

Overview

Venezuela is a federal state. From a financial point of view, this translates into the existence of multiple taxing powers. Thus, the Constitution recognizes each of the political-territorial entities that make up the Venezuelan State, that is to say, the Republic, the States and the Municipalities, have the power to create and collect taxes.

The Republic has the broadest taxing power, since it is responsible for the creation, organization, collection, administration and control of taxes on income, inheritance, donations and other related matters, capital, production, added value, hydrocarbons and mines, import and export of goods and services, taxes on liquors, alcohols and other alcoholic species, cigarettes and other tobacco products. It also has a residual taxing power in regards to all other taxes, rates and incomes not expressly attributed to States or Municipalities.

The States have mainly the following taxing powers: the creation, organization, collection, control and administration of stamp taxes; taxes for the use of goods and services; the regime and use of non-metallic minerals, not reserved to the Republic, and the ones levied on salt flats and pearl oysters.

As for the Municipalities, the taxes whose collection they are in charge of are the ones established on: economic activities, urban real estate, vehicles, public shows, commercial advertising; the use of their goods and services, on lawful bets, and the special contribution for the surplus value of the properties.

In addition, different laws have created other levies which, although called "contributions," have an underlying tax nature. These are commonly referred to as "parafiscal contributions," some of which are only applicable to specific industries (banking, telecommunications, hydrocarbons exploitation etc.).

It is also worth noting that Venezuela has a network of thirty-one (31) double taxation treaties in force with different countries, which includes the ones signed with the United States, China and Russia.

In this chapter

- Legal system
- Taxation authorities
- Business vehicles
- Financing a corporate subsidiary
- Income tax
- Cross-border payments
- Payroll taxes
- Other taxes
- Other parafiscal contributions

Legal system

Venezuela has a civil law legal system applicable throughout its whole territory.

Taxation authorities

The national tax system in Venezuela, that is to say, the taxes that are attributed to the Republic, are administered by the National Integrated Customs and Tax Administration Service (SENIAT, by its acronym in Spanish).

Each one of the States and Municipalities is responsible for the collection of their taxes, through the entity designated for such purpose.

Similarly, parafiscal contributions are collected by a specific authority determined by its founding law.

Business vehicles

A non-resident may either establish a Venezuelan business vehicle to carry on business in Venezuela or operate directly through a foreign entity with or without a branch in Venezuela.

In both cases, there is the possibility of creating a permanent establishment in the country. The Income Tax Law (the LISR, for its acronym in Spanish) possesses its own definition of permanent establishment.

According to the Commercial Code, the Venezuelan business vehicles are those listed below:

- i. The collective name partnership, in which the social obligations are guaranteed by the limited and joint liability of all the partners.
- ii. The limited partnership, in which the social obligations are guaranteed by the limited and joint liability of one or more partners, called joint and several partners, and by the liability limited to a certain amount of one or more partners, called limited partners. The capital of the limited partners may be divided into shares.
- iii. The joint-stock corporation, in which the obligations of the company are guaranteed by a certain capital and in which the partners are only obliged by the amount of their shares.
- iv. The limited liability corporation, in which the social obligations are guaranteed by a determined capital, divided into participation quotas, which may not be represented in any case by shares or negotiable securities.

There is also the possibility of carrying out economic activities through an accidental or joint account company or a consortium which, unlike those listed above, does not have a legal personality.

Partnerships and consortiums are treated as semi-fiscally transparent entities for Venezuelan income tax purposes, which means that they are not subject to payment of tax on their net income, since the tax is levied on the partners. However, they are subject to the determination of such net income, as well as to the obligations of control and supervision established by the law, and are jointly and severally liable for the payment of the tax that, on account of their shares or participation quotas, must be paid by its partners.

