International Bar Association Annual Conference 2022

Recent Developments in International Taxation

Venezuela

Juan Korody

Palacios, Torres y Korody (Ptck Legal)

jkorody@ptck.legal

Introduction

The past two years have seen the Venezuelan economy diverge from the general downward path it has followed since 2013, when the yearly increase in gross domestic product was last reported. The economic growth experienced in 2021 and up to the time of writing this article has been mostly limited to private sector activities, where loosened foreign exchange restrictions and customs duties have led to stabilised inflation levels – that is, compared to prior years – and an increase in imports and domestic consumption, in considerable contrast to the widespread shortages experienced in recent years.

Public sector activities, as well as associated private sector aspects and traditional sectors in general (ie, energy and natural resources), on the other hand, have continued their descent from 2013 levels, severely hampering non-tax revenue in a country traditionally over-dependent thereon. Although such growth pales in comparison with the economic contraction accumulated during the years following 2013, the outsized role played therein by the traditionally muted private sector allows for reasonable predictions of further growth if traditional sectors are able recover in the short or medium term.

The aforementioned growth in private sector economic activity, along with the continued decrease in oil and gas revenue, has essentially set the tone for recent tax reforms, as Venezuelan fiscal policy has been forced to abandon its traditional over-dependence on non-tax revenue and turn to taxation as a more relevant (relative to prior years, that is) source of state revenue. To this end, recent tax reforms have notably included private sector tax burden increases directed at foreign currency sales and earnings that have, respectively, driven and resulted from increases in domestic sales and consumption, as well as novel, specialised tax regimes directed at incentivising foreign investment in designated areas.

Tax on foreign currency purchases

Most notable among recent tax developments are the February 2022 Reforms to the Financial Transaction Tax ('IGTF') Law, originally enacted in late 2015 for tax payments and/or other specific performances made by or on behalf of previously designated qualified taxpayers at a rate of up to two per cent. The February 2022 Reforms to the IGTF Law did not alter taxability over such events nor the tax burden resulting therefrom, but rather incorporated a three per cent levy over:

- all foreign currency or cryptocurrency payments made through the national banking system, without the intervention of any foreign banking correspondents; and

- all foreign currency or cryptocurrency payments made to previously designated qualified taxpayers, outside the Venezuelan banking system.

These newly incorporated taxable events are focused exclusively on the form of payment for a given transaction rather than on the tax profiles of the payer thereof, unlike those derived from prior iterations of the IGTF Law, which refer solely to payments by or on behalf of previously designated qualified taxpayers, regardless of the payment currency.

The February 2022 Reforms deviated or expanded the scope of the IGTF to target non-bolívar transactions as a means to reach the private sector activities that saw the most growth in the past year: those payable in foreign currency.

The 2022 Reforms to the IGTF Law may be assimilated into the 2020 Reforms to the Valued Added Tax Law, which similarly sought to incorporate a special levy on foreign currency transactions. As mentioned above, loosened foreign exchange restrictions during times of elevated inflation led to an increase in the use of foreign currency for various transactions, which has permitted an increase in imports and consumption, even amid rising prices.

As the IGTF is primarily collected through withholdings, any tax base expansion considerably increases the cost of compliance by any persons called to act as withholding agents, namely, previously designated qualified taxpayers.

Increases in special contributions for the sciences

Similar to the above, the 2022 Reforms to the Law on Science, Technology and Innovation resulted in novel taxation targeted at foreign currency savings.

The aforementioned law contains a Special Contribution for the Sciences that previously levied a one per cent charge on yearly revenue derived from primary activities to be entered into the National Fund for the Sciences. The tax base for this contribution saw a considerable expansion in the inclusion of foreign exchange gains within the legal definition thereof, as a clear response to the proliferation in sales and purchases in foreign currency during the past year and a half, as seen above.

Further to this, the applicable period for the Special Contribution for the Sciences was reduced from yearly to monthly, considerably increasing the cost of compliance and generally creating much uncertainty as to its entry into force for most taxpayers.

Increases and dollarisation of stamp duties

In December 2021, the Law on Registries and Notaries was reformed to modify the accounting unit for stamp taxes from tax units to petros.

This change, though seemingly superficial, implies that stamp tax amounts shall no longer be subject to inflation and/or devaluation, which traditionally eroded their value to insignificant amounts. Unlike the tax unit, whose value can only be increased by law, which is only done periodically, the value of a petro unit varies daily and is not subject to any formalities that may impede seamless increases in value by the Venezuelan Central Bank.

New tax incentives for international investment

Finally, the Organic Law on Special Economic Zones was published in July 2022, creating a specialised legal regime in certain economic and geographical sectors as a means to incentivise foreign investment.

Although the law does not provide specific tax incentives, the Law on Special Economic Zones provides that private persons or entities may enter into 'economic activity agreements' with the newly created Superintendence for Special Economic Zones over economic incentives that may benefit the given venture.

Such economic activity agreements may include, among other tax incentives, specialised drawback regimes, reimbursement for certain amounts paid as taxes and simplified inward processing approvals.

Tax treaties

Venezuela maintains 31 tax treaties that are in force. In recent years, there has been no development of new treaties, nor renegotiation or denunciation of existing ones.