

**International Bar Association Annual Conference 2022: Recent Developments in International  
Taxation**

**Honduras**

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### Honduran tax rates summary updated to 2022

Resident or domiciled corporation	25%
Resident or domiciled individuals' income base exempt	HNL 181,274.56 (US\$7,369.04)
Resident or domiciled capital gains tax	10%
Non-resident or non-domiciled capital gains tax	4% of the total operation value
General sales tax	15%
Sales tax for beer, hard liquor, compound liquor, and other alcoholic beverages, cigarettes and other tobacco elaborated products	18%
Sales tax for national or international business class, First-class or other of similar standards airline ticket sales	18%
Population security rate	HNL 2.00 (US\$0.09) per HNL 1000.00 or fraction
Real estate tradition tax	1.5%
Dividends tax	10%

## **Honduran tax legislation 2022 updates**

*Year 2022*

### TAX RETURN APPLICATION

On 17 January 2022, Decree 142-2021 was published establishing that any request for reimbursement or refund of any type of tax, whether it has been declared to the tax administration and that has been unduly paid for any reason by companies covered by special regimes in the agricultural, re-exporting and aquaculture sector, in local purchases, as of January 2012, will be refunded. This refund shall be made through a credit note or electronic transfer without the need to prove the resolution of exemption from the payment of said taxes and fiscal solvency issued by the Tax Authority (Servicio de Administración de Rentas or SAR). Requests for tax refunds submitted prior to the validity of the mentioned decree may also apply the benefits indicated in the present document.

### ELECTRICAL INDUSTRY MARKET PROMOTION AND STRENGTHENING LAW

Decree 123-2021 published on 17 January 2022 contains the new Electrical Industry Market Promotion and Strengthening Law, which exempts national electricity market agents from the payment of sales tax (impuesto sobre ventas or ISV) and import tariff rights in fossil fuel-derivatives of oil imports.

### COMPANIES COVERED BY SPECIAL REGIMES IN THE AGRICULTURAL SECTOR, AGRO-EXPORTER AND AQUACULTURE FARMING TAX REIMBURSEMENT APPLICATIONS

Decree 142-2021 published on 17 January 2022 reforms Article 263 of Decree No107-2021, indicating that for any request for reimbursement for the return of any type of tax, whether it has been declared to the tax administration and that has been unduly paid for any reason by companies covered by special regimes in the agricultural, agro-export and aquaculture sector, in local purchases, as of 1 January 2012, the value of the taxes paid will be refunded by means of a fiscal credit through a credit note or electronic transfer without the need to prove a resolution of exemption from the payment of said taxes and tax solvency issued by SAR.

#### TAX ADMINISTRATION EX OFFICIO PRESCRIPTION

Decree 126-2021 published on 3 February 2022 established that the Honduran Tax Authority ex officio must prescribe formal or material obligations generated by merchandise declarations that cover different customs regimes, pending the completion of their cycle in the customs computer system for the year 2017 and previous years.

#### ZOLI TAX BENEFITS IN MERGED COMPANIES

The aforementioned Decree 126-2021 indicated that, in cases in which companies merged by absorption that have or do not have approval for the economic concentration operation beyond 98 per cent of ownership of the shares or partnership interests in the companies participating in the merger process through the resolution of the Defence and Promotion of Competition Commission, and where the absorbed companies are covered by special regimes different from the regime of the absorbing company, the absorbed or associated companies are able to enjoy and avail themselves of the benefits of the Free Zones Law (Zona Libre or ZOLI).

In cases of companies merged by absorption that have customs cycles of any regime, pending conclusion in the computer system of the Honduras Customs Administration, these will be concluded by the absorbing company once the resolution of the change of regime of the companies is issued and absorbed without the need to stop the operations carried out by the absorbed companies in the new regime.

#### TRANSFER PRICES OF LEGAL AND NATURAL PERSONS DOMICILED IN HONDURAS

Decree 117-2021 was published on 14 February 2022. This decree contains an interpretation of Article 113 of the Honduran Tributary Code that refers to a legal or natural person's tax obligations with related parties.

