



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Peru: Tax (4th edition)

This country-specific Q&A provides an overview to tax laws and regulations that may occur in Peru.

It will cover withholding tax, transfer pricing, the OECD model, GAAR, tax disputes and an overview of the jurisdictional regulatory authorities.

This Q&A is part of the global guide to Tax. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/index.php/practice-areas/tax-4th-edition/>

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1. How often is tax law amended and what are the processes for such amendments?

In Peru, tax law is generally amended on a yearly basis, although the amendments introduced frequently consist in corrections to the existing rules. Tax amendments can occur at any time of the year and are effective as from the date immediately after their publication in the Official Gazette, although those relating to yearly taxes are effective from the following January.

Proposed amendments are commonly announced closed to yearend and, in most of the cases, they are prepared by the Executive branch, with little, if none, intervention by the Congress.

Pursuant to our Constitution and the Act of the Congress, amendments may be proposed by (i) the congressmen, acting through their corresponding parliamentary group, (ii) the Executive branch, acting through the Ministry of Economy and Finance, (iii) the Judicial branch, the Ombudsman, the Constitutional Court, the Regions and the Municipalities, on matters related to their scope of competence, and (iv) 0.3% of the registered voters.

There are two ways to amend a tax law in Peru, namely:

- a) The approval by the Congress of a law.
- b) The delegation of legislative powers into the Executive branch for the latter to issue tax law on behalf of the Congress.

It is worth mentioning that the Tax Authority issues from time to time regulations to the tax law that while are in principle intended to clarify aspects from the legislation that may be obscure, sometimes set forth conditions or requirements that go beyond those set out in the tax law.

2. What are the principal procedural obligations of a taxpayer, that is, the maintenance of records over what period and how regularly must it file a return or accounts?

Taxpayers are required to keep records and supporting evidence of their transactions for a period equal to the higher of 5 years and that resulting from the application of the limitation rules set forth for each specific tax, which may range between four to ten years.

With few exceptions (namely, those of taxpayers which are party to concession contracts or that are making investments in certain productive activities), the accounting must be prepared in Peruvian currency pursuant to the International Financial Reporting Standards. The Tax Authority approves the rules for the preparation and submission of electronic accounting books and set the type of books

that need be kept, as well as the deadlines for their submission.

The due dates set for the filing of returns are the following:

Tax Return	Due Date
Income Tax	Between the last week of March and the first week of April.
Advance payments of Income Tax	Between the second and the third week of the following month.
VAT, VAT withholdings and VAT advance payments	Between the second and the third week of the following month.
Temporal Tax on Net Assets or "ITAN"	Between the second and the third week of April.
Bank Debit Tax or "ITF"	During the week following the fortnight of its accrual or by the due date for the payment of the annual income tax.
Social Security Contribution	Between the second and the third week of the following month.
Salary tax (fifth-category income tax withholding)	Between the second and the third week of the following month.
Transfer pricing local report	Between the second and the third week of June of the following year.
Transfer pricing master file	Between the second and the third week of September of the following year.
Transfer pricing Country-by-country report	Between the second and the third week of September of the following year.
Accounting books	Between the second and the third week of each month.

3. Who are the key regulatory authorities? How easy is it to deal with them and how long does it take to resolve standard issues?

The key regulatory authority is the National Superintendence of Customs and Tax Administration (*Superintendencia Nacional de Aduanas y de Administración Tributaria*), also known as SUNAT, per its Spanish acronym. This authority is responsible for the collection of taxes corresponding to the Central Government and for the enforcement of all related tax obligations. In such capacity, it continuously issues regulations or rulings intended to clarify aspects from the tax law, as well as to allow the fulfillment by taxpayers of their tax obligations.

SUNAT is responsible for the design and setting up of the platforms which taxpayers must employ to fulfill their tax obligations. Also, it enacts the regulations necessary for the operation of the mechanisms that have been set to assure the payment of taxes, such as the VAT withholdings and advance payments, the enforced collection of debts, etc.

