

GARRIGUES

How are indirect sales of companies taxed in Latin American countries, Spain and Portugal?

We analyze how indirect transfers of shares are regulated in the tax systems of Argentina, Chile, Colombia, Mexico, Peru, Uruguay, Spain and Portugal.



Indirect sales

The taxation of the so-called “indirect sales” is a huge challenge for companies operating in more than one country.

There is an indirect transfer where there is a transfer of the shares or holdings of an entity which is not resident in a specific country but is, in turn, the owner – directly or through one or more companies – of shares in entities that are resident in that country.

This document contains a graphic and simplified description of the tax treatment of this type of transactions in different countries in Latin America, in Spain and Portugal provided by tax experts from the firm.

All of these graphs are from the perspective of the entity that is sold, and the applicable tax regime is described through questions and decision trees with common codes for all the countries.

Check the information of each country by clicking on the map



[And direct sales?](#)



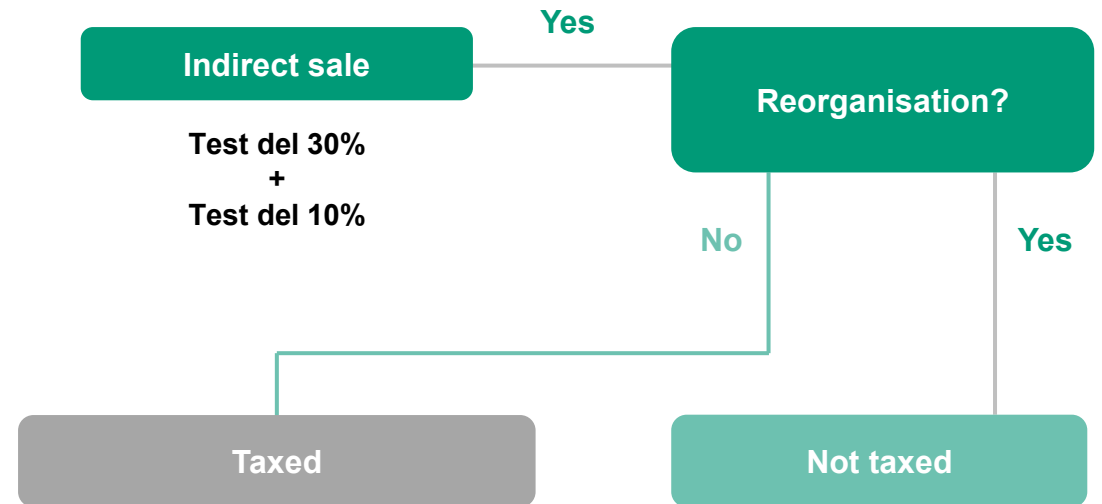
Argentina

Starting in 2018, income tax in Argentina started to be levied on the sale of shares of foreign companies that possess assets in the country directly or indirectly, provided that the following conditions are simultaneously met:

1) At least 30% of the market value of the shares sold directly or indirectly must originate from shares, rights, quotas of companies incorporated in Argentina, permanent establishments or other assets located in the country, measured based on their current value on the market, whether at the time of the sale or at any time during the 12 months preceding the sale; 2) The shares sold must represent (alone or together with the companies over which control is held) at least 10% of the owning foreign company's equity directly or indirectly deriving from the assets in Argentina, at the time of the sale or at any time during the preceding 12 months; 3) the shares were acquired after 12/30/2017 (Law 27.430). If these conditions are met, then the Argentine source gain will be determined in proportion to the value of the assets in the value of the sold shares.

The tax is not applicable when the transfers take place within the same economic group (when the seller of the shares owns a total direct or indirect interest of 80% or more in the buyer's capital, or vice-versa; and when one or more companies own a total direct or indirect interest of 80% or more in the seller and the buyer).

