

DOING BUSINESS IN PERU

2018



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INTRODUCTION

During the last twenty years, Peru has shown a sustained economic growth, and has turned into an attractive country at the Latin American level to invest and do business. Such development has been leveraged by government policies which aim to boost commerce and industries with a global approach, through different commercial agreements, such as those entered into with United States, China and the Pacific Alliance countries (among other international strategic partners).

A clear and predictable legal framework allows economic actors to analyze possible business opportunities in Peru, and to determine the type of investment they consider most profitable, the best legal structure, and what charges and risks are involved according to the type of business in which they wish to invest.

This publication has been prepared by the Tax & Legal Business Unit of BDO in Peru, for the exclusive use of the BDO Global Organization and its clients. It is addressed to those individuals and entities who intend to establish a business in Peru as a separate entity or a branch office of an existing foreign company, or to those interested in investing, living or working permanently in Peru.

Please note that this publication neither represents nor qualifies as legal advisory; therefore, the analysis of the most appropriate structure for each business scheme will require further advice from BDO.

ABOUT BDO

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BDO's strength is based on the application of the local knowledge of its work teams, as well as their expertise and the understanding of the international context resulting from our global approach, to provide a seamless service. At BDO, operation and quality control procedures do not hinder innovation and independent thinking, but rather are the starting point. BDO is a solid organization committed to providing comprehensive services.

BDO's reputation is built upon providing timely, creative and objective advice and/or solutions on a consistent basis. The Organization is proud of the success of its clients and the relationships formed with them. It is a personal relationship which combines the benefits of professional knowledge, integrity and business approach with the understanding of the client's business and the ability to communicate. This guarantees the highest standard of quality professional services tailored to meet the individual needs of each client, whether it is a government entity, a multinational company, a local business or a sole proprietorship.

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1. BUSINESS ENVIRONMENT

General Information

Geography and climate

Peru is located in the central west region of South America, covering approximately 1,285,000 km² (495,000 sq mi), and 2,000 km of the Pacific Ocean coast.

The climate varies in each zone depending on whether it is the coast, the highlands or the jungle. The northern coast has a tropical climate, whereas in the southern and central coasts have a warm climate. In the Andean highlands, at an altitude of between 2000 and 5000 meters above sea level, the climate is cold, but it is warm during the day between September and April. The jungle has a tropical climate.

Government

Peru is a republic composed of 24 regions and the Constitutional Province of Callao. The city of Lima, capital of the Lima Region, is also the capital of the Peruvian Republic. The Executive Power is led by the President, who is elected by direct popular vote every five years, and may be reelected for an additional period. The President appoints the Ministers of State.

The Legislative Power is composed of 130 members who are elected by direct popular vote for a period of five years.

Population and language

As of 2018, Peru has approximately 32,162,184 inhabitants¹.

Lima is located in the western coast of Peru, at sea level, and has a population of approximately 9,985,664 inhabitants. Other important industrial and commercial cities are: Arequipa, Trujillo, Chiclayo, Piura and Cusco.

Spanish is the most used language in Peru. However, Quechua and Aimara, which are native languages, are also spoken in various zones of the highlands and the jungle, respectively. These are the official languages of our country, as set out in the Political Constitution of Peru.

Currency and exchange rate

The currency unit is the Sol, which is represented by the symbol “S/” and is equivalent to 100 cents.

The exchange rate fluctuates between S/ 3.274 and S/ 3.276 per USD 1 for purchase and selling transactions, respectively. It is published daily by the Superintendency of Banking

¹ Source: National Institute of Statistics (*Instituto Nacional de Estadística e Informática* or INEI in Spanish) - Peru: Population Estimates and Projections, 1950 - 2050. Demographic Analysis Bulletin No. 36.

and Insurances (*Superintendencia de Banca, Seguros y AFP* or *SBS* in Spanish) and is used for different purposes, including tax purposes.

The exchange rate is set by supply and demand in the Peruvian Financial System.

Inflation

In year 2016, the accumulated inflation rate was 3.3%. For year 2017, the closing inflation rate was 2.3%. It is estimated that the inflation rate will not exceed 2% in the first semester of 2018.

International time, weights and measures

The Peruvian territory is located in the US Eastern Time zone (-5 GMT). As for weights and measures, Peru uses the metric system (grams, meters, liters).

Business entities

The main business entities in Peru are:

- Branches, offices or permanent establishments of foreign companies; and
- Corporations incorporated in Peru

Companies are formed upon their incorporation and registration, establishing appropriate by-laws containing detailed provisions for, among others, their incorporation, internal management, and liquidation or dissolution. Each company corresponds to a specific type of company, which is set out in its by-laws and regulates its management.

The legal basis for the incorporation and operation of companies in Peru is found in:

- The General Companies Act
- The Civil Code

The main types of entities in Peru are:

- Corporation (*Sociedad Anónima* or *S.A.* in Spanish), whose capital is represented by shares and its owners have limited liability. A corporation may be publicly or privately-held, subject to compliance with certain conditions.
- Limited Liability Partnership (*Sociedad de Responsabilidad Limitada* or *S.R.L.* in Spanish), whose capital is represented by ownership interests and its owners have limited liability.

However, there are other legal entities such as:

- Unlimited Liability Company (uncommon)
- Civil Association; and
- Joint Ventures or Business Collaboration Agreements

Types of Companies

Corporation (Sociedad Anónima or S.A. in Spanish)

Most business entities are incorporated as Corporations. The capital of this entity is represented by transferable shares which grant limited liability to shareholders. The subscription of bearer shares is not permitted.

In order to incorporate a corporation, there must be at least two shareholders (individuals or companies).

Capital: Shareholder contributions are limited by shares, and no minimum capital is required. At least 25% of the subscribed shares must be paid upon their issuance, or contributions in kind may also be made.

Board of Directors: The Board of Directors is an association of professionals elected by the shareholders. Directors may be Peruvian or foreign individuals. In the case of privately-held companies, having a Board of Directors is optional and the presence of its members in local territory is not required to hold meetings.

The Board of Directors appoints one or more managers, except if the corporation's by-laws reserve such right for the shareholders. The General Manager and the Board of Directors are responsible for the Company's management.

General Shareholders' Meeting: The Company must summon General Shareholders' meetings to ratify the transactions and activities of the Board of Directors. The resolutions passed at the General Shareholders' Meetings, if any, are enforced by the Board of Directors.

The General Shareholders' Meeting is held at least once a year (mandatory annual meeting), where annual financial statements are approved; however, extraordinary meetings may also be held to address specific issues.

In addition to corporations, Peruvian legislation sets out the possibility to incorporate two (2) kinds of corporations, based on the number of shareholders each entity wishes to have:

Privately-held company (*Sociedad Anónima Cerrada* or *S.A.C.* in Spanish): It is composed of at least two (2) shareholders and no more than twenty (20) shareholders, whose shares are not listed in the Stock Exchange.

Publicly-held company (*Sociedad Anónima Abierta* or *S.A.A.* in Spanish): This type of entity is mandatorily applicable when the Company's shares have been traded through an initial public offering, the Company has more than seven hundred and fifty (750) shareholders, or when 35% of its capital belongs to one hundred and seventy-five (175) or more shareholders. The shares of this type of company are listed in the Stock Exchange and are therefore registered with the Public Records of the Stock Market.

Limited Liability Partnership (Sociedad Comercial de Responsabilidad Limitada or S.R.L. in Spanish)

It is a separate legal entity whose capital is represented in equal ownership interests. Upon its incorporation, the paid portion of its capital must be equivalent to 25% of each ownership interest.

The maximum number of partners allowed for this kind of company is twenty (20), and the minimum number is two (2). Partners are not personally liable for the obligations of the entity.

This kind of entity is managed by one or more managers, who may be partners or not, and who represent it for all matters related to its business object. Managers are appointed by the partners.

Partners exercise their rights at the General Meeting of Partners. The resolutions passed by the partners require a majority of votes. During the meetings held, the partners decide on all issues, the regular course of business and any other matter as set out by applicable laws or by-laws.

In addition, ownership interests can only be transferred upon prior authorization from the majority of the partners.

Branch Offices of Foreign Companies

A foreign investor may start operations with a branch office instead of incorporating a Peruvian subsidiary. Likewise, investors can also incorporate a Peruvian company with foreign capital.

Branch offices do not have a legal personality separate from its parent company. These are granted permanent legal representation, as well as autonomy to manage the activities assigned by the parent company, according to the powers granted to its representatives.

Unlimited Liability Companies***General Partnership***

It does not have a minimum capital requirement; however, the consent of all partners is required to modify any partnership interest. Partners are jointly and severally liable for the partnership's debts, and gains and losses are proportionally divided based on the contribution made by each partner.

Limited Partnership

This commercial entity has at least one general partner with unlimited personal liability, and one or more partners whose liability is limited to their capital contributions. The limited partners of a limited partnership have no power to participate in the management of the entity.

Partnership limited by shares

It is similar to the previous category; however, the ownership interests of the limited partners are represented by shares.