Dealing with the Tax Authority can be a cumbersome matter when it comes to the number of formal obligations that need be fulfilled by taxpayers. Pursuant to the World Bank, the time required by taxpayers to fulfil their tax obligations was, in 2018, equal to 260 hours.

On the other hand, while the tax regulations set the timeframe for the carrying out of an audit in one year (extendible to one more), this term is frequently extended and the time required to attend claims from the taxpayers at the administrative stage extends far beyond the established terms of 9 months at the first instance and 12 months in the second instance at the Tax Court. In practice, the time required to get a response on a claim at the administrative stage can go from 2 to 9 years, depending on the complexity of the case.

Finally, the time required to get a tax refund can vary between 2 months in case of income tax refunds to individuals, to 6 months in case of VAT refunds, provided, however, that the application submitted by the taxpayer is not rejected for in the latter case the time required to get the refund can extend for some additional months or years, depending on the complexity of the case.

4. Are tax disputes capable of adjudication by a court, tribunal or body independent of the tax authority, and how long should a taxpayer expect such proceedings to take?

Tax disputes can be brought before the Judiciary by the taxpayer or even by the Tax Administration (which can seek for the annulment of any unfavorable Tax Court's resolution). There is even the possibility for taxpayers to bring before the Constitutional jurisdiction (the ultimate instance of which resides at the Constitutional Court) certain matters where infractions to the Constitution are denounced, through an *amparo* injunction.

Proceedings at the Judiciary are lengthy (even if they are brought before its competence through an *amparo* injunction), despite the fact that special judges and tribunals have been appointed to deal with tax matters. The situation could worsen if the decision of a tribunal is brought before the competence of the Supreme Court, which is competent to adjudicate on infractions to either the Constitution or the law, in which case getting a resolution may take two or three additional years. This implies that, in practice, any case at the Judiciary or the Constitutional jurisdiction is dealt with in a term of 4 to 8 years.

5. Are there set dates for payment of tax, provisionally or in arrears, and what happens with amounts of tax in dispute with the regulatory authority?

As a general rule, taxes for which there is no specific due date set for its payment must be paid up to the 12th business day of the month following that of its accrual. In the case of taxes collected by SUNAT, this entity set the due dates for each taxpayer (based on the last digit of its tax identification number), but these due dates are normally located between the second and the third week of the month following that of the accrual of the tax.

In the case of the income tax, both individuals and corporations are required to submit a return (save in certain punctual cases) and pay the tax in March or April of the following year to that in which the tax accrued. SUNAT set the due date for each taxpayer based on the last digit of its tax ID. However, advance payments must be made by corporations and sole proprietors on a monthly basis.

Payment of any amounts disputed by taxpayers can be suspended so long as they have timely submitted a claim or an appeal at the administrative state. Once the administrative stage is completed, any disputed amounts needs be paid, unless the taxpayer gets a preliminary order from the Judiciary suspending the payment under certain conditions, which, generally speaking, consist in the placement of a bond for an amount equal to 60% of the amount disputed, together with interests and penalties.

6. Is taxpayer data recognised as highly confidential and adequately safeguarded against disclosure to third parties, including other parts of the Government? Is it a signatory (or does it propose to become a signatory) to the Common Reporting Standard? And/or does it maintain (or intend to maintain) a public register of beneficial ownership?

Taxpayer data is protected by the guarantee of tax secrecy, set forth in article 2 of the Constitution and in section 85 of the Tax Code. Pursuant to that guarantee, tax data cannot be disclosed but only in the following cases: (i) requests issued by either the Judiciary, the Prosecution Office or a Congress Committee during a criminal investigation, (ii) if the information is required as per an exchange of information agreement or any other similar convention, (iii) if the information corresponds to finished tax cases, when required for academic purposes, (iv) in case of statistical information, (v) when the information corresponds to taxpayers designated as comparable for transfer pricing purposes, (vi) the amount of debts subject to enforced collection, (vii) information contained in Customs declarations.

On the other hand, Peru is a signatory of the Common Reporting Standard. While this standard came into force in Peru at the end of 2018, it is expected that the first exchange of information, concerning the information of tax year 2018, occurs in 2020.

