# Peru

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## 1.0 OVERVIEW

In the past few years, Peru has made several economic developments placing it at the top of the list of countries with rapid growth on a global level. The Peruvian economy is open to private investment, which is practiced in the context of a social market economy. It also promotes competition and ensures foreign investment in any type of company.

The principal taxes levied on entity activities include income tax, value-added tax (VAT), financial transaction tax, municipal taxes and the net assets temporary tax (ITAN, in its Spanish acronym).

## 2.0 LEGAL SYSTEM

All the provinces of Peru operate under a common legal system. While the ability to make laws is the exclusive domain of the government, the rules that determinate the application of these laws are within the scope of other authorities.

## 3.0 TAXATION AUTHORITIES

The tax system in Peru is administered by the Peruvian National Superintendence of Customs and Tax Administration (SUNAT).

## 4.0 BUSINESS VEHICLES

A non-resident may either establish a Peruvian vehicle to carry on business in Peru or operate directly through a foreign entity. Peru business vehicles are corporations (limited liability or unlimited liability), branches/subsidiaries and associative agreements.

### 4.1 Corporations

Peruvian corporations are governed by the General Law of Companies (LGS). Under the LGS, a corporation must have at least two shareholders at the time of incorporation, which may be individuals or legal entities. Peruvian corporations must have a board of directors, except for closely held corporations, which may choose to not have one. The LGS requires a minimum of three directors who must be individuals. There are no nationality or residency requirements for directors.

### 4.2 Branches

A branch is considered part of its parent entity, without separate legal personhood. It shall have permanent legal representation and management autonomy with respect to the scope of its activities that the main corporate entity appoints to it, according to the powers given to its representatives.

### 4.3 Associative agreements

Associative agreements create and regulate the participation and integration of specific businesses in the common interest of the intervening parties. This type of agreement does not create a legal entity. The agreement is done in writing and it is not subject to recording.

The two types of associative agreements are consortiums and joint ventures.

The resources allocated for these agreements are considered direct foreign investment when the foreign investor participates in the production capacity. However, it does not involve any contribution of capital. The operation will correspond to contractual trade operations through which the foreign investor provides the receiving company with goods or services in exchange for participation in physical production volume, in the global sales amount or in the net profits of the referred receiving company.

### 4.4 Foreign corporation

A foreign corporation that carries on business in Peru is subject to tax in respect of such income. Peruvian income tax law deems certain activities conducted by a non-resident as constituting the conduct of business in Peru, and therefore subject to income tax.

Where the foreign corporation is resident in a country with which Peru has a double-taxation treaty pursuant to which the corporation may claim treaty benefits, the corporation will generally be exempt from Peruvian taxation on its business profits, except to the extent that the profits were earned through a permanent establishment situated in Peru.

A corporation that operates through a Peruvian permanent establishment (such as a branch) will be subject to Peruvian income tax for such income.

## 5.0 FINANCING A CORPORATE SUBSIDIARY

### 5.1 Equity financing

Investments in subsidiaries incorporated in Peru are not afforded special treatment. Subsidiaries or branches of companies incorporated abroad will only be taxed on their Peruvian source income. The income derived by such entities will be taxed as a dividend at the end of the fiscal year, even when not distributed.

### 5.2 Stamp tax

Peru does not impose a stamp tax in respect of debt or equity financing.

## 6.0 INCOME TAX

### 6.1 Corporate income tax (CIT)

Companies incorporated in Peru are considered resident in Peru for tax purposes and thus, are subject to a CIT rate of 29.5% on their worldwide net income. Branches, agencies and permanent establishments (PE) of non-resident companies or entities incorporated in Peru are subject to income tax on their Peruvian-source income, while subsidiaries are subject to income tax on their global-source income.

To calculate the taxable basis, domiciled companies are entitled to deduct expenses, to the extent that they are necessary to produce income or to maintain its source. Additionally, there are certain limits and/or caps on the deduction of certain expenses, such as finance costs (thin capitalization rules apply), provisions for bad debts, salaries and travel expenses, among others.

Dividends and any other type of profit distribution are subject to a 5% withholding tax as of 2017. The prior year rates (4.1% or 6.8%) shall be applied on retained earnings, depending on the fiscal year in which the profits were generated.