Civil Partnership or Civil Association

These nonprofit organizations are composed of some individuals with the purpose of achieving a common objective. Most of these entities are incorporated for charitable purposes, and include professional, scientific, and cultural associations, as well as social clubs and religious institutions.

As an exception, specific professional organizations require being incorporated as a Civil Association due to the unlimited personal liability this type of entity entails, such as auditing firms.

Other ways of doing business in Peru

These are not separate legal entities, but its parties may operate under different categories, such as: Silent Partnership Agreements, Joint Ventures, Consortia, etc.

The General Companies Act currently regulates this type of association agreements and business collaboration agreements; however, these are also regulated by local tax regulations, such as the Income Tax Law and the Value-added Tax Law.

Sole Proprietorships

The Peruvian Trade Code allows individuals to undertake any kind of business. Foreign individuals residing in Peru may carry out business activities. The difference between a sole proprietorship and a company is that, in the case of a company, the personal liability of shareholders is generally limited, while in the case of a sole proprietorship, owners have unlimited personal liability and do not have a legal personality separate from the entity.

As an exception, our legislation established a type of entity called Limited Liability Sole Proprietorship (*Empresa Individual de Responsabilidad Limitada* or *E.I.R.L.* in Spanish), which is run by a sole trader who limits part of their assets and allocates them to a specific business.

Employment Relationships

Employee/Employer Relationship

Employment laws provide employees with significant security with respect to employment and working conditions. Employment relationships are basically regulated by employment contracts.

Employment contracts

Open-ended employment contract

It establishes an employment relationship between an employer and an employee, through the provision of remunerated and subordinated services from the employee to the employer. It does not have an expiration date; therefore, this type of contract does not need to be in writing.

Conditional contract (fixed-term contract)

These contracts have a specific expiration date. The different types of conditional contracts may be used due to market needs, higher production levels, start of operations in our country; or due to the temporary or accidental nature of the services to be provided or the work to be performed, among others. Such contracts must meet certain formalities and must be authorized by the Labor Administrative Authority (*Autoridad Administrativa de Trabajo* o AAT in Spanish).

The employees hired under this type of contract are entitled to receive the same employment rights and benefits that the employees hired by the same company under an open-ended contract would receive by law, agreement or tradition. In addition, such employees are entitled to have employment stability during the term of their contract, once the trial period has elapsed (3 months for common employees, 6 months for qualified or trusted employees and one year for managerial employees).

Termination of Employment Relationship

Employee resignation

It is caused by the voluntary and free resignation of an employee. In this case, the employee must give the employer a 30 calendar day prior written notice. The employer may exempt the employee from the referred notice period, on their own initiative or at the request of the employee. In this last case, the request will be deemed to be accepted if it is not rejected in writing within the following three (3) days.

Termination by mutual consent

This termination arises by mutual consent of both parties, and must be stated in writing.

Expiration of term of temporary contract

It refers to the completion of a work or service, or the termination of the previously agreed contract. This is only applicable to conditional contracts.

Collective dismissal due to objective causes

It is applicable to specific situations such as unforeseen circumstances or force majeure events; economical, technological, structural or similar reasons; dissolution, liquidation or bankruptcy of the company; and equity restructuring.

Individual Dismissal

It is a type of termination occurred at the discretion of the employer, based on the employee's behavior or capabilities.

A dismissal based on an employee's behavior may be caused by the following reasons:

- (i) Committing a serious offense;
- (ii) Being convicted for willful misconduct;
- (iii) Employee disqualification; and
- (iv) False allegation of sexual harassment

In the case of a dismissal based on the employee's capabilities, it may be caused by the following reasons:

- (i) The detriment of the physical or mental capabilities of an employee, or their sudden incompetence, which are determining factors for their performance;
- (ii) The employee's unjustified refusal to pass a medical examination previously agreed or established by law, which is a determining factor for the continuance of the employment relationship; or to comply with the measures prescribed by a physician to prevent illnesses or accidents;
- (iii) Poor performance with respect to the employee's capabilities and the average performance of their peers under similar conditions.

Working Conditions

Employee rights and benefits

Private sector employees have, among others, the following rights and benefits:

Regular Remuneration: It is composed of the total amount earned by an employee for rendering their services, whether in cash or in kind, and provided that it is readily available. It is calculated on a monthly basis; however, it can be paid weekly, every 15 days or monthly.

At present, the Peruvian Minimum Wage (*Remuneración Mínima Vital* or *RMV* in Spanish) amounts to S/ 930 (approximately US\$ 285), and is periodically adjusted by the Executive

Branch. No employee must receive a lesser amount, except in the case of an employee hired under a part-time employment contract.

In addition, an employer may agree with the employees who receive a monthly remuneration exceeding 2 tax units (S/ 8,300 or US\$ 2,550 approximately), to pay them a comprehensive remuneration calculated on an annual basis, encompassing all the legal and customary benefits applicable to the company, except for profit-sharing.

Legal Bonuses: In July (Independence Day) and December (Christmas), the employers pay a legal bonus set out by applicable legislation, equivalent to one (1) monthly salary in each case. This benefit is granted to employees who have worked for at least one month.

Compensation for Years of Services (CTS): It is a semi-annual deposit made into special bank accounts opened in the name of each employee with banking or financial entities. This benefit is granted to employees who work at least an average of four hours per day, and have worked for at least one whole month. The funds deposited are released upon termination of the employment relationship.

Employees' Profit-sharing: Employees are entitled to a share of the company's profits through the distribution of a percentage of the company's annual taxable income before income tax. Such percentage is calculated based on the activity carried out by the company:

Activity	Rate
Fishing companies	10%
Telecommunication companies	10%
Industrial companies	10%
Mining companies	8%
Wholesale and Retail companies and restaurants	8%
Companies performing other kind of activities	5%

This benefit is only granted to companies which have more than 20 employees. In order to calculate the annual income this benefit refers to, companies are allowed to deduct tax losses from prior years.

Paid vacation leave: Employees are allowed to take 30 calendar days of paid vacation time. This right is granted once employees have completed one (1) full year of services.

"Vida Ley" life insurance: It is granted to employees who have worked for the same employer for four years, and is borne by such employer. It also benefits the spouse or concubine, and the underage children of the employee.

Health Risk Insurance: Certain activities require employers to hire this insurance in order to provide coverage to employees who are exposed to occupational accidents or illnesses. It is materialized through the Supplemental Occupational Risk Insurance.

Taxes and contributions related to salaries of local employees

In order to apply any tax on remuneration, such remuneration is defined as any payment made as consideration for personal services provided.

Social Security

The Social Security System in Peru is divided into two systems:

a. **Public System:** This system includes:

Healthcare System: The contribution to this system is equivalent to nine per cent (9%) of the salary paid to any employee, and is entirely borne by the employer on a monthly basis. The affiliation of employees to this system is mandatory.

National Pension System: The employee must contribute an amount equivalent to thirteen per cent (13%) of their insurable salary. The affiliation to this system is not mandatory, as employees have also the option to affiliate to the private pension system, described below.

b. **Private system:**

Healthcare System: Employers may provide health coverage to their employees by contracting healthcare plans from Private Healthcare Providers (*Entidades Prestadoras de Salud* or *EPS* in Spanish). The amount to be charged will depend on the scope of the plan hired, and may be borne by the employees and the employer. Employers are entitled to an EPS credit, which is used to offset the contributions to be made to the corresponding Healthcare System.

Private Pension System: This system is an alternative to the National Pension System and it is managed by the Private Pension Fund Administration Entities (*Administradoras Privadas de Fondos de Pensiones* or *AFP* in Spanish). Any employee may affiliate by making contributions of approximately between 12.99% and 13.5% of their salary, as each AFP applies a different percentage, or may stay affiliated to the National Pension System.

Supplemental Occupational Risk Insurance

The purpose of this insurance is to protect employees and workers who perform high-risk activities, by granting them healthcare coverage, disability pensions, survivor benefits and funeral expenses, in case of suffering an occupational accident or illness.

Contribution to the National Construction Training Service (SENCICO)

It is a contribution required from all natural and legal persons who perform construction activities, and must be paid on a monthly basis. This contribution is equivalent to 0.2% of the total income earned from materials, workforce, general expenses, technical management, use and any other element invoiced to the client, under any kind of work contracting system.

Contribution to the National Technical-Industrial Training Service (SENATI)

This contribution is exclusively borne by the employer and must be paid on a monthly basis. These contributions are deducted, at a rate of 0.75%, from the total amount of the salaries paid to those employees who have an employment relationship with the company, and who perform installation, repair and maintenance activities in favor of the company and third parties.

Only those companies performing industrial activities, according to the International Standard Industrial Classification of all Economic Activities (ISIC) of the United Nations, are subject to this contribution, except those performing construction activities. In addition, the companies which, during the previous year, had 20 employees or less in average performing the activities mentioned above are not required to pay this contribution.