With respect to beneficial ownership, Peru has enacted legislation intended for its Tax Authority to collect information as to the beneficial owners of any legal entity or corporate vehicle, with the aim at tackling tax evasion and money laundering. The information gathered by the Tax Authority will not be public and could only be shared by said entity with the Superintendence of Banking, Insurance and Private Pension Fund Managers and the Superintendence of the Securities Market. Public Notaries are also required to verify whether any legal entity or corporate vehicle requesting their services have submitted before the Tax Authority the information of their beneficial owners, or to collect it directly for further transmission to the Tax Authority.

7. What are the tests for residence of the main business structures (including transparent entities)?

Pursuant to section 9 of the Income Tax Law, an entity is deemed to be resident in Peru if it has been either incorporated or established in our country.

On the other hand, section 14 of the Income Tax Law sets forth a list of the vehicles which are deemed to be entities for tax purposes, and the criteria from the Tax Authorities is that any vehicle which is not specifically designated in that list is not deemed to be an entity for tax purposes. It is worth noting that there are no specific rules in our law on dealing with foreign vehicles regarded as transparent entities in their country of incorporation, for which it will be necessary to analyze, on a case by case basis, whether they are regarded as legal entities in their respective countries (in which case it will be treated as such in our country).

8. Have you found the policing of cross border transactions within an international group to be a target of the tax authorities' attention and in what ways?

Yes. In fact, our law provides different measures intended to tackle base erosion caused by the carrying out of cross border transactions either inside or outside a group of companies.

In that respect, in 2019 became effective a rule which conditions the deduction of expenses relating to royalties, interests and any retribution for services to non-residents upon their effective payment. Also, payments to foreign beneficiaries regarded as Peruvian source income are levied at rates ranging between 15% to 30%, with some few exceptions. Payments for services to residents in countries or territories of low or null taxation, or of non-cooperative jurisdictions, or payments through any of those jurisdictions are generally non-deductible, except for payments for (i) interests, (ii) insurance and reinsurance, (iii) lease of vessels and aircrafts, (iv) transport and (v) fees for the use of the Panama Canal.

In addition to these rules, SUNAT has enacted a series of regulations aligned with Action 13 of BEPS, aiming at the obtention of information on transactions carried out within group of companies. In that sense, taxpayers may, in accordance with their level of revenues, be obliged to submit informative returns such as the local report, the master file and the country-by-country report.

9. **Is there a CFC or Thin Cap regime? Is there a transfer pricing regime and is it possible to obtain an advance pricing agreement?**

The Peruvian tax laws provide for CFC, thin cap and transfer pricing regimes, and it is possible to enter into advance pricing agreements with SUNAT, as explained below:

- **CFC rules:**

The Income Tax Law provides that the passive income obtained by persons resident in Peru using a controlled foreign entity are deemed to be allocated to those persons at the end of the fiscal year of their accrual. For these purposes, a controlled foreign entity is any entity resident of countries or territories of low or null taxation, or of non-cooperative jurisdictions, or that are levied with a tax rate which is less than 75% of the tax rate applicable in Peru on the same income, so long as a person or persons resident in Peru have a participation of, at least, 50% on their profits.

- **Thin cap rules:**

In 2019 and 2020, interest expenses incurred by entities resident in Peru will be deductible so long as a 3:1 debt/equity ratio is met. Note that not only financings among related parties (or with foreign counterparties) are comprised under the scope of this rule, but also financings with unrelated parties, even financial institutions. The rule admits exceptions to its application, as, for instance, (i) the case of interest from notes issued via a public offering under the provisions of the Securities Market Act in the Peruvian market, so long as there are, at least, 5 bondholders, (ii) interest from financings to entities the net revenues of which are less than 2,500 Tax Units (each Tax Unit equals PEN 4,200 in 2019), (iii)

interests from financings granted to financial institutions and insurance companies, (iv) interest from financings to companies developing public infrastructure or utilities projects, etc.

From 2021 onwards, interest expenses from any type of financing will be deductible up to a limit equal to 30% of the EBITDA. Interest in excess of this limit could be carried forward for up to four additional years. The rule admits the same exceptions described in the immediately preceding paragraph.

