

Latin America kicks off 2023 with new tax reforms on the horizon

During 2022, the shock of the pandemic began to recede. Following a period in which Latin American governments focused on the delicate balance required to address the sectors hit the hardest by the health crisis without sacrificing fiscal discipline, some Latin American countries experienced political changes, include some turbulence, that dictated the pace and the agenda of reforms in the fiscal sphere as well. In this document, our tax experts analyze the tax changes announced and enacted in 2022 in Chile, Mexico, Peru, Colombia, Argentina and Uruguay.



Chile

Direct taxation

On July 7, 2022, the Government of president Gabriel Boric sent Congress a tax reform bill that sought to raise revenue amounting to 4% of GDP.

The main pillars of the bill were:

- To reduce evasion and avoidance by amending the general anti-avoidance rule, strengthening the power to tax and transfer pricing rules, creating an anonymous whistleblower channel, a registry of beneficial owners and a raft of other powers that were granted for the purpose to the Internal Tax Service.
- To increase the personal income tax brackets and rates (global supplemental tax and single second-category tax).
- To replace the totally or partially integrated system (in which corporate or first-category income tax could be totally or partially credited against final taxes) with a “dual” or disintegrated system, creating a 22% capital income tax on dividends distributed or withdrawals of income made by final taxpayers (meaning that the corporate or first-category income tax could no longer be credited against final taxes).
- The creation of a tax on the deferral of final taxes, applicable to income retained and not distributed by investment companies or companies that generate revenues from “passive” income, to final taxpayers.
- Creation of a wealth tax, applicable to individuals domiciled or resident in Chile, whose wealth exceeds the equivalent of USD 5 million.

However, on March 8, 2023, the Chilean House of Representatives declined to move forward with the bill, meaning that it cannot be submitted for discussion again for a year.

Alternatively, the Executive could insist on its current tax reform bill in the Senate, but in this case, the Senate would have to approve it with a 2/3 quorum rather than a simple majority (a majority which the Executive does not have in the Senate) and, in that case, the bill would return to the House of Representatives, where it would also need a 2/3 quorum to be approved.

In light of the above, it appears that the Government should sit down for talks with the opposition and other economic actors to try to agree on a tax reform

different from the one it originally proposed – probably narrower – which makes it possible to raise more revenue, while endeavoring not to affect savings, investment and economic growth.

Indirect taxation

January 1, 2023 saw the entry into effect of the amendment of the Sales and Services Tax Law published in the Official Journal on February 4, 2022, which, in essence, subjects the provision of all kinds of remunerated services to value added tax (VAT), save for the exceptions expressly envisaged in the law.

This amendment substantially changes the VAT treatment of services, given that before the amendment the general rule was the opposite, that is, only services expressly envisaged in the VAT Law were subject to VAT.

This is particularly important, considering that, in Chile, VAT on services applies both to services supplied in Chile and to services used in Chile, regardless of whether the related remuneration is paid or received in Chile or abroad. Therefore, even services supplied abroad by service suppliers domiciled and resident abroad could be subject to VAT if those services are used in Chile.



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Mexico

Direct and indirect taxation

In Mexico, there have not been any recent reforms to the laws governing income tax, value added tax, the excise tax on production and services or the Federal Tax Code that significantly affect the direct or indirect taxation of taxpayers in fiscal year 2023.

However, it should be noted that over the course of 2023 certain provisions will enter into force which were approved previously and will affect certain obligations incumbent on Mexican taxpayers. They relate in particular to:

- **Requirement to audit financial statements**

Companies that in fiscal year 2022 have obtained cumulative revenue equal to or greater than MXN\$ 1,650,490,600 or that are listed on the securities market or have participated in a merger or spin-off,¹ will be required to have their financial statements audited (the opinion must be submitted in 2023).

- **Changes relating to online digital tax receipts**

In fiscal year 2022 the new version 4.0 of the Online Digital Tax Receipt (*Comprobante Fiscal Digital por Internet*—CFDI) entered into force. It will replace version 3.3 of the CFDI. The use of this new version of the CFDI will be mandatory starting April 1, 2023. In other words, from that date onward, version 3.3 cannot be used.