Income tax on work-derived income

The consideration paid for personal services, defined as any payment received by an employee for services rendered, and which represents an economic benefit for such employee, is subject to income tax.

Such service may be provided under a subordinate relationship, which will result in the payment of employment income. If such service is provided on a freelance basis, the payment received will be deemed as self-employment income, which will be stated in a civilian contract, with the exception of some services rendered on a freelance basis which may be subject to payroll tax. For further information, please refer to Section 5: Taxes on Personal Income.

Hiring of foreign employees

Local legislation establishes the possibility of hiring foreign employees so that these can provide services in Peru.

However, the total number of foreign employees must not exceed 20% of the total headcount. In addition, from the total payroll amount, 70% will be used to pay local employees, and only 30% will be used to pay foreign employees. It is worth pointing out that the percentages referred to above (20% and 30%) may be reduced, but in no case these may be increased, unless a request to be exempted from such restrictive percentages is filed to hire the following employees:

- Specialized professional or technical staff
- Managerial employees in charge of new business activities or in the event of a corporate restructuring

To be able to work in Peru, foreign citizens must have a written fixed-term employment contract in place, (for a maximum term of 3 years, which may be extended for a term not exceeding 3 years). Such contract must be duly approved by the Labor Administrative Authority, which will also be in charge of its renewal or amendment.

The referred limits are not applicable to foreign employees from Andean Community countries (i.e., Ecuador, Colombia, Bolivia and Peru), as set forth in Statement 545, under which, the citizens from such countries are called “Andean citizens” and receive the same treatment as Peruvian employees.

Spanish citizens are not subject either to the regulations applicable to the hiring of foreign employees, pursuant to the Dual Citizenship Agreement in place between Peru and Spain.

Employment rights and benefits of foreign employees

Foreign employees will have the same rights and benefits as local employees.

Taxes and contributions of foreign employees

Foreign employees must pay income taxes on their Peruvian-source income; i.e., on the income earned from personal services, civilian or commercial activities, or services of any kind, performed in Peru. For further information, please refer to Chapter 5.

In addition, foreign employees must make contributions to the Healthcare System and the National Pension System (*Sistema Nacional de Pensiones* or *SNP* in Spanish) or, if applicable, to the Private Pension Fund Administration (AFP).

Work Permits and Visas

Foreign employees may be granted different immigrations statuses, each with different characteristics, depending on the activities to be carried out in Peruvian territory.

Immigration statuses include the following:

1) Temporary:

- a. International agreements*
- b. Temporary Training/Research*
- c. Business*
- d. Temporary Worker/Designated Worker*

2) Residency:

- a. Designated resident*
- b. Investor*
- c. Worker*
- d. Permanent resident*
- e. International agreements*

2. FINANCE AND INVESTMENT

Business Regulation

Industry and commerce are regulated by several Ministries, such as:

- Employment
- Energy and Mining
- Foreign Trade and Tourism
- Production
- Economy and Finance
- Transportation and Telecommunications
- Environment

Price Control

At present, no products are subject to price control. Since 1990, our economy is regulated by the free market of supply and demand.

Unfair and anticompetitive measures

The practices which restrict free competition, and the abuse of dominant or monopoly positions, are prohibited. This matter is fully regulated by a special law.

Consumer and Environmental Protection

The Consumer Defense and Protection Law and the General Environmental Law regulate these issues.

The Consumer Protection Commission of the National Institute for the Defense of Competition and the Protection of Intellectual Property (*Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual* or INDECOPI in Spanish) ensures compliance with the fundamental rights of consumers, particularly the right to access adequate and sufficient information about the goods and services offered in the market.

Environmental protection is also regulated by the corresponding laws. The National Environment Council (*Consejo Nacional del Ambiente* o CONAM in Spanish) is the National Environmental Authority and governing body of the National Environmental Management System (*Sistema Nacional de Gestión Ambiental* in Spanish). Its specific duties and responsibilities are established by law and are set out in its Organization and Functions Regulation.

Import and Export Control

Peru is a member of the World Trade Organization (WTO), among other International Organizations. In addition, Peru has entered into bilateral agreements with neighboring countries.

As from April 2000, the Customs Valuation rules of the WTO are applied to all customs items, and the Decisions of the WTO Customs Valuation Committee have been previously incorporated into Peruvian legislation.

At present, there is no customs regulation restricting the import or export of goods, except for those established due to sanitary reasons, and for the defense of cultural and environmental heritage, preservation and protection of the national flora and fauna, preservation of genetic native heritage, improvement of crops, and the defense of the public order and safety of our country.

The Commission for Dumping and Subsidy Control of INDECOPi is responsible for ensuring compliance with the regulations intended to prevent and correct competition distortions generated by the import of products at dumping or subsidized prices, pursuant to the provisions set forth in the WTO Agreement and local regulations.

Imported goods are subject to Ad-Valorem customs duties, except for certain goods subject to specific customs duties. Similarly, imported goods are subject to Value-Added Taxes (VAT) and, in the case of some specific goods (such as fuel, cigarettes, and alcoholic beverages, among others), these will be also subject to excise tax.

Ad-valorem custom duties may amount to 0%, 6% or 11%, depending on the customs code of each item imported.

The export of goods is free, except for goods whose possession is illegal, as in the case of goods forming part of our National Cultural Heritage.

[Patents, Trademark Registration and other Industrial Property Rights](#)

Patents, trademarks and other industrial property rights are protected by Peruvian legislation and, at a sub-regional level, through the Andean Community, which has established a Common Regime for the Treatment of Foreign Capitals, as well as for trademarks, patents, licenses and royalties.

The individuals and entities wishing to register patents, trademarks and other industrial property elements must file the required documentation with INDECOPi, which is the national competent organization responsible for their registration and control.

Local Banking and Finance

The Central Reserve Bank (*Banco Central de Reserva* or *BCR* in Spanish) is the regulatory entity of the Monetary System. It is responsible, among other duties, for controlling currency issuance and coin minting. In addition, it regulates money circulation and credits in the Financial System, and participates in the International Monetary Fund.

The Superintendency of Banking, Insurance and AFP (SBS) is responsible for, among other duties, controlling banking entities, insurance companies and AFPs. Peruvian commercial banks and the branches of foreign banks perform multiple duties, as these grant credits, receive deposits, manage trust funds and perform all kinds of financial activities.

Peru does not have exchange rate controls for remittance of profits and repatriation of capitals. However, since January 1, 2004, the Law established that amounts greater than S/ 3,500 or US\$ 1,000, or any loans granted, must be paid using specific Payment Methods.

Accounting and Auditing Requirements

Accounting:

The Generally Accepted Accounting Principles (GAAP) in Peru are the International Accounting Standards (IAS) and the International Financial Reporting Standards (IFRS), with their respective interpretations (SIC and ISIC).

Until 2004 year-end, inflation adjustments were made, but these were suspended from 2005 onwards for accounting and tax purposes.

It is worth mentioning that the Peruvian Government, through the execution of contracts under sectorial laws, may authorize certain companies that may have received and/or made direct investments, to keep their financial statements in United States Dollars, subject to prior compliance with certain requirements and obligations set forth in such laws.

Books and Records:

Accounting records must be kept in Spanish and in Peruvian Soles, except for direct foreign investments if a contract has been entered into with the Government to keep accounting records in foreign currency.

All assets and liabilities in foreign currency must be stated at the exchange rate effective at year-end.

For tax purposes, the records supporting the accounts and transactions must be generally kept for five years, in compliance with the closing rules at the end of the year being reported. Local tax regulations have established that, in almost all cases, the accounting books and records related to tax matters must be kept electronically.

Auditing:

Audits conducted by an independent auditor (external audit) are mandatory for publicly-held companies and other entities subject to compliance with certain requirements established by law. Such audited financial information must be submitted to the Superintendency of the Securities Market (*Superintendencia del Mercado de Valores* or SMV in Spanish). In addition, banking, financial and insurance institutions are controlled by the SBS.

The by-laws of a company may also stipulate the requirement of having external annual financial audits.

Investment incentives

The Peruvian Government has built its legal system, and has designed its economic policies, within the framework of a free market economy and with the purpose of attracting capitals and investments.

In this context, several laws have been enacted to promote foreign investment in diverse economic sectors, basically the agricultural, mining, oil, and tourism industries, among others. The Government has also entered into free-trade agreements with its main business partners, such as the United States of America, China and Japan.

As we will explain in the following paragraphs, Peru offers multiple opportunities to Peruvian and foreign investors, giving them equal treatment, applying a policy designed to boost the industries referred to above, and granting, in some cases, tax incentives aimed at facilitating their economic development.

Government's Attitude towards Foreign Investment

In 1991, the Peruvian Government designed a system which encourages foreign investment to contribute to the expansion of the free business economy started in our country. As of today, such purpose continues to be served by providing investors with a legally safe environment, which is now internationally accepted and reflected in the reduction of the Country Risk rating (EMBIG).

Taking into consideration that foreign investment and technology transfer are pivotal for the economic dynamism required for our country's development, such investments are encouraged as a necessary complement of local investment.

