



Doing Business in Peru 2020





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Foreword

Peru remains as one of the most stable and promising economies in the region. In fact, the country's resilience allowed it to achieve a 2.5% growth in 2019, and it is expected that 2020 will see a recovery of growth, despite the country's vulnerability to external shocks such as a decline in commodity prices or changes in international financial conditions. This stability is possible because, over the years, different Peruvian governments have carried out several reforms to improve business climate, promote foreign investment and boost the country's competitiveness.

Peru has experienced constant growth in its Gross Domestic Product (GDP) for the past few years, driven mainly by the production and export of commodities. However, due to the international volatile context, such as the trade war between China and the United States, and the social outbreak the region has experienced in the last months, Peru's growth rate has decelerated, as occurred in most of the neighboring countries and other emerging economies.

Doing business in Peru contains the most recent, reliable and detailed information on the major macroeconomic, tax, corporate, labor and social security matters about Peru. We are confident that the content of this publication will be helpful for both investors who wish to participate in our market and business leaders already present, who need to be up-to-date on the most relevant regulatory changes in order to conduct a successful business in Peru.

PwC has 95 years of uninterrupted presence in Peru, and significant experience providing business advisory as well as tax and audit services through its multidisciplinary teams, assisting organizations to accomplish their business goals.

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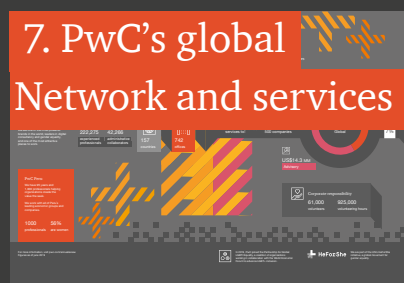
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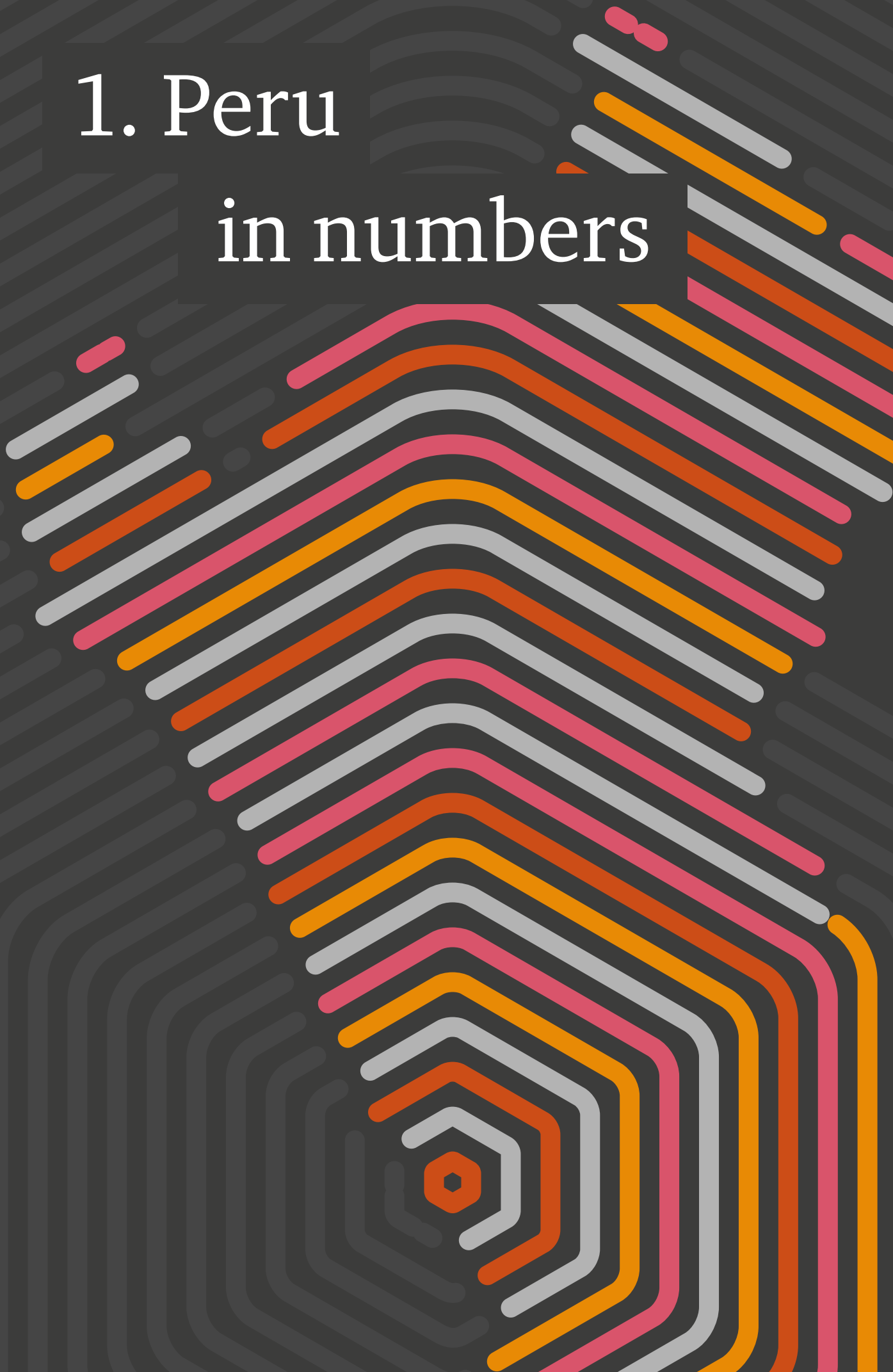
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1. Peru

in numbers



Over the past few years, Peru has maintained economic stability, welcoming brand new players and businesses. At a 2.5% growth rate, the country remains one of the most attractive markets for new investors, with a growth projection above the regional average.