◦ ***Transfer pricing rules and advance pricing agreements:***

Any transaction carried out between related parties or with parties resident of countries or territories of low or null taxation, or of non-cooperative jurisdictions must be carried out at arm's length conditions. SUNAT is entitled to challenge the value of those transactions and to adjust that accordingly, in case of noncompliance with the arm's length principle. Peruvian transfer pricing rules follow, in essence, the OECD guidelines and recognize those as source for their interpretation.

Advance pricing agreements can be entered into with SUNAT, with effect in the year of their subscription and three additional tax years.

10. Is there a general anti-avoidance rule (GAAR) and, if so, in your experience, how would you describe its application by the tax authority? Eg is the enforcement of the GAAR commonly litigated, is it raised by tax authorities in negotiations only etc?

The Rule XVI of the Preliminary Title of the Tax Code sets forth a general anti-avoidance rule, which enables SUNAT to disregard the effects of transactions leading to the increase of tax credits or losses, or to base erosion, if they are carried out under the following circumstances:

a) If those transactions are, be it individually or jointly with others, artificial or improper

for the consecution of the goals achieved by the parties, and,

b) If the use of those transactions leads to getting legal or economic effects, other than tax savings or advantages, which are equal or similar to those which would have been obtained with the usual or proper acts.

The application of this rule began in May 7, 2019, following the release of the substantial and formal requirements that need be considered by SUNAT at the moment of addressing a challenge against a taxpayer under the scope of the GAAR. In that condition, there has been no practice until now as to the application of the GAAR in specific cases.

It is worth mentioning that the application of the GAAR may lead to the imposition of substantial penalties in case that deficiencies are identified (equal to 50% of the tax due, or of the credits unduly obtained). Also, the law states that the board of directors is liable for the approval of any tax planning action, and SUNAT can hold the members of the board (together with any person taking part of a tax planning action later challenged under the scope of the GAAR) as joint and severally liable for the payment of any taxes in defect.

11. Have any of the OECD BEPS recommendations been implemented or are any planned to be implemented and if so, which ones?

Even though Peru is not a member of the OECD, has implemented most of the BEPS recommendations. In effect, in the last two years the following actions of BEPS has been implemented in our country:

- Action 4: new thin cap rules disallowing the deduction of interest expenses became effective on January 2019.
- Action 5: the general anti-avoidance rule was put in force in May 2019, after six years of suspension.
- Action 6 and 15: Peru signed in 2018 the OECD Multilateral Convention to Implement Tax

Treaty Related Measures to Prevent BEPS, although it has not yet become effective.

- Action 7: the rules on permanent establishments were updated in 2018, with effect from January 2019, to accommodate those to the recommendations of this action.
- Actions 8 to 10 and 13: the transfer pricing rules were updated in 2016, with effect from 2017 onwards, to accommodate them to the recommendations of these action plans. Because of that, starting on 2017, taxpayers are obliged to submit either a local report, master file or country-by-country report, depending on the volume of its revenues or those of the multinational group of companies they belong in.

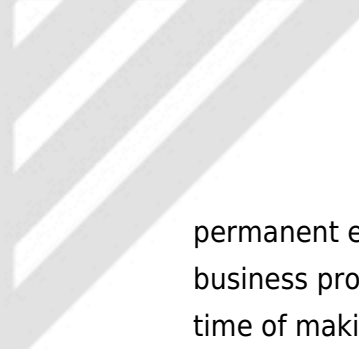
12. In your view, how has BEPS impacted on the government's tax policies?

While Peru has not yet become a member of the OECD, its tax authorities have been participating actively in the discussions on the post-BEPS world and have been keen to propose legislation that suits the recommendations coming from the OECD. One can say, therefore, that BEPS has impacted greatly on our tax policies and that is more likely than not that any updates to the BEPS's action plans will be followed by amendments into our tax law to put that in line with the new recommendations that can come from the OECD.

