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FOREIGN INCOME

Business Operations in Peru

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The author wishes to recognize the following for their contributions: Dr. Susan Gamarra Blondet; Dr. Evelyn Román Carrasco; Dr. Julio Vidal Villanueva, Partner; Dr. Ricardo Morón Acosta; Dr. Andres Kuan-Veng, Partner; Dr. Diego Fasanando Van Oordt; Dr. Víctor Ferro Delgado, Partner; Dr. Armando Gutierrez Gonzales, Partner; Dr. Sandro Nuñez Paz, Partner; Dr. Sheerley Cárdenas Guerra; and Dr. Carlos Arata Delgado, Partner.

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TAX MANAGEMENT PORTFOLIOS™

FOREIGN INCOME

Business Operations in Peru

PORTFOLIO DESCRIPTION

Tax Management Portfolio, *Business Operations in Peru*, No. 7288, contains general information designed to assist foreign investors/businesses in determining the best method of conducting their operations in Peru from both a tax and a general legal perspective. The Portfolio describes the forms of doing business in Peru and provides an analysis of the statutory and procedural framework of Peruvian income taxation as it applies to individuals and corporations. In addition to providing a detailed explanation of the Peruvian income tax system, the Portfolio discusses the value added tax, the temporary tax on net assets, the real property tax, the real property transfer tax, as well as corporate, customs, intellectual property, labor, immigration, and foreign investment related law issues.

A guide to the Detailed Analysis is provided by a Table of Contents. The Portfolio's Worksheets provide access to the most important tax return forms for corporations and individuals. A complete list is shown in the Table of Worksheets.

This Portfolio may be cited as Dávila, 7288 T.M., *Business Operations in Peru*.

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DETAILED ANALYSIS

I. Peru — General Background

A. The Country and Its Political Organization

1. The Country

Peru is a democratic unitary republic¹ divided into regions, departments, provinces and districts.² Specifically, the country is divided into 24 municipal departments and one constitutional province (Callao). The country is governed by a democratically elected government led by a president, who serves for a five-year term.

The official languages in Peru are Spanish, Quechua, Aymara and the native languages.³ English is also widely spoken among business executives and professionals.

2. Political and Governmental Organization

The current Peruvian Constitution was enacted in 1993. Under its provisions, the president is both the head of state and the head of government. The president is elected every five years and no immediate reelection is allowed.⁴ The president's administrative acts must be countersigned by a minister.⁵

The president appoints the Council of Ministers, which is composed of the head of each ministry and a president. The Council of Ministers, and every minister as regards his or her own sector, is responsible for the direction and management of the public services in the country.⁶

The legislative branch of the Peruvian state resides in the Congress, which is unicameral and consists of 130 members elected for a five-year period.⁷

The judiciary, on the other hand, is organized as an autonomous hierarchical institution, exercising jurisdictional functions throughout the Peruvian territory.⁸

B. Legal System

1. Sources of Law

The Peruvian legal system is based on the following hierarchy of laws:

a. *The Political Constitution and the Human Rights Treaties*

The Political Constitution of Peru and the international treaties on human rights to which Peru is a party (e.g., International Covenant on Civil and Political Rights) are the supreme laws of the country, and have the highest legal priority followed by the Peruvian regulations.

The Republic of Peru is ruled by the Political Constitution of 1993, approved by the Democratic Constituent Congress and then ratified by referendum, and in force since December 31, 1993. The Constitution also regulates the organization of the Peruvian State and deals with individual fundamental rights and liberties.

Peruvians have equal rights before the law, such as the right of property, to work, to inherit, to participate in political, social and economic life, to profess a religion or belief, to security, to equal treatment regardless of sex, color, religion, language, opinion, economic situation, etc.⁹

The Peruvian Constitution protects these, and other fundamental rights, through the Constitutional Court, which is an autonomous and independent court formed by seven members elected by the Congress.¹⁰ This court has jurisdiction over legal actions seeking protection against the violation of constitutional rights by the authorities or by another citizen, such as habeas corpus, the amparo (action for the protection of constitutional rights), habeas data and compliance actions.¹¹

b. *Legislation*

The second priority rank is composed of the Peruvian legislation that includes:

(i) All international treaties executed and ratified by Peru that do not involve human rights (e.g., the Economic Compensation Agreement with the Southern Common Market — MERCOSUR);

(ii) Organic statutes that establish the regulatory framework for state entities and their approval, that require a qualified majority of the Congress¹² (e.g., General Law of the Financial and Insurance System);

(iii) Ordinary laws that regulate general and specific topics approved by the Congress (e.g., General Mining Law, General Environmental Law, etc.);

(iv) Legislative resolutions approved by the Congress for a specific purpose, such as an authorization for the president to leave the country;¹³

¹ Constitution, art. 43.

² Under Article 189 of the Constitution, the territory of the Republic is divided into regions, departments, provinces and districts. The government is organized and exercised at three different levels: (i) the national level; (ii) the regional level; and (iii) the local level, preserving the integrity and unity of the State and the Nation. The regional level of government consists of regions and departments, while the local level consists of provinces and districts.

³ Quechua, Aymara and the Native Languages are official languages in the cities where they predominate. Peruvian Constitution, art. 48.

⁴ Constitution, art. 112.

⁵ Constitution, art. 120.

⁶ Constitution, art. 119.

⁷ Constitution, art. 90.

⁸ Constitution, art. 138.

⁹ Constitution, art. 2.

¹⁰ Constitution, art. 201.

¹¹ Constitution, art. 202.

¹² Constitution, art. 106.

¹³ Constitution, art. 102.

(v) Rules of procedure of the Congress that regulate its organization and parliamentary procedure, and establish the rights and duties of congressmen and congresswomen;¹⁴

(vi) Urgent decrees, that are extraordinary measures approved by the Council of Ministers and the president when the national interest requires it. Urgent decrees have the same force as law, and they can be amended or eliminated by the Congress;¹⁵

(vii) Legislative decrees issued by the executive power that have the same authority as a law issued by the Congress. However, the Congress must previously authorize (via law) the executive branch to act in place of the Congress, with the purpose of making and enacting new laws on a specific matter and for a certain period of time;¹⁶

(viii) Decree laws that have been issued by a *de facto* government, but have the same status and rank of a law issued by Congress, because they are currently being applied despite their illegitimate origin; and

(ix) Regional and municipal ordinances issued by the regional and local governments. Even though regional and local governments are under the sovereignty and supervision of the central government, they are in charge of the development of regions and districts, with political, economic and administrative autonomy over the matters within their competence.¹⁷

c. Administrative Acts

The administrative acts are the third and the last priority rank in the Peruvian hierarchy of rules. They are issued by the executive power, classified by number and nature, and are composed of:

(i) Supreme decrees that regulate rules with the same status and force of a law and are applicable to specific sectorial activities at a national level;

(ii) Supreme resolutions, that are approved by the president and one or more ministers depending on the area;

(iii) Ministerial and deputy resolutions, that are approved by a minister or deputy regarding national and sectorial politics;¹⁸

(iv) Rectorate resolutions, that are approved by directors of the public administration departments in the exercise of their functions;

(v) Head of state regulations that specify politics and determine procedures or actions to be carried out in order to be compliant with the legal provisions in force; and

(vi) Regional and mayoral decrees that implement regional and local ordinances, procedures for the municipal and regional administrations, among others.¹⁹

2. Court System

The Peruvian Constitution establishes that the exercise of jurisdictional activity corresponds both to the ordinary justice and to the arbitration jurisdiction,²⁰ in accordance with the following principles, among others:²¹

(i) Independence in the exercise of jurisdictional activity;

(ii) Observance of due process;

(iii) Plurality of instances.

The law that regulates the organization and functions of the judiciary,²² establishes its jurisdictional categories as follows:²³

(i) The Supreme Court of Justice of the Republic;

(ii) The Superior Courts of Justice, in the respective judicial districts;

(iii) The Specialized Courts, in the respective provinces; and

(iv) The Justice of Peace Courts, in the cities or towns.

The Supreme Court is divided into chambers, in charge of social and constitutional rights, civil and criminal litigation. Each court is composed of five supreme judges. The superior courts are also divided by legal specializations and into chambers, composed of three superior judges.

The rules of jurisdiction by degree, amount, shift and territoriality are provided by the respective codes corresponding to each legal specialty.²⁴ In addition, the contentious-administrative action has the purpose of legal control by the judicial power of the public administration activity subject to administrative law, and the effective protection of the rights and interests of the claimant.²⁵

3. Arbitration System

Peru recognizes two forms of arbitration as a mean of dispute resolution: arbitration of law and arbitration of consensus (conscientious arbitration). In the former system, the arbitrators are lawyers who aim to resolve conflicts within a legal framework, while in the latter system, the arbitrators may be expert technicians or professionals from other fields who seek to resolve disputes to the best of their knowledge and understanding.

The Arbitration Law²⁶ regulates arbitrations of a national and international nature,²⁷ taking place within the Peruvian ter-

¹⁴ Constitution, art. 94.

¹⁵ Constitution, art. 118.

¹⁶ Constitution, art. 104.

¹⁷ Constitution, art. 192 and 195.

¹⁸ Constitution, art. 125.

¹⁹ Organic Law of Municipalities (Law No. 27972), art. 10 and 39.

²⁰ Constitution, art. 138 and 139, inc. 1.

²¹ Constitution, art. 139.

²² Supreme Decree 017-93-JUS.

²³ Supreme Decree 017-93-JUS, art.26.

²⁴ Procedural Civil Code, Procedural Constitutional Code, Procedural Contentious Administrative Law, Procedural Penal Code, Procedural Labor Law (29497).

²⁵ Constitution, art. 148; Contentious Administrative Law, art. 1.

²⁶ Legislative Decree 1071.

²⁷ Legislative Decree 1071, art. 1.

ritory, and it applies to various private controversy matters (e.g., free disposals according to law), as well as to those matters authorized by domestic law or international treaties.

The principles of arbitration are as follows:

(i) The judiciary may not intervene, except in the cases in which the Peruvian Arbitration Law so requires (e.g., precautionary measures against the constitution of the tribunal);

(ii) The arbitral tribunal must act in full independence;

(iii) The arbitral tribunal has full powers to initiate and continue the process of arbitration, to decide on their own jurisdiction and to issue a final decision;

(iv) No action or mandate outside the arbitration proceedings can nullify the decisions of the arbitral tribunal. However, the decision can be subject to subsequent judicial control through an appeal of annulment action that could be filed by any of the parties involved.²⁸

²⁸Legislative Decree 1071, arts. 62 to 64.

II. Operating a Business in Peru

A. Foreign Investment Regulation

1. In General

The practical experience of the past two decades has proven Peru to be friendly to both local and foreign investment. The Peruvian Government has ensured that the Constitution and the relevant rules and regulations endorse principles favorable to an open market for potential investors interested in developing projects in Peru.

The private investment regime is predominantly contained in the Private Investment Law approved by Legislative Decree 757 and the Foreign Investment Encouragement Law approved by Legislative Decree 662 (the “Foreign Investment Law”). Both laws were enacted in 1991.

The Private Investment Law²⁹ contains the measures required to ensure the growth of private investment in all economic sectors, including the elimination of legal and administrative barriers that may block the economic development or restrict private initiative, which allows for fair competition in the private sector. This law also protects investors from arbitrary tax changes.

On the other hand, the Foreign Investment Law has created mechanisms that guarantee legal and tax stability for foreign investors, access to foreign currency, and nondiscriminatory treatment as between foreign and local investors, with a view to promoting foreign capital investment in Peru.³⁰ Furthermore, as a measure aimed at closing gaps in public infrastructure and services, Peru has implemented different regimes for the promotion of private investment in these areas, by local, regional and national governments. Pursuant to Legislative Decree 1362, the promotion of private investment in the public sector through the use of public-private partnerships was declared a matter of national interest, which, among others, approved special procedures for the financing, construction, operation and maintenance of public infrastructure, provision of public services and development of projects on state assets by private investors, under self-financed schemes or with state co-financing. In addition, Law 29230, as approved by Supreme Decree No. 081-2022-EF, created a mechanism called “works for taxes” that enables private investors to pay a portion of their income tax as part of the execution and/or maintenance of public works.

2. ProInversion

a. In General

The Peruvian Government has set up a specialized body to streamline and promote private investment in Peru, seeking efficiency and transparency in the process. The body concerned is ProInversion, a public entity attached to the Ministry of Economy and Finances. ProInversion is responsible for developing and implementing the national private investment promotion policies.³¹

²⁹ Legislative Decree 757, art. 1.

³⁰ Legislative Decree 757, art. 40.

³¹ ProInversion was created in 2002 by Supreme Decree 027-2002-PCM.

ProInversion promotes private investments in public services and public infrastructure through public-private partnerships and projects involving state assets, based on public and private initiatives within national competence, and provides assistance to regional or local public entities, at their request.³² ProInversion also provides formation and orientation services to investors and helps create an environment conducive to attracting private investment, in accordance with economic plans and integration policies.

b. Main Activities and Responsibilities

ProInversion’s main activities include:³³

(i) Developing private investment promotion processes for public projects and services through special committees and the Investment Promotion Office.

(ii) Promoting and providing services related to: (a) information, guidance and support for local, regional, national and foreign investors; and (b) the monitoring and maintenance of an attractive environment for private investment, in accordance with economic plans and integration policies. The latter is conducted through the Investor Services Office.

(iii) Designing and promoting steps to increase private investment in public infrastructure and services, with a regional or local scope, through the Decentralized Investment Office.

3. Rights of Foreign Investors

a. Principal Rights

The rights of foreign investors are as follows:

(i) Nondiscriminatory treatment, i.e., foreign investors have the same rights as Peruvian investors.³⁴

(ii) Unrestricted access to most economic sectors, except as described under b., below.³⁵

(iii) The free transfer of capital and profits, i.e., foreign investors are allowed to remit freely in foreign currency capital invested and all dividends, as well as the consideration received for the use of assets physically located in Peru and royalties for the use and transfer of technology, after deducting the corresponding taxes. Remittances of foreign currency must be channeled through the Peruvian National Finance System.³⁶

(iv) The right to acquire shares, equity interests or property rights from Peruvian investors.³⁷

³² Legislative Decree 1362, and its Regulations approved by Supreme Decree 240-2018-EF.

³³ Supreme Decree 042-2009-EF, art. 3; and Legislative Decree 662, art. 23.

³⁴ Peruvian Constitution, art. 2(2); Legislative Decree 662, art. 2; and Legislative Decree 757, art. 12.

³⁵ Legislative Decree 662, art. 3; and Legislative Decree 757, arts. 2 and 3.

³⁶ Legislative Decree 662, art. 7. The entities that are part of the National Financial System can be found at: <http://www.sbs.gob.pe/>.

³⁷ Legislative Decree 662, art. 8.

(v) Freedom to conduct commercial and industrial activities, and to perform import and export operations.³⁸

(vi) The right to use the most favorable exchange rate existing in the market for any exchange rate operation.³⁹

(vii) The right to enter into Juridical Stability Agreements (see 4., below) with the Peruvian Government regarding their investments in the country, to guarantee investors' stability with respect to: (i) the tax system in place at the time the relevant agreement was signed, (ii) a regime of free availability and disposition of currencies, and (iii) the right to non-discrimination.⁴⁰

(viii) The right to acquire insurance for their investments against commercial and noncommercial risks.⁴¹

b. Restrictions

(i) Ownership restrictions: foreign individuals and legal entities are subject to the same conditions regarding ownership as Peruvian entities.⁴² However, within 50 kilometers of the national borders, foreign individuals are not allowed to purchase or own mines, land, forests, water, fuel or energy sources, under any title, directly or indirectly, individually or jointly, under penalty of losing any such acquired rights in favor of the State.⁴³ In certain specific cases this ownership restriction will not apply where waiving the restriction is in the public interest, as declared by a Supreme Decree.

(ii) Economic sector restrictions: both foreign and Peruvian investors may perform any type of economic activity,⁴⁴ provided the activity is not considered a criminal offense and is compliant with the requirements established in the Peruvian Constitution and the applicable treaties and laws.⁴⁵

There are a few activities with respect to which restrictions are imposed on foreign investors, for example, air and maritime transportation.⁴⁶

4. Juridical Stability Agreements and Investment Registration

a. In General

A Juridical Stability Agreement is a mechanism by means of which the Peruvian State, represented by ProInversion, assures investors and the Peruvian companies in which they invest of the stability of the tax system in place at the time when the relevant agreement was signed, of the regime providing for the free availability and disposition of foreign currency, and of non-discrimination rights, with the only requirement of having

submitted a preliminary investment form to ProInversion, and prior to or within 12 months following the granting of an investment enabling title.⁴⁷

Juridical Stability Agreements have the status of "legal contracts" and may not be amended or unilaterally terminated by the Government. Such agreements have a civil nature and may only be amended or terminated by mutual agreement among the parties.⁴⁸

Companies already operating in Peru that are organized with foreign capital contributions may enjoy stability under any of the existing labor hiring arrangements, and the special stability guarantees granted for export industries, such as: the temporary admission of goods to be re-exported; access to industrial, commercial and duty-free zones; and other guarantees that may be created in the future.⁴⁹

b. Entitled Parties

Any investor, whether a Peruvian or foreign person, who commits to comply with Peruvian law and any company existing or to be organized in Peru to which new foreign capital contributions are made can execute a Juridical Stability Agreement.

c. Minimum Investment

Investors wishing to conclude a Juridical Stability Agreement with the State must make a capital contribution through the National Financial System to a company existing or to be organized under Peruvian law, or sign an agreement to make a venture capital investment with a third party in an amount of at least US\$10 million in the mining and hydrocarbon industries, or of at least US\$5 million in any other industry.⁵⁰

d. Principal Rights of the Parties

(1) Investors

The principal rights of investors concern the stability of:

- (i) The rules regarding nondiscriminatory treatment;
- (ii) The income tax regime applicable to dividends;
- (iii) Entitlement to use freely the most favorable exchange rate available in the market; and
- (iv) The regime ensuring the ability to remit freely foreign currency, dividends and royalties.

(2) Invested Company

The principal rights of the company in which an investment is made concern the stability of:

- (i) The labor recruitment regimes;
- (ii) The regimes for the promotion of exports; and
- (iii) The income tax regime.

³⁸ Legislative Decree 662, art. 6.

³⁹ Legislative Decree 662, art. 9.

⁴⁰ Legislative Decree 662, art. 10.

⁴¹ Legislative Decree 757, art. 46.

⁴² Legislative Decree 662, art. 4.

⁴³ Peruvian Constitution, art. 71.

⁴⁴ Legislative Decree 662, art. 3; and Legislative Decree 757, arts. 2 and 3.

⁴⁵ Peruvian Constitution, arts. 24(a) and 63.

⁴⁶ Civil Aeronautics Law approved by Law 27261, art. 79; and Merchant Maritime Law approved by Law 28583, art. 4(1).

⁴⁷ Legislative Decree 662, art. 10.

⁴⁸ Legislative Decree 757, art. 39.

⁴⁹ Legislative Decree 662, art. 12.

⁵⁰ Law 27342, art. 2.

e. Term

The term of a Juridical Stability Agreement is 10 years.⁵¹ In the case of concessions, the term will be defined in accordance with the concession's contract term (subject to a maximum of 60 years).⁵²

f. Registration of Foreign Investment

A foreign investment must be registered with the relevant national agency before the investor may enjoy the right to use freely convertible currency to remit abroad the total amount of capital earned, dividends payable and verified net profits. ProInversion is the agency authorized to register foreign investments.⁵³

The following are considered to constitute foreign investment where the investment concerned has a foreign source and is made in a revenue-generating economic activity:⁵⁴

- (i) Contributions made by a foreign individual or company to the capital of a new or existing company that takes one of the corporate forms set out in the Peruvian Corporations Law approved by Law 26887 that are channeled through the National Financial System in the form of freely convertible currency or tangible assets, such as industrial facilities, new or refurbished machinery or equipment, replacements, spare parts, raw materials and throughputs;
- (ii) Investments in local currency using resources authorized to be remitted abroad;
- (iii) The conversion of private foreign obligations into shares;
- (iv) Reinvestments made pursuant to existing law;
- (v) Investments in goods physically located in Peruvian territory;
- (vi) Contributions of intangible technology, such as trademarks, industrial models, technical assistance and patented or unpatented technical knowledge realized in material form, and technical documentation and instructions;
- (vii) Investment for purposes of purchasing listed financial securities, documents and papers, or bank deposit certificates in local or foreign currency;
- (viii) The contribution of resources for purposes of joint ventures and other agreements that grant the foreign investor concerned a participation in the relevant company's production capacity but do not involve a capital contribution; instead, what is involved is a venture of a commercial nature enforced by a contract under which the foreign investor provides goods or services to the invested company in exchange for a share in the physical output, global sales or net profits of the invested company (such investments are subject to current tax laws); and

- (ix) Any other type of foreign investment that contributes to Peru's national development.

g. Mining and Hydrocarbon Industries

In addition to the possibility of executing a Juridical Stability Agreement under the rules described above, investors involved in mining or hydrocarbon businesses may also enter into Juridical Stability Agreements that are subject to different conditions and provide different types of benefits, as described in (1) and (2), below.

(1) Mining Industry

(a) Legal Requirements

Under the Peruvian Mining Law,⁵⁵ mineral title holders may enter into Juridical Stability Agreements with the Ministry of Energy and Mines for a period of 10 years, if:

- (i) They will commence or are currently carrying on mining activities with a volume of more than 350 tons but no more 5,000 tons per day; or⁵⁶
- (ii) They enter into investment programs where the value of the investment is equivalent to at least US\$20 million.⁵⁷

(b) Guarantees

The execution of this type of agreement guarantees the following rights, among others, to the mineral title holder:⁵⁸

- (i) Stability with respect to the tax regime in force at the time the relevant investment is approved. Any tax created or any subsequent substantial amendment to an existing tax will not apply to the mineral holder.⁵⁹
- (ii) Free disposition of the foreign currency generated by the mineral holder's exports, whether in or outside Peru.
- (iii) Nondiscrimination with respect to the currency exchange rate.
- (iv) Free commercialization of mineral products.
- (v) The stability of special tax regimes, where applicable.
- (vi) No unilateral modification of guarantees included in the agreement.
- (vii) The option to keep accounting records in U.S. dollars or the foreign currency in which the investment is made.⁶⁰

(c) Special Promotion for Larger Investments

With a view to promoting investments in mining projects with an initial capacity of at least 5,000 tons per day, or in expansions of existing projects intended to achieve such capacity,

⁵¹ Legislative Decree 662, art. 15.

⁵² Supreme Decree 240-2018-EF, art. 38.

⁵³ Legislative Decree 662, arts. 19 and 20.

⁵⁴ Legislative Decree 662, art. 1.

⁵⁵ Supreme Decree 014-92-EM.

⁵⁶ Supreme Decree 014-92-EM, art. 78.

⁵⁷ Supreme Decree 014-92-EM, art. 79.

⁵⁸ Supreme Decree 014-92-EM, art. 80.

⁵⁹ Note that, according to Law 27343, art. 1, for this purpose, the applicable income tax rate will be the current applicable rate plus two percentage points.

⁶⁰ Supreme Decree 014-92-EM, art. 84.

a stability term contract of 12 years is available to a mineral title holder that meets one of the following requirements:⁶¹

(i) Where mining activities have not yet commenced, an investment plan with a value equivalent to at least US\$100 million must be filed with the Ministry of Energy and Mining; or

(ii) In the case of an existing project, the investment program must have a value equivalent to at least US\$250 million.

Similarly, with a view to promoting investments in mining projects with an initial capacity of at least 15,000 tons per day, or in expansions intended to achieve a capacity of at least 20,000 tons per day, a stability term contract of 15 years is available to a mineral title holder that files an investment plan with a value equivalent to at least US\$500 million.⁶²

(2) *Hydrocarbon Industry*

(a) *Legal Requirements*

Under the Peruvian Hydrocarbon Law,⁶³ a contractor that has concluded a hydrocarbon transportation, licensing or similar agreement with the Peruvian State is guaranteed that the exchange rate and tax regimes⁶⁴ in force at the time the relevant agreement is concluded will not be changed during the term of that agreement.⁶⁵

(b) *Guarantees*

The main benefits of concluding the type of agreement outlined in (a), above are the following:

(i) The company may keep its accounting records in foreign currency in accordance with Peruvian generally accepted accounting practices;⁶⁶

(ii) Peru's Central Bank must guarantee the availability of currencies⁶⁷ (in the event that the national financial institutions are unable to cope with demand);

(iii) Foreign currency generated by exports, whether in or outside Peru, may be freely disposed of;⁶⁸

(iv) Foreign currency equivalent to up to 100% of local currency obtained from the sale of hydrocarbons in the local market,⁶⁹ as well as consideration received in cash,⁷⁰ may be freely disposed of and converted and both foreign and local currency may be freely deposited directly into local or foreign bank accounts;⁷¹

(v) Bank accounts may be freely maintained, controlled, and operated in any currency, either in Peru or abroad;⁷² and

(vi) Annual after-tax profits may be freely disposed of, distributed, transferred or retained offshore, without restriction.⁷³

5. *Investment Agreements*

The Peruvian Government has concluded Free Trade Agreements (FTAs) with many countries, including: Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Canada, Chile, China (PRC), Colombia, Costa Rica, Croatia, Cyprus, the Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Germany, Greece, Honduras, Hungary, Iceland, Ireland, Italy, Japan, South Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Mexico, The Netherlands, Norway, Panama, Paraguay, Poland, Portugal, Romania, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Thailand, the United Kingdom, the United States, Uruguay, and Venezuela.⁷⁴

6. *Investment Guarantees*

Investors are authorized to take out insurance in Peru and abroad for purposes of protecting their investments against commercial and noncommercial risks.⁷⁵ Investors may also take out insurance cover to protect their investments through the Multilateral Investment Guarantee Agency of the World Bank (MIGA).⁷⁶ Peru has been a member of MIGA since 1991.

MIGA offers guarantees to cover investments against the noncommercial risks related to money transfers, expropriation, and war and civil disturbance, or that may arise in the case of the breach of any agreement entered into with investors from countries that are members of the MIGA.

Peru is a signatory to the Covenant with the United States Overseas Private Investment Corporation (OPIC),⁷⁷ ratified by the Peruvian Congress on May 14, 1993. Peru has also signed the World Bank's Convention regarding the International Centre for Settlement of Investment Disputes (ICSID).⁷⁸

B. *Currency and Exchange Controls*

The national currency of Peru is the Peruvian Sol (PEN).

There are no currency or exchange control regulations under Peruvian law.

⁶¹ Supreme Decree 014-92-EM, arts. 82 and 83.

⁶² Supreme Decree 014-92-EM, arts. 83-A and 83-B.

⁶³ Supreme Decree 042-2005-EM.

⁶⁴ According to Law 27343, art. 1, for this purpose, the applicable income tax rate will be the current applicable rate plus 2 percentage points.

⁶⁵ Supreme Decree 042-2005-EM, art. 63.

⁶⁶ Supreme Decree 042-2005-EM, art. 64.

⁶⁷ Supreme Decree 042-2005-EM, art. 66.

⁶⁸ Supreme Decree 042-2005-EM, art. 66(a).

⁶⁹ Supreme Decree 042-2005-EM, art. 66(b).

⁷⁰ Supreme Decree 042-2005-EM, art. 66(c).

⁷¹ Supreme Decree 042-2005-EM, art. 66(b).

⁷² Supreme Decree 042-2005-EM, art. 66(d).

⁷³ Supreme Decree 042-2005-EM, art. 66(e).

⁷⁴ These agreements are available on the official webpage of Peru's Ministry of Foreign Commerce and Tourism: www.acuerdoscomerciales.gob.pe.

⁷⁵ Legislative Decree 757, art. 47.

⁷⁶ Multilateral Investment Guarantee Agency of the World Bank official webpage: <http://www.miga.org/>.

⁷⁷ United States Overseas Private Investment Corporation official webpage: <http://www.opic.gov/>.

⁷⁸ International Centre for Settlement of Investment Disputes official webpage: <https://icsid.worldbank.org>.

C. Trade and Commerce Regulation

1. Imports and Exports

a. International Trade Agreements

In keeping with global market trends, over the last few years Peru has signed several international FTAs and similar agreements.⁷⁹ This has made it possible for Peru to introduce various legal mechanisms that have simplified customs procedures applicable to international trade in goods and services.

Peru has signed either free trade agreements (FTAs) or other trade agreements with the following partners: the *Alianza del Pacífico* countries (i.e., Chile, Colombia and Mexico), Australia, Canada, the Andean countries (i.e., the Cartagena Agreement), Chile, PR China, Costa Rica, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) countries (i.e., Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Singapore and Vietnam), Cuba, the European Free Trade Association (EFTA, which comprises Iceland Liechtenstein, Norway and Switzerland), the European Union, Japan, South Korea (ROK), Mercosur (i.e., Argentina, Brazil, Paraguay and Uruguay), Mexico, Panama, Singapore, Thailand, the United States, Venezuela, Honduras, and the United Kingdom.

Negotiations have begun for future trade agreements with El Salvador, India, Nicaragua, Hong Kong, and Turkey.

Some of the specific provisions of the FTAs and other trade agreements currently in force are described in (1) to (6), below.

(1) The Pacific Alliance

The commercial relationship between Peru, Chile, Colombia, and Mexico is based on the Framework Agreement of the Pacific Alliance⁸⁰ and its Additional Protocol.⁸¹ Under this multilateral agreement, the parties seek to achieve the free movement of merchandises, services, capital and people and to promote greater growth, development and competitiveness of the economies of the Parties.⁸² The Pacific Alliance Agreement deals with the following: e-commerce, agricultural products, fishing, origin rules, customs, trade facilitation, finance services, maritime services, and public procurement. To prove the origin of goods, electronic origin certificates are accepted. During the first semester of 2019, the main products exported to Pacific Alliance's member States include: plastic, molybdenum, plastic manufacturing, cooper wire and agricultural products.

⁷⁹ The information in this section is also available on Peru's Ministry of Foreign Commerce and Tourism official webpage: <http://www.mince-tur.gob.pe/>.

⁸⁰ The Pacific Alliance Framework Agreement was signed on June 6, 2012 and entered into force on July 20, 2015.

⁸¹ The Additional Protocol to the Pacific Alliance Framework Agreement was signed on February 10, 2014 and entered into force on May 1, 2016.

⁸² See the Comments issued by the Ministry of Foreign Commerce and Tourism of Peru, available at: http://www.acuerdoscomerciales.gob.pe/index.php?option=com_content&view=category&layout=blog&id=166&Itemid=185.

(2) The Andean Community

Peru is a member of the Andean Community of Nations (CAN), which currently comprises Bolivia, Colombia, Ecuador and Peru. The CAN was established in 1969, when the Cartagena Agreement⁸³ was signed. As regards trade and commerce, some of the main objectives set by the Cartagena Agreement are the consolidation of a free trade area within the Andean sub-region, the establishment of a common external set of tariffs, and the harmonization of foreign trade instruments and economic policies.

As a consequence of the agreement, Peru trades freely with other members of the CAN.⁸⁴

(3) Peru and the United States

The Peru-United States FTA was signed in Washington D.C. on April 12, 2006, and entered into force on February 1, 2009.⁸⁵

The main products exported to the United States include: minerals, metals, textiles, fishery products, crude oil, coffee, cocoa, handicrafts, paprika, artichokes, grapes, mangoes, tangerines and asparagus.

The FTA with the United States reduces the tariffs and taxes applicable to producers in both countries, allowing them to trade freely with each other. By way of example, under this agreement Peru has eliminated tariffs on about 76% of the total agricultural products produced in the United States, while the United States has eliminated tariffs on all agricultural products originating in Peru.⁸⁶

(4) Peru and Canada

The Peru-Canada FTA was signed on May 29, 2008 and entered into force on August 1, 2009.⁸⁷

The FTA with Canada deals with the following: national treatment and access to markets, origin rules, trade facilitation, sanitary and phyto-sanitary measures, technical barriers to trade, emergency and defense trade, investment, cross-border trade services, telecommunications, financial services, temporary entry for business persons, competition policy, public procurement, e-commerce, labor, environment, transparency and dispute resolution.

The main products exported to Canada include: gold, gasoline, copper and lead minerals, raw silver, fish oil, zinc, fishmeal, gas, agricultural products, tangerines, fresh grapes, handicrafts, wood and paper, nonmetallic mined material, seafood, furs and leather, chemicals, iron and steel, textiles and jewelry.

⁸³ Approved in Peru by Decree 17851. This agreement (also known as the Andean Pact) entered into force in Peru on Oct. 16, 1969.

⁸⁴ The tariff reduction schedule started in 1997 as a consequence of Andean Commission's Decision 414 and was fully completed in 2005.

⁸⁵ Approved in Peru by Legislative Resolution 28766, Supreme Decree 030-2006-RE and Supreme Decree 009-2009-MINCETUR.

⁸⁶ See the *Report on the use of the Peru-US FTA*, issued by the Ministry of Foreign Commerce and Tourism of Peru, regarding the economic results obtained during the fifth year of application of the United States-Peru Free Trade Agreement (FTA), available at: http://www.acuerdoscomerciales.gob.pe/images/stories/eeuu/Estudio_5_aos_EEUU_29_Abr_2014.pdf; p. 5.

⁸⁷ Ratified in Peru by Supreme Decree 044-2009-RE.

By way of reference, in 2020, approximately 30% of the total Peruvian gold exported was exported to Canada.⁸⁸

(5) *Peru and China*

The Peru-China FTA was signed in Beijing on April 28, 2009, and entered into force on March 1, 2010.⁸⁹

Among the main Peruvian products benefiting from the Peru-China FTA are: squid, fresh grapes, avocados, mangoes, barley, paprika and tara powder. Some of the economic results observed as a consequence of this FTA are as follows:⁹⁰

- (i) Peruvian exports to PR China amounted to US\$11.115 million, while imports amounted to US\$10.310 million for 2020.
- (ii) 378 new products have been exported since the FTA entered into force. More than 96% of these are nontraditional products.
- (iii) 637 new export companies have been set up since the FTA entered into force.
- (iv) In 2014, 100% of the construction materials imported from PR China into Peru entered Peru with zero tariffs.

(6) *Peru and the European Free Trade Association*

The EFTA-Peru FTA was signed in Reykjavic on June 24, 2010, and in Lima on July 14, 2010.⁹¹ The FTA entered into force with respect to Liechtenstein and Switzerland on July 1, 2011;⁹² with respect to Iceland on October 1, 2011;⁹³ and with respect to Norway on July 1, 2012.⁹⁴

The EFTA-Peru FTA deals with: e-commerce, agricultural products, fishing, origin rules, customs, trade facilitation and the recognition of qualifications of service suppliers, investments, scientific collaboration, and public procurement.

Some of the main products exported to the EFTA countries are: gold, fish oil, copper minerals, fishery and agricultural products, asparagus, textiles and avocados.

(7) *The Trans-Pacific Partnership*

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) aims to enhance trade in goods and services, as well as to promote the economic growth in its member countries. The CPTPP is the first trade agreement that Peru has signed with Brunei, Malaysia, New Zealand and

Vietnam. The agreement entered into force on September 19, 2021.⁹⁵

b. *Imports*

(1) *In General*

The main rules relating to customs are the Peruvian General Customs Law approved by Legislative Decree 1053 (GCL) and the Regulation thereunder approved by Supreme Decree 010-2009-EF (GCLR).⁹⁶

Some of the most relevant regimes dealing with imports are discussed in (a) to (d), below.

(a) *Imports for Consumption*

This regime allows the entry into Peruvian territory of foreign goods to be consumed within the country. Customs duties and other import taxes may apply.⁹⁷ The foreign goods imported will be considered nationalized on clearance by the Customs Authority.⁹⁸

(b) *Reimports in the Same State*

This customs regime allows the entry into Peruvian customs territory of goods previously exported without payment of customs duties and other import taxes, provided such goods have not been actually transformed, remanufactured or repaired abroad.⁹⁹

Benefits under the regime may be claimed for a period of 12 months beginning on the date of completion of the shipment of the goods exported.¹⁰⁰

(c) *Temporary Admission for Re-exportation in the Same State*

This customs regime allows the entry of certain assets into Peruvian customs territory with suspension of payment of customs duties and other taxes on imports, provided the assets are identifiable and intended to meet a specific purpose in a specific place, and are re-exported within a maximum period of 18 months¹⁰¹ without undergoing any change, except normal depreciation caused by their use.¹⁰²

Assets qualifying under this scheme are set out in a list approved by Ministerial Resolution of the Ministry of Economy and Finance.¹⁰³

(d) *Customs Warehousing Regime*

This is a customs regime under which foreign goods are stored within Peru without customs duties or other taxes having to be paid.¹⁰⁴ Stored goods may be subject to operations such as the change, transfer and repair of the containers required for

⁸⁸ See the Report G8 *Definitive Export, main national sub-items by Country of destination* available at: <https://www.sunat.gob.pe/estadisticasestudios/exportaciones.html>.

⁸⁹ Ratified in Peru by Supreme Decree 092-2009-RE and Supreme Decree 005-2010-MINCETUR.

⁹⁰ See the Report on the use of the Peru-China FTA, issued by the Ministry of Foreign Commerce and Tourism of Peru, regarding the economic results obtained during the fourth year of application of the PR China-Peru FTA, available at: http://www.acuerdoscomerciales.gob.pe/images/stories/china/e_aprovechamiento_tlc_peru_china_4_ano_abril_2014.pdf, p. 13.

⁹¹ Ratified in Peru by Supreme Decree 055-2011-RE.

⁹² Approved in Peru by Supreme Decree 052-2011-RE and Supreme Decree 009-2011-MINCETUR.

⁹³ Approved in Peru by Supreme Decree 017-2011-MINCETUR and Supreme Decree 053-2011-MINCETUR.

⁹⁴ Approved in Peru by Supreme Decree 054-2011-RE and Supreme Decree 015-2012-MINCETUR.

⁹⁵ According to Supreme Decree 011-2021-MINCETUR.

⁹⁶ The information in this section is also available on the Customs Administration's official webpage: <http://www.sunat.gob.pe/orientacionaduanera/index.html>.

⁹⁷ GCL, art. 49.

⁹⁸ GCL, art. 50.

⁹⁹ GCL, art. 51.

¹⁰⁰ GCL, art. 52.

¹⁰¹ GCL, art. 56.

¹⁰² GCL, art. 53, para. 1.

¹⁰³ GCL, art. 53, para. 2.

¹⁰⁴ GCL, art. 88.

their preservation, the collection of packages, the formation/arrangement of batches and the sorting of goods, provided neither the nature nor the value of the goods is modified.¹⁰⁵

Customs warehousing may be authorized for a maximum term of 12 months beginning on the date on which the Customs Declaration Form (DAM) is numbered. In the case of perishable merchandise, this term may not exceed the expiration date within the 12-month period.¹⁰⁶ If the term requested is shorter than 12 months, it is possible to request an extension of that term by making a written formal request, which will be automatically approved, but the overall maximum term of 12 months may not be exceeded.¹⁰⁷

(2) Import Duties and Other Taxes

Imports are generally subject to the payment of import duties. The exact amount of duty varies depending on the type of merchandise as noted in (a) to (d), below.

(a) Ad Valorem Duties

Ad valorem duties are levied on the customs value of imported goods determined according to the WTO Valuation Agreement (including the value of freight and insurance — CIF). Current tax rates are: 0%, 4%, 6% and 11%.¹⁰⁸

(b) Specific Duties — System of Price Band

The System of Price Band applies to imports of agricultural products such as rice, yellow corn, milk and sugar. The system imposes additional specific duties when international prices are below a certain level and discounts on the customs duties when such prices are above certain levels, as determined in specific customs tables.¹⁰⁹

(c) Excise Tax

Excise tax is levied on the importation of certain goods, such as fuel, soft drinks, vehicles (new and used), alcoholic drinks (for example, wine, beer and pisco) and cigarettes. Rates vary depending on the type of goods concerned. For further discussion of the excise tax, see IV.E., below.

(d) Value Added Tax

Value added tax (VAT) is imposed at the rate of 18% on the customs value of imported goods determined according to the WTO Valuation Agreement (including the value of freight and insurance — CIF) plus tariffs and other customs duties and other import taxes.¹¹⁰ For a detailed discussion on Peru's VAT system, see IV.D., below. See also the VAT Navigator.

(3) Formalities and Documentation

As a general rule, the following documents are required for the importation of goods:¹¹¹

- (i) DAM;
- (ii) Original invoice;
- (iii) Transportation Document (Bill of Lading (BL) or Airway Bill (AWB));
- (iv) Insurance document for merchandise transportation;
- (v) Authorizations issued by the competent sector, in case of restrictions merchandise; and
- (vi) Other documents required according to the nature of the dispatch.

c. Exports

(1) In General

Two of the main export regimes are discussed below.

(a) Definitive Exports

The definitive export regime allows the exit from Peruvian customs territory of national or nationalized merchandise for use or final consumption abroad.¹¹²

To be considered an exporter for these purposes, the entity or individual concerned must have a taxpayer identification number (*registro único de contribuyentes* or RUC).¹¹³ However, exceptionally, an individual may carry out export operations without a RUC number in the case of:¹¹⁴

- (i) Occasional exports of goods where the Free on Board (FOB) value per operation does not exceed US\$1,000, provided the exporter carries out not more than three exports per year; or
- (ii) A single export of goods in a calendar year with an FOB value exceeding US\$1,000 but not exceeding US\$3,000.

In Peru, exports are not subject to VAT.

The export procedure to be followed will depend on the value of the products exported. In that regard, if the FOB value of the products exported does not exceed US\$5,000, the export can be conducted by filing a Simplified Export Statement.¹¹⁵ Exports in excess of US\$5,000 require the importer to use a customs agent.

(b) Temporary Exports for Re-importation in the Same State

This customs regime allows the temporary exit from the customs territory of national or nationalized goods and their re-importation within a period of 12 months (this period may be extended if duly justified),¹¹⁶ without payment of customs duties and other import taxes,¹¹⁷ provided the goods have not suf-

¹⁰⁵ Resolution of Superintendence 576-2010-SUNAT/A, art VII(E)(25).

¹⁰⁶ Resolution of Superintendence 576-2010-SUNAT/A, art. VI(5).

¹⁰⁷ GCL, art. 89.

¹⁰⁸ Supreme Decree 404-2021-EF.

¹⁰⁹ Supreme Decree 115-2001-EF.

¹¹⁰ The 18% rate is comprised of a 16% VAT rate under the Single Unified Text of the Value Added Tax and Excise Tax Law, art. 17, approved by Supreme Decree 055-99-EF and a 2% Municipal Promotion Tax rate under the Single Unified Text of the Municipal Tax Law, art. 76, approved by Supreme Decree 156-2004-EF.

¹¹¹ Regulations under the GCL (GCLR), art. 60; and Resolution of Superintendence 10-2015-SUNAT/5C0000.

¹¹² GCL, art. 60.

¹¹³ Resolution of Superintendence 024-2020-SUNAT/A, art. VI(A)(2).

¹¹⁴ Resolution of Superintendence 162-2011/SUNAT/A, art. VI(5).

¹¹⁵ Resolution of Superintendence 162-2011/SUNAT/A, art. VI(1) and (2).

¹¹⁶ GCL, art. 65.

¹¹⁷ GCL, art. 66.

ferred any change, except normal depreciation caused by their use.¹¹⁸

(2) Formalities and Documents

Required export-related documentation is as follows:¹¹⁹

- (i) Simplified Export Statement;
- (ii) DAM;
- (iii) Original invoice or equivalent document or contract, as appropriate; or affidavit in the cases determined by the Customs Administration;
- (iv) Certificate of origin;
- (v) Insurance document for merchandise transportation; and
- (vi) Other documents required because of the nature of the export.

2. General Regulation of Business

a. Monopolies

The Peruvian Constitution establishes a social-market economy¹²⁰. In that sense, the Peruvian State facilitates and supervises free competition, restricts any practice that may limit such competition, and restricts abuses of a dominant or monopoly position in the market). Except in the case of public utilities (see 2.c.(1), below), no law or convention may authorize or establish monopolies.

Moreover, freedom of speech exercised through the press, radio, television or other media is protected. Thus, in general, companies, assets and services related to the freedom of speech may not be exclusive or held in a monopoly position, whether directly or indirectly, through public or private parties.¹²¹

b. Mergers and Acquisitions

The basic legal framework that applies to mergers and acquisitions in Peru is:

- The Peruvian Corporations Law, approved by Law 26887 (PCL);
- The Law for the Prior Control of Business Concentration Operations, approved by Law 31,112 and its regulations, approved by Supreme Decree 039-2021-PCM; and
- The Peruvian Civil Code approved by Legislative Decree 295.

The main forms of acquiring a business under Peruvian law are outlined in (1) to (3), below.

(1) Stock Purchases

The most common way of acquiring or merging a business is through a stock purchase agreement. In general terms, the parties enter into a private agreement including the necessary covenants, representations and warranties, conditions precedent, and closing and post-closing obligations. The transfer is

registered in the acquired company's stock ledger. Depending on the share of interest acquired, a shareholders' agreement may also be in place.

(2) Asset Purchases

Another way of acquiring or merging a business in Peru is through an asset purchase agreement. Like a stock purchase agreement, this is a private agreement that includes the necessary covenants, representations and warranties, conditions precedent, and closing and post-closing obligations. In the case of an asset purchase agreement, there is no transfer of shares, but all assets that are subject to registration must be registered in the name of the purchaser in the Public Registry.

