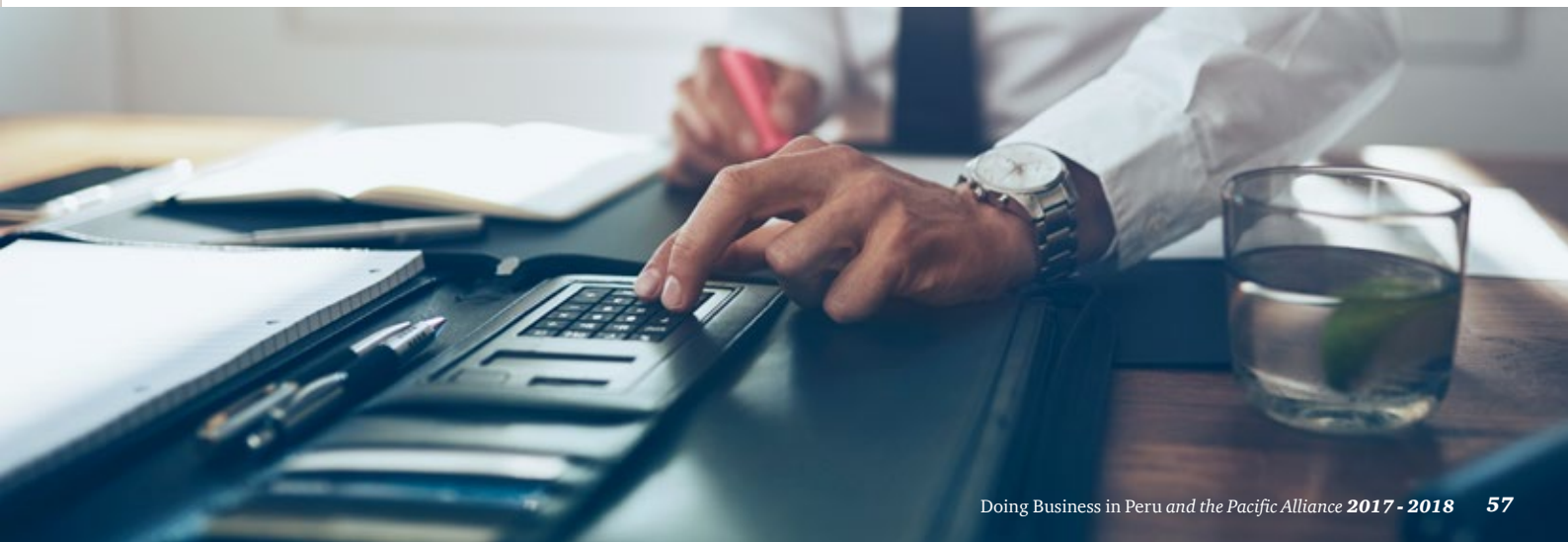
- **Wealth Tax:** The wealth tax is generated by the ownership of an equity equal to or higher than COP 1'000,000,000 (approximately US\$341,000), as of 1 January 2015. The taxable base for this tax is made up of the net equity owned by the taxpayer as of each causation date, with a right to any kind of reduction, such as the deduction of the net equity value from the shares held in domestic corporations, as well as the first 12,200 Tax Value Units (UVTs) (approximately USD 123,778) of the dwelling house or apartment. In 2017, the wealth tax rate fluctuates between 0.05% and 0.4%.
- **Value Added Tax (VAT):** This tax is mainly levied on the sale of tangible personal property other than fixed assets, the provision of services within the national territory, the sale of immovable property, the rendering of services from abroad, the transfer of intangible property related to industrial property, and the import of tangible personal property, which has not been expressly excluded. This tax must be mandatorily collected and paid to the Colombian Tax Authority by whoever carries out any activities that generate it, even when this tax is financially assumed by the final consumer. There is currently a general VAT rate of 19% that is applied to most transactions, as well as differential rates of 5% and 35% for some goods and services.
- **National Consumption Tax:** The activities that generate this tax comprise the provision or sale to the final consumer (or the import by the final consumer) of certain products or services, such as mobile phone carriers, certain vehicles, the sale of prepared meals, etc. The causation of this tax does not include the causation of the VAT. The rates are as follows: 4% for mobile phone carriers, between 8% and 16% for taxable vehicles, and 8% for consumption in restaurants and the consumption of prepared meals.
- **Tax on Financial Transactions:** This tax is ongoing, of instant causation, and it is levied on financial transactions through which a person may access funds deposited in checking or savings accounts, as well as in deposit accounts held with the Bank of the Republic, and by drawing cashier's checks. The rate is equivalent to 0.4% of the total value of the financial transaction through which financial resources are accessed. It is possible to deduce from the taxpayer's income tax 50% of the amount paid for this tax, regardless of whether there is or not a causal relationship between such amount and the taxpayer's income-generating activity.