These are some important facts to be considered by business leaders interested in investing in Peru.

32,131,400

Population

US\$6,947

Income per capita *

US\$222.05 Bn

GDP *

2.04%

Inflation rate

US\$65.90 Bn

Foreign debt *

1,285,215.60 km²

Total land area

US\$6.47 Bn

Foreign direct investment *

76.5

Life expectancy at birth

US\$52.50 Bn

National budget

Source: World Bank, INEI, BCRP, MEF

* December 2018



2. Foreign

investment

considerations

Foreign investment considerations

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 controls, 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 borders or in natural protected areas.

Moreover, the acquisitions of shares belonging to local investors are 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

Domiciled entities will be able to deduct the following taxes as credit:

- Income tax paid or withheld abroad for dividends distributed (“direct credit”) by non-domiciled entities (from now on, “first level entities”).
- Corporate income tax paid abroad by the first level entities (“indirect first level credit”) in the proportion that corresponds to the above-mentioned dividends. Requirements:
 - The domiciled entity must have a direct participation in the first level entity of at least 10% of the total amount of shares with voting rights during at least 2 months prior to the distribution of dividends.
- Corporate income tax paid abroad by non-domiciled entities that distribute dividends to first level entities, in proportion to such dividends (“indirect second level credit”). Requirements:
 - The domiciled entity must have an indirect participation of at least 10% of the total amount of shares of the second level entity with right to vote for the last 12 months prior to the distribution of dividends.
 - The second level and the first level entity must be domiciled in the same country, or the second level entity must be resident in a country that celebrated a tax information exchange agreement.

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 may have the following deductions:

The taxpayer whose net income is equal to or less than 2300 Tax Units (PEN9,890,000), may have the following deductions:

215%

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.

175%

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

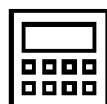
The taxpayer whose net income is more than 2300 Tax Units (PEN9,890,000), may have the following deductions:

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 of development (Zonas Especiales de Desarrollo – ZED) – known before as Centers of Export, Transformation, Industry, Commercialization, and Services (CETICOS)

ZED 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. The ZEDs are located in the cities of Paita (Piura), Ilo (Moquegua), and Matarani (Arequipa).

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

Until 31 December 2042, companies engaged in industrial, *maquila*, or assembling activities, established or set up in the ZED 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.



3. Corporate considerations

Corporate considerations

In Peru no specific rules have been established to authorize percentages for foreign or domestic investment participations. However, the Peruvian Companies Act (hereinafter, 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 regulations note that all representatives for procedures before the Tax Authority must be Peruvian or have a Foreign Residence Card. In addition, all newly appointed directors shall formally accept their appointment in order to carry out the corresponding registration at the Peruvian Public Registry (SUNARP).

Share capital

When incorporating a company in Peru, it is required for the enterprise to have share capital, 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 S/1,000 (USD 300) 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. The bylaws of the company may establish share classes, limitations and conditions on the transfer of shares, but may not prohibit them.

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. The most common legal structure is the Closed Corporation.

In Closed Corporations, having a board of directors is not mandatory.

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 all the resolutions taken by their governing bodies. The corporate books are used for General Shareholders' Meetings resolutions and board of directors resolutions.

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 are 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.



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 the Peruvian Public Registry 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 the Public Registry, 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, 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 the Peruvian Public Registry. Registration procedures take approximately 5 to 7 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.
- **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 by 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 the Peruvian Public Registry. 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 the Peruvian Public Registry (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 the Peruvian Public Registry. 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).

Merger Control Act

The Peruvian Merger Control Act will come into force in August 20th, 2020, for a period of five years. It establishes a merger and acquisition control system related to economic concentrations that involve transfer or permanent change in the control chain of a legal entity. The procedure will be in charge of a governmental entity, the *Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual* (INDECOP), through its Competition Commission as a first instance, and its Defense of Competition and Intellectual Property Court for the appeals. This last instance decision can be subject of review on a civil court.

As part of the evaluation procedure, in order to start a merger or transference process that includes a Peruvian company or legal entity, it is advisable to take into consideration this new regulation.



4. Labor

Legislation

Labor legislation

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

- **Unlimited Term Agreements:** Those signed 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 must be duly detailed in the contract. According to Legislative Decree 1246, approved on November 11th, 2016, fixed term agreements and trainee agreements do not need to be registered with the Labor Authority.