In addition, in fiscal year 2022, the obligation came into force for freight trucking companies to issue the “Waybill Supplement” in order to include, in the CFDI, the information on the transportation and possession of freight. In this respect, it should be noted that the transition period granted by the tax authorities for the non-application of fines and penalties due to the issuance of CFDIs that do not include the information from the Waybill Supplement ends on July 31, 2023.

Procedural aspects

As regards court rulings, it is worth noting that case law has been recently published which concludes that the deduction of investments is appropriate only if the investments have been actually paid for. This contrasts with the view existing up to now on this issue which permitted taxpayers to start deducting investments when the asset began to be used (regardless of its payment).

It is also important to note that the Mexican Supreme Court is also discussing the methods for discharging

obligations that constitute a form of payment for VAT. The Court is expected to establish that offsetting (or similar forms of discharging obligations) is not a form of payment for VAT and, depending on the justices' votes, its decision could constitute new mandatory case law for the rest of the country's courts.

International aspects

On March 15, 2023, after it had been approved by the Senate of the Republic and published in the Official Federal Gazette, Mexico deposited with the secretary general of the OECD the instrument ratifying the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, known as the “multilateral instrument” or “MLI”. It will enter into force on July 1, 2023. As from that date, it will apply:

- With respect to taxes withheld in the source country, as from the first day of the calendar year following that of its ratification and deposit.
- With respect to the other provisions of the conventions, as from the first day of the sixth month following that of its ratification and deposit.

This instrument completes the work carried out around action number 15 of the BEPS (Base Erosion and Profit Shifting) Action Plan spearheaded by the OECD and will make it possible to amend existing bilateral treaties with no need for negotiations with each contracting State (Mexico has indicated that its entire network of treaties is covered under the MLI: 61 in total).

Other matters

The reform of the Social Security Law and the Retirement Savings System Law that took place in fiscal year 2021 and that envisages a gradual increase in employer social security contributions for the branches of early retirement and old age will begin to take effect this year and until 2030.

¹Unless the requirements indicated in the Miscellaneous Tax Resolution are met.



Peru

2023 kicks off with a raft of new tax developments, particularly in the area of indirect taxation. We explain below the key features of the main measures adopted:

Direct taxation

As from this year, new rules have taken effect for determining market value in share sales for income tax purposes. These rules prioritize the application of the discounted cash flow method over other methods (such as the equity value method) in sales outside the stock exchange.

Another significant change involved the exemption from income tax of sales of marketable securities through centralized trading mechanisms (i.e. the stock exchange). Although the exemption was extended until December 31, 2023, it was established that it only applies to individuals and up to the first 100 tax units of the capital gain generated in each year (approximately, USD\$ 130,000, according to the value of the tax unit in force for 2023). The change therefore left out domiciled and foreign legal entities, which were able to apply the exemption only up to 2022.

In addition, regarding joint ventures, as from this year, new rules on their tax treatment have taken effect. Among others, it was established that (i) the contribution of assets under a joint venture qualifies as a disposal subject to income tax; and (ii) the contributing partner's share qualifies as a dividend for income tax purposes and cannot be deducted as an expense or cost by the managing partner.

Also in the area of income tax, as from 2023, special and temporary regimes have been established for accelerated depreciation relating to certain assets, in order to boost private investment. Accordingly, buildings and structures can be depreciated at an annual rate of 33.33%, whereas land, hybrid or electric vehicles acquired in fiscal years 2023 and 2024 can be depreciated at an annual rate of 50%.

Indirect taxation

As regards value added tax (IGV), as from 2023, the rules for applying the Special IGV Early Recovery Regime have been relaxed. That regime allows for a refund of the IGV that was levied on the importation and/or local acquisition of goods, services and construction contracts in the pre-operational stage of investment projects in any economic sector. In this respect, until December 31, 2024, the amount of the investment commitment to apply the regime has been reduced from USD 5,000,000 to USD 2,000,000.

Other matters

The Congress of the Republic recently delegated to the Executive the power to legislate on matters relating to reactivation of the economy, authorizing it to issue tax-related measures, including most notably: (i) the amendment of the rules on presumed interest in the case of cash loans; and (ii) the extension of a raft of exemptions contained in the Income Tax Law.

