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Recent Developments in International Taxation

Venezuela

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The Venezuelan Tax System is composed of three levels of taxation: federal, state and local. Each level features its own tax laws and set of taxes, although usually without overlapping tax events or bases. In order to harmonize this system, the Organic Tax Code contains general norms applicable at all levels, including tax principles, administrative and judicial procedures, and sanctions.

Notable among federal taxes are the Valued Added Tax (VAT) and the Income Tax, which taxes worldwide income and features specific CFC, prices transfer and presumptive dividend and income rules. Excise and other specialized taxes, such as telecom, oil-and-gas, banking and insurance taxes, are also found among federal taxes. Taxable gross income is levied with a series of “para-fiscal contributions,” instituted relatively recently at the federal level, meant to benefit individual governmental policies, such as combatting drug trafficking or promoting sports in urban youths. Local tax authorities also levy gross income with a Business Activities Tax, whose rate varies by municipality.

In recent years the Venezuelan economy has suffered considerable contraction combined with rising inflation and currency devaluation. During the past five years of continuous recession, from January 2013 to December 2019, Gross Domestic Product has receded by 46.2 per cent, while Oil Production and International Reserves have fallen 50.7 per cent and 70.9 per cent, respectively. Inflation, for its part, has exceeded two and half billion per cent during this time. This has been paired with an increasingly complicated devaluation by way of a foreign exchange regime which has at times featured up to three official exchange rates, in addition to the generally-employed “parallel rate.” As per official rates, on average, the value of the Venezuelan Bolívar has fallen by nearly one and half billion per cent; while the “parallel rate” has experienced a 429 million per cent devaluation.¹

¹ These statistics have been drawn from published figures by the Central Bank of Venezuela, the Organization of Oil Exporting Countries (OPEC) and by the parallel rate compiler DolarToday. These statistics were compiled by PwC Venezuela.

As a consequence of this economic hardship corporations in Venezuela face significant capital distortions:

- The aforementioned inflation and devaluation levels have eroded previously acceptable capital levels.
- The mere existence of foreign-currency liabilities, including intra-group accounts payable, common within MNEs may cause capital impairment in otherwise-healthy corporations.
- Corporations are then forced to choose between unwanted/unnecessary capital injections or nominal capital reduction.
- Among other considerations, capital impairment precludes affected corporations from participating in government contracting procedures.
- These capital distortions have naturally impeded dividend distribution in most corporations, which, until recently, was forcibly channeled through official foreign-exchange systems.
- It should be noted, that our Income Tax Law establishes thin capitalization rules that often come into play under these circumstances.
- Additionally, in light of the capital distortion experienced by many MNEs in Venezuela, the Venezuelan Tax Authority established the requirement to solicit authorization for the export of capital goods.

These capital distortions must be considered in the context of diminishing gross sales, as purchasing-power has dwindled, while labor costs have remained relatively steady and price controls, in place since 2014, have taken away much decision-making power from administrators and hindered inventory rotation.

This past year the effects of the worsening economic climates reached government revenues and resulted in an aggressive tax reform, regarding Value Added Tax (VAT), Income Tax, Financial Transaction Tax (FTT) and foreign-currency taxation.

Between August and September 2018, Venezuela Value Added Tax (VAT) was fundamentally reformed:

- Where VAT advances were traditionally calculated weekly based on estimates of monthly sales, VAT law reforms call for daily advances based on estimates of weekly sales.
- Fiscal periods for VAT were also reduced from monthly to weekly periods for “qualified taxpayers.” Due to lack of reform in this regard, most taxpayers in Venezuela are considered “qualified taxpayers.”
- VAT retentions by merchants are now also due weekly.
- VAT rates were raised from 12 per cent to 16 per cent.

- Prior exemptions for Oil products were eliminated.
- The minimum threshold for Luxury Goods Tax—additional to customary VAT—was generally lowered, and now exclusively expressed in United States of America Dollars.

VAT Reform was accompanied by similar reform regarding Income Tax advances, which must now be entered on a weekly basis, as opposed to the monthly periodicity in force prior to the reform. Like the reforms in VAT advances, the new period for Income Tax advances is only applicable for “qualified taxpayers;” however these currently constitute the majority of taxpayers in Venezuela. Other relatively recent reforms in Income Tax include a prohibition to adjust non-monetary accounts for inflation. Initially applicable only to entities in the Banking, Insurance and Capital Markets sectors, this proscription has been extended to all “qualified taxpayers.”

September 2018 additionally featured a rate-increase in Financial Transaction Tax (FTT) from 0.75 per cent to one per cent.

Lastly, regarding transactions in foreign-currency:

- Decree 35, issued on December 28, 2018, established the obligation to pay any federal taxes applicable to dealings in foreign currency or cryptocurrency in those currencies.
- It should be noted that this Decree refers exclusively to federal taxes, thus state and local taxes must continue to be paid in local currency. The wording of the provision does not appear to exclude “para-fiscal contributions” or payment for federal utilities.
- Municipal Tax Authorities have naturally attempted to apply this decree in collecting municipal taxes in foreign currencies. This has prompted myriad litigation, much of which is still pending final decision.
- The option to pay tax obligations in foreign currencies is authorized under the Organic Tax Code; however this Decree establishes an obligation to do so.
- This Decree applies exclusively to activities authorized by exchange laws to be undertaken in foreign currencies or cryptocurrency.
- The above provision raises the possibility of its restriction to the tourism and export industries—the only such industries expressly mentioned in the exchange laws in force.
- Regarding taxation in cryptocurrency, this provision must be understood in the context of crypto and block chain promotion in Venezuela, including the launching of a national cryptocurrency, the Petro.
- Any dealings in the Caracas Stock Exchange, as well as export operations by state-owned entities, are expressly exempt from this Decree.
- Tax rebates for excess payment under this decree are payable only bolivars.

- The above notwithstanding, the application of this Decree is contingent upon the issue of specific rules by the Tax Authority and by the Banking Superintendence regarding procedures for declaring and paying in foreign currencies and in crypto currencies.
- These rules have yet to be published as of the writing of this Report.

Although Venezuela currently has 31 Tax Treaties in place, BEPS has not influenced recent legislative and fiscal reforms. Multinational entities and those financed by foreign capital have, nonetheless, internally implemented FACTA and Country-by-Country (CbC) norms.

Similarly, regardless of the presence of burgeoning e-commerce and digital services industries in Venezuela, specific rules for taxing said businesses have yet to be enacted.