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

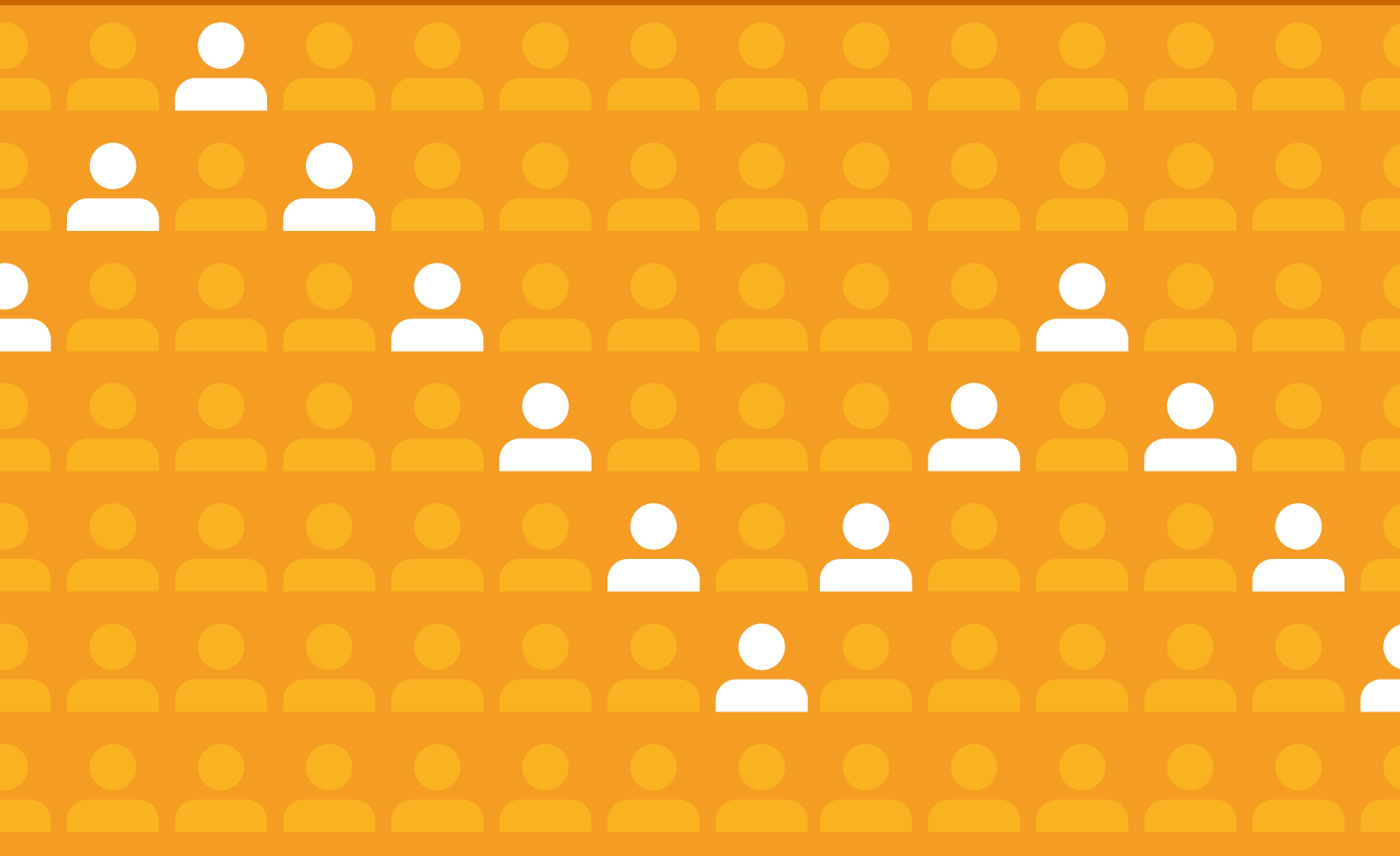
- **Intermediation Agreements:** They are meant for the rendering of temporary, complementary and highly specialized services. The intermediary entity assigns employees to a company in order to perform services under instructions of the latter, while their labor relationship continues to be responsibility 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 the result of the activities. The employees remain subordinate to them.

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 December 30, 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, if an employee is 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 S/ 930 (approximately US\$276). The employer may also agree with employees whose monthly compensation is not less than two Tax Units (equivalent to S/8,400 or approximately US\$2,545) that their compensation be paid as an annual package calculated on an annual basis, including all legal and conventional benefits, except for profit sharing.
- **Legal bonuses:** Employers must pay a bonus equal to one monthly salary on 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.
- **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, from the beginning of a labor relationship, are entitled to a mandatory life insurance provided by the employer. This life insurance contract must be registered (online) before the Labor Authority.
- **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.

Employer and employee may agree to split the vacation days in two periods of 15 days each. The first one must be a period of not less than 7 and 8 days, consecutive. The remaining period can be enjoyed in periods of less than 7 days. However, any agreement must be in written form. In the absence of it, the employer decides the opportunity to enjoy vacations but not the division of vacation.

Regarding compensation, when the employment is terminated, the vacation days enjoyed in advanced will be compensated with vacations truncated to that date. Likewise, if at the end of the employment relationship, the days enjoyed are superior to the vacations acquired, the worker has no obligation of compensation; that is, in case the worker does not have enough vacations to compensate, he is not obliged to any compensation.

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, and they could be enjoyed in periods of less than 7 consecutive days.

- **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.

To calculate profit sharing, the employer must consider the days of maternity leave as actually worked, both prenatal and postnatal.



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.

Please, consider that additional contributions may vary depending on the type of industry.

Safety and health regulations at work

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. If there is 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 at 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.

People with disabilities

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.

The company must make all the necessary and reasonable adjustments during the recruitment process for people with disabilities, such as the implementation of tools, machinery and signage, among others.

Paternity leave

According to the law 30807, the employer must grant the employee 10 consecutive days of paternity leave. However, the number of days may extend to 20 in case of premature children or multiple birth. In case of a terminal congenital disease, severe disability or serious complications in the mother's health, the employee must be granted 30 days of leave.

Other labor regulations

- The General Law for the Protection of People with Diabetes states that the employer must consider, as part of the company's politics, that diabetes and the consequences it carries should not be causes to prevent the entry or hiring of an employee, neither should they be considered as reasons to terminate a contract or employment relationship.
- 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.

- The Law for equality and nondiscrimination in wages states specific obligations that every company must consider within its planning of equality and non-discrimination, such as: i) table of positions and salary bands, ii) training plans and communications to the staff; and iii) career lines and promotions.

Labor Audit System

The labor authority oversees and ensures 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. The amount imposed varies according to the type of company and the number of employees affected.