Using a wording similar to that contained in double taxation treaties, the LISR provides that a taxpayer carries out operations Venezuela through a permanent establishment when, directly or through an agent, employee or representative, it owns in the Venezuelan territory any premises or fixed place of business, or any center of activity where it carries out, totally or partially, its activity or when it owns in Venezuela a management headquarters, branch, offices, factories, workshops, facilities, warehouses, stores or other establishments; construction, installation or assembly works, when their duration exceeds six (6) months, agencies or representatives authorized to contract in the name or on behalf of the taxpayer, or when it carries out in the country activities relating to mines or hydrocarbons, agricultural, forestry or livestock operations or any other place of extraction of natural resources or professional or artistic activities or has other workplaces where it carries out all or part of their activity, either by itself or through its employees, attorneys-in-fact, representatives or other personnel hired for that purpose.

An agent who acts independently is excluded from this definition, unless the agent has the power to conclude

contracts on behalf of the principal. Facilities operated on a permanent basis by a business owner or professional, centers for the purchase of goods or services and real estate operated under lease or by any other means are also considered permanent establishments.

Financing a corporate subsidiary

Equity financing

In Venezuela, the shareholders can make contributions that are destined to increase the amount of the share capital and that have as a counterpart the issuance of new shares or the increase of the nominal value of those already issued. From a tax perspective, there is no difference between choosing one way or the other.

It is also possible for shareholders to make other contributions that do not increase the amount of share capital but form part of the company's assets. This is the case, for example, when a contribution is made for future capitalizations, when a legal or statutory reserve is increased, or when shares are subscribed with a premium (the entire amount paid for the premium increases the equity, but not the capital).

However, these notions may not coincide with equity for tax purposes. For those taxpayers that may make use of the tax inflation adjustment system (i.e., non-special taxpayers), the tax net worth is the difference between the total of the sum of the restated non-monetary assets and the monetary assets, less the total of the restated non-monetary liabilities and the monetary. For those taxpayers who cannot apply the tax adjustment for inflation, the net tax assets is the difference between the assets and liabilities, with the inclusions and exclusions ordered by the LISR and its regulations.

Thus, according to Venezuelan tax legislation, there must be excluded from the net worth for tax purposes: (i) revaluations of fixed assets and their corresponding depreciations not authorized by law, (ii) equity participation in the profits or losses of permanent investments in subsidiaries, affiliates and other related companies, (iii) capitalizations in non-monetary asset accounts due to currency devaluations, (iv) provisions, accounts and bills receivable from shareholders, directors, affiliates and other related and/or affiliated companies, (v) assets, debts and obligations applied in their entirety to the production of profits or alleged enrichment, exempt, exempt or not subject to income tax, as well as (vi) provisions such as obsolescence of inventory and uncollectible accounts and (vii) intangible assets not paid or assumed by the taxpayer, or other revaluations of assets not authorized by law.

Debt financing

Withholding tax implications

Venezuelan partnerships or corporations are permitted to borrow funds from financial institutions incorporated abroad and not domiciled in the country at a more favorable rate (4.95%), from a withholding tax perspective, than would be obtained from other types of legal entities (15%-34%).

Thin capitalization

The LISR has thin capitalization rules for the purpose of regulating financing transactions between related parties. By virtue of these rules, interest paid, directly or indirectly, to related parties is deductible only to the extent that the amount of the debts with related parties, added to the amount of the debts contracted with independent parties, does not exceed the net patrimony of the taxpayer.

Stamp tax

Venezuela imposes a stamp tax on the registration and capital increase of corporations equivalent to one percent (1%) of the entity's capital. It is necessary to take into account that the regulatory entity in charge of Commercial Registries has established minimum amounts for the incorporation of business vehicles based on the economic activity they will perform. The minimum amount for incorporation, at the current exchange rate, is equivalent to US\$500.

Income tax

Venezuela imposes corporate and personal income tax on its residents in respect of income and capital gains earned anywhere in the world.

Income tax is a national tax collected by SENIAT. Venezuelan income tax is a mixed system. It is fundamentally a global tax, which means that –in principle- it takes into account the generality of income without splitting it into different categories. However, it is also partially a scheduler tax that divides some revenues into categories according to their source in order to tax them separately.

