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Recent Developments in International Taxation

Venezuela

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Introduction

Venezuela's gross domestic product (GDP) expanded by four per cent in the fourth quarter of 2023. The current dollar GDP increased 6.3 percent, or $1.61tn, in 2023 to a level of $27.36tn, compared with an increase of 9.1 percent, or $2.15tn, in 2022, according to statistics published on 28 February 2024.[1]

Although oil production improved following the easing of United States and European sanctions, continued galloping inflation and sharp currency depreciation earlier in the year weakened consumer demand, weighing on economic growth.

In 2024, economic activity is expected to pick up slightly, driven mainly by a further increase in oil production, supported by continued high global demand. On 17 April 2024, after six months of relief under the Office of Foreign Assets Control's (OFAC's) General License 44, the US reimposed its sanctions on Venezuela's oil and gas sector under the terms of License 44-A.

These measures seem to be a response to international effort and pressure related to the political situation, especially with regard to the next presidential elections to be held in Venezuela on 28 July 2024. However, while an improvement is expected, oil production is likely to remain well below pre-2013 levels (around three million barrels per day (b/d) compared to a peak of 800,000 b/d in 2023) due to a lack of investment and the poor state of energy infrastructure after years of inactivity.

Recent efforts by the Venezuelan Government (the 'Government') to channel and increase private sector investment in various ventures in the oil industry have been mainly fuelled using the provisions of the Anti-Blockade Law,[2] a law that has picked up more use by the Government because it allows, among other things, the Venezuelan Executive (the 'Executive') to waive the applicability of constitutional and legal provisions to specific projects entered into between the state and private parties, citing the necessity and urgency of said waiver, which has its basis in combatting the sanctions regime imposed, which is expressly stated in the declaration of principles of this law. For example, a private company that invests in oil could be subject to a waiver of the obligation to pay some taxes for the specific project entered into with the Government, in case the Executive deems said waiver necessary to promote the investment. Although this law is basically based on the need to 'counteract the sanctions regimes', it clearly states that all measures taken in application of this law will continue to apply, even after the sanction's regimes are lifted, should they be lifted.

On the demand side, consumer spending will remain weak in 2024, although inflationary pressures have eased thanks to tight monetary policy and the reduced risk of a return to hyperinflation. The economy has undergone an informal dollarisation process and, in general, the Venezuelan economy will continue to be affected not only by the decline of its capacity as an oil country but also by failures in macroeconomic management and lack of legal certainty. All these factors affect and discourage international foreign investment.

The restoration of relations with Colombia and the reactivation of commercial relations with Brazil, due in part to the political environment and the political affinity of Presidents Petro in Colombia and Lula da Silva in Brazil, both important strategic neighbouring countries, will open new economic opportunities.

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[1] Trading Economics, Venezuela GDP, Summary and Stats https://tradingeconomics.com/venezuela/gdp#:~:text=GDP%20in%20Venezuela%20is%20expected,macro%20models%20and%20analysts%20expectations accessed 15 May 2024.

[2] *Official Gazette* No 6.583 Special of 12 October 2020.

Tax environment

Venezuela's tax system includes: (1) national taxes, such as income tax (territorial and worldwide basis and tariff up to 34 per cent on net income), VAT (16 per cent), large net worth tax (0.25 per cent on net wealth) and financial transactions tax (two per cent or three per cent of transaction value); (2) local and municipal taxes, such as economic activities tax (*impuesto de actividades económicas* or IAE) and real estate local taxes; and (3) several special tax contributions (social, sports, technology and science, among others). Venezuela has an interesting double taxation network, including double tax treaties with more than 35 countries. Although the majority of recent double taxation agreements (DTAs) have been based on the OECD model, Venezuela is not a member of the OECD and due to the current political and economic situation, this does not seem to be a priority for the current government. However, tax legislation does contain provisions that allow for international double taxation avoidance, controlled foreign company (CFC) rules and anti-avoidance tax measures.

Nevertheless, the possibility of entering a double taxation treaty with Colombia is on the agenda of current bilateral efforts. A bilateral investment treaty (BIT) has recently been signed between Venezuela and the Republic of Türkiye.

Venezuelan legislative agenda and improvements in tax matters from June 2023 to June 2024

On 30 January 2024, the National Assembly (Venezuelan Congress), in ordinary session, announced the content of its agenda for this year, which included these projects:

- Law for the Promotion of Non-Oil Exports;
- Organic Law of the Communal Economic System;
- Law of Digital Commerce;
- Law for the Control, Regularization, Performance and Financing of Non-Governmental and Related Organizations;
- Reform of the Justice System Law;
- Law of the Housing and Habitat Benefit System;
- Reform of the Organic Water Law;
- Reform of the Waste Management Law; and
- Law for International Cooperation.

From a tax perspective, it is important to point out the following as of this date.

Organic Law for the Harmonization of the Tax Powers of the States and Municipalities

The Organic Law for the Harmonization of the Tax Powers of the States and Municipalities has been published and is in force, as well as its supplementary regulations (the 'Harmonization Law'). This law develops a constitutional mandate aimed at coordinating the tax powers exercised by the different levels of political organisation in Venezuela (national, state and municipal) and provides harmonisation measures for taxes created and administered by the states and municipalities. The main purpose of this law is to prevent double taxation within the country; the overburdening of taxpayers; and abusive or unconstitutional behaviour in the exercise of the tax powers of municipalities and states.