Fine according to type of infraction and number of workers affected

Microenterprises										
Number of employees affected	1	2	3	4	5	6	7	8	9	10 or more
Slight infringement	189.00	210.00	294.00	336.00	378.00	462.00	588.00	672.00	756.00	966.00
Serious infringement	462.00	588.00	672.00	756.00	840.00	1,050.00	1,218.00	1,428.00	1,596.00	1,890.00
Very serious infringement	966.00	1,050.00	1,218.00	1,344.00	1,512.00	1,722.00	1,974.00	2,268.00	2,562.00	2,856.00

Small enterprises										
Number of employees affected	1 a 5	6 a 10	11 a 20	21 a 30	31 a 40	41 a 50	51 a 60	61 a 70	71 a 99	100 or more
Slight infringement	378.0	588.0	756.0	966.0	1,344.0	1,890.0	2,562.0	3,486.0	4,242.0	9,450.0
Serious infringement	1,890.0	2,478.0	3,234.00	4,074.00	5,292.0	6,804.0	8,778.00	10,206.00	11,802.0	18,900.0
Very serious infringement	3,234.0	4,158.0	5,376.0	6,888.0	8,988.0	11,550.0	14,952.0	18,144.0	20,790.0	32,130.0

Enterprises in the general system										
Number of employees affected	1 a 10	11 a 25	26 a 50	51 a 100	101 a 200	201 a 300	301 a 400	401 a 500	501 a 999	1000 or more
Slight infringement	966.0	3,234.0	4,620.0	8,526.0	11,340.0	13,608.0	19,362.0	27,804.0	39,690.0	56,700.0
Serious infringement	5,670.0	14,196.0	18,900.0	23,646.0	28,350.0	37,800.0	47,166.0	66,150.0	75,600.0	94,500.0
Very serious infringement	9,450.0	18,900.0	28,350.0	41,580.0	51,030.0	66,150.0	85,050.0	113,400.0	151,200.0	189,000.0



5. Foreign Trade

Foreign trade

Peru is a member of the World Trade Organization (WTO) and has several 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
Bilateral agreements	Singapore	2009
	South Korea	2011
	Thailand	2011
	Chile	2009
	Mexico	2012
	Costa Rica	2013
	Panama	2012
	Cuba	2001
	Venezuela	2013
	Pacific Alliance: Colombia, Chile and Mexico	2012
	Honduras	2017



Peru has also signed trade agreements soon to be effective with Guatemala, Brazil, Australia, and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). It 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 related to their tariff classification under the Customs Tariff and are 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 authority during customs clearance.

The taxes required are the following:

- Ad valorem customs duty (rates of 0%, 6% and 11%).
- VAT (16%).
- Municipal promotion tax (2%).

Depending of the nature of the goods, other taxes may apply, including the following:

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

There are no restrictions on imported and exported goods. Notwithstanding, there is a limited list of products that cannot be imported or exported (forbidden and restricted goods). 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 FOB value of imported goods, 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 3% of the freight on board (FOB) value of the exported good, provided such amount does not exceed 50% of the good's production cost (CIF value). 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).

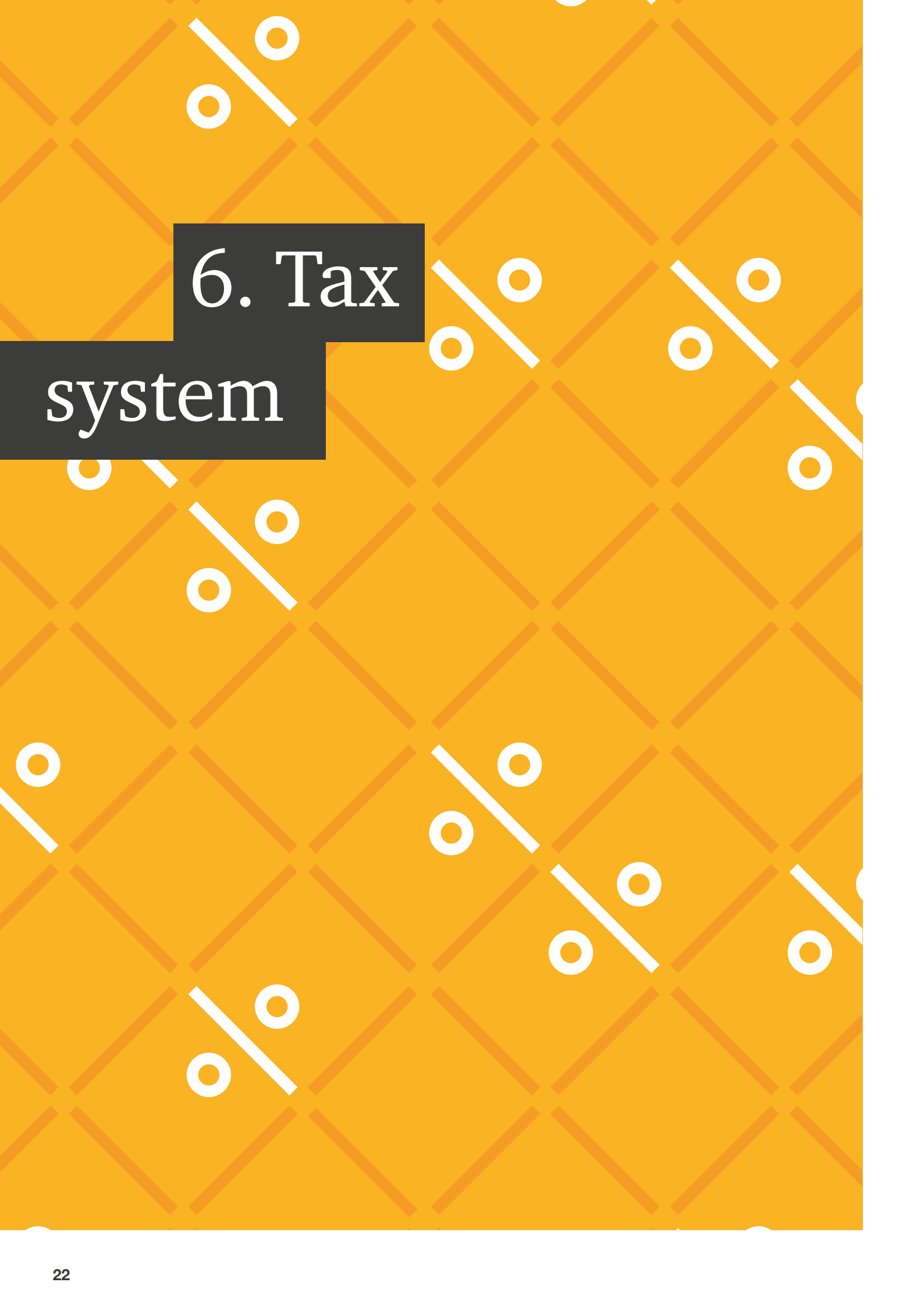
For such purposes, the beneficiaries of the drawback regime are the manufacturer and exporter companies whose cost of production is increased by the customs duties paid upon the import of: (i) raw material, (ii) intermediate products, or (iii) pieces incorporated or consumed in the production of exported 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.