- **Industry and Commerce Tax:** This tax is levied on the income obtained from the development of industrial, commercial, and service-related activities carried out, directly or indirectly, by individuals, legal entities or de facto corporations in their respective municipal jurisdictions. The taxable base of this tax comprises the gross amount obtained by the taxpayer, minus the deductions and exemptions to which they are entitled. The rate of this tax is defined by each municipality, all of which are autonomous regarding the fixation of rates within the ranges established by law: a rate between 0.2% and 0.7% for industrial activities, and a rate between 0.2% and 1% for commercial and service-related activities.
- **Property Tax:** The Unified Property Tax is imposed on the ownership of real estate properties located in urban, suburban or rural areas, with or without buildings. Therefore, the owners or possessors of real estate properties are subject to this tax. The taxable base of this tax comprises the property valuation in force adjusted according to the Consumer Price Index. In areas such as the Capital District of Bogota, the taxable base comprises the property valuation carried out by the taxpayer. The applicable rate depends on the quality of the property (i.e. if it is rural, urban or suburban), and it ranges between 0.4% and 1.2% in a differential way, depending on the economic purpose of each property. This tax is 100% deductible on the Tax Return, provided that it has a causal relationship with the income-generating activity.
- **Registration Tax:** This tax is levied on all documentary acts, contracts or legal transactions that must be registered with the chambers of commerce and with the Public Records Offices. The taxable basis of this tax comprises the value included in the document containing the act, contract or legal transaction. Regarding documents that do not establish a value, the taxable basis shall be determined according to the nature of the document. In the case of acts, contracts or legal transactions establishing a value and subject to registration with the Public Records Offices, the taxable base ranges between 0.5% and 1%. Likewise, the acts, contracts or legal transactions establishing a value and subject to registration with the chambers of commerce range between 0.3% and 0.7%. In the case of acts, contracts or legal transactions that do not establish a value, the taxable base shall range between 2 and 4 statutory minimum salaries per day.

Other tax considerations

Following the recent peace agreement with Colombia's main rebel group, the government encourages the use of areas of the country previously affected by rebel activity (ZOMAC) as areas for investments and social development. To that end, the recent tax reform introduced two programs:

1. **Direct spending on communities:** Taxpayers with annual revenue in excess of USD 350,000 may use up to 50% of the payable tax on social-oriented projects in the ZOMAC areas.
2. **Infrastructure projects:** Subject to certain conditions being met, taxpayers may – upon Government's approval of the project– use the spending on infrastructure projects in ZOMAC to pay up to 50% of the income tax charge for the 10 years following that of the spending of the project.



Mexico

Mexico



Foreign investment considerations

It has been the general policy of the Mexican government not to offer special tax concessions to encourage foreign businesses to locate in Mexico. However, special tax incentives are granted to taxpayers that wish to contribute to qualified film and theater projects, and to taxpayers who are involved in the agriculture, livestock, fishing, and timber industries.

Investors should also consider 100% foreign ownership is permitted in labor-intensive in-bond processing and in a majority of economic activities, including commercial and service sectors; banking industry is almost 100% private, and majority foreign ownership of banks is allowed; private and direct foreign investment at 100% is now permitted in telecommunications and satellite communications; and specific duty deferral programs allow temporary imports.

Additionally, the Mexican government has a policy and procedures that aim to simplify the setting of a company, including the reduction of formalities and time for issuance of authorization resolutions; and capital and earnings can be freely remitted abroad.



Corporate considerations

Prior authorization to use a specific corporate name is required from the Ministry of Economy (SE) to form any business entity in Mexico. No approval is needed to amend its charter or bylaws unless the amendment involves either a change in the corporate name or the substitution of a provision allowing foreign participation for one prohibiting foreign participation. In addition, certain activities may require prior authorization from the Foreign Investment Commission if the entity will be wholly, partially or neutrally owned abroad.

