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International tax

Venezuela Highlights 2015

Investment basics:

Currency – Venezuelan Bolivar (VEB)

Foreign exchange control – Parties interested in acquiring or selling foreign currency, by any means, must meet the guidelines and legal requirements established by the national government. There are three legal mechanisms to buy and sell foreign currency in Venezuela, namely: (1) Through the foreign trade center (CENCOEX), under which foreign currency is exchanged at a fixed rate of VEB 6.30 per USD 1, available only to individuals or legal entities that perform certain economic activities related to the health and food industries; (2) Through the complementary system for administration of foreign currency (SICAD), under which fluctuating exchange rates provided by the Central Bank of Venezuela are available to individuals or legal entities that perform activities in certain strategic areas of the economy, and for travel and electronic operations with foreign suppliers; and (3) Through the foreign exchange marginal system (SIMADI), under which exchange rates fluctuate freely based on supply and demand, and which is available for foreign currency exchanged via brokerage firms, banking institutions and currency exchange establishments. The amount of foreign currency individuals may purchase through SIMADI may be subject to certain daily, monthly and annual limits; there are no limits for companies.

The foreign exchange rules apply only to foreign currency transactions within the Venezuelan territory; the government has no jurisdiction to regulate transactions carried out abroad, even if Venezuelans are involved.

Accounting principles/financial statements – Companies quoted on the Venezuelan stock exchange are subject to the standards set by the National Superintendence of Securities (i.e. Venezuelan GAAP). Other companies are required to apply the appropriate Mexican GAAP, although IAS is becoming more common where Venezuelan GAAP does not apply. Financial statements must be filed annually.

Principal business entities – These are the corporation, limited liability company and branch of a foreign corporation.

Corporate taxation:

Residence – A company is resident in Venezuela for tax purposes if it is incorporated or domiciled there.

Basis – Resident companies are subject to tax on their worldwide taxable income; nonresidents are taxed only on Venezuela-source income. Foreign enterprises that conduct business in Venezuela through a permanent establishment (PE) are subject to income tax on foreign and Venezuela-source income attributable to the PE.

Taxable income – Taxable income is defined as income from worldwide sources and is calculated by deducting from gross receipts all “normal and necessary” expenses incurred in earning income. Business profits and capital gains are included in taxable income.

Tax accounting rules require certain taxpayers to make adjustments for inflation; however, banking and financial institutions, and insurance and reinsurance companies have been expressly excluded from the inflation adjustments system; the tax administration may enact rules governing the accounting statements of such institutions.

Taxation of dividends – Dividends paid out of profits that have been subject to tax are exempt. Dividends paid in excess of the payer company’s taxable income are subject to a 34% final withholding tax.

Capital gains – Capital gains generally are taxed as part of the taxpayer’s ordinary income. However, capital gains derived from the sale of shares registered on the Venezuelan stock exchange are subject to a 1% tax on the gross proceeds. Losses on sales of shares registered on the Venezuelan stock exchange may not be deducted from other income.

Losses – Losses may be carried forward for up to three years, except for losses arising from inflation adjustments, which cannot be carried forward. Losses carried forward may not offset more than 25% of the taxable income for any year. Foreign-source losses may be offset only against foreign-source profits earned abroad. Losses may not be carried back.

Rate – Rates are progressive up to 34%. Oil companies pay a 50% tax rate on net income, except for specific projects considered by the government to be of national interest, which are taxed at the normal corporate rate.

Companies engaged in the exploration, exploitation, processing, transport, distribution, storage, marketing and export of nonassociated natural gas pay a 34% rate, as do companies involved in oil refining. Oil companies also are charged a 30% tax or royalty on the amount of crude oil produced. The Ministry of Energy and Oil can reduce the royalty rate to 20% for heavy-oil projects or marginal fields, in special circumstances.

Surtax – No

Alternative minimum tax – No

Foreign tax credit – Venezuela grants a tax credit for foreign taxes paid, up to the amount of Venezuelan tax payable on the income.