Recent changes in customs legislation:

On December 2019, Peruvian government approved the amendments to the General Customs Law. The general purpose of these changes was to expedite global trade operations, safeguard the supply chain and adjust Peruvian customs legislation to current international standards. Amendments to the General Customs Law are still pending to be published.





6. Tax

system

Tax system

Main taxes

Corporate Income Tax

Pursuant to the Peruvian Income Tax Law (PITL), domiciled taxpayers are subject to said tax on a worldwide basis; whereas, branches, agencies, and permanent establishments (PE) of non-resident entities incorporated in Peru, are subject to income tax on their Peruvian-source income. Peruvian income tax applies on an annual and accrual basis. The Peruvian corporate income tax rate is 29.5%.

Considering that the income tax is determined yearly and monthly (through payments in advance); these payments in advance have a coefficient that is determined by dividing the income tax calculated the previous year by the total taxable income for the same period. On the other hand, new companies or companies with tax losses determine their monthly advance obligations by paying 1.5% of their monthly net revenues. However, it is possible to reduce the coefficient or even suspend the monthly advance payments under certain conditions.

To establish taxable income, entities are allowed to deduct expenses to the necessary extent 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, and others).

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 Corporate Income Tax (CIT) rate and the taxable income qualifies as foreign-source income for Peruvian income tax purposes. Dividends and any other type of profit distribution paid by a domiciled taxpayer to a non-domiciled entity will be subject to a 5% withholding tax. If the dividends correspond to earnings of the fiscal year 2014 the withholding will be 4.1%, and for earnings from the fiscal years 2015-2016, the rate will be 6.8%.

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; on the contrary, the distribution of dividends in favor of domiciled individuals is subject to a 5% of WHT.

Enterprises are subject to an additional tax rate of 5% on every amount or payment in kind that, as a 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.

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.

Deductions

Obligations that are fulfilled through cash payments exceeding PEN 3,500 must be made via bank deposits, wire transfers, payment orders, credit cards, non-negotiable checks, or other means of payment authorized by Law 28194, 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 related to transactions entered into with (i) entities resident in tax havens or non-cooperating territories, (ii) PEs located in tax havens or non-cooperating territories, or (iii) entities that generate revenues or income through tax havens or non-cooperating territories.

Nonetheless, expenses incurred from the following transactions are excluded from the aforementioned limitations, provided that the retribution paid is at market value according to the tax rules on the matter:

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

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 are subject to a flat 5% rate of depreciation, 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 amortized in the first period of operation or 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

According to the PITL, interest deductibility is subject to certain limits for loans between related parties (thin capitalization rules). According to such rule, in the case of loans between related parties, the amount of interest to be deducted is limited to interest from indebtedness not exceeding 3 times the debtor's net equity as of the end of the previous fiscal year.

Only the amount of interest that proportionally corresponds to the maximum amount of debt permitted after applying such coefficient is deductible.

Pursuant to the recent changes to the PITL, the thin capitalization rule will be applicable to all loans (related or unrelated debt). The new thin cap rule will apply for loans entered or renewed as of September 13, 2018, until December 31, 2020.

The thin capitalization rule, will not apply to:

- a. Insurance and Banking companies.
- b. Taxpayers whose net income is equal to or less than 2500 tax units (approximately USD 3.1 MM).
- c. Taxpayers who develop public infrastructure projects, public services, services related to public services, applied investigation and/or technological innovation through Public-Private Entrepreneurship Associations.
- d. Interest arising from loans required to finance the activities mentioned in the previous point.
- e. Indebtedness arising from the issuance of debt securities, subject to certain requirements.

Additionally, a limitation on interest deduction applicable as of January 1, 2021, has been established. Such limit will be 30% of the company's EBITDA for related and unrelated debt. For purposes of this new rule, EBITDA is defined as the net income after setting off net operating losses, plus net interest, depreciation and amortization. Non-deductible interest exceeding the aforementioned limit may be carried forward to the following 4 years.

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 to perceive donations (with certain exceptions). 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 of their profits among their employees (5%, 8%, or 10% depending on the industry). The basis is the tax profit of the fiscal year. The amount of distribution for each employee depends on the employee's effective working days during the year and annual retribution paid.