The minimum share capital for a regular corporation is that determined by the charter or bylaws of incorporation. It is customary that such minimum share capital be in the amount of MXN 50,000 (USD 2,819), and every corporation must have at least two shareholders. After all necessary governmental authorizations have been secured, the charter and bylaws must be formalized pursuant to a public instrument executed before a public attester (notary public or public broker). The corporation must then be registered in the Public Registry of Commerce and with all tax and regulatory authorities, as the case may be.

Forms of business enterprise:

- **Stock Corporation:** The most common way for domestic and foreign investors to operate in Mexico is through a stock corporation, formed under the General Law of Mercantile Companies. A foreign-owned Mexican corporation is subject to the laws relating to all local companies in general, as well as to the Foreign Investment Law. The Stock Corporation for the Promotion of Investment was created in order to provide joint-venture investors with a suitable vehicle to enter into covenants which reflect the intention to develop an investment and ultimately cash in the benefits and part ways, allowing the issuance of much tailored stock, and acknowledging enforceability to certain shareholder agreements which were deemed void under business forms. The most common type of stock corporation is the Stock Corporation with Variable Capital, for which there is no mandatory minimum paid-in capital, and the charter or bylaws of the corporation may freely determine such amount.
- **Limited Liability Company:** In most ways, it is similar to a corporation in actual operation. However, as an organization of individuals, its bylaws can be drafted in such a way as to give it most of the characteristics of a partnership under the tax laws of foreign countries, except for unlimited liability.
- **General Partnership:** The General Law of Mercantile Companies also provides for partnerships, as well as partnerships with limited and unlimited liability partners, but as a result of the unlimited liability of all or the general partners, these business forms are not common. Partnerships require at least two partners.
- **Civil Partnership:** The managing partners have unlimited liability, while other partners' liability is limited to the value of their contributions. This form is usually employed by professional practitioners, but it is also used by some non-profit entities such as educational establishments. By definition, these entities should not engage in commercial operations. The transferability of rights, as well as the admission of new partners, is subject to approval of all the partners.



- **Joint Venture Contract:** This contract is one whereby a person grants a participation in the profits and losses of a specific venture or business to others who provide property or services. Such a contract has no legal personality (i.e. a separate legal entity is not created) and operations are conducted in the name of the active managing joint-venturer. The joint-venturer is the only one with any direct liability to third parties. The tax treatment applicable to joint ventures is essentially the same treatment as regular corporations solely for tax purposes. Legal requirements for a valid joint venture contract are minimal.
- **Branch of a Foreign Corporation:** A foreign corporation can be registered to operate in Mexico, with full access to the local courts, through a branch office after complying with certain formalities as well as obtaining the prior approval of the Mexican government through the General Department of Foreign Investment of the SE, except for foreign corporations from certain countries with which Mexico has entered into a free trade agreement, in which case there is no need to obtain prior authorization, but only to file a notice with the aforementioned authority.
- **Sole Proprietorship:** As in many Western countries, it is a very popular form of organization for small businesses. However, the element of unlimited liability generally inhibits the use of this form of organization for large operations, particularly in view of the substantial amount of severance pay that may accrue in favor of employees. Moreover, resident aliens may engage in business activities only if their immigration status is that of a permanent resident. However, in some instances it has been concluded that non-resident individuals with a taxable permanent establishment might operate under the same principles applicable to branches of foreign entities.
- **Civil Association:** Charitable and other non-profit organizations take the form of a civil association, whose charter prohibits the distribution of profits to its members.



Labor legislation

Labor is readily available in most regions of Mexico, with internationally competitive levels of efficiency. However, turnover is moderate, especially in the highly competitive labor-intensive industries, and unionization and collective-labor contracts are common in both capital and labor-intensive industrial enterprises.

Social security plays an important role in labor relations in Mexico. Fringe benefits – including labor law benefits – are significant relative to total payroll costs. The social security system is in effect for all industrial areas and many agricultural zones, although social security premiums are payable by both the employer and the employee. In addition to these costs, profit sharing is mandatory for most businesses, and amounts to 10% of adjusted taxable income. Compliance with general provisions of labor law, as well as social security, hygiene, safety and environmental care are monitored by the authority and default is subject to penalties which may be material in some cases.