In addition, in mid-2022, the Congress approved the creation of the tax on distance games and distance sports bets on technological platforms, which is set to take effect in 2023. It is a monthly tax and its rate is 12% of the difference between the monthly net revenues and maintenance expenses of each technological platform. The tax paid can be deducted by taxpayers when determining their business income tax.

Lastly, the obligation to submit an affidavit by the beneficial owner will continue to be gradually implemented throughout 2023. Accordingly, this year the affidavit must be submitted by legal entities domiciled in Peru that recorded net revenues above 300 tax units (approximately, USD 363,000) in 2022.



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Colombia

Direct taxation

The recent tax reform in Colombia tightened direct taxation by introducing new rates and restrictions on tax benefits.

Although the reform kept the standard rate in place, it established surcharges of between 5% and 15% on income tax for financial institutions, some extractive activities and for hydropower companies.

In addition, following OECD guidance, the reform established a minimum 15% tax rate for legal entities determined on the basis of the “adjusted tax” on “adjusted income”, with a particular problem, namely, that it does not permit future offsets. The reform also creates an annual limit of 3% of the taxpayer’s ordinary net income for the appropriateness of certain revenues that do not constitute income, exempt income and tax credits.

Furthermore, the reform made changes to the free-zone regime, establishing a mixed tax treatment that will be in effect from 2024 onward and with which the preferential rate that existed under this regime will apply only to export-derived revenues.

As regards individuals, the manner in which taxable net income is determined was amended so that all net income obtained from the different baskets is added together, which has a significant effect on the applicable rate taking into account its progressive nature. However, the basket income system is kept in place for the purposes of applying the adjustment to exempt income and deductions. In addition, the ceilings on combined benefits were reduced.

This, together with the changes in the tax rates on dividends, considerably increased the taxation of dividends for resident individuals. However, to counteract this effect, a 19% credit was established for this tax.

The tax rates on dividends went up by 10%, from 10% to 20% for nonresident individuals and foreign companies. In addition, the tax rate applicable to occasional gains went up by 15%.

Furthermore, the reform established the wealth tax on a permanent basis, only for individuals and nonresidents, under new conditions based on the possession of net wealth as of January 1 of each year equal to or greater than COP\$ 3 billion.

Indirect taxation

In order to mitigate negative externalities in the areas of health and the environment, new indirect taxes were created: the tax on single-use plastics, the tax on sugary beverages and the tax on ultra-processed

foods. The parties liable for these taxes are producers and importers of the plastic product or the foods or beverages subject to “health taxes”, when they sell, import or withdraw the product for own consumption.

In addition, the reform establishes the stamp tax on sales of real estate recorded in public deeds, makes changes to the taxable amount of VAT applicable to games of chance and the transportation of valuables, and establishes a special rule on the event triggering the financial transactions tax for movements by electronic payments where a payment gateway is involved.

Procedural aspects

Notable changes in this area include the grant of relief and reductions in penalties and interest generated by contingencies in the submission of returns and information to the tax authorities.

International aspects

As part of the measures to reduce evasion and avoidance, the concept of Significant Economic Presence (SEP) was introduced. Accordingly, as from 2024, persons with SEP in Colombia must bear a 10% withholding at source or voluntarily pay a rate of 3% of gross revenues. However, these provisions will not apply to persons who are resident in jurisdictions with which Colombia has a tax treaty in force.

Other matters

With this reform, the procedure for determining taxes by means of a bill is adjusted and new taxes that may be determined by billing are included. In addition, the reform extended the possibility of the exchange of tax information between the Colombian Tax and Customs National Authority (DIAN) and other entities like the Ministry of Finance, Ministry of Health and Social Protection, the National Planning Department (DNP) and the Pension and Parafiscal Management Unit (UGPP).



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Argentina*

Direct taxation

By means of General Resolution 5248/2022, on August 11, 2022, the Argentine Federal Tax Authority (AFIP) implemented an extraordinary payment on account of income tax.