13. Does the tax system broadly follow the recognised OECD Model? Does it have taxation of; a) business profits, b) employment income and pensions, c) VAT (or other indirect tax), d) savings income and royalties, e) income from land, f) capital gains, g) stamp and/or capital duties? If so, what are the current rates and are they flat or graduated?

Peru follows in most of their aspects the OECD Model, but in some respects, it follows the recommendations from the UN such as in the case of royalties.

Business profits obtained by persons resident in Peru are levied with a 29.5% corporate tax rate, and distribution of dividends is levied with a 5% tax rate. Branches and other



permanent establishments of foreign corporations are levied at the same rates on their business profits, with the particularity that they shall pay the 5% dividends tax at the time of making good of the annual corporate tax, regardless that those dividends have not been distributed at all.

Salaries and wages paid to residents in Peru are levied at progressive rates ranging from 8% to 30%, and those paid to non-residents are levied at a flat 30% rate. Pensions are tax exempt.

VAT is imposed with an effective rate of 18%, which results from adding to the VAT rate (16%) the 2% rate corresponding to the Municipal Promotion Tax (applicable under the same VAT rules). VAT levies all sales of goods (other than real estate) performed in the country, imports of goods and services, provision of services and construction contracts. Exceptionally, the first sale of real estate made by the builder is levied with this tax, but in any event the sale of the land wherein the property is located is tax exempt.

Savings income obtained by individuals (either resident or not) are temporally tax exempt, while royalties are levied at 5% (for resident individuals other than sole proprietors), 29.5% (for sole proprietorships and corporations) and 30% (for non-residents).

Income from land is taxed at 5% (in case of individuals), 29.5% (for sole proprietors and corporations) and 30% (for non-resident sole proprietors and corporations).

Capital gains are taxed at 5% (in case of resident individuals), 29.5% (in case of resident entities) and 30% (for non-residents). There are some exceptions to this rule depending on the mechanism used to carry out the sale (for instance, certain sale of stock and securities through the Lima Stock Exchange can be exempt or subject to a 5% tax).

There are neither stamp taxes nor capital duties in our country.

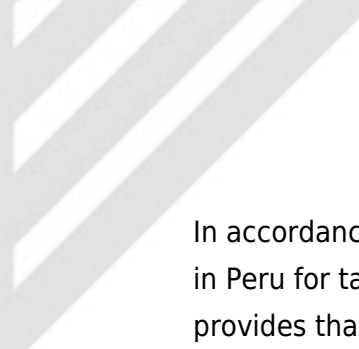
14. Is the charge to business tax levied on, broadly, the revenue profits of a business as computed according to the principles of commercial accountancy?

Broadly, this charge is levied on business profits computed in accordance with the International Financial Reporting Standards, but they need be adjusted to suit the new rules on “accrual” that, effective from January 2019, have been incorporated in our tax law. These rules disregard the probability that the company receives the flows related to the transaction under analysis.

15. Are different vehicles for carrying on business, such as companies, partnerships, trusts, etc, recognised as taxable entities? What entities are transparent for tax purposes and why are they used?

Any type of vehicle available in our corporate laws may be used for carrying on business and are, generally, recognized as legal entities by our law. By way of exception, our law does not recognize the condition of legal entity to participation accounts (*asociaciones en participación*), though they are not regarded to be pass-through vehicles, and grants the treatment of pass-through vehicles to the following structures: (i) consortia and joint ventures whose effective term is less than 3 years, (ii) local trusts (*fideicomisos*), and (iii) local investment funds. Local mutual funds are subject to a special tax regime whereby income is deferred until the certificates issued by such vehicle are redeemed or cancelled. There are no rules on foreign partnership and trusts and generally their tax treatment will depend upon (i) their being legal entities as per the law of their incorporation and (ii) the fact of being discretionary or not in the case of trusts.

16. Is liability to business taxation based upon a concept of fiscal residence or registration? If so what are the tests?



In accordance with section 7 of the Income Tax Law, an entity is deemed to be resident in Peru for tax purposes if it has been incorporated in our country. Said rule also provides that branches, agents or other permanent establishments in Peru of sole proprietors, corporations and any other type of entity incorporated abroad is resident in our country but only levied on their Peruvian- source income.