Although foreign ownership of companies is generally allowed, the employment of foreign nationals is generally limited to 10% of the total workforce. Certain exceptions may apply when a free-trade agreement is in effect. Work visas are required.

Payroll costs:

- **Wages and salaries:** Minimum daily wages are established for separate regions of the country by a National Minimum Wage Committee, working through local committees made up of representatives of government, organized labor and private industry. In recent years, the variation in wage rates in the different regions has been considerably reduced, and only two different minimum rates are now in effect, varying from a low of MXN 63.77 per day in some regions to MXN 67.29 per day in Mexico City and in some regions near the United States border. The Minimum Wage Committees have also established professional minimum wage rates for a number of semiskilled and skilled jobs and office jobs.
- **Overtime pay and other required payments:** Double time must be paid for the first nine hours of overtime each week and triple pay if unusual circumstances require more than nine extra hours (the legal maximum) in any week. Triple pay is also provided for work on the seven legal holidays. Sunday work entitles a worker to a premium of 25% of regular pay, even if the worker receives a day off during the week. A Christmas bonus equivalent to 15 days' pay must be paid to all employees on or before 20 December each year.
- **Fringe benefits:** Collective labor contracts often provide for benefits over and above those stipulated by the federal labor law and other legislation with regard to early retirement, number of holidays, length of vacations, and a wide range of benefits that are not taxable to employees, such as contributions to general savings funds. Many taxpayers grant coupons for meals and groceries, which under certain conditions are not taxable to the employees. From 2014, coupons will only be partially deductible for the employer in most cases.
- **Paid holidays and vacations:** The present law requires that a vacation of six working days be granted after the first year of service, with an additional two days for each of the next three subsequent years, with an additional two days for every five years of service after the fourth year. A premium of 25% of the regular salary must also be paid during vacations. Non-union employees are commonly granted a two-week vacation period.



Foreign trade

Mexico's commercial conditions provide excellent trade opportunities. General import duty rates range from 0 to 35%, but most imports fall within the range of 3 to 20%. Higher rates apply to different types of goods and to imports from certain countries, ranging from 35 to 120%. Examples of these goods include fabrics, leather, malt, beans, crabs, live chickens and hens, coffee-based extracts and extracts for juices. Compensatory quotas can raise duties up to 150%.

Temporary imports are exempt from customs duties (except for fixed assets) and "in some cases" pay VAT as from January 2015. However, if certain requirements are met, it is possible to obtain an automatic tax credit for such VAT.

The Mexican government has continued its policy of progressive reduction of trade barriers to imports. Prior import licenses from the SE are required only for less than 1% of items or classifications in the customs tariff. Special requirements currently apply for importing products into Mexico in respect of health, ecology, quality, and consumer protection issues. These requirements have different specific formalities, depending on the product to be imported, and are usually identified by the subheadings included in the Harmonized Tariff System for Merchandise Classification and Codification (HTS).

The import of drug products or substances containing illegal drugs (acetylmorphine, pseudoephedrine, coca leaf, corn poppy, cannabis indica, etc.) is definitely banned. Since the late 1980's Mexico adopted the HTS, making its import/export classification system compatible with those of most countries with which it commonly trades. In 2007, the current General Import and Export Tariff Law introduced some tariff code reclassifications and a general reduction in the duties.

The customs valuation of merchandise to determine its taxable base for import/export duty purposes is generally the transaction value of the goods, which is the value actually paid for the goods. In this sense, Mexico has adopted the valuation agreement approved by the WTO. Consequently, if a financial, commercial or other type of relationship exists between the foreign supplier and the Mexican importer (related parties), free competitive conditions must be satisfied.



Tax System

Main taxes:

- **Corporate Income Tax:** The federal corporate tax rate is 30%. Resident individuals are subject to Mexican income tax on their worldwide income, regardless of their nationality, at graduated rates reaching 35% for individuals with income exceeding MXN 3'000,000 (USD 169,128) in the year. Non-resident corporations and individuals are subject to tax on their various types of Mexican-source income treated separately, but if they are considered to have one or more permanent establishments for income tax purposes in Mexico, all income attributable to such establishments must be consolidated in a single annual return. In the case of non-residents, including Mexican citizens who can prove residence for tax purposes in a foreign country, are taxed only on their Mexican-source income. Mexican citizens need to notify their foreign residency status, with special rules and restrictions applicable in the case of expatriation to low tax jurisdictions.