In that sense, the Government's purpose has been, and continues to be, to remove obstacles and restrictions on foreign investment, to guarantee equal rights and obligations among Peruvian and foreign investors, as well as to provide a legal stability system for foreign investors by recognizing certain guarantees, ensuring the continuity of established rules.

Thus, the purpose is to orient Peruvian legislation towards a permanence regime which would allow long-term investments to be made with clear, known and predictable game rules.

Legal Stability Agreements are contracts with legal force among the parties thereto, and are civilian, not administrative, in nature. Therefore, the Government cannot unilaterally terminate or amend them without prior consent of the investor.

In addition to Tax Stability Agreements, there are other incentives to increase investments in the production or resource-generating activities in our country.

Free Trade Agreement with the United States of America

As part of the Peruvian Government's overall development strategy, and after 43 months of negotiations, the Free Trade Agreement between the United States and Peru was finally ratified in December 2007 by the U.S. Congress. This Agreement, whose predecessor is the ATPDEA, came into effect in February 2009.

The execution and enforcement of this Agreement enables an increased growth of the Peruvian export market, as well as higher employment levels, along with a simplification of trade and the promotion of an export culture in Peru. In addition, the Agreement will grant preferential tariff-free entry to a significant number of Peruvian products to the American market.

On the other hand, the Agreement also benefits Peruvian consumers due to the reduction of import duties and the suppression of import barriers.

Under the FTA, Peru agrees to comply with its own legislation and with its main international commitments mainly referred to employment and environmental protection matters. The Agreement further offers Peruvian companies the opportunity to enter the US public contracting and procurement market, as well as a business opportunity for micro, small and medium-sized companies.

The FTA attracts a significant inflow of direct foreign investments, with favorable effects on export volumes, job creation and technology transfer.

Other Free Trade Agreements signed by Peru

As of today, Peru has also signed Free Trade Agreements with China, Japan, the European Union, Thailand, Chile, Singapore, Canada, South Korea, Cuba, Mexico, Panama and the European Free Trade Association (EFTA, which includes Switzerland, Iceland, Liechtenstein, and Norway), the Andean Community (which includes Colombia, Ecuador, Bolivia and Peru), Costa Rica, Honduras and Venezuela, which are still in force. In addition, Peru has Free Trade Agreements with Brazil, Guatemala and the countries of the Pacific Alliance (which includes Peru, Colombia, Mexico and Chile) which are not yet in effect. Moreover, Peru is negotiating Free Trade Agreements with India, El Salvador and Turkey.

Public-Private Associations and Regional and Local Public Investment Agreements

The Peruvian Government has approved a legal framework which regulates the participation of private entities in public infrastructure projects or the provision of public services, even if it has a regional or local impact.

The referred legal framework promotes the participation of private entities under the form of Public-Private Associations, or through the execution of agreements between

regional and/or local governments and private sector entities, granting certain income tax benefits.

With the purpose of fostering infrastructure investments, our country also offers certain VAT benefits, which allow the early recovery of such tax, provided some requirements are met.

Restrictions on Foreign Investment

Foreign investors are subject to no restrictions to invest in our country, as they are governed by the same rules applicable to Peruvian investors.

As an exception, the Peruvian Constitution prohibits foreigners from acquiring goods in Peruvian territory within 50 km from our borders.

Andean Highlands

The Law To Promote the Development of Production Activities in the Andean Highlands sets forth certain tax benefits which may be granted to Production Units and companies with registered offices, operating centers or production facilities established in the Andean Highlands, at an altitude ranging between 2,500 and 3,200 meters above sea level, provided these are not located in the capital city of Peruvian departments and are engaged in any of the following activities: fishing farming, aquaculture, meat processing in general, forest plantations for commercial or industrial purposes, milk production, breeding and exploitation of South American camelid fiber and bovine wool, agroindustry, handicrafts and textiles.

3. TAX SYSTEM

The Peruvian tax structure comprises local taxes and contributions, municipal taxes and fees for individualized services provided by the Peruvian Government.

Tax Structure

Local Taxes

The main local taxes are:

- Income Tax. - It is a direct tax levied on the earnings classified by relevant laws as “income”, and is structured under the “Product Income Theory”, even if it expressly levied on specific income which does not fall within the scope of such theory².

It is applicable to natural persons, with respect to their income earned through capital or work, as well as to legal entities and companies in general, with respect to the income these may earn.

It should be noted that income tax is also levied on capital gains, which are defined as any income earned from the disposal of capital goods, i.e. goods not intended to be traded within the scope of a company’s line of business, such as the transfer of shares and negotiable securities, real estate, and certain attributed income specifically established by relevant laws.

- Value-Added Tax and Municipal Promotion Tax. - These are designed under the value-added mechanism, and are levied on almost all goods (even if these have been delivered on a free-of-charge basis), the rendering of services in exchange for a valuable consideration, and other specific assumptions listed below.

The Peruvian VAT is a tax on consumption similar to the “IVA”³ or “IGV”⁴ existing in other countries, and is intended to tax the added value on each stage of the production and trading process. To this end, the VAT levied on the purchase of goods and services may only be deducted - in principle - from the VAT levied on certain transactions, such as the sale of goods or the rendering of services in exchange for a valuable consideration taking place in our country.

- Excise Tax. - It is a single-phase tax levied on certain goods in one single stage of the production and trading cycle (manufacturer or importer) and, by exception, on the party economically related to the manufacturer or importer.
- Temporary Tax on Net Assets. - This tax (*Impuesto Temporal a los Activos Netos* or *ITAN* in Spanish) is an equity tax to be paid by entities which earn business income subject to the General Income Tax Regime, based on the value of the entity's net

² According to the “Product Income Theory”, income is defined as any income periodically generated by a durable producing source being exploited.

³ *Impuesto al Valor Agregado* in Spanish.

⁴ *Impuesto General a las Ventas* in Spanish.

assets stated in the Statement of Financial Position as of December 31 of the year prior to the corresponding payment.

- Financial Transactions Tax. - It is levied on the financial transactions carried out by both natural and legal persons, and is established based on a percentage of the total amount of such transactions.

Municipal Taxes

These taxes are collected and managed by municipalities (local governments).

The main taxes include:

- Property Transfer Tax
- Real Estate Tax
- Vehicle Tax

4. TAXES ON BUSINESS INCOME

Corporate Income Tax

As from January 1, 2017, entities earning corporate income and domiciled in Peruvian territory are subject to a 29.5%⁵ tax rate on their net income.

The fiscal year starts on January 1 and ends on December 31 of each calendar year, and the Annual Income Tax Return must be filed by all companies between March and April of every year, according to the deadlines set forth by the National Superintendence of Customs and Tax Administration (*Superintendencia Nacional de Aduanas y de Administración Tributaria* or *SUNAT* in Spanish).

Taxpayers are required to make monthly tax pre-payments, which are determined based on their net monthly income; and the outstanding tax balance is paid upon filing the Annual Income Tax Return.

The Income Tax Law differentiates between persons domiciled and not domiciled in our country. The former are subject to taxation on their worldwide income, and the latter are subject to taxation only on their Peruvian-source income.

The branch offices of non-domiciled natural or legal persons, even if these qualify as domiciled entities under applicable laws, are required to pay taxes only on their Peruvian-source income.

With respect to the depreciation of fixed assets under the General Income Tax Regime, the straight-line method is used to calculate the depreciation of buildings and constructions, at an annual rate of 5%. However, there are exceptional regimes which establish higher depreciation rates.

For all other fixed assets, the depreciation rate accepted from a tax standpoint is the rate accounted for throughout the taxable year in the accounting books and records, provided that it does not exceed the maximum annual depreciation rate for each unit of fixed assets, irrespective of the depreciation method applied by the taxpayer.

The annual depreciation rates are:

Goods	Rate
Working and breeding livestock; fishing nets	25%
Land transportation vehicles (except trains); furnaces in general	20%
Machinery and equipment used for mining, oil and construction activities, except furniture, fixtures and office equipment	20%
Data processing equipment	25%
Machinery and equipment acquired as from January 1, 1991	10%
Other fixed assets	10%

⁵ This provision does not apply to companies which have entered into Legal Stability Agreements with the Peruvian Government. In such cases, the Income Tax rate is determined on a case-by-case basis upon execution of the referred agreements.

Finally, for income tax purposes, all economic transactions must be conducted at “market value”, in accordance with the provisions contained in relevant legislation. In the case of companies which qualify as “related parties”, as defined in applicable laws, the market value of their transactions must be determined pursuant to Transfer Pricing regulations.

Distribution of Profits

As from January 1, 2017, dividends and any other form of distribution of profits are subject to income tax, at a rate of 5%, on the amount distributed⁶. Such rate applies to the profits distributed to natural persons (whether domiciled or not) and to non-domiciled legal entities.

The legal entities paying such profits must withhold 5% of such amount, except when these are paid to domiciled legal entities. The amount withheld or the payments made are deemed as final income tax payments of the beneficiaries and must be paid to SUNAT before the deadlines established for monthly tax obligations.