The LISR embraces the notion of the world income system. Consequently, those who are considered tax residents in Venezuela are subject to the income tax for both, their territorial and extraterritorial (foreign) income. This regime is also applicable to permanent establishments in Venezuela, but only with respect to the income that is directly attributable to it.

Finally, territorial source income that has its source in Venezuela, will also be subject to taxation in Venezuela, even if obtained by a non-resident corporation that does not possess a permanent establishment in Venezuela.

Income tax rate

The LISR, has three rates that could be applicable to the net income obtained by a company, depending on the economic activity that originates it, as shown below:

Rate	Applicable to
<p>“Rate N° 2”: Progressive rate from 15% to 34% depending on the amount of income.</p>	Any source of income other than the ones set out below.
<p>“Rate N° 3-A”: Proportional rate of 60%</p>	Royalties and other similar interests arising from the operation of mines and from the income resulting from the assignment of such royalties and interests
<p>“Rate N° 3-B”: Proportional rate of 50%</p>	The exploitation of hydrocarbons and associated activities, such as refining and transport, or the purchase or acquisition of hydrocarbons and derivatives for exploitation.

Capital gains

Capital gains are not subject to a specific tax rate. They are treated as gross income of territorial or extraterritorial (foreign) nature subject to the progressive rate of the corporate income tax (Rate N° 2).

Taxation on dividends

The dividends paid by local companies to their shareholders are subject to a proportional tax of thirty-four percent (34%), under an imputation system, subject to full withholding at the time of payment.

When the dividends come from companies engaged in the exploitation of hydrocarbons and associated activities, they shall be taxed at the rate of fifty percent (50%), subject to total withholding at source.

When the dividends come from companies that receive net income derived from the operation of mines and from the income resulting from the assignment of such royalties and interests, they shall be taxed at the rate of sixty percent (60%), subject to total withholding at source.

Dividends received from companies incorporated and domiciled abroad or companies incorporated abroad and domiciled in Venezuela are excluded from the imputation system explained above and instead are subject to a proportional tax of thirty-four percent 34%. The LISR allows for the tax paid for this concept outside Venezuelan territory to be attributed to said result.

Taxation on presumptive dividends

The corporations or partnerships constituted abroad and domiciled in Venezuela or constituted and domiciled abroad that have a permanent establishment in the country are obliged to pay, in their capacity as liable parties, on behalf of their partners, shareholders or community members, a tax of thirty-four percent (34%) on their net income, not exempt or exonerated, that exceeds the net income taxed in the fiscal year (imputation system).

This presumptive dividend is not applicable in cases where the permanent establishment proves, to the satisfaction of

the SENIAT, that it made a full reinvestment in the country of the difference between the taxable net income and the financial net income. This reinvestment must be maintained in the country for a minimum period of five (5) years.

Computation of taxable income

Taxable base

The LISR establishes that annual, net and available income obtained in cash or in kind shall be subject to taxation in Venezuela.

Net income is defined as the increase in patrimony resulting after subtracting from gross income, costs and deductions allowed by the law.

The income will be considered available as a general rule from the moment the operations that produce it are carried out. Exceptionally, some types of income are considered available only when they are paid or when they are legally enforceable.

Deductions

As a general rule, the taxpayer is allowed to make the deductions from the gross income, which, unless otherwise stated, must correspond to (i) normal and necessary expenses (ii) not attributable to the cost (iii) incurred in the country and (iv) with the purpose of producing the income.

There are some limitations established by the LISR Regulations to the deduction of payments made by a permanent establishment to the head office of the company or any of its other branches, affiliates, subsidiaries, parent company or related companies, e.g. for the payment of royalties or technical assistance.

Income tax reporting

Venezuelan resident corporations and non-resident corporations that carry on business in Venezuela through a permanent establishment are required to file an annual corporate income tax return, regardless of the amount of their income or loss.