Legal entities are taxed at a rate of 42.86% on the value of any distributions of profits they carry out in excess of their after tax earnings account. In these cases, the tax on distributions is creditable by the legal entity making the excess distribution. Dividends distributed to individual or foreign residents will be subject to a 10% withholding when distributed on earnings generated from 2014 and thereafter. Dividend taxes may be lower or nil; under the terms of the tax treaties in place with many countries.

Taxpayers engaged exclusively in agriculture, livestock, fishing, and forestry activities are subject to a reduction of 30% of their tax liability.

- **Value Added Tax (VAT):** VAT is levied on transfers of goods and services at a standard rate of 16% and at a zero rate for some transactions.

The 0% rate is applicable to a substantial number of transactions, including the sale of books, magazines, and newspapers published by the taxpayer, the export of goods and certain services (including some maquila activities intended for export), the sale of certain basic foodstuff, agricultural goods and services, sales and rentals of farm machinery and equipment, and other specified transactions.

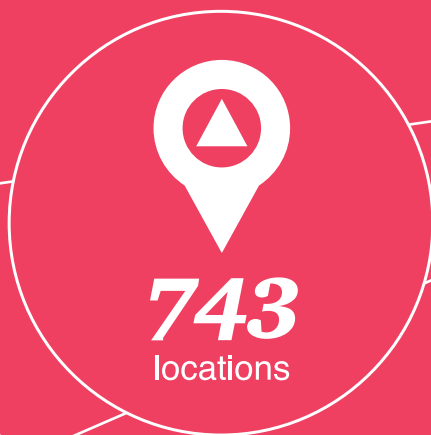
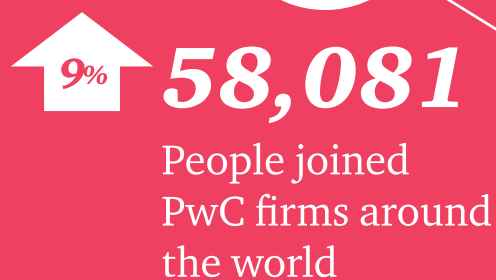
Credit against VAT liability (which may result in overpayment and refund) may be taken for VAT paid on all imports and purchases. Credit for VAT paid may not be taken in proportion to revenues that are exempt from VAT or for VAT paid on goods and services that do not represent deductible expenses under the Income Tax Law. With the exception of purchases made by foreign tourists, there is no mechanism to recover the VAT paid by non-residents.

There are some exceptions, principally when the sales of an enterprise are exempt from VAT, in which case the enterprise is treated as the last consumer and will have to absorb any charges for VAT (input VAT) on its purchases, except insofar as its activities are subject to the zero rate. However, input VAT paid on goods or services used to produce items that are exempt from VAT, may be deducted for corporate income tax purposes.