The profits distributed by legal entities (including branch offices, agencies or permanent establishments in our country of corporations and entities of any type, which have been incorporated abroad) among their partners, associates, owners or persons who form part of such entities, when applicable, either in cash or in kind, except for shares issued with respect to their own capital, are subject to income tax at a rate of 5% on the amount distributed.

Furthermore, certain assumptions (presumptions) have been established, under which it is understood that profits have been distributed. These include the following:

- a) The distribution of the highest value attributed due to asset revaluation, whether in cash or in kind, except in the case of shares issued with respect to their own capital.
- b) Capital reduction of up to an amount equivalent to the profits, revaluation surplus, restatement adjustments, or freely available premiums and/or reserves which may have been previously capitalized, unless the reduction is intended to cover losses, as provided for in the Peruvian Companies Act, or in case these exist upon the execution of the capital reduction agreement. If after the capital reduction, such profits, revaluation surplus, restatement adjustments, or freely available premiums and/or reserves were distributed or capitalized, these will not be considered as dividends or any other form of distribution of profits.
- c) The difference between the par value of equity shares or interests, plus the supplementary premiums, if any, and the amounts received by the partners, associates, owners or persons who form part thereof, at the time of the capital reduction or winding-up of such legal entity.
- d) Profit-sharing granted by the founder, work shares and any other securities authorizing their holders to participate in the management or the election of

⁶ Special assumption rules are applied (which involves the use of different rates) when distributing dividends from prior years.

managers, or to have any interest, whether directly or indirectly, in the issuing entity's capital or earnings.

- e) Any credit, up to the limit of the freely available profits and reserves, granted by legal entities other than Multi-Operation Companies or Finance Leasing Companies to their partners, associates, owners or persons who form part thereof, whether in cash or in kind, in a general or particular manner.
- f) Any amount or delivery in kind which, upon performing the respective tax audit, is determined to be corporate income, provided that the disbursement, due to its nature, represents an indirect disposal of such income, not subject to further tax control. Under this assumption, the 5% rate will not be applied to the person receiving the funds, but to the company incurring the disbursement.

In the case of branch offices or any other type of permanent establishments of non-domiciled legal entities, the profits will be deemed to have been distributed on the due date established for filing the Annual Income Tax Return, considering the available income in favor of the foreign beneficiary as the distribution amount. The calculation basis will include the net income of the branch office or permanent establishment plus the income from exempted interest and dividends and other forms of profit distribution, or other available items that may have been generated during the year, minus the income tax amount paid by the branch office as a legal entity domiciled in Peruvian territory.

Profit distribution will occur upon execution of the dividend distribution agreement or other forms of profits, irrespective of the year in which the profits to be distributed were generated.

However, in the case of dividends and any other form of profit distribution in kind, these are calculated at the market value attributed to the goods on the date of distribution. In these cases, the tax withholding at source will not apply; instead, the legal entity agreeing on the distribution of profits must pay the income tax resulting from applying the 5% rate directly to SUNAT, and the beneficiary of the distribution must then reimburse the respective amount.

Taxation of Foreign Entities

Income tax is also levied on the Peruvian-source income earned by companies not domiciled in Peru, which are subject to tax withholding by the persons or entities domiciled in our country which pay or credit such income to such non-domiciled entity.

It is presumed, without proof to the contrary, that the following activities developed by entities not domiciled in Peru are subject to income tax at a 30% rate calculated on a portion of their net income:

Activity	Net Income
Insurance activities	: 7% on premiums
Rental of ships (vessels)	: 80% on gross income
Rental of aircrafts	: 60% on gross income
Air transportation	: 1% on gross income
Affreightment and sea transportation	: 2% on gross income
Telecommunication services	: 5% on gross income
International News Agencies	: 10% on gross remuneration
Distribution of cinematographic films and similar	: 20% on gross income
Supply of containers for transportation within our country or from our country to abroad	: 15% on gross income
Demurrage of transportation containers	: 80% on gross income
Assignment of television retransmission rights	: 20% on gross income

The income tax applicable to companies not domiciled in our country is determined by applying the following rates:

- Interests from external credits, subject to compliance with certain requirements: 4.99%. If such requirements are not met, the rate is 30%.
- Interests paid by banking entities and financial companies established in Peru to entities abroad for the use of their credit lines abroad in our country: 4.99%.
- Income from the rental of ships and aircrafts: 10%.
- Royalties paid by a domiciled entity, or economically used in our country: 30%.
- Dividends and other forms of distribution of profits received from legal entities (including branch offices or any other type of permanent establishments of foreign legal entities): 5%.
- Dividends and any other form of profits distributed by a non-domiciled entity, generated as a result of a capital reduction, provided that, in the twelve (12) months prior to the distribution, the non-domiciled entity has increased its capital due to new contributions, credit capitalization, or a reorganization: 30%.
- Digital services provided via Internet and economically used in our country: 30%.
- Technical assistance services economically used in our country when specific requirements are met: 15%; otherwise, the rate is 30%.
- Live shows starring non-domiciled artists and performers: 15%.
- Income earned from the disposal of securities within our country: 5%.

- Interests accrued from bonds and other debt instruments, or deposits, as a well as the capital increases of such deposits, in local or foreign currency, reporting transactions, repurchase agreements and stock borrowings, and other interests accrued from company credit transactions: 4,99%.
- Other income and interests paid to entities abroad by private entities for credits granted by a non-domiciled related party: 30%.

Transactions with entities residing in tax havens

The Income Tax Law sets out a special treatment to the transactions conducted with persons domiciled in countries with low or zero taxation (“tax havens”), with the clear objective of preventing taxpayers from obtaining tax “advantages”.

Several measures have been adopted for such purpose. Some of them consider new assumptions with respect to non-deductible expenses for the computation of the net corporate income of domiciled taxpayers.

Expenses, including capital losses, derived from transactions conducted with taxpayers qualifying under any of the following assumptions, are not considered as tax deductible:

- a) entities domiciled in tax havens;
- b) permanent establishments located or incorporated in tax havens;
- c) persons earning income, revenue or profits through a tax haven.

Such rule does not apply to expenses derived from the following transactions: (i) credits; (ii) insurance or re-insurance (iii) assignment of user rights for vessels or aircrafts; (iv) transportation from our country to abroad and vice versa; and (v) the right of way through the Panama Canal. These expenses will be deductible provided that the price or consideration amount is the same as that which would have been agreed upon between independent parties in comparable transactions.

It is worth mentioning that the items within the scope of the referred rule will only be considered as deductible expenses in the case of domiciled companies which have executed agreements with the Peruvian Government, under which the Income Tax Regime has been stabilized prior to January 1, 2001, and if such agreements are still in place. Under such assumption, the income earned by the non-domiciled entity will be considered as Peruvian-source income (even though it is not due to its nature), and in addition to being able to deduct such expense, the domiciled entity must withhold and pay the corresponding income tax to SUNAT.

For income tax purposes, the following countries are considered as tax havens: Alderney, Andorra, Anguilla, Antigua and Barbuda, Netherlands Antilles, Aruba, Bahamas, Bahrain, Barbados, Belize, Bermuda, Cyprus, Dominica, Guernsey, Gibraltar, Grenada, Hong Kong, Isle of Man, Cayman Islands, Cook Islands, Marshall Islands, Turks and Caicos Islands, British Virgin Islands, US Virgin Islands, Jersey, Labuan, Liberia, Liechtenstein, Luxembourg, Madeira, Maldives, Monaco, Montserrat, Nauru, Niue, Panama, Western Samoa, Saint

Christopher and Nevis, Saint Vincent and the Grenadines, Saint Lucia, Seychelles, Tonga and Vanuatu.

The countries or territories where the effective income tax rate (or similar) is zero per cent (0%) or is 50% lower than the rate applicable in Peru to income of the same nature are also considered as tax havens, and if they also meet one of the following characteristics:

- is not willing to provide information about the beneficiaries of low or zero taxation.
- has an special taxation system for non-domiciled entities, which grants tax benefits or advantages and excludes domiciled entities, whether explicitly or implicitly.
- prevents, explicitly or implicitly, the beneficiaries of low or zero taxation from operating within the market of such country or territory.
- advertises itself or is perceived as advertising itself, as a place which may be used by non-domiciled entities to “escape” from the taxes of their country of residence.

The effective tax rate is the ratio resulting from dividing the total calculated tax by the taxable income, multiplied by one hundred (100) without decimals.

International Tax Transparency Regime

Since year 2013, the International Tax Transparency Regime is applicable to taxpayers domiciled in our country who own non-domiciled controlled entities, in respect of their passive income (such as dividends, interest, royalties, etc.), provided that their foreign-source income is subject to income tax in Peru.

Controlled entities are entities of any nature which, among other things: (i) have a legal personality different from their partners, associates or stakeholders, (ii) have been incorporated in tax havens and (iii) are owned by taxpayers domiciled in Peruvian territory, which occurs when, at the closing of the taxable year, on their own or together with their related parties in our country, have direct or indirect interest on over 50% of the capital or the earnings of such entities, or on their voting rights.