The unit of measurement for the determination of taxes, sanctions, adjustments or fines at local (municipal level) is the exchange rate of the higher foreign currency. Sanctions must comply with the limits established in the Organic Tax Code, which provides an adjustment method that allows the application of the exchange rate published by the Central Bank of Venezuela on the date of payment. In addition, the Harmonization Law and its complementary regulations have established limits for the specific taxes currently in force at this level (eg, municipal tax on economic, industrial, commercial and service activities (*impuesto sobre las actividades económicas* or ISAE), municipal tax on vehicles, urban and rural property taxes, tax on the use of non-metallic minerals and tax on credit instruments or payment methods).

Tax exemption on import activities

An exemption on import activities for a list of products was granted for the last three years and was recently renewed. This measure was originally issued to promote the reactivation of the Venezuelan economy and has been successively renewed, promoting the import of a large catalogue of goods, raw materials and equipment. In some cases, the exemption applies only when the national production of the item is insufficient or non-existent, and prior to obtaining certification from the Ministry of Production and Trade. On 17 May 2024, a new Executive Decree containing the new Customs Duties was published with a delay in the *Official Gazette* No 6,804 Special of 24 April 2024.

In the *Official Gazette* No 42,869 of 30 April 2024, Decree No 4,949 of 30 April 2024, issued by the Venezuelan Executive Branch, was published, which exempts from the payment of income tax (*impuesto sobre la renta* or ISLR), under the terms and conditions set forth in the decree, the enrichment obtained by holders, individuals and legal entities residing or domiciled in Venezuela from investments made in securities or other instruments of a similar nature issued and guaranteed by the Venezuelan Central Bank (Banco Central de Venezuela or BCV). The duration of the exoneration benefit will be one year, counted from the effective date, that is, 8 May 2024, as expressly provided in the decree.

An Extension of Regulations for the Optimization and Dynamization of Export Processes was granted via Decree No 4,902 of 11 December 2023 published in *Official Gazette* No 42,775 of 11 December 2023, issued by the Venezuelan Executive, by means of which the effectiveness of Decree No 4,525 (Previous Decree for the Optimization and Dynamization of the Export Processes), published in *Official Gazette* No 42,145 of 9 June 2021, and consequently the exemptions of the legal regimes for exports indicated therein, remain in force, under the terms and conditions indicated in the decree.

Tax unit (TU) adjustment

The value of the tax unit (TU), a unit of measurement used by the National Tax Administration for the adjustment of tax bases and sanctions, has been adjusted in accordance with Administrative Order No SNAT/2023/00031, published in *Official Gazette* No 42,623 (8 May 2023). The new value of the TU has been set at 9 bolivars (VES 9) (equivalent to approximately $0.30), which represents an increase of 2.160 per cent in relation to the previous value of the TU.

Social Security Pensions Protection Law (Ley de Protección de las Pensiones de Seguridad Social Frente al Bloqueo Imperialista)

Recently enacted, it creates a new tax to cover the deficit of the Venezuelan Social Security Institute. It creates, under the figure of a new tax, a levy to be paid by any legal entity that carries out operations or economic activities in the country, equivalent to up to 15 per cent of the salary expenses of its employees. At the time of writing, the rate has not been determined.

This legislation has been criticised for the inflationary effect it may have, as well as for its implications in the labour field, given the repercussions it may have on the social benefits system in force in Venezuela. Although the proposal is legitimate and praiseworthy, because it aims to improve the living conditions of retirees, its impact on the private business sector could lead to a reduction in private hiring and act as a brake or disincentive to wage increases in the active private labour sector. From the point of view of administrative procedures, there has been an increase in tax audits and a growing interest in increasing tax collection. Tax appeals, which deny tax effects in exchange, are beginning to be produced.

Organic Law of Special Economic Zones (Ley Orgánica de Zonas Económicas Especiales)[3]

It has the purpose of regulating the creation, organisation, operation, administration and development of Special Economic Zones, as well as economic, tax and other applicable incentives that will be implemented in certain areas of the country designated as such for certain industries and the actors engaging in said activities in those areas.

Organic Law of Extinction of Ownership (Ley Orgánica de Extinción de Dominio)[4]

The objective of this legislation is to establish procedures for identifying, locating and recovering assets, and other effects derived from or destined for illicit activities, as well as the extinguishment of rights and attributes related to their ownership in favour of the Republic. This will be achieved through a judgment and without any consideration or compensation. Even if the facts that lead to the extinction of ownership happened before the law was enacted, ownership of the proceeds can still be forfeited. Additionally, if it's proven that the assets were obtained illegally, any agreements or transactions used to acquire them will be considered void because they violate the law.

Relevant jurisprudence on tax matters

On 2 May 2024, the Political Administrative Chamber of the Supreme Court of Justice of Venezuela issued Ruling No 209, reviewing an appeal filed by a private company challenging a lower court decision in a lawsuit against the municipality of Baruta, one of the five districts that make up the Caracas Metropolitan Area. The lawsuit centred on: (1) the challenge of fines imposed on the company by Baruta's tax administration for non-payment of taxes; and (2) the alleged 'illegality' of a measure taken by Baruta to block this private company's user from the website where companies must register to pay municipal taxes to Baruta (a practice recently and intensively adopted by municipal tax administrations throughout the country). The Supreme Court rejected the appeal and upheld the lower court's decision, specifically referring to the blocking of users as a valid measure by municipal tax administrations because they can

[3] *Official Gazette* No 6,710 Special of 20 July 2022.

[4] *Official Gazette* No 6,745 of 28 April 2023.

‘…take all administrative and legal measures to collect the amounts owed to them…’ while also recognising that municipal tax authorities have the powers and mandate to collect duties raised for public services.