Participation exemption – No

Holding company regime – No

Incentives – Foreign investors are entitled to a range of investment incentives, including tax exemptions, special credit financing, export incentives and debt-to-equity swaps. The government provides tax incentives for investment in “strategic” sectors. Regional incentives include an exemption from income tax for companies operating in certain areas in five undeveloped states and 36 industrial parks. Venezuela also has several industrial, commercial and services free zones.

Withholding tax:

Dividends – Dividends paid to a resident or nonresident generally are exempt. However, if dividend distributions exceed the payer company's net taxed income, a 34% withholding tax applies.

Interest – Interest paid to a nonresident legal entity is taxed at the normal corporate income tax rates (i.e. 15% to 34%) applied to 95% of the gross payment, resulting in effective rates of 14.7%, 20.9% and 32.30%, provided certain requirements are met. Interest paid to nonresident banks or financial institutions is subject to a withholding tax of 4.95%. Interest paid to a nonresident individual is subject to a 34% withholding tax.

Royalties – Royalties paid to a nonresident company or a resident individual are subject to withholding tax at a maximum rate of 34% applied to 90% of the gross payment, resulting in an effective maximum rate of 30.6%.

Technical service fees – Technical assistance fees paid to a nonresident company or a resident individual are subject to withholding tax at a maximum rate of 34% applied to 30% of the gross payment, for an effective maximum rate of 10.2%.

Branch remittance tax – A branch profits tax is levied on permanent establishments of foreign enterprises at a rate of 34%. However, the tax will be deferred if amounts are reinvested in Venezuela for at least five years.

Other – No

Other taxes on corporations:

Capital duty – A 1% capital duty is levied on the formation of a company and on additional contributions to capital.

Payroll tax – A company that has more than five employees must contribute to the National Institute of Educational Cooperation. The rate is 2% on payroll.

Real property tax – Real property tax is levied by the municipalities; the rates and bases of assessment vary by location and use of the property. Some municipalities offer exemptions from real property taxes to manufacturing enterprises.

Social security – Employers must withhold special contributions from employee salaries and remit them to the relevant authorities on a monthly basis. Contributions for employers may be 10%, 11% or 12% of salary; the employee contribution is 4%. Additional social contributions paid by employers and employees are addressed under "Other taxes on individuals," below.

Stamp duty – Stamp duty of 0.01 tax units per one VEB or fraction of one VEB is levied when the initial capital of a company is registered or increased. A "tax unit" is a measure of value used by the tax authorities (for 2015, one tax unit equals VEB 150, approximately USD 23).

Stamp duty also is levied when a branch registers in Venezuela. Companies in the Capital District must include stamp duty of one tax unit plus 0.5 tax units per page with the incorporation request. Likewise, stamp duty is levied when a company modifies the incorporation documents (one tax unit plus 0.05 tax units per page).

Each state is entitled to regulate the stamp duty of its jurisdiction. If no law is issued by the state, the Stamp Duty Law applies until a corresponding state law is issued.

Transfer tax – There is no transfer tax, but where a document is issued for the transfer of goods/shares, the competent office/public notary will levy stamp tax for registration of the document at rates that vary by location and by transaction.

Other – The municipalities levy an annual tax on economic activities for the privilege of doing business in a district. The tax usually is based on gross receipts or sales and varies from 0.5% to 10%, depending on the district and type of business.

Enterprises that are domiciled or nondomiciled in Venezuela that carry on economic activities in Venezuela and earn more than 100,000 tax units (VEB 15 million) annually must make an annual contribution for science and technology. The contribution is 0.5%, 1% or 2% of gross income, depending on the activities of the company. The 0.5% rate applies to enterprises that conduct economic activities in Venezuela and to state-owned enterprises that conduct oil and mining activities in Venezuela. The 1% rate applies to enterprises that carry out oil and mining activities in Venezuela, and the 2% rate applies to enterprises that conduct activities related to alcohol and cigarettes, etc.

The Law on Drugs requires public and private enterprises employing 50 or more employees to contribute 1% of "operating profits." The payment and related filing must be made to the National Antidrug Fund within 60 calendar days after the fiscal year end.