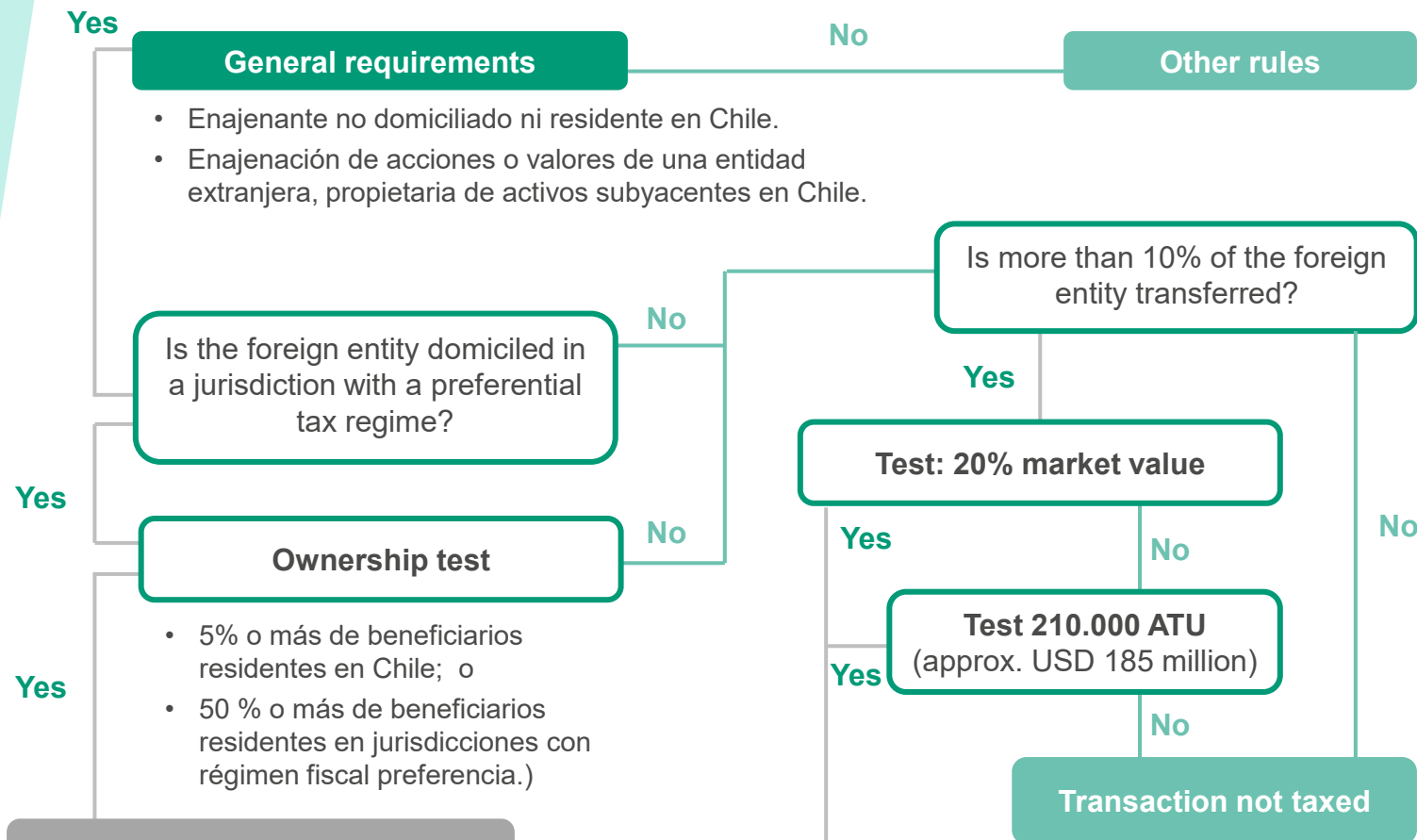
The tax is settled either by applying a 15% tax rate on the actual net gain or a 13.5% tax rate on the selling price (90% of presumed gain) (provided that the beneficiaries and/or the funds do not originate from "uncooperative" jurisdictions).



The capital gain is calculated in accordance with the general rules (15% of the actual gain or 13.5% of the selling price).

Chile

The first rule on indirect sales was added to the Income Tax Law (Ley sobre Impuesto de la Renta, LIR) in 2002. Requirements for the rule to apply are: (i) sales made abroad must not be in the context of a business reorganization; (ii) 10% or more of the foreign shares or securities must be sold; and (iii) the market value of the underlying asset located in Chile must represent at least 20% of the market value of the foreign asset, or the market value of the underlying asset located in Chile, for the part indirectly sold abroad, must have a market value above 210,000 ATU, i.e., approximately USD 185 million. In addition, the rule includes the option for the foreign seller to declare and pay the tax as if the Chilean assets had been effectively sold, including the possibility of availing of certain tax relief or benefits provided for under Chilean legislation and that would have been applicable had the asset located in Chile been sold directly.