It is worth pointing out that the taxpayers domiciled in our country to whom the net passive income of a non-domiciled controlled entity is attributed, may deduct, from the income tax levied on such amounts, the tax paid abroad by the controlled entity which is levied on such income, without exceeding an established limit.

Transactions between Related Parties

Over ten years ago, the Income Tax Law introduced the concept of transactions between "related parties", in connection with the application of the Transfer Pricing Regulations.

In this sense, two or more persons, companies or entities are deemed to be related parties, when:

- (i) one of them is involved in, whether directly or indirectly, the management, control or capital of the other,
- (ii) the same person or group is involved in, whether directly or indirectly, the management, control or capital of several persons, companies or entities, and
- (iii) the transaction is carried out through interposed persons to conceal a transaction between related parties.

Modifications referred to transfer pricing regulations were subsequently made to the Income Tax Law. The new provisions are in effect since January 1, 2006 and have been modified on several occasions.

Transfer Pricing regulations are applied not only to transactions conducted by taxpayers with their related parties, but also to transactions conducted from, to or through tax havens.

The existence of transactions between related parties determines the application of specific valuation methods.

Formal Obligations related to Transfer Pricing

As from year 2017, the taxpayers whose accrued revenues in the corresponding taxable year exceed 2300 tax units, will be required to file, on a yearly basis, and Informative Tax Return - Local Report with respect to the transactions which were carried out with related parties and entities domiciled tax havens, and which generated taxable income and/or non-deductible costs or expenses for income tax purposes. This obligation applies to transactions carried out from year 2016 onwards.

Notwithstanding the aforesaid, SUNAT may require taxpayers to comply with such obligation with respect to transactions which generated exempt or non-taxable income, as well as to non-deductible costs and expenses for income tax purposes.

In addition, as from year 2018, the taxpayers who form part of a group and whose accrued income in the corresponding taxable year exceed 20000 tax units, will be required to file, on a yearly basis, the Informative Tax Return - Master Report, which will contain their organizational structure, a description of the business(es), the transfer pricing policies in respect of intangible assets, group financing sources and their financial and tax position. This obligation applies to transactions carried out from year 2017 onwards.

Likewise, as from year 2018, the taxpayers who form part of a multinational group will be required to file, on a yearly basis, an Informative Tax Return - Report by Country, which will contain the global distribution of income, taxes paid and business activities of each of the entities pertaining to the multinational group who carry out their operations in a specific country or territory. This obligation applies to transactions carried out from year 2017 onwards.

SUNAT may exempt entities from filing the referred tax returns. However, entities may not be exempted from the obligation to file the Informative Tax Return - Local Report in

the cases where the market value, with respect to the disposal of goods, is below their accounting cost.

It is worth pointing out that the documentation and information supporting such informative tax returns must be kept by taxpayers, with the corresponding translation into Spanish, if applicable, for 5 years or until the prescribed period expires, whichever is longer, as set out in the Tax Code.

The Income Tax Law has expressly established that, for the interpretation of Transfer Pricing Regulations, the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, approved by the Council of the Organization for Economic Cooperation and Development (OECD), will apply.

Advance Transfer Pricing Agreements (APAs)

Current regulations allow taxpayers to enter into agreements with SUNAT, to determine the price, consideration amount and/or profit margin, as well as the methodology which will support the values to be used by taxpayers in setting the prices of future transactions with related parties or from, to or through tax havens.

SUNAT may also enter into advance transfer pricing agreements with other tax administrations of countries with which Peru has entered into an international agreement to avoid double taxation.

Such agreements are governed by civil law and may not be modified or rendered null and void unilaterally, except in those cases specifically provided for in the respective regulations. These agreements are applicable to the fiscal year in which they were approved and throughout the following three (3) fiscal years.

Taxation of Branch Offices, Agencies and Permanent Establishments

The Peruvian-source income earned by branch offices, agencies or permanent establishments incorporated in our country is subject to income tax.

The Income Tax Law considers as taxpayers any branch offices, agencies or any other permanent establishments incorporated in Peruvian territory and belonging to sole proprietorships, corporations and any other kind of entity incorporated abroad.

Consortia and other forms of business collaboration

The amount or ownership interest of the contracting parties with respect to the revenues earned from a specific business, work or exploitation activities is set within a broad framework for contractual freedom. The contracting parties' share in the profits or losses resulting from the project performance is determined pursuant to contractual provisions.

Consortia, joint ventures or similar forms of business collaboration agreements are subject to income tax when these are required to keep separate financial statements from those of their partners or contracting parties.

Exceptionally, in the case of contracts whose specific transactions do not allow entities to keep separate financial statements from those of their contracting parties, or with expiration dates earlier than three (3) years, the income will be attributed to the natural or legal persons who form part of such entities or who are contracting parties thereto.

When a non-domiciled entity is a party to a contract through:

- A permanent establishment incorporated in our country; in this case, such entity may be incorporated as a branch office or subsidiary, and must keep accounting records with respect to its transactions in our territory, being subject to taxation only in connection with its share in the contract profits and other income it may obtain therefrom.
- no permanent establishment; in this case, its share in the contract profits is subject to income tax and the other domiciled contracting party must withhold the tax applying a 30% rate on the amounts paid or credited to the non-domiciled entity.

Temporary Tax on Net Assets

The Temporary Tax on Net Assets (*Impuesto Temporal a los Activos Netos*, or *ITAN* in Spanish) is an equity tax payable by entities which earn corporate income under the General Income Tax Regime, except for those taxpayers expressly indicated in the referred law. Furthermore, there is a special treatment in the case of taxpayers required to pay taxes abroad on Peruvian-source income (as in the case of a branch office of a non-domiciled entity incorporated in our country).

The basis for the calculation of the ITAN is the net asset value stated in the Statement of Financial Position as of December 31 of the fiscal year prior to which the payment corresponds, after deducting the depreciation and amortization amounts permitted under the Income Tax Law. The following rates are applied to such basis:

<u>Rate</u>	<u>Net assets</u>
0%	Up to S/ 1'000,000 (approximately US\$ 304,694)
0.4%	On the excess of S/ 1'000,000

The amount determined may be paid in one lump sum or be divided into nine (9) monthly installments to be paid together with the pre-payments made under the General Income Tax Regime by taxpayers from April to December of the same year. The ITAN amount paid may be used as: (i) credit against the prepayments made under the General Income Tax Regime of the fiscal year to which the prepayment corresponds, or (ii) credit against the total income tax balance for the applicable fiscal year or future fiscal years. If taxpayers decide to request a refund of such tax, such refund will only be granted through the filing of the annual income tax return of the corresponding year. SUNAT has 60 days to respond to the request, and once this period has elapsed, the refund is deemed to have been accepted.

Value-Added Tax (VAT)

Scope of application

It is an indirect, multi-phase, non-cumulative tax structured under the value-added mechanism, which is calculated over a financial base and is levied on the following transactions:

- Sale of personal property in Peru.- Refers to the transfer of goods in exchange for a valuable consideration, irrespective of the contract or business from which it originated. However, it also includes the transactions where the corresponding guarantee deposit exceeds 3% of the total value of such transaction, as well as the withdrawal (free-of-charge delivery) of goods with certain exceptions.
- Rendering or utilization of services in Peruvian territory.- Requires the service to be rendered in exchange for a valuable consideration. The tax is levied on the services performed by domiciled entities (rendering) or non-domiciled entities (utilization), irrespective of the place where the contract was executed, or where the payment was made, when such amount is deemed as corporate income for the beneficiary, in accordance with income tax regulations.

If such services are performed by a domiciled entity for the benefit of a non-domiciled entity and the use or exploitation of such services takes place abroad, and the domiciled service provider is registered in the Registry of Service Exporters of SUNAT, the referred services will be classified as “Export of Services” and, as a result, these will not be subject to VAT.

- Construction Contracts performed in Peruvian territory. A construction contract is a document under which construction activities are agreed upon.
- First sale of real estate by constructors.- Includes the subsequent sale of property by the entities economically related to the constructor, or after a corporate reorganization.
- Import of goods by natural or legal entities.

Non-taxable items

Among others:

- Goods transferred as a result of corporate reorganizations.
- Gambling and betting activities (subject to Excise Tax).
- Royalties paid under hydrocarbon exploitation contracts.
- Goods transferred or imported, and services rendered by, universities, higher education institutes and education centers for their own purposes.

- Award of goods obtained from the performance of business collaboration agreements with no separate financial statements from those of the other parties.
- Allocation of resources by the parties for the performance of the business collaboration agreement when no separate financial statements are kept.
- Attribution of goods or services obtained from the performance of business collaboration agreements with no separate financial statements.
- Services rendered by Private Pension Fund Administration Entities and insurance companies to employees affiliated to the Private Pension Fund Administration System and to their beneficiaries.
- Credit services including only the income earned by banking and financial institutions, municipal savings and credit unions, municipal popular credit unions, small and micro-enterprise development companies, credit and savings cooperatives, and rural credit and savings unions, whether or not domiciled in our country.