Employee's retributions and health insurance premiums

Employee's retributions paid during a fiscal year may be deducted in such year, provided that 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/husbands, and children are deductible.

Vehicle expenses deductions

Vehicle expenses may be deducted, provided that the vehicles are essential to a company's business activities and are continuously used for such purposes. There is a limitation on the tax deductibility of vehicle expenses used for administrative 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 of 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 one 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

Payments in favor of non-domiciled beneficiaries may be deducted as a cost or expense in the fiscal year in which they correspond to the extent that they have been effectively paid or credited within the term established to file the annual tax return (for the year in which they were incurred). Expenses that are not deducted in fiscal year to which they correspond will be deductible in the fiscal year in which they are effectively paid, even if they have been registered in a previous fiscal year.



Group taxation

Group taxation is not permitted in Peru.

Transfer pricing rules

Transactions between related parties and those entered into with parties domiciled in tax havens are subject to transfer pricing rules.

The existence of the transactions between related parties determine the application of specific valuation methods, which are established in the Income Tax law.

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 fair market value (FMV) for tax purposes. If such value differs from the FMV, either by overvaluation or sub valuation, 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 if transfer pricing rules would have been used. The adjustment will be imposed 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 or non-cooperating territories, the FMV 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.

Formal obligations

New formal obligations have been approved:

- **Informative tax return – Local report:** Mandatory for taxpayers whose accrued income in the taxable year exceeded 2,300 Tax Units. They must provide information of transactions which generate taxable income and deductible costs/expenses.
- **Informative tax return – Master report:** Mandatory for companies that are part of a group with profits higher than 20,000 Tax Units, and companies that would have performed transactions within the scope of transfer pricing rules, whose amount of operations is equal or higher than 400 Tax Units. 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.
- **Informative tax return – Country by country report:** Mandatory for domiciled 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.

Benefit test requirement

The benefit test must be accomplished when a domiciled entity receives a service rendered by any of its related parties. Such test is considered complied 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.

If the domiciled entity complies successfully with the benefit requirement test, then the deduction of the cost or expense incurred for the services rendered would be accepted. Low value services must not exceed the margin of 5%.



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.

Advance Transfer Pricing Agreements (APAs)

Peruvian tax law allows taxpayers to enter into APAs before the Tax Administration, in order to determine the price, retribution and/or the profit margin. In addition, it can be agreed the methodology which will support the values to be used by taxpayers in setting the prices of the transactions which may be agreed with related parties, tax havens or non-cooperating territories.

The Peruvian Tax Administration may also enter into APAs with other tax administration of countries that Peru has signed a double tax treaty.

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.

All of them are levied over their net Peruvian source income on their revenues accrued during the fiscal year.

According to the PITL, a foreign company is considered a PE if:

- It has a fixed place of business through which it carries out business activities in whole or in part;
- 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;
- 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;
- works or construction projects, installation or assembly, as well as the supervision activities related to them, when their duration exceeds 183 days, unless a lower term has been established through a Double Tax Treaty, in which case, that would be the applicable term;
- services, when they are performed in the country for a same project, service or for a related one, for a period or periods that in total exceed 183 days within any given 12 month period, unless a lower term has been established through a Double Tax Treaty, in which case, that would be the applicable term.

PEs must 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 regarding the retribution 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, a report issued by an audit firm will be required, in which case it must be stated that the technical assistance has been effectively rendered for the 15% WHT rate to apply; otherwise, a WHT rate of 30% will be applicable.

In the case of the services that entail the execution of activities partly in Peru and partly 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:

Type of payment	Deemed Peruvian-source income (%)
Insurance	7
Lease of vessels	80
Lease of aircraft	60
Air transport	1
Maritime transport	2
Telecom services	5
International news services	10
Distribution of movies, records, and similar products	20
Supply of containers	15
Demurrage of containers	80
Rights for broadcasting live foreign TV shows within Peru	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 applicable whenever the dividend is actually paid, without considering the moment in which the shareholder agreement is executed.

General anti-avoidance rule (GAAR)

The Legislative Decree N° 1422, published on September 13, 2018, offers additional guidance on the application of the Peruvian GAAR (the so-called “Norm XVI”), which has been suspended since its introduction in 2012. The GAAR allows the Peruvian tax authorities to determine the true nature of any transaction and recharacterize it if deemed necessary.

Norm XVI is applicable in tax audits carried out in order to analyze cases, facts, or situations occurring on or after July 19, 2012, provided that the Peruvian tax inspector has obtained a favorable opinion from the review committee. This committee consists of three Tax Administration officials that are accountants or lawyers by profession, and that have previous experience in tax audits or in the interpretation of Peruvian tax legislation performed in the public sector. The tax inspector must provide the committee with the tax audit records and a memorandum that must be shared with the taxpayer. Before issuing its opinion, the review committee must schedule a hearing with the taxpayer to explain the case and information included in the memorandum. Opinions, that must be issued within 30 working days of that hearing, are binding on the tax inspector and must be notified to the taxpayer.

Foreign tax relief

Tax credits are permitted, within certain limits, for taxes paid abroad on foreign-source income.

Since January 1, 2019, domiciled taxpayers are entitled to deduct the corporate income tax paid by non-domiciled companies of first and second level that distributed them dividends.

Regarding paid Income tax deduction by first level non-domiciled companies, the domiciled entity must have direct participation on at least 10% of the total shares with voting rights of the first level non-domiciled company. In this context, there are two forms of deductible income tax: (i) The one paid or withheld abroad for distributed dividends or; (ii) the corporate income tax according to the amount of the dividends abovementioned.