### 6.2 Withholding income tax

Non-domiciled companies are subject to a withholding income tax (WIT) in Peru on Peruvian-source income, on a gross basis.

The tax rates for non-domiciled entities are as follows:

| Income | Withholding tax rate |
|---|---|
| Other income | 30% |
| Interest | 4.99% (as long as certain requirements are fulfilled)<br><br>30% (all others) |
| Dividends | 5% as of 2017 |
| Royalties | 30% |
| Services fees | 30% (general and digital services)<br><br>15% (technical assistance, provided certain conditions are met) |

### 6.3 Tax treaties

For the purpose of avoiding double taxation on income tax, Peru has entered into treaties with Brazil, Canada, Chile, Korea, Mexico, Portugal and Switzerland under the Organisation for Economic Co-operation and Development (OECD) model.

In addition, Peru, as a member of the Andean Community, is subject to a double-taxation standard. Other members are Bolivia, Colombia and Ecuador, therefore all operations between entities of both jurisdictions must follow Decision N° 578 regarding income tax.

## 7.0 CROSS-BORDER PAYMENTS

### 7.1 Transfer pricing

According to the CIT, in all operations, the value assigned to goods and services must be at market value for tax purposes; otherwise, the Tax Administration can adjust it.

Agreements entered into between related parties or agreements entered into in low-tax jurisdictions are subject to transfer pricing rules. Agreements not entered into at market value, which is what would have been agreed upon between independent parties in comparable transactions under the same or similar conditions, may be subject to adjustment Therefore, the value of the transaction must be determined by a transfer pricing study.


Please note that transfer pricing rules are applicable when the value agreed between related parties would have resulted in an income tax payment in the country lower than that which would have corresponded by applying the market value.

In the case of intercompany services, the value of such services must fulfill the benefit test. This test is considered fulfilled when the service in question provides economic or commercial value to the recipient (improving or maintaining its commercial position), which would occur if independent parties had satisfied the need for the service, executing it by themselves or through a third party.

### 8.0 MINING TAX

As of October 1, 2011, the mining royalty was modified and two new mining taxes came into effect: the Special Mining Tax (IEM) and the Special Mining Contribution (GEM). The mining royalty, the IEM and the GEM are economic considerations paid to the Peruvian government for the exploitation of mineral resources.

The mining royalty includes metallic and non-metallic mineral resources, while the IEM and the GEM only include metallic mineral resources. The GEM is only applicable to mining companies that have valid tax stability agreements. These companies will voluntarily sign contracts with the Peruvian government for the payment of said charge, which must be determined by each stability agreement that they maintain.

The payment obligation of the mining royalty, IEM and GEM falls due at the closing of each quarter (January–March, April–June, July–September and October–December). The basis of calculation is the operating profit or sales revenue for the quarter.

Operating profit is obtained by taking the revenue generated from the sales of mineral resources each quarter, then deducting the sales cost and the operating expenses (including selling expenses and administrative expenses) incurred in order to be able to generate said revenue. All of these expenses and costs must be at market value.

Within the last 12 business days of the second month following the generation of the obligation, mining companies must present a quarterly declaration (January–March, April–June, July–September and October–December) and make payment of the corresponding mining royalty, IEM and GEM. This declaration must determine the basis for calculating the mentioned contributions.

The amounts effectively paid for mining royalty, IEM and GEM will be considered as an expense for income tax purposes in the period in which they were paid.

They are calculated as follows:

| Name | Base | Tax rate (range) |
|---|---|---|
| Mining royalty | Operating profit - (minimum, 1% of sales) | 1%–12% |
| Special mining tax | Operating profit | 2%–8.4% |
| Special mining contribution | Operating profit | 4%–13.12% |

## 9.0 TEMPORARY TAX ON NET ASSETS (ITAN)

Companies that are subject to corporate income tax are obligated to pay the temporary tax on net assets. This taxed is levied on the net asset value contained in the balance sheet as of December 31 of the previous period to which the payment corresponds, deducting the depreciations and amortizations permitted by law. A company is subject to the ITAN the year after it starts its activities.

| Rate | Net Assets |
|---|---|
| 0% | Up to S/ 1,000,000 |
| 0.4% | More than S/ 1,000,000 |

The amount paid for the ITAN is a credit that will be offset against the advanced income tax payment or the annual income tax regularization payment. Any remaining balance can be reimbursed by the Tax Administration.