The decree indicates that the article does not include companies with special regimes that enjoy tax benefits within the operations that determine tax obligations related to transfer pricing because the intention of the legislator is orientated such that transfer pricing obligations apply only to natural or legal persons domiciled or resident in Honduras that are related, linked or associated with companies covered by special regimes and not them individually.

*Year 2020*

#### NEW FREE ZONES LAW BYLAWS

Agreement 41-2020 published on 10 May 2020 contains the new Free Zones Law Bylaws, which explain the procedure for companies to include in the beneficial tax regime.

#### RENEWABLE RESOURCES ELECTRIC POWER GENERATION PROMOTION LAW BENEFICIARIES' REIMBURSEMENT OR REFUND OF TAXES

Decree 19-2020 published on 4 June 2020, indicates the interpretation taxpayers, as well as the Honduran Tax Authority, must follow for Article 27 of the Renewable Resources Electric Power Generation Promotion Law. This decree contains that it must be understood that for taxpayers that have requested tax reimbursement for taxes paid in the construction period before having the corresponding tax exemption, or where the corresponding exemption request is in process, the reimbursement must be granted by the authority without further requirements.

#### **Honduran medium-sized and small business tax benefits**

*Year 2022*

#### ECONOMIC RECOVERY AND REACTIVATION OF MICRO AND SMALL BUSINESSES LAW BYLAW

Agreement 362-2022 published on 8 July 2022 contains the new Economic Recovery and Reactivation of Micro and Small Businesses Law Bylaw, which establishes the procedures and obligations that micro and small businesses must complete to enjoy the benefits of the law.

*Year 2020*

#### TAX INCENTIVES FOR MICRO AND SMALL ENTERPRISES

Decree No 163-2020 published on 21 December 2020 reforms Article 3 of the Micro and Small Enterprises Support Law. This reform extended the term validity of tributary incentives included in the law to 36 months, to be counted from the publication date of the decree.

Micro and small businesses that will be constituted or that are constituted, or those that have been operating informally and legalised their situation can enjoy the following incentives for a period of five years:

1. income tax payment;
2. net asset tax payment;
3. supportive contribution tax payment;
4. advance payment of one per cent and 12.5 per cent for net asset tax;
5. personal tax; and,
6. industry, commerce and services tax.

#### **Social contribution of the economy's social sector tax**

On 26 February 2019, Decree No 131-2018 was published establishing the social contribution of the economy's social sector, which must be paid annually within the three months following the end of the previous fiscal period.

The social contribution is 15 per cent of the net surpluses or net profits generated in the previous fiscal period, understood as surplus net or net profit, that comes from the difference between total income and:

1. total expenses directly related in the generation of said income; and
2. funds for:
  - (i) capitalisation; and
  - (ii) reserve for loss or reserve for legal cases.

## **Honduran customs legislation update**

*Year 2021*

### SEA FREIGHT COST VALUE MODIFICATION

Decree 96-2021 published on 18 October 2021 indicated that the cost of sea freight, for the purposes of calculating the customs value of merchandise, was going to be determined based on 25 per cent of the value consigned in the bill of lading until 31 December 2021.

### TAX AND CUSTOMS AMNESTY

Article 1 of Decree 110-2021 published on 29 December 2021 indicated the Tax and Customs Amnesty benefit from the decree's published date until 30 April 2022. This amnesty released surcharges and interest on tax and customs debt to taxpayers that had pending tax obligations from the total or partial payment of fines until 31 December 2021.

*Year 2020*

### TAX AND CUSTOM BENEFIT AMNESTY

On 24 February 2020, Decree 168-2019 entered into force, which contains the Tax and Customs Amnesty Benefit. The objective of this benefit is to exonerate total or partial taxes and/or the customs debt payment of fines, surcharges and interest. The amnesty was in force for a period of 90 days.