Final income tax returns must be filed within three (3) months after the end of the taxpayer's taxation year, in order to avoid late filing penalties. However, there are exceptional cases in which it is necessary to file, in advance, the definitive income tax return. One such case is that of corporations or partnerships that are liquidated or dissolved in advance.

Additionally, depending on the income obtained in the previous fiscal year, corporations and partnerships may be required to determine and pay the advance tax due for the current taxation year on the basis of eighty percent (80%) of the net overall income for the immediately preceding year.

Finally, the transfer pricing regime of the LISR requires that transactions between *related parties* carried out in the tax year be reported to the tax authorities by means of an information return, which must be submitted in the month of June following the closing date of the tax year.

Cross-border payments

Transfer pricing

The LISR allows the SENIAT to impose a transfer pricing adjustment in respect of a transaction that is not made on arm's length terms or conditions.

Therefore, taxpayers who enter into transactions with related parties are required, for tax purposes, to determine their income, costs and deductions by considering for those transactions the prices and amounts of consideration that they would have used with or between independent parties in comparable transactions (arm's length principle).

Withholding tax

The Partial Regulation of the LISR establishes a withholding tax on different types of income. As an example, below we will refer to the cases of (i) interest, (ii) royalties, and (iii) services rendered:

Type of income	Percentage withholding on the amount paid or credited to the account			
	Natural person		Legal person	
i. Interest				
	Resident	Non-resident	Resident	Non-resident
Interest on capital, as well as interest on loans taken out, described below:				
Those invested in the production of income and paid to any natural or legal person not domiciled in the country.		34%		The withholding agent is required to withhold the tax within the taxable year at the time of payment or crediting of the payment into the account. The tax to be withheld can range from 15-34% depending on the amount of income.
Interest on loans and other credits payable to financial institutions incorporated abroad and not domiciled in the country.				4,95%
Interest paid by legal persons or communities to any other legal person, community or natural person.	3%	34%	5%	The tax to be withheld can range from 15-34% depending on the amount of income.
ii. Royalties				
The net income derived from the disbursements originated by supplies coming from abroad, by concept of royalties and other similar participations, as well as by remunerations, fees and analogous payments for technical assistance or technological services used in the country or transferred to third parties, when they are made in favor of natural or legal persons or communities not resident or not domiciled in the country.		34%		The tax to be withheld can range from 15-34% depending on the amount of income.
iii. Service fees				
Payments made by legal persons, consortiums or communities to contractors or subcontractors domiciled or not in the country, by virtue of the execution of works or the provision of services in the country, whether these payments are made on the basis of valuations, permanent payment orders, individual or by any other means	1%	34%	2%	The tax to be withheld can range 15-34% depending on the amount of income.

Payroll taxes

Social Security is a national parafiscal contribution collected by the Venezuelan Institute of Social Security. The

Social Security

contribution to be made by the employer varies from nine percent to eleven percent (9%-11%) of the employee's salary depending on the "risk classification" of the employer.

Employment Benefit Regime

The Employment Benefit Regime is a national parafiscal contribution collected by the National Employment Institute. The contribution is equal to two-point fifty percent (2.50%) of the normal salary accrued by the worker in the month immediately preceding that in which it was caused. The employer is responsible for the payment of eighty percent (80%) of the contribution and the worker is responsible for the payment of the remaining twenty percent (20%).

Obligatory Housing Savings Fund

The Obligatory Housing Savings Fund is a national parafiscal contribution collected by the National Bank for Housing and Habitat. The monthly contribution in the account of each worker is equivalent to three percent (3%) of his *integral* salary, indicating separately; the obligatory savings of the worker are equivalent to one third (1/3) of the monthly contribution and the obligatory contributions of the employers to the account of each worker are equivalent to two thirds (2/3) of the monthly contribution.

National Socialist Training Institute Fund

The National Socialist Training Institute Fund is a national parafiscal contribution collected by the National Socialist Training Institute. It comprises a contribution (i) from the employer's equivalent to two percent (2%) of the normal salary and (ii) from the workers of zero-point one percent (0.5%) of their annual income and bonuses at the end of the year.