(3) Mergers

Mergers are governed by the PCL.

(a) Types of Merger

The PCL provides for two types of mergers:

(i) Merger by absorption: in this type of merger, one company absorbs in one act the assets and liabilities of another company. The absorbing company issues the corresponding shares to the shareholders of the absorbed company in the form agreed to in the Merger Project approved by the corporate bodies of both companies;¹²² after the merger is completed, the absorbed company ceases to exist and all of the absorbed company's assets and liabilities are transferred to the absorbing company.

(ii) Merger by incorporation: in this type of merger, two companies amalgamate to create a new company. The shareholders of the participating companies become the shareholders of the new company, in the form and proportion agreed to in the Merger Project and approved by the corporate bodies of both companies.¹²³ The companies that participate in the merger by incorporation will cease to exist; only the new company, under its own name and identity, survives after acquiring the assets and liabilities of the former companies.

(b) General Procedure

The general procedure for undertaking a merger under the PCL is as follows:¹²⁴

(i) The competent corporate bodies of the participating companies must approve the Merger Project, establishing the date on which the merger enters into force;

(ii) The merger resolution must be published three times at intervals of five days to allow for the exercise of separation and opposition rights by interested parties;

(iii) After 30 days from the last publication date of the resolution, the public deed of merger is granted; and

(iv) The merger is registered in each of the companies' records with the Peruvian Public Registry.

¹¹⁸ GCL, art. 64.

¹¹⁹ GCLR, art. 60.

¹²⁰ Constitution, art. 58

¹²¹ Constitution, art. 61.

¹²² Peruvian Corporations Law, approved by Law 26887 (PCL), art. 344(2).

¹²³ PCL, art. 344(1).

¹²⁴ PCL, arts. 345 to 362.

(c) Simplified Procedure

A simplified merger procedure is available under the PCL for situations in which the absorbing company holds the entire stock of the absorbed company. Under this simplified procedure, certain requirements of the Merger Project may be waived, such as providing an explanation of the economic reasons for the merger and the issuance of securities issued.¹²⁵

(d) Merger Control Rules

The Law for the Prior Control of Business Concentration Operations (Law 31112) was enacted on January 7, 2021, and its implementing Regulations (Supreme Decree 039-2021-PCM) were enacted on March 4, 2021. This legal framework entered into force on June 14, 2021.

The scope of Law 31112 is comprised of the following elements:

- (i) Acts of concentration: The acts of concentration are those that exceed certain thresholds (as defined in the Law), which (a) produce effects in the Peruvian territory, even if the act of concentration is carried out abroad and (b) links among economic agents performing activities in Peru;
- (ii) Economic agents: The economic agents are those that offer or solicit goods or services, who carry out acts of concentration that produce or could produce anti-competitive effects in the Peruvian territory.

An act of concentration is defined as any act or transaction that involves the transfer or change of control of all or part of a company.

A concentration transaction covered by Law 31112 effecting such transfer or change of control must be carried out through one of the following transactions and/or acts:¹²⁶

- Merger: An act of concentration whereby several independent companies join into one enterprise.
- Acquisition: The purchase by an enterprise of rights from other economic agent(s) that involves the concentration of power in the former.
- Creation of a new company and/or joint venture or similar contractual arrangement: The creation by two or more independent economic agents of a new joint enterprise functioning as an economic and independent company or other type of legal entity, which results in the holding by the agents of joint control over such entity (commonly known as full function joint venture).
- Acquisition of operating and productive assets: The purchase of a company's assets that significantly contribute to the development of the economic activity of that company and that represent the core business competitive force of the economic agent selling such assets.

Transactions carried out within the same economic group are excluded.

Law 31112 also covers consecutive transactions or acts carried out between the same economic agents within a two-year term. In such cases, the concentration transaction that must be notified to the authorities is the last deal or act. The companies involved in that last transaction must verify whether they reach or exceed the thresholds established under Article 6 of Law 31112.

The rules on notifications and prior control under Law 31112 will apply to concentrations that simultaneously meet the following thresholds:

- If (i) the total combined value of sales, (ii) the annual revenues or (iii) the value of assets within Peru of the economic agents involved in the concentration transaction in the previous tax year is equal to or exceeds 118,000 TUs; and
- If (i) the value of sales, (ii) the annual revenues or (iii) the value of assets within Peru of at least two or more economic agents involved in the concentration transaction in the previous tax year is equal to or exceeds 18,000 TUs, separately.

The Technical Secretary of the Antitrust Commission of INDECOPI has been granted with wide authority to intervene in transactions (even if they are below the triggering thresholds) if there are reasonable grounds to believe that such transaction could generate or strengthen the dominant position of an economic agent or affect the development of effective competition within the relevant market.

In addition, Supreme Decree 039-2021-PCM further provides the following guidance:

- Calculation of the thresholds includes not only (i) the value of sales, (ii) the annual revenues or (iii) the assets' value of the specific undertakings participating in the transaction, but also the values or revenues corresponding to other companies within the economic groups they belong to.
- For purposes of a merger, the value of assets to be considered is their accounting book value.
- No special treatment or flexibility is granted to companies affected by the COVID-19 pandemic.

For transactions that are below the thresholds, the Technical Secretary of the Antitrust Commission of INDECOPI has the power to review any transaction that has been carried out within the market during an entire year from the closing of the transaction.

(e) Securities Law and Takeovers

The Capital Markets Law¹²⁷ and other specific regulations apply to: (i) publicly offered securities and their issuers; (ii) broker-dealers; (iii) closed-ended management companies; (iv) open-ended management companies; and (v) any other participants in Peruvian capital markets. Issuers of securities can also list their securities on the Peruvian Stock Exchange.¹²⁸

The takeover rules apply to companies that have their voting shares listed on the Peruvian Stock Exchange. The rules es-

¹²⁵ PCL, art. 351.

¹²⁶ Law 31112, art. 5.

¹²⁷ Legislative Decree 861, published on October 22, 1996.

¹²⁸ Peru's Stock Exchange official webpage: <http://www.bvl.com.pe/>.

establish an obligation to execute a tender offer when a person or legal entity acquires or increases a “relevant participation” in such listed companies.

A person or legal entity is deemed to have acquired a “relevant participation” in a listed company when it: (i) acquires, directly or indirectly, a percentage that equals, or is higher than, 25%, 50% or 60% of the listed company’s voting rights; (ii) acquires a percentage of voting shares that allows it to appoint or remove the majority of the members of the board of directors of the listed company or to amend its by-laws;¹²⁹ or (iii) has the ability to exercise voting rights in a percentage that allows it to appoint or remove the majority of the members of the board of directors of the listed company or to amend its by-laws.

c. Restrictive Trade Practices

(1) Price Controls

Currently, Peru does not have any price regulations in force. Nevertheless, some public services (such as water or electricity supply) under a monopoly regime must apply fixed tariffs, supervised and regulated by the corresponding regulatory entity.

(2) Securities Regulation

In accordance with the Capital Markets Law, securities are defined as “massively issued” and freely negotiable instruments that grant their holders credit, property rights or participation in the capital, assets or earnings of the issuer. Also, where such rights are themselves negotiable or are index-based rights, they are considered to be securities.

The definition of securities under Peruvian law also includes shares in both open-ended and closed-ended investment funds, shares of private equity funds, equity securities and any other instrument that meets the definition set out above.

Securities may or may not be publicly traded. Publicly-traded securities must be registered in the Capital Market Registry of the Capital Market Superintendence (SMV) and, for purposes of subsequent trading, with the Lima Stock Exchange.¹³⁰ It should be noted that registration of the issuer and its securities in the Capital Market Registry of the SMV is mandatory, whereas registration with the Lima Stock Exchange applies only to the securities that will be traded.

The SMV¹³¹ is the capital market regulator and companies that have their shares registered in the Capital Market Registry and/or listed on the Lima Stock Exchange must communicate certain information to the SMV, such as important facts, financial statements and, in general, aspects that can affect and/or be of interest to investors.

3. Licensing and Franchising

a. In General

The intellectual property (IP) rights that can enjoy protection in Peru include: (i) industrial property; and (ii) copyrights.

Among other items, industrial property includes trademarks, commercial names, slogans, patents, industrial designs and utility models.

The main regulations relating to IP rights are: (i) Decision 486 of the CAN, of September 14, 2000; (ii) Legislative Decree 1075, of June 27, 2008; and its regulations approved by Supreme Decree 059-2017-PCM; and (iii) Legislative Decree 822, of April 24, 1996.¹³²

b. Patents

For an invention to be patentable, the following requirements must be met: (i) the invention must be novel; (ii) the invention must have an inventive step; and (iii) the invention must have an industrial application.

An invention is considered novel when it has not been disclosed to the public by any means before the patent application filing date or the priority date and, thus, is not part of the “state of the art.” The state of the art comprises all information available to the public regarding an invention (such as written or oral descriptions) prior to the application filing date or the priority date.

The owner of a patent may prevent unauthorized third parties from producing, selling, offering for sale, using, or importing the patented product or process. The owner of a patent (or the owner of a patent application that is being processed) may license third parties to exploit the invention it covers.

To be protected, a patent must be registered with the Department of Inventions and New Inventions of the National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI). To keep the patent in force (or to retain the patent application), an annual fee must be paid to INDECOPI.

Patents are enforceable for 20 years as from the application filing date. After this period a patent enters the public domain.

The following are not considered patentable inventions:

- (i) Discoveries, scientific theories, and mathematical methods;
- (ii) Living beings (and their parts) that exist in nature, natural biological processes, biological material that exists in nature or that may be isolated, including the genome or germ plasma of any natural living being;
- (iii) Literary and artistic works or any other works protected by copyright;
- (iv) Plans, rules and methods for the pursuit of intellectual activities, the playing of games or the conduct of economic and business activities;
- (v) Computer programs or software, as such; and
- (vi) Methods of showing information.

The owner of a patent can take legal action against an unauthorized use of the invention. The Peruvian Intellectual Property Authority is competent to impose: (i) the cessation of all infringing acts; (ii) the withdrawal of all infringing prod-

¹²⁹ Conasev Resolution 009-2006-EF-94.10, arts. 4 and 5.

¹³⁰ Peru’s Capital Markets Registry official webpage: <http://www.smv.gob.pe/>.

¹³¹ Peru’s Capital Markets Superintendence official webpage: <http://www.smv.gob.pe/>.

¹³² Legislative Decree 822 is also known as the Copyrights Law, published on April 24, 1996.

ucts from the market; (iii) a prohibition on the import or export of the infringing products; (iv) the destruction of the infringing products; or (v) the temporary or permanent closure of the infringing business.

c. Trademarks

A trademark is any sign that can be used to identify goods and/or services in the market. A trademark can be registered provided it is susceptible of graphical representation. In that sense, a trademark may consist of any of the following: (i) word or combinations of words; (ii) figures, images, symbols, graphics, logos, monograms, labels, portraits, shields and emblems; (iii) smells and sounds; (iv) letters and numbers; (v) a color limited by a shape or a combination of colors; or (vi) any combination of these.

To obtain protection, a trademark must be registered with the Peruvian Trademark Office of INDECOPI. The process of registering a trademark takes approximately four to six months, if no opposition or objection is filed.

The owner of a registered trademark has the exclusive right to prevent all unauthorized parties from: (i) using or affixing the trademark, or a similar or identical distinctive sign, to certain products; (ii) removing or changing the trademark once it has been attached to a product; (iii) manufacturing, selling or storing materials that reproduce or contain the trademark; (iv) using the trademark or a similar or identical sign in the course of trade where this would result in the likelihood of confusion or mistaken association with the registered owner, or in the damage of the owner's economic or commercial interests. It is possible to perform a trademark availability search with the Peruvian Trademark Office to determine the availability of similar or identical signs.

The requirements for applying for the registration of a trademark in Peru are the provision of: (i) applicant's name and domicile; (ii) a clear and complete description of the trademark; (ii) samples of the logo, if the trademark contains graphic elements, including its colors; (iii) a list of products or services to be covered by the trademark and its international class pursuant to the Nice Classification; and (iv) a power-of-attorney granted and duly authorized by a representative of the company.¹³³

Trademark registration is granted for a term of 10 years and can be indefinitely renewed for the same period. The owner of a registered trademark or any party with a legitimate interest may apply for its renewal within six months before the expiration of its registration, or during a grace period (that is, within six months after the expiration date).

The lack of use of a trademark for a period of three consecutive years (as from the date of registration) allows a cancellation action to be initiated by third parties. To avoid the cancellation of a registered trademark, the owner must prove that he has been using the trademark during those three years with respect to the products and/or services the registered trademark covers.

d. Trade Names

A trade name is any sign that identifies an economic activity, an entity, a company or premises. A company or an entity may have more than one trade name. The exclusive use of a trade name is acquired with its first use in the market. It ends when the use of the name or the activities performed by the entity or premises using it cease.

Under Peruvian law, a trade name is enforceable for 10 years, as from the date of its registration, subject to renewal for equal periods. The transfer of a registered trade name must be registered with the Peruvian Trademark Office. The transfer of a trade name can only be carried out together with the transfer of the entity or premises that uses it. Likewise, in the case of the transfer of a trade name registry application, it must be demonstrated that the entity or premises that uses the trade name is also being transferred.

e. Utility Models

Utility models protect any new shape, configuration or arrangement of the components of any device, tool, implement, mechanism, or any part thereof, that leads to improvement or provides a different functioning, use or manufacture of the object that incorporates it, or that provides a use, advantage or technical effect that the object previously did not have. The following are not considered utility models: (i) plastic or architectural works, or objects that have only an aesthetic character; and (ii) procedures and matters excluded from patent protection.

For a utility model to be legally protected, it must: (i) be novel; and (ii) have an industrial application. A utility model is enforceable for 10 years as from the filing date of the application for registration. After this period, a utility model enters the public domain.

f. Industrial Designs

Industrial designs protect the particular appearance of a product that results from any arrangement of lines or combination of colors, or any two-dimensional or three-dimensional outward shape, line, outline, form, texture or material, without changing the intended use or purpose of the product.

For an industrial design to be registered, it must meet two requirements: (i) it must comprise a set of lines, combination of colors, or two-dimensional or three-dimensional outward shape; and (ii) it must be incorporated into an industrial or craft product so as to alter the product's appearance without changing its nature. An industrial design must be registered with the Office of Inventions and New Technologies of INDECOPI.

The owner of an industrial design can proceed against any individual who produces or markets an article whose design has only minor differences from the owner's design or where the appearance is the same. The owner of an industrial design can take legal action against the unauthorized use of its design and can request, for example: (i) the cessation of all infringing acts; (ii) the withdrawal of all infringing products from the market; (iii) a prohibition on the import or export of the infringing products; (iv) the destruction of the infringing products, or the temporary or permanent closure of the business; and (v) publication of the resolution condemning the infringer and notification of the interested parties at the infringer's expense.

¹³³ For registration purposes this document does not need to be legalized; however, for purposes of the cancellation, withdrawal and renunciation of a registration, the power-of-attorney must be duly legalized and apostilled.

An industrial design is enforceable for 10 years as from the date of filing of the application.

g. Trade Secrets

A trade secret is considered to be any information not disclosed by the individual or entity that legitimately owns it. The information is required to: (i) be secret, that is, it is not easily accessible to other persons; (ii) have an economic value in the market due to the fact that it is secret; and (iii) have been subjected to reasonable measures adopted by the owner to keep it. To qualify as a trade secret, such information must additionally: (i) be used within a productive activity, whether commercial or industrial; and (ii) be transmitted to a third party.

Such trade secret information may concern the nature, characteristics or purposes of products, a method or manufacturing process, or even means of distributing or commercializing products or services. A trade secret remains enforceable for as long as the relevant information is kept secret and all the above-described conditions are met.

h. Denomination of Origin

As the owner of all denominations of origin in Peru, the Peruvian state grants authorizations for the use of the same. To date, Peru has recognized the following denominations of origin: Pisco (the beverage) from Pisco, giant white corn from Cuzco, pallar from Ica, Villa Rica coffee, loche from Lambayeque, Machu Picchu-Huadquina coffee, maca from Maca Junín-Pasco, cacao from Amazonas, and olives from Tacna.

i. Other Intellectual Property Rights

Geographical indications and traditional guaranteed specialties are now included among Peru's IP rights.

Through geographical indications, products whose added value is due to their specific geographical origin (for example, dairy products, alcoholic beverages or agricultural products, among others), it is possible to distinguish products whose qualities, reputation or characteristics are due to their place of origin. Likewise, through traditional guaranteed Specialties, it is possible to accredit that a given culinary recipe has traditionally Peruvian ingredients and/or preparation methods.

The legal framework that currently regulates these matters is the Legislative Decree 1397, whose regulations was approved by Supreme Decree 170-2021-PCM.

j. Copyrights

Under Peruvian law, copyrights exist automatically as of the time of their creation; that is, copyrights may subsist without registration. However, it is possible to register a work with the Copyrights Office of INDECOPI to support it and to publicize the fact that copyright exists.

Copyright protection is granted for the life of the creator plus 70 years. Copyright protection is granted for creative original works such as music, movies, software, books, drawings, architectural works, photographs, designs and original databases, among others, fixed in a tangible medium of expression, whether currently known or later developed, from which they can be perceived or otherwise communicated.

Copyright protection grants its owner two kinds of rights: (i) an economic right to authorize or forbid the reproduction, publication, public performance or display, importation, production of derivative works or sale of his or her copyrighted works; and (ii) the moral rights granted to an author that include the recognition of authorship and preclude the deformation, mutilation or modification of the work without the author's prior authorization.

A copyright can be enforced by an infringement action in administrative proceedings or by a criminal action if the facts are considered to constitute a crime. In the case of administrative proceedings, the penalties for infringement include: (i) a warning; (ii) a fine of up to 180 Tax Units (TUs);¹³⁴ (iii) temporary closure of the infringing business for 90 days; (iv) seizure of the infringing goods; (v) permanent closure of the infringing business; and (vi) publication of the resolution condemning the infringer and notification of the interested parties at the infringer's expense. In the case of criminal procedures, criminal penalties may also be applied. Existing penalties include imprisonment for up to six years. For example, the unauthorized reproduction of a work is sanctioned by penalties of imprisonment for two to four years. Additionally, a copyright holder may request indemnification for damages before the Civil Court, but only if administrative or criminal penalties have been imposed by the competent authorities.

k. Industrial Know-How

The transfer of know-how is deemed to constitute a franchising agreement. However, there is no specific legislation governing franchising agreements. Rather, franchises are governed by the provisions of contract and commercial law as set forth in the Peruvian Civil Code and the Code of Commerce.

D. Immigration Regulations

1. In General

The Peruvian Law on Foreigners¹³⁵ requires all foreign individuals entering Peru to hold the appropriate migratory status or visa during while they remain in the country.

2. Visas

Depending on the nationality of the applicant, visa applications may be filed with the Peruvian Consulate abroad or the National Migration Office (*Superintendencia Nacional de Migraciones*).

Foreign individuals wishing to enter and/or to stay in Peru must have the following:

- (i) A valid passport or similar document; and
- (ii) The corresponding visa, if required.

Foreign citizens may be admitted into Peru under any of the following visas or migratory statuses:¹³⁶

¹³⁴ A TU is a reference amount approved by law. The value of the TU may vary each fiscal year. For the 2023 fiscal year a TU is equivalent to PEN 4,950.

¹³⁵ Law on Foreigners (approved by Legislative Decree 1350).

¹³⁶ The new Peruvian Law on Foreigners (approved by Legislative Decree 1350) is in force as from March 1, 2017.

Temporary	Tourist
	International Agreements
	Business
	Artist or Athletes
	Special
	Training/Temporary Investigation
	Business
	Detached Employee Temporary
	Crew Member
	Journalist
	Consular
	Diplomatic
Resident	Diplomatic
	Consular
	Official
	Cooperating
	Exchange
	Humanitarian
	Religious
	Employee
	Independent
	Rentier
	Family
	Suspended
	Training
	Immigrant
	International Agreements
	Investor

The cost of obtaining a visa comprises: (i) visa application fees, which range from US\$35 to US\$40; and (ii) US\$15 for issuance of the Foreign Card. Approval of a visa by the National Migration Office may take up to approximately 45 business days.

Visas may be classified as follows:

(i) Temporary: admission and stay of the foreign citizen is authorized for up to 180 days (extendible); or

(ii) Resident: admission and stay of the foreign citizen is authorized for periods of one year ((which may be extended).

Temporary and resident visas are granted based on the migratory status of the individual, according to the chart above. The most common types of visa or migratory status established by the Peruvian immigration law are described , below.

a. Tourist Visa

This temporary visa is granted to foreign citizens who enter Peru not to take up residence, but for sightseeing, recreational activities and the like. The visa does not allow an individual to perform remunerated or other for-profit activities in the country.

b. Business Visa

This temporary visa is addressed to foreign citizens who enter into the country not to take up residence but to conduct arrangements of a business nature or related activities.

The period of permanence is 183 days, cumulative during a period of 365 days. The latter period cannot be extended.

c. Resident Employee Visa

This resident visa is applicable to foreign citizens entering Peru to provide their personal services under an employment agreement previously approved by the Labor Authority.

d. Training Visa

This visa is granted to foreign citizens entering the country for purposes of studying in educational institutions or centers recognized by the Peruvian Government. Such individuals are not allowed to receive income from Peruvian sources, except when the foreign citizens have received special permission to work granted by the National Migration Office.

3. Registration of Foreigners

Once the migratory procedure is approved, the foreign citizen should register with the online service of the who holds a resident visa is required to register with the Central Register of Foreigners of the National Migration Office and obtain the foreign identification card (*Carné de Extranjería*). Foreign individuals must carry their foreign identification cards with them at all times while they are in Peru.

4. Violations of Immigration Law

Noncompliance with Peruvian immigration law is punishable with monetary fines, compulsory exit, cancellation of stay, cancellation of residence visa and/or expulsion.

E. Labor Relations

1. In General

Peruvian labor law classifies labor relations as falling into two frameworks: (i) individual labor bargaining, which regulates relations between employers and employees; and (ii) the collective labor bargaining, which governs organized and collective labor relations.

2. Individual Labor Relations

a. In General

General employment rules are set forth in the Law on Labor Productivity and Competitiveness, contained in the Single Unified Text of Legislative Decree 728, approved by Supreme Decree 003-97-TR and published on March 27, 1997 ("the Labor Law").

The Labor Law sets out the minimum rights and guarantees granted to private sector employees in Peru to the effect that any agreement between an employer and an employee that affects, restricts or denies employee rights is void, in view of the inalienable and non-renounceable character of labor rights. In addition, an employee cannot waive or assign the rights and guarantees provided by the law. Under the Labor Law, when the facts are in conflict with the provisions of an employment

agreement the facts will prevail over the terms of the agreement.

b. Employment Contracts

The Labor Law governs all types of employment contracts where:

- (i) The employee renders a personal service;
- (ii) The employee receives a salary as economic compensation for the personal provision of services; and
- (iii) The employee is “subordinated” to the employer.

“Subordination” refers to the personal rendering of services by employees under the authority of their employer to: (i) direct; (ii) supervise; and/or (iii) sanction the services of the employees within the limits of reasonableness and proportionality.

By virtue of the power of direction, the employer is entitled, among other things, to make changes or modify shifts, days, or hours of work. By virtue of the power of supervision, the employer is permitted to verify the manner in which services are provided, subject to the criteria of reasonableness and proportionality, taking into account the entrepreneurial needs of the employer.¹³⁷ Finally, by virtue of the power of sanction, the employer may sanction any breach of the employees’ obligations.

c. Terms and Conditions

According to the Labor Law, employment contracts are deemed to be entered into for non-fixed terms¹³⁸ and are subject to no specific formalities. Exceptionally, employers can hire employees under a fixed-term employment contracts, but only in specific cases and subject to special conditions established by law. A fixed-term employment contract must: (i) be in writing and in three copies; and (ii) expressly state the term and purpose of the agreement and other labor-related conditions.

Fixed-term employment contracts, which are subject to special conditions, comprise the following:

- (i) Temporary fixed-term employment contracts required because of:
 - The commencement of activities or the launching of a new activity;
 - Market needs; or
 - Corporate restructuring.
- (ii) Incidental fixed-term employment contracts categorized as:
 - Occasional agreements;
 - Substitution agreements; and
 - Emergency agreements.

(iii) Special work or service fixed-term employment contracts categorized as:

- Task work agreements;
- Intermittent work agreements; and
- Seasonal agreements.

Fixed-term contracts are permitted to last for a maximum period of five years, provided they do not exceed the maximum terms established under otherwise applicable special rules with respect to certain types of contracts, including task work, substitution and emergency contracts. The same benefits and rights are granted to employees hired under fixed-term contracts as are granted to employees hired under non-fixed term contracts.

d. Contract Reclassification

A distortion of a fixed-term employment contract is deemed to occur in the following circumstances:

- (i) If an employee continues working after the expiration date or agreed to extensions established by his or her employment contract agreement or after agreed extensions, or if the contract extensions exceed the maximum period established by law;
- (ii) In the case of a task work contract, if an employee continues working after finishing the job for which he or she was hired without signing an extension;
- (iii) In the case of a substitution contract (i.e., where a substitute employee replaces a permanent employee whose labor relationship is suspended due to any legal cause or reason, such as illness or pregnancy), if the permanent employee continues working and the substituted employee does not resume his or her regular work after the legal or conventional period has expired;
- (iv) If an employee proves that the employment contract circumvents or thwarts labor law; or
- (v) If the employment contract does not properly express the special fixed-term labor conditions.

If one of the above situations occurs, the fixed-term employment contract is reclassified as a non-fixed term contract, entitling the employee to job security and protection against arbitrary dismissal.

e. Termination

Under Peruvian labor law, the following are causes for the termination of a labor relationship:

- (i) The death of the employee;
- (ii) The death of the employer;
- (iii) The resignation of the employee;
- (iv) The expiration of a fixed-term contract;
- (v) Mutual agreement of the parties;
- (vi) Permanent disability of the employee;
- (vii) Retirement;
- (viii) Objective causes; and
- (ix) Dismissal.

¹³⁷ Single Unified Text of Legislative Decree 728, approved by Supreme Decree 003-97-TR and published on March 27, 1997 (LPCL), art. 9.

¹³⁸ LCPL, art. 4: “In any remunerated and subordinated provision of services, the existence of a non-fixed term employment agreement is presumed ...”.

f. Arbitrary Dismissal

Protection against arbitrary dismissal is recognized under the Peruvian Constitution. However, this protection applies only after the employment trial period has expired. In general, Peruvian labor law considers the trial or probation period to be the first three months of the labor relationship. The probation period may be extended for up to six months in the case of “trusted” personnel¹³⁹ or employees who have to be trained. The probation period may be extended to up to one year in the case of management personnel.¹⁴⁰

Once the trial period has expired, employees are entitled to employment stability and cannot be dismissed at any time or in any circumstance. For a valid dismissal to be effected, a number of conditions must be fulfilled. These conditions are exclusively related to the conduct and/or capacity of the employee. In either cases, a special procedure must be followed.

An employee who is unduly dismissed has the right to receive a special indemnity and/or a severance payment. If the employee is hired under a fixed-term contract, the special indemnity and/or severance payment is equivalent to 1.5 monthly salaries for each month remaining until the end of the agreement, subject to a maximum of 12 monthly salaries. Periods shorter than one year are paid proportionally. An employee hired under a non-fixed term contract is entitled to a special indemnity equivalent to 1.5 monthly salaries per year of service, subject to a maximum of 12 monthly salaries. Periods shorter than one year are paid proportionally.

g. Remuneration

Although remuneration is fixed by the employer and the employee in accordance with their respective interests and/or capabilities, Peruvian law establishes a minimum living wage with which the employer must comply regardless of the nature of an employee’s activities.¹⁴¹ Currently, the minimum living wage is PEN 1,025 per month.¹⁴²

For purposes of fixing the remuneration, employers should follow the principle of same remuneration for same functions developed.¹⁴³

For all legal purposes, remuneration comprises all sums received by an employee as direct compensation for services rendered by him/her in favor of his or her employer, to the extent such sums are at the sole disposition of the employee. Remuneration may be paid in cash or in kind.

Certain payments are not considered remuneration, for example, special bonuses, profit-sharing payments, employment-conditioned amounts, and any other amounts an employ-

er grants to its employees unconditionally and by way of donation.

An employee earning remuneration equal to or higher than two TUs¹⁴⁴ may agree with his or her employer to have an integrated annual remuneration, which will include all labor benefits with the exception of the employee’s profit sharing.

h. Employer Obligations

Whenever an employment contract exists, in addition to salary, the employer must pay to the employee the legal benefits described below.

(1) Compensation

Compensation for time served (CTS) is granted to employees who work a minimum of four hours per day.¹⁴⁵ The CTS is granted twice a year (in May and November). As much as 1/12 of the applicable remuneration earned by an employee will be deposited by the employer in the months of April and October, according to the number of full months worked by the employee. Fractions of a month must be taken into account proportionally. Deposits must be made in the employee’s account at an institution that is part of the Peruvian financial system.

The applicable remuneration is the basic compensation plus any amounts earned by the employee in cash or in kind as compensation for his or her work, provided such amounts are at the employee’s disposal. Exclusions from applicable remuneration include special bonuses; profit sharing; employment-conditioned amounts; Christmas basket items and the like; the value of transportation fares necessary for the employee’s attendance at the workplace; annual birthday and similar allowances; transport, business or clothing expenses; and any other amount that does not constitute a benefit or advantage that increases the net worth of the employee.

(2) Bonuses

Employees are entitled to receive two bonuses per year: the Independence Day bonus must be paid on July 15 and the Christmas bonus on December 15.¹⁴⁶ To be entitled to receive these bonuses, during the months such bonuses are paid, employees must be: (i) working for the company; (ii) on a vacation period; (iii) on a paid license period; or (iv) earning subsidies, such as maternity or sickness subsidies.

In the case of an employee who has been working for less than six months, the bonus is paid in proportion to the number of complete months worked. The bonus amount is equal to an employee’s basic monthly remuneration plus any other fixed and permanent amount earned by the employee, to the extent such amount is: (i) at the employee’s sole disposal; and (ii) considered to be remuneration, regardless of the name given to the amount by the parties.

¹³⁹ “Trusted” personnel refers to any employees working in personal and direct contact with the employer or the management personnel who have access to industrial, commercial or professional secrets and/or restricted information due to the nature of the services they perform.

¹⁴⁰ Management personnel refers to any employees exercising the general representation of the employer before other employees and/or third parties, by replacing the employer or by sharing the employer’s management functions, or level of responsibility and control.

¹⁴¹ Ministry Resolution 091-92-TR and Supreme Decree 004-2018-TR.

¹⁴² Supreme Decree N° 003-2022-TR.

¹⁴³ Law N°30709, Law that prohibits remunerative discrimination between men and women and its Regulation approved by Supreme Decree N° 002-2018-TR.

¹⁴⁴ Approximately, PEN 9,200.

¹⁴⁵ Law on Compensation for Time Served, contained in the Single Unified Text of Legislative Decree 650, approved by Supreme Decree 001-97-TR, published on March 1, 1997.

¹⁴⁶ Law that regulates the granting of legal bonuses to employees subject to the private activity sector, approved by Law 27735; and its Regulation approved by Supreme Decree 005-2002-TR.

(3) Annual Leave

For each full year of service, an employee working a minimum of four hours per day is entitled to 30 calendar days of vacation.¹⁴⁷ The payment for the vacation period is equal to the monthly remuneration the employee would receive if he or she were working.

If the earned vacation is not taken within a year, the employee will be entitled to the following: (i) remuneration for work performed; (ii) remuneration for the earned but untaken vacation; and (iii) an indemnity for not having taken the vacation, equal to one month's remuneration. For example, an employee earning PEN 1,000 per month would receive the following amounts: (i) PEN 1,000, as regular remuneration; (ii) PEN 1,000, as remuneration for the earned but untaken vacation; and (iii) PEN 1,000, as an indemnity for not having taken vacation on time.

(4) Family Allowance

Employees of private sector companies whose remuneration is not regulated by a collective bargaining agreement are entitled to receive monthly the equivalent to 10% of the minimum living wage.¹⁴⁸ Currently, the family allowance is equal to PEN 102.50, regardless of the employment commencement date. This allowance is granted to employees with one or more dependents under the age of 18.

(5) Profit Sharing

Private sector companies with more than 20 employees must share their profits with their employees according to the sectoral percentages set by law, as shown in the table below:¹⁴⁹

Activity	Percentage
Fishing sector	10%
Industrial sector	10%
Telecommunications sector	10%
Wholesalers, retailers and restaurants	8%
Mining sector	8%
Other sectors	5%

(6) Life Insurance

Employees are entitled to life insurance from the first day of work.¹⁵⁰ The employer is required to take out the insurance policy contract and pay the corresponding premiums. If there is a breach of this obligation and the employee dies or suffers accident causing his or her permanent disability, the beneficiaries

of the employee are entitled to receive the value of the insurance as established by law.

(7) Supplementary Work Risk Insurance

Companies performing risky activities must subscribe to a Supplemental Security Work Risk Insurance contract for the employees involved in those activities.¹⁵¹

(8) Working Hours and Overtime Pay

The typical workday lasts eight hours subject to a maximum of 48 hours per week. Employees may establish atypical workday arrangements provided the maximum number of hours established per week is not exceeded.¹⁵²

Any excess time worked will be considered overtime and be subject to a surcharge of not less than 25% for the first two hours and 35% for subsequent hours calculated based on the ordinary remuneration received or compensated with periods of rest. Management personnel, personnel with non-direct supervision and personnel who render intermittent services are not entitled to overtime pay.

Employees performing night work shifts may not receive remuneration lower than the minimum monthly remuneration in force, plus a surcharge of 35%. Night work is defined as any work performed between 10 p.m. and 6 a.m.

*(9) Mandatory Social Contributions**(a) National Health System*

The National Health System (SNS), which is the responsibility of the Peruvian Social Security Institute (EsSalud), was created by Decree Law 22482 and was published on March 28, 1979, provides for a mandatory employer's contribution equal to 9% of employee remuneration. Furthermore, the Law on the Modernization of Social Security, approved by Law 26790, published on May 17, 1997, allows for private sector participation via the provision of complementary medical services through Business Health Services (EPS).

Employees transferred to EPS will continue to contribute to EsSalud.¹⁵³ EPS contribution must be paid by the employer. EPS will only provide certain medical services (i.e., the most common and less complex medical services). The less common and more complex medical services will still be provided by EsSalud.

(b) Pension System

Employees have the right to choose from the following two contribution systems:

(i) The National pension system, which is the responsibility of the government Pension Fund Office (ONP). The monthly contribution is 13% of the employee's monthly remuneration.

¹⁴⁷ Law on paid rest of employees subject to the private activity sector, approved by Legislative Decree 713 published on Nov. 8, 1991.

¹⁴⁸ Law 25129 (published on Dec. 6, 1989) updates the family allowance received by employees subject to the private activity sector.

¹⁴⁹ Legislative Decree 677 (published on Oct. 7, 1991), and Legislative Decree 892 (published on Nov. 11, 1996) and the Regulation thereunder approved by Supreme Decree 009-98-TR (published on Aug. 6, 1998).

¹⁵⁰ Supreme Decree 009-2020-TR, that approves the regulation of Emergency Decree 044-2019 related to life insurance and Legislative Decree 688, i.e., Law of Consolidation of Social Benefits and modifications.

¹⁵¹ Dispositions for the Complementary Insurance for High-Risk Activities approved by Supreme Decree 003-98-SA.

¹⁵² Law on Work and Overtime contained in the Single Unified Text of Legislative Decree 854, and its Regulation approved by Supreme Decree 008-2002-TR.

¹⁵³ In the case of employees transferred to EPS, the employer's contribution (i.e., 9%) is divided as follows: (i) 6.75% to EsSalud; and (ii) 2.25% to EPS.

(ii) The Private pension system, which is managed by Pension Fund Management Companies (AFPs). The monthly contribution depends on the AFP selected, being on average around 12.9% of the employee's monthly remuneration.

The employer must withhold the corresponding percentage from the employee's remuneration.

3. Foreign Employees

Foreign employees who are in Peru under labor contracts previously approved by the Labor Authority are entitled to the same labor rights and benefits as Peruvian citizens. Employers are able to hire foreign employees to the extent of up to 20% of their total work force, provided the remuneration of such employees does not exceed 30% of total payroll.¹⁵⁴ However, employers may request an exemption from these limitations on the employment of foreigners in the case of:

- (i) Specialized professional or technical personnel;
- (ii) Management and/or general personnel involved in a new corporate activity, or in the case of corporate restructuring;
- (iii) Teachers hired to provide advanced education or basic or secondary education in private foreign schools or in the teaching of languages in private national schools or specialized language centers;
- (iv) Personnel of public sector companies, or of private companies that are parties to contracts with public sector organizations, institutions or companies; and
- (v) Any other personnel in cases established by Supreme Decree.

Foreign labor agreements must be in writing and for fixed-terms of up to three years. Such agreements may be renewed successively for equal periods. Such labor agreements must be submitted for approval to the Labor Authority. The approval process of the employment agreement for foreign employees is automatic; therefore, the approval is understood to be operational as of its presentation before the Labor Authority. The Labor Authority's approval of a labor agreement is not sufficient for a foreign employee to commence work — the foreign employee will also need to obtain a visa approved by the National Migration Office before being able to work.

4. Collective Labor Relations

a. In General

The right to collective bargaining is protected under the Peruvian Constitution,¹⁵⁵ which recognizes the right of an employee to join labor unions, collective bargaining and strikes.¹⁵⁶

b. Labor Unions

Labor union affiliation is voluntary. To be a member of a labor union, an employee must work in an enterprise or be involved in an activity, profession or occupation that corresponds to the type of union concerned. Managers and executive employees are not allowed to be members of unions, unless otherwise established by the by-laws of the company concerned. The minimum number of employees depends on the type of labor union. To be constituted and subsist, a company union must have a minimum of 20 employees. Other types of labor unions (i.e., an activity union, a guild union, a various occupations union, groups of companies, a production productive chain or subcontracting networks -outsourcing, intermediation-, or any other that the workers deem convenient) require a minimum of 50 employees. Employers may deduct union fees from the monthly salary of their employees, provided they are expressly authorized to do so by the employees concerned.

c. Formation

The procedure for creating a labor union is as follows:

- (i) General assembly: the employees must call for a general assembly to adopt the union's statute or by-laws and elect a board of directors. These agreements are reflected in corresponding documents, which must be endorsed by a notary public or, in the absence of a notary public, by the local court. The Statute must indicate the place and date of the general assembly and the members that attended. The union's statute or by-laws may be freely determined.
- (ii) Registration before the labor authority: a union must be registered with the labor authority. A formal request must be submitted for such purpose, which must include the following legal requirements: (a) the documents drafted with regard to the general assembly; (b) the statute; (c) a list of members; (d) the payroll of the affiliated organizations, in case of federations or confederations; and (e) a list of the elected members of the board of directors.
- (iii) Certificate of registration: the labor authority issues the respective Certificate of Registration in the Registry of Trade Unions of Employees under the Private Activity regulations (*Registro de Sindicatos del Régimen de la Actividad Privada*) no later than five days as from the date on which the request was filed.
- (iv) Notice of Registration: once a union is registered, the board of directors communicates this fact to the employer(s), providing it/them with the list of members.

d. Privileges

Under Peruvian labor law, unions are classified as follows:

- (i) Company union (*Sindicato de Empresa*): formed by employees of different professions, occupations, or specialties working for the same employer;
- (ii) Activity union (*Sindicato de Actividad*): formed by employees with diverse professions, specialties or occupations working for two or more enterprises in the

¹⁵⁴ Law on Employment of Foreigners approved by Legislative Decree 689, and its Regulation approved by Supreme Decree 014-92-TR.

¹⁵⁵ Peruvian Constitution, art. 28.

¹⁵⁶ Law on Work Collective Relations approved by Supreme Decree 010-2003-TR (published on Oct. 5, 2003) and the Regulation thereunder, approved by Supreme Decree 011-92-TR (published on Oct. 15, 1992), amended by Supreme Decree No. 014-2022-TR (published on July 24, 2022).

same economic activity or industry (for example, the mining industry union);

(iii) Guild union (*Sindicato de Gremio*): formed by employees of diverse companies with the same profession, occupation or specialty; and

(iv) Various occupations union (*Sindicato de Oficios Varios*): formed by employees with diverse professions, occupations or specialties working for a number of different companies, when the total number of employees is not sufficient for the creation other kinds of unions.

e. Immunity

In general terms, union law protects union members and their representatives from dismissal and guarantees that they will not be transferred to other establishments of the employer company, without a duly proven fair reason or without the employees' acceptance. Employee acceptance is not required when a change of establishment within the same company does not interfere with an employee's function as a union representative. Protected individuals include the following:

- (i) The members of a union in the process of formation;
- (ii) The members of the board of directors of the union, federations and confederations, as well as the delegates from the trade union sections. This protection may be extended pursuant to collective bargaining;
- (iii) The delegates, where the number of employees does not reach the required minimum;
- (iv) The candidates for leaders or delegates, as from 30 calendar days prior to the beginning of the electoral process and up to 30 calendar days after the end of that process;
- (v) All union section delegates; and
- (vi) The members of a committee negotiating labor grievances (*pliego petitorio*) for a term of up to three months after the conclusion of the respective negotiation process.

f. Collective Bargaining

Collective bargaining begins with the submission of a list of claims by the unionized employees to the employer (in the case of company level bargaining) or through the labor authority (in the case of union level bargaining) to start negotiations. The list of claims must be approved by the union's general assembly and must be submitted to the employer within two months after such approval.

The result of the collective bargaining process is an agreement intended to regulate wages, productivity, and working conditions, among one or more trade unions or, in their absence, representatives of the employees, expressly authorized and elected for such purpose, and an employer, a group of employers or a number of employer organizations.

Once agreed to, collective bargaining agreements are mandatory for the parties that agree to it and for the employees

that join the union on a date after which the agreement was concluded.

5. Labor Measures

Non-compliance with labor regulations is sanctioned by fines. The amount of the fine varies depending on the infringement level and the number of employees involved.¹⁵⁷

The types of infractions are classified as follows:

- (i) Labor relationships;
- (ii) Health and safety at work;
- (iii) Job development and placement;
- (iv) Labor intermediation and outsourcing services;
- (v) Training;
- (vi) Employment of foreign employees;
- (vii) Social security; and
- (viii) Labor inspection.

F. Financing the Business

1. Shareholder Capital

A shareholder capital injection can be made in the form of a direct contribution to capital or in the form of a loan from the shareholders to the company. It is important to note that the PCL allows such a loan to be capitalized subsequently, provided the shareholders' meeting approves the capital stock increase and there is a consequent issuance of shares.¹⁵⁸

Capital stock increases (whether through a contribution or the capitalization of a loan) must be registered in the company's records with the Peruvian Public Registry.¹⁵⁹

2. Loans

Injecting capital through the direct use of loans granted by financial entities is also a common way of financing a business in Peru.

3. Debt Instruments

Debt instruments can be privately or publicly traded, depending on the decision made by, and the nature of, the issuing company.

4. Project Finance

Sophisticated project finance structures are commonly arranged in the case of major projects.

The financing methods described above are usually combined in order to maximize their benefits.

¹⁵⁷ General Law on Labor Inspection approved by Law 28806, Regulation thereunder approved by Supreme Decree 019-2006-TR, Supreme Decree 002-2017-TR, Law 29981, and Law 30814.

¹⁵⁸ PCL, art. 202.

¹⁵⁹ Peru's Public Registry official webpage: <https://www.sunarp.gob.pe/>.

III. Forms of Doing Business in Peru

A. Principal Business Entities

Peru is an attractive country in which to invest and offers a wide range of alternative choices for carrying on business. These choices have different characteristics that may be adjusted to accommodate the preferences of both local and foreign investors. The multiple structuring options (such as branches of foreign companies, various forms of Peruvian legal entities and various forms of agreements) are highly adaptable and can provide a range of different benefits to investors. That being said, it is important for investors to consider carefully what objectives they wish to achieve in order to determine the most suitable legal structure for doing business in Peru.

The most commonly used forms of business in Peru are:

- (i) The stock corporation (*Sociedad Anónima* or S.A.);¹⁶⁰
- (ii) The closed stock corporation (*Sociedad Anónima Cerrada* or S.A.C.);¹⁶¹
- (iii) The limited liability company (*Sociedad Comercial de Responsabilidad Limitada* or S.R.L.);¹⁶² and
- (iv) The branch of a foreign corporation.¹⁶³

Corporate law regulates the incorporation procedure, operation, management, reorganization, dissolution, liquidation and extinction process for the various types of legal entities.

B. Stock Corporation

1. Formation

The *Sociedad Anónima* (S.A.) is the most common form of legal entity used by investors (both foreign and local) for doing business in Peru. An S.A. must be incorporated by at least two shareholders, who may be individuals and/or legal entities.¹⁶⁴ These shareholders agree to contribute assets, such as cash, movable/immovable property, and/or rights with commercial relevance.¹⁶⁵

The shareholders of an S.A. are not personally liable for the debts of the S.A., their liability being limited to the amount they have contributed to the S.A.¹⁶⁶ Additionally, there is no limit on the number of shares that a shareholder may own out of the total number issued by an S.A.

a. Purpose Clause

The business purpose of an S.A. must be established in its public deed of incorporation and should specify the operations, business and activities that are going to be carried on. It is understood that acts related to the business purpose that contribute to its achievement are also included, even if they are not specifically stated in the articles of incorporation or the by-laws.¹⁶⁷

b. Corporate Name

The corporate name of an S.A., which does not have to describe its activities, must be followed by the words “*Sociedad Anónima*” (stock corporation) or the initials “S.A.”¹⁶⁸ The corporate name cannot be the same as the name of a pre-existing legal entity.¹⁶⁹

c. Incorporation

The incorporation of an S.A. must be formalized by public deed before a notary public and takes approximately three business days. The document concerned must contain the S.A.’s articles of incorporation and by-laws, as well as indicating the appointment of the first members of the board of directors and the managers, among other items.¹⁷⁰

Once the public deed of incorporation is executed before a notary public, it must be filed with the public registry of the domicile of the S.A. within the following 30 calendar days.¹⁷¹ The process of registering with the public registry usually takes about 10 business days.