In terms of paid Income tax deduction by second level companies, the domiciled entity must have direct participation on at least 10% of the total shares with voting rights of the second level non-domiciled company. For this, the second level non-domiciled company needs to be: (i) resident of a country that has celebrated an information exchange treaty with Peru or, (ii) resident of the same country as the first level non-domiciled company.

Other taxes

Value-Added Tax (VAT)

Peruvian VAT law establishes that the following transactions will be subject to VAT at a rate of 18%.

- Sale of goods within the country.
- Render or 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 export of services provided that certain conditions are met. 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 be offset against 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 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 following services are subject to a withholding rate of 12%: (i) labor intermediation, (ii) maintenance and repair of movable goods, (iii) other corporate services, and (iv) other services levied with VAT.

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.

VAT withholding regime

This system is applicable to recipients, appointed as VAT withholding agents, of goods or services subject to VAT. Purchasers of goods and users of services must withhold 3% of the price or fees invoiced where the price of the supply exceeds PEN 700 (approximately USD 250).

Recipients of goods or services must be expressly appointed as a VAT withholding agent by the Tax Administration. The designation of withholding agents, as well as the exclusion of any of them, is determined by Supreme Decree endorsed by the Ministry of Economy and Finance (MEF), with the technical opinion of the Tax Administration.

The provider may deduct the withheld amounts from the gross tax (this is, the total amount of VAT on sales or services performed in the period) until the last day of the period for which the return corresponds. The amount not applied would be carried forward to the next periods until they are exhausted, without any time limit. Also, the provider would be entitled to request the refund of the withheld amounts that were not applied (as a VAT credit), to the extent such amounts are not applied over a term of 3 months.

VAT perception regime

This system is applicable to the sale of certain goods within the country, such as mixed oil gas, carbon dioxide, among others. For this purpose, perception agents, which are previously appointed by the Tax Administration, must withhold in advance an amount of the VAT that will be generated by its customers in future transactions with the goods. Perception regime is not applicable to the rendering of services.

The sale of goods listed in Superintendency Resolution 058-2006/SUNAT, in which the perception agent would have to withhold a perception amount that the customer would be obliged to pay for the acquisition of such goods; and, in the import of goods, with some specific exemptions established by the Tax Administration.

In the import of goods, the Tax Administration acts as the perception agent. In this case, the withholding rates range between 3.5%, 5% and 10%.

The regime would be applicable to the definitive import of goods subject to VAT, except for the import of goods subject to temporary importation regimes and the goods listed in the annex 1 of the Superintendency Resolution 203-2003.

Amounts subject to the perception regime can be recovered either as a credit or as a refund.

The taxpayer may offset as input VAT the amount withheld from it. If no VAT levied transactions were to be performed or if these would not be enough to absorb the perceptions applied in a certain month, the surplus amounts may be used in the next months until it is exhausted.

VAT special recovery regime for investments

This regime allows companies at pre-operative stage to recover the input VAT on the import and/or local acquisition of new capital goods, new intermediate goods, services and construction contracts, that were acquired in the pre-operative stage, to be used directly in the execution of a project investment commitment and which are destined to the performance of operations levied with VAT or exportations.

For purposes of be benefited with this regime, the applicants must comply with the following requirements:

- The implementation of a project in any economic sector that generates corporate income, committing to invest not less than USD 5'000,000.00 (Five Million Dollars), not including VAT.
- Have a project that requires a pre-operative stage equal or more than 2 years, counted as from the date of initiation of the investment schedule.
- Obtain the Ministerial Resolution of the corresponding sector, approving the subjects who would be benefited with the regime; as well as the list of goods, services and construction contracts approved for the early recovery of the VAT.

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 considering 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	Real estate property tax rate (%)
Up to 15 Tax Units	0.2
Over 15 and up to 60 Tax Units	0.6
Over 60 Tax Units	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 retribution agreed 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 assumed exclusively by the buyer, regardless of what the parties have agreed. The first ten Tax Units (PEN 43,000) of the tax basis are exempt from this tax.

Tax on Vehicular Assets

This is an annual tax which levies the ownership of vehicles, cars, trucks, station wagons, and buses, among others in kind, which have no more than 3 years old. This term will be considered as from the first inscription in the Registry of Vehicular Property (SUNARP).

The applicable tax rate is 1%, applicable on the value of the vehicle. In any case, the amount to be paid shall not be less than 1.5% of the effective applicable Tax Unit as of January 1 of the year in which the tax corresponds.

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 CIT are required to pay TNAT, except for companies which are in preoperative stages or that commenced business as from January 1 of the fiscal year in which TNAT must be paid. The tax basis is the value of the assets set forth in the taxpayer's balance sheet as of 31 December of the year prior to the one in which corresponds 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%.

The TNAT Law indicates that the following items, among others, shall not be considered for the tax basis of ITAN:

- The shares, participations or rights of capital of companies subject to the tax, except that they were exempted from the tax.
- The value of the machinery and equipment with no more than 3 years of use.
- The goods delivered in concession by the Government, according to the Supreme Decree 059-96-PCM, and which are affected to the provision of public services, as well as the constructions carried out on them.