Exempt transactions until December 31, 2018

The following transactions, among others, are exempt from VAT until December 31, 2018:

- The local sale or import of specific vegetables, fish and cultural books, among others.
- Cargo transportation and supplemental services to or from a foreign country, rendered to carriers of international cargo domiciled in Peru.
- The sale of certain goods and the rendering of services in the Amazon region.
- The import of goods intended to be consumed in the Amazon region until December 31, 2018. The applicable laws establish the provinces which form part of the Amazon region for exemption purposes.
- The sale of goods in the “ZOFRATACNA” zone (located in the city of Tacna, south of Peru) carried out among entities classified as “users” of such special zone.

Consortia, joint ventures and other forms of business collaboration are subject to this tax when they carry out taxable transactions and keep separate financial statements.

Exported goods and certain specific services are not subject to this tax under the assumption that “taxes cannot be exported”.

In addition, the VAT levied on the purchase of goods and services by the exporter gives rise to an “export credit balance”, which gives the right to receive a refund of the VAT transferred in the prior stage, through negotiable credit notes.

Origin of Tax Obligation

1. Sale of goods: when the payment voucher is issued or the goods are delivered, whichever occurs first.
2. Rendering of services: when the payment voucher is issued – when it is supposed to be issued – or when the payment is received, whichever occurs first. In the case of the use of services rendered by non-domiciled entities, when the corresponding payment voucher is recorded in the Purchase Record, or when the consideration is paid, whichever occurs first.
3. Construction contracts: when the payment voucher is issued or the payment, whether in whole or in part, is received, whichever occurs first.
4. First sale of real estate: When the payment is received, whether in whole or in part.
5. Import of goods: when the request of clearance for consumption is filed.

Taxable base

Sale of goods: The sales value of the goods.

Rendering or use of services: The total consideration amount.

Construction contracts: The construction value.

Sale of real estate: The income earned, excluding the price of the land.

Import of goods: The customs value, determined in accordance with current legislation, plus any import duties or taxes.

The referred valuation methods for income tax purposes also apply to determine the VAT taxable base in the case of transactions between related parties.

Rate

The current tax rate is eighteen percent (18%), which includes a two percent (2%) rate corresponding to the Municipal Promotion Tax. However, as from July 1, 2017, the VAT may be reduced to 17%, provided that the total VAT levied, net from internal refunds, reaches 7.2% of the Gross Domestic Product of our country. Such rate would also include a two per cent (2%) rate corresponding to excise tax. It is worth pointing out that this tax must be paid on a monthly basis.

VAT credit

This credit is made up of the VAT paid in the acquisition of goods, services and construction contracts, or the VAT paid on imported goods or on the use in Peru of services rendered by non-domiciled entities. The Law and its regulations establish a number of substantial and

formal requirements to be eligible to use this tax credit. The tax payable results from applying this tax credit against the gross tax amount.

There is no time limit on the use of this tax credit; i.e., as credit, it can be carried forward indefinitely until it is finally used. However, its use is mandatory if no other tax credit exists and if there is a VAT payable.

“Retencion” VAT Withholding Regime

This refers to the VAT to be withheld by the acquirers or users (domiciled legal entities) appointed by SUNAT from the suppliers, on the sale of personal property, the first sale of real estate, the rendering of services and construction contracts, provided that such transactions are subject to VAT. Such tax withholding is not required in the cases where the payment to the supplier is equal to or less than Seven Hundred Peruvian Soles (S/ 700.00 or US\$ 211.00 approximately) or where the total amount of the payment vouchers involved does not exceed such value; as well as in the case of certain transactions depending upon the condition of suppliers or the type of transaction.

The amount withheld is equivalent to 3% of the total amount to be paid by the acquirer, the service user, or the person who orders the construction, including all taxes levied on the transaction (i.e., 3% of the selling price).

“Detraccion” VAT Withholding Regime

The “Detraccion” VAT Regime (also known as *System of Payment of Tax Obligations with the Central Government* or *SPOT* in Spanish), is a mechanism whereby the purchaser or user of certain goods or services deposits, at the Banco de la Nación (National Bank), in a bank account opened in the name of the seller or service provider, a portion of the amount which the purchaser or user must pay for the transaction. It is worth pointing out that the SPOT does not imply a new tax or an increase of the VAT rate.

The amount deposited by the purchaser or user is deducted from the total amount payable to the supplier of goods or services, who, in turn, may settle its tax obligations using the funds deposited into the referred bank account.

The balance deposited which has not been depleted after the expiration of the period prescribed by law, are considered as readily available funds.

It should be noted that, as from April 2012, the vast majority of services subject to VAT are subject to the “Detraccion” VAT Regime.

“Percepcion” VAT Withholding Regime

This regime is a mechanism whereby a “Percepcion” Agent collects in advance a portion of the VAT to be subsequently generated by its customers with respect to their sale transactions levied with this tax.

The “Percepción” Agent will pay the amounts withheld to SUNAT and the client will be required to accept the “Percepcion” withheld.

Early VAT Recovery Regime

VAT regulations set out the possibility of accessing a general regime and special regimes for the early recovery of VAT, which apply to specific industries involving exploration activities, development and/or exploitation of natural resources, thus encompassing all forms of economic activities involving a significant investment and pre-operating stages.

This system involves the refund, by means of negotiable credit notes, of the tax credit accumulated from the imports and/or local purchases of capital goods, services and construction contracts taking place during the pre-production stage, to be directly used by the Regime's beneficiaries in the execution of the projects contemplated under Investment Agreements and intended for transactions subject to VAT.

Excise tax

This applies to the sale, in Peru, at the producer and importer level, of the following items:

- a. Gasoline
- b. Liquefied oil gas
- c. Fuel and lubricants
- d. Alcoholic drinks and beer
- e. Mineral water and soft drinks
- f. Cigarettes
- g. Vehicles

In some cases, this tax is established as a percentage (Ad-valorem system, with rates amounting to 10%, 20%, 30% or 50%), and in other cases, it is established as a specific amount in Peruvian Soles per unit.

It also applies to gambling and betting activities, such as lotto, bingo, raffles, sweepstakes and horse-racing events.

It is worth pointing out that this tax is subject to VAT regulations.

Entities subject to Excise Tax:

Producers or companies economically related to such producers on sales taking place in Peruvian Territory.

Persons importing taxable goods. The importers or the companies economically related to the importers, on sales of taxable goods taking place in Peruvian territory.

Entities organizing gambling or betting activities.

It is worth mentioning that the transactions between related parties set out by the provisions of the Income Tax Law, are subject to Excise Tax.

Other taxes or obligations

Payment Methods to avoid Tax Evasion and to Formalize Peruvian Economy - Bank Services Accessibility Regime

As from year 2008, contract obligations in cash exceeding of S/ 3,500 or US\$ 1,000, as well as any refund to repay funds borrowed, must be paid using specific payment methods.

Such payment methods include: Account deposits, remittances, wire transfers, payment orders, debit and credit cards issued in our country, and “non-negotiable”, “non-transferable”, “not to the order of” checks or its equivalents.

Any payment made without using any payment method will not grant the right to deduct expenses and/or costs for income tax purposes, or to use the tax credit for VAT purposes. In addition, entities will not be entitled to offset funds or request any refund of taxes, credit balances, special tax withholdings, customs duties, etc.

Financial Transactions Tax

The Financial Transactions Tax (*Impuesto a las Transacciones Financieras* o *ITF* in Spanish) is levied on all transactions in local or foreign currency involving, among others:

- i) Any amount credited to and debited from accounts opened with entities pertaining to the Peruvian Financial System, except for transfers between accounts of the same holder and kept in the same entity of the Financial System, or between their accounts opened with different entities of the Financial System.
- ii) Payments made to an entity of the Financial System without using any account, regardless of the legal instrument used or the name given thereto.
- iii) The acquisition of certified checks, bank certificates, traveler’s checks or other instruments created or to be created.
- iv) Money remittances or transfers made through an entity of the Financial System without using company accounts or a fund transferring company or any other person or entity earning corporate income. In this case, the delivery of money transferred or sent to the beneficiary is also subject to taxation.
- v) The delivery or receipt of own or third party funds representing an organized payment system in our country or abroad, without the involvement of a Financial System entity.
- vi) Payments, within a taxable year, of more than 15% of the obligations of a person or entity earning corporate income, without using cash or any payment method.

The rate of this tax is established by applying an aliquot to the value of the taxable transaction. Thus, the aliquot amounts to 0.005%.

Financial System entities, Fund Transferring Companies and natural or legal persons which organize a payment system or which pay obligations in cash or using any payment method, are responsible for withholding, declaring and paying the ITF.

The ITF is deductible for income tax purposes and, in the case of corporate-income earners, deductions must comply with the general provisions established by the Income Tax Law.