An S.A. acquires legal personality as of the date of its registration in the Public Registry and keeps it until its extinction is registered in the same registry.¹⁷²

d. Articles of Incorporation

As stated above, the incorporation of an S.A. is carried out by the founding shareholders at the moment of the execution of the public deed containing the articles of incorporation and the by-laws, at which time the founding shareholders fully subscribe to the shares issued by the S.A.¹⁷³

The articles of incorporation must include the following information:¹⁷⁴

- (i) The identity of, and information regarding, the founding shareholders: in the case of individual shareholders, their names, addresses, civil status and, if they are married, the names of their spouses; and in the case of shareholders that are legal entities, their names, places of incorporation and addresses, the names of their representatives and the documents confirming representation;
- (ii) The express manifestation of the shareholders’ desire to incorporate the S.A.;
- (iii) The amount of capital stock and shares;
- (iv) The manner in which the subscribed capital has been paid as well as each contribution in cash or in kind, with the corresponding appraisal reports;
- (v) Appointment and identification information regarding the first managers; and

¹⁶⁰ PCL, arts. 50–233.

¹⁶¹ PCL, arts. 234–248.

¹⁶² PCL, arts. 283–294.

¹⁶³ PCL, arts. 396–406.

¹⁶⁴ PCL, art. 4.

¹⁶⁵ PCL, arts. 1 and 74.

¹⁶⁶ PCL, art. 51.

¹⁶⁷ PCL, art. 11.

¹⁶⁸ PCL, art. 50.

¹⁶⁹ PCL, art. 9.

¹⁷⁰ PCL, art. 5.

¹⁷¹ PCL, art. 16.

¹⁷² PCL, art. 6.

¹⁷³ PCL, arts. 22 and 52.

¹⁷⁴ PCL, art. 54.

(vi) The by-laws that will govern the S.A.'s operations.

The by-laws of an S.A. must include the following information:¹⁷⁵

- (i) The corporate name;
- (ii) The S.A.'s business purpose;
- (iii) The domicile of the S.A.;
- (iv) The term of the S.A. and its commencement date;
- (v) The amount of capital stock, the number of shares into which the stock is divided, the nominal value of each share, and the amount paid for each subscribed share;
- (vi) Where applicable, the classes of shares into which the capital stock is divided, the number of shares of each class, the characteristics, special rights or preferences granted in their favor and the regime of accessory benefits or additional liabilities;
- (vii) The regime applicable to the corporation's bodies;
- (viii) The requirements for agreement to increases or decreases of capital and any other amendment of the articles of incorporation or the by-laws;
- (ix) The times and occasions on which management performance and the results of each fiscal year must be submitted to the shareholders' approval;
- (x) The rules on profit distribution; and
- (xi) The dissolution and liquidation regimes.

e. Capital Stock

There is no legal minimum or maximum for the capital stock of an S.A., except in the case of certain types of corporations (banks, insurance companies, etc.). Nonetheless, some banks require a minimum amount of PEN 1,000 for depositing capital stock through cash contributions.

The incorporation of an S.A. requires that all of its capital stock be fully subscribed by the shareholders. At least 25% of the shares representing the fully subscribed capital stock must be paid up.¹⁷⁶

An S.A. may also issue shares in exchange for goods and credit contributions. The corresponding public deed must show these in-kind contributions and must include a report stating:¹⁷⁷

- (i) A description of the contributions in-kind;
- (ii) The criteria used for the appraisal of the contributions in-kind; and
- (iii) The value of the contributions in-kind.

The shares issued by an S.A. represent an aliquot portion of the capital stock and must have the same nominal value.¹⁷⁸ The issued shares may be represented by share certificates, account entries or other forms allowed by law.¹⁷⁹ The creation, issuance, transfer, exchange or splitting of the shares; the grant-

ing of rights and liens or encumbrances, as well as transfer restrictions related to the shares; and the agreements entered into by or between the shareholders and third parties with respect to the shares or related to the exercise of the rights inherent therein must be registered in the Stock Registry Book.¹⁸⁰

An S.A. may issue different types of shares, including non-voting shares.¹⁸¹ The rights attached to voting and nonvoting shares are discussed below.

f. Voting Shares

Voting shares grant their holders political and economic rights, such as:¹⁸²

- (i) The right to participate and vote in shareholders' meetings;
- (ii) The right to supervise management performance;
- (iii) The right to withdraw from an S.A. on the approval of certain corporate decisions (for example, decisions regarding mergers, spin-offs and changes of business purpose);
- (iv) The right to participate in the distribution of profits;
- (v) The right to participate in the net proceeds resulting from liquidation; and
- (vi) Pre-emptive rights.

g. Non-voting Shares

Non-voting shares confer no political rights on their holders and are, therefore, not taken into consideration in determining the quorum for shareholders' meetings.¹⁸³ The holders of nonvoting shares are granted the following rights:¹⁸⁴

- (i) The right to be informed at least every six months about the activities and management of the S.A.;
- (ii) The right to oppose decisions that violate their rights;
- (iii) The right to withdraw from the S.A. in the case of events specified by the Peruvian Corporations Law (PCL) and the by-laws of the S.A.;
- (iv) The right to be participate in the distribution of profits, in particular to receive preferential dividends as provided by the S.A.'s by-laws;
- (v) The right to be participate in the net profits resulting from liquidation proceedings, in preference to the holders of voting shares; and
- (vi) Pre-emptive rights.

h. Incorporation By Foreign Shareholders

If one or all shareholders of the S.A. are foreign individuals or legal entities, in addition to the general requirements, discussed above, the following requirements must also be met:

¹⁷⁵ PCL, art. 55.

¹⁷⁶ PCL, art. 52.

¹⁷⁷ PCL, art. 27.

¹⁷⁸ PCL, art. 82.

¹⁷⁹ PCL, arts. 84 and 100.

¹⁸⁰ PCL, art. 92.

¹⁸¹ PCL, art. 88.

¹⁸² PCL, art. 95.

¹⁸³ PCL, art. 94.

¹⁸⁴ PCL, art. 96.

(i) A foreign shareholder (whether an individual or a legal entity) must grant power in favor of an individual or a legal entity in Peru to incorporate the new company and draft the articles of incorporation and by-laws;

(ii) A foreign shareholder that is a legal entity must issue a certificate of incumbency stating that the individual or legal entity that granted the power of attorney in favor of an individual or a legal entity in Peru on its behalf to incorporate the S.A. is acting with sufficient power; and

(iii) A certificate of good standing must be provided to confirm the existence and good standing of the foreign shareholder if the shareholder is a legal entity.

All of the documents presented for the incorporation of the S.A., as set out above, must be:

(i) Apostilled or legalized by the competent authorities of the place(s) where the documents are granted/issued and by the Peruvian Consulate of the corresponding jurisdiction(s);

(ii) Officially translated into Spanish;

(iii) Certified by the Peruvian Ministry of Foreign Affairs; and

(iv) Recorded in the Public Registry.

i. Costs of Incorporation

The costs of incorporating an S.A. in Peru are as follows:

(i) Notary public fees starting from approximately PEN 1,000, depending on the amount of the S.A.'s capital stock; and

(ii) Registration fees payable to the public registry based on 1.08% per one TU and 0.003% of the amount of the S.A.'s capital stock.¹⁸⁵

2. Operation

a. Business Licenses

An S.A. may need to obtain certain authorizations and licenses to initiate operations, depending on the activities to be carried on. For example, an operating license is required for a corporate office, an authorization of operations is required to provide banking and financial services or insurance, and an authorization is also required for the commencement of mining activities.

b. Amendment of By-laws

Amendments to the by-laws must be approved by the general shareholders' meeting.¹⁸⁶ To enter into force, such amendments must be formalized by means of a public deed before a notary public and then registered in the Public Registry.¹⁸⁷

Amendments to the by-laws require:

(i) A clear and accurate statement of the terms of the proposed amendments in the call notice of the general shareholders' meeting.¹⁸⁸

(ii) The approval of shareholders representing at least an absolute majority of the fully subscribed voting shares.¹⁸⁹ The quorum required on first call is at least two thirds of the fully subscribed voting shares and on second call, 60% of such shares.¹⁹⁰

The adoption of the following resolutions (among others) by the general shareholders' meeting requires an amendment to the by-laws:

(i) A change of the corporate name;¹⁹¹

(ii) Modification of the business purpose;¹⁹²

(iii) A change in the S.A.'s domicile;¹⁹³

(iv) Modifications to the capital stock (i.e., increases or decreases);¹⁹⁴

(v) The creation of a new class of shares;¹⁹⁵

(vi) Limitations on the transfer of shares;¹⁹⁶

(vii) Reorganizations;¹⁹⁷

(ix) Mergers;¹⁹⁸ and

(x) Spin-offs.¹⁹⁹

It is worth noting that changes in managers, legal representatives or members of the board of directors do not require the amendment of the by-laws.

c. Alteration of Share Capital

(1) Increase in Share Capital

A capital increase is agreed to by the General Shareholders' Meeting in compliance with the established requirements for amending the by-laws.²⁰⁰

A capital increase may be effected by way of:²⁰¹

(i) New contributions;

(ii) The capitalization of credits granted to the S.A., including the conversion of bonds into shares;

(iii) The capitalization of profits, reserves, benefits, capital stock premiums or appraisal surplus; and

(iv) Other methods provided for by law.

¹⁸⁸ PCL, art. 198.

¹⁸⁹ PCL, art. 127.

¹⁹⁰ PCL, art. 126.

¹⁹¹ PCL, art. 9.

¹⁹² PCL, art. 11.

¹⁹³ PCL, art. 20.

¹⁹⁴ PCL, arts. 201 and 215.

¹⁹⁵ PCL, art. 88.

¹⁹⁶ PCL, art. 101.

¹⁹⁷ PCL, art. 336.

¹⁹⁸ PCL, art. 345.

¹⁹⁹ PCL, art. 370.

²⁰⁰ PCL, art. 201.

²⁰¹ PCL, art. 202.

¹⁸⁵ Supreme Decree 008-2004-JUS.

¹⁸⁶ PCL, art. 198.

¹⁸⁷ PCL, art. 5.

A capital increase requires the creation of new shares or an increase in the nominal value of existing shares.²⁰² For capital to be increased as a result of new contributions or the capitalization of credits, it is a prerequisite that all existing shares, regardless of the class they belong to, are fully paid.²⁰³

(2) Decrease in Share Capital

A capital reduction is agreed to by the General Shareholders' Meeting in compliance with the requirements established to amend the by-laws.²⁰⁴ A reduction of capital requires the amortization of shares issued by the S.A. or a reduction in their nominal value, and is executed by way of:²⁰⁵

- (i) The delivery to the shareholders of the amount of the amortized nominal value;
- (ii) The delivery to the shareholders of an amount corresponding to their participation in the net equity of the S.A.;
- (iii) The remission of capital calls; or
- (iv) The restoration of the balance between the capital stock and the net equity where the latter has been reduced as a result of losses incurred by the S.A.

In principle, a capital reduction affects all shareholders in proportion to their participation in the capital stock without changing their shareholding percentage. Any other arrangement must be decided on unanimously by the holders of all subscribed shares with voting rights.²⁰⁶ A capital reduction agreement must be published three times at intervals of five days in the Peruvian Official Newspaper (*El Peruano*).²⁰⁷

d. Acquisition of Own Stock

An S.A. may acquire its own shares in order to amortize them by reducing its capital stock. If the shares are acquired for an amount greater than their nominal value, the difference may only be paid out of the S.A.'s benefits and free reserves.²⁰⁸

An S.A. may also acquire its own shares in order to amortize them without reducing its capital stock and without refunding the nominal value of the acquired shares to the shareholders. In this case, the S.A. may issue titles to the shareholders granting them the right to receive a percentage of the S.A.'s profits over a specified period.²⁰⁹

Additionally, an S.A. may acquire its own shares gratuitously, in which case it may or may not amortize them.²¹⁰ Shares that an S.A. acquires for consideration must be fully paid, unless the acquisition is carried out to prevent serious damage to the S.A.²¹¹

e. Corporate Officers

An S.A. has one or more managers designated by the board of directors, unless the by-laws establish that only the general shareholders' meeting has the power to designate managers.²¹² Additionally, an S.A. may have legal representatives, whom it may authorize to carry out its business purpose.

f. Annual Shareholders' Meeting

The general shareholders' meeting is the supreme body of an S.A.²¹³ The shareholders may decide matters within their competence provided they have the requisite quorum and majority for passing resolutions.²¹⁴

A general shareholders' meeting must be held at least once a year within three months after the end of the business year, to approve the financial statements of the corresponding period, among other matters.²¹⁵ The board of directors or the general manager may call a general shareholders' meeting whenever it is ordered to do so by law, established in the by-laws, agreed to by the board of directors if it is deemed necessary to the S.A.'s best interests, or requested by a number of shareholders representing at least 20% of the subscribed voting shares.²¹⁶

g. Directors' Meetings

The by-laws of an S.A. set either a fixed number, or a minimum and maximum number of directors. The minimum number of directors cannot be less than three.²¹⁷

The by-laws must establish the term of office of the board of directors for specific periods that may not exceed three years or be less than one year. The board of directors must be totally replaced at the end of its term of office, including those directors who were appointed to complete terms. Directors may be re-elected, unless otherwise provided by the by-laws.²¹⁸

h. Books and Records

An S.A. must keep the following company books:

- (i) A general shareholders' meetings Book;²¹⁹
- (ii) A board of directors' meetings Book;²²⁰
- (iii) A stock registry book,²²¹ and
- (iv) Accounting books.²²²

Each book must be page-numbered and duly legalized by a public notary.

i. Financial Statements

As stated in f., above, the financial statements (balance sheet and the profit and loss statement) must be presented by

²⁰² PCL, art. 203.

²⁰³ PCL, art. 204.

²⁰⁴ PCL, art. 215.

²⁰⁵ PCL, art. 216.

²⁰⁶ PCL, art. 217.

²⁰⁷ PCL, art. 217.

²⁰⁸ PCL, art. 104.

²⁰⁹ PCL, art. 104.

²¹⁰ PCL, art. 104.

²¹¹ PCL, art. 104.

²¹² PCL, art. 185.

²¹³ PCL, art. 111.

²¹⁴ PCL, art. 111.

²¹⁵ PCL, art. 114.

²¹⁶ PCL, art. 113.

²¹⁷ PCL, art. 155.

²¹⁸ PCL, art. 163.

²¹⁹ PCL, art. 134.

²²⁰ PCL, art. 170.

²²¹ PCL, art. 92.

²²² Resolution of Superintendence 234-2006-SUNAT.

the board of directors to the general shareholders' meeting for its approval within the three first months of every year.²²³

S.A.s whose shares are quoted on the Lima Stock Exchange must file their financial statements and any other material information with the Capital Market Superintendence and the Lima Stock Exchange.

j. Dividends and Other Distributions

The following rules apply with respect to dividend distributions:²²⁴

- (i) Dividends may be paid out of profits earned or free reserves, provided the net worth of the S.A. paying the dividends is not less than its paid-in capital;
- (ii) All shares (even shares that are not fully paid up) are equally entitled to dividends, regardless of when the shares were issued or paid up, unless otherwise provided by the by-laws or a resolution of the general shareholders' meeting;
- (iii) The distribution of interim dividends to shareholders is allowed, except when prohibited by law;
- (iv) If the general shareholders' meeting agrees to distribute an interim dividend without the favorable opinion of the board of directors, the shareholders who voted in favor of the resolution will exclusively hold joint and several liability for the distribution; and
- (v) The general shareholders' meeting may validly delegate to the board of directors the power to approve the distribution of interim dividends.

k. Reserves

A minimum of 10% of the distributable income for each fiscal year, less income tax, must be allocated to a legal reserve, until the amount of the reserve reaches an amount equal to 20% of the S.A.'s capital stock. Any excess over this threshold does not have the status of a legal reserve.²²⁵

Losses incurred by an S.A. are set off against profits or free reserves. In the absence of profits or free reserves, losses are set off against the legal reserve. In the latter case, the legal reserve must be restored.²²⁶

An S.A. may capitalize its legal reserve, in which case it is required to restore it. The restoration of the legal reserve is made with future earnings.²²⁷

3. Mergers

There are two types of mergers under Peruvian law:²²⁸

- (i) The merger of two or more existing companies to create a new company causing the extinction of the legal personality of the merging companies and the transfer of all of their assets to the new company; and

- (ii) The absorption of one or more existing companies by another existing company causing the extinction of the legal personality of the absorbed company or companies. The continuing company receives all the assets of the extinguished companies.

The shareholders of the extinguished companies receive shares of the new company or of the continuing company, respectively.²²⁹ All mergers must be formalized by means of a public deed and registered in the public registry and, additionally, must be reported to the Peruvian Tax Administration (*Superintendencia Nacional de Aduanas y de Administración Tributaria* or SUNAT).

4. Dissolution and Liquidation

An S.A. may be dissolved for any of the following reasons:²³⁰

- (i) The expiration of the S.A.'s term;
- (ii) The conclusion of the S.A.'s business purpose, the nonfulfillment of the S.A.'s business purpose over a long period or it becoming clear that it is impossible for the S.A. to fulfill its purpose;
- (iii) The ongoing inactivity of the S.A.'s General Shareholders' Meeting;
- (iv) The incurring of losses that reduce the S.A.'s net equity to an amount lower than 30% of its paid-up capital, unless this situation is reversed or modified;
- (v) A resolution of the assembly of creditors passed in accordance with the pertinent law, or bankruptcy;
- (vi) No plurality of shareholders, if such plurality is not reestablished within six months;
- (vii) A resolution adopted by the Supreme Court;
- (viii) A resolution of the General Shareholders' Meeting (no legal or statutory cause is required); or
- (ix) Any other reason set forth in the law or considered in the articles of incorporation, the by-laws or a shareholders' agreement registered with the S.A.

The liquidation process begins as soon as an S.A. is dissolved.²³¹ The dissolved S.A. retains its legal personality during the liquidation process until its extinction is registered with the public registry. During the liquidation process, the S.A. must add to its corporate name the expression "in liquidation."²³²

The representation of an S.A. by its directors, managers and representatives in general ceases on the conclusion of the dissolution agreement and the liquidators assume the functions that correspond to them according to the law, the by-laws, the articles of incorporation, the shareholders' agreements registered with the company and the resolutions of the general shareholders' meeting.²³³ The liquidators are designated by the general shareholders' meeting. The liquidators can be individuals or legal entities and their positions are remunerated unless

²²³ PCL, art. 221.

²²⁴ PCL, art. 230.

²²⁵ PCL, art. 229.

²²⁶ PCL, art. 229.

²²⁷ PCL, art. 229.

²²⁸ PCL, art. 344.

²²⁹ PCL, art. 344.

²³⁰ PCL, art. 407.

²³¹ PCL, art. 413.

²³² PCL, art. 413.

²³³ PCL, art. 413.

the by-laws, articles of incorporation, or the general shareholders' meetings provide otherwise.²³⁴

The liquidators have the power to represent the S.A. and to administer its assets during the process of liquidation. They must assemble an inventory, prepare the financial statements, and guard the corporate books, among other responsibilities.²³⁵

If, during the process of liquidation, the equity of an S.A. is extinguished and there are still creditors that have not been paid, the liquidators must call a general shareholders' meeting to inform the creditors of the situation and must file a judicial declaration of bankruptcy in accordance with the pertinent law.²³⁶

Once the net profit resulting from the liquidation process is distributed, the extinction of an S.A. must be registered in the public registry.²³⁷

5. Reorganizations

A company incorporated under the PCL may be converted into another legal type of company or legal entity governed by Peruvian law.²³⁸ Such a conversion does not entail a change of legal personality²³⁹ and does not modify the participation of the shareholders in the capital stock of the entity concerned.²⁴⁰ Such a conversion must be evidenced by a resolution of the general shareholders' meeting, which must comply with the provisions established in the by-laws of the company and be formalized by means of a public deed with a public notary and registered in the public registry.²⁴¹

C. Closed Stock Corporation

1. In General

An S.A. may be subject to the regime applicable to a *Sociedad Anónima Cerrada* (S.A.C.) when it has no more than 20 shareholders and its shares are not registered in the public registry of the stock market.²⁴² The corporate name must include the words "*Sociedad Anónima Cerrada*" (closed stock corporation) or the letters "S.A.C."²⁴³ The S.A.C. regime is optional for investors, who can choose to incorporate either as an S.A. or an S.A.C in accordance with the requirements established by the PCL.

2. Preferential Acquisition Right

A shareholder of an S.A.C. intending to transfer all or part of his, her or their shares to another shareholder or a third party must notify the general manager of the S.A.C. in writing, who, in turn, must notify the other shareholders within 10 days, so that within 30 days they may exercise their preferential acquisition right in proportion to their participation in the S.A.C.'s capital stock.²⁴⁴ The notification from the shareholder to the

general manager must provide general information regarding the potential buyer, the number and class of shares to be transferred, the price at which the shares are to be transferred and other conditions.²⁴⁵ The shareholder may transfer the shares to third parties on the terms communicated to the general manager 60 days after filing such communication provided neither the S.A.C. nor the shareholders have communicated an interest in purchasing the shares.²⁴⁶

3. Optional Board of Directors

The articles of incorporation or the by-laws may provide that an S.A.C. is to have no board of directors. In such case, the functions of the board will be performed by the general manager.²⁴⁷

D. Limited Liability Company

The capital of a *Sociedad Comercial de Responsabilidad Limitada* (S.R.L.) is divided into equal, indivisible participations. It may not be incorporated into security titles, nor be called shares.²⁴⁸ An S.R.L. may not have more than 20 partners. The partners are not held personally liable for the S.R.L.'s obligations.²⁴⁹

An S.R.L. must add to its corporate name the words "*Sociedad Comercial de Responsabilidad Limitada*" (limited liability company) or the letters "S.R.L."²⁵⁰

The capital stock of an S.R.L. is composed of the partners' contributions. At the moment of incorporation, at least 25% of each participation must be paid up and deposited in an account with a bank or financial institution in the name of the S.R.L.²⁵¹

The by-laws of an S.R.L. may establish the mechanism by which the partners may express their will.²⁵² However, a general partners' meeting must be held when required by partners that represent 20% of the capital stock.²⁵³ The administration of an S.R.L. lies in the hands of one or more managers.²⁵⁴

E. Branch of a Foreign Corporation

A branch is any secondary establishment through which a foreign corporation can conduct business in Peru—²⁵⁵

A branch does not have an independent legal personality separate from that of its head office.²⁵⁶ The activities of a branch, as assigned to it by its head office, are managed and administered by a permanent legal representative in Peru.²⁵⁷ The head office remains liable for all of the obligations of its branch.²⁵⁸

²³⁴ PCL, art. 414.

²³⁵ PCL, art. 416.

²³⁶ PCL, art. 417.

²³⁷ PCL, art. 421.

²³⁸ PCL, art. 333.

²³⁹ PCL, art. 333.

²⁴⁰ PCL, art. 335.

²⁴¹ PCL, art. 336.

²⁴² PCL, art. 234.

²⁴³ PCL, art. 235.

²⁴⁴ PCL, art. 237.

²⁴⁵ PCL, art. 237.

²⁴⁶ PCL, art. 237.

²⁴⁷ PCL, art. 247.

²⁴⁸ PCL, art. 283.

²⁴⁹ PCL, art. 283.

²⁵⁰ PCL, art. 284.

²⁵¹ PCL, art. 285.

²⁵² PCL, art. 286.

²⁵³ PCL, art. 286.

²⁵⁴ PCL, art. 287.

²⁵⁵ PCL, art. 396.

²⁵⁶ PCL, art. 396.

²⁵⁷ PCL, arts. 396 and 399.

²⁵⁸ PCL, art. 397.

The branch of a foreign corporation must be established through a public deed and be registered with the public registry.²⁵⁹ The public deed must include the following (at a minimum) information:²⁶⁰

- (i) A certificate of good standing of the head office issued by the competent entity in the jurisdiction in which the company was incorporated. This document must state that neither the company's articles of incorporation nor its by-laws prevent the company from establishing branches abroad.
- (ii) A copy of the articles of incorporation and the by-laws of the head office or the equivalent documents in the jurisdiction in which it was incorporated.
- (iii) The document evidencing the agreement to establish a branch in Peru, adopted by the company's competent

corporate body, which must indicate/include the following:

- The capital assigned to the branch for carrying out its business activities;
- A declaration stating that such activities are within the corporate purpose of the head office;
- The domicile of the branch;
- The appointment of at least one permanent legal representative in Peru;
- The powers granted to the permanent legal representative; and
- A declaration to the effect that the head office will be subject to Peruvian laws and bear the obligations of the branch.

²⁵⁹ PCL, art. 403.

²⁶⁰ PCL, art. 403.

IV. Principal Taxes

Peruvian tax law must be in compliance with the tax principles set forth in Article 74 of the Constitution of 1993,²⁶¹ i.e., the principles of legality, equity and non-confiscation, as well as the obligation to respect human rights. Any law issued in contravention of such principles has no effect for tax purposes.²⁶²

The general rules governing the Peruvian tax system are primarily contained in the Tax Code, which describes rights, faculties and duties for both taxpayers and Tax Administration,²⁶³ as well as provides the rules for tax procedures (including tax audits, tax claims and appeals)²⁶⁴ and for imposing penalties to taxpayers.²⁶⁵ The Tax Code was enacted by means of Legislative Decree 816 of 1996. After several amendments, a Single Unified Text of the Tax Code was approved by Supreme Decree 133-2013-EF, published on June 22, 2013, and went into force as of June 23, 2013.

In addition, other bodies of law deal with each specific tax. For example, income tax is governed by the Income Tax Law approved by Supreme Decree 179-2004-EF and the Regulations thereunder approved by Supreme Decree 122-94-EF, while value added tax is governed by the Value Added Tax and Excise Tax Law, approved by Supreme Decree 055-99-EF, as well as the Regulations approved by Supreme Decree 29-94-EF (see IV.B. and D., below).

In Peru, taxes may be levied at the national level by the central government, at the regional level by the regional government (i.e., the various regional authorities), and at the local level by the local government (i.e., the various provincial and municipal authorities).

A. Sources of Authority in Tax

The Peruvian Tax Code recognizes the following sources of authority in tax matters:²⁶⁶

- (i) The Constitution;
- (ii) International treaties duly approved by the Congress and ratified by the President;
- (iii) Tax rules established by laws;
- (iv) Special tax rules governing regional and municipal taxes;
- (v) Tax rules established by regulations;
- (vi) Tax Court jurisprudence;
- (vii) General resolutions issued by the Tax Administration (*Superintendencia Nacional de Aduanas y de Administración Tributaria* or SUNAT); and
- (viii) Tax doctrine.

²⁶¹ Constitution, amended by Law 28390, published on Nov. 17, 2004, art. 74.

²⁶² Constitution, art. 74, para. 4.

²⁶³ Tax Code, Section II.

²⁶⁴ Tax Code, Section III.

²⁶⁵ Tax Code, Section IV.

²⁶⁶ Tax Code, Rule III.

1. Legislative

a. Power to Legislate

As already noted, Article 74 of the Constitution establishes the principle that the tax law must be in compliance with the principle of legality, among other principles. According to the principle of legality, taxes in Peru are created, modified or eliminated, or an exemption from tax is granted, exclusively by a law or a legislative decree in the case of the delegation of powers.²⁶⁷

Laws are issued by the Congress in accordance with Article 102 of the Constitution.²⁶⁸ Legislative Decrees are rules on the same level as laws. Legislative Decrees are issued by the executive branch of the government (i.e., the President of the Republic and his or her Ministers). Under Article 104 of the Constitution, Congress may delegate its power to legislate to the Executive Branch, provided the legislation concerns specific matters and applies within a specific term. Such legislation must be executed by means of the issuance of a legislative decree.

b. Other Sources of Law

(1) Ordinances

Within their jurisdiction, regional and local governments may also create, modify, eliminate or grant exemptions from taxes.²⁶⁹ For this purpose, they will issue an ordinance (*ordenanza*), which is on the same level as a law.

(2) International Treaties

International treaties dealing with matters related to human rights; sovereignty, dominion or integrity of the country; national defense; and financial obligations of the country must be duly signed by the government of Peru, then be approved by the Congress through a Legislative Resolution, and finally be ratified by the President through a Supreme Decree.²⁷⁰ Both the Legislative Resolution and the Supreme Decree must be published in the Official Gazette (*El Peruano*).²⁷¹

c. Legislative Process

As a general rule, legislative initiative is granted by the Constitution to both the President of the Republic and the members of Congress.²⁷² Once a law is approved by the Congress, it is sent to the President for signature. The President has 15 days from that time to either sign the legislation or reject it.²⁷³

A law concerning taxation generally enters into force on the day after it is published in Peru's Official Gazette (*El Pe-*

²⁶⁷ By way of exception, customs tariffs are regulated by Supreme Decrees.

²⁶⁸ It is the duty of the Congress to pass laws: Constitution, art. 102(1).

²⁶⁹ Constitution, art. 74.

²⁷⁰ Law N° 26647, art. 2.

²⁷¹ Law N° 26647, art. 4.

²⁷² In matters within their competence, legislative initiative is also granted to regional and local governments, autonomous public institutions and associations of professionals. Citizens may also have legislative initiative. Constitution, art. 107, para. 1.

²⁷³ Constitution, art. 108.

ruano). By way of exception,²⁷⁴ laws concerning annual taxes (for example, the income tax and real property tax)²⁷⁵ come into force on the first day of January of the year following their enactment.²⁷⁶ After a law enters into force, it is applied to existing legal relations and situations; it does not have retroactive force or effect.²⁷⁷

A law may be repealed only by another law. A law declared unconstitutional (i.e., a law held to be in contravention of the provisions of the Constitution) is null and void.²⁷⁸

d. Constitutional Challenges

A law, or a rule on the same level as a law (for example, a Legislative Decree), that infringes constitutional provisions may be challenged.²⁷⁹ The unconstitutionality of a law or rule must be alleged before the Constitutional Court,²⁸⁰ which is autonomous and independent.²⁸¹ Among other persons, the President, 25% of the legal number of members of Congress and 5,000 citizens, as well as associations of professionals (on matters within their fields), are entitled to submit a writ of unconstitutionality.²⁸²

The Constitutional Court resolution declaring the unconstitutionality of a law is published in the Official Gazette and the law becomes ineffective on the following day. The ruling of the Constitutional Court does not have retroactive effect.²⁸³

2. Administrative

a. Power to Regulate

Under Article 118 of the Constitution, the Executive Branch holds the power to enact regulations under laws.²⁸⁴ This is generally done by the issuance of a Supreme Decree. It should be noted that the regulations enacted by the President must be approved by the Council of Ministers and/or the competent Minister.

As a general rule, and unless otherwise stated by the same regulation, a regulation enters into force on the day after it is published in the Official Gazette.

b. Tax Administration

The Peruvian tax administration (*Superintendencia Nacional de Aduanas y de Administración Tributaria* or SUNAT) is the tax authority for national taxes and customs.²⁸⁵ SUNAT is

an autonomous specialized technical agency in the Ministry of Economy and Finances.²⁸⁶

Under the Tax Code, SUNAT's responsibilities include: (i) the collection of taxes;²⁸⁷ (ii) the determination and calculation of the tax due;²⁸⁸ (iii) the carrying out of tax audits;²⁸⁹ and (iv) the imposition of tax penalties.²⁹⁰

The Tax Code also allows and regulates the exchange of mutual assistance between the SUNAT and foreign tax authorities.²⁹¹ Such mutual assistance includes: (i) the exchange of information;²⁹² (ii) assistance for the coercive collection of taxes;²⁹³ and (iii) notification to taxpayers.²⁹⁴

(1) Resolutions

SUNAT regulates matters within its competence by means of the issuance of Resolutions of Superintendence. Such rules have the effect of a regulation and enter into force on the day after they have been published in the Peruvian Official Gazette (*El Peruano*).

(2) Formal Opinions

National Public Entities, as well as entities representing professional, labor or economic activities, are allowed to ask SUNAT for its formal opinion on the interpretation of specific tax rules.²⁹⁵ Such a formal opinion, once issued is binding on SUNAT.

(3) Advance Tax Rulings

Article 95-A of the Tax Code makes it possible for a taxpayer to ask SUNAT for an official legal opinion on a specific transaction to be carried out by it.²⁹⁶ SUNAT must issue the opinion requested within a four-month period.²⁹⁷ SUNAT will be bound by its opinion issued to the taxpayer. SUNAT will be bound by its opinion issued to the taxpayer.

3. Tax Court

A SUNAT tax assessment can be challenged through a tax claim submitted to SUNAT.²⁹⁸ An adverse outcome deriving from such a claim (i.e., SUNAT's resolution confirming the tax assessment) can be challenged by way of a tax appeal submitted to the Peruvian Tax Court.²⁹⁹

The Tax Court is an administrative court acting as the second and highest administrative court in tax matters in Peru. Among others, the following resolutions issued by the Tax Court constitute mandatory jurisprudence for SUNAT:³⁰⁰

²⁷⁴ This exception does not apply in the case of the elimination of annual taxes. In such a case, the general rule must be followed.

²⁷⁵ See IV.B. and N., below, for an overview of these taxes.

²⁷⁶ Tax Code, Rule X.

²⁷⁷ Except in criminal matters, when the application of the law favors the defendant. Constitution, art. 103.

²⁷⁸ Constitution, art. 103.

²⁷⁹ Constitution, art. 200(4).

²⁸⁰ Constitution, art. 202.

²⁸¹ Constitution, art. 201.

²⁸² Constitution, art. 203.

²⁸³ Constitution, art. 204.

²⁸⁴ It is the duty of the President of the Republic to exercise the power to regulate laws without violating or distorting them and, within these limits, to issue decrees and resolutions. Constitution, art. 118(8).

²⁸⁵ Tax Code, art. 50. It should be noted that local governments are also competent to administer some taxes, such as municipal fees and contributions, as well as other taxes expressly assigned by law (e.g., Real Property Tax). Tax Code, art. 52.

²⁸⁶ The SUNAT was created through Law 24829.

²⁸⁷ Tax Code, art. 55.

²⁸⁸ Tax Code, art. 59.

²⁸⁹ Tax Code, art. 62.

²⁹⁰ Tax Code, art. 82.

²⁹¹ Tax Code, art. 102-A.

²⁹² Tax Code, art. 102-B.

²⁹³ Tax Code, art. 102-G.

²⁹⁴ Tax Code, art. 102-H.

²⁹⁵ Tax Code, art. 93.

²⁹⁶ Supreme Decree 253-2015-EF, art. 3.

²⁹⁷ Supreme Decree 253-2015-EF, art. 5.

²⁹⁸ Tax Code, art. 133.

²⁹⁹ Tax Code, art. 101.

³⁰⁰ Tax Code, art. 154.

- (i) Resolutions containing a specific interpretation of a tax rule; and
- (ii) Resolutions expressing a lasting tax criterion that is followed by the Tax Court.

A resolution issued by the Tax Court must expressly state that it constitutes mandatory jurisprudence and must be published in the Official Gazette (*El Peruano*).³⁰¹

B. Income Tax

Income tax is governed by the rules laid down in the Income Tax Law approved by Supreme Decree 179-2004-EF,³⁰² published on December 8, 2004, as amended (ITL), and the Regulations approved by Supreme Decree 122-94-EF,³⁰³ published on September 21, 1994, as amended (ITR).

Income tax is a national tax levied on:

- (i) Income derived from capital or work, or a combination of both;³⁰⁴
- (ii) Capital gains;³⁰⁵ and
- (iii) Patrimonial increases as expressly established under the ITR.³⁰⁶

Legal entities (as defined), individuals and undivided inheritances are considered to be taxpayers for income tax purposes.³⁰⁷ The ITL lists the entities that qualify as “legal entities” for this purpose, including among others: corporations (for example, the stock corporation (*Sociedad Anónima* or S.A.), the closed stock corporation (*Sociedad Anónima Cerrada* or S.A.C.), the limited liability company (*Sociedad Comercial de Responsabilidad Limitada* or S.R.L.)); sole proprietorship businesses (for example, the individual limited liability corporation (*Empresa Individual de Responsabilidad Limitada*)); non-profit organizations; consortia and business collaboration contracts whose accounting records are kept separately from those of their members; and branches, agencies and other permanent establishments in Peru that are owned by nonresidents.³⁰⁸

Residence status is the key criterion for determining the applicable tax treatment.³⁰⁹ Resident corporations and individuals are subject to tax on their worldwide income, while non-resident corporations and individuals are subject to tax only on their Peruvian-source income.³¹⁰ As a general rule, legal entities are resident in Peru if they were incorporated in Peru.³¹¹ For the definition of a resident individual, see IX.B., below. Branches,

agencies and other PEs located in Peru that are owned by non-resident entities of any kind are taxed only on their Peruvian-source income.³¹² With regard to such income, they are considered resident legal entities³¹³ and are taxed accordingly.

Peruvian-source income is classified as falling into the following five categories.³¹⁴

- (i) First category: income derived from operating leases with respect to both movable and immovable property;
- (ii) Second category: income derived from the exploitation of capital that is not included in the first income category;
- (iii) Third category: income derived from business, trading or industry;
- (iv) Fourth category: income derived from independent work; and
- (v) Fifth category: income derived from dependent work.

Foreign-source income, although taxed, is not categorized for income tax purposes. All income derived by resident corporations, whether ordinary or extraordinary, will fall into the third category regardless of its nature.³¹⁵

Income tax is imposed on an annual basis.³¹⁶ Each taxable year starts on January 1 and ends on December 31 of the same year. No exceptions are allowed.³¹⁷

The accrual method must be followed in regard to first category income,³¹⁸ third category income³¹⁹ and related expenses,³²⁰ as well as foreign-source income derived from business activities.³²¹ The ITL states special accrual rules to be used for such purposes.³²² The cash method must be followed with respect to all other categories of income.³²³

Overall, the annual calculation of the third category income tax consists of the following steps:

- (i) Peruvian-source gross income is calculated by adding together all ordinary and extraordinary gross receipts accruing³²⁴ to the resident corporation during the taxable year.³²⁵ In the case of receipts derived from the disposal of goods, all related refunds, rebates and discounts are subtracted from the amount of gross receipts to obtain the net receipts amount.³²⁶ Then, costs incurred to acquire, produce or build the goods disposed of, if any, are subtracted from such net receipts amount to arrive at Peruvian-source gross income.³²⁷

³⁰¹ Tax Code, art. 154.

³⁰² The Single Unified Text of the Income Tax Law approved by Supreme Decree 179-2004-EF, published on Dec. 8, 2004, as amended (ITL) is available at the Tax Administration's (SUNAT's) official webpage: <http://www.sunat.gob.pe/legislacion/renta/tuo.html>.

³⁰³ Regulations approved by Supreme Decree 122-94-EF, published on Sept. 21, 1994, as amended (ITR) is available at SUNAT's official webpage: <http://www.sunat.gob.pe/legislacion/renta/reglamento.html>.

³⁰⁴ ITL, art. 1(a).

³⁰⁵ ITL, art. 1(b).

³⁰⁶ ITL, art. 1(c).

³⁰⁷ ITL, art. 14.

³⁰⁸ See V.B.1., below, for more details on the legal entities that are considered taxpayers for income tax purposes.

³⁰⁹ “Resident” is used in this Portfolio as interchangeable with “domiciled,” since the ITL does not differentiate between the two terms.

³¹⁰ ITL, art. 6, para. 1.

³¹¹ ITL, art. 7(d).

³¹² ITL, art. 6, para. 2.

³¹³ ITL, art. 7(e).

³¹⁴ ITL, art. 22(e).

³¹⁵ ITL, art. 28.

³¹⁶ ITL, art. 20.

³¹⁷ ITL, art. 57.

³¹⁸ ITL, art. 57, para. 2(b).

³¹⁹ ITL, art. 57, para. 2(a).

³²⁰ ITL, art. 57, para. 3.

³²¹ ITL, art. 57, para. 2(c).

³²² See V.C.4.b., for more details on the special accrual rules.

³²³ ITL, art. 57, para. 2(d).

³²⁴ ITL, art. 57(a).

³²⁵ ITL, art. 20, para. 1.

³²⁶ ITL, art. 20, para. 7.

³²⁷ ITL, art. 20, para. 2.

(ii) Peruvian-source net income (i.e., third category net income) is then obtained by subtracting from Peruvian-source gross income all expenses deductible for tax purposes, which include all expenses incurred to obtain the income or to maintain the income source, except as otherwise restricted by law.³²⁸

(iii) Peruvian-source net losses carried forward, if any, are set off against Peruvian-source net income.³²⁹ The ITL does not permit loss carrybacks.³³⁰

(iv) Foreign-source net income, if any, derived by the corporation is added to Peruvian-source net income. Foreign-source net losses cannot be offset against Peruvian-source net income.³³¹

(v) The income tax rate of 29.5% is applied to the resulting taxable amount.³³²

(vi) Tax credits, such as credits for tax paid abroad on foreign-source income, can be credited against the Peruvian income tax due.³³³

For an example illustrating steps (i) to (vi), above, see V.C.1., below.

The income tax due is declared and paid directly to SUNAT by the resident corporation.

For information on exempted income with respect to corporations, see V.C.2.a., below.

The calculation of the income tax liability of resident individuals varies according to the category of income they derive. In general, the following rules apply.³³⁴

(i) First category income derived from operating leases with respect to immovable or movable property. Income tax is imposed on a monthly basis.³³⁵ The first category net income is determined by deducting from gross income a flat 20%.³³⁶ Income tax is imposed on the balance at the rate of 6.25%.³³⁷

(ii) Second category income derived from dividends. Income tax is triggered by the decision to distribute a dividend and is withheld at source at the rate of 5% by the corporation paying the dividend.³³⁸

(iii) Second category income derived from the transfer of real property.³³⁹ Income tax is imposed on receipt of the income. The taxable base is determined by deducting from gross receipts the cost³⁴⁰ of the real property transferred³⁴¹ and then subtracting a flat rate of 20% from the resulting

gross income. Income tax is imposed on the balance at the rate of 6.25%.³⁴²

(iv) Second category income derived from the transfer of shares. Income tax is imposed on an annual basis.³⁴³ The taxable base is determined by deducting from gross receipts the cost of the shares transferred.³⁴⁴ From the resulting gross income a flat 20% is deducted.³⁴⁵ Income tax is levied on the balance at the rate of 6.25%.³⁴⁶

(v) Other second category income.³⁴⁷ This category includes income such as royalties and loan interest. Income tax is imposed on the receipt of the income.³⁴⁸ The taxable base is determined by deducting from gross income a flat 20%.³⁴⁹ The tax rate applicable on the balance is 6.25%, the tax in this case being imposed by way of withholding.³⁵⁰

(vi) Third category income. Income tax is imposed on an annual basis. This type of income is subject to the same rules as apply to resident corporations, as described above.

(vii) Fourth and fifth category income. To calculate the tax due, the following steps are followed:

(a) A flat tax of 20%³⁵¹ is subtracted from the fourth category gross income.³⁵²

(b) Seven tax units (TUs) are deducted from the sum of the fourth category net income and the fifth category gross income.³⁵³

(c) The amount resulting from steps (a) and (b) is referred to as the “net income from work.”³⁵⁴ From this net income may be deducted financial transactions tax (FTT)³⁵⁵ and the amount of certain donations made to Peruvian public entities or private nonprofit organizations.³⁵⁶

³⁴¹ As a general rule, if the real property was acquired by the individual for consideration, the cost will be the acquisition or construction cost of the property. If the real property was gratuitously acquired, no cost will be recognized. ITL, art. 21(21.1)(a).

³⁴² ITL, art. 84-A.

³⁴³ ITL, art. 49, para. 1.

³⁴⁴ As a general rule, if the shares were acquired by the individual for consideration, this cost will be the acquisition cost of the shares. If the shares were gratuitously acquired, no cost will be recognized. ITL, art. 21(21.2).

³⁴⁵ ITR, art. 28-A(2).

³⁴⁶ ITL, art. 52-A.

³⁴⁷ ITL, art. 24.

³⁴⁸ ITL, art. 72.

³⁴⁹ ITL, art. 36, para. 1.

³⁵⁰ ITL, art. 72, para. 1.

³⁵¹ ITL, art. 45.

³⁵² The deduction is not allowed with respect to Fourth Category Income derived from the performance of activities as a company director, business representative, etc. ITL, art. 45, para. 2. Also, the amount subtracted may not exceed 24 TUs. ITL, art. 45, para. 1.

³⁵³ ITL, art. 46. The seven TU deduction is limited to an amount equal to the sum of the Fourth and Fifth Category Income arrived at in this step. ITR, art. 26.

³⁵⁴ ITL, art. 49, para. 1.

