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Recent Developments in International Taxation

Venezuela

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Introduction

Venezuela's perspectives for 2023 seem to be much better than previous years. In 2022 we had a GDP growth of 18,70%, according to the *Banco Central de Venezuela* (Venezuela's Central Bank) (other sources 7%) and it is estimated that the growth for 2023 will be between 4,4% and 7,5% (the highest in the region).

The Global impact of the war in Ukraine is putting pressure in western countries to have reliable and easily available sources of oil & gas. Venezuela has been pointed out as a leading option to meet the market need

The opening towards Colombia may be followed by enhanced relations with Brazil and other countries in the region. There is also pressure in the international community to lift the sanctions, this may open new opportunities of investment, not only in oil & gas but also in other areas, such as agroindustry, construction, infrastructure, or electricity.

Tax Environment

Venezuela's tax system includes (i) National taxes as IT (territorial and worldwide basis and tariff up to 35% on net income), VAT (16%), Large Networth Tax (0.25% on net patrimony) and financial transactions taxes (2% or 3-% on transaction value), (ii) local or municipal taxes, as Economic Activities tax (IAE) and Real State local taxes, and (iii) several special tax contributions (social, sports, technology and sciences, among others).

Venezuela has an interesting double taxation net including Double Convention Treaties with more than 35 countries. Even though the majority of recent DTT's have been based on the OCDE Model, Venezuela is not part of the OCDE and due to the current political and economic situation, it seems this will not be a priority for the current Government. However, tax regulations have rules granting international doble taxation avoidance, CFC rules and anti-avoidance tax measures.

Legislative improvements in tax matters from June 2022 to June 2023

1. Organic Law for the Harmonization of the Tax Powers of the States and Municipalities. (Harmonization Law hereinafter), approved in second discussion in July, 2023.

This law develops a constitutional mandate, aiming to coordinate the tax powers exercised by the different levels of the political organization in Venezuela (National, State and Municipal). Nevertheless, this law only provides harmonization measures for taxes created and administered by States and Municipalities. Thus, one of the most important critics to this law is the non-inclusion of measures aiming to also coordinate the National tax power .

The Harmonization Law seeks to prevent the internal double taxation, the tax overload of taxpayers and an abusive or non-constitutional behavior in the exercise of the tax powers by

Municipalities and States. Hence, any contribution or payment that doesn't follow a State or Municipal law within the limitations of the constitutional reserved powers granted to States and Municipalities, will be null and void. To guarantee the judicial protection of taxpayers, they have the possibility to request directly to the Supreme Court of Justice the nullity of any regulation issued by States or Municipalities which terms contradicts the disposition of the Harmonization Law.

Likewise, it is established in this law that taxes may not be confiscatory in nature and can be collected exclusively in the local currency (bolivars). The unit of measure to determine taxes, sanctions, adjustments, or fines, 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 to apply the exchange rate published by Venezuelan Central Bank at the payment date.

Moreover, the Harmonization Law establish applicable limits to the specific taxes currently in force at this level (Municipal Tax on Economic, Industrial, Commercial and Services Activities (ISAE), Municipal Tax on Vehicles, Urban and Rural Property Taxes, Tax on the use of non-metallic minerals, Tax on Credit Instruments or Payment Methods, among others).

A limited and simplified local tax system will be applicable to entrepreneurships, this is, up to a maximum of 1% of their gross income, enforceable by means of a single tax quota fixed in relation with the nature of their economic activities and the volume of sales.

2. Tax Exoneration on import activities

Exoneration on import activities of a large list of products has been granted for the last two 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 material, and equipment. In some cases, the exoneration will only apply if the national production of the item is insufficient or not existent, and prior obtainment of a certification from Production and Commerce Ministry.

3. Exoneration on import and local sales of petroleum products

Decree No. 4.767, published on Official Gazette No. 42.548 (January 13, 2023), grants, in favor of both public and private entities, an exoneration on value added tax (VAT), import duties and charges, Great Financial Transactions tax (IGTF) for all imports and local sales of petroleum products.

4. Exoneration on tax and special contributions to entrepreneurs.

As part of the so called "*Motor Emprendedor*" ("*Startup Motor*" in English) government policies, the Decree No. 4.783, published on the Official Gazette No. 42.575 (February 23, 2023), conferred new benefits to entrepreneurial initiatives developed by small and middle enterprises (PYMES by its acronyms in Spanish). The benefits include exemptions from tax obligations and contributions in favor of Social Security Authorities (*Instituto Venezolano de los Seguros Sociales (IVSS)*), *Instituto Nacional de Capacitación y Educación Socialista (INCES)*, *Fondo de Ahorro*

Obligatorio para la Vivienda (FAOV)), attached to Ministry of People's Power for the Social Work Process.

5. Tax Unit (TU) adjustment.

The value of Tax Unit (TU) a measure unit used by National Tax Authorities to adjust tax bases and sanctions has been adjusted, according to Administrative Providence No. SNAT/2023/00031, published in Official Gazette No. 42.623 (May 8, 2023). The new value of the TU has been fixed on nine bolivars (Bs. 9,00) (equivalent to approximately thirty cents of a United States of America dollar), reflecting an increase of 2.160%, in relation to the prior TU value.

6. Great Financial Tax new exonerations

New benefits and non-subjection cases has been developed to exclude the taxability on bank debits or payment transactions that come from operations executed in foreign currency between small and middle entities (non-considered special tax payers by Venezuelan Tax Authorities), as well as an exoneration to debits on amounts that come from the acquisition or sale of securities guaranteed by the Republic or by the Venezuelan Central Bank, or from the negotiation in foreign currency of securities at the stock exchange market.

These measures have been enacted, in view of the problems caused by the last modification of this tax in 2022, in which a high aliquot was established to tax payments in foreign currency or in crypto assets other than Petros.

Relevant jurisprudence on tax matters.

Ruling issued by the Political and Administrative Chamber of the Venezuelan Supreme Court of Justice, on June 22, 2022.

According to this ruling, the municipal tax treatment applicable on hydrocarbon activities was modified. This decision analyzes the tax reserve to National Public Power, concluding that it only applies to the entities owned totally or partially by the Republic, but not to other private entities executing Strategic Associations Agreements. Even though according to article 156.2 of the Constitution of Venezuela, municipal taxation is NOT allowed in relation to hydrocarbons activities, the new criteria established that the prohibition would only apply to public entities developing primary activities but does not exclude the possibility to apply municipal taxes to private entities executing secondary hydrocarbons activities. This ruling was submitted to an extraordinary appeal for review, to be decided by Constitutional Chamber of the Supreme Court.