Indirect transfer taxed

The applicable rate is 35%, on the highest value attributable to the underlying assets in Chile.

However, the transferor has the option of subjecting the transaction to the same tax regime that would have applied if the underlying assets in Chile had been transferred directly (including the application of the local laws on nontaxable income or reduced rates established in some tax treaties).

The rule on indirect sales does not apply where the transfer abroad has taken place in the context of a reorganization of a business group and provided that the transaction has not generated income or a higher value for the transferor, determined according to Chilean law.



Colombia

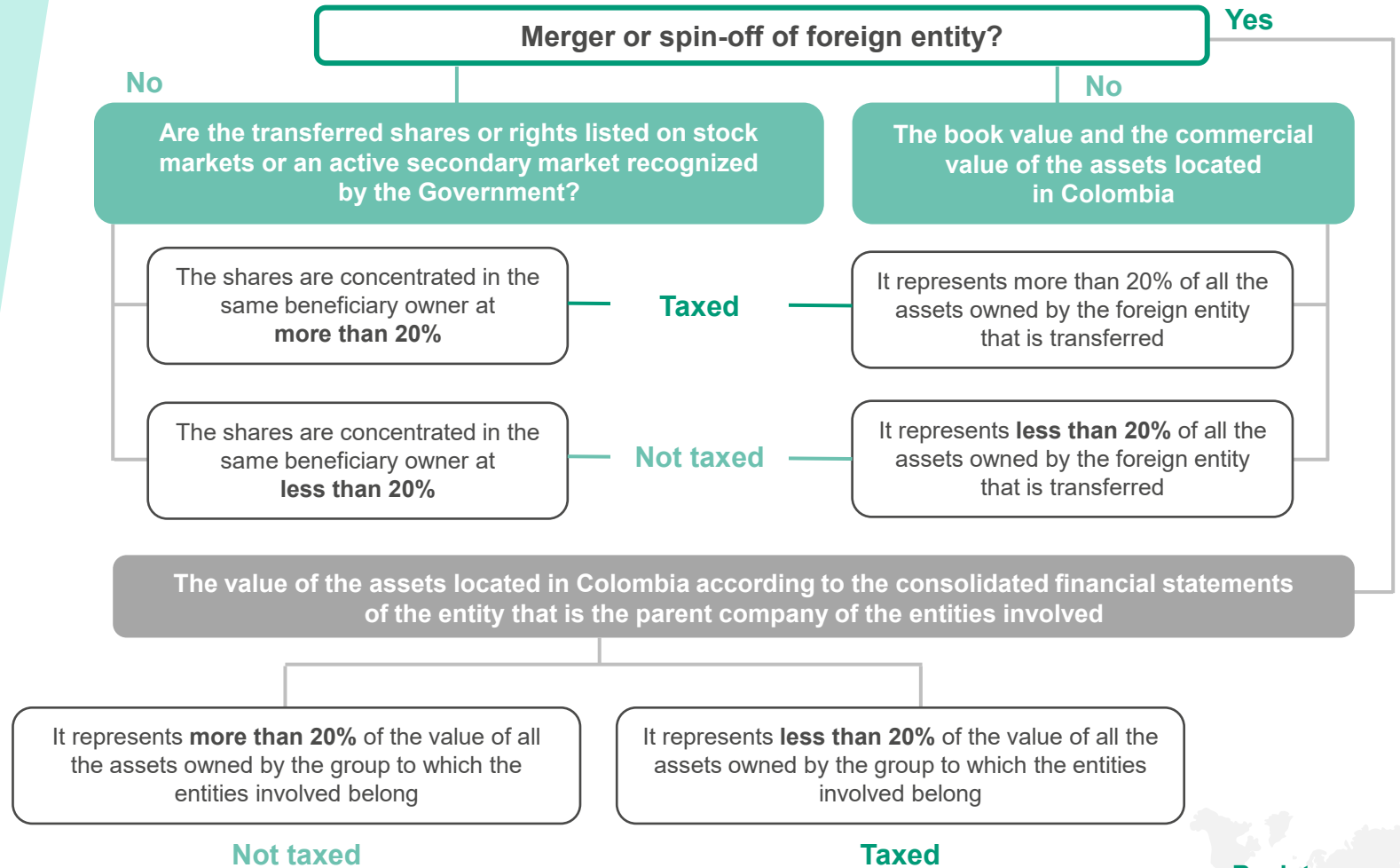


In Colombia, the taxation of indirect transfers as a taxable event for income tax purposes was introduced as of 2019. This regime applies when vehicles or foreign entities are transferred and such entities hold, directly or indirectly, shares, rights, or other assets located in Colombia.