Special Taxation on Mining Industry

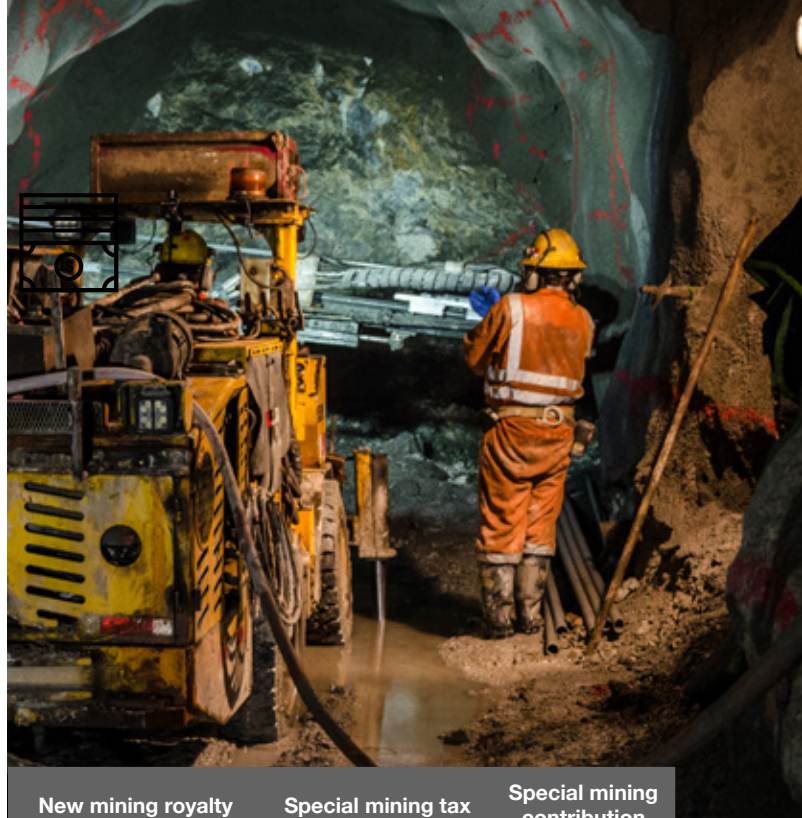
The new mining royalty (NMR) regime, special mining tax (SMT), and special mining contribution (SMC) are economic considerations paid to the Peruvian government for the exploitation of mineral resources. The NMR applies to metallic and non-metallic mineral resources, while the SMT and SMC only apply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

	New mining royalty (NMR)	Special mining tax (SMT)	Special mining contribution (SMC)
Concept	No tax stability	No tax stability	With tax stability
Regime	Previous mining royalty modified	New	New
Accumulative 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 0.13% in 2019.

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 2019.

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

According to PITL, domiciled taxpayers are levied on their worldwide income, whereas non-domiciled taxpayers are levied only on their Peruvian-source income. Income obtained from the indirect transfer of shares issued by entities incorporated in Peru is deemed Peruvian-sourced. For such purposes, an indirect transfer of shares is deemed to exist when the shares of a non-domiciled entity, which in turn owns – directly or indirectly through other entities – shares issued by a domiciled entity, are transferred, provided the following two conditions are jointly met:

- i. During the 12 months prior to transfer, the fair market value (FMV) of the shares of the Peruvian entity owned by the foreign entity equals 50% or more of the FMV of the shares of the foreign entity (hereinafter the "50% test"); and,
- ii. During any given 12-month period, shares representing 10% or more of the foreign entity's share capital are transferred (the minimum rule).

Pursuant to the recent changes to PITL, an additional scenario for indirect transfer has been included. An indirect transfer is considered when the total value of the shares of the domiciled entity being indirectly transferred is equal to or greater than 40,000 tax units (Approx. USD50MM). Such amount will be determined by applying the percentage obtained for the 50% test (above) on the total value agreed for the sale of the shares transferred by the taxpayer and its related parties.

Further Regulations will establish the methods by which the FMV of the shares will be calculated for purposes of the 50% test referred above. Such methods may consider the discounted cash flow method, the equity participation value adjusted by the average active market rate, the value of equity participation on the basis of audited balance sheets, even before 12 months preceding the transfer of shares, among others.

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.

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.

Ultimate Beneficiary informative affidavit

Legal persons and legal entities are required to identify, obtain, update, declare, retain and provide information about their ultimate beneficiaries and, in this regard, they have to submit the Ultimate Beneficiary informative affidavit. The identification of these beneficiaries is based on the following criteria: (a) The natural person who directly or indirectly owns at least ten percent (10%) of the legal entity's shares, (b) A natural person who, acting individually or with others as a decision unit, has power to designate or remove the majority of the administrative, management or supervisory bodies, or has decision-making power in the financial, operational and/or commercial agreements that are adopted. When there is no possibility to identify a person by criteria (a) and (b), the ultimate beneficiary of the legal entity that should be reported is the person within the company with the highest administrative position.





Tax treaties

Peru has entered 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	5%	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.

7. PwC's global network and services

One network

We are part of the largest international professional services network, carrying out multidisciplinary work to offer effective and innovative solutions to our clients.

We build value relationships that are sustainable over time, generating confidence and solving complex problems.

We are one of the most powerful brands in the world, leaders in digital consultancy and gender equality, and one of the most attractive places to work.

One collaborators

69,734

New collaborators around the world

11,464

Partners

222,275

experienced professionals

21%

are women

42,266

administrative collaborators

276,005

collaborators around the world



157 countries



742 offices

PwC Peru

We have 95 years and 1,000 professionals helping organizations create the value they seek.

We work with all of Peru's leading economic groups and companies.

1000

professionals

56%

are women



Our revenues



US\$10.7 MM

Tax & Legal Services



US\$17.3 MM

Assurance

Our clients

PwC firms provide services to:

425

Fortune Global 500 companies



US\$
42.4 MM
Global

7%



US\$14.3 MM

Advisory



Corporate responsibility

61,000

volunteers

925,000

volunteering hours



In 2019, PwC joined the Partnership for Global LGBTI Equality, a coalition of organisations working in collaboration with the World Economic Forum to advance LGBT+ inclusion.



HeForShe

We are part of the UN's HeForShe initiative, a global movement for gender equality.

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