³⁵⁵ For general information on the financial transactions tax (FTT), see IV.L. The amount of FTT subtracted cannot exceed an amount equal to the Fourth Category net income. ITL, art. 49(a) and ITR, art. 28-B(a).

³⁵⁶ The donations that can be deducted are those that comply with the requirements to be deductible expenses. ITL, art. 49(b) and ITR, art. 28-B(b).

³²⁸ ITL, art. 37, para. 1.

³²⁹ ITL, art. 50.

³³⁰ ITL, art. 50.

³³¹ ITL, art. 51.

³³² ITL, art. 55.

³³³ ITL, art. 88.

³³⁴ Some rules may vary in cases where the resident individual receives different categories of income during the same taxable year.

³³⁵ ITL, arts. 57(b) and 84; and ITR, art. 53(a).

³³⁶ ITL, arts. 36 and 84.

³³⁷ ITL, arts. 52-A and 84.

³³⁸ ITL, art. 73-A.

³³⁹ A transfer will be exempted from income tax if the real property sold is the individual's home. ITL, art. 2, last para.

³⁴⁰ ITL, art. 20, para. 6.

(d) Foreign-source net income, if any, derived by the resident individual is added.³⁵⁷

(e) Income tax is imposed on an annual basis on the balance resulting from steps (a) through (d), above.³⁵⁸

(f) Income tax is levied at progressive cumulative rates, as follows: (i) up to five TUs, 8%; (ii) over five TUs and up to 20 TUs, 14%; (iii) over 20 TUs and up to 35 TUs, 17%; (iv) over 35 TUs and up to 45 TUs, 20%; and (v) over 45 TUs, 30%.³⁵⁹

Taxpayers obtaining fourth and/or fifth category income are allowed to deduct an additional amount up to a maximum of three TUs with respect to certain expenses³⁶⁰ in calculating their annual IT. The refund of any excess income tax withheld in excess can be made by default by the Tax Administration, or by request of the taxpayer who filled an annual income tax return for such purpose.

For an example of steps (a) to (f), above, see IX.C.4.f., below.

For information regarding the exempted income of individuals, see IX.C.3., below.

In the case of nonresident corporations and nonresident individuals, who are subject to tax only on their Peruvian-source income, income tax is generally levied by way of withholding. The withholding tax rate varies depending on both the nature of the income obtained and the recipient, and ranges from 4.99% to 30%. The withholding tax rate is applied to the full amount of Peruvian-source gross income received, i.e., as a general rule, no deductions are allowed. Exceptionally, however, certain deductions are allowed with respect to:

(i) The disposal of goods or rights, or the exploitation of goods subject to depreciation, in the case of which the acquisition costs incurred, if any, may be deducted provided certain requirements are met;³⁶¹ and

(ii) Fourth category income, in the case of which an amount equal to 20% of gross income may be deducted.³⁶²

On the other hand, in the case of certain activities carried out partly in Peru and partly abroad,³⁶³ such as international

transportation,³⁶⁴ telecommunication services,³⁶⁵ international press agency activities,³⁶⁶ and film distribution,³⁶⁷ Peruvian-source net income is deemed to be a certain flat percentage of gross income. For a full list of such international activities and the fixed rates applicable, see V.C.3.c., below.

C. Estate, Inheritance and Gift Tax

Peru has no estate/inheritance, transfer or gift taxes.

D. Value Added Tax

1. In General

The value added tax (VAT) is governed by the Value Added Tax and Excise Tax Law, approved by Supreme Decree 055-99-EF (VATL) and the Regulations approved by Supreme Decree 29-94-EF (VATR).

VAT is levied at a rate of 18%³⁶⁸ on the following operations:³⁶⁹

- (i) The local sale of movable goods;
- (ii) The rendering or the use of services in Peru;
- (iii) Construction contracts;
- (iv) The first sale of real property made by a builder; and
- (v) The importation of goods.

The VAT is assessed on a monthly basis. As a general rule, a VAT paid on the acquisition of goods, services and construction contracts, VAT paid on the importation of goods and VAT paid on the use of services in Peru³⁷⁰ can be deducted from the monthly gross VAT debit.

The mechanics of VAT may be illustrated by the following example:

³⁶³ ITL, art. 48.

³⁶⁴ Net Peruvian-source income is an amount equal to 1% or 2% of the gross income derived from air or maritime transportation, respectively. ITL, art. 48(d).

³⁶⁵ Net Peruvian-source income is an amount equal to 5% of gross income. ITL, art. 48(e).

³⁶⁶ Net Peruvian-source income is an amount equal to 10% of gross income. ITL, art. 48(f).

³⁶⁷ Net Peruvian-source income is an amount equal to 20% of gross income. ITL, art. 48(g).

³⁶⁸ As already explained, the 18% rate includes a 16% VAT rate under Single Unified Text of the Value Added Tax and Excise Tax Law, approved by Supreme Decree 055-99-EF (VATL), art. 17, as well as a 2% municipal promotion tax rate, under Single Unified Text of the Municipal Tax Law approved by Supreme Decree 156-2004-EF, art. 76.

³⁶⁹ VATL, art. 1.

³⁷⁰ VATL, art. 18.

See V.C.3.a.(12) for general information about donations that are deductible for income tax purposes. The amount deducted as a donation may not exceed an amount equal to 10% of the net income from work plus the foreign-source income. ITL, art. 49(b).

³⁵⁷ ITR, art. 29-A(a).

³⁵⁸ Fourth or Fifth Category income tax paid in advance or already withheld can be credited against income tax due. ITL, art. 88.

³⁵⁹ ITL, art. 53.

³⁶⁰ ITL, art. 46. See IX.C.4.f., below for further information about the expenses included.

³⁶¹ ITL, art. 76(g).

³⁶² ITL, art. 76(e).

Month	Purchases		Sales		VAT Due		
		VAT Credit (18%)	Sales	VAT Debit (18%)	VAT Credit from Prior Periods	VAT Balance	VAT Due
January	600,000	108,000	1,000,000	180,000	0	72,000	72,000
February	1,500,000	270,000	1,000,000	180,000	0	(90,000)	0
March	600,000	108,000	2,000,000	360,000	(90,000)	252,000	162,000

For further research on Peru's VAT system, see also the VAT Navigator.

2. Scope of Activities

Except where an express exception is provided, the VAT is imposed on the activities discussed in a. to e., below.

a. Sales of Movable Goods

For this purpose, "sale" generally includes any transaction that entails the disposal of goods located in Peru.³⁷¹ Movable goods include both tangible and some intangible goods, such as rights over movable tangible goods and copyrights.³⁷² The taxable base is the total amount derived from the sale.³⁷³

b. Services

A service is considered to be rendered within Peru when the service provider is a Peruvian resident entity. If the service provider is a nonresident entity, a service will be regarded as "used within Peru" if the service is consumed in Peru.³⁷⁴ In neither case has the country in which the provision of the service was agreed to, or the country in which the payment for the service was made, any relevance for determining the place where the service was rendered or used.

The taxable base is the total amount derived from the provision of the service.³⁷⁵

c. Construction Projects

Construction activities taxed under the VATL are those activities classified as such under the United Nations International Standard Industrial Classification of All Economic Activities³⁷⁶ that are carried on in Peru.³⁷⁷ The taxable base is the value of the constructed structure.³⁷⁸

d. First Sale of Real Property by Builders

Persons that, on a regular basis, sell real property built by them are deemed to be engaged in the construction business for VAT purposes.³⁷⁹ VAT is imposed on the first sale of the real property built³⁸⁰ and the taxable base is 50% of the total amount derived from the sale.³⁸¹

e. Imports

VAT is also chargeable on the importation of goods into Peru. The taxable base comprises the customs value of the goods plus customs duties.³⁸²

3. Exempt Activities

A number of activities are exempt from VAT, including the following:

- (i) The sale or importation of certain goods and products, such as live horses, mules, south American camelids, fish, fresh potatoes, fresh tomatoes, lettuce, carrots, lemons, strawberries and tea;³⁸³
- (ii) The provision of public transportation services (except air and rail transportation);³⁸⁴
- (iii) The international transportation of cargo (both transportation into and out of Peru);³⁸⁵ and
- (iv) The staging of live theatre shows, operetta, classical music concerts, opera, ballet and circuses provided such performances qualify as "cultural shows."³⁸⁶

4. VAT Taxpayers

As a general rule, resident individuals and companies are considered to be taxpayers for VAT purposes if they carry on business activities in Peru and perform any of the activities that are subject to tax under the VATL.³⁸⁷

Individuals who do not carry on business activities will nonetheless be considered to be VAT taxpayers if they habitually perform any of the activities that are subject to VAT.³⁸⁸ As an exception, individuals that carry on importing activities will be considered VAT taxpayers even if they do not carry on such activities on a habitual basis.

Consortia and business collaboration contracts whose accounting records are kept separately from those of their members, as well as branches, agencies and other permanent establishments (PEs) located in Peru that are owned by nonresident entities, are also considered as taxpayers for VAT purposes.³⁸⁹

5. Taxable Events

a. In General

Liability to VAT arises on the occurrence of the following events:

- (i) Sale of movable goods: the date of issuance of the invoice, as provided for under the VAT regulations, or the date on which the goods are delivered, whichever is earlier;³⁹⁰
- (ii) Provision of services: the date of issuance of the invoice, as provided for under the VAT regulations, or the date on which the remuneration for the services is received, whichever is earlier;³⁹¹

³⁷¹ VATL, art. 3(a).

³⁷² VATL, art. 3(b).

³⁷³ VATL, arts. 13(a) and 14.

³⁷⁴ VATL, art. 3(c).

³⁷⁵ VATL, arts. 13(b) and 14.

³⁷⁶ VATL, art. 3(d).

³⁷⁷ Regulations approved by Supreme Decree 29-94-EF (VATR), art. 2(1)(c).

³⁷⁸ VATL, arts. 13(c) and 14.

³⁷⁹ VATL, art. 3(e).

³⁸⁰ VATL, art. 1(d).

³⁸¹ VATL, arts. 13(d) and 14; and VATR, art. 5(9).

³⁸² VATL, art. 13 (e).

³⁸³ VATL, art. 5 and Appendix I.

³⁸⁴ VATL, art. 5 and Appendix II.

³⁸⁵ VATL, art. 5 and Appendix II.

³⁸⁶ VATL, art. 5 and Appendix II.

³⁸⁷ VATL, art. 9(9.1).

³⁸⁸ VATL, art. 9(9.2).

³⁸⁹ VATL, art. 9(9.3).

³⁹⁰ VATL, art. 4(a).

³⁹¹ VATL, art. 4(c).

(iii) Use in Peru of services provided by nonresidents: the date on which the invoice is registered in the Purchases Account of the service recipient or the date on which the fee for the services is paid, whichever is earlier.³⁹²

(iv) Construction contracts: the date of issuance of the invoice, as provided for under the VAT regulations, or the date on which part or all of the income from the contract is received, whichever is earlier;³⁹³

(v) First sale of real property: the date on which the income from the sale is received;³⁹⁴ and

(vi) Importation of goods: the date on which customs clearance is requested.³⁹⁵

b. Taxable Base

In general terms, the taxable base for VAT comprises the following:³⁹⁶

(i) The total amount derived from the sale of goods;³⁹⁷

(ii) The total amount derived from services rendered or used in Peru;³⁹⁸

(iii) The value of constructed structure;³⁹⁹

(iv) The total amount derived from the first sale of real property excluding an amount equal to the value of the land;⁴⁰⁰ or

(v) The customs value of imported goods, plus customs duties.

c. VAT Credit

VAT is assessed on a monthly basis. In calculating the amount of monthly VAT due, a tax credit (input tax) can be deducted from the monthly gross VAT debit,⁴⁰¹ except to the extent the VAT debit relates to services provided by a nonresident or the importation of goods.⁴⁰²

The tax credit corresponds to VAT paid by the VAT taxpayer claiming the credit on the acquisition of goods, services and construction contracts, VAT paid on the importation of goods and VAT paid on the use of services in Peru,⁴⁰³ where the following requirements are met:

(i) The consideration for such acquisitions, etc. is allowed to be deducted as costs or expenses under the ITL rules. This requirement must be met even if the VAT taxpayer claiming the credit is not subject to income tax.⁴⁰⁴

(ii) Such acquisitions, etc. are made for purposes of carrying out transactions that are themselves subject to VAT.⁴⁰⁵

In addition to the above two requirements, a number of formal requirements must also be met, which are generally as follows:

(i) The amount of VAT paid must be separately indicated on the invoice or the tax receipt evidencing the relevant purchase of goods, acquisition of services or construction contract, or the documents evidencing the amount of VAT levied on the relevant importation of goods;⁴⁰⁶

(ii) The invoices or tax receipts must clearly indicate the name as well as the taxpayer identification number (*registro único de contribuyentes* or RUC) of the provider of the goods, etc.;⁴⁰⁷ and

(iii) The invoices or tax receipts must be recorded in the accounting books of the taxpayer claiming the VAT credit.⁴⁰⁸

In case the taxpayer carries out both taxed and tax exempted operations, the VAT credit must be proportionally apportioned.⁴⁰⁹

d. Filing

As a general rule, taxpayers must file VAT returns and pay the assessed VAT due on a monthly basis.⁴¹⁰

e. Export Activities

The export of goods and services, as well as construction contracts executed abroad, are not subject to VAT.⁴¹¹

Services are considered exported where the following requirements are met: (i) the services are provided for consideration; (ii) the exporter (i.e., the service provider) is a resident entity; (iii) the user or service recipient is a nonresident entity; (iv) the use or exploitation of the services takes place abroad; and (v) the exporter is registered in the Registry of Exporters of Services of the SUNAT.⁴¹²

Services partially carried out abroad in favor of nonresident entities are deemed to be as export services for VAT purposes.⁴¹³

Note that, as a general rule, taxpayers exporting services are obliged to keep electronic books and records, as well as to issue electronic invoices.⁴¹⁴

E. Excise Tax

Excise tax is also governed by the VATL and the VATR. It is a national tax that, in general terms, is levied on:⁴¹⁵

³⁹² VATL, art. 4(d).

³⁹³ VATL, art. 4(e).

³⁹⁴ VATL, art. 4(f).

³⁹⁵ VATL, art. 4(g).

³⁹⁶ VATL, art. 13.

³⁹⁷ VATL, arts. 13(a) and 14.

³⁹⁸ VATL, arts. 13(b) and 14.

³⁹⁹ VATL, arts. 13(c) and 14.

⁴⁰⁰ VATL, arts. 13(d) and 14. For this purpose, the value of the land is considered to equal 50% of the amount derived from the sale of the real property. ITR, art. 5(9).

⁴⁰¹ VATL, arts. 11 and 12.

⁴⁰² VATR, art. 5, para. 1.

⁴⁰³ VATL, art. 18.

⁴⁰⁴ VATL, art. 18(a).

⁴⁰⁵ VATL, art. 18(b).

⁴⁰⁶ VATL, art. 19(a).

⁴⁰⁷ VATL, art. 19(b).

⁴⁰⁸ VATL, art. 19(c).

⁴⁰⁹ VATL, art. 23, para. 1.

⁴¹⁰ VATL, art. 29.

⁴¹¹ VATL, art. 33, para. 1.

⁴¹² VATL, art. 33, para. 5.

⁴¹³ VATL, art. 33, para. 6(12).

⁴¹⁴ Superintendence Resolution 312-2017-SUNAT, art. 8.

⁴¹⁵ VATL, art. 50.

(i) Local sales at the manufacturer level,⁴¹⁶ and the importation, of goods such as fuel, alcoholic beverages, vehicles, soft drinks, mineral water, cigarettes and tobacco;⁴¹⁷

(ii) Local sales made by the importer of the goods, in the case of goods such as vehicles, mineral water, cigarettes and tobacco;⁴¹⁸ and

(iii) Gambling, including casino games, slot machines, equestrian events, lotteries and raffles.⁴¹⁹

With regard to local sales, liability to excise tax arises in the same circumstances as VAT on sales. In the case of gambling games, including lotteries and raffles, liability to ET arises when the relevant income is received.⁴²⁰

The following are considered to be taxpayers for excise tax purposes:⁴²¹

- (i) Producers (or related parties), with respect to sales in Peru;
- (ii) Individuals or corporations that import taxed goods;
- (iii) Importers (or related parties), with respect to local sales of taxed goods; and
- (iv) The organizers of gambling games.

Different methods and rates apply in calculate the excise tax liability. These vary depending on the type of goods concerned:

(i) Value system:⁴²² under this method, a percentage rate is applied to the value of the goods. The sale of vehicles and mineral water is covered by this system.⁴²³ The rate varies depending on the goods concerned and ranges from 10% to 50%.⁴²⁴

(ii) Specific system:⁴²⁵ under this method, a fixed amount per unit or per unit of measure is applied on the sale of the goods. Fuel, cigarettes, tobacco, slot machines, casino games, beer, and pisco.⁴²⁶ are covered by this system. The applicable amounts vary depending on the goods concerned.

(iii) Value system according to the sale price to the public:⁴²⁷ currently this method is not applicable to any good.

The taxable base is as follows:

- (i) Under the value system:⁴²⁸ the sales value of the goods (in the case of the local sale of goods); the customs value

of the goods (in the case of imports); and the difference between the total revenue received in a month from gambling activities and the total prizes granted in the same period (in the case of lotteries, bingos, raffles, and equestrian events).

(ii) Under the specific system:⁴²⁹ the volume of goods sold or imported, expressed in units. For casino games, it will be the average net revenue received in a month per each table; and in the case of slot machines, the net revenue received in a month; and

(iii) Under the value system according to the sale price to the public: the suggested retail price of the goods, multiplied by a specified factor.⁴³⁰

F. Tax on Remote Gaming and Sports Betting

The tax on remote gaming and sports betting is governed by Law 31557, published on August 13, 2022⁴³¹ and regulated through Supreme Decree 005-2023-MINCETUR. Law 31557 entered into force in February 2024 and the tax is effective as of April 1, 2024.

The tax on remote gaming and sports betting, which requires a prior authorization issued by the Ministry of Foreign Trade and Tourism, is applicable to the exploitation of technological platforms on remote gaming and sports betting.⁴³² Domestic Peruvian legal entities, as well as the branches of foreign legal entities, that exploit such technological platforms are deemed to be the taxpayers for purposes of this tax.⁴³³

The tax is assessed monthly at a rate of 12% on the difference between the net income arising from the placing of bets and maintenance expenses of the technological platform.⁴³⁴ This tax is deductible by taxpayers as an expense against their annual income tax.⁴³⁵

G. Capital Investment Tax

Peru does not levy a capital investment tax.

H. Payroll Tax

1. National Health System

An employer must pay a contribution to either the National Health System (SNS) under the responsibility of the Peruvian Social Security Institute (ESSALUD) or the Private Health Services (EPS). The contribution is calculated by the employer at the rate of 9% of the monthly remuneration of its employees.

For more information on this legal contribution, see II.E.2.h.(9)(a), above.

⁴¹⁶The concept of "sale" for ET purposes is the same as that for VAT purposes. VATL, art. 3.

⁴¹⁷For a full list of such goods, see VATL, Appendix III and Appendix IV.

⁴¹⁸For a full list of such goods, see VATL, Appendix IV(A).

⁴¹⁹VATL, art. 50(c).

⁴²⁰VATL, art. 52.

⁴²¹VATL, art. 53.

⁴²²VATL, art. 55(a).

⁴²³VATL, Appendix IV(A).

⁴²⁴VATL, Appendix IV(A).

⁴²⁵VATL, art. 55(b).

⁴²⁶VATL, Appendix IV(B).

⁴²⁷VATL, art. 55(c).

⁴²⁸VATL, art. 56(a).

⁴²⁹VATL, art. 56(b).

⁴³⁰VATL, art. 56(c). Such factor is equal to one divided by an amount resulting from the VAT rate (18%) plus 1.

⁴³¹It must be noted that Law 31557 also modified the VATL to include the exploitation of remote gaming and sports betting as an operation subject to Excise Tax.

⁴³²Law 31557, art. 39.

⁴³³Law 31557, art. 40.

⁴³⁴Law 31557, art. 41(41.1).

⁴³⁵Law 31557, art. 46.

2. Pension Contributions

Employees affiliated to the National Pension System must pay a 13% contribution to the National Pension System under the responsibility of the Government Pension Fund Office (ONP). Employees affiliated to the Private Pension System managed by the Private Pension Fund Management (AFP) must pay a contribution that depends on the AFP selected (the current average is 12.9% of the employee's monthly remuneration).

For more information on this legal contribution, see II.E.2.h.(9)(b), above.

I. Trade Tax

Peru does not levy a trade tax.

J. Net Worth Tax

Peru does not levy a net worth tax (but see IV.K., below, regarding the tax on net assets (*Impuesto Temporal a los Activos Netos* or ITAN) levied on third category income taxpayers).

K. Wealth Tax

The ITAN⁴³⁶ is governed by Law 28424, published on December 21, 2004, and the Regulations approved by Supreme Decree 025-2005-EF, published on February 16, 2005. Originally intended to apply on a temporary basis, ITAN has become permanent.

This annual national-level tax is levied on the value of the net assets owned by of a company that exceeds the established threshold (i.e., it affects all third category income taxpayers that calculate their income tax liability in accordance with the rules applying under the general income tax regime).⁴³⁷ Entities that had not yet commenced their economic operations when ITAN was enacted, as well as some nonprofit organizations, are exempted from the tax.⁴³⁸

The ITAN is imposed on the value of the taxpayer's net assets as of December 31 of the previous year.⁴³⁹ The value of certain assets, such as shares⁴⁴⁰ and new machinery,⁴⁴¹ may be left out of account in determining the taxable base.⁴⁴²

The rate of ITAN is 0.4% on the net asset value exceeding PEN 1 million. For net asset values below this threshold, the rate is 0%.⁴⁴³

Taxpayers may credit ITAN against their income tax liability—i.e., against both estimated payments and annual payments.⁴⁴⁴ A refund of excess ITAN paid may also be requested in the event of tax losses or an asset reappraised at a lower value. A refund claim is automatically approved if the tax author-

ities do not respond within 30 business days of a claim being filed.

L. Financial Transactions Tax

The FTT is governed by the rules laid down in the Single Unified Text of Law 28194,⁴⁴⁵ approved by Supreme Decree 150-2007-EF, published on September 23, 2007 (FTTL) and the Regulations approved by Supreme Decree 047-2004-EF, published on April 8, 2004 (FTTR).

The FTT is levied on listed financial transactions carried out through the Peruvian banking system, such as debits and credits in savings accounts.⁴⁴⁶ The tax rate applicable to each financial transaction is 0.005%.⁴⁴⁷ As a general rule FTT must be withheld by the financial institution through which the transaction was carried out.⁴⁴⁸

Payments of FTT may be credited against the income tax liability of the corporation or individual concerned.⁴⁴⁹

M. Tax on Consumption of Plastic Bags

Law 30884, published on December 19, 2018, as well as Supreme Decree 244-2019-EF, published on August 3, 2019, regulate single-use plastic and disposable containers, and create the Tax on Consumption of Plastic Bags⁴⁵⁰ as a way to discourage the use of single-use plastic bags and to contribute to the preservation of the environment.⁴⁵¹

This tax is levied on the acquisition of plastic bags used to load or carry goods sold by the commercial establishments that distributed them. Taxpayers are the individuals and/or legal entities acquiring the plastic bags.

The tax is in force since August 1, 2019,⁴⁵² and is applicable to each acquisition of plastic bags, as follows:

- 2019: PEN 0.10.
- 2020: PEN 0.20.
- 2021: PEN 0.30.
- 2022: PEN 0.40.
- From 2023:⁴⁵³ PEN 0.50.

The commercial establishment must include in the invoice the initials ICBPER, the number of bags delivered, and the total amount of ICBPER applied.⁴⁵⁴ The ICBPER is not included in the base for the calculation of the VAT applicable on the invoice.⁴⁵⁵

⁴³⁶The temporary tax on net assets (*Impuesto Temporal a los Activos Netos* or ITAN) was originally intended to apply on a temporary basis but is now permanent.

⁴³⁷See IV.B.

⁴³⁸Law 28424, art. 3.

⁴³⁹Law 28424, art. 4.

⁴⁴⁰Law 28424, art. 5(a).

⁴⁴¹I.e., machinery that is no older than three years. Law 28424, art. 5(b).

⁴⁴²Law 28424, art. 5.

⁴⁴³Law 28424, art. 6.

⁴⁴⁴Law 28424, art. 8.

⁴⁴⁵Law 28194 was published on March 26, 2004.

⁴⁴⁶Single Unified Text of Law 28194, approved by Supreme Decree 150-2007-EF, published on Sept. 23, 2007 (FTTL), art. 9.

⁴⁴⁷FTTL, art. 10.

⁴⁴⁸FTTL, art. 16.

⁴⁴⁹FTTL, art. 19.

⁴⁵⁰Known as ICBPER (*Impuesto al Consumo de las Bolsas de Plástico*).

⁴⁵¹Law 30884, art. 12.

⁴⁵²Law 30884, art. 12.

⁴⁵³Supreme Decree 244-2019-EF, art. 5.

⁴⁵⁴Superintendence Resolution 150-2019-SUNAT, art. 1.

⁴⁵⁵Law 30884, art. 12.6.

The commercial establishment must declare and pay to the Tax Administration the total tax collected each month⁴⁵⁶ by means of Virtual Tax Form 1670.⁴⁵⁷

Among others, the ICBPER does not apply to the acquisition of biodegradable plastic bags.⁴⁵⁸

N. Local Taxes

1. Real Property Tax

Real property tax is governed by the rules laid down in the Single Unified Text of the Municipal Tax Law,⁴⁵⁹ approved by Supreme Decree 156-2004-EF (MTL). The tax is imposed on an annual basis by the Municipal Tax Authority of the municipality where the property is located. The owner of real property⁴⁶⁰ as of January 1 of a particular year (whether a corporation or an individual) is the taxpayer with respect to such property for that year.⁴⁶¹

The tax is imposed on the value of the real property owned. For this purpose, such value includes the value of the land and the buildings, as well as the value of those fixed assets that cannot be separated from the property.⁴⁶²

The tax is imposed at progressive rates, as follows: (i) up to 15 TUs, 0.2%; (ii) over 15 TUs and up to 60 TUs, 0.6%; and (iii) over 60 TUs, 1%.

2. Real Property Transfer Tax

Real property transfer tax (*Alcabala*) is also governed by the MTL. Real property transfer tax is levied on any type of transaction entailing the transfer of real property.⁴⁶³ The tax is levied by the Municipal Tax Administration of the municipality in which the property concerned is located. The acquirer is deemed to be the taxpayer for this purpose.⁴⁶⁴

The taxable base corresponds to the value of the real property transferred, which may not be lower than the value declared by the taxpayer for real property tax purposes to the Municipal Tax Administration.⁴⁶⁵ An amount equal to 10 TUs is subtracted from the gross value of the real property transferred in calculating the net taxable base.⁴⁶⁶ A tax rate of 3% is applied to the balance.⁴⁶⁷

O. Tax Incentives

1. VAT Recovery

Under Legislative Decree 973, published on March 10, 2007, and Supreme Decree 084-2007-EF, published on June

29, 2007, VAT levied on imports and local acquisitions of new capital goods or intermediate goods, as well as services or construction contracts, carried out during the pre-production stage of a large project (i.e., the phase before the beginning of the exploitation of the project) may be refunded in advance.⁴⁶⁸ In general terms, the exploitation of a project is deemed to begin when goods or services are exported for the first time, or services or goods subject to VAT have been sold for the first time, both as result of the exploitation of the project concerned.⁴⁶⁹

When such a VAT refund is requested, the following must be taken into account:

(i) The minimum amount that can be requested is an amount equal to 36 TUs.⁴⁷⁰

(ii) The claimant may submit refund requests to SUNAT⁴⁷¹ on a monthly basis.

Any individual or legal entity carrying on business activities may benefit from this regime,⁴⁷² provided:

(i) An investment project commitment is entered into with the State;⁴⁷³

(ii) The amount of the project investment commitment is at least US\$5 million. This amount does not apply for agricultural projects;⁴⁷⁴ and

(iii) The pre-production stage lasts for two years or more.⁴⁷⁵

A taxpayer's entitlement to the regime for each project is established by ministerial resolution.

2. Special Development Zones

Special development zones⁴⁷⁶ (*Zonas Especiales de Desarrollo - ZED*) are located in the cities of Ilo, Matarani, Paita, Tumbes and Loreto.⁴⁷⁷

Under Law 26953, published on May 22, 1998, and Supreme Decree 112-97-EF,⁴⁷⁸ published on September 3, 1997, the performance of authorized services such as repairs, refurbishment, packaging, assembly, mixing, maquila activities and the storage of goods within a ZED is exempted from income tax, VAT, excise tax, and any other national or local taxes.⁴⁷⁹ Additionally, it is possible to enter goods tax-free into those zones.⁴⁸⁰ The subsequent entry of such goods into other zones in the country will trigger the application of regular taxes.⁴⁸¹

⁴⁶⁸ Legislative Decree 973, art. 2(2.1) and art. 5(5.1).

⁴⁶⁹ Legislative Decree 973, art. 5(5.2).

⁴⁷⁰ Supreme Decree 084-2007, art. 7(7.1).

⁴⁷¹ Supreme Decree 084-2007, art. 8(8.1)(a).

⁴⁷² Legislative Decree 973, art. 3(3.1).

⁴⁷³ Legislative Decree 973, art. 3(3.2)(a). The agreement will be signed with the Ministry of the corresponding economic sector and ProInversion. Legislative Decree 973, art. 4(4.1).

⁴⁷⁴ Legislative Decree 973, art. 3(3.2)(a).

⁴⁷⁵ Legislative Decree 973, art. 3(3.2)(b).

⁴⁷⁶ Supreme Decree 112-97-EF, art. 2.

⁴⁷⁷ Loreto and Tumbes ZED are not currently operating.

⁴⁷⁸ Law 26953 governs the activities within the Loreto Center for export, transformation, industry, commercialization and services (CETICOS).

⁴⁷⁹ Supreme Decree 112-97-EF, art. 3.

⁴⁸⁰ Law 26953, art. 2.

⁴⁸¹ Supreme Decree 112-97-EF, art. 4, para. 2.

⁴⁵⁶ Law 30884, art. 12.6.

⁴⁵⁷ Superintendence Resolution 171-2019-SUNAT, art. 5.

⁴⁵⁸ Supreme Decree 244-2019-EF, art. 4.1(c).

⁴⁵⁹ The Municipal Tax Law itself was approved by Legislative Decree 776, published on Dec. 31, 1993. A unified version of the Municipal Tax Law was approved by Supreme Decree 156-2004-EF, published on Nov. 15, 2004.

⁴⁶⁰ Single Unified Text of the Municipal Tax Law, approved by Supreme Decree 156-2004-EF (MTL), art. 9.

⁴⁶¹ MTL, art. 10.

⁴⁶² MTL, art. 8.

⁴⁶³ MTL, art. 21.

⁴⁶⁴ MTL, art. 23.

⁴⁶⁵ MTL, art. 24.

⁴⁶⁶ MTL, art. 25.

⁴⁶⁷ MTL, art. 25.

The exemptions are in force until the year 2042 in the case of Tumbes,⁴⁸² Ilo, Matarani, and Paita,⁴⁸³ and until 2048 in the case of Loreto.⁴⁸⁴

3. Free Trade Zone and Commercial Zone of Tacna

Tacna has a free trade zone and a commercial zone. Within the free zone of Tacna, the following sectors are exempt from income tax, VAT, excise tax and any other national or local taxes: industrial, agro-industrial, maquila and assembly activities (services such as storage, packing, unpacking and labelling); technologies services (call center, data center, and others); human health research services; and infrastructure development services.⁴⁸⁵

Goods entering the Tacna free zone are deemed to be located abroad for customs duties purposes.⁴⁸⁶ On the other hand, provided certain requirements are met, certain goods entering the commercial zone of Tacna are exempt from VAT and excise tax, with only a special tariff being payable when the goods enter the zone.⁴⁸⁷

The Tacna zone exemptions are to remain in force for 30 years, as from 2011.

4. Free Trade Zone of Cajamarca Region

Law 31343, published on August 14, 2021, created the free trade zone of Cajamarca region. The aim of this free trade zone is to contribute to the sustainable socioeconomic development of Northeast Peru, through the promotion of investment and technological development. Among the benefits for taxpayers operating in this free trade zone are exemptions from income tax, VAT, excise tax, and other national or local taxes.

5. Free Trade Zone of Chimbote

Law 31407, published on February 2, 2022, created the free trade zone in the city of Chimbote. The aim of this Free Trade Zone is to contribute to the sustained socioeconomic development of the region of Ancash of which Chimbote is the capital through the promotion of investment and technological development.

6. Special Tax Regime for Amazonia

Law 27037⁴⁸⁸ establishes a special tax regime for taxpayers based in Peru's Amazonian region that carry out certain activities within that region.⁴⁸⁹

The main tax benefits of the regime are:

- (i) Lower income tax rates (5% and 10%) for companies whose principal activities are agriculture, aquaculture, fishing or tourism, or the manufacturing, processing or commercialization of raw materials obtained from such activities⁴⁹⁰ or forestry transformation activities;⁴⁹¹

- (ii) An income tax exemption for companies whose principal activities are agriculture or the processing of products considered to be native crops;⁴⁹²

- (iii) VAT exemption on the sale of goods for consumption within the Amazonian Region, as well as on services rendered within the Amazonian Region;⁴⁹³ and

- (iv) VAT exemption on the importation of certain goods⁴⁹⁴ into the Amazonian Region.⁴⁹⁵ until December 31, 2029.⁴⁹⁶

7. Special Tax Regime for Agribusiness

This special regime applies to individuals or companies engaged in agribusiness, such farming crops or breeding activities.⁴⁹⁷ It is also applicable to those that carry out agro-industrial activities outside of the provinces of Lima and Callao. Agro-industrial activities involving wheat, tobacco, oilseeds, oils, and beer are not covered under this special regime.⁴⁹⁸

The main tax benefits are as follows:

- (i) For individuals or companies with net income of up to 1700 TUs,⁴⁹⁹ a lower income tax rate of 15% will be applicable as of the year 2021 and until December 31, 2030.⁵⁰⁰

- (ii) For individuals or companies with net income in excess of 1700 TUs, the following income tax rates will be applicable:⁵⁰¹

- As of the year 2021 and until the year 2022: 15%;
- As of the year 2023 and until the year 2024: 20%;
- As of the year 2025 and until the year 2027: 25%; and
- As of the year 2028 onwards: the rate applicable to the general regime, which is currently 29.5%.

- (iii) A special annual depreciation rate of 20% for investments in hydraulic infrastructure and irrigation works;⁵⁰² and

- (iv) Anticipated recovery of VAT pursuant to Legislative Decree 973 (see IV.O.1., above).⁵⁰³

These tax benefits will be in force until December 31, 2025, except for the benefit related to the lower income tax rate

⁴⁸² Law 29704, art. 4.

⁴⁸³ Law 30446, art. 3.

⁴⁸⁴ Law 26953, art. 1 established a term of 50 years for such tax benefits, as from the date of its publication in 1998.

⁴⁸⁵ Law 27688, published on March 28, 2002, art. 7.

⁴⁸⁶ Law 27688, art. 2.

⁴⁸⁷ Law 27688, art. 18.

⁴⁸⁸ Law on Promotion of Investment in the Amazon, approved by Law 27037, published on Dec. 30, 1998.

⁴⁸⁹ Law 27037, art. 11(11.1).

⁴⁹⁰ Supreme Decree 103-99-EF, art. 3.

⁴⁹¹ Law 27037, art. 12(12.1), (12.2).

⁴⁹² Law 27037, art. 12(12.3).

⁴⁹³ Law 27037, art. 13.

⁴⁹⁴ Law 30896, art. 3.

⁴⁹⁵ Law 27037, Third Complementary Provision.

⁴⁹⁶ Special rules apply in the case of Loreto (city located inside the Amazonian Region), where the exemption from VAT for the importation of goods into Loreto was in force until December 31, 2018, except for certain tariff headings which will remain exempted until December 31, 2028. Law 30897, art. 2(b).

⁴⁹⁷ Law 31110, art. 2(a).

⁴⁹⁸ Law 31110, art. 2(b).

⁴⁹⁹ Approximately PEN 8,415,000.

⁵⁰⁰ Law 31110, art. 10(a.i).

⁵⁰¹ Law 31110, art. 10(a.ii).

⁵⁰² Law 31110, art. 10(b).

⁵⁰³ Law 31110, art. 10(c).

described in Paragraph (i) above, which will be in force until December 31, 2030.⁵⁰⁴

8. Real Estate Investment Funds and Securitization Trusts

Real estate investment funds (*Fondo de Inversión en Renta de Bienes Inmuebles - FIRBI*)⁵⁰⁵ and real estate investment securitization trusts (*Fideicomiso de Titulación para Inversión en Renta de Bienes Raíces - FIBRA*)⁵⁰⁶ are vehicles that operate similarly to a real estate investment trust (REIT). In general terms, these investment vehicles are dedicated to the acquisition and/or construction of properties to be used for leasing or other income generating purposes with a certain degree of stability over time.

Once the FIRBI or FIBRA is set up in the country, the tax regulations grant the following benefits:

(i) Deferral of payment of the income tax on capital gains derived from the contribution or transfer of real estate assets, until the tax year in which (a) the FIRBI or the FIBRA disposes of the contributed property;⁵⁰⁷ (b) the contributor disposes of one or more of its participation certificates received as consideration for the contribution of assets;⁵⁰⁸ or (c) the trust loses its condition of FIBRA or FIRBI.

(ii) The income derived from the use of the real estate assets that are part of the patrimony of the FIRBI or FIBRA is subject to a definitive income tax withholding of 5% on gross income.⁵⁰⁹

(iii) Deferral of the real property transfer tax applicable in regard to the acquisition of the property contributed to the FIRBI until the last working day of the calendar month following the date on which the property is transferred by the FIRBI or when the contributor disposes of FIRBI participation certificates.⁵¹⁰

Law 31650, published on December 29, 2022, has extended the application of the tax benefits discussed above until December 31, 2026.

P. Tax Assessment and Collection

1. Limitations Period for Assessment and Collection

The statute of limitations for: (i) the assessment of taxes; (ii) the collection of any omitted tax; and (iii) the imposition of any tax sanction (for example, a tax-related fine) by SUNAT is four years, if the taxpayer filed the related tax affidavit.⁵¹¹

The starting date from which the statute of limitations commences to run varies depending on the type of tax involved.

In the case of income tax, for instance, it will be the first day of the year following that in which the taxpayer was required to file the corresponding tax affidavit (for example, January 1, 20X3 with respect to income tax accrued during the tax year 20X1, since the taxpayer would have been legally required to declare such tax in 20X2).⁵¹²

The statute of limitations term can be suspended (for example, during an administrative tax procedure) or interrupted (for example, on the commencement of a tax audit procedure).⁵¹³ A suspension is temporary, while an interruption results in the commencement of an entirely new term.⁵¹⁴

2. Audit Process

The SUNAT is entitled to carry out comprehensive or partial physical tax audits to control taxpayers' tax compliance.⁵¹⁵ It can also carry out partial electronic tax audits.⁵¹⁶

During the audit procedures, the taxpayers' accounts and tax returns filed, as well as the amount of taxes paid, may be reviewed. In the case of partial tax audits (physical or electronic), a specific aspect of the tax assessment will be under review (for example, a specific expense deducted by the taxpayer).⁵¹⁷ Partial electronic tax audits are usually carried out when the Tax Administration identifies that information provided by the taxpayer through electronic means (e.g., tax affidavits, electronic books and records, electronic tax receipts, or similar) is not accurate.⁵¹⁸

The maximum period over which a comprehensive physical tax audit may be carried out is one year.⁵¹⁹ Exceptionally, this period can be extended to an additional year when the tax audit is complex (e.g., due to the high volume of operations of the taxpayer, or geographical dispersion of its commercial activities); a possible case of tax evasion is detected; or the taxpayer is part of a business group or a business collaboration contract.⁵²⁰ The maximum period over which a partial physical tax audit may be carried out is six months.⁵²¹ Partial electronic tax audits will be carried out for a maximum of 30 working days.⁵²²

Once that period is over, SUNAT is not allowed to require any additional documentation from the taxpayer.⁵²³

Consequent to an audit procedure, SUNAT may issue:

(i) A new assessment (referred to as an "assessment resolution"), where the taxpayer's tax calculation is challenged;

(ii) An order to pay any omitted tax (referred to as to as a "payment order"), where the taxpayer declared the corresponding tax but omitted to pay it; and/or

⁵⁰⁴ Law 31110, art. 10(d).

⁵⁰⁵ Regulated by SMV Resolution 029-2014.

⁵⁰⁶ Regulated by SMV Resolution 038-2016.

⁵⁰⁷ Law 30532, art. 3(1)(a)(i).

⁵⁰⁸ Law 30532, art. 3(1)(a)(ii).

⁵⁰⁹ Law 30532, art. 4(1).

⁵¹⁰ Legislative Decree 1188, art. 3. These rules apply to transfers of ownership of immovable property made from January 1, 2016, through December 31, 2026.

⁵¹¹ Tax Code, art. 43. If the related tax affidavit was not filed by the taxpayer, the applicable statute of limitations will be increased to six years.

⁵¹² Tax Code, art. 44(1).

⁵¹³ Tax Code, art. 46.

⁵¹⁴ Tax Code, art. 45.

⁵¹⁵ Tax Code, arts. 61 and 62.

⁵¹⁶ Tax Code, art. 61.

⁵¹⁷ Tax Code, art. 61.

⁵¹⁸ Tax Code, art. 61, para. 4.

⁵¹⁹ Tax Code, art. 62-A(2).

⁵²⁰ Tax Code, art. 62-A(2).

⁵²¹ Tax Code, art. 61.

⁵²² Tax Code, art. 62-B.

⁵²³ Tax Code, art. 62-A(4).

(iii) Sanctions related to any tax infringement (referred to as a "penalty resolution").

The assessment resolution, payment order and/or penalty resolution can be challenged under an administrative tax procedure.⁵²⁴

Notwithstanding the above, it should be noted that the review of a possible case of tax evasion and the possible subsequent application of Peru's General Anti-Avoidance Rule (GAAR) are carried out under a special comprehensive physical tax audit. For information about the GAAR and the related special audit procedure, see XIII.B., below.

3. Tax Disputes and Appeals

Tax disputes are generally resolved under an administrative tax procedure, although the outcome of the administrative procedure may be further challenged under a judicial procedure. Under the administrative tax procedure, litigation initially takes place before SUNAT⁵²⁵ and then before the Tax Court.⁵²⁶

The advance payment of any amount assessed in an assessment resolution or a penalty resolution is not required for the submission of a tax claim, provided the claim is filed in due time (i.e., no later than 20 working days after notice of the resolution was given).⁵²⁷ By contrast, a payment order must be settled before a claim against it can be processed.⁵²⁸

SUNAT has a period of nine months within which to resolve a claim; however, this period is extended to 12 months in the case of transfer pricing disputes.⁵²⁹ Once this maximum period is reached, the application of interest over the tax debt is suspended until SUNAT resolves the claim.⁵³⁰

The outcome of a claim may be appealed before the Tax Court. The taxpayer has 15 working days to submit its appeal and is not required to pay any tax deficiency at this time.⁵³¹ The taxpayer and the Tax Administration may be allowed to present their case before the Court orally. The taxpayer has to submit his or her request to the court when filing the appeal; while the Tax Administration has to submit it when the appeal files are delivered to the court.⁵³² The Tax Court must rule on an appeal within 12 months, though this period is extended to 18 months in the case of transfer pricing disputes.⁵³³ Once this maximum period is reached, the application of interest over the tax debt is suspended until SUNAT resolves the claim.⁵³⁴

A ruling of the Tax Court may be challenged by the taxpayer under a judicial procedure. The submission of a judicial appeal, however, does not of itself prevent the collection of the omitted amount confirmed by the Tax Court.⁵³⁵ The judicial claim must be filed with the Superior Court of the Judiciary specialized in tax matters within a three-month period after no-

tice of the Tax Court ruling is given. The outcome may be further appealed before the Supreme Court of the Judiciary.⁵³⁶

4. Coercive Collection of Taxes

The Tax Administration is allowed to initiate a formal tax procedure to collect the tax debt. The procedure begins with the formal notification of a coercive collection resolution that contains a mandate to cancel the assessment resolution or payment orders within seven working days, under among others penalty of imposing precautionary measures or initiating forced execution through foreclosure, seizure of properties, and seizure of bank accounts.⁵³⁷

Q. Special Obligations

1. Authorized Means of Payment

Law 28194, approved by Supreme Decree 150-2007-EF, contains rules for avoidance of evasion and formalization of the economy. In this regard, transactions involving the payment of money in amounts of PEN 2,000 or more (US\$ 500 and above) must be carried out through the use of authorized means.⁵³⁸

In the case of loan agreements, the provision and the return of the cash must be made by using an authorized means of payment, regardless of the amount.⁵³⁹

Similarly, provided the following transactions are valued in an amount equal to or higher than one tax unit (TU) (PEN 4,950), they must be paid only through the use of an authorized means of payment: (i) the transferring of rights over real property; (ii) the transferring of rights over vehicles (new or used); and (iii) the acquisition, increase or reduction of capital of a legal entity.⁵⁴⁰

The current allowed means of payment include (i) cash deposits in bank accounts; (ii) wire transfers; (iii) payment orders; (iv) debit cards issued in Peru; (v) credit cards; (vi) checks; and (vii) letters of credit.⁵⁴¹

It must be noted that the obligation of using authorized means of payments will be deemed fulfilled if (a) the payment is made directly to the creditor or provider of the goods or services; or (ii) the payment is made to a third party appointed by any of those subjects, provided such appointment has been communicated to the SUNAT prior to the payment.⁵⁴²

Payments made without using an authorized means of payment do not give right to expense deduction, tax costs or tax credits, nor to request and obtain tax refunds or to recover taxes.⁵⁴³

⁵²⁴ Tax Code, art. 135.