Enterprises that carry on economic activities in Venezuela and earn more than 20,000 tax units of net profits or annual accounting profits must contribute 1% to the National Fund for the Development of Sports, Physical Activity and Physical Education.

Enterprises whose purpose is the importation, distribution and commercialization of proprietary software for the national government must contribute 2.5% of the current year's net income to the National Committee of Information Technology.

Anti-avoidance rules:

Transfer pricing – Venezuela's transfer pricing rules generally follow the OECD guidelines, requiring income and expenses related to transactions between related parties to be on arm's length terms. The transfer pricing rules define related parties and set forth permitted methodologies. Taxpayers are required to verify the existence of arm's length pricing by conducting a transfer pricing study, and the tax authorities may adjust prices that do not reflect an arm's length amount.

Thin capitalization – The thin capitalization rules provide for a debt-to-equity ratio of 1:1.

Controlled foreign companies – Venezuela does not have CFC rules, but the Income Tax Law contains fiscal transparency rules.

Under the fiscal transparency rules, taxpayers that invest directly, indirectly or through another person (i.e. an agent or intermediary) in entities or funds located in a low-tax jurisdiction must report the income of the low-tax jurisdiction entity/fund, regardless of whether the income is distributed. Such income is considered foreign-source gross income for purposes of Venezuelan income tax. To be subject to the fiscal transparency rules, however, the Venezuelan taxpayer must have the power to influence the distribution of profits or dividends of the low-tax jurisdiction entity or control the administration of the entity directly, indirectly or through a third person.

A low-tax jurisdiction is one in which income is taxed at rates lower than 20%. The fiscal transparency rules generally do not apply if the Venezuelan taxpayer's income is derived from business activities and more than 50% of the total assets of the investment are used to carry on the business activities in the low-tax jurisdiction. However, if more than 20% of the total income derived from the investment in the low-tax jurisdiction comes from dividends, interest, royalties or income from the sale of movable or immovable property, the exception will not apply.

The investment in the low-tax jurisdiction entity must be reported in an additional return filed with the final income tax return for the corresponding taxable year.

Other – No

Disclosure requirements – No, except the disclosure required under the fiscal transparency rules.

Compliance for corporations:

Tax year – Generally the calendar year, but taxpayers may choose their own fiscal year. Once approved, the fiscal year may not be changed without the approval of the tax authorities. Taxpayers considered "special taxpayers" are required to use a 12-month fiscal year starting on 1 January and ending on 31 December. A corporation's first fiscal year may contain fewer than 12 months.

Consolidated returns – Consolidated returns are not permitted; each company must file a separate return.

Filing requirements – All companies (except mining and oil companies) that earned more than 1,500 tax units during the preceding fiscal year must file an estimated tax return by the end of the sixth month of the fiscal year. The amount of tax declared in the return must be calculated based on at least 80% of the preceding year's taxable income, unless the company can justify a smaller estimate. The amount of estimated investments eligible for tax credits may not exceed 80% of the investments declared for the same purpose in the previous year's final tax declaration. All corporate taxpayers (except those involved in mining or oil activities) must make advance tax payments in six equal installments. For companies in the hydrocarbons industry, advance payments must be made in 12 equal monthly installments.

Mining and hydrocarbons companies must file estimated tax returns within the first 45 days of each year, and advance payments of 96% of the tax resulting from the estimate must be paid at that time.

Final income tax returns must be filed within three months of the close of the company's fiscal year and payment of tax liability must be made at that time.

Penalties – Penalties for late filing of returns are 10%-200% of the amount due, plus flat fines and temporary closure of the establishment in certain cases. The monthly interest rate on outstanding payments is equal to the maximum commercial bank rate plus 20%.

Rulings – Taxpayers may request a ruling on the tax consequences of particular transactions.

Personal taxation:

Basis – Residents are taxed on a worldwide basis. Resident expatriates are subject to tax on all income from Venezuelan and foreign sources, at the same rates applicable to Venezuelans. A tax credit is available for tax paid on foreign-source income, up to the amount of Venezuelan tax payable on such income. Nonresidents are taxed in Venezuela only on Venezuela-source income.