Real Estate Tax

This tax is levied on the ownership of real estate. Therefore, the natural or legal persons owning such real estate are considered as the taxpayers of this tax. This tax is paid on an annual basis and is a municipal-type tax.

Aliquot:

Progressive cumulative scale with rates amounting to 0.2%, 0.6% and 1%, which are applicable to the property's appraised value, in accordance with current valuation rules for lands and buildings.

Exemptions:

Among others:

- Mining companies: these companies only pay the municipal taxes applicable in urban zones.
- Companies established or incorporated in industrial tax-free zones.
- Pensioners (individuals) receiving a pension of less than one (1) Tax Unit (S/ 4,150 or US\$ 1,280 approximately) are not subject to this tax provided that the value of their one and single property does not exceed fifty (50) Tax Units (S/ 207,500 or US\$ 63,847 approximately).

Property Transfer Tax

This tax, which is also a municipal-type tax, applies to the transfer of urban and rustic property made whether on a free-of-charge basis or in exchange for a valuable consideration.

The person acquiring the property is deemed as the taxpayer, and this cannot be agreed otherwise for tax purposes.

Rate:

The rate is 3% and is applied on the transfer value, which may not be less than the property's appraised value corresponding to the year in which the transfer takes place. It must be paid within the month following the date of transfer. The portion of the property value comprising the first ten (10) Tax Units (S/ 4,150 or US\$ 1,280, approximately) is exempted from this tax.

Exemptions:

The following items are exempted:

- Transfers of ships and aircraft.
- Advancement on inheritance.
- Termination of transfer agreement before full payment of price is made.
- Transfer of rights on real estate not entailing the transfer of ownership.

Vehicle Tax

This tax applies to the ownership of locally manufactured or imported cars, pick-up trucks or station wagons only for three (3) fiscal years counted since the following year from the date of the vehicle's first registration with the Vehicle Property Registry.

The taxpayer condition is attributed to any natural or legal person exercising the ownership of such vehicles as of January 1 of the year to which the tax obligation corresponds.

Rate:

The rate is 1% of the vehicle's value. In no case the amount to be paid will be less than 1.5% of the Tax Unit value in force as of January 1 of the year to which the tax corresponds (during year 2018, one tax unit amounts to S/ 4,150 or US\$ 1,280 approximately).

On a yearly basis, the Ministry of Economy and Finance approves the reference values for vehicles.

Exemptions

- Vehicles which are owned by legal entities and do not form part of their fixed assets.
- Vehicles owned by the Central Government, Regions and Municipalities; foreign governments, universities and education centers, and religious entities.

Taxes applicable to the Mining Industry

The Special Mining Tax (*Impuesto Especial a la Minería* or *IEM* in Spanish) is levied on the operating profit obtained by entities performing mining activities (except for those taxpayers with valid legal stability agreements with the Peruvian Government), from the sale of metallic mineral resources, as well as the operating profit from the self-consumption and the unjustified withdrawal of such goods.

This tax is calculated on a quarterly basis by applying, to the referred operating profit, a rate established based on the operating margin of the corresponding quarter.

On the other hand, entities engaged in mining activities are also required to pay Mining Royalties.

5. TAXES ON PERSONAL INCOME

Personal Income Tax

Natural persons domiciled in Peru are subject to income tax on their income earned from worldwide sources (Peruvian-source and foreign-source income), and non-domiciled natural persons are subject to income tax on their Peruvian-source income.

The following, among others, are considered to be domiciled in our country:

- a. Natural Peruvian persons domiciled in our country according to common laws. These persons will lose their domiciled status when they are granted the residency of another country and have emigrated from Peru, which must be evidenced as required by certain rules.
- b. Foreign natural persons who have lived or stayed in our country for more than one hundred and eighty-three (183) calendar days during any twelve (12) month period.

The domiciled status is obtained as from January 1 of the year following the year in which the referred conditions are met.

Taxable base

The tax is separately levied on income earned from capital, at a pro-rata rate of 6.5%, whereas work-derived income and foreign-source income are jointly tax applying a cumulative progressive scale with rates of 8%, 14%, 17%, 20% and 30%.

Dividends and any other form of distribution of profits are taxed with a 5% rate.

Income Classification and applicable rates

Capital income

First Category Income - Income from leases, subleases and assignment of property

This income includes the income from the lease of premises, personal property and real estate, as well as the temporary assignment of the rights on such property, as well as the free assignment of real estate. In such cases, it is presumed that the rent amounts to 6% of the value of the premises.

Second Category Income - Income from interests, royalties, dividends and other capital gains

This tax is levied, among others, on the income earned from capital interests, increases or readjustments, royalties, attribution of profits, capital gains from investment funds, trust funds of securitization entities and bank trusts, as well as the capital gains from the transfer of shares and other securities.

The tax applicable on dividends and any other form of distribution of profits are paid to SUNAT, by applying a 5% rate on the total amount distributed by a company incorporated in Peru.

The transfer of real estate is subject to a 5% effective rate on the gross income earned, provided that it is not applied to the seller's dwelling house; in such case, it would not be subject to taxation.

Other second category income includes income earned from capital, royalties on the transfer of know-how, annuities, sums received as payment for "not to do" obligations, income earned from transactions with derivative financial instruments, etc. The applicable rate is 5% on the gross income.

It is worth noting that the interest earned by natural persons on any deposits made into the National Financial System, are exempt from income tax.

Business Income

Third Category Income - Business Income

See Taxes on Business Income

Work-derived Income

Fourth Category - Self-employment income

The income from the individual practice or performance of any profession, art, science or trade is subject to income tax. The income earned by company directors is also included.

To determine the net self-employment income, 20% of the gross income must be deducted up to a twenty-four (24) Tax Units (S/ 99,600 or US\$ 30,646 approximately). However, such deduction does not apply to the income earned by company directors.

To calculate the corresponding income tax payable, this income is added to employment income.

Fifth Category Income - Employment Income

Any remuneration earned during the year for work performed under a subordinate or employment relationship is subject to taxation. In the case of domiciled employees, the first seven (7) Tax Units (S/ 29,050 or US\$ 8,938 approximately) are exempt for year 2018.

It is worth pointing out that when both self-employment income and employment income are earned simultaneously, the deduction of (7) tax units is applicable only once.

In addition, the amounts incurred for the following expenses may be deducted, up to 3 tax units:

- Leasing and/or subleasing of real estate which is located in our country and is not intended to be exclusively used for activities generating business income. Only 30% of the rent agreed upon may be deducted as an expense.
- Mortgage interests and credits for first-time home purchase, granted by a financial system entity.
- Thirty per cent (30%) of the professional fees paid for medical or dental services rendered in our country, provided that such services qualify as self-employment income.
- Services rendered in our country whose consideration qualify as self-employment income, except the income earned by fulfilling company director, receiver, mandate or similar duties.
- Contributions to the Peruvian Social Security System (EsSalud), made for domestic workers.

The following progressive and cumulative income tax scale applies to the sum of net work-derived income and net foreign-source income:

Sum of Net Work-derived Income and Foreign-Source Income	Rate
Up to 5 tax units	8%
Between 5 and 20 tax units	14%
Between 20 and 35 tax units	17%
Between 35 and 45 tax units	20%
Over 45 tax units	30%

Finally, from the resulting income tax payable for the year, it may be possible to deduct certain income tax credits (such as self-employment income tax prepayments, employment income tax prepayments, income taxes paid abroad on foreign-source income, etc.)

It is worth pointing out that non-domiciled individuals and jointly-inherited estates are subject to taxation on their Peruvian-source income, at the following rates:

TYPE OF INCOME	RATE
<u>CAPITAL INCOME</u>	
Dividends and any other form of distribution of profits, except those set out in item f) of Article 10 of the Law.	5%
Dividends and any other form of distribution of profits.	5%
Capital gains* from the disposal of real estate.	5%
Interests, when paid or credited by a business-income earner domiciled in our country. The rate will apply provided that there is no relationship between the parties and the interests are not accrued from transactions made from or	4.99%

through tax havens; in which case, the 30% rate will apply.	
Capital gains* from the disposal of securities in Peruvian territory. The disposal is deemed to have taken place in Peruvian territory when the transfer involves shares registered with the Public Registry of the Stock Exchange, and the transaction is carried out using a centralized negotiation mechanism (stock exchange).	30%
Capital gains * earned from the disposal of securities outside Peruvian territory (securities not registered with the Public Registry of the Peruvian Stock Exchange or which, even registered, are traded outside a Peruvian centralized negotiation mechanism of Peru).	30%
Income from royalties.	30%
Other capital income.	5%
<u>WORK-DERIVED INCOME</u>	
Work-derived Income	30%
Income earned by artists and performers for live shows taking place in Peruvian territory.	15%
Income other than as specified above.	30%

* In the case of the transfer of shares or real estate, to be able to deduct the acquisition cost of such assets from the selling price, prior to making any payments or advances, a Certificate of Recovery of Invested Capital must be requested to SUNAT.

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