⁵²⁵ Tax Code, art. 133(1).

⁵²⁶ Tax Code, art. 143.

⁵²⁷ Tax Code, art. 137.

⁵²⁸ Tax Code, art. 136.

⁵²⁹ Tax Code, art. 142.

⁵³⁰ Tax Code, art. 33.

⁵³¹ Tax Code, art. 146.

⁵³² Tax Code, art. 150, para. 2.

⁵³³ Tax Code, art. 150, para. 1.

⁵³⁴ Tax Code, art. 33.

⁵³⁵ Tax Code, art. 157.

⁵³⁶ Law 27584.

⁵³⁷ Tax Code, art. 117, para. 1.

⁵³⁸ Supreme Decree 150-2007-EF, arts. 3 and 4.

⁵³⁹ Supreme Decree 150-2007-EF, art. 3, para. 2.

⁵⁴⁰ Supreme Decree 150-2007-EF, art. 3, para. 3.

⁵⁴¹ Supreme Decree 150-2007-EF, art. 5.

⁵⁴² Supreme Decree 150-2007-EF, art. 5-A.

⁵⁴³ Supreme Decree 150-2007-EF, art. 8.

2. Ultimate Beneficial Ownership

Legislative Decree 1372⁵⁴⁴ and Supreme Decree 003-2019-EF⁵⁴⁵ introduced the obligation for taxpayers to identify, keep and report information about the identity of their ultimate beneficial owners (UBOs). The following are the main rules governing these new obligations:

- The new obligations are mandatory for legal entities,⁵⁴⁶ and for some legal arrangements expressly listed in Legislative Decree 1372,⁵⁴⁷ such as local investment funds, local trusts, foreign trusts with Peruvian managers, and consortia without independent accounting.⁵⁴⁸
- The ultimate beneficial owner is deemed as:
 - (i) The individual that directly or indirectly owns at least 10% of the capital of the entity;⁵⁴⁹
 - (ii) The individual (or group of individuals) that directly or indirectly has power to appoint or remove most of management, director or supervisor positions; to decide about the financial, operative and/or commercial agreements; or that controls the entity by different means;⁵⁵⁰
 - (iii) In case the UBO cannot be identified using the criteria under (i) and (ii), above, the individual that has the highest administrative charge within the Peruvian entity (e.g., the general manager),⁵⁵¹
 - (iv) In the case of legal arrangements, such as trusts and investment funds, the individual who holds the title of grantor, trustee or beneficiary, as well as any other individual who having the title of a participant or investor has actual ultimate control over the patrimony, economic results or profits of the entity;⁵⁵² or
 - (v) In the case of other pass-through entities, any individual whose position is similar to a grantor, trustee, beneficiary, or investor or participant having ultimate control over the patrimony, economic results or profits of the entity.⁵⁵³
- Entities should implement an internal procedure comprising reasonable mechanisms for obtaining and keeping information on the identification of their ultimate beneficial owners,⁵⁵⁴ including:
 - (i) To properly identify and validate the information about their ultimate beneficial owners. For this purpose, beneficial owners must fulfill and sign the tax form

named “*Special form for the Individual that qualifies as an ultimate beneficial owner*”⁵⁵⁵ revealing their identity to entities, including among others, their names, identification card number, nationality, place of residence, date of birth, type of relationship with the company, percentage of participation in the company, e-mail, and phone number; and

(ii) To keep available accurate and up-to-date information about the identity of the UBO.⁵⁵⁶

- The information about the UBO must be reported to the tax administration by affidavit using a special form, Virtual Form 3800 - Ultimate Beneficiary Return.⁵⁵⁷

The obligation to submit the Virtual Form 3800⁵⁵⁸ initially applied to Peruvian resident companies qualified as principal taxpayers (*Principales Contribuyentes — PRICOS*) as from November 30, 2019. PRICOS were required to submit the Virtual Form 3800 by December 2019.⁵⁵⁹

In 2022, other resident legal persons were included in the group of taxpayers required to file Virtual Form 3800,⁵⁶⁰ based on annual net income earned during fiscal years 2021 and 2022, in accordance with the following schedule:

Stage	Net Income ⁵⁶¹	Submission Deadline: Until the due date corresponding to the monthly tax obligation of:
I	More than 1,000 TUs (S/ 4,400,000)	May 2022
II	More than 500 TUs (S/ 2,200,000) and up to 1,000 TUs (S/4,400,000)	August 2022
III	More than 300 TUs (S/ 1,380,000) and up to 500 TUs (S/2,200,000)	May 2023

Presently, legal arrangements with a taxpayer identification number (*registro unico de contribuyentes* or RUC) that is

⁵⁴⁴Published in the Peruvian Official Gazette *El Peruano* on August 2, 2018.

⁵⁴⁵Published in the Peruvian Official Gazette *El Peruano* on January 8, 2019.

⁵⁴⁶Legislative Decree 1372, art. 3(3.1)(c).

⁵⁴⁷Legislative Decree 1372, art. 3(3.1)(d).

⁵⁴⁸See VIII. for more details on the taxation of consortia without independent accounting.

⁵⁴⁹Legislative Decree 1372, art. 4(4.1)(a).

⁵⁵⁰Legislative Decree 1372, art. 4(4.1)(b).

⁵⁵¹Supreme Decree 003-2019-EF, art. 4.1(c).

⁵⁵²Legislative Decree 1372, art. 4(4.2)(a).

⁵⁵³Legislative Decree 1372, art. 4(4.2)(b).

⁵⁵⁴Legislative Decree 1372, art. 6(6.1).

⁵⁵⁵This tax form — *Formato de la Persona Natural que Califica como Beneficiario Final* - is included as an annex to Supreme Decree 003-2019-EF of January 8, 2019.

⁵⁵⁶Legislative Decree 1372, art. 6 (6.2)(b).

⁵⁵⁷Legislative Decree 1372, final complementary disposition one.

⁵⁵⁸Superintendence Resolution 000278-2022/SUNAT.

⁵⁵⁹Superintendence Resolution 185-2019/SUNAT, art. 5. Legislative Decree 1372, art. 3, para. 2.

⁵⁶⁰Superintendence Resolution 000041-2022/SUNAT, published on March 24, 2022.

⁵⁶¹For stages I and II, the net income should be calculated on the basis of the annual income tax affidavit corresponding to the fiscal year 2021; and for stage III, on the basis of the annual income tax affidavit corresponding to the fiscal year 2022. Bear in mind that additional special provisions must be considered for the net income calculation.

registered by June 30, 2024 and those arrangements that are not de-registered as of that date are required to submit Virtual Form 3800. The form must be submitted by the due dates established for the compliance with the obligations of said declaration and/or by the deadline for the payment of taxes administered by SUNAT corresponding to the period of June 2024, or if applicable, its extensions.⁵⁶²

Certain legal entities are expressly exempt from reporting UBOs to the tax administration, including:⁵⁶³ (i) Peruvian gov-

ernment institutions (other than state-owned corporations); (ii) the Central Reserve Bank of Peru (BCRP) and other state-owned banks; (iii) dioceses, religious institutions, and entities related exclusively to the Catholic Church; and (iv) public universities, among others.

⁵⁶² Superintendence Resolution 000236-2023/SUNAT, published on November 10, 2023.

⁵⁶³ Legislative Decree 1372, art. 3, para. 2.

V. Taxation of Resident Corporations

A. In General

Under the Single Unified Text of the Income Tax Law approved by Supreme Decree 179-2004-EF, published on December 8, 2004, as amended (ITL), legal entities are regarded as taxpayers for income tax purposes (as are individuals and undivided inheritances).⁵⁶⁴ The ITL contains a list of legal entities that are taxpayers for its purposes, including among others, corporations, sole proprietorship businesses and branches located in Peru that are owned by nonresident entities of any kind (see V.B.1., below).

As a general rule, a legal entity is considered to be a Peruvian resident if it is incorporated in Peru. The place of management and control plays no role in determining the residence status of a legal entity. A legal entity that is a Peruvian resident is subject to Peruvian income tax on its worldwide income.⁵⁶⁵

Peruvian-source income is classified into five different categories (i.e., as first category through fifth category income). The third income category comprises income derived from business, trading activities, industry, and income from other sources expressly mentioned in the ITL, such as patrimonial increases as expressly laid down in the ITL.⁵⁶⁶ All Peruvian-source income derived by a Peruvian legal entity,⁵⁶⁷ be it ordinary or extraordinary, and regardless of its classification as business income or capital gains is classified as third category income and taxed accordingly.

The rules applying to resident corporations are discussed in V.C.1. to 6., below.

B. Resident Legal Entities

1. What Is a Legal Entity?

The ITL identifies the following as being legal entities for its purposes.⁵⁶⁸

(i) Corporations, including a stock corporation (*Sociedad Anónima* or S.A.), a closed stock corporation (*Sociedad Anónima Cerrada* or S.A.C.) and a limited liability company (*Sociedad Comercial de Responsabilidad Limitada* or S.R.L.), incorporated in Peru;

(ii) State-owned enterprises;

(iii) Sole proprietorship businesses, such as an limited liability individual company (*Empresa Individual de Responsabilidad Limitada*) incorporated in Peru;

(iv) Branches, agencies, and other permanent establishments owned by nonresident entities;

(v) Consortia, joint ventures and business collaboration contracts whose accounting records are kept separately from those of their members;

(vi) Foundations (whether subject to or exempt from income tax) and other nonprofit organizations; and

(vii) Foreign corporations, associations or other entities deriving Peruvian-source income.

Peru has no pass-through entity concept. However, pass-through treatment applies to consortia, joint ventures and business collaboration contracts that do not keep accounting records separate from those of their members, since such bodies are not considered legal entities and, therefore, are not taxable entities for income tax purposes.⁵⁶⁹

Certain legal entities are expressly excluded from being taxpayers under the ITL, such as institutions of the Peruvian government (other than state-owned corporations)⁵⁷⁰ and indigenous peoples associations.⁵⁷¹ Foundations exclusively devoted to cultural activities, advanced research, charitable activities, social assistance and hospital care, and/or social benefits for employees may also apply for the same tax treatment, and thus, be excluded from being taxpayers under the ITL.⁵⁷² Such foundations must be registered with SUNAT as entities excluded from being taxpayers for income tax purposes.

In addition, a temporary income tax exemption applies to the income derived by certain legal entities.⁵⁷³ For example, the exemption applies to religious congregations, provided their income is earmarked to cover their religious-related activities within Peru.⁵⁷⁴ The exemption also applies to foundations subject to income tax and other nonprofit organizations, provided certain requirements are met, for example: (i) the foundation/organization concerned exclusively carries on charitable, social care, educational, cultural, scientific, artistic, literary, sports, political, guild and/or housing programs; (ii) the foundation's/organization's income is earmarked to cover its purposes within Peru; (iii) the foundation's/organization's income is not (directly or indirectly) distributed to its members or related parties; and (iv) the foundation's/organization's assets are earmarked to support similar programs in the event of the foundation's/organization's dissolution.⁵⁷⁵ Such entities must be registered with SUNAT as benefiting from a temporary income tax exemption.

A legal entity continues to be considered a taxpayer until the date on which it ceases to exist.⁵⁷⁶

2. Tax Residence

A legal entity that is incorporated in Peru is considered to be resident in Peru for income tax purposes.⁵⁷⁷ A branch, agency or other PE located in Peru that is owned by a nonresident entity is also considered to be resident in Peru for income tax purposes, but only with respect to its Peruvian-source income.⁵⁷⁸

⁵⁶⁴ ITL, art. 14.

⁵⁶⁵ ITL, art. 6.

⁵⁶⁶ ITL, art. 22(c).

⁵⁶⁷ Foreign-source income does not follow the aforementioned classification. Foreign-source income is added to Peruvian-source income in accordance with the rules described in V.C.1., below.

⁵⁶⁸ ITL, art. 14.

⁵⁶⁹ ITL, art. 14.

⁵⁷⁰ ITL, art. 18(a).

⁵⁷¹ ITL, art. 18(e)(f).

⁵⁷² ITL, art. 18(c).

⁵⁷³ The temporary exemption was in force until December 31, 2020, for most of these legal entities.

⁵⁷⁴ ITL, art. 19(a).

⁵⁷⁵ ITL, art. 19(b).

⁵⁷⁶ ITL, art. 15.

⁵⁷⁷ ITL, art. 7(d).

⁵⁷⁸ ITL, art. 7(e).

3. Basis of Taxation

Resident legal entities are taxed on their worldwide income. Nonresident entities, as well as branches, agencies, and other PEs owned by nonresidents are taxed only on their Peruvian-source income.⁵⁷⁹

4. Peruvian-Source Income

As discussed at IV.B., above, the ITL classifies Peruvian-source income into five different categories, depending on the nature of the income:

- (i) First category: income derived from operating leases with respect to movable and immovable property;
- (ii) Second category: income derived from capital that is not included in the First Category;
- (iii) Third category: Income derived from business, trading or industry;
- (iv) Fourth category: Income from independent work; and
- (v) Fifth category: Income from dependent work.

All income derived by a legal entity (for example, a corporation or a Peruvian branch, agency or other PE owned by a nonresident entity), is classified as third category income, regardless of its nature or the category into which it would otherwise fall.⁵⁸⁰

C. Corporate Income Tax

1. In General

In general terms, a resident corporation calculates its third category income tax on an annual basis following these steps:

- (i) Peruvian-source gross receipts is calculated by aggregating all ordinary and extraordinary gross receipts obtained by the resident corporation accrued⁵⁸¹ during the taxable year.⁵⁸²
- (ii) In the case of receipts derived from the disposal of goods, all related refunds, rebates and discounts are subtracted from gross receipts to obtain a net receipt amount.⁵⁸³ Then, costs incurred in order to obtain, produce or construct the goods disposed of, if any, are subtracted from net receipts in order to arrive at Peruvian-source gross income.⁵⁸⁴
- (iii) Peruvian-source net income (i.e., third category net income) is then obtained by subtracting from Peruvian-source gross income all deductible tax expenses, which include all expenses incurred to produce the income or to maintain the income source, except as otherwise restricted by law.⁵⁸⁵

(iv) Peruvian-source net losses carried forward are set off against Peruvian-source net income.⁵⁸⁶ The ITL does not allow the carryback of Peruvian-source net losses.⁵⁸⁷

(v) Foreign-source net income, if any, derived by the corporation is added to Peruvian-source net income. Foreign-source net losses cannot be set off against the Peruvian-source net income.⁵⁸⁸

(vi) The income tax rate of 29.5% is applied to the resulting taxable amount.⁵⁸⁹

(vii) Tax credits, for example, for foreign tax paid on foreign-source income, are applied against the Peruvian income tax due.⁵⁹⁰

(viii) The income tax due is declared and paid directly to SUNAT by the resident corporation.

The above steps (i) to (viii) are illustrated in the following example:

Concept	Amounts	Steps	Description
(+) Provision of services	5,000,000	(i)	Peruvian-source gross receipts are calculated by adding all ordinary and extraordinary gross receipts accrued during the taxable year by the resident corporation
(+) Sales of goods	4,000,000		
(+) Extraordinary income	1,000,000		
Total Gross Receipts	10,000,000		
(-) Discounts, rebates, etc.	-1,000,000	(ii)	In the case of receipts from the disposal of goods, all related refunds, rebates and discounts are subtracted from the amount of gross receipts to obtain net receipts
Total Net Receipts	9,000,000		
(-) Cost of goods	-2,000,000	(ii)	Costs incurred to obtain, produce or construct the goods disposed of, if any, are subtracted from net receipts to arrive at Peruvian-source gross income
Third Category Gross Income	7,000,000		
(-) Deductible expenses	-1,000,000	(iii)	Peruvian-source net income (the Third Category net income) is obtained by subtracting from Peruvian-source gross income all expenses deductible for tax purposes, which include those incurred to produce the income or to maintain the income source, except as otherwise restricted by law

⁵⁷⁹ ITL, art. 6, para. 2.

⁵⁸⁰ ITL, art. 28(e).

⁵⁸¹ ITL, art. 57(a).

⁵⁸² ITL, art. 20, para. 1.

⁵⁸³ ITL, art. 20, para. 2.

⁵⁸⁴ ITL, art. 20, para. 6.

⁵⁸⁵ ITL, art. 37, para. 1.

⁵⁸⁶ ITL, art. 50.

⁵⁸⁷ ITL, art. 50.

⁵⁸⁸ ITL, art. 51.

⁵⁸⁹ ITL, art. 55.

⁵⁹⁰ ITL, art. 88.

Third Category Net Income	6,000,000		
(-) Net losses of previous years	-4,000,000	(iv)	Peruvian-source net losses carried forward, if any, are set off against the Peruvian-source net income
(+) Foreign-source net income	2,000,000	(v)	Foreign-source net income, if any, derived by the corporation is added to Peruvian-source net income
Taxable Amount	4,000,000		
Rate	29.5%	(vi)	The income tax rate of 29.5% is applied to the resulting taxable amount
Tax Due	1,180,000		
(-) Tax credits (e.g., tax paid abroad)	-120,000	(vii)	Tax credits, e.g., foreign tax paid on foreign-source income, can be credited against Peruvian income tax liability
Tax Due (payable)	1,060,000	(viii)	The income tax due is declared and paid directly to SUNAT by the resident corporation

Each step is described in further detail in below.

2. Gross Income

a. In General

The concept of gross income as applied in Peru is a very broad one. As a general rule, all income (ordinary and extraordinary) of a resident corporation is subject to income tax, regardless of its nature. Hence, unless an exemption applies, taxable income includes all receipts derived from a business or trade, including capital gains⁵⁹¹ and, generally, all receipts derived from transactions with third parties,⁵⁹² (for example, occasional income and gains from the gratuitous acquisition of goods).⁵⁹³

Income of corporations that is expressly exempt from tax includes income derived from the transfer of shares or other securities (for example, American depositary receipts (ADRs), global depositary receipts (GDRs) and exchange traded funds (ETFs)) effected on the Lima stock exchange, provided the following conditions are met:⁵⁹⁴

- (i) Within a 12-month period, neither the transferring corporation nor its related parties transfer ownership of 10% or more of the shares issued by the same corporation

⁵⁹¹ ITL, art. 1(b).

⁵⁹² ITL, art. 3, para 2.

⁵⁹³ ITR, art. 1(g).

⁵⁹⁴ Originally established by Law 30341, this is a temporary exemption, which was intended to remain in force until December 31, 2019, but it was extended to December 31, 2022, pursuant to Emergency Decree 005-2019. Later, pursuant to Law 31662, it was extended again until December 31, 2023, but exclusively applicable to capital gains of individuals and an undivided inheritance or marital partnerships and limited to the first 100 taxable units (TUs) of such gain generated in the taxable year.

in one or multiple successive or simultaneous operations;⁵⁹⁵ and

- (ii) The shares have a “market presence,” determined by applying the formula established by Law 30341 based on the volume of shares traded on the stock exchange.⁵⁹⁶

Similarly, as from fiscal year 2017, income derived from transfers of securities, such as participation certificates in mutual funds investing in securities (*Fondos mutuos de inversión en valores*), participation certificates in real property funds (*Certificados de participación en fondo de inversión en renta de bienes inmuebles — FIRBI*) and participation certificates in securitization trusts investing in real property (*Certificados de participación en fideicomiso de titulización para inversión en renta de bienes raíces — FIBRA*), traded on the Lima stock exchange, may also be tax exempt, provided some conditions are met.⁵⁹⁷

Other tax-exempt income includes:

- (i) Interest and capital gains derived from certain debt instruments issued by the Peruvian government on the international market in or after 2003;⁵⁹⁸
- (ii) Royalties derived from technical, economic, financial or any other kind of assistance, rendered from abroad by international organizations or foreign governmental entities;⁵⁹⁹
- (iii) Income of official sports teams of foreign countries derived from sports performances in Peru;⁶⁰⁰ and
- (iv) Income of official performers from foreign countries derived from live performances of theatrical pieces, classical music concerts, opera, ballet and folklore shows in Peru, provided such performances are classified as public cultural shows by the Peruvian National Institute of Culture.⁶⁰¹

b. Peruvian-Source Income

Income derived from the rendering of services, business or trading activities in Peru is regarded as Peruvian-source income.⁶⁰² Income derived from the exploitation of real property and rights connected with real property (including the disposal of such property or rights) is also considered Peruvian-source income, provided the real property concerned is located in Peru.⁶⁰³ This treatment also applies to income derived from the exploitation of tangible goods and rights connected to tangible goods (including the disposal of such goods/rights), provided the goods are located in Peru or the rights are economically used in Peru.

⁵⁹⁵ Law 30341, art. 2(2).

⁵⁹⁶ Law 30341, art. 2(3).

⁵⁹⁷ Law 30341, art. 2.

⁵⁹⁸ ITL, art. 18(h)(ii).

⁵⁹⁹ ITL, art. 19(k). The temporary exemption was in force until December 31, 2023.

⁶⁰⁰ ITL, art. 19(j). The temporary exemption was in force until December 31, 2023.

⁶⁰¹ ITL, art. 19(n). The temporary exemption was in force until December 31, 2023.

⁶⁰² ITL, art. 9(e).

⁶⁰³ ITL, art. 9.

In addition, the ITL also considers the following to be Peruvian-source income, regardless of the nationality or place of residence of the parties to the transactions concerned and the place where the agreements were entered into:

- (i) Royalties: if the goods or rights with respect to which the royalties are paid are economically used in Peru, or the royalties are paid by a resident entity;
- (ii) Interest: income derived from loans or the exploitation of capital, if the capital is held or economically used in Peru, or the payer is a resident entity;
- (iii) Interest: income derived from debt instruments if the entity issuing the debt instruments is incorporated in Peru;⁶⁰⁴
- (iv) Dividends: profit distributions derived from resident corporations or other entities;⁶⁰⁵
- (v) Gains on the disposal of shares: gains from the disposal of shares and other securities issued by resident corporations or other entities;⁶⁰⁶
- (vi) Gains on the indirect disposal of shares: gains from the indirect disposal of shares issued by resident corporations or entities.⁶⁰⁷ Indirect disposal occurs when shares issued by a nonresident entity that is a shareholder in a Peruvian entity are disposed of;
- (vii) Income from digital services: income derived from the provision of digital services if the services are used, economically used or consumed in Peru;
- (viii) Fees for technical assistance services: income derived from the provision of technical assistance services if the services are economically used in Peru; and
- (ix) Income from derivative agreements: income derived by resident entities from financial derivative agreements.⁶⁰⁸

In so far as crypto-assets are concerned, there is as yet no tax regulation in Peru regarding transactions involving this assets class. Similarly, concerning cryptocurrencies, the SUNAT through Letter No. 000034-2023-SUNAT/7T0000, issued on July 5, 2023, stated the following: 'Our legal system does not encompass specific regulation of this concept, nor does it address its commercialization or any other form of transactions that may occur. Thus, the analysis of tax obligations arising from cryptocurrencies should be conducted by considering the characteristics of each specific case, based on the existing legal provisions of the Income Tax.'

Accordingly, in Peru, the tax treatment of income derived from crypto-assets remains uncertain, leading to legal ambiguity for taxpayers, with several possible approaches to the taxation of these assets. Assuming that crypto-assets qualify as intangible movable property, distinct from securities, individuals not engaged in business activities would not be subject to income tax on gains from the sale of crypto-assets. The situation would differ for Peruvian legal entities, which would need to

include the income generated from their sale of crypto-assets as part of their annual net income, subject to the 29.5% income tax. However, given the lack of legislation on this matter, many aspects remain under question, such as the cost and market valuation of crypto-assets for tax purposes, the tax treatment of value fluctuations, income accrual, accounting treatment, etc.

c. Disposals of Goods

The ITL defines a "disposal" as any sale, exchange, permanent transfer, expropriation, capital contribution, contribution of assets in a joint venture agreement, or any transaction by means of which the property in goods is transferred for consideration.⁶⁰⁹ The gross amount is obtained by subtracting the cost of the goods disposed from the net amount. To arrive at the net amount,⁶¹⁰ all related refunds, rebates and discounts must be subtracted from the gross amount.⁶¹¹

For IT purposes, the allowable cost of the goods disposed of is equal to the following:⁶¹²

- (i) The acquisition cost of the goods disposed of: this is the allowable cost applies when the goods were acquired for consideration from a third party.⁶¹³

The acquisition cost is equal to the purchase price of the goods, plus any other purchase-related costs incurred, such as transportation costs, insurance expenses, commissions, fees, import duties, applicable taxes, and, in general, any expenses incurred to put the goods concerned into a usable, saleable or economically exploitable condition.⁶¹⁴

- (ii) The production or construction cost of the goods disposed of: this is the allowable cost when the goods were produced or constructed by the taxpayer.⁶¹⁵

The acceptable cost is equal to the amount of expenses incurred during the production or construction of the goods, such as raw materials, labor costs and other necessary expenses.⁶¹⁶ In the case of self-created intangible goods, the acceptable cost is their production cost.⁶¹⁷

- (iii) The value at which the disposed goods were included in the patrimony of the taxpayer: this is the allowable cost when: (a) the goods were acquired cost-free from third parties (including intangible goods acquired cost-free from third parties),⁶¹⁸ or (b) the goods were acquired as a consequence of a reorganization.⁶¹⁹

The acceptable cost is equal to the market value of such goods.⁶²⁰

⁶⁰⁹ ITL, art. 5.

⁶¹⁰ See V.C.1., above, for an overview on the steps to calculate the Third Category income tax on an annual basis, including the calculation of the gross income derived from the disposal of goods.

⁶¹¹ ITL, art. 20, para. 5.

⁶¹² ITL, art. 20, para. 8.

⁶¹³ ITR, art. 11(a)(1).

⁶¹⁴ ITL, art. 20.

⁶¹⁵ ITR, art. 11(a)(3).

⁶¹⁶ ITL, art. 20.

⁶¹⁷ ITR, art. 11(a)(3).

⁶¹⁸ ITR, art. 11(a)(3), para. 3.

⁶¹⁹ ITR, art. 11(a)(2).

⁶²⁰ ITL, art. 20.

⁶⁰⁴ ITL, art. 10(a).

⁶⁰⁵ ITL, art. 9(d).

⁶⁰⁶ ITL, art. 9(h).

⁶⁰⁷ ITL, art. 10(e).

⁶⁰⁸ ITL, art. 10(d).

(iv) Inventory cost: this is the allowable cost applies when the taxpayer is required to keep inventories.⁶²¹

The acceptable cost is valued using one of the following methods: first in, first out (FIFO); daily, monthly or annual weighted average method; retail inventory; or basic stock.

Depreciation or amortization allowances must be deducted from the cost of the goods. See 3.a.(14) and b., below.⁶²²

Costs incurred must be supported by the corresponding invoice receipts.⁶²³ Exceptionally, no invoice will be required if: (i) the seller is an individual who does not derive business income from the disposal; (ii) the issuance of an invoice in the transaction concerned is not mandatory; or (iii) the ITL allows proof of the expenses incurred by means of another type of payment receipt.

Special rules apply with respect to the acceptable cost in the following cases:

(i) Disposal of real property by a legal entity, when the property was acquired through a financial leasing operation signed after January 1, 2001: in this case the acceptable cost for the lessee is equal to the acquisition cost of the real property less depreciation;⁶²⁴

(ii) Disposal of shares acquired for consideration by a legal entity: the acceptable cost is equal to the acquisition cost of the shares;⁶²⁵

(iii) Disposal of shares acquired for no consideration by a legal entity after December 31, 2012, where the shares are disposed of on or after January 1, 2013: the acceptable cost is the value at which the shares were included in the patrimony of the legal entity; i.e., the market value of the shares;⁶²⁶

(iv) Disposal of shares acquired through capitalization of profits by a legal entity: the acceptable cost is the face value of the shares;⁶²⁷ and

(v) Disposal of intangible assets: the acceptable cost is the acquisition cost of the intangibles less amortization, when applicable.⁶²⁸

d. Presumptive Income

(1) Income from Loans

Presumptive minimum income is recognized (and taxed accordingly) under the ITL with respect to interest income derived from loans. Unless otherwise registered in the accounting records of the debtor, it will be presumed that any loan granted by a resident corporation accrues an amount of interest at a rate no lower than: (i) the active rate in local currency (TAMN) published by the Peruvian Superintendence of Banking and Insurance multiplied by an adjustment factor, in the case of a loan granted in Peruvian currency,⁶²⁹ or (ii) the active rate in

foreign currency (TAMEX), published by the Peruvian Superintendence of Banking and Insurance multiplied by an adjustment factor, in the case of a loan granted in any other currency.⁶³⁰

The presumption does not apply if:

(i) The loan was granted to an employee as remuneration paid in advance and the capital amount does not exceed one tax unit (TU);

(ii) The loan was granted to an employee and was intended for the acquisition of housing, and the capital amount does not exceed 30 TUs; or

(iii) The transfer pricing rules apply to the transaction concerned (see XII., below).

(2) Income from the Leasing of Real Property

Presumptive minimum income is recognized for tax purposes under the ITL with respect to the leasing of real property. Unless the property concerned is leased to the Peruvian Government, museums, libraries or a zoo, it will be presumed that the leasing of real property gives rise to compensation of no less than 6% of the value of the property.⁶³¹ The presumption does not apply when the transfer pricing rules apply to the transaction concerned — in such circumstances, the transfer pricing rules will apply to determine the amount of the compensation.⁶³²

(3) Income from the Use of Real Property

Presumptive income equal to 6% of the value of the property concerned is recognized for tax purposes whenever a corporation makes a gratuitous grant of the use of real property.⁶³³ The presumption does not apply when transfer pricing rules apply to the transaction concerned — in such circumstances, the transfer pricing rules will apply to determine the amount of the presumptive income.⁶³⁴

(4) Income from the Use of Movable or Other Immovable Property

Presumptive annual net income is recognized where a legal entity grants the use of movable or immovable property (other than real property) to another legal entity. Specifically, if a legal entity grants the use of movable or immovable property (the depreciation or amortization of which is allowed as a expense under the ITL) for no consideration or for consideration that is below fair market value, presumptive annual net income equal to 6% of the acquisition, production or adjusted patrimonial value of the property must be recognized as income by the grantor.⁶³⁵

The presumption does not apply, however, where:⁶³⁶

⁶²⁹ This presumption applies even if: (i) no interest rate is agreed on; (ii) it is agreed that no interest will accrue; or (iii) a lower interest rate is agreed on.

⁶³⁰ ITL, art. 26.

⁶³¹ ITL, art. 23(a), paras. 3 and 4.

⁶³² ITL, art. 23(a), para. 6.

⁶³³ ITL, art. 23(d).

⁶³⁴ ITL, art. 23(d), para. 4.

⁶³⁵ ITL, art. 28(h), para. 1.

⁶³⁶ ITL, art. 28(h), para. 2.

⁶²¹ ITR, art. 11(a)(4).

⁶²² ITL, art. 20, para. 5.

⁶²³ ITL, art. 20, paras. 2 and 4.

⁶²⁴ ITL, art. 21(21.1)(c).

⁶²⁵ ITL, art. 21(21.2)(a).

⁶²⁶ ITL, art. 21(21.2)(b)(b.2).

⁶²⁷ ITL, art. 21(21.2)(c).

⁶²⁸ ITL, art. 21(21.5).

- (i) The transfer is made within a consortium or joint venture agreement;
- (ii) The transfer is made to a Peruvian Government institution (other than a Peruvian Government-owned corporation); or
- (iii) The transfer pricing rules apply to determine the amount of the compensation for the grant.

e. Dividends

(1) In General

Resident corporations are not taxed on dividends received from other resident corporations. Different treatment applies to dividends payable to nonresident legal entities and to resident or nonresident individuals, to which income tax withholding at a rate of 5% applies.

The ITL considers the following to be dividends, among other things:⁶³⁷

- (i) Profit distributions to shareholders, partners, etc., whether in cash or in kind;
- (ii) Distributions of surplus value derived from the revaluation of assets, whether in cash or in kind;
- (iii) Reductions of capital, up to an amount equal to profits, revaluation surpluses, restatement adjustments or unrestricted reserves that: (a) were previously capitalized (unless such capital reductions were intended to cover losses under Peruvian Corporate Law); or (b) existed at the time the capital reduction agreement was adopted;⁶³⁸
- (iv) Differences between the face value of the capital represented by shares and other securities (plus supplementary premiums, if any) and amounts paid to shareholders, partners, etc. in the case of capital reductions or liquidations; and
- (v) Any credits (up to the amount of profits and free reserves) that legal entities (except certain financial companies) grant in favor of their shareholders, partners, etc., in cash or in kind, regardless of the formal structure used for such transactions.

(2) Indirect Disposal of Business Income

Any third category income, in cash or in kind, that represents an indirect disposal of taxable business income is deemed to be a dividend distribution.⁶³⁹ Examples include amounts benefiting the shareholders of the taxpayer, personal expenses of the shareholders and, in general, any personal expenses.⁶⁴⁰

Also, among other expenses, the regulations approved by Supreme Decree 122-94-EF, published on September 21, 1994,

as amended (ITR) expressly include those expenses supported by invoices for which: (i) the issuer does not have a valid taxpayer registry number; (ii) the issuer uses a taxpayer registry number corresponding to a different taxpayer; (iii) the address of the issuer is not real; or (iv) the transactions supported by the invoices are not real.⁶⁴¹

The amounts indirectly disposed of are subject to additional income tax withholding at the rate of 5%.⁶⁴² Such additional income tax must be paid in the month following the disposition date or the month following the date on which the expenses accrued.⁶⁴³ The additional income tax applies is imposed regardless of the profit or loss generated in the taxable year.⁶⁴⁴

The amounts indirectly disposed of may include unduly deducted expenses or income that has not been declared. Expenses considered indirectly disposed of are expenses that could have benefited shareholders, members or associates, such as:

- (i) Personal expenses;⁶⁴⁵
- (ii) Expenses supported by false invoices, i.e., invoices for which the issuer does not have a valid taxpayer identification number (*registro único de contribuyentes* or RUC), where the RUC belongs to a different taxpayer, where the address for tax purposes is false, and/or where the transactions supported by the invoices are artificial;⁶⁴⁶
- (iii) Expenses supported by unreliable invoices, i.e., invoices containing information that differs from the information described in the original document;⁶⁴⁷ and
- (iv) In general, any expenses disallowed by law that entail a disposition not subject to subsequent tax control.⁶⁴⁸

3. Net Income

a. Business Expenses

Resident corporations are allowed to deduct business expenses from their Peruvian-source gross income in arriving at their Peruvian-source net income.

As a general rule, any expense that is necessary to produce income or to maintain the source of income, as well as any expenses related to capital gains, is deductible, unless it is expressly prohibited by the ITL.

Expenses must comply with the following conditions:

- (i) The nature of the expenses must be related to the business activity of the taxpayer;⁶⁴⁹
- (ii) The amount of the expenses must be reasonable in view to the taxpayer's income;⁶⁵⁰

⁶³⁷ ITL, art. 24-A.

⁶³⁸ Under ITL, art. 24-A(c), if those profits, appraisal surpluses, restatement adjustments or unrestricted reserves were distributed after the reduction of capital agreement was adopted, the new distribution will not be considered a dividend distribution. If the profits, appraisal surpluses, restatement adjustments or unrestricted reserves were capitalized after the reduction of capital agreement was adopted, the subsequent capital reduction will not be considered a dividend distribution.

⁶³⁹ ITL, art. 24-A(g).

⁶⁴⁰ ITR, art. 13-B.

⁶⁴¹ ITR, art. 13-B.

⁶⁴² ITL, art. 55, para. 2.

⁶⁴³ ITL, art. 55, para. 3.

⁶⁴⁴ ITR, art. 13-B, last para.

⁶⁴⁵ ITR, art. 13-B, para. 1.

⁶⁴⁶ ITR, art. 13-B(1).

⁶⁴⁷ ITR, art. 13-B(2).

⁶⁴⁸ ITR, art. 13-B(6).

⁶⁴⁹ ITL, art. 37, last para.

⁶⁵⁰ ITL, art. 37, last para.

(iii) The expenses must be supported by invoices or other tax receipts that meet legal requirements;⁶⁵¹

(iv) As a general rule, only expenses incurred and accrued during the current tax year are deductible;⁶⁵² and

(v) The deduction must not be expressly prohibited by the ITL.⁶⁵³

Deductible expenses expressly recognized by the ITL are discussed below.

(1) Debt Interest

As a general rule, interest and related expenses (i.e., expenses incurred to renew or cancel debt) are deductible provided the debt on which the interest is payable was incurred to acquire goods or services related to the production of taxable income or to maintain the income source.⁶⁵⁴ However, under an amendment introduced by Legislative Decree 1424, thin capitalization rules will apply with respect to the granting of loans among both related and unrelated parties.⁶⁵⁵

Interests accruing as from January 1, 2019, to December 31, 2020, will be deductible provided the amount of the loans does not exceed three times the net worth of the taxpayer (the debtor).⁶⁵⁶ If the amount of the loans exceeds this maximum, the interest attributable to the excess will not be deductible for income tax purposes.⁶⁵⁷

Exemptions to this rule include⁶⁵⁸ taxpayers whose net income in a given fiscal year is equal to or lower than 2,500 TUs (PEN 12,375,000 approximately),⁶⁵⁹ financial and insurance companies under article 16 of Law 26702 - General Law of the Financial and Insurance System of the Peruvian Superintendence of Banking and Insurance.

As of January 1, 2021, interest exceeding an amount equal to 30% of the Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA) of the previous fiscal year will not be deductible for tax purposes.⁶⁶⁰

For tax purposes, EBITDA will be equal to annual net income after setting off tax losses and adding back net interest, depreciation and amortization. When in a taxable year, a taxpayer is not in a net income position or is in a net income but has off-settable tax losses from previous years that are equal to

or greater than the net income obtained, EBITDA will be equal to the sum of the net interest, depreciation and amortization deducted in that taxable year.⁶⁶¹

Provided certain conditions are fulfilled, interest that is not deducted because of the restriction based on EBITDA may be carried forward for the following four consecutive fiscal years.⁶⁶²

(2) Employee Transportation Subsidies

Subsidies for employee transportation expenses are deductible to the extent they allow employees to duly perform their activities and do not entail a personal economic benefit for the employees.⁶⁶³ Such expenses may be supported by corresponding invoices or expense reports signed by the employees.⁶⁶⁴

The daily amount of expenses supported by an expense report may not exceed an amount equal to 4% of the monthly Minimum Living Wage (approximately US\$13) per employee.⁶⁶⁵

(3) Research and Development Costs

All expenses incurred for scientific research, technological development or technological innovation purposes, whether or not related to a corporation's business purpose, are deductible.⁶⁶⁶

For these purposes, "scientific research" is defined as any original, planned study designed to gain new technological or scientific knowledge. "Technological development" is the application of the research outcome or the application of any other scientific knowledge to a plan or design to produce new materials, goods, methods, proceedings or systems, or to improve materials, goods, etc. before the production process begins or before the materials, goods, etc. are used in commercial activities. "Technological innovation" means the creation or development of a new product, process or service, or any significant technological change to a new product, process or service. To qualify as a new product, process or service, the characteristics or applications of the product, process or service must differ from those already in existence.

Law 30309, enacted on March 13, 2015 as modified by Law 31659, effective as of January 1, 2023, grants additional special tax benefits to taxpayers that incur expenses related to scientific research, technological development and technological innovation projects.⁶⁶⁷ The benefit amounts to an additional deduction of 60%, 90% or 140% of such expenses. The scientific research, technological and/or innovation development project must be designated as such by the Peruvian National Counsel for Science, Technology and Technological Innovation (CONCYTEC).⁶⁶⁸

⁶⁵¹ ITL, art. 44(j). The Regulation of Tax Receipts approved by Resolution of Superintendence 007-99/SUNAT, art. 8 states that, among other things, the invoice must contain: (i) the name and Taxpayer Identification Number (RUC) of both the acquirer and the supplier of the goods or services; (ii) the fiscal address and issuance location; (iii) a number that corresponds to a consecutive invoice numbering system; (iv) the issuance date; and (v) the number of items sold and their value, or a description and the value of the services rendered.

⁶⁵² ITL, art. 57. Exceptionally, where it was not possible for the taxpayer to know about the expenses on a timely basis, the expenses can be deducted in the taxable year in which they became known, provided certain requirements are met (e.g., the expenses were accrued in the accounting records of the taxpayer and paid in full).

⁶⁵³ See V.C.3.b., for a list of prohibited expenses.

⁶⁵⁴ ITL, art. 37(a).

⁶⁵⁵ See XII.B., for the definition of related parties.

⁶⁵⁶ For this purpose, the net worth of the taxpayer at the end of the previous taxable year is considered. ITR, art. 21(a)(6).

⁶⁵⁷ ITL, art. 37(a), para. 5.

⁶⁵⁸ ITL, art. 37(a)(2).

⁶⁵⁹ ITL, art. 37(a)(2)(b).

⁶⁶⁰ ITL, art. 37(a)(1).

⁶⁶¹ ITR, art. 21(a)(1)(i).

⁶⁶² Legislative Decree 1424, complementary disposition.

⁶⁶³ ITL, art. 37(a1).

⁶⁶⁴ ITL, art. 37(a1), para. 2.

⁶⁶⁵ ITR, art. 21(v)(2).

⁶⁶⁶ ITL, art. 37(a3).

⁶⁶⁷ The definition of scientific research, technological development and technological innovation contained in the ITL applies for this purpose. Law 30309, art. 3(a).

⁶⁶⁸ Law 30309, art. 3(a); Supreme Decree 188-2015-EF, art. 3.

The project must be conducted directly by the taxpayer or by a scientific, technological development or innovation research center. Both the taxpayer and/or the center must be duly authorized by CONCYTEC to carry out the type of project concerned.⁶⁶⁹

Taxpayers with net income in a given fiscal year equal to or lower than 2,300 TUs (approximately PEN 11,385,000) who incur expenses related to scientific research, technological development or technological innovation projects, may benefit from the following tax benefits:⁶⁷⁰

- Projects conducted directly by the taxpayer or a resident scientific, technological development or innovation research center qualify for a deduction of 240% of the expenses incurred;⁶⁷¹
- Projects conducted by a nonresident scientific, technological development or innovation research center qualify for a deduction of 190% of the expenses incurred.⁶⁷²

Taxpayers with net income in a given fiscal year in excess of 2,300 TUs (approximately PEN 11,385,000) who incur expenses related to scientific research, technological development or technological innovation projects, may benefit from the following tax benefits:⁶⁷³

- Projects conducted directly by the taxpayer or a resident scientific, technological development or innovation research center qualify for a deduction of 190% of the expenses incurred;⁶⁷⁴
- Projects conducted by a nonresident scientific, technological development or innovation research center qualify for a deduction of 160% of the expenses incurred.⁶⁷⁵

The additional deduction of 60%, 90% or 140% may not exceed, in any case, a maximum annual amount equal to 500 TUs.⁶⁷⁶ This tax benefit remains in effect until fiscal year 2025.

Taxpayers incurring expenses on projects related to scientific research, technological development, and technological innovation projects, qualified by CONCYTEC within the term mentioned in the previous paragraph, and that have a duration extending beyond such term may apply the additional deduction with respect to such projects until December 31, 2027.⁶⁷⁷

(4) Taxes

Taxes on goods or activities that are the source of the taxpayer's income are deductible.⁶⁷⁸ Income tax, however, is not deductible.⁶⁷⁹

(5) Insurance Costs

Premiums on insurance policies that cover risks with respect to the taxpayer's operations, or services or goods provided by the taxpayer, as well as on those that cover workplace accidents of the taxpayer's employees or business interruptions, are deductible.⁶⁸⁰

(6) Extraordinary Losses

Extraordinary losses caused by fortuitous events damaging the goods that are the source of the taxpayer's income or crimes committed against the taxpayer by its employees or third parties are deductible.⁶⁸¹ In the case of the latter, a deduction is available only to the extent the extraordinary losses are not covered by compensation or insurance, and provided the crime was proven in court or it was proven that it would have been useless to initiate any legal action against the criminals concerned.

(7) Income Collection

Any expense incurred in order to collect taxable income is deductible.⁶⁸²

(8) Start-Up and Organizational Costs

Organizational expenses, initial pre-operating expenses, pre-operating expenses incurred as a result of the expansion of the economic activities of the taxpayer, as well as the interest accrued during the pre-operating term, may, at the option of the taxpayer, either: (i) be deducted in full in the first operating year;⁶⁸³ or (ii) be proportionally deducted over a maximum term of 10 years.⁶⁸⁴

(9) Bad Debts

Bad debts, as well as equitable provisions for bad debts, are deductible provided the corresponding account is identified.⁶⁸⁵ The following debts, among others, are not recognized as bad debts:

- (i) Debts owed to related parties;⁶⁸⁶ and
- (ii) Renewed debts.

(10) Employee Benefits

The following expenses incurred in relation to employees may be deducted:

- (i) Remuneration paid to employees, provided the remuneration is paid by the deadline for filing the annual income tax return.⁶⁸⁷
- (ii) Allowances earmarked to constitute provisions for social benefits.⁶⁸⁸

⁶⁶⁹ Law 30309, art. 3(b); Supreme Decree 188-2015-EF, art. 4.