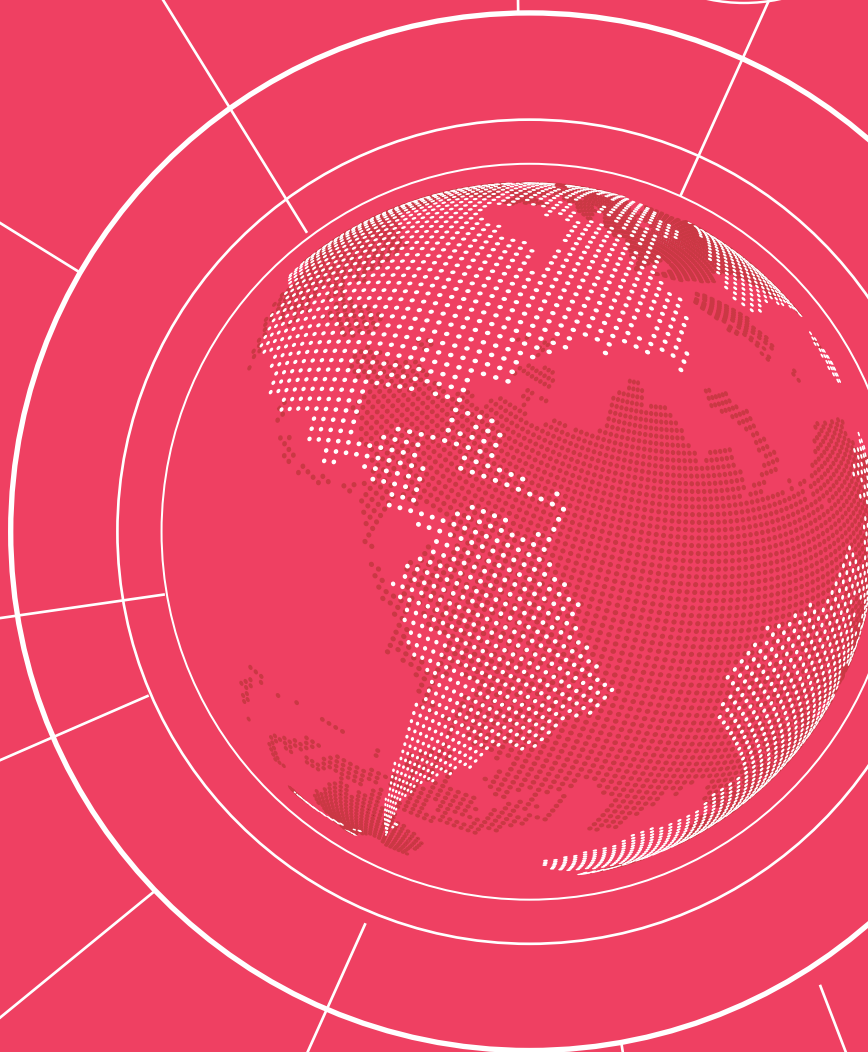
- **Excise Tax:** The Excise Tax Law levies substantial federal excise rates on the import and/or sale of certain taxable items, such as gasoline (variable), beer (26.5%), wine (26.5 to 53%), spirits (53%), and cigarettes and other tobacco products (160% plus an additional quota), as well as on certain services related to these activities, such as commission, mediation, and distribution of excise taxable items, along with services for raffles and gambling (30%). Excise tax is also applicable to certain telecommunication services (3%). Additionally, the Excise Tax Law applies to soft drinks at MXN 1 per liter and to junk food at an 8% rate. In both cases, the excise tax is payable by the producer or importer.
- **State and Municipal Taxes:** Taxes levied by states and cities in Mexico are much lower than the federal levies, and in most cases are also lower than those of comparable entities in the US and other countries. Municipal taxes are usually of minor importance. The states and municipalities may not tax transactions subject to Federal VAT, of which they receive a substantial share from the federal government. Other activities, such as banking, may also not be taxed at the local level. The main state and municipal taxes are as follows:
 - **Property taxes:** A local tax on the acquisition of real estate is levied on all types of transfers of real property and the rights thereto. In general terms, subject to the review of each state law or the Mexico City Financial Code, this tax is payable by the person or entity that becomes the owner of the property, whether by purchase, donation, inheritance, contribution, merger, spin-off, liquidation, in trust, or otherwise. In Mexico, real estate is defined as land or as land and the structures attached thereto. In Mexico City, the tax is calculated at a progressive rate and the maximum rate is about 4.9%, aside from the respective notary fees and other transfer costs. The tax base is the highest between the transfer price, the fair market value and the appraisal value of the property. Notary fees and other transfer costs often increase the purchase price by two or more additional points.
 - **Title transfer taxes:** As stated previously, the transfer of real estate is almost without exception subject to a variable transfer tax at rates averaging 3 to 4%. The tax is levied by most states and Mexico City.
 - **Taxes on earned income:** Some Mexican states levy a relatively low tax on salaries and other income earned by employees, which in most cases is payable by the employer (e.g. Mexico City imposes a 3% payroll tax payable by the employer).
 - **Independent opinion for Mexico City and other states tax compliance:** In the case of Mexico City and other states, a special purpose statutory tax opinion on the status of state taxes issued by an independent public accountant is required by the local authorities.

PwC's global network

Our people



Our revenues





Our clients

PwC firms provided
services to:

422

Fortune Global 500
companies



Corporate responsibility

6%



61,702

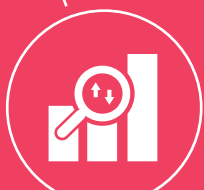
PwC people involved
in community activities

17%



820,127

hours of general, professional
services and skilled
volunteering



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