17. Are there any special taxation regimes, such as enterprise zones or favourable tax regimes for financial services or co-ordination centres, etc?

Yes. There are different special taxation regimes. For instance, agriculture, aquaculture and agri-industrial companies are levied with a 15% corporate income tax, and a 4.1% dividends tax. There are also preferential regimes for companies situated in the most remote areas of the Andes and in some parts of the Amazon, which contemplate exemptions from Income Tax and VAT. Likewise, companies located in the so-called special development areas (“ZED”, per its Spanish acronym) may benefit from exemptions on income tax, VAT, excise tax, ITAN, etc. Finally, companies classified as middle and small companies may benefit from a 10% corporate tax rate on profits up to 15 Tax Units.

18. Are there any particular tax regimes applicable to intellectual property, such as patent box?

There are no particular tax regimes applicable to intellectual property.

19. Is fiscal consolidation employed or a recognition of groups of corporates for tax purposes and are there any jurisdictional limitations on what can constitute a group for tax purposes? Is a

group contribution system employed or how can losses be relieved across group companies otherwise?

No, fiscal consolidation is not allowed, so that losses cannot be relieved across group companies.

20. Are there any withholding taxes?

Yes. Withholding taxes currently apply on payments of Peruvian-source income to non-residents, as follows:

Payment	WHT on individuals	WHT on entities
Royalties	30%	30%
Lease (other than lease of planes and vessels)	5%	30% (24% in case of goods subject to depreciation)
Interest	4.99% or 30%	4.99% or 30%
Interest from bonds and other financial income	4.99%	4.99%
Technical assistance	24%	15% or 30%
Capital gains derived from sale of stock	0%/5%/30%	0%/5%/30%
Capital gains derived from sale of real estate	5%	30%
Lease of vessels and planes	18%/24%	8%/10%
Insurance and reinsurance	2.1%	2.1%
Air transport	0.3%	0.3%
Maritime transport	0.6%	0.6%
Telecom services	1.5%	1.5%
Digital services	30%	30%
Artists	15%	15%
International News Agencies	3%	3%
Demurrage	24%	24%
Distribution of movies	6%	6%
Lease of containers for international transport	4.5%	4.5%
Payments for TV rights	6%	6%
Business income	30%	30%

Note that the double tax conventions entered into by Peru may provide for different

WHT rates.

21. **Are there any recognised environmental taxes payable by businesses?**

Yes. Peru imposes excise taxes on the acquisition of fuels and certain types of vehicles, which amount depends upon the level of contamination that those products may generate. For instance, the tax imposed on vehicles with significant cylinder volumes is higher than that imposed on vehicles with lower cylinder volumes. On the other hand, the tax imposed on fuels containing biocomponents is lower than that imposed on less efficient fuels.

22. **Is dividend income received from resident and/or non-resident companies exempt from tax? If not, how is it taxed?**

Dividend income received from resident companies is levied with a 5% tax rate, except when received by another resident company. In the case of dividends received from non-resident companies, they are not exempt and are deemed to be regular income, being subject to rates ranging between 8% to 30% in the case of individuals, and 29.5% in the case of corporations.

In general, the tax paid abroad on dividends can be credited up to a limit equal to the tax payable on the gross amount of that income in Peru. In case that the recipient of the dividend is a corporation, it is entitled to also credit the corporate tax paid by the foreign entity distributing the dividend and that immediately below the former, as per certain special rules and up to a limit equal to the tax payable in Peru on the gross amount of the dividends.

23. **If you were advising an international group seeking to re-locate**



activities from the UK in anticipation of Brexit, what are the advantages and disadvantages offered?

Compared to other countries of Latin America, Peru is a market economy with rules promoting foreign investments, no foreign exchange control and the right of free remittance of funds abroad. Those rules have been in force for almost thirty years now. It is also an advantage for our country the fact of being located at the very center of South America, which converts it in a transportation hub within the different countries of the region. However, Peru does not have a broad network of tax treaties, its tax law is not promotive of outbound investments and labor laws are quite protective of employees, which make difficult termination unless there is cause for that.