⁶⁷⁰ Law 30309, art. 1(a). Supreme Decree 056-2020-EF, art. 2. The net worth of the taxpayer and the TUs at the end of the previous taxable year are considered for this purpose.

⁶⁷¹ Law 30309, art. 1(a)(a.1).

⁶⁷² Law 30309, art. 1.

⁶⁷³ Law 30309, art. 1(b).

⁶⁷⁴ Law 30309, art. 1(b)(b.1).

⁶⁷⁵ Law 30309, art. 1(b)(b.2).

⁶⁷⁶ Law 30309, art. 6.

⁶⁷⁷ Law 30309, art. 7.

⁶⁷⁸ ITL, art. 37(b).

⁶⁷⁹ Exceptionally, income tax on interest on loans paid to a nonresident entity can be deducted by the resident borrowing company. ITL, art. 47.

⁶⁸⁰ ITL, art. 37(c).

⁶⁸¹ ITL, art. 37(d).

⁶⁸² ITL, art. 37(e).

⁶⁸³ ITR, art. 21(d).

⁶⁸⁴ ITL, art. 37(g).

⁶⁸⁵ ITL, art. 37(i).

⁶⁸⁶ See XII.B. for a definition of related parties.

⁶⁸⁷ ITL, art. 37(v).

⁶⁸⁸ ITL, art. 37(j).

(iii) Retirement pensions paid to employees, not covered by an insurance policy.⁶⁸⁹

(iv) Bonuses or special compensation or consideration agreed to for the benefit of employees, including severance payments, provided the bonuses, etc. are paid by the deadline for filing the annual income tax return.⁶⁹⁰

(v) Expenses incurred in order to provide health, recreational, cultural and educational services to the employees.⁶⁹¹ The amount of deductible recreational expenses is equal to 0.5% of the net income of the taxpayer, subject to a ceiling of 40 TUs. Any amount exceeding that limit is not deductible for income tax purposes.⁶⁹²

(vi) Employee medical expenses.⁶⁹³

(vii) Premiums on health insurance policies covering employees' spouses and children under 18 years old (or older if disabled).⁶⁹⁴

(11) Business Travel

Business-related travel expenses, including transportation and travel allowances (i.e., accommodation, food and transportation within the city where the work is performed) are deductible.⁶⁹⁵ The necessity of the travel must be duly supported (i.e., through appropriate documentation). Transportation expenses must be evidenced with travel tickets.⁶⁹⁶

The amount of travel allowances granted with respect to travel in Peru must be supported by corresponding invoices.⁶⁹⁷ The amount of travel allowances paid with respect to travel abroad is limited to twice the amount the Peruvian Government grants to its higher officials⁶⁹⁸ and must be supported by the following:⁶⁹⁹

(i) In the case of accommodation: foreign tax receipts;⁷⁰⁰ and

(ii) In the case of food and internal transportation: foreign tax receipts⁷⁰¹ or⁷⁰² an affidavit signed by the employee concerned.⁷⁰³ The amount supported by an affidavit may not exceed an amount equal to 30% of the limit referred to above.⁷⁰⁴

⁶⁸⁹ ITL, art. 37(k).

⁶⁹⁰ ITL, art. 37(l).

⁶⁹¹ ITL, art. 37(II), para. 1.

⁶⁹² ITL, art. 37(II), last para.

⁶⁹³ ITL, art. 37(II), para. 1.

⁶⁹⁴ ITL, art. 37(II), paras. 2 and 3.

⁶⁹⁵ ITL, art. 37(r), para. 1.

⁶⁹⁶ ITL, art. 37(r), para. 2.

⁶⁹⁷ ITR, art. 21(n), para. 2.

⁶⁹⁸ In view of Supreme Decree 007-2013-EF, art. 1, the current applicable limit is PEN760 per day.

⁶⁹⁹ ITR, art. 21(n), para. 1.

⁷⁰⁰ ITR, art. 21(n), para 3(i). A foreign tax receipt must include the name and address of the service provider, as well as the date and amount of the transaction. ITL, art. 51-A, para. 4.

⁷⁰¹ A foreign tax receipt must include the name and address of the service provider, as well as the date and amount of the transaction. ITL, art. 51-A, para. 4.

⁷⁰² Each option is exclusive. ITR, art. 21(n), para. 4.

⁷⁰³ ITL, art. 37(r), para. 4.

⁷⁰⁴ ITL, art. 37(r), para. 4.

(12) Charitable Donations

Amounts donated by a taxpayer to certain Peruvian Government institutions (other than government-owned corporations) and nonprofit organizations may be deducted.⁷⁰⁵ For a donation to qualify, the ITL requires the institution or organization to which the donation is made to be registered with SUNAT and to pursue one or more of the following purposes: (i) charitable; (ii) social assistance or welfare; (iii) educational; (iv) cultural; (v) scientific; (vi) artistic; (vii) literary; (viii) sports; (ix) health; and/or (x) indigenous cultural heritage, and/or similar purposes.⁷⁰⁶ Donations must be duly supported by documentation.⁷⁰⁷

The deduction for donations may not exceed an amount equal to 10% of the taxpayer's Third Category net income after the set-off of losses.

Expenses for food in good condition that would have lost commercial value and is suitable for human consumption that is donated may also be deducted provided the donations are made to certain entities registered with SUNAT. The deduction for such donations may not exceed of 1.5% of the total net food sales made by the donor during the taxable year.⁷⁰⁸

(13) Inventory Losses

Losses attributable to duly credited inventory shrinkage and/or obsolete inventory can be deducted for income tax purposes.⁷⁰⁹

Inventory shrinkage is defined as the physical loss of inventory (i.e., volume, weight or quantity) attributable to the nature of the inventory nature or the production process.⁷¹⁰ Inventory shrinkage must be certified via a technical report issued by an independent professional. The report must describe the methodology used as well as the tests used to qualify the loss.⁷¹¹

Inventory obsolescence is defined as a loss in the quality of inventory. The loss must be irrecoverable and the inventory unusable.⁷¹² Inventory obsolescence must be supported by a destruction certificate issued by a Public Notary. SUNAT must be notified of the destruction date at least two days in advance.⁷¹³

(14) Depreciation

The depreciation of fixed assets used in income-producing activities is deductible.⁷¹⁴ The following general rules, among others, must be followed in calculating the depreciation amount:

(i) If the fixed assets are only partly used in income-producing activities, the deductible depreciation amount must be proportional to such use.⁷¹⁵

⁷⁰⁵ ITL, art. 37(x).

⁷⁰⁶ ITL, art. 37(x).

⁷⁰⁷ ITR, art. 21(s).

⁷⁰⁸ ITL, art. 37(x.1).

⁷⁰⁹ ITL, art. 37(f).

⁷¹⁰ ITR, art. 21(c), para. 1(1).

⁷¹¹ ITR, art. 21(c), para. 2.

⁷¹² ITR, art. 21(c), para. 1(2).

⁷¹³ ITR, art. 21(c), para. 3.

⁷¹⁴ ITL, art. 37(f).

⁷¹⁵ ITL, art. 38, para. 3.

(ii) Depreciation is computed annually. It is not possible to carry forward excess depreciation allowances to future taxable years.⁷¹⁶

(iii) Buildings and other structures are depreciated at an annual rate of 5%,⁷¹⁷ using the straight-line method.⁷¹⁸

(iv) Other straight-line annual depreciation rates are as follows:

- Livestock for work and reproduction: 25%;⁷¹⁹
- Road vehicles (other than trains): 20%;⁷²⁰
- Machinery used in mining, petroleum and construction activities (other than office equipment): 20%;⁷²¹
- Data processing equipment: 25%;⁷²²
- Machinery and equipment acquired on or after January 1, 1991 (excluding machinery used in mining, petroleum and construction activities): 10%;⁷²³ and
- Other fixed assets: 10%.⁷²⁴

These rates are the maximum rates allowable for income tax purposes.⁷²⁵

(v) To be deductible for income tax purposes, depreciation must be duly recorded in the accounting books of the taxpayer and the rates of depreciation may not exceed the maximum rates allowable for income tax purposes.⁷²⁶ Depreciation recorded in the accounting books for a taxable year that has ended cannot be modified. However, the taxpayer may modify the depreciation rate applicable to future taxable years.⁷²⁷

(vi) Depreciation is calculated based on the acquisition, production or construction cost of the assets, the value at which the assets were included in the patrimony of the taxpayer, or the value resulting after making a balance sheet adjustment for inflation, when applicable.⁷²⁸

Pursuant to Law 31652,⁷²⁹ applicable as from January 1, 2023, special depreciation regimes are created on an exceptional and temporary basis so that taxpayers may depreciate certain assets on an accelerated basis, as follows:

i. Special depreciation regime for buildings and construction:

1. As from taxable year 2023, buildings and construction works may be depreciated by applying a maximum annual depreciation percentage of 33.33% on their value until their total depreciation, provided that the assets are intended exclusively for business development and comply with the following conditions:

- a) Construction had begun as from January 1, 2023;⁷³⁰
- b) Up to December 31, 2024, the construction work is at least 80% complete.⁷³¹

2. Assets acquired as property during 2023 and 2024 that meet the conditions above may also be depreciated at the rate of 33.33%.⁷³²

ii. Special depreciation regime for hybrid and electric vehicles:

As from taxable year 2023, hybrid motor vehicles (with piston engine and electric motor) or electric motor vehicles that are acquired in fiscal years 2023 and 2024 and used for the production of taxable income may be depreciated by applying a maximum annual depreciation rate of 50% on their value until their total depreciation.⁷³³

For purposes of these special temporary depreciation regimes, taxpayers must maintain separate control accounts for the assets subject to the benefit, detailing the costs incurred for the progress of the work, if applicable. Likewise, the fixed asset registry must contain the individualized detail of the referred assets and their respective depreciation.⁷³⁴

(15) Expenses Associated with Certain Services Rendered by Nonresident Entities

Amounts agreed in favor of nonresident entities in regard to royalties, services, technical assistance services, use of goods, and the like are deductible provided that they are paid by the deadline for filing the annual income tax return.⁷³⁵ Those amounts not deducted in the corresponding fiscal year may be deducted in the fiscal year they are actually paid.⁷³⁶

(16) Expenses Incurred for Reasons of Representation of the Company

Expenses incurred for reasons of representation of the company (for instance, business meals) are deductible. The deduction is limited to an amount equal to 0.5% of the gross annual income of the taxpayer, subject to a ceiling of 40 TUs.⁷³⁷

(17) Expenses Incurred in Regard to Vehicles

Expenses incurred in regard to certain types of vehicles which are essential for the development of the business activ-

⁷¹⁶ ITL, art. 38, para. 2.

⁷¹⁷ ITR, art. 39.

⁷¹⁸ ITR, art. 22(a).

⁷¹⁹ ITR, art. 22(b)(1).

⁷²⁰ ITR, art. 22(b)(2).

⁷²¹ ITR, art. 22(b)(3).

⁷²² ITR, art. 22(b)(4).

⁷²³ ITR, art. 22(b)(5).

⁷²⁴ ITR, art. 22(b)(6).

⁷²⁵ ITR, art. 22(b).

⁷²⁶ ITR, art. 22(b), para. 2.

⁷²⁷ ITR, art. 22(b), para. 3.

⁷²⁸ ITL, art. 41.

⁷²⁹ Regulated by Supreme Decree 156-2023-EF. The regime does not apply to investments included in legal stability agreements signed under Legislative Decrees 662 and 757 and in other contracts signed with tax stability clauses.

⁷³⁰ Law 31652, art 2.1 (a).

⁷³¹ Law 31652, art 2.1 (b).

⁷³² Law 31652, art 2.2.

⁷³³ Law 31652, art 4.

⁷³⁴ Law 31652, art 6.

⁷³⁵ Legislative Decree 1369, art. 4, and ITL, art. 37(a.4), para. 1.

⁷³⁶ Legislative Decree 1369, art. 4, and ITL, art. 37(a.4), para. 2.

⁷³⁷ ITL, art. 37(q).

ities of the company and that are continuously used for such purposes may be deducted. These expenses include:⁷³⁸

- (i) Auto rental;
- (ii) Fuel, insurance services, car repair services, and the alike; and
- (iii) Depreciation.

Similarly, expenses incurred with regard to certain types of vehicles that are assigned to management, representation and administration activities of the company are also deductible provided the following conditions are met:

- (i) The total number of such vehicles does not exceed the maximum number of vehicles allowed by the ITR, which varies depending on the annual net income of the company, as follows:⁷³⁹

Annual Net Income	Number of Vehicles
Up to 3,200 TUs (approximately PEN 15,840,000)	1
Up to 16,100 TUs (approximately PEN 79,069,500)	2
Up to 24,200 TUs (approximately PEN 119,379,000)	3
Up to 32,300 TUs (approximately PEN 159,880,000)	4
Over 32,300 TUs	5

- (ii) The acquisition cost of such vehicles does not exceed 30 TUs (approximately PEN 148,500).⁷⁴⁰

b. Non-deductible Business Expenses

The ITL expressly disallows the deduction of the following expenses for tax purposes:

- (i) Personal expenses.⁷⁴¹
- (ii) Income tax.⁷⁴²
- (iii) Tax fines.⁷⁴³
- (iv) Donations that do not meet the legal requirements for deductibility.⁷⁴⁴
- (v) Amounts intended to constitute provisions or reserves, the deduction of which is not allowed by law.⁷⁴⁵
- (vi) Amortization of intellectual property.⁷⁴⁶ Exceptionally, the price paid for certain intangibles with a limited life⁷⁴⁷

⁷³⁸ ITL, art. 37(w).

⁷³⁹ ITL, art. 37(w), para. 3, ITR, art. 21(r)(1).

⁷⁴⁰ ITR, art. 21(r), para. 3.

⁷⁴¹ ITL, art. 44(a).

⁷⁴² ITL, art. 44(b).

⁷⁴³ ITL, art. 44(c).

⁷⁴⁴ ITL, art. 44(d). See V.C.3.a.(12), above, for a description of donations allowed as expenses for income tax purposes.

⁷⁴⁵ ITL, art. 44(f).

⁷⁴⁶ ITL, art. 44(g).

used in income-producing activities⁷⁴⁸ can be treated as expenses and may be deducted in one taxable year or proportionally over a 10-year period.⁷⁴⁹

(vii) Commissions originating abroad deriving from the purchase or sale of merchandise or goods, in the amount that exceeds the amount usually paid for such commissions in the country in which they originate.⁷⁵⁰

(viii) Expenses supported by invoices that do not comply with the legal requirements and expenses supported by invoices where the issuer does not hold a valid RUC.⁷⁵¹

(ix) Value added tax (VAT) and excise tax (ET) levied on gratuitous transfers of goods.⁷⁵²

Additionally, expenses, including capital losses, incurred by a resident corporation with respect to transactions carried out with the following entities are not deductible for income tax purposes:⁷⁵³

- (i) Entities resident in non-cooperating countries or tax havens;⁷⁵⁴
- (ii) PEs located in non-cooperating countries; or
- (iii) Entities not included under (i) or (ii) above, that derive income, earnings or gains through non-cooperating countries or tax havens, or that are subject to a preferential tax regime (in regard to those operations).

By way of exception to the rule regarding the non-deductibility of payments made to tax havens expenses relating to the following transactions may be deducted, provided the consideration paid equals that which would have been agreed to among independent parties in similar transactions (i.e., the consideration is at arm's length):⁷⁵⁵

- (i) Loans;
- (ii) Insurance and reinsurance;
- (iii) The assignment of ships and airplanes;
- (iv) Transportation into and out of Peru; and
- (v) The right to pass through the Panama Canal.

On the other hand, as a general rule, the income tax due from a taxpayer that is borne by another taxpayer, cannot be deducted as an expense by the latter. Exceptionally, the amount of income tax paid by the latter can be deducted if the income tax is payable on loan interest paid to a foreign creditor.⁷⁵⁶

⁷⁴⁷ ITR, art. 25(a)(1).

⁷⁴⁸ ITR, art. 25(a)(4).

⁷⁴⁹ An intangible with a useful life limited by law or by the nature of the intangible itself, such as a patent, copyright, design, secret formula and the like, is an intangible with a limited life. Goodwill is not an intangible with a limited life. ITR, art. 25(a)(2).

⁷⁵⁰ ITL, art. 44(h).

⁷⁵¹ ITL, art. 44(j).

⁷⁵² ITL, art. 44(k).

⁷⁵³ ITL, art. 44(m), para. 1.

⁷⁵⁴ See XIII.A., for a definition of non-cooperating country and tax haven under the ITL.

⁷⁵⁵ ITL, art. 44(m), para. 2.

⁷⁵⁶ ITL, art. 47.

Finally, payments that are not effected through one of the authorized mechanisms under the Financial Transactions Tax Law⁷⁵⁷ may not be deducted as expenses.⁷⁵⁸

c. Income from International Activities

The ITL provides that some international business activities of foreign corporations and their branches, agencies or PEs located in Peru are deemed to generate varying percentages of Peruvian-source income, giving rise to income that is partly Peruvian-source and partly foreign-source.⁷⁵⁹ In such cases, a fixed rate percentage is applied to the gross income derived from those activities to calculate the corresponding Peruvian-source income.

These international business activities and their deemed Peruvian-source income percentages are as follows:

- (i) Insurance: 7% of premiums;⁷⁶⁰
- (ii) Ship leasing: 80% of gross income;⁷⁶¹
- (iii) Aircraft leasing: 60% of gross income;⁷⁶²
- (iv) Air transport: 1% of gross income derived from such transport;⁷⁶³
- (v) Maritime transport: 2% of gross income derived from such transport;⁷⁶⁴
- (vi) Telecommunication services: 5% of gross income;⁷⁶⁵
- (vii) International news agencies: 10% of gross income derived from the newsfeeds (or, in general, the provision of informative or graphic material) to resident entities or individuals or to entities that use such material in Peru;⁷⁶⁶
- (viii) Distribution of films to be used by resident individuals or entities: 20% of gross income derived from the use of the films, TV films, etc.;⁷⁶⁷
- (ix) Provision of containers for international transportation: 15% of gross income derived from such provision;⁷⁶⁸
- (x) Demurrage of containers used for transportation: 80% of gross income;⁷⁶⁹ and
- (xi) Transfer of television rights: 20% of gross income derived by nonresidents from the transfer of TV broadcasting rights, when the relevant live TV event conducted abroad is broadcast in Peru.⁷⁷⁰

⁷⁵⁷ See IV.L., above, for information on the FTTL and the authorized payment mechanisms.

⁷⁵⁸ FTTL, art. 8.

⁷⁵⁹ ITL, art. 48.

⁷⁶⁰ ITL, art. 48(a).

⁷⁶¹ ITL, art. 48(b).

⁷⁶² ITL, art. 48(c).

⁷⁶³ ITL, art. 48(d).

⁷⁶⁴ ITL, art. 48(d).

⁷⁶⁵ ITL, art. 48(e).

⁷⁶⁶ ITL, art. 48(f).

⁷⁶⁷ ITL, art. 48(g).

⁷⁶⁸ ITL, art. 48(h).

⁷⁶⁹ ITL, art. 48(i).

⁷⁷⁰ ITL, art. 48(j).

Notwithstanding the above, it is important to note that, on a reciprocal basis, an exemption from Peruvian income tax may apply to Peruvian-source income derived by an entity headquartered in a foreign country from international air and maritime transport activities, if Peruvian air/shipping lines are exempted from tax in that foreign country.

d. Losses

Resident corporations may carry forward their Peruvian-source net losses.⁷⁷¹ The ITL provides for two alternative systems that can be applied in this respect:

(i) Carried forward Peruvian-source net losses incurred in a taxable year may be set off on a year-by-year basis against the full net income derived during the immediately following four taxable years.⁷⁷² Any remaining losses may not be further set off.

(ii) Carried forward Peruvian-source net losses incurred in a taxable year may be set off on a year-by-year basis against 50% of the net income derived during subsequent taxable years.⁷⁷³ Under this system, there is no limit on the number of years for which losses may be carried forward and set off.

If the taxpayer does not choose one of the two systems above, SUNAT will apply the system described above in (i).⁷⁷⁴

Exempt income, if any, is taken into account in calculating net income and, thus, in determining the amount of net loss that may be set off.⁷⁷⁵

Losses may not be carried back.

e. Foreign-Source Income

Foreign-source income, although taxed, is not placed into any income category for income tax purposes. Since resident corporations are taxed on a worldwide basis, any foreign-source income derived by a resident corporation must be added to its Peruvian-source income.⁷⁷⁶ For this purpose, the resident corporation must aggregate and net off all earnings and losses (excluding losses from transactions with non-cooperating countries or tax havens) derived from foreign sources. If the result is positive, the foreign-source income must be added to Peruvian-source income. If the result is a loss, the loss cannot be used to offset against Peruvian-source income.⁷⁷⁷

In arriving at foreign-source net income, all related expenses may be deducted.⁷⁷⁸ It is presumed that expenses incurred abroad are related to the generation of foreign-source income. Expenses incurred must be supported by the corresponding tax receipts issued abroad. The receipt must include the name and address of the seller of goods or the service provider,

⁷⁷¹ ITL, art. 50, para. 1.

⁷⁷² ITL, art. 50(a).

⁷⁷³ ITL, art. 50(b).

⁷⁷⁴ ITL, art. 50, para. 4.

⁷⁷⁵ ITL, art. 50, para. 2, and ITR, art. 29(c).

⁷⁷⁶ ITL, art. 51.

⁷⁷⁷ ITL, art. 51.

⁷⁷⁸ ITL, art. 51-A. Losses resulting from transactions with tax havens are not allowed.

a description and the amount of the transaction concerned, and the date of its issuance.⁷⁷⁹

Expenses related to both Peruvian-source income and foreign-source income that cannot be exclusively attributed to one or the other must be proportionally allocated between them.⁷⁸⁰

4. Calculation of Income Tax

a. Basis of Taxation

The corporate income tax is an annual tax. The taxable year starts on January 1 and finishes on December 31 of the same year. No exceptions are allowed.⁷⁸¹

Third category (Peruvian-source) income accruing to a taxpayer during a taxable year is taken into account in calculating the taxpayer's income tax liability for the year.⁷⁸² The same rule applies with regard to the deduction of expenses. Exceptionally, in cases where it was not possible for a taxpayer to identify a particular expense in a timely manner, the expense may be deducted in the taxable year in which the taxpayer becomes aware of it, provided certain requirements are met (for example, that provisions were set up in the accounting records of the taxpayer for the expense and it is paid in full prior to the year-end).⁷⁸³

Foreign-source income is also calculated on an accrual basis.⁷⁸⁴

b. Income and Expense Accrual

(1) Income Accrual

As a general rule, income will be deemed as accrued when substantial events for its generation have occurred, provided the right to obtain such income is not subject to a suspensive condition. The rule is applicable regardless of whether the payment is actually made or there is an opportunity of its collection, and even when accurate terms for the payment were not agreed to by the parties.⁷⁸⁵

Additionally, the ITL has established specific rules for the accruing of income depending on the specific type of transaction, including:

(i) Transfer of goods:⁷⁸⁶ The income is considered as accrued on the occurrence of any of the following events, whichever is earlier:

- The purchaser has control over the goods; that is, has the right to decide about the use of the goods and to obtain the benefits thereof; or

- The transferor has transferred to the purchaser the risk of loss of the goods.

(ii) Rendering of services that are executed over time:⁷⁸⁷ Income accrues depending on progress, in accordance with the following methods:⁷⁸⁸

- Inspection; or
- Percentage correlation between the work already executed and the total work to be executed; or
- Percentage correlation between the costs already incurred and the total cost of the service.

(iii) Rendering of services of continuous execution:⁷⁸⁹

- Income accrues proportionally to the specific time agreed for the execution of the service.⁷⁹⁰
- When the services are agreed to for an indefinite period of time, the income will be deemed as accrued using the best method of measuring, considering the particular nature and characteristics of the service.⁷⁹¹

(iv) Temporary assignment of goods.⁷⁹²

- If a term is specified, income accrues proportionally to the total time of assignment.
- If a term is not specified, income accrues as the service is executed using the best method of measuring, considering the particular nature and characteristics of the operation.

(2) Expense Accrual

Expenses accrue when the substantial events for their generation have occurred, provided the payment obligation is not subject to a suspensory condition. The rule is applicable regardless of the opportunity to make the actual payment, and even when accurate rules for the payment were not agreed to by the parties.⁷⁹³

Exceptionally, when due to external reasons, the taxpayer has not been able to know about an expense in a timely fashion, it may be deducted in the fiscal year the taxpayer knows about it, provided a provision has been duly set up for accounting purposes and paid before the end of the fiscal year.⁷⁹⁴

c. Tax Rates

The standard corporate income tax rate is 29.5%.

⁷⁷⁹ ITL, art. 51-A.

⁷⁸⁰ ITL, art. 51-A, para. 3. ITR, art. 29-B lays down the formula to be used to calculate the proportion.

⁷⁸¹ ITL, art. 57, para. 1.

⁷⁸² ITL, art. 57(a). However, special rules apply with respect to income and losses derived from financial derivative agreements, in the case of which income and losses will accrue in the taxable year in which the underlying asset is delivered, the price of the instrument is paid or the contract position is closed out (among other options).

⁷⁸³ ITL, art. 57, last para.

⁷⁸⁴ ITL, art. 57(c).

⁷⁸⁵ ITL, art. 57(a), para. 2.

⁷⁸⁶ ITL, art. 57(a)(1).

⁷⁸⁷ ITL, art. 57(a)(2)(2.1).

⁷⁸⁸ Once an accrual method is chosen, the taxpayer is required to apply it to other services with similar characteristics. The method chosen may be changed only if authorized by the SUNAT.

⁷⁸⁹ Once an accrual method is chosen, the taxpayer is required to apply it to other services with similar characteristics. The method chosen may be changed only if authorized by the SUNAT.

⁷⁹⁰ ITL, art. 57(a)(2)(2.2)(a).

⁷⁹¹ ITL, art. 57(a)(2)(2.2)(b).

⁷⁹² ITL, art. 57(a)(3).

⁷⁹³ ITL, art. 57.

⁷⁹⁴ ITL, art. 57, penultimate para.

d. Foreign Tax Credit

The ITL allows certain credits to be set off against a taxpayer's Peruvian income tax liability,⁷⁹⁵ including a foreign tax credit with respect to tax paid abroad on foreign-source income.⁷⁹⁶ Specifically, the following credits can be deducted from the annual income tax liability in the following order:

- (i) Credit for foreign income tax paid on foreign-source income;
- (ii) Credit for reinvestment;
- (iii) Other nonrefundable credits;
- (iv) Credit for income tax paid in previous taxable years;
- (v) Monthly income tax paid in advance;
- (vi) Income tax already paid;
- (vii) Income tax withheld; and
- (viii) Other refundable credits.

To avoid international double taxation, a resident corporation in receipt of foreign-source income may credit against its Peruvian income tax liability taxes already paid to the source country, provided certain limitations are observed.⁷⁹⁷ Specifically, the credit may not exceed an amount calculated by applying the taxpayer's average tax rate to the foreign income (this limitation being applied on an overall rather than a per country basis) or the amount of taxes actually paid abroad.

The following requirements must also be met:

- (i) The taxes paid abroad must be levied on income taxable under the ITL;⁷⁹⁸
- (ii) The taxes paid abroad must be taxes on income;⁷⁹⁹ and
- (iii) The tax paid must be duly supported by documentation.⁸⁰⁰

e. Filing and Payment of Taxes

Every resident corporation must register with SUNAT to obtain its unique RUC (taxpayer) identification number.

(1) Annual Income Tax Return

Resident corporations must file annual income tax return during late March or early April. The deadline date for filing is published by SUNAT and depends on the last digit of a corporation's RUC. The tax return must assess the income tax liability corresponding to the prior taxable year (i.e., the year closing on December 31 of that year).⁸⁰¹

Any balance of tax due must be paid upon the filing of the tax return. Late payments accrue interest at a monthly rate of 0.9%.⁸⁰²

(2) Monthly Income Tax Return

Resident corporations are obliged to make advance payments of income tax on a monthly basis.⁸⁰³ These monthly payments are credited against the annual income tax liability.⁸⁰⁴ For these purposes, resident corporations must file monthly income tax returns. The filing deadline date is published by SUNAT and depends on the last digit of a corporation's RUC.

(3) Withholding Income Tax Return

A resident corporation is responsible for withholding any income tax applicable to Peruvian-source income that it pays to a nonresident entity.⁸⁰⁵ Once the income tax has been withheld, the resident corporation is required to declare and pay over the income tax withheld to SUNAT on a monthly basis. For such purposes, the resident corporation must file a withholding income tax return.

(4) Consolidate Groups

Consolidated tax grouping is not allowed in Peru. Therefore, each entity in a corporate group that is required to file a Peruvian income tax return must file its own return.

5. Accounting Records

Financial Statements and accounting records must be kept in accordance with the generally accepted accounting principles, which include International Financial Reporting Standards (IFRS) and International Accounting Standards (IAS). In June 2023, the Peruvian Accounting Standards Council approved the complete set of IFRS version 2023, which include the Conceptual Framework for Financial Reporting.⁸⁰⁶

Peru's tax rules require that the complete accounting records of a resident corporation consist of the following:⁸⁰⁷

- (i) Cash and bank book;⁸⁰⁸
- (ii) Stock and balance sheet book;⁸⁰⁹
- (iii) Daily book;⁸¹⁰
- (iv) Ledger;⁸¹¹
- (v) Purchases registry;⁸¹² and
- (vi) Sales and income registry.⁸¹³

When so required, legal entities must also keep the following books.⁸¹⁴

⁷⁹⁵ ITL, art. 88.

⁷⁹⁶ ITR, art. 52(a)(1).

⁷⁹⁷ ITL, art. 88(e).

⁷⁹⁸ ITR, art. 58(1).

⁷⁹⁹ ITR, art. 58(2).

⁸⁰⁰ ITR, art. 58(3).

⁸⁰¹ ITR, art. 47(d).

⁸⁰² Rate applicable for debts in Peruvian national currency. Resolution of Superintendence 000044-2021-SUNAT, unique art.

⁸⁰³ ITL, art. 85.

⁸⁰⁴ ITR, art. 52(a)(5).

⁸⁰⁵ ITR, art. 76, para. 1.

⁸⁰⁶ Resolution of the Accounting Standards Council No. 002-2023-EF/30.

⁸⁰⁷ Resolution of Superintendence 234-2006/SUNAT, art. 12(12.3).

⁸⁰⁸ Resolution of Superintendence 234-2006/SUNAT, art. 12(12.3)(a).

⁸⁰⁹ Resolution of Superintendence 234-2006/SUNAT, art. 12(12.3)(b).

⁸¹⁰ Resolution of Superintendence 234-2006/SUNAT, art. 12(12.3)(c).

⁸¹¹ Resolution of Superintendence 234-2006/SUNAT, art. 12(12.3)(d).

⁸¹² Resolution of Superintendence 234-2006/SUNAT, art. 12(12.3)(e).

⁸¹³ Resolution of Superintendence 234-2006/SUNAT, art. 12(12.3)(f).

⁸¹⁴ Resolution of Superintendence 234-2006/SUNAT, art. 12(12.4).

(i) Withholding income tax book,⁸¹⁵ which relates to the withholding of income tax provided for in paragraphs e)⁸¹⁶ and f)⁸¹⁷ of article 34 of the ITL;

(ii) Fixed asset register;⁸¹⁸

(iii) Register of costs;⁸¹⁹

(iv) Register of perpetual inventory by physical unit;⁸²⁰ and

(v) Register of perpetual inventory by value.⁸²¹

Resident corporations with an annual gross income of 1700 TUs or more are required to keep complete accounting records.⁸²² Resident corporations with an annual gross income of less than 1700 TUs but of at least 500 TUs are required to keep a stock and balance sheet book, daily book, ledger, purchases registry, and sales and income registry.⁸²³ Resident corporations with an annual gross income of less than 500 TUs but of at least 300 TUs are required to keep a daily book, ledger, purchases registry, and sales and income registry.⁸²⁴ Resident corporations with an annual gross income of less than 300 TUs are required to keep a purchases registry, sales and income registry, and simplified daily book.⁸²⁵

Resident taxpayers are required to keep a register of costs, a register of perpetual inventory by physical unit and by Value, whenever their gross income in the prior taxable year is 1,500 TUs or more.⁸²⁶ If the gross income derived in the prior taxable year is 500 TUs or more but less than 1,500 TUs, only a register of perpetual inventory by physical unit must be kept.⁸²⁷

The basic accounting requirements under Peruvian law are as follows:

⁸¹⁵ Resolution of Superintendence 234-2006/SUNAT, arts. 12(12.4)(a) and 13(4). This book is required to be kept when the taxpayer pays income set out in ITL, art. 34, para. e) or f).

⁸¹⁶ Under ITL, art. 34, para. e), income derived by an individual as compensation for independent work is considered Fifth Category Income, provided: (i) the work is performed in the place and according to the schedule established by the service recipient; (ii) the service provider provides the work supplies; and (iii) the service provider bears the expenses related to the provision of the work.

⁸¹⁷ Under ITL, art. 34, para. f), income derived by an individual as compensation for independent work when the individual is, at the same time, an employee of the service recipient is considered Fifth Category Income.

⁸¹⁸ Resolution of Superintendence 234-2006/SUNAT, art. 12(12.4)(b). Under Resolution of Superintendence 234-2006/SUNAT, art. 13(7)(7.1), all information relating to the entry and exit of fixed assets, as well as the corresponding depreciation, must be registered annually in this book.

⁸¹⁹ Resolution of Superintendence 234-2006/SUNAT, art. 12(12.4)(c). Under Resolution of Superintendence 234-2006/SUNAT, art. 13(10)(10.1), this book must contain monthly information concerning the different elements composing the costs that relate to the production process and determine the corresponding production cost.

⁸²⁰ Resolution of Superintendence 234-2006/SUNAT, art. 12(12.4)(d). Under Resolution of Superintendence 234-2006/SUNAT, art. 13(12)(12.1), all information relating to the physical entry and exit of stock to/from a warehouse must be registered in this book.

⁸²¹ Resolution of Superintendence 234-2006/SUNAT, art. 12(12.4)(e). Under Resolution of Superintendence 234-2006/SUNAT, art. 13(13)(13.1), all information relating to the entry and exit of stock to/from a warehouse supported by invoices must be registered in this book.

⁸²² ITL, art. 65.

⁸²³ Resolution of Superintendence 234-2006/SUNAT, art. 12(12.2).

⁸²⁴ Resolution of Superintendence 234-2006/SUNAT, art. 12(12.1).

⁸²⁵ ITL, art. 65.

⁸²⁶ ITR, art. 35(a).

⁸²⁷ ITR, art. 35(b).

(i) Books and records relating to tax matters must follow the General Accounting Plan,⁸²⁸ International Accounting Standards (IAS), International Financial Reporting Standards (IFRS), and the Generally Accepted Accounting Principles (GAAP) in force in Peru.⁸²⁹

(ii) Books and records relating to tax matters must be kept in Spanish and in Peruvian currency.⁸³⁰

(iii) Physical books and records relating to tax matters must be authenticated by a Peruvian notary public before any entries are made.⁸³¹

(iv) Physical books and records relating to tax matters that are kept as loose-sheets or continuous paper must be bound, preferably on an annual basis.⁸³² These books must contain the original sheets (authenticated and numbered). The incorporation of non-original sheets in the accounting books and records is prohibited.⁸³³

(v) The stock and balance sheet book must be signed at the close of each taxable year or period by the legal representative of the legal entity and by the Public Accountant responsible for it.⁸³⁴

(vi) The books and records must have headings specifying the name of the book concerned and the period to which it relates, among other information. The books and records must also record transactions in chronological or correlative order,⁸³⁵ legibly, with no spaces or blank lines, interpolations, or corrections.⁸³⁶

(vii) Accounting information must be recorded by specified deadlines.⁸³⁷

(viii) Certain legal entities must maintain some accounting books electronically.⁸³⁸

- Principal taxpayers (*Principales Contribuyentes* — PRICOS) are required to keep their daily book, ledger, purchase registry and sales and income registry in electronic format,⁸³⁹

- From January 1, 2016, national principal taxpayers (*Principales Contribuyentes Nacionales* - PRICOS Nacionales) with annual gross income of more than 3,000 TUs are required to keep complete accounting records in electronic format;⁸⁴⁰

- From January 1, 2022, taxpayers that derived gross income of more than 75 TUs between May 2020 to April 2021, are required to keep their purchase registry

⁸²⁸ Resolution of Superintendence 234-2006/SUNAT, art. 6(iii).

⁸²⁹ Legislative Decree 1438.

⁸³⁰ Resolution of Superintendence 234-2006/SUNAT, art. 6(b)(v).

⁸³¹ Resolution of Superintendence 234-2006/SUNAT, arts. 2 and 3.

⁸³² Resolution of Superintendence 234-2006/SUNAT, art. 5.1.

⁸³³ Resolution of Superintendence 234-2006/SUNAT, art. 6(d).

⁸³⁴ Resolution of Superintendence 234-2006/SUNAT, art. 6(e).

⁸³⁵ Resolution of Superintendence 234-2006/SUNAT, art. 6(b)(i).

⁸³⁶ Resolution of Superintendence 234-2006/SUNAT, art. 6(b)(ii).

⁸³⁷ Resolution of Superintendence 234-2006/SUNAT, art. 8.

⁸³⁸ Resolution of Superintendence 379-2013/SUNAT and Resolution of Superintendence 018-2015/SUNAT.

⁸³⁹ Resolution of Superintendence 286-2009-SUNAT, art. 4.

⁸⁴⁰ Resolution of Superintendence 286-2009-SUNAT, art. 4.

as well as their sales and income registry in electronic format;⁸⁴¹

- From January 1, 2018, taxpayers that carried out export of services transactions between September 2017 to December 2017 are also required to keep their purchase registry as well as their sales and income registry, in electronic format;⁸⁴² and

- From January 1, 2018, taxpayers carrying out export of services transactions must keep their purchase registry as well as their sales and income registry, in electronic format.⁸⁴³

(ix) Taxpayers maintaining accounting books electronically must keep their electronic books and records in magnetic optical media storage, or similar, for a term of five years.⁸⁴⁴

6. Mergers and Acquisitions

For tax purposes, companies that undergo a reorganization may opt for one the three tax regimes described below.⁸⁴⁵

a. Voluntary Asset Appraisals with Tax Effects

Under this regime, the difference between the appraised value and the cost of the assets transferred under a reorganization is subject to income tax. If this regime is opted for, the transferred assets and those of the acquirer will be recorded in the accounts of the acquirer at their appraised value.⁸⁴⁶

For depreciation purposes, the value of the assets transferred pursuant to the reorganization will be the appraised value minus accumulated depreciation. The assets transferred will be treated as new assets for purposes of calculating depreciation on those assets.⁸⁴⁷

b. Voluntary Asset Appraisals Without Tax Effects

Under this regime, the companies involved in a reorganization appraise the value of their assets but the difference between the appraised value and the cost of the assets will not be

subject to income tax to the extent the amount of the difference is not distributed to shareholders.⁸⁴⁸

In this case, the asset appraisal will produce no tax effects. The value of the assets will remain unaltered for tax purposes. If a revaluation gain is distributed to the shareholders whether in cash or in kind by the acquiring company, such gain will be treated as taxable income in the hands of the acquiring company.⁸⁴⁹

c. No Asset Appraisal

Under this regime, there is no appraisal of assets transferred under a reorganization and the transferred assets retain their carryover basis in the hands of the acquirer, i.e., the same cost basis that they had in the hands of the transferor.⁸⁵⁰

In addition, the acquirer is subject to the following rules:

(i) The acquirer may not carry forward the tax losses of the transferor. If the acquirer had tax losses at the time of the reorganization, it will only be allowed to set off against its own income an amount of tax losses that does not exceed the value of its fixed assets prior to the reorganization, without taking into account any voluntary appraisal of such assets.⁸⁵¹

(ii) The acquirer retains the transferor's right to deduct as expenses pre-operating expenses and the cost of any intangibles with a limited life for their remaining term.⁸⁵²

(iii) The acquirer receives the tax benefits (tax credits, tax deductions and tax reimbursements) as well as the tax liabilities of the transferor.⁸⁵³ The acquirer must comply with the same conditions and requirements to which the transferor was subject in order to enjoy those rights.⁸⁵⁴

These rules apply to reorganizations of resident companies and, exceptionally, to mergers of branches of nonresident entities where such mergers are carried out as a consequence of the prior mergers of their respective parent companies.⁸⁵⁵

⁸⁴¹ Resolution of Superintendence 379-2013/SUNAT, art. 2(2.4).

⁸⁴² Resolution of Superintendence 379-2013/SUNAT, art. 2(2.5).

⁸⁴³ Resolution of Superintendence 379-2013/SUNAT, art. 2(2.6), and Resolution of Superintendence 312-2017/SUNAT.

⁸⁴⁴ Resolution of Superintendence 106-2018-SUNAT.

⁸⁴⁵ ITL, art. 104.

⁸⁴⁶ ITL, art. 104(1).

⁸⁴⁷ ITR, art. 69(a).

⁸⁴⁸ ITL, art. 104(2).

⁸⁴⁹ ITL, art. 105.

⁸⁵⁰ ITL, art. 104(3).

⁸⁵¹ ITL, art. 106.

⁸⁵² ITL, art. 107.

⁸⁵³ ITR, arts. 71 and 72.

⁸⁵⁴ ITL, art. 108; and ITR, art. 71.

⁸⁵⁵ ITR, art. 67(a).

VI. Taxation of Nonresident Corporations

A. What Is a Nonresident Corporation?

A corporation that is not incorporated in Peru⁸⁵⁶ is regarded as a nonresident corporation for income tax purposes.

B. Basis of Taxation

Nonresident corporations are subject to tax only on their Peruvian-source income.⁸⁵⁷ For the rates of source country taxation applying to investment income, services income and capital gains under Peru's domestic law and tax treaties and the context for the application of those rates, see the Withholding Tax Chart.

C. Calculation of Income Tax

1. In General

Peruvian-source income⁸⁵⁸ derived by a nonresident corporation will generally be subject to withholding tax, so that, as a general rule, a nonresident corporation is not required to file an income tax return.⁸⁵⁹ The applicable income tax withholding rate varies depending on the nature of the income, although most Peruvian-source income derived by nonresident corporations is subject to a 30% withholding rate, unless the rate is reduced under an applicable tax treaty.⁸⁶⁰

As a general rule, no deductions are allowed in calculating the taxable base and, consequently, the tax is withheld on the full amount of the Peruvian-source gross income received by a nonresident corporation.⁸⁶¹ Exceptionally, some deductions are allowed with respect to income derived from the disposal of goods,⁸⁶² as well as with respect to income from certain activities carried out partly in Peru and partly abroad, among other cases.⁸⁶³

These rules, their exceptions, and the special cases are further discussed below.

2. Business Activities in Peru

Income derived from the provision of services or the carrying on of a business or from commercial or trading activities in Peru is Peruvian-source income.⁸⁶⁴ This sourcing rule applies regardless of the place of residence of the parties to the relevant contracts or the place where the contracts were signed.

The applicable withholding tax rate on payments to nonresidents is 30% on a gross basis. No deductions are allowed.

3. Technical Assistance

Income derived from the rendering of technical assistance services is considered Peruvian-source income if the services are economically used in Peru.⁸⁶⁵

Services are regarded as economically used in Peru if the services are used to carry on the activities of:⁸⁶⁶

(i) A resident entity (in this regard, it is presumed that technical assistance is economically used in Peru whenever a resident legal entity deducts the payment for the assistance as an expense); or

(ii) A Peruvian public entity.

For income tax purposes, technical assistance comprises any independent service, whether rendered in Peru or from abroad, where the service provider uses its abilities, by applying certain procedures, art or techniques, with the aim of providing the service recipient with non-patentable specialized knowledge that is necessary for its production or commercialization processes or any other economic activity. It also includes the training of individuals in charge of the application of such specialized knowledge.⁸⁶⁷

The following activities, however, are not considered to constitute technical assistance:⁸⁶⁸

(i) Technical services where remuneration is paid by the service recipient to its employees in consideration of their dependent work;

(ii) Marketing services;

(iii) Activities that give rise to the payment of royalties; and

(iv) Supervisory activities related to imports.

The applicable withholding tax rate for fees for technical assistance is 15%. A resident service recipient that pays fees for technical assistance to a nonresident service provider the amount of which exceeds 140 tax units (TUs)⁸⁶⁹ must file with the Peruvian tax administration (*Superintendencia Nacional de Aduanas y de Administración Tributaria* or SUNAT) a report issued by an audit firm certifying that the technical assistance has been effectively provided, in order to be able to withhold at the 15% rate. Otherwise, tax must be withheld at the rate of 30%.

Only amounts representing expenses borne by the resident service recipient regarding local travel allowances and international transportation tickets may be excluded from the gross income of the nonresident service provider.⁸⁷⁰

⁸⁵⁶ ITL, art. 7(d). See V.B., above, for the definition of a resident corporation.

⁸⁵⁷ ITL, art. 6.

⁸⁵⁸ See V.C.2.b., above, for a list of the kinds of income considered to be Peruvian-source income under the ITL.

⁸⁵⁹ ITR, art. 47(f).

⁸⁶⁰ ITL, art. 56(j).