Other taxes

Value Added Tax (VAT):

The value-added tax (VAT) is a national tax collected by the SENIAT. The VAT law, provides that the sale of movable property, the provision of services and the import of goods, as defined by the law, are subject to VAT. The current rate is set at sixteen percent (16%).

The importers of goods, the industrialists, the traders, the providers of services, and, in general, any natural or legal person who, as part of its occupation habitually carries out the activities which constitute taxable events of VAT, are taxpayers of VAT.

In addition, a recent reform of the VAT law established the application of an additional rate that may be modified by the National Executive and will be between a minimum limit of five percent (5%) and a maximum of twenty-five percent (25%) to goods and services paid in foreign currency, cryptocurrency or cryptoassets different from those issued by Venezuela (at the time this guide is issued, the applicable rate has not yet been defined and therefore this additional rate is not yet applicable).

Tax on Major Financial Transactions

The Tax of Major Financial Transactions is a national tax collected by the SENIAT and it is aimed exclusively at special taxpayers.

The tax is established on (i) financial transactions, such as: debits in bank accounts, assignments of checks and securities, etc.; as well as on (ii) transactions that are carried out without the use of the financial sector, but that constitute the extinction of a debt for a special taxpayer subject to the tax. The current rate is set at 2%.

Tax on Large Patrimonies

The tax on large patrimonies is a national tax collected by the SENIAT and it is aimed exclusively at special taxpayers whose net patrimonies are equal or greater than 150.000.000 Tax Units (approximately US\$ 1,200,000) by September 30 of each year.

The National Executive is allowed by law to modify the tax rate applicable to the net patrimony value determined. In

any case, the rate is limited to a minimum of zero point twenty-five and a maximum of one point fifty percent (1.50%). The current rate is set at zero point twenty-five (0.25%).

Tax on Economic Activities

The tax on economic activities is a municipal tax collected by the Municipal Tax Administrations.

It is regulated in its design by the Constitution and the Law of Municipal Public and it must be created by each municipality through a municipal law with strict adherence to the provisions of the above rules.

The rates applicable to each one of the types of economic activities subject to the payment of the tax are contained in the "Activity Classifiers" that form part of the municipal laws, and typically range from one to fifteen percent (1%-15%) of *gross* income.

In regards to reporting obligations, many municipal laws provide for the filing of an estimated tax return within the first quarter of the year, followed by monthly advance payments, which are deductible when the final income tax return is filed, also within the first quarter of each year.

Other parafiscal contributions

National Fund for the Development of Sport, Physical Activity and Physical Education

It is a national parafiscal contribution collected by the National Sport Institute. The taxable event is the performance of activities for profit by public and private commercial companies by public or private, for profit, civil societies; or any other legal person that within the territory of the Republic, when this exceeds of 20,000 Tax Units (approximately US\$200). The rate is set at one percent (1%) of the net profit or annual accounting profit.

National Anti-Drug Fund

It is a national parafiscal contribution collected by the National Anti-Drug Fund. The taxable event is the occupation of fifty (50) or more employees by private legal persons; joint ventures and public entities with or without business purposes. The rate is set at one percent (1%) of the profit or operating profit for the fiscal year.

National Fund for Science, Technology and Innovation

It is a national parafiscal contribution collected by the National Fund for Science, Technology and Innovation. The taxable event is the earning of a gross annual income of more than 100,000 Tax Units (approximately US\$850) by a joint-stock companies and limited liability companies; collective name partnerships, in simple limited partnership, communities, as well as any other partnerships of persons, including irregular or de facto societies; associations, foundations, corporations, cooperatives and other legal or economic entities; permanent establishments, centers or fixed bases located in the national territory.

The rate ranges from zero point five percent to two percent (0.5%-2%) depending on the type of economic activity on the gross income effectively earned by the taxpayer in the immediately preceding fiscal period.

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