- If the transfer occurs as a result of mergers or spin-offs of foreign companies, the transaction will be subject to tax in Colombia if the assets located in Colombia represent more than 20% of the total assets of the group, according to the consolidated financial statements of the parent company.
- For any other type of transaction, the transfer will be taxed in Colombia if: (i) the assets located in Colombia represent more than 20% of the book or market value of the transferred entity, and (ii) the transferred shares or rights are not listed on a secondary securities market recognized by the Colombian Government.
- The gain will be taxed at a rate of 15% if it qualifies as a capital gain, or at 35% (for the year 2020) if it is considered ordinary income.

Indirect transfer

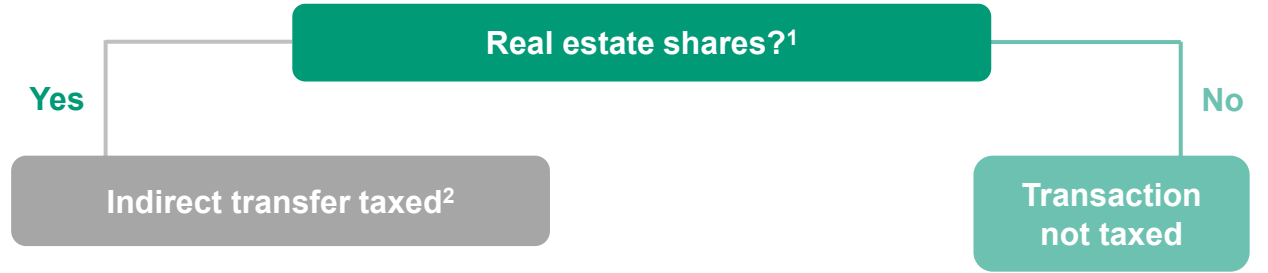
Indirect transfer by any means of shares, rights or assets located in Colombia through the transfer of shares, holdings or rights of entities abroad



Mexico



To determine whether an indirect sale of shares is taxable under Mexican law, the transaction must be analyzed to ascertain whether more than 50% of the book value of the transferred shares derives, directly or indirectly, from real estate assets located in Mexico. If so, any capital gain obtained on the sale of such shares will be subject to tax at a rate of 25% of the gross amount of the transaction. However, if certain requirements are met (e.g., designation of a legal representative in Mexico, preparation and issuance of a tax opinion on the sale of shares, among others), such capital gains obtained by non-residents may be taxed at 35% of the net gain. The aforementioned tax rates could be reduced if the seller is a tax resident in a jurisdiction that has signed a tax treaty with Mexico establishing preferential tax rates for indirect sales of shares and provided special requirements established in said treaty are met.



General rule
Transfer taxed at 25% of the total amount of the transaction

Practical difficulty in paying the relevant tax if the purchaser of the shares is not tax resident in Mexico.

Option
Transfer taxed at 35% of the gain obtained on the transfer

To be able to apply this option, the following requirements, among others, must be met:

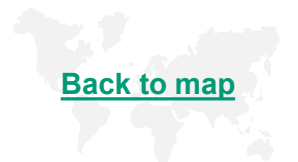
- Appointment of a legal representative in Mexico.
- Preparation and submission of a tax opinion.

¹ Elements to be analyzed:

- It refers to shares or instruments of which more than 50% of the book value comes from real estate in Mexico.
- It is a direct or indirect interest in the value of the shares.
- The Mexican tax provisions do not define the term “book value”, so the provisions of the applicable accounting standards need to be analyzed.
- Each transaction should be carefully analyzed.

² In any case, to determine the final taxation of the transaction, the various tax treaties that Mexico has in force should be specifically analyzed.

It should also be borne in mind that if there is no business rationale for the transaction, it may be reclassified by the tax authorities.