⁸⁶¹ ITL, art. 76, para. 5(d).

⁸⁶² ITL, art. 76, para. 5(g).

⁸⁶³ ITL, art. 76, para. 5(c).

⁸⁶⁴ ITL, art. 9(e).

⁸⁶⁵ ITL, art. 9(j).

⁸⁶⁶ ITR, art. 4-A(c), para. 7.

⁸⁶⁷ ITR, art. 4-A(c).

⁸⁶⁸ ITR, art. 4-A(c).

⁸⁶⁹ The TU in force at the time the service agreement was signed is taken into account for this purpose. ITL, art. 56(f).

⁸⁷⁰ ITR, art. 4-A(c).

4. Digital Services

Income derived from the provision of digital services is considered to be Peruvian-source if the services provided are used, economically used or consumed in Peru.⁸⁷¹

Digital services are regarded as used, economically used or consumed in Peru if the services are used.⁸⁷²

(i) To carry on the economic activities of resident legal entities, or to fulfill the purposes of certain nontaxed legal entities⁸⁷³ (in this regard, it is presumed that a digital service is economically used in Peru whenever a resident legal entity deducts the payment for the service as an expense); or

(ii) To carry on the activities of Peruvian public entities.

For this purpose, a “digital service” is any service at the disposal of the service recipient through the use of the Internet, an online network or the like, characterized as being essentially automatic and that is not viable in the absence of information technology.⁸⁷⁴ Examples are software maintenance, online technical support, data warehousing, application hosting, application service provider, website hosting and banner ads.

The applicable withholding tax rate is 30%. No deductions are allowed.

5. Royalties

Royalties are considered to be Peruvian-source income if the goods or rights with respect to which the royalties are paid are economically used in Peru (i.e., are used for economic activities in Peru), or the royalties are paid by a resident entity.⁸⁷⁵

Royalties are defined as any consideration, paid in cash or in kind, for the use of, or the privilege of using: patents, trademarks, designs or models, plans, secret processes or formulae; copyrights of literary, artistic or scientific work; software; or information concerning industrial, commercial or scientific experience.⁸⁷⁶ “Information concerning industrial, commercial or scientific experience” is defined as “any transfer of knowledge, whether secret or not, of a technical, economic, financial or similar nature, related to commercial or industrial activities.”⁸⁷⁷ The definition applies regardless of the relationship that such knowledge has with the generation of the income of the recipient or the way the recipient uses the knowledge.⁸⁷⁸ The “use of software” giving rise to the payment of royalties, is defined as the temporary transfer of all or some of the property rights over the software that allow for the economic exploitation of the software.⁸⁷⁹

⁸⁷¹ ITL, art. 9(i).

⁸⁷² ITR, art. 4-A(b).

⁸⁷³ E.g., foundations exclusively devoted to cultural activities, advanced research, charitable activities, social assistance and hospital care, and/or the provision of social benefits to employees that are not taxpayers for income tax purposes. For legal entities excluded by the ITL from being taxpayers for income tax purposes, see V.B.1.

⁸⁷⁴ ITR, art. 4-A(b).

⁸⁷⁵ ITL, art. 9(b), para. 2.

⁸⁷⁶ ITL, art. 27, para. 1.

⁸⁷⁷ ITR, art. 16 indicates that such a “transfer of knowledge” concerns specialized knowledge that is incorporated into instructions, formulae, plans, designs, models, sketches or the like, and allows industrial, commercial, technical or scientific experience to be exploited in an economic activity.

⁸⁷⁸ ITL, art. 27, para. 2.

The regulations approved by Supreme Decree 122-94-EF, published on September 21, 1994, as amended (ITR) expressly state that the following constitute consideration for the disposal of goods rather than royalties:⁸⁸⁰

(i) Consideration for the perpetual, unlimited and exclusive transfer of all or any of the property rights over software that allow the software to be economically exploited; and

(ii) Consideration received by the owner of property rights over software that allow the software to be economically exploited for the use of the software under a license agreement.

The applicable withholding tax rate is 30% of the gross amount of royalties received. No deductions are allowed.

6. Loan Interest

Loan interest is considered to be Peruvian-source income if the loan capital is placed or economically used (i.e., is used for economic activities) in Peru or the payer of the interest is a resident corporation.⁸⁸¹ The withholding rate varies depending on whether or not the loan was granted by a party that is economically related⁸⁸² to the entity paying the interest as follows:

(i) Related parties:⁸⁸³ interest on a loan granted by a nonresident entity to a related resident entity is subject to withholding at a rate of 30% of the gross amount of interest paid; and

(ii) Unrelated parties: interest⁸⁸⁴ on foreign loans granted between unrelated parties is subject to withholding at a rate of 4.99% of the gross amount of interest paid, if the following requirements are met:⁸⁸⁵

- In the case of a foreign loan granted in cash, the relevant foreign currency is placed in Peru through the Peruvian financial system.

- The loan does not accrue annual interest at a rate higher than Secured Overnight Financing Rate (SOFR)-plus 7%.⁸⁸⁶ Amounts paid at a rate in excess of this rate are subject to income tax withholding at a rate of 30%.

- The purpose of the foreign loan is related to the economic activities of the loan recipient.

Additionally, interest paid to nonresident corporations by resident banks or financial institutions, for the use of their foreign credit lines in Peru is subject to income tax withholding at the rate of 4.99%.

⁸⁷⁹ ITR, art. 16, para. 1.

⁸⁸⁰ ITR, art. 16, para. 2(2).

⁸⁸¹ ITL, art. 9(c).

⁸⁸² See XII.B., below, for a discussion of related parties.

⁸⁸³ ITL, art. 56(j).

⁸⁸⁴ According to ITR, art. 30, “interest” for this purpose includes any expense, fee or commission paid to the nonresident entity.

⁸⁸⁵ ITL, art. 56(a).

⁸⁸⁶ ITR, art. 56(a)(2); ITR, art. 30; and Supreme Decree 137-2023-EF.

7. Dividends

Dividends and any other distributions of profit are considered to be Peruvian-source income if the payer of the dividends or distributions is a resident corporation.⁸⁸⁷

Among other things, the Single Unified Text of the Income Tax Law approved by Supreme Decree 179-2004-EF, published on December 8, 2004, as amended (ITL) considers the following to be dividends:⁸⁸⁸

- (i) A profit distribution made to shareholders, partners, etc., whether in cash or in kind;
- (ii) The distribution of the surplus value derived from the appraisal of assets, whether in cash or in kind;
- (iii) A reduction of capital, up to an amount equal to profits, appraisal surplus, restatement adjustments or unrestricted reserves that: (a) were previously capitalized (unless the capital reduction was intended to cover losses in accordance with the Peruvian corporate law; or (b) existed at the time the capital reduction agreement was adopted;⁸⁸⁹
- (iv) The difference between the face value of the capital represented by shares and other securities (plus supplementary premiums, if any) and the amount paid to the shareholders, partners, etc. in the case of a capital reduction or the liquidation of the entity; and
- (v) Any credit (up to the amount of profits and free reserves) that a legal entity (except certain financial companies) grants in favor of its shareholders, partners, etc. in cash or in kind, regardless of the formal structure used for the transaction.

Dividends are subject to income tax withholding at the rate of 5%. The withholding is made when the dividends are distributed.⁸⁹⁰

8. Sales of Real Property

Income derived from real property or rights connected with real property (including income from the sale of such property/rights) is considered to be Peruvian-source income if the property concerned is located in Peru.⁸⁹¹

In calculating net income from the sale of real property or rights with respect to real property, an amount equal to the capital invested in the property/rights (i.e., the acceptable cost of the property/rights transferred)⁸⁹² may be deducted.⁸⁹³ The amount of capital invested must be certified by SUNAT.⁸⁹⁴ Any

cost not previously certified by SUNAT may not be deducted for tax purposes.

A withholding tax rate of 30% applies.

9. Sales of Goods

Income derived from the exploitation of tangible goods other than real property and securities (including shares) and rights connected with tangible goods (including income from the disposal of such tangible goods/rights) is considered Peruvian-source income if the goods are physically located in Peru or the rights are economically used in Peru (i.e., are used for economic activities in Peru).⁸⁹⁵

In calculating net income from the sales of tangible goods or rights, an amount equal to the capital invested in the goods/rights (i.e., the acceptable cost of the goods/rights disposed of)⁸⁹⁶ may be deducted.⁸⁹⁷ The amount of capital invested must be certified by SUNAT.⁸⁹⁸ Any cost not previously certified by SUNAT may not be deducted for tax purposes.

A withholding tax rate of 30% applies.

10. Sales of Securities

Gain derived from the sales of securities (including shares) issued by resident corporations is considered to be Peruvian-source income. If the disposal of the securities is made in Peru, the gains are subject to withholding tax at the rate of 5%.⁸⁹⁹ For this purpose, the sales of securities is deemed to be made in Peru if the securities concerned are registered in the Public Registry of the Stock Market and are negotiated via a centralized negotiation mechanism in Peru.⁹⁰⁰ In calculating net income from the sales of securities, an amount equal to the capital invested in the securities (i.e., the acceptable cost of the securities disposed of)⁹⁰¹ may be deducted.⁹⁰² If the sale is made through a centralized negotiation mechanism in Peru, the amount of capital invested does not require previous certification by SUNAT.⁹⁰³

In all other cases, the gain is taxed at the rate of 30%.⁹⁰⁴ In calculating net income from such sales of securities, an amount equal to the capital invested in the securities (i.e., the acceptable cost of the securities disposed of)⁹⁰⁵ may also be deducted;⁹⁰⁶ however, in this case, the amount of capital invested must be previously certified by SUNAT.⁹⁰⁷ Any cost not previously certified by SUNAT may not be deducted for tax purposes.

⁸⁸⁷ ITL, art. 9(d).

⁸⁸⁸ ITL, art. 24-A.

⁸⁸⁹ Under ITL, art. 24-A(c), if such profits, appraisal surplus, restatement adjustments or unrestricted reserves were distributed after the reduction of capital agreement was adopted, the new distribution will not be considered a dividend distribution. Nor, if the profits, appraisal surplus, restatement adjustments or unrestricted reserves were capitalized after the reduction of capital agreement was adopted, will the subsequent capital reduction be considered a dividend distribution.

⁸⁹⁰ ITL, art. 73-A.

⁸⁹¹ ITL, art. 9(a).

⁸⁹² ITR, art. 57(a). For a discussion of the cost of goods for income tax purposes, see V.C.2.c.

⁸⁹³ ITL, art. 76, para. 5(g).

⁸⁹⁴ ITR, art. 57(a).

⁸⁹⁵ ITL, art. 9.

⁸⁹⁶ ITR, art. 57(a). For a discussion of the cost of goods for income tax purposes, see V.C.2.c.

⁸⁹⁷ ITL, art. 76, para. 5(g).

⁸⁹⁸ ITR, art. 57(a).

⁸⁹⁹ ITL, art. 56(h).

⁹⁰⁰ ITR, art. 30-B(3).

⁹⁰¹ ITR, art. 57(a). For a discussion of the cost of goods for income tax purposes, see V.C.2.c.

⁹⁰² ITL, art. 76, para. 5(g).

⁹⁰³ ITR, art. 57(a).

⁹⁰⁴ ITL, art. 9(h).

⁹⁰⁵ ITR, art. 57(a). For a discussion of the cost of goods for income tax purposes, see V.C.2.c.

⁹⁰⁶ ITL, art. 76, para. 5(g).

⁹⁰⁷ ITR, art. 57(a).

The transfer of securities must be carried out at fair market value (FMV).⁹⁰⁸ From January 1, 2023, new methods to establish the FMV of shares and other securities will be applicable.⁹⁰⁹

In the case of listed shares, the FMV will be the higher of the transaction value⁹¹⁰ or the list value, which is:

- (i) For stock market sales, the listed value registered at the moment of the sale; and
- (ii) For over-the-counter market sales or sales free of charge, the average opening and closing value registered in the stock exchange or centralized negotiation mechanism on the date of the transaction.

In the case of non-listed shares, the FMV will be the higher of the transaction value⁹¹¹ or:

- (i) The value resulting from applying the discounted cash flow method,⁹¹² which is applicable when the entity shows a foreseeable horizon of future cash flows or owns licenses, authorizations or intangibles that allow to foresee the existence of such flows. This method will not be applicable if (a) the seller has a participation lower than 5% in the equity of the legal entity which shares are transferred, or (b) the net income accrued in the previous fiscal year of the issuing legal entity does not exceed 1,700 tax units. The discounted cash flow value must be supported with a technical report containing certain minimum information and requirements; or
- (ii) The equity value if the previous method was not applicable. Such value must be calculated by dividing the equity amount of the entity whose shares will be transferred between the number of issued shares by the later. To calculate the equity value the following rules apply:

- The equity value will be calculated based on the last audited balance closed⁹¹³ prior to the date of the transfer of the shares when the legal entity is under the control and supervision of the Capital Market Superintendence or similar;
- If the previous rule is not applicable, the equity value will be determined in accordance to any of the following methods: (a) the last balance closed prior to the date of the transfer of shares, increased by the active rate in local currency (TAMN) published by the

Peruvian Superintendence of Banking and Insurance; or (b) the appraisal value established within the six months prior to the date of the transfer of the shares.

For other kind of securities, different than shares, the FMV will be determined by applying the following methods, as appropriate:

- (i) The price vector value,⁹¹⁴ for securities representing debt that are not listed on the stock exchange or in any centralized trading mechanism;
- (ii) Quota value,⁹¹⁵ for certificates of participation in mutual investments funds in securities,⁹¹⁶
- (iii) In the case of securities not included in any of the above-mentioned methods, the FMV will be the transaction value.

In the case of transactions between related parties, and transactions carried out from, to or through non-cooperating countries or tax havens, the fair market value shall be established according to the transfer pricing rules. See XII., below, for further information.

11. Indirect Transfers of Shares

Gain derived from the indirect transfer of shares issued by resident corporations is also taxed at the rate of 30%.⁹¹⁷ As a general rule, an indirect transfer occurs when shares issued by a nonresident entity that is a shareholder in a resident entity are disposed of and the following conditions are fulfilled:⁹¹⁸

- (i) In any of the 12 months prior to the disposal date, the market value of the shares of the resident entity (that is directly or indirectly owned by the nonresident entity) is equal to 50% or more of the market value of the shares representing the capital of the nonresident entity (the 50% test); and
- (ii) Within any given 12-month period, there is a transfer of shares (carried out through one transaction, or various simultaneous or successively transactions) representing 10% or more of the capital of the nonresident entity.

If the nonresident entity whose shares are disposed of is resident in a non-cooperating country, tax haven or low-tax jurisdiction, an indirect transfer will be presumed to have occurred and the taxpayer will have the burden of proving that the conditions set out above were not fulfilled.⁹¹⁹

Additionally, a taxable indirect transfer of shares is triggered when the value of the shares of the Peruvian entity indirectly transferred is equal to or higher than 40,000 TUs (PEN 198,000,000 approximately). Such value of shares is calculated by applying the percentage resulting from the 50% test to the

⁹⁰⁸ ITL, art. 32.

⁹⁰⁹ Legislative Decree 1539.

⁹¹⁰ Supreme Decree 326-2022-EF, art 2: The transaction value is considered the value agreed upon by the parties to the transaction; this is understood as any operation in which it is agreed to transfer the ownership of the securities in any title.

⁹¹¹ Legislative Decree 1539, art. 3.

⁹¹² Supreme Decree 326-2022-EF, art 2: To prove the determination of the discounted cash flow value, the taxpayer must have a technical report containing at least, among others, an analysis of the sector where the company operates, informing the main factors that could impact its value, description of the products or services marketed, historical review, shares, participations, shareholders and stockholders, horizontal and vertical analysis of the financial statements.

⁹¹³ Supreme Decree 326-2022-EF, art 2: Such balance must have been closed within the ninety (90) days prior to such disposal, and must be audited by a Peruvian auditing firm with a current registration in the Auditing Firms Registry of a Public Accountants' Association.

⁹¹⁴ In accordance with the Price Vector Value Regulations approved by the Resolution of the Peruvian Superintendence of Banking and Insurance No. 945-2006.

⁹¹⁵ In accordance with the Resolution CONASEV No. 068-2010-EF-94.01.1.

⁹¹⁶ In the case of quotas in funds managed by the Private Pension Fund Administrators, acquired with voluntary contributions without pension purposes, the quota value will be determined in accordance with the Resolution No. 052-98-EF-SAFP.

⁹¹⁷ ITL, art. 10(e).

⁹¹⁸ ITL, art. 10(e).

⁹¹⁹ ITL, art. 10(e), para. 4.

total price agreed to for the transfer of the shares of the nonresident entity.⁹²⁰

Article 10 of the ITL lays down special rules for determining the net income to be taxed. The resident entity will be jointly responsible for the income tax payable by the nonresident entity if at any time during the 12-month period prior to the disposal date the two entities were related parties.⁹²¹

12. International Activities

Because of the cross-border nature of certain business activities that are carried out by nonresident entities and their permanent establishments (PEs) in Peru, such activities are deemed to generate set percentage rates of Peruvian-source income.⁹²² In such case, a fixed rate is applied to the gross income received from the activity to determine the corresponding amount of Peruvian-source income. The relevant withholding income tax rate is applied to the deemed Peruvian-source income to determine the income tax assessable to the nonresident entity.

These international business activities and the applicable withholding tax rates are discussed below.

a. Aircraft and Ship Leasing

Peruvian-source net income from the leasing of ships, is deemed to be 80% of the gross income received. Peruvian-source net income from the leasing of aircraft is deemed to be 60% of the gross income received. In both cases, the withholding income tax rate is 10%.

b. Air and Maritime Transportation

Peruvian-source net income from air transportation activities carried out between Peru and abroad is deemed to be 1%

of the gross income received. Peruvian-source net income from maritime transportation activities carried out between Peru and abroad is deemed to be 2% of the gross income received. In both cases, the withholding income tax rate is 30%.

It is important to note that an exemption from Peruvian income tax may apply on a reciprocal basis to Peruvian-source income derived from international air and maritime transport activities by an entity headquartered in a foreign country, if Peruvian lines operating in the foreign country concerned are exempted from tax in that country.⁹²³

13. Filing and Payment of Taxes

Nonresident corporations can make the following tax payments to the Peruvian Treasury through a online portal for payments named *Pago sin Clave SOL*.⁹²⁴

(i) Income tax corresponding to Peruvian source income of non-resident entities, on which withholding is not applicable.⁹²⁵

(ii) Income tax related to Peruvian source income obtained by non-resident corporations, subject to withholding at source, for which the corresponding withholding was not made, either totally or partially.⁹²⁶

The payment of taxes can be made by credit card or debit card through a single bank transaction.⁹²⁷ After the payment is made, a voucher called Virtual Form 1673 will be generated.⁹²⁸

The discussion above will also be applicable to nonresident individuals. See Section X., below.

⁹²⁰ ITL, art. 10(e).

⁹²¹ ITL, art. 68. See XII.B., for a definition of related parties.

⁹²² For a complete list of such international activities, see V.C.3.c.

⁹²³ ITL, art. 48(d).

⁹²⁴ Resolution of Superintendence 000251-2022/SUNAT. See <https://em-prender.sunat.gob.pe/landing/pago-sin-clave-sol>.

⁹²⁵ Resolution of Superintendence 000251-2022/SUNAT, art. (2) (1) (a.1).

⁹²⁶ Resolution of Superintendence 000251-2022/SUNAT, art. (2) (1) (a.2).

⁹²⁷ Resolution of Superintendence 000251-2022/SUNAT, art. 4.

⁹²⁸ Resolution of Superintendence 000251-2022/SUNAT, art. 5.

VII. Taxation of Branches, Agencies and Other Permanent Establishments

A. In General

As discussed in V., above, individuals, undivided inheritances and legal entities are regarded as taxpayers for income tax purposes. The Single Unified Text of the Income Tax Law approved by Supreme Decree 179-2004-EF, published on December 8, 2004, as amended (ITL) provides a list of legal entities for income tax purposes, which includes branches, agencies and other permanent establishments (PEs) located in Peru that are owned by nonresident entities.⁹²⁹

Branches, agencies and other PEs are taxed only on their Peruvian-source income.⁹³⁰ With respect to such income, branches, etc. are treated as resident legal entities⁹³¹ and taxed accordingly. Thus, the rules for determining the Peruvian-source income of branches, etc. are the same as those applicable to resident corporations, as discussed in V., above.

B. What Is a Permanent Establishment?

According to the ITL, as amended by legislative Decree No. 1424, published on September 13, 2018, the following are deemed to constitute a permanent establishment (PE):

- (i) Any fixed place of business through which the business activities of a foreign entity are wholly or partly carried on. In that sense, provided that the general criterion is satisfied, a management headquarter, branch, agency, office, factory, workshop, warehouse, store, mine, oil or gas wells, quarry or any other fixed or movable installation or structure, used for the exploration or exploitation of natural resources, is considered to be a PE;⁹³²
- (ii) Construction, installation or assembly works or projects, as well as supervision activities related thereto, provided their duration exceeds 183 calendar days in any 12-month period, unless there is a shorter period established in an applicable double taxation agreement;⁹³³
- (iii) The rendering of services, when they are performed in the country for the same project or service or for one related thereto, during a period or periods that in total exceed 183 calendar days in a 12-month period, unless there is a shorter period established in an applicable double taxation agreement;⁹³⁴
- (iv) An individual acting in Peru on behalf of a foreign company or entity of any kind, who habitually concludes contracts or habitually plays the principal role in the conclusion of contracts routinely entered into without substantial modification by the foreign company or entity of any kind, provided the following conditions are met:⁹³⁵

- Such contracts are entered into on behalf of the foreign entity;
- Such contracts are entered into for the transfer of the right of ownership, or the right of use of property owned by the foreign entity; and
- Such contracts are entered into for the rendering of services by the foreign entity.

The ITR also lists cases that are deemed not to constitute a PE, including:

- (i) When the activity carried out is of a preparatory or auxiliary nature; that is, when it is not an essential and significant part of the activities of the company or entity of any kind. The latter is not applicable when such activity, jointly with other activities carried out in the country by the foreign entity and/or its related parties, qualifies as a complementary activity of a cohesive business.⁹³⁶
- (ii) When an individual agent acting in Peru on behalf of a foreign enterprise carries out an economic activity in the country as an independent agent and acts in the ordinary course of that activity. Notwithstanding the latter, the individual will not be considered as an independent agent when:

- The agent performs more than 80% of the activities on behalf of the foreign entity and in the course of his or her commercial and financial relationship with the foreign enterprise, different conditions than those that would have been agreed to between independent parties are agreed to or imposed; or
- The agent performs more than 80% of his or her activities on behalf of one or more economically related foreign enterprises.⁹³⁷

C. Determination of Taxable Income

Because branches, agencies and other PEs are considered resident legal entities with respect to their Peruvian-source income, they must assess their tax liability in accordance with the same rules as apply to resident corporations (see V., above). A branch, etc. must also comply with the formal tax obligations applicable to legal entities, such as obtaining a Taxpayer Identification Number (*Registro Único de Contribuyentes*—or RUC), filing an annual income tax return,⁹³⁸ making monthly advance payments of income tax, maintaining accounting books and issuing authorized invoices, among others.

Dividends will be deemed to be distributed by a PE on the deadline date for filing the annual income tax return. The amount of dividends deemed distributed is equal to the amount of income of the branch that is at the parent company's disposal.⁹³⁹

⁹²⁹ ITL, art. 14.

⁹³⁰ ITL, art. 6, para. 2.

⁹³¹ ITL, art. 7(e).

⁹³² ITR, art. 3(a)(1).

⁹³³ ITL, art. 14-B(2).

⁹³⁴ ITL, art. 14-B(3).

⁹³⁵ ITL, art. 14-B(4).

⁹³⁶ ITL, art. 14-B, para. 6.

⁹³⁷ ITL, art. 14-B, para. 8. The relationship will be determined in accordance with article 32 A (b) of ITL.

⁹³⁸ ITR, art. 48.

⁹³⁹ ITL, art. 56(e), para. 2.

D. Branch Accounting

The accounting rules applicable to branches, agencies and other PEs are similar to those applicable to resident corporations.⁹⁴⁰

E. Subsidiary vs. Branch

The subsidiary of a nonresident entity can operate as a Peruvian corporation having the form of a stock corporation (*Sociedad Anónima* —S.A.), a closed stock corporation (*Sociedad Anónima Cerrada* —S.A.C.), a limited liability company (*Sociedad Comercial de Responsabilidad Limitada* —S.R.L.), or

one of the other forms permitted under Peru's commercial law (see III., above). From a tax perspective, subsidiaries are taxed on a worldwide basis, while branches and other PEs are taxed only on their Peruvian-source income.

Subsidiaries and branches (or other PEs) that qualify as resident legal entities calculate their Peruvian income tax liabilities in accordance with rules similar to those applicable to resident corporations. However, differences between subsidiaries and branches arise with regard to their taxable bases (worldwide income versus Peruvian-source income, respectively) and the factors that trigger dividend distributions.⁹⁴¹

⁹⁴⁰Such criteria may be inferred from Tax Administration Report 101-2012-SUNAT/4B000.

⁹⁴¹ITL, art. 56(e), para. 2.

VIII. Taxation of Consortia, Joint Ventures and Business Collaboration Contracts

The rules applicable for calculating the liabilities of consortia, joint ventures and business collaboration contracts vary depending on the type of structure adopted.

Consortia, joint ventures and business collaboration contracts that maintain independent accounting records are considered to be separate legal entities and thus are taxpayers for income tax purposes.⁹⁴² The rules applicable for purposes of calculating the income tax liabilities of such consortia, etc. are the same as those that apply for purposes of calculating the income tax liabilities of resident corporations (see V., above).

Accordingly, consortia, joint ventures and business collaboration contracts that do not maintain accounting records separate from those of their members are not considered to be separate legal entities. The income derived by such arrangements is directly attributed to their members on a pass-through basis.⁹⁴³

As a general rule, consortia, joint ventures and business collaboration contracts must keep independent accounting records.⁹⁴⁴ However, in cases in which, for commercial reasons, it is not possible to keep independent accounting records, each of the contracting members, or one of them, may keep the accounting records pertaining to the contract.

An authorization not to keep independent accounting records must be requested from the Peruvian Tax Administration (*Superintendencia Nacional de Aduanas y de Administración Tributaria* —SUNAT). The same rules apply where a consortium, joint venture or business collaboration contract is deemed to last less than three years since, in such circumstances, the Single Unified Text of the Income Tax Law approved by Supreme Decree 179-2004-EF, published on December 8, 2004, as amended (ITL) allows the contracting members (or one of them) to keep the accounting records for the contract. SUNAT must be duly notified of the latter situation within five days following the date of the signing of the contract.⁹⁴⁵

On January 1, 2023, a new income tax regime became effective, applicable to a special type of business collaboration agreement called “*Asociación en Participación*”.⁹⁴⁶ In general, contributions of goods made by the contributing partner to the managing partner to carry out a joint business will be considered an alienation of goods that may trigger capital gains and, therefore, be subject to income tax. Additionally, the retribution obtained by the contributing partner as a result of its participation in the joint business may be considered as a profit distribution and, therefore, be subject to income tax at a rate of 5%, provided the contributing partner is an individual or a non-resident entity.

⁹⁴² ITL, art. 14(k).

⁹⁴³ ITL, art. 14, last para.

⁹⁴⁴ ITL, art. 65.

⁹⁴⁵ ITL, art. 65.

⁹⁴⁶ Legislative Decree 1541, published on March 26, 2022.

IX. Taxation of Resident Individuals

A. In General

Under the Single Unified Text of the Income Tax Law approved by Supreme Decree 179-2004-EF, published on December 8, 2004, as amended (ITL), individuals may be subjected to tax.⁹⁴⁷

As in the case of legal entities, residence is the key criterion for determining the tax regime applicable to individuals. Specifically, resident individuals are taxed on a worldwide basis, while nonresidents are taxed only on their Peruvian-source income.⁹⁴⁸

The income tax rules applicable to resident individuals are discussed in B. and C., below.

B. Residence

In general, the following individuals are considered to be Peruvian residents for income tax purposes:⁹⁴⁹

(i) Peruvian nationals who have resident status in Peru under Peruvian law;⁹⁵⁰ and

(ii) Foreign nationals who reside or remain in Peru for more than 183 calendar days during a 12-month period.⁹⁵¹

Additionally, the following rules apply:⁹⁵²

(i) Peruvian resident status will be lost by an individual who: (a) acquires resident status in another country; and (b) actually leaves Peru.

(ii) Peruvian resident status abroad must be duly supported by the relevant visa or a labor contract⁹⁵³ duly endorsed by the Peruvian Consulate in the foreign country concerned.⁹⁵⁴

(iii) If resident status abroad cannot be duly supported, the individual remains a Peruvian resident if he or she does not leave Peru for more than 183 calendar days during a 12-month period.

(iv) A Peruvian national who loses his or her Peruvian resident status (as a consequence of the application of the above rules) regains resident status for income tax purposes when he or she permanently returns to Peru.

(v) An individual referred to above at (iv) does not regain Peruvian resident status for income tax purposes if he or she only returns to Peru on a temporary basis, i.e., spends 183 days or less in Peru during a 12-month period.

(vi) Resident status is assessed at the beginning of each taxable year. Any change in the status of an individual is considered for the following taxable year. The only exception to this rule is in the circumstances described in

above in (i), in which circumstances the individual loses his or her Peruvian resident status immediately.⁹⁵⁵

C. Individual Income Tax

1. In General

As discussed in V.B.4., above, Peruvian-source income is classified into five different categories. Each category of income has special rules that must be observed in assessing the income tax due and, in that sense, the calculation of the income tax liability of a resident individual will vary depending on the category(ies) of income the individual receives.

For purposes of the calculation of Third Category income (that is, income derived from business and trade activities) received by resident individuals, the same rules apply as for resident corporations. See V., above.

2. Peruvian-Source Income

a. First Category Income

Among others, the types of income included in the First Category are the following:⁹⁵⁶

(i) Income derived from the leasing of real property;

(ii) Income from the temporary assignment of movable goods; and

(iii) Income from the exploitation of rights over movable goods.

b. Second Category Income

Among others, income in the Second Category includes the following types of income:⁹⁵⁷

(i) Debt interest;

(ii) Royalties;

(iii) Dividends and other profit distributions;

(iv) Income from the disposal of real property;⁹⁵⁸ and

(v) Income from the disposal of shares.⁹⁵⁹

c. Fourth Category Income

Income in the Fourth Category includes:⁹⁶⁰

(i) Income derived from independent work; and

(ii) Income derived from the performance of activities as company director, business representative, etc.

d. Fifth Category Income

Income in the Fifth Category includes:⁹⁶¹

⁹⁴⁷ ITL, art. 14.

⁹⁴⁸ ITL, art. 6.

⁹⁴⁹ ITL, art. 7.

⁹⁵⁰ ITL, art. 7(a). Under Civil Code, art. 33, the habitual residence of an individual establishes residence.

⁹⁵¹ ITL, art. 7(b).

⁹⁵² ITL, art. 7.

⁹⁵³ The term of the contract must not be less than one year.

⁹⁵⁴ ITR, art. 4(a).

⁹⁵⁵ ITL, art. 8.

⁹⁵⁶ ITL, art. 23.

⁹⁵⁷ ITL, art. 24.

⁹⁵⁸ If the real property concerned is the individual's home, the income is exempt from income tax. ITL, art. 2, last para.

⁹⁵⁹ As a general rule, other capital gains that are not considered business income and are not derived from the disposal of real property or shares are not subject to income tax. ITL, art. 2, last para.

⁹⁶⁰ ITL, art. 33.

- (i) Income derived from dependent work, including salaries, commissions, compensation, etc. and, in general terms, any compensation for personal services; and
- (ii) Annuities or pensions to the extent they derive from personal services.

3. *Exempted Income*

Income tax is not imposed on the following items, among others:

- (i) Indemnities paid under labor rules;⁹⁶²
- (ii) Indemnities paid as compensation for death or incapacity related to work accidents or work illnesses;⁹⁶³
- (iii) Retirement annuities;⁹⁶⁴ and
- (iv) Expenses incurred by an employer in order to provide health assistance to its employees.⁹⁶⁵

4. *Calculation of Income Tax*

As stated above, the calculation of the income tax liability of a resident individual varies depending on the category of income received by the individual. Both the expenses allowed as deductions and the applicable income tax rates depend on the type of income received.

The general terms of the applicable rules regarding the calculation of income tax are discussed below.

a. *First Category Income from Leasing Immovable Goods*

Income tax on such income is imposed and paid on a monthly basis.⁹⁶⁶ The First Category net income is determined by deducting from the gross income a flat 20%.⁹⁶⁷ Income tax is imposed on the balance at the rate of 6.25%.⁹⁶⁸

b. *Second Category Income from Dividends*

Income tax is imposed at the time the dividend paying corporation makes the decision to distribute the dividends.⁹⁶⁹ The dividend income is subject to withholding tax at a rate of 5%.

c. *Second Category Income from Transfers of Real Property*

Income tax is imposed when the income is received.⁹⁷⁰ The taxable base is determined by deducting from gross receipts the cost⁹⁷¹ of the real property transferred,⁹⁷² and then subtracting a

flat 20% from the resulting gross income. Income tax is levied on the balance at the rate of 6.25%.⁹⁷³

d. *Second Category Income from Transfers of Shares*

Income tax is imposed on an annual basis.⁹⁷⁴ The taxable base is determined by deducting from gross receipts the cost of the shares transferred.⁹⁷⁵ From the resulting gross income a flat 20% is deducted.⁹⁷⁶ The tax is levied on the balance at the rate of 6.25%.⁹⁷⁷

e. *Other Second Category Income*

Other Second Category income includes income such as royalties and loan interest.⁹⁷⁸ Income tax is imposed when the income is received.⁹⁷⁹ The taxable base is determined by deducting from gross income a flat 20%.⁹⁸⁰ The withholding tax rate applicable to the balance is 6.25%.⁹⁸¹

f. *Fourth and Fifth Category Income*

The following steps must be followed to calculate the tax due:

(i) A flat 20%⁹⁸² is subtracted from the Fourth Category gross income.⁹⁸³

(ii) Seven Tax Units (TUs) are deducted from the sum of the Fourth Category net income and the Fifth Category gross income.⁹⁸⁴

(iii) The amount resulting from steps (i) and (ii) is referred to as “net income from work.”⁹⁸⁵ From such net income may be deducted any financial transactions tax (FTT) paid⁹⁸⁶ as well as the amount of certain donations granted to Peruvian public entities or private nonprofit organizations.⁹⁸⁷

⁹⁷³ ITL, art. 84-A.

⁹⁷⁴ ITL, art. 49, para. 1.

⁹⁷⁵ As a general rule, if the shares were acquired by the individual for consideration, the cost will be the acquisition cost of the shares. If the shares were acquired gratuitously, no cost will be recognized. ITL, art. 21(21.2).

⁹⁷⁶ ITR, art. 28-A(2).

⁹⁷⁷ ITL, art. 52-A.

⁹⁷⁸ ITL, art. 24.

⁹⁷⁹ ITL, art. 72.

⁹⁸⁰ ITL, art. 36, para. 1.

⁹⁸¹ ITL, art. 72, para. 1.

⁹⁸² ITL, art. 45.

⁹⁸³ The deduction is not allowed with respect to Fourth Category income derived from the performance of activities as company director, business representative, etc. ITL, art. 45, para. 2. Also, the amount subtracted may not exceed 24 TUs. ITR, art. 45, para. 1.

⁹⁸⁴ ITL, art. 46. The 7 TUs deduction is limited to an amount equal to the sum of the Fourth and Fifth Category income obtained in this step. ITR, art. 26.

⁹⁸⁵ ITL, art. 49, para. 1.

⁹⁸⁶ For general information about the FTT, see IV.L. The amount of FTT subtracted may not exceed an amount equal to Fourth Category net income. ITL, art. 49(a) and ITR, art. 28-B(a).

⁹⁸⁷ The donations that can be deducted are those that comply with the requirements to be deductible expenses. ITL, art. 49(b) and ITR, art. 28-B(b). See V.C.3.a.(12), for general information regarding donations that are deductible for income tax purposes. The amount to be deducted as donations may not exceed an amount equal to 10% of net income from work plus foreign-source income. ITL, art. 49(b).

⁹⁶¹ ITL, art. 34.

⁹⁶² ITL, art. 18, para. 2(a).

⁹⁶³ ITL, art. 18, para. 2(b).

⁹⁶⁴ ITL, art. 18, para. 2(d).

⁹⁶⁵ ITR, art. 20(c)(3).

⁹⁶⁶ ITL, arts. 57(b), and 84; and ITR, art. 53(a).

⁹⁶⁷ ITL, arts. 36 and 84.

⁹⁶⁸ ITL, arts. 52-A and 84.

⁹⁶⁹ ITL, art. 73-A.

⁹⁷⁰ If the real property concerned is the individual's home, the income is exempt from income tax. ITL, art. 2, last para.

⁹⁷¹ ITL, art. 20, para. 6.

⁹⁷² As a general rule, if the real property was acquired by the individual for consideration, the cost will be the acquisition or construction cost of the property. If the real property was acquired gratuitously, no cost will be recognized. ITL, art. 21(21.1)(a).

(iv) Foreign-source net income, if any, derived by the resident individual is added to the taxable base.⁹⁸⁸

(v) Income tax is imposed on the balance on an annual basis.⁹⁸⁹

(vi) The tax is levied at progressive cumulative rates, as follows:⁹⁹⁰

Tax Units	Rate
Up to five TUs	8%
Over five TUs and up to 20 TUs	14%
Over 20 TUs and up to 35 TUs	17%
Over 35 TUs and up to 45 TUs	20%
Over 45 TUs	30%.

Steps (i) to (vi) are illustrated below.

Income Category	Amount	Step	Description
Fourth Category Income	380,000		
(-) Deduction 20%	-80,000	(i)	A flat tax of 20% is subtracted from Fourth Category gross income.
Fourth Category Net Income	300,000		
Fifth Category Income	600,000		
Fourth Category Net Income + Fifth Category Income	900,000		
(-) 7 TUs = 32,200	34,650	(ii)	7 TUs are deducted from the sum of the Fourth Category net income and the Fifth Category gross income.
Fourth + Fifth Category Net Income	865,350		
(-) Financial Transaction Tax	-10,000	(iii)	The amount resulting from steps (i) and (ii) is referred to as the "net income from work." From this net income may be deducted FTT and the amount of certain donations made to Peruvian public entities or private non-profit organizations.
(-) Donations	-10,000		

⁹⁸⁸ ITR, art. 29-A(a).

⁹⁸⁹ Fourth or Fifth Category income tax paid in advance or already withheld can be set off as a credit. ITL, art. 88.

⁹⁹⁰ ITL, art. 53.

Net Income			845,350		
(+ Foreign-source net income			127,650	(iv)	Foreign-source net income, if any, derived by the resident individual is added.
Taxable basis			973,000		
Limitations		Rates	Tax Due	(v)	Income tax is imposed on an annual basis on the balance resulting from steps (i) through (iv).
Up to 5 TUs	24,750	8%	1,980	(vi)	Income tax is levied at progressive cumulative rates.
5–20 TUs	74,250	14%	10,395		
20–35 TUs	74,250	17%	12,623		
35–45 TUs	49,500	20%	9,900		
More than 45 TUs	750,250	30%	225,075		
Total tax due			259,973		

Taxpayers in receipt of Fourth or Fifth Category income are allowed to deduct an additional amount up to a maximum of three TUs with respect to certain expenses in calculating their annual IT.⁹⁹¹ The refund of any excess income tax withheld can be made by default either by the Tax Administration⁹⁹² or by request of the taxpayer.

These related deductible expenses relate to:

(i) Leases or subleases of real property located in Peru,⁹⁹³

(ii) Medical and/or dental fees qualified as Fourth Category income;⁹⁹⁴

(iii) Independent services qualified as Fourth Category income (e.g., as lawyers, software programmers, architects, nutritionists, nurses, personal trainers, photographers, film and TV operators, engineers, translators, obstetricians, psychologists, medical technical assistants, and veterinarians);⁹⁹⁵

(iv) Social health care insurance fees related to housing employees;⁹⁹⁶

(v) Services covered under Division 55 of Section H of Version No. 3 of The International Standard Industrial Classification of All Economic Activities (ISIC), including hotels and restaurants;⁹⁹⁷ and

⁹⁹¹ ITL, art. 46.

⁹⁹² Tax Code, art. 92(b).

⁹⁹³ Up to a limit equal to 30% of the total annual amount corresponding to such expenses. ITL, art. 46(a).

⁹⁹⁴ Up to a limit equal to 30% of the total annual amount corresponding to such expenses, and provided the income paid to the service provider qualifies as Fourth Category income. ITL, art. 46(c).

⁹⁹⁵ Up to a limit equal to 30% of the total annual amount corresponding to such expenses, and provided the income paid to the service provider qualifies as Fourth Category income. ITL, art. 46(d).

⁹⁹⁶ ITL, art. 46(e).

⁹⁹⁷ Up to a limit equal to 15% of such expenses paid for the services. ITR, art. 26-A(d).

(vi) Services covered under Divisions 55 and 56 of Section I of Version No. 4 of the ISIC, including accommodations, food and drinks services.⁹⁹⁸

The above-mentioned expenses may be deducted provided that:

- (i) the provision of the services is duly supported by the corresponding electronic tax receipt; and
- (ii) the payment of the services is made through an authorized means of payment.⁹⁹⁹

As a general rule, taxpayers in receipt of fourth category income are subject to withholdings or income tax payments in advance equivalent to 8% of the compensation received. Starting from January 1 of each calendar year, these individuals have the option to request the suspension of these withholdings or advance payments from SUNAT, provided they meet specific conditions. Annually, usually in December, SUNAT approves the conditions applicable for the next year to be eligible for such suspension. The conditions for the year 2023 were approved through the Resolution 000295-2022/SUNAT. For independent workers, excluding directors of companies, trustees, agents, or similar roles, a condition was set that the income obtained does not surpass PEN 3,609 per month and PEN 43,313 per year.

⁹⁹⁸ Up to a limit equal to 15% of such expenses paid for the services. ITR, art. 26-A(d).

⁹⁹⁹ See IV.Q.1., for further information about the authorized means of payments.

5. Filing and Payment of Taxes

As a general rule,¹⁰⁰⁰ individual taxpayers must file an annual income tax return including all income received by them during the taxable year. An exception applies however, with respect to individuals that receive exclusively Fifth Category income — such individuals are not required to file such annual returns because the tax is withheld from Fifth Category income at source.¹⁰⁰¹ Notwithstanding the latter, individuals that receive Fifth and/or Fourth Category income are required to file an annual return if they request a refund of income tax paid in excess as a consequence of the application of the additional expenses deduction benefit, as explained in IX.C.4.f., above. Also, it should be borne in mind that no annual filing is required with respect to certain income derived from the disposal of goods since income tax is imposed when such income is received.

The deadline date for filing the annual income tax return is published by the Peruvian Tax Administration (*Superintendencia Nacional de Aduanas y de Administración Tributaria* or SUNAT) and depends on the last digit of the taxpayer's Taxpayer Identification Number (*registro único de contribuyentes* — RUC). Any balance of tax due must be paid on the filing of the annual return. Late payments accrue interest at a monthly rate of 0.9%.¹⁰⁰²

¹⁰⁰⁰ Except as otherwise noted, a final tax withholding at source applies.

¹⁰⁰¹ ITR, art. 79 and ITR, art. 47.

¹⁰⁰² The applicable rate for debts in Peruvian national currency. Resolution of Superintendence 000044-2021-SUNAT, single art.

X. Taxation of Nonresident Individuals

A. Definition of Nonresident Individual

Individuals who do not meet the requirements for being considered resident individuals are considered nonresidents for income tax purposes.¹⁰⁰³

B. Basis of Taxation

Nonresident individuals are taxed on their Peruvian-source income.¹⁰⁰⁴

C. Income Tax Calculation

Peruvian-source income derived by a nonresident individual is subject to a withholding tax,¹⁰⁰⁵ and thus, as a general rule, a nonresident individual is not required to file an income tax return.¹⁰⁰⁶ For a list of the types of income that qualify as Peruvian-source income under the Single Unified Text of the Income Tax Law approved by Supreme Decree 179-2004-EF, published on December 8, 2004, as amended (ITL), see V.C.2.b., above.

As a general rule, income derived by a nonresident individual from independent or dependent personal services performed in Peru is considered to be Peruvian-source income.¹⁰⁰⁷ This applies regardless of the place of residence of the parties to the relevant contracts, or the place where the contracts were signed. However, income is not deemed to be Peruvian-source income if it is received by a nonresident individual in his or her country of residence and the individual temporarily enters Peru in order to carry out: preliminary activities connected with foreign investment; supervisory activities connected with business or investment, such as collecting data or information, or conducting interviews with members of the public or private sector; acts related to the hiring of local staff; or acts related to the signing of contracts.¹⁰⁰⁸

The deductions allowed in calculating Peruvian-source net income vary depending on the category of income derived by a nonresident individual (for example, a flat 20% can be deducted from Fourth Category income paid to such an individual, leaving 80% of the income as Peruvian-source net income).¹⁰⁰⁹

In light of the above, the following amounts are considered Peruvian-source net income:¹⁰¹⁰

- (i) First Category income: the total amount paid to a nonresident individual;¹⁰¹¹

(ii) Second Category income from the disposal of goods or rights, or the exploitation of goods subject to depreciation: the amount of capital invested to obtain such income can be deducted (for example, the acquisition cost of the goods disposed of), provided certain requirements are met;¹⁰¹²

(iii) Other Second Category income:¹⁰¹³ the total amount paid to a nonresident individual;¹⁰¹⁴

(iv) Fourth Category income: 80% of the total amount paid to a nonresident individual;¹⁰¹⁵ and

(v) Fifth Category income: the total amount paid to a nonresident individual.¹⁰¹⁶

Additionally, it should be noted that the rules for calculating Peruvian-source net income in the case of activities carried out partly in Peru and partly abroad, may also apply with regard to income derived by nonresident individuals.¹⁰¹⁷

The withholding income tax rates also vary depending on the nature of the income derived.¹⁰¹⁸ The applicable rates are:

(i) Dividends and other profit distributions:¹⁰¹⁹ 5%;¹⁰²⁰

(ii) Income from disposals of real property: 5%;¹⁰²¹

(iii) Interest, if the payer is a resident legal entity: 4.99%;¹⁰²²

(iv) Capital gains from disposals of securities outside Peru:¹⁰²³ 30%;¹⁰²⁴

(v) Other income from the exploitation of capital: 5%;¹⁰²⁵

(vi) Income from independent and dependent personal services: 30%;¹⁰²⁶

(vii) Royalty income: 30%;¹⁰²⁷

¹⁰¹² ITL, art. 76, para. 5(g).

¹⁰¹³ Examples of other Second Category income are royalties and interest.

¹⁰¹⁴ ITL, art. 76, para. 5(b).

¹⁰¹⁵ ITL, art. 76, para. 5(e).

¹⁰¹⁶ ITL, art. 76, para. 5(f).

¹⁰¹⁷ See V.C.3.c., above, for a description of these rules.

¹⁰¹⁸ ITL, art. 54.

¹⁰¹⁹ This is the general rule; however, this rate does not apply to dividends received from certain capital reduction transactions.

¹⁰²⁰ ITL, art. 54(a).

¹⁰²¹ ITL, art. 54(b).

¹⁰²² This tax rate applies if the recipient is neither related to the payer nor resident in a tax haven. Otherwise, a 30% withholding tax rate will apply. ITL, art. 54(c).

¹⁰²³ It is considered that the disposal of securities is carried out abroad when the securities are not registered in the Public Registry of the Stock Market or are not negotiated through a centralized negotiation mechanism in Peru. ITR, art. 30-B(1).

¹⁰²⁴ ITL, art. 54(d).

¹⁰²⁵ ITL, art. 54(e).

¹⁰²⁶ ITL, art. 54(g). However, income derived from the following activities is not deemed to be Peruvian-source, if it is received in his or her home country by a nonresident individual who enters Peru on a temporary basis: preliminary activities connected with foreign investment; supervisory activities connected with business or investment, such as data or information collection, and conducting interviews with members of the public or private sector; acts related to the hiring of local staff; and acts related to the signing of agreements. ITL, art. 9.

¹⁰²⁷ ITL, art. 54(h).

¹⁰⁰³ See IX.B., for the requirements for being considered a resident individual.

¹⁰⁰⁴ ITL, art. 6.

¹⁰⁰⁵ ITL, art. 76.

¹⁰⁰⁶ However, a nonresident individual must directly declare Peruvian-source income not subject to withholding tax and pay the corresponding income tax by filing a tax return. ITR, art. 47(f).

¹⁰⁰⁷ ITL, art. 9(e).

¹⁰⁰⁸ ITL, art. 9(e).

¹⁰⁰⁹ In the case of Third Category income derived by a nonresident individual, Peruvian-source net income is generally the total amount paid to the individual. See VI., for information regarding Third Category income derived by nonresident entities.

¹⁰¹⁰ ITL, art. 76.

¹⁰¹¹ ITL, art. 76, para. 5(a).

(viii) Income derived from live artistic performances in Peru: 15%;¹⁰²⁸ and

(ix) Other income: 30%.¹⁰²⁹

The following examples illustrate the income tax calculation.

(i) Royalty income:

	Amount
Gross royalty income (i.e., Second Category income)	1,000
Peruvian-source net income = the total amount paid to the non-resident individual	1,000
Applicable withholding rate	30%
Income tax due	300

(ii) Interest income (where the payer is a resident legal entity):

	Amount
Gross interest income (i.e., Second Category income)	1,000
Peruvian-source net income = the total amount paid to the non-resident individual	1,000

Applicable withholding rate	4.99%
Income tax due	49.90

(iii) Income derived from independent personal services:

	Amount
Gross income from independent personal work (i.e., Fourth Category income)	1,000
Peruvian-source net income = 80% of the total amount paid to the non-resident individual	800
Applicable withholding rate	30%
Income tax due	240

(iv) Income derived from dependent personal services:

	Amount
Gross income from independent personal work (i.e., Fifth Category income)	1,000
Peruvian-source net income = the total amount paid to the non-resident individual	1,000
Applicable withholding rate	30%
Income tax due	300

¹⁰²⁸ ITL, art. 54(i).

¹⁰²⁹ ITL, art. 54(j).

XI. Estate, Inheritance, and Gift Tax

Peru has no estate, inheritance, or gift taxes.

XII. Inter-Company Pricing

A. In General

Under the Single Unified Text of the Income Tax Law approved by Supreme Decree 179-2004-EF, published on December 8, 2004, as amended (ITL), transfer pricing rules apply in the case of:¹⁰³⁰ (i) transactions between related parties; transactions carried out from, to or through non-cooperating countries or tax havens; and (iii) transactions carried out with parties whose income and earnings were subject to a preferential tax regime.¹⁰³¹ However, the Peruvian tax authorities will only proceed to adjust the value agreed to by the parties when the amount of income tax determined as a consequence of such value is lower than the amount of income tax that would have been calculated if the transfer pricing rules had been applied.¹⁰³² The Regulations approved by Supreme Decree 122-94-EF, published on September 21, 1994, as amended (ITR) state that a lower amount of income tax is determined when, among other things: (i) there is income deferral; or (ii) the calculated losses are higher than those that would have accrued under arm's-length terms.¹⁰³³

B. Related Parties

In general terms, the ITL provides that two or more entities are related parties (domestic and foreign) when:¹⁰³⁴ (i) one of the entities is involved directly or indirectly in the management, control or capital of the other(s); or (ii) the same individual or group of individuals participates directly or indirectly in the management, control or capital of the two or more entities. Parties that are related will continue to be regarded as related even when a transaction between them is carried out using third parties so as to disguise it.¹⁰³⁵

Individuals and entities who are engaged in the following ownership structures, among others, are deemed to be related parties as a result:

- (i) An individual or legal entity and another legal entity: where the individual or legal entity owns more than 30% of the capital of the other legal entity, either directly or through third parties;¹⁰³⁶
- (ii) Two or more legal entities: where more than 30% of the capital of the two or more legal entities is owned by the same individual or legal entity, whether directly or through third parties;¹⁰³⁷
- (iii) Two or more legal entities: where more than 30% of the capital of each of the two or more legal entities is owned by people who are related by marriage, or are related up to the second degree of consanguinity or affinity;¹⁰³⁸

(iv) Two or more legal entities: where more than 30% of the capital of each of the two or more legal entities is owned by the same shareholders;¹⁰³⁹

(v) A nonresident entity and its one or more permanent establishments (PEs) in Peru;¹⁰⁴⁰ and

(vi) A resident entity and its permanent establishments abroad.¹⁰⁴¹

C. Transfer Pricing Methods

Various transfer pricing methods are permissible under Peruvian law, including:¹⁰⁴²

(i) The comparable uncontrolled price:¹⁰⁴³ this method compares the pricing of goods and services charged between related parties against the pricing of goods and services charged among third parties in comparable transactions, under comparable conditions.

Additionally, the ITL provides that, in the case of imports and exports of goods quoted in the international market, local market or the destination market, including those quoted for derivative financial instruments, or at prices that are established taking as reference the quotations of the relevant markets, the market value is determined based on such quotation.¹⁰⁴⁴

(ii) The resale price: the resale price is calculated by subtracting the appropriate gross profit margin from the applicable resale price of the property concerned in the controlled transaction;¹⁰⁴⁵

(iii) The cost plus: the cost-plus price is calculated by adding the appropriate gross profit to the controlled taxpayer's cost of producing the property concerned in the controlled transaction;¹⁰⁴⁶

(iv) Profit split: the profit split is calculated by apportioning the global profit arrived at by aggregating the profits obtained on each of the transactions between related parties. The global profit figure is then apportioned in proportions that it would have been apportioned between independent third parties, taking into account, among other things, the sales, expenses, costs, risks assumed, assets and functions performed by the related parties;¹⁰⁴⁷

(v) Residual profit split: this method determines the market value of goods and services using the profit split method but apportions the global profit as follows: (a) the minimum profit attributable to each related party is first determined using any accepted method, excluding the

¹⁰³⁰ ITL, art. 32-A(a).

¹⁰³¹ See XIII.A., below, for further information regarding non-cooperating countries and tax havens for Peruvian income tax purposes.

¹⁰³² ITL, art. 32-A(c).

¹⁰³³ ITR, art. 109.

¹⁰³⁴ ITL, art. 32-A(b).

¹⁰³⁵ ITL, art. 32-A(b), para. 2.

¹⁰³⁶ ITR, art. 24(1).

¹⁰³⁷ ITR, art. 24(2).

¹⁰³⁸ ITR, art. 24(3).

¹⁰³⁹ ITR, art. 24(4).

¹⁰⁴⁰ ITR, art. 24(10).

¹⁰⁴¹ ITR, art. 24(11).

¹⁰⁴² ITL, art. 32-A(e).

¹⁰⁴³ ITL, art. 32-A(e)(1).

¹⁰⁴⁴ ITL, art. 32-A(e)(1), para 2.

¹⁰⁴⁵ ITL, art. 32-A(e)(2).

¹⁰⁴⁶ ITL, art. 32-A(e)(3).

¹⁰⁴⁷ ITL, art. 32-A(e)(4).

utilization of significant intangibles; and (b) the residual profit is determined by subtracting the minimal profit from global profit. The residual profit is apportioned among the related parties, taking into account, the significant intangibles used by each of party, in the proportions that it would have been apportioned among independent parties, among other attributes.¹⁰⁴⁸

(vi) Transactional net margin: this method determines the profit that would have been obtained by independent parties in comparable transactions, taking into account the profitability relative to an appropriate base, such as assets, sales, expenses, costs, cash flows, etc.¹⁰⁴⁹

D. Comparability Criteria

Transactions are comparable to transactions carried out between independent parties when, under the same or similar conditions, at least one of the following conditions is met:¹⁰⁵⁰

- (i) None of the existing differences among the transactions subject to comparability or among the characteristics of the parties materially affects the price, the amount of the consideration or the profit margin;¹⁰⁵¹ or
- (ii) Even when there are differences among the transactions subject to comparison or among the characteristics of the parties that may materially affect the price, the amount of the consideration or the profit margin, such differences can be eliminated with appropriate adjustments.¹⁰⁵²

To determine whether the transactions are comparable, those elements or circumstances that best reflect the economic reality of the transaction, depending on the method used, will be considered, for example the following:¹⁰⁵³

- (i) The characteristics of the transactions;
- (ii) The functions or economic activities, including assets used and risks borne in the transactions, of each of the parties involved;
- (iii) The contractual terms;
- (iv) The economic or market circumstances; and
- (v) Business strategies, including those related to the penetration, permanence and expansion of the market.

When, for purposes of determining comparable transactions, no local information is available, taxpayers may use information from foreign companies, making the necessary adjustments to reflect market differences.¹⁰⁵⁴

E. Benefits Test for Services

As a requirement for their deduction as costs and/or expenses for tax purposes, all services rendered between related parties must meet the benefits test for services. Furthermore,

taxpayers are required to keep and provide supporting documentation and information related to such services.¹⁰⁵⁵

For Peruvian transfer pricing purposes, the benefits test for services is met whenever the service provides commercial or economic value to the service recipient, enhancing or maintaining its commercial position. The latter is in turn determined by evaluating whether an independent entity would have performed the service by itself or through a third party.¹⁰⁵⁶

As mentioned before, taxpayers are required to provide supporting documentation and information related to the services, in particular supporting the actual provision of the services; the nature of the services; the necessity for acquiring the services; as well as the costs and expenses incurred by the service provider and the allocation criteria used.¹⁰⁵⁷

In the case of low value-adding services, the costs and/or expenses for tax purposes are assessed by adding all costs and expenses incurred by the service provider and the applicable mark-up which cannot exceed 5%.¹⁰⁵⁸ Low value-adding services have the following characteristics:¹⁰⁵⁹

- (i) They are of a supportive nature;
- (ii) They are not part of the core business of the taxpayer or the multinational group, as applicable;
- (iii) They do not require the use of unique and valuable intangibles, and do not lead to the creation of unique and valuable intangible; and
- (iv) They do not involve the assumption or control of a high or significant risk, and do not give rise to a significant risk for the service provider.

The following are not regarded as low value-adding services:¹⁰⁶⁰

- Core business services;
- Research and development services;
- Manufacturing and production services;
- Sales and distribution activities;
- Financial transactions;
- Exploration or exploitation of natural resources;
- Insurance and reinsurance;
- Senior management services.

F. Documentation Requirements

In Peru, there are now three types of transfer pricing documentation to be submitted by taxpayers, which were introduced by an amendment to the ITL pursuant to Legislative Decree 1312. The type of report and the information to be reported varies depending on the amount of annual income of the taxpayer in the fiscal year and on whether the taxpayer belongs to a local or a multinational group of companies, as follows:

¹⁰⁴⁸ ITL, art. 32-A(e)(5).

¹⁰⁴⁹ ITL, art. 32-A(e)(6).

¹⁰⁵⁰ ITL, art. 32-A(d) and ITR, art. 110.

¹⁰⁵¹ ITL, art. 32-A(d)(1).

¹⁰⁵² ITL, art. 32-A(d)(2).

¹⁰⁵³ ITL, art. 32-A(d), para. 2.

¹⁰⁵⁴ ITL, art. 32-A(d), para. 3.

¹⁰⁵⁵ ITL, art. 32-A(i), para. 1.

¹⁰⁵⁶ ITL, art. 32-A(i), para. 2.

¹⁰⁵⁷ ITL, art. 32-A(i), para. 3.

¹⁰⁵⁸ ITL, art. 32-A(i), para. 5.

¹⁰⁵⁹ ITL, art. 32-A(i), para. 6.

¹⁰⁶⁰ ITR, art. 118-A(e).

Documentation	Taxpayer	Annual Income	Information
Local Report ¹⁰⁶¹	All taxpayers	Annual income accrued is > 2,300 TUs ¹⁰⁶² (PEN 11,385,000)	Organizational structure; descriptions of intercompany transactions; benefits test for services; transfer pricing methods used; financial statements corresponding to the related tax period, etc. ¹⁰⁶³
Master File ¹⁰⁶⁴	Taxpayers belong to a local group ¹⁰⁶⁵	Local group's annual income accrued is 20,000 TUs ¹⁰⁶⁶ (PEN 99,000,000,000)	Among other information: organizational structure; a description of the business or businesses developed; a description of the transfer pricing policies regarding intangible assets and group financing; finance and fiscal status. ¹⁰⁶⁷
Country by Country Report ¹⁰⁶⁸	Taxpayers qualified as headquarters of multinational group ¹⁰⁶⁹ or appointed as the representative headquarters. ¹⁰⁷⁰	Multinational group's annual income accrued is > PEN 2.7 billion. ¹⁰⁷¹	Among other information: global distribution of the income; losses; taxes paid; business activities regarding each of the entities belonging to the multinational group. ¹⁰⁷²

¹⁰⁶¹ Resolution of Superintendence 014-2018/SUNAT regulates the form, terms and conditions of the filing of the Local Report.

¹⁰⁶² ITL, art. 32-A(g), para. 1 and Resolution of Superintendence 014-2018-SUNAT, art. 2.

¹⁰⁶³ ITL, art. 32-A(g), para. 1 and ITR, art. 117(a).

¹⁰⁶⁴ Resolution of Superintendence 163-2018/SUNAT regulates the form, terms and conditions of the filing of the Master File.

¹⁰⁶⁵ For this purpose, the term "group" has been defined as the group of persons, companies or entities related by way of property or control, obliged to formulate consolidated financial statements in accordance with the generally accepted accounting principles, or that would be obliged to do it if the shares issued by them where negotiated through a centralized negotiation mechanism. ITR, art. 116(a)(1).

¹⁰⁶⁶ ITL, art. 32-A(g), para. 3.

¹⁰⁶⁷ ITL, art. 32-A(g), para. 3 and ITR, art. 117(b).

¹⁰⁶⁸ Resolution of Superintendence 163-2018/SUNAT regulates the form, terms and conditions of the filing of the Country-by-Country Report. Resolution of Superintendence 188-2019/SUNAT amended Resolution of Superintendence 163-2018/SUNAT by adopting the Integral System of Automatic Recep-

Entities are required to keep the related supporting documentation, duly translated into Spanish, for the longer of a five-calendar year term or during the statute of limitations period of the corresponding tax.¹⁰⁷³

G. Advance Pricing Agreements

1. In General

The ITL allows the Peruvian Tax Administration (*Superintendencia Nacional de Aduanas y de Administración Tributaria* or SUNAT) to enter into advance pricing agreements (APAs) with resident taxpayers to determine the value of transactions under the transfer pricing regime.¹⁰⁷⁴

Taxpayers that subscribed an APA are obliged to submit the Local Report as well as an annual report describing the operations carried out in the year, and proving compliance with the conditions of the agreement.¹⁰⁷⁵

2. Application Procedure

A resident taxpayer interested in entering into an APA may hold preliminary meetings with SUNAT to explain its position and evaluate the viability of an APA.¹⁰⁷⁶

A taxpayer that decides to enter into an APA must file with SUNAT (prior to carrying out the relevant transactions) a valuation proposal regarding its future transactions with related parties, or transactions from, through or to countries or territories

tion and Exchange of Information (Sistema IR-AOEI) for taxpayers to file the Country-by-Country Report.

¹⁰⁶⁹ For this purpose, the term "Multinational group" has been defined as a group composed by one or more persons, companies or entities with residence in Peru and one or more persons, companies or entities with foreign residence; or a group composed by one or more persons, companies or entities with tax residence in a jurisdiction but taxed in a different jurisdiction on the activities carried out through a permanent establishment. ITR, art. 116(a)(2). Note that taxpayers belonging to a multinational group, not qualified as the headquarters of the group may also be obliged to submit the Country-by-Country Report if certain conditions are met. For instance, they are obliged to submit the Country-by-Country Report when the multinational group's annual income accrued is equal or higher than PEN 2.7 billion and the foreign headquarters of the group is not obliged to submit a Country-by-Country Report in their residence jurisdiction. ITR, art. 116(b).

¹⁰⁷⁰ Taxpayers members of a multinational group were not required to submit a Country by Country Report for the fiscal years 2017, 2018 and 2019, among other cases, provided their non-domiciled parent company had its residence or domicile in any of the following jurisdictions with which Peru has entered into an Agreement between Competent Authorities (AAC) within the framework of the Convention on Mutual Administrative Assistance in Tax Matters: Andorra, Anguilla, Argentina, Australia, Austria, Belgium, Belize, Bermuda, Brazil, British Virgin Islands, Bulgaria, Canada, Cayman Islands, Chile, China, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hong Kong, China, Iceland, India, Indonesia, Ireland, Isle of Man, Japan, Jersey, Kazakhstan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Macau (China), Malaysia, Malta, Mauritius, Mexico, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Panama, Poland, Portugal, Qatar, Romania, Russia, San Marino, Singapore, Saudi Arabia, Seychelles, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, Turks and Caicos Islands, United Arab Emirates, United Kingdom, and Uruguay.

¹⁰⁷¹ ITR, art. 116(b).

¹⁰⁷² ITL, art. 32-A(g), para. 4 and ITR, art. 117(c).

¹⁰⁷³ ITL, art. 32-A(g), para. 9.

¹⁰⁷⁴ ITL, art. 32-A(f).

¹⁰⁷⁵ ITR, art. 118.

¹⁰⁷⁶ ITR, art. 118(b), para. 1.

with no or low taxation.¹⁰⁷⁷ In general terms, the proposal must provide information and documentation to support the relevant facts, the method to be used and the price determined, and must demonstrate that the transactions concerned will be entered into under conditions that would have been agreed to between independent parties under comparable conditions. The proposal must be submitted by all related parties involved in the transactions.

SUNAT has 24 months within which to approve or reject a proposal. This period may be extended for an additional 12 months. The approval or rejection of the proposal must be duly supported.¹⁰⁷⁸

If and when a proposal is approved, the taxpayer and SUNAT will subscribe to the corresponding APA.¹⁰⁷⁹ The APA

will apply with effect from the taxable year in which it is approved and the following three taxable years.¹⁰⁸⁰

3. Termination

SUNAT is allowed to terminate an APA unilaterally in the following circumstances:¹⁰⁸¹

- (i) The taxpayer or any related party involved in the transactions covered by the APA are effectively convicted for tax-related crimes;¹⁰⁸² or
- (ii) The terms and conditions established in the APA are breached.¹⁰⁸³

¹⁰⁷⁷ ITR, art. 118(b), para. 2.

¹⁰⁷⁸ ITR, art. 118(d).

¹⁰⁷⁹ ITR, art. 118(e).

¹⁰⁸⁰ ITR, art. 118(g).

¹⁰⁸¹ ITR, art. 118(i).

¹⁰⁸² ITR, art. 118(i)(1).

¹⁰⁸³ ITR, art. 118(i)(2).

XIII. Special Provisions Relating to Multinational Operations

A. Non-Cooperating Countries and Tax Havens

As discussed in V.C.3.b., above, the deductibility of expenses (including capital losses) incurred by a resident legal entity in connection with transactions carried on with any of the following entities is disallowed for income tax purposes:¹⁰⁸⁴

- (i) Entities resident in non-cooperating countries or tax havens;
- (ii) Permanent establishments (PEs) located in non-cooperating countries or tax havens; and
- (iii) Entities not included under (i) or (ii) above that derive income, earnings or gains through non-cooperating countries or tax havens, or that are subject to a preferential tax regime (in regard to those operations).

A country or territory is considered to be a non-cooperating country or tax haven if it is expressly included in the "black list" issued by the Peruvian Government.¹⁰⁸⁵

The following 44 countries or territories are currently included in the Peruvian list of non-cooperating countries and tax havens:¹⁰⁸⁶ American Samoa, Andorra, Anguila, Antigua and Barbuda, Aruba, Bailía de Jersey, Bahrain, Barbados, Belize, Bermuda, Cayman Islands, Cook, Cyprus, Curaçao, Dominica, Gibraltar, Granada, Guam, Guernsey, Hong Kong, Independent State of Samoa, Labuan, Liberia, Liechtenstein, Marshall Islands, Monaco, Monserrat, Nauru, Niue, Panama, Republic of Trinidad and Tobago, Saint Croix and Nevis, Saint Lucia, Saint Vincent, Sint Maarten, the Bahamas, the British Virgin Islands, the Grenadines, the Isle of Man, the Seychelles, the U.S. Virgin Islands, the Maldives, Tonga, Turks and Caicos, and Vanuatu.

A country or territory can be included in the aforementioned list based on any of the following:¹⁰⁸⁷

- (i) It has not signed an agreement for the exchange of information nor a double taxation agreement that includes an exchange of information clause with Peru; or having an agreement, the exchange of information is not complied with or is limited due to the existence of legal rules or administrative practices that restrict it;¹⁰⁸⁸
- (ii) Absence of transparency at the legal, regulatory or administrative level;¹⁰⁸⁹ or
- (iii) The corporate income tax rate is 0% or lower than 60% of the Peruvian corporate income tax rate (approximately 11.8%).¹⁰⁹⁰

Conversely, a country or territory that has signed a double taxation agreement that includes an exchange of information clause with Peru, that exchanges information with Peru, or that is a member of the Organisation for Economic Co-opera-

tion and Development (OECD) can be excluded from the list above.¹⁰⁹¹

A territory can be considered to be a preferential tax regime based on any two of the following:¹⁰⁹²

- (i) The country or territory has not signed an agreement for the exchange of information nor a double taxation agreement that includes an exchange of information clause with Peru; or having an agreement, the exchange of information is not complied with or is limited due to the existence of legal rules or administrative practices that restrict it;¹⁰⁹³
- (ii) Absence of transparency at the legal, regulatory or administrative level;¹⁰⁹⁴
- (iii) The corporate income tax rate is 0% or lower than 60% of the Peruvian corporate income tax rate (approximately 11.8%);¹⁰⁹⁵
- (iv) Tax benefits or advantages explicit or implicitly excluded for local residents;¹⁰⁹⁶ or
- (v) The OECD qualified them as a pernicious or potentially pernicious regime due to absence of the requirement of substantive local presence, the exercise of a real activity or economic substance.¹⁰⁹⁷

By way of an exception to the general rule that does not allow the deduction of expenses incurred in relation to parties located in non-cooperating countries and tax havens, expenses relating to the following transactions may be deducted, provided the compensation paid equals that which would have been agreed between independent parties in a similar transaction (i.e., it is at arm's length):¹⁰⁹⁸

- (i) Loans;
- (ii) Insurance and reinsurance;
- (iii) The assignment of ships and airplanes;
- (iv) Transportation into and out of Peru; and
- (v) The right to pass through the Panama Canal.

As discussed in IV.Q.1, above, payments made by a taxpayer without using an authorized means of payment may result in the forfeiture of the right to expense deductions or tax costs, tax credits, or to request tax refunds or recover taxes.

Under Legislative Decree 1529, issued on March 3, 2022, the obligation to use authorized means of payment is not deemed fulfilled when payments pass through banking or financial entities residing in non-cooperating countries or territories with low or no taxation or where they have permanent establishments in such countries or territories.

For this purpose, countries or territories classified as non-cooperating or with low or no taxation are deemed to be those

¹⁰⁸⁴ ITR, art. 44(m), para. 1.

¹⁰⁸⁵ ITR, art. 86(1).

¹⁰⁸⁶ The list is included as an annex to the ITR.

¹⁰⁸⁷ ITR, art. 44(m), para. 3. ITR, art. 86(1)

¹⁰⁸⁸ ITR, art. 86(1)(a).

¹⁰⁸⁹ ITR, art. 86(1)(b).

¹⁰⁹⁰ ITR, art. 86(1)(c).

¹⁰⁹¹ ITR, art. 86(1).

¹⁰⁹² ITR, art. 44(m), para. 4. ITR, art. 86(2).

¹⁰⁹³ ITR, art. 86(2)(a).

¹⁰⁹⁴ ITR, art. 86(2)(b).

¹⁰⁹⁵ ITR, art. 86(2)(c).

¹⁰⁹⁶ ITR, art. 86(2)(d).

¹⁰⁹⁷ ITR, art. 86(2)(e).

¹⁰⁹⁸ ITR, art. 44(m), para. 2.

outlined in the aforementioned ‘black list’ to the extent that they do not have in-force agreements on the Exchange of Tax Information or Double Taxation Conventions with Peru that include a clause for the exchange of information.¹⁰⁹⁹

B. General Anti-Avoidance Rule

Rule XVI of the Peruvian Tax Code establishes a general anti-avoidance rule (GAAR).¹¹⁰⁰

The GAAR will be triggered when the performance of a taxable event is partially or completely avoided (or the taxable income is otherwise reduced) by means of arrangements that: (i) are artificial or inappropriate for achieving the result obtained; and (ii) produce legal or commercial effects other than tax savings that are similar to those that would have been produced by means of usual or appropriate acts.¹¹⁰¹

As guidance, the rules that regulate the application of the GAAR list certain transactions that may be evaluated by the Peruvian Tax Administration (*Superintendencia Nacional de Aduanas y de Administración Tributaria* or SUNAT), such as:¹¹⁰²

- Corporate reorganizations or restructuring processes with apparently little economic substance;
- Transactions or economic relationships that are not at fair market value, or that lack economic rational;
- Transactions with residents in non-cooperative or low-tax countries;
- Zero cost transactions.
- Use of legal structures or agreements that contribute to defer income or to anticipate expenses.

In October 2022, the SUNAT approved a new version (version 2.0) of its catalogue of high tax risk schemes (the new catalogue). It describes different situations or schemes that may lead to the application of the GAAR.

Also, the rules list those aspects that the SUNAT will take into account in deciding on the application of the GAAR to a particular transaction, including:¹¹⁰³

- Form and substance of the transaction;
- The celebration date;
- The execution period;
- How the legal acts were celebrated and executed.

The application of the GAAR must be carried out under a special comprehensive tax audit, and with the prior approval of a Review Committee comprised of three Tax Administration officers.¹¹⁰⁴ Taxpayers are obliged to disclose information about the identity of those involved in the design, approval and/or execution of the tax planning that led to the application of the

GAAR.¹¹⁰⁵ Taxpayers are allowed to submit and present their legal arguments before the Committee, which then has to issue a formal opinion within the next 30 working days. This opinion is binding for the Tax Administration. The taxpayer may challenge the related tax assessment resolution under an administrative tax procedure.¹¹⁰⁶ As a result of the application of the GAAR, the SUNAT is entitled to collect the omitted tax, reduce the amount of tax credits or otherwise eliminate the tax advantage achieved.¹¹⁰⁷

An additional consequence is that, once the GAAR is applied, the law presumes (unless proven otherwise) that the legal representatives of the company who collaborated with the design, approval and/or execution of the acts carried out under the tax planning, acted with willful misconduct, gross negligence or abuse of authority, and therefore, they can be held jointly and severally liable for any unpaid tax liabilities arising for the company.¹¹⁰⁸

Although Peru has not issued or implemented regulations to enforce BEPS Action 12 (mandatory disclosure rules) to date, the Peruvian Tax Code establishes that, for companies with a board of directors, it is the responsibility of this corporate body to define the company’s tax strategy. In this regard, the board of directors must decide on the approval or rejection of acts, situations, or economic relationships within the framework of its tax planning. Consequently, directors could be jointly liable with the company for its tax obligations to the extent the board ratifies agreements without opposition or modification regarding structures that could fall under the scope of GAAR. This allows SUNAT, during an audit procedure, to review board agreements and potentially obtain information revealing aggressive tax planning.

C. Controlled Foreign Corporations

A controlled foreign corporation (CFC) regime was introduced into the Single Unified Text of the Income Tax Law approved by Supreme Decree 179-2004-EF, published on December 8, 2004, as amended (ITL) in 2013 with the aim of counteracting possible tax deferral with respect to passive income earned by certain nonresident entities controlled by Peruvian resident taxpayers. The passive income covered by the regime includes, among other things: dividends and other profit distributions; interest; royalties; gains from the disposal of real property; gains from the disposal of shares; and income from the lease of real property.¹¹⁰⁹

A nonresident entity is considered a CFC and therefore subject to the regime if the entity:¹¹¹⁰

- (i) Has a legal status independent of that of its partners or owners for Peruvian income tax purposes¹¹¹¹ (this includes entities such as companies, investment funds, trusts, partnerships, associations and foundations, among others);¹¹¹²

¹⁰⁹⁹ In February 2023, SUNAT released the mentioned ‘blacklist’ on its official website, detailing which countries have active agreements related to the Exchange of Tax Information or Double Taxation Conventions with an information exchange clause, along with the effective dates of these agreements. See https://orientacion.sunat.gob.pe/sites/default/files/inline-files/Anexo_2.pdf.

¹¹⁰⁰ Law 30230, art. 8.

¹¹⁰¹ Peruvian Tax Code, Rule XVI, para. 3.

¹¹⁰² Supreme Decree 145-2019-EF, art. 6.

¹¹⁰³ Supreme Decree 145-2019-EF, art. 7, para. 7.3.

¹¹⁰⁴ Peruvian Tax Code, art. 62-C.

¹¹⁰⁵ Peruvian Tax Code, art. 62-C, para. 2.

¹¹⁰⁶ Tax Code, art. 135.

¹¹⁰⁷ Tax Code, Rule XVI, para. 2.

¹¹⁰⁸ Tax Code, art. 16.

¹¹⁰⁹ ITL, art. 114.

¹¹¹⁰ ITL, art. 112, para. 1.

¹¹¹¹ ITL, art. 112, para. 1(1).

¹¹¹² ITR, art. 62(1).

(ii) Is incorporated, established or resident in a country or territory: (a) non-cooperating or with low or no taxation; or (b) in which its passive income is not subject to taxation, or is subject to taxation at a rate that is 75% or less of the income tax rate that would be applicable in Peru to income of the same nature;¹¹¹³ and

(iii) Is owned by Peruvian resident taxpayers.¹¹¹⁴

As a consequence of the application of the CFC regime, the net passive income derived by a CFC is attributed to its Peruvian resident owners that, at the close of the taxable year, participate to the extent of more than 50% in the results (profits or losses) of the entity.¹¹¹⁵

D. Pillar One and Pillar Two

Peru has been an associate participant in the Inclusive Framework of the BEPS Project since January 2017. In July 2021, it furthered its commitment by joining the “Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy,” endorsed by members of the Inclusive Framework. However, as of this writing, there have been no legislative developments in Peru regarding the implementation of the two Pillars.

Even though Peru’s legislation does not specifically address a special tax for international digital platforms, since 2004 it levies an income tax on digital services rendered from abroad, based on the criteria of economic use, usage, or consumption within the country.¹¹¹⁶

However, the current taxation framework primarily pertains to transactions under the scope of the e-commerce and, more specifically, for operations that involve the provision of intangible services. Transactions that involve the transfer of digital goods through e-commerce (such as books, photos, music, among others), or any other type of transaction different from the specified services, are expressly excluded. In this context, it becomes evident that the definition of digital services, as stipulated in the Income Tax Law, falls short in capturing the diverse array of business models prevalent in the digital economy today.

On the other hand, services provided by non-resident entities through international digital platforms in favor of Peruvian legal entities or individuals performing business activities (B2B model), will be subject to VAT provided the services are used in the country. VAT does not apply to services provided by international digital platforms used by Peruvian final consumers (B2C model).

Comment: While necessary international consensus is being sought for the implementation of Pillars One and Two, creating mechanisms for indirect taxation (such as expanding VAT to encompass a broader service framework, including the B2C model) seems to be the most immediate solution to be implemented in Peru. However, at present, there is only one bill that has been introduced in the Congress addressing this issue, and there has been no significant progress in its approval.

¹¹¹³ ITL, art. 112, para. 1(2).

¹¹¹⁴ ITL, art. 112, para. 1(3).

¹¹¹⁵ ITL, art. 113, para. 1.

¹¹¹⁶ For a detailed analysis of the economic use or consumption of digital services in Peru, please refer to Chapter VI.C.4.

XIV. Avoidance of Double Taxation

A. Tax Treaties

1. In General

Historically, Peru has not signed a significant number of international tax treaties. In the past 15 years, this trend has been reversed due to the increasing openness of the economy, as well as the aspiration of Peru to become a member of the OECD. For the text and status of Peru's tax treaties, see International Tax Treaties.

Peru has signed different kinds of tax treaties: multilateral ones (e.g., the Decision 578 under the scope of the Andean Community), bilateral agreements to avoid double taxation,¹¹¹⁷ and bilateral agreements that grant exemptions on income arising from international air and maritime transportation services.¹¹¹⁸ Tax information exchange agreements (TIEAs) are another important type of tax agreement signed by Peru.

Under the scope of the TIEA signed between Peru and the United States,¹¹¹⁹ in force since March 31, 1993, tax information could be exchanged automatically only with respect to income taxes, consumption taxes, wealth taxes, and transfer taxes (in the case of Peru); and to federal income tax, federal tax on independent workers, federal tax on transfers destined to avoid income tax, federal tax on donations and inheritances and federal consumption tax (in the case of the United States).¹¹²⁰

The information shared between the countries must be exclusively used for the assessment, calculation and collection of taxes, as well as for the application of tax credits, investigation purposes or for tracking down fiscal crimes or claims against the tax authority.¹¹²¹

Since October 25, 2017, Peru is signatory to the Convention on Mutual Administrative Assistance on Tax Matters (CMAATM), that facilitates international tax cooperation to tackle tax evasion and avoidance, and provides for all possible forms of administrative co-operation between states in the assessment and collection of taxes. It also includes automatic exchange for the recovery of foreign tax claims.¹¹²²

The CMAATM was approved by the Peruvian Congress¹¹²³ and ratified by the president,¹¹²⁴ being in force from September 1, 2018.¹¹²⁵

¹¹¹⁷ Such bilateral agreements mainly follow the OECD Model Tax Convention.

¹¹¹⁸ The ITL also sets out an exemption, granted on a reciprocal basis, applicable to non-resident entities for income obtained from international transport and maritime services rendered to or from Peru, provided certain conditions are fulfilled. See V.C.3.c., above, for further discussion.

¹¹¹⁹ Agreement for the Exchange of Tax Information, art. 2(2.1).

¹¹²⁰ The Agreement states that it also applies to identical or similar taxes. Agreement for the Exchange of Tax Information, art. 2(2.2).

¹¹²¹ Agreement for the Exchange of Tax Information, art. 4(4.1). It should be noted that further regulations regarding the implementation of the Agreement for the Exchange of Tax Information are still awaiting enactment.

¹¹²² More information is available at: <https://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm>.

¹¹²³ Legislative Resolution 30774, published on May 23, 2018.

¹¹²⁴ Supreme Decree 012-2018-RE.

¹¹²⁵ The full text of this treaty was published on August 30, 2018.

2. Double Taxation Agreements

a. Negotiation and Entry Into Force

The Ministry of Economy and Finance is the governmental entity authorized to negotiate double taxation treaties with other states.¹¹²⁶ A technical committee integrated by representatives of the Ministry of Economy and Finance, SUNAT and the Ministry of Foreign Affairs participates in the rounds of negotiations with the representatives of the other contracting state.

After being signed by the representatives of the two contracting states, the treaty must be approved by the Peruvian Congress through a legislative resolution,¹¹²⁷ and then remitted to the President for its ratification through a Supreme Decree.¹¹²⁸ The full text of the approved tax treaty must be published in the Peruvian Official Gazette (*El Peruano*) within 30 business days from its ratification.¹¹²⁹

The tax treaty will enter into force and be considered as part of the Peruvian legislation once the specific conditions established in the treaty are fulfilled,¹¹³⁰ after which the Ministry of Foreign Affairs will give notice to the Official Gazette to publish the date of its entry into force.¹¹³¹

This process usually concludes when the contracting states exchange diplomatic notes informing each other that the domestic implementation of the tax treaty in their respective states has been completed.

b. Administrative Measures

Peru has not implemented administrative measures regarding tax treaty provisions so far. However, in 2021, the superintendent of the SUNAT was appointed as the representative of the Ministry of Economy and Finance to act as the competent authority in Mutual Agreement Procedures (MAPs) for the resolution of disputes regarding the application of tax treaties signed by Peru.¹¹³²

3. Andean Community of Nations Agreement to Avoid Double Taxation and Prevent Tax Evasion

Peru is a member of the Andean Community of Nations. This organization currently comprises Bolivia, Colombia, Ecuador and Peru. Through Decision 578, which has been in force in Peru since 2005, the Andean Community Commission has established a regime to avoid double income taxation among the Andean countries.

Highlights of some of the provisions are as follows:

(i) As a general rule, taxation is imposed only in the country in which the source of the income concerned is located, regardless of the nationality or domicile of the recipient;¹¹³³

¹¹²⁶ Decree-Law 25883, art. 1.

¹¹²⁷ Peruvian Constitution, art. 56.

¹¹²⁸ Law 26647, art. 2.

¹¹²⁹ Law 26647, art. 5.

¹¹³⁰ Law 26647, art. 3.

¹¹³¹ Law 26647, art. 6.

¹¹³² Ministerial Resolution 383-2021-EF/10.

¹¹³³ Decision 578, art. 3.

- (ii) Profits from business activities are subject to tax in the country in which the activities are carried on;¹¹³⁴
- (iii) Loan interest is taxed in the country in which payment of the interest is attributed and registered;¹¹³⁵
- (iv) Dividends are taxed in the country in which the distributing company is domiciled;¹¹³⁶ and
- (v) As a general rule, capital gains are taxed in the country where the assets were located at the time of their disposal.¹¹³⁷

4. *Pacific Alliance Agreement to Standardize the Tax Treatment Established in Double Taxation Treaties*

Country members of the Pacific Alliance (Mexico, Chile, Colombia and Peru) signed the Convention to Standardize the Tax Treatment established in Double Taxation Treaties among Pacific Alliance Countries.

This agreement aims to standardize the tax treatment applicable to interest and capital gains obtained by pension funds among Pacific Alliance country members by recognizing such types of funds as persons for the purposes of double taxation treaties. It also establishes maximum tax rates applicable to interest arising from investments made by such pension funds.

The Convention applies in Peru with respect to income tax on interest and capital gains, as well as to the amounts that are paid, credited or accounted as expenses, from July 2, 2023.¹¹³⁸

5. *OECD Multilateral Instrument*

The “Multilateral Convention on Implementing Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting” (MLI) is a result of the implementation of Action 15 of the OECD BEPS Plan.

On June 27, 2018, Peru signed the MLI, expressing its intention to include treaties with Chile, Canada, Brazil, Mexico, South Korea, Switzerland and Portugal as “covered agreements” under the MLI.

However, as of November 10, 2023, according to updated information from the OECD:¹¹³⁹ (a) the MLI has not come into force in Peru as the deposit of the instrument of ratification, acceptance or approval, as provided for in Article 34 of the MLI, has not yet been made; (b) Peru has not included the tax treaty with Japan as a covered tax agreement; (c) Brazil has not signed the MLI; (d) Switzerland has not designated the tax treaty signed with Peru as a covered tax agreement; and (e) Mexico, South Korea, Portugal, Canada, and Chile have deposited the instrument of ratification, acceptance, or approval, including the tax treaty signed with Peru as a covered tax agreement.

In light of this, it will be necessary for Peru to fulfill the deposit requirement specified in Article 34 of the MLI so that, in accordance with Article 35 of the same convention, the re-

spective modifications to the tax treaties signed by Peru with Mexico, South Korea, Portugal, Canada, and Chile can enter into force.

B. *Foreign Tax Credit*

The Single Unified Text of the Income Tax Law approved by Supreme Decree 179-2004-EF, published on December 8, 2004, as amended (ITL) allows certain credits to be set off against a taxpayer’s Peruvian income tax liability, including a credit for income tax already paid abroad on the same income as is taxable in Peru.¹¹⁴⁰ Thus, in order to avoid international double taxation, resident corporations and individuals in receipt of foreign-source income may credit against their Peruvian income tax liabilities taxes already paid to the source country, subject to certain limitations. These limitations prevent the amount of taxes paid abroad that can be set off by way of a credit from exceeding: (i) an amount calculated by applying to the foreign-source income the average tax rate of the taxpayer in Peru (this limitation being applied on an overall basis); or (ii) the amount of taxes actually paid abroad, whichever is less.¹¹⁴¹

Additionally, the following rules apply:

(i) The tax credit is granted only with respect to tax paid abroad that was levied on income deemed taxable under the Peruvian income tax rules;¹¹⁴²

(ii) The tax paid abroad must be in essence an income tax;¹¹⁴³ and

(iii) Taxes paid abroad should must be converted to national currency (the taxpayer must apply the average purchase price exchange rate corresponding to December 31 of the fiscal year in which the income was obtained).¹¹⁴⁴

The rules above, however, are not applicable in the case of taxes paid abroad on foreign-source dividends by resident legal entities.¹¹⁴⁵ In this case, as stated by article 88 of the ITL, as amended by Legislative Decree 1424, published on September 13, 2018, the resident taxpayer may deduct:

(i) The income tax paid or withheld abroad on the distribution of dividends;¹¹⁴⁶

(ii) The income tax paid by the first-tier nonresident entity;¹¹⁴⁷ and

(iii) The income tax paid by the second-tier nonresident entity.¹¹⁴⁸

¹¹⁴⁰ ITL, art. 88.

¹¹⁴¹ ITL, art. 88(e).

¹¹⁴² ITR, art. 58(1).

¹¹⁴³ ITR, art. 58(2).

¹¹⁴⁴ ITR, art. 58(3).

¹¹⁴⁵ Some legal entities are excluded, such as branches, agencies and other PEs owned by nonresident entities, located in Peru, and consortia, joint ventures and business collaboration contracts whose accounting records are kept separately from those of their members. ITL, art. 88(f).

¹¹⁴⁶ ITL, art. 88(f)(1).

¹¹⁴⁷ The first-tier nonresident entity is deemed as the nonresident entity distributing the dividends to the resident taxpayer. ITL, art. 88(f)(2).

¹¹⁴⁸ The second-tier nonresident entity is deemed as the nonresident entity distributing the dividends to the first-tier non-resident entity. ITL, art. 88(f), para. 3.

¹¹³⁴ Decision 578, art. 6.

¹¹³⁵ Decision 578, art. 10.

¹¹³⁶ Decision 578, art. 11.

¹¹³⁷ Decision 578, art. 12.

¹¹³⁸ Legislative Resolution 31580 published on October 5, 2022.

¹¹³⁹ See: <https://www.oecd.org/tax/treaties/beps-mli-signatories-and-parties.pdf>.

TABLE OF WORKSHEETS

Worksheet 1	List of Important Tax Forms for Corporations and Individuals.
Worksheet 2	List of Other Relevant Forms for Corporations and Individual.

Working Papers for this Portfolio can be found online at <https://bloombergtax.com>.