According to the legislation, the payment on account was a one-time payment applicable to the taxpayers envisaged in article 73 of the Income Tax Law (i.e. companies). The following requirements must also be met:

- i. Amount of tax per the affidavit for the 2021 tax period (year-end between August and December) or 2022 (year-end between January and July), as applicable, is equal to or higher than AR\$ 100,000,000 (US\$ 483,675.94); or
- ii. Amount of the net taxable income, before the deduction of accumulated tax losses, is equal to or higher than AR\$ 300,000,000 (US\$ 1,451,027.81).

The payment will be creditable in the tax period following that used as the basis for calculation.

The rate on the amount to be paid will be 25% for companies for which the amount of income tax prepayments determined under the general regime contained in AFIP General Resolution 5211 is AR\$ 0, and 15% for all other taxpayers, applicable to net taxable income before the deduction of accumulated tax losses.

Lastly, the legislation establishes that offsetting cannot be used to cancel the payment envisaged in General Resolution 1658, nor can the payment be used to reduce general tax prepayments.

In addition, article 195 of Law 27701 on the General Budget of the Executive of the Nation for fiscal year 2023 established that for taxpayers that determine a positive inflation adjustment in the first and second year commenced on or after January 1, 2022, may recognize a third in that tax period and the remaining two-thirds in the two immediately following tax periods.

The above-mentioned computation of the positive inflation adjustment only applies to taxpayers whose investment in the purchase, construction, manufacture, production or final importation of property, plant and equipment – except for automobiles – during each of the two tax periods following that of the computation

of the first third, is equal to or higher than AR\$ 30,000,000,000 (US\$ 145,102,781.14).

International aspects

On December 5, 2022, Argentina and the United States signed an agreement for the automatic exchange of tax information relating to financial accounts, so that the Argentine tax authority can obtain information on Argentine residents with accounts in the United States (and vice versa).

The agreement takes effect on January 1, 2023 and will apply to individuals who are holders of accounts generating income above US\$ 10 per year.

By means of Decree 48/2023, the Executive amended the list of jurisdictions considered “non-cooperative” for Argentina, eliminating the following jurisdictions from the list: Bosnia and Herzegovina, Mongolia, Montenegro, Kingdom of Swaziland, Kingdom of Thailand, Hashemite Kingdom of Jordan, Republic of Botswana, Republic of Cape Verde, Republic of Kenya, Republic of Liberia, Republic of Maldives, Republic of Namibia, Republic of Paraguay, Islamic Republic of Mauritania and Sultanate of Oman.

Other matters

The Executive enacted Law 27687, ratified on September 15, 2022, approving the 2021 Tax Consensus, which agreed on the power of the provinces to create taxes on transfers of assets for no consideration. It also establishes a common definition of sales tax (a tax governed by each province), setting ceilings on the rates for this tax, as well as for the stamp tax. In addition, it is also agreed that income from exports (except for mining, hydrocarbon and ancillary activities) and from services actually used abroad is exempt from sales tax.

Exchange rate used: AR\$ 206.75 / US\$ 1.

* Garrigues does not have offices in Argentina.



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Uruguay**

Direct taxation

The main new tax developments in Uruguay focused on direct taxation.

As regards corporate income tax (impuesto a la renta de las actividades económicas—IRAE), the Uruguayan government took another step in the firm commitment it has made for many years now to implementing best tax practices. In this case, to honor the commitments that it had made in 2021 with the EU Code of Conduct Group and its standards, Uruguay introduced significant changes in the taxation of passive income obtained abroad by Uruguayan-tax-resident companies (dividends, interest, exchange differences or gains, as well as royalties for intangible assets) obtained abroad by entities that form part of a multinational group.

It should be recalled that Uruguay has a territorial tax system, so, until this change, passive income obtained by its companies was exempt because it was foreign-source income.

Now, effective January 1, 2023, and through Law 20095 and its Regulatory Decree 395/022, income deriving from the sale or economic use outside Uruguay of trademarks obtained by corporate income taxpayers belonging to multinational groups is considered to be Uruguayan-source income in all cases.