This benefit consisted in the following:

1. formal and pending material obligations presentation until 30 November 2020;
2. payment, without pecuniary sanction, of taxes pending payment that derive from self-assessments filed up to 30 November 2019;
3. the ability to make corrections to statements submitted up to 30 November 2019;
4. payment, without pecuniary sanction, of taxes determined by the tax or customs administration as a product of the exercise of their powers notified up to 30 November 2019; and

5. payment, without pecuniary sanction, of the tax debt generated by tax credits used that were produced as an effect of the final seal granted by the regularisation tributary benefit.

This decree also contains the Honduran Social Security Institute (IHSS) Amnesty; Telecoms Amnesty; Vehicular Amnesty; Municipal Tax Amnesty; Honduran Telecommunication Corporation (HONDUTEL) Amnesty; Electric Power National Corporation (ENEE) Amnesty; and Compliance Report on Environmental Measures (ICMA) Amnesty.

## **Transfer pricing**

### *Definition*

The Transfer Pricing Law was created with the purpose of regulating commercial and financial operations that are carried out between related parties, valued in accordance with the principle of free or full competition (arm's length).

Honduras has transfer pricing rules applicable to transactions between Honduran entities and non-resident, foreign-related entities, as well as related Honduran resident entities.

### *Related parties*

The law establishes in what cases the involved parties would be considered related as follows:

1. an individual or corporation directly or indirectly participating in the direction, control or capital of another, duly documented or legalised;
2. corporations that individually constitute a decision unit, where one company is a partner of another, and have direct or indirect participation greater than 50 per cent and are related;
3. direct and indirect commercial and financial operations are carried out between taxpayer's resident or domiciled in the national territory and people or a corporation located in another jurisdiction qualified as a tax haven;
4. a resident corporation in the country that has permanent establishments abroad;
5. whenever a corporation is related to another corporation that has the same directors or administrators;
6. when an agent, distributor or concessionaire has exclusivity for the sale of goods, services or rights by another, if the contractual relationship between them has preferential rights;



7. when contractual clauses of a preferential nature are agreed in relation to those granted to third parties in similar circumstances;
8. when there is financial or economic dependence derived from joint action agreements and trust deposits, among the main ones; and,
9. the counterparty is constituted in a country or territory classified as a tax haven.

Given the above, individuals or corporations that carry out commercial or financial operations with related parties inside or outside the country must determine the number of taxable profits according to the said principle.

The transfer pricing law states that Honduras must follow the general market practices and customs established in the Organisation for Economic Co-operation and Development (OECD) guidelines for transfer pricing, including the valuation methodology, reporting requirements and criteria on company groups.

*Applicable method in goods export operations with an international quotation*

Decree No 62-2019 was published on 19 October 2019, interpreting Article 10 of the Transfer Pricing Law, establishing that when it comes to export operations that have as their object goods with a known price in transparent markets, stock exchanges or similar, the exporter, subject to income tax, may choose to apply the comparable uncontrolled price method between independent parties, considering the quoted value of the merchandise in the transparent market, stock exchanges or similar, to the start date of shipment.

**Bylaw to the billing system, other tax documents and the tax register for printing press reform**

Agreement 817-2018 of 4 December 2018 makes it mandatory, from 21 March 2019, that invoices, shopping tickets and pre-valued invoices contain the exonerated acquirer data, discounts and sales granted.

If previous documents do not have the information required, they will not be considered as valid documents to back up the credit from sales tax, income tax, the social contribution of the economy's social sector tax and any other tax that taxes net profits.

## **Conclusion**

It is undeniable that Honduras is still undergoing revolutionary times tax wise, which is true for all participants.

It seems possible that special taxes and tax rises may remain and continue for the next few years as part of a government capitalisation strategy. However, we should not lose focus on making Honduras attractive for businesses.

In this scenario, I shall share with you that my country is open to tax benefit free trade zones, tourism, construction, education, renewable energy projects, micro and small enterprises, call centre enterprises, non-governmental organisations (NGOs), a temporary import regime and the social contribution of the economy's social sector. Next to this, Honduras offers non-double taxation over dividends to holding companies.

From my point of view, these mixed challenges and opportunities will take time to settle down to a proper balance, show their integral improvements and conclude in our country's expected development, should corruption and organised crime not interrupt our legal and political stability.

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