## 10.0 FINANCIAL TRANSACTIONAL TAX (ITF)

Obligations paid through cash payments of amounts greater than S/ 3,500 must be made through bank accounts or deposits, bank transfers, payment orders, credit cards or non-negotiable checks, among other means of payment provided by the entities of the Peruvian financial system.

Any obligation that is not carried out using these methods prevents the deduction of the expense or the recognition of the cost for tax purposes, and prevents the recognition of tax credits (e.g., VAT). Additionally, the ITF is applied to all debits and/or credits in bank accounts maintained by the taxpayers. The applicable tax rate is 0.005%. Certain operations are exempt from ITF, such as the operations between accounts of the same accountholder; credits or debits in bank accounts opened at the request of the employer exclusively to be able to deposit the salaries of its employees; and credits or debits in bank accounts of severance payments.

The ITF is deductible as an expense for income tax purposes.

## 11.0 INDIRECT TAXES

### 11.1 Valued-added tax (VAT)

VAT is levied at a rate of 18% on the following operations:

i. Sale of real property within Peru
ii. Services provided within Peru
iii. Import of services (services economically used within Peru)
iv. Import of goods
v. Construction contracts
vi. The first sale of a real property made by the constructor.

The VAT law follows a debit/credit system by which the VAT paid on the purchase of goods and services can be used as a credit against the VAT originated by future taxed operations. Any VAT credit that is not used within a determined month can be carried forward (at historical values) to be used against the VAT of future operations. It must be taken into account that the return of VAT in cash is only available for exporters and some entities in the pre-operating stage, as long as certain conditions are met.

**Early recovery of VAT:** To promote investment in the mining industry, a VAT recovery regime has been established for the holders of mining concessions that have not begun operations and are in the exploration stage. In addition to this regime, exclusively applicable to the mining industry, there is a regime of early recovery of the VAT applicable to any industry (including the mining industry) for companies in the pre-operating stage (for example, in the construction stage). Finally, the VAT credit related to exports may be recovered by the exporter, since those sales are not levied with VAT to offset such credit.

## 12.0 OTHER MATTERS

### 12.1 Stability agreements

Investors can sign stability agreements with the Peruvian government, whether under the special regime or under sectorial regimes (e.g., mining and oil), in order to guarantee the following rights for a 10-year period:

i. Stability of the current income tax regime at the time of signing the agreement, with regard to dividends and profit-sharing
ii. Stability of the monetary policy of the Peruvian government, according to which there is an absence of exchange controls; foreign currency can be acquired or sold freely at any type of exchange rate offered by the market; and funds (remittances) can be sent abroad without requiring prior authorization
iii. The right of non-discrimination between foreign and local investors.

## 13.0 PAYROLL TAXES

Remuneration paid to employees is subject to statutory social contributions and payroll taxes. To determinate the payroll taxes, a first deduction of 7 tax units is made on the employee's income; subsequently, the following annual progressive rate is applied:

i. 8% for the first 5 tax units of net income

ii. 14% of net income for amounts from 5 tax units to 20 tax units

iii. 17% of net income for amounts from 20 tax units to 35 tax units

iv. 20% of net income for amounts from 35 tax units to 45 tax units

v. Any excess at 30% of net income.

## 14.0 MUNICIPAL TAXES

i. **Property tax:** This tax is levied on the ownership of property by a natural or legal person in a given district. The rate varies between 0.2% and 1% depending on the value of the property determined by municipal tax authorities. The tax must be paid annually

ii. **Alcabala tax:** This tax applies to the gratuitous or onerous transfer of land property. The rate is 3% and is applied to the value of the property agreed by the parties or the self-appraisal value determined by the district municipality where the property is located, whichever is greater. The tax must be paid by the buyer

iii. **Automotive tax:** This tax is generally applicable to automobiles owned by individuals and companies, and levies an annual 1% of the original purchase price of automobiles no older than 3 years

iv. **Other municipal taxes:** Includes public cleaning service fees, local public security services fees and local park maintenance services fees. Local governments or municipalities are authorized to create, amend or annul certain local taxes related to the services they provide to the public.