In turn, where it originates from assets located or rights used economically outside Uruguay, income from real estate, dividends, interest, royalties, other income from movable property and capital gains from the above-mentioned assets will be considered Uruguayan-source income, provided that it is obtained by an entity included in a multinational group, outside of banks, regarded as a “non-qualified” entity. An equity will be regarded as “non-qualified” where it does not have adequate economic substance during the fiscal year, such substance being considered for each asset generating the income and for the entire period of ownership of the asset.

For an entity to be deemed to have substance, and therefore to be “qualified”, it must simultaneously meet a number of requirements:

- It must employ human resources appropriate in number, qualifications and compensation to manage the investment assets, and must have suitable facilities to pursue this activity in Uruguay

- It must make the necessary strategic decisions and bear risks in Uruguay
- It must incur the appropriate expenses and costs in connection with the acquisition, ownership or disposal, as the case may be

According to the regulations, the requirements indicated in letters a) and b) can be met through third parties in Uruguay, subject at all times to suitable supervision in Uruguay by the corporate income taxpayer.

In turn, the requirements b) and c), that is, the making of strategic decisions and risks and expenses and costs, do not apply to entities that can be regarded as “holding companies”, meaning companies where at least 75% of their assets are directly associated with the activity of holding shares in other entities. A very important point is that to meet the sole substance requirement that is applied to holding companies, namely that of letter a) relating to appropriate human resources and facilities, the regulations established a presumption that the requirement relating to human resources is met where the entity at least has a manager resident in Uruguay with the appropriate qualifications to hold the position, or where the majority of the human resources employed are Uruguayan residents and are qualified to carry on the activities that generate the income in question.

Lastly, for income deriving from intellectual property rights linked to registered patents and software, sold or used economically outside Uruguay, any income that may be considered foreign-source income, and therefore not taxed, will be determined by applying a specific multiplier that was already in effect for the exemption that this income qualified for (nexus approach, following the international best practices, which requires comparing the expenses and costs incurred in Uruguay to develop or maintain these assets).

By means of Resolution 488/023, the Uruguayan Tax Authority regulated the formal requirements of the amendments, including the affidavits that will have to be submitted by taxpayers, indicating the degree of compliance with the requirements in relation to all the income items mentioned.

Furthermore, the Uruguayan government recently presented a draft decree in keeping with its campaign promises, where it envisages a reduction in the tax

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Uruguay**

burden of the direct taxation of individual income – i.e. personal income tax (IRPF) and social security assistance tax (IASS) – given that the GDP growth projections made at the beginning of the year were exceeded (it reached 5% in 2022) and the public deficit fell to 2.4% due to the application of the fiscal rule established by the same government, all the foregoing in addition to the healthy investment and employment figures.

According to the government's own estimates, the measures will benefit 75% of personal income taxpayers, particularly 47% of lower-income taxpayers, and 14% of the total (35% of lower-income taxpayers) will not be subject to the tax.

International aspects

The same law that made the significant changes to direct taxation already discussed at the outset (passive income and substance requirements), also introduced a unilateral tax credit regime for corporate income taxpayers that finally pay taxes in foreign countries on this income which is then taxed in Uruguay.

In addition, following the most modern practices in the area, the law approves a general anti-avoidance rule, which will enable the tax authority to reclassify income or entities and disregard forms or mechanisms, where it proves in a well-founded manner that they were conceived or carried out with the main purpose or one of the main purposes of obtaining a tax advantage that distorts the objective or aim sought by the new legislation, lacking a business purpose.

Other aspects

Accountability Law 20075, Decree 319/022 and the regulations of the new National Directorate of Free Zones 92/022, established a legal framework since January 2023 for teleworking in free zones, which provided a guarantee of certainty for many companies operating under this special regime. According to the legislation, under certain conditions, companies can have a teleworking system of up to 40% per month.

Companies must evidence a minimum of 1,000 in-person hours in order to qualify for the special teleworking regime, whereas the working hours of employees cannot be fewer than 25 hours per week.

In addition, the proportion of the teleworking arrangement in free zones is 40-60, that is, 40% of monthly working time can be teleworking and 60% in person.

** Garrigues does not have offices in Uruguay



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