Residence – A resident is defined as an individual who is present in Venezuela for more than 183 days during the relevant calendar year or during the immediately preceding calendar year. An individual may be deemed to be tax resident in Venezuela if he/she has a habitual abode in the country unless the individual, in the same calendar year, spends more than 183 days in another country and can prove that tax residence status has been obtained in that country.

Filing status – Married couples must file a joint return.

Taxable income – Venezuelan residents are subject to income tax on income derived from all sources, whether in cash or in kind.

Capital gains – Capital gains are included in ordinary income and taxed at the normal rates, except for capital gains derived from the sale of shares listed on the stock market, which are subject to a 1% tax on the gross proceeds.

Deductions and allowances – Individuals are entitled to certain itemized deductions in computing taxable income, including school tuition and costs for dependents younger than age 25; health insurance premiums; medical, dental and hospitalization costs; interest on loans for the purchase of a residence or for the expansion of a residence, up to 1,000 tax units; and payments for housing/mortgage costs, up to 800 tax units per year. Otherwise, a standard deduction of 774 tax units may be taken. A taxpayer also may deduct 10 tax units for each family member younger than age 25, and an additional 10 tax units overall.

Rates – Progressive rates based on tax units apply, ranging from 6% to 34%.

Other taxes on individuals:

Capital duty – No

Stamp duty – No

Capital acquisitions tax – No

Real property tax – Real property tax is levied by the municipalities; rates and bases of assessment vary by location and use of the property.

Inheritance/estate tax – Inheritance tax is levied at progressive rates up to 55%.

Net wealth/net worth tax – No

Social security – Social security contributions must be made by both the employer and the employee, at amounts based on the employee's monthly salary. The employee's contribution is 4% of gross salary up to a maximum of five minimum wages per month.

Contributions to the employment system also are required. The employee pays 0.5% of gross salary, up to a maximum of 10 minimum wages per month, and the employer pays 2% of the employee's regular monthly normal salary (with a cap of 10 minimum salaries).

Under the housing and habitat payment system, the employer withholds 1% of the employee's monthly salary and also pays a 2% employer share of the employee's total monthly salary.

Under the National Institute of Socialist Training and Education contribution system, the employer pays up to 2% of the company's total annual payroll, and employees must contribute an amount equal to 0.5% of the profit-sharing amount they receive.

Other – Individuals that provide services to the national government regarding proprietary software must contribute 1.5% of the current year's net income derived from such services to the National Committee of Information Technology.

Compliance for individuals:

Tax year – Calendar year

Filing and payment – A tax return must be filed if an individual's annual net income exceeds 1,000 tax units or gross receipts exceed 1,500 tax units. The return must be filed within three months following the end of the fiscal year.

Penalties – Penalties apply for late filing and failure to file. Also, certain offenses, such as fraud, can lead to imprisonment.

Value added tax:

Taxable transactions – VAT is based on the invoiced price for domestic and imported goods and the provision of services.

Rates – The standard rate is 12%. However, an additional rate of 15% applies for transactions relating to certain goods and services considered to be luxury consumption. Several exemptions exist for exporters and importers and specific industries, certain staples and certain imports.

Registration – Taxpayers must obtain a tax number from the Tax Registry and update their information every three years. Nonresident enterprises carrying out a business or activities in Venezuela without a PE must obtain a tax ID number.

Filing and payment – VAT tax returns must be filed (even if no tax is due for the period) and paid within 15 calendar days following the end of the tax period.

Source of tax law: Income Tax Law, Value-Added Tax Law, Master Tax Code, Labor Law, exchange control agreements, Foreign Exchange Regime Law

Tax treaties: Venezuela has 28 tax treaties.

Tax authorities: *Servicio Nacional Integrado de Administración Aduanera y Tributaria* (SENIAT)

International organizations: UN, WTO, IMF, OAS

Deloitte contact
Alejandro Gomez Rutmann
E-mail: algomez@deloitte.com

Winston Perez
E-mail: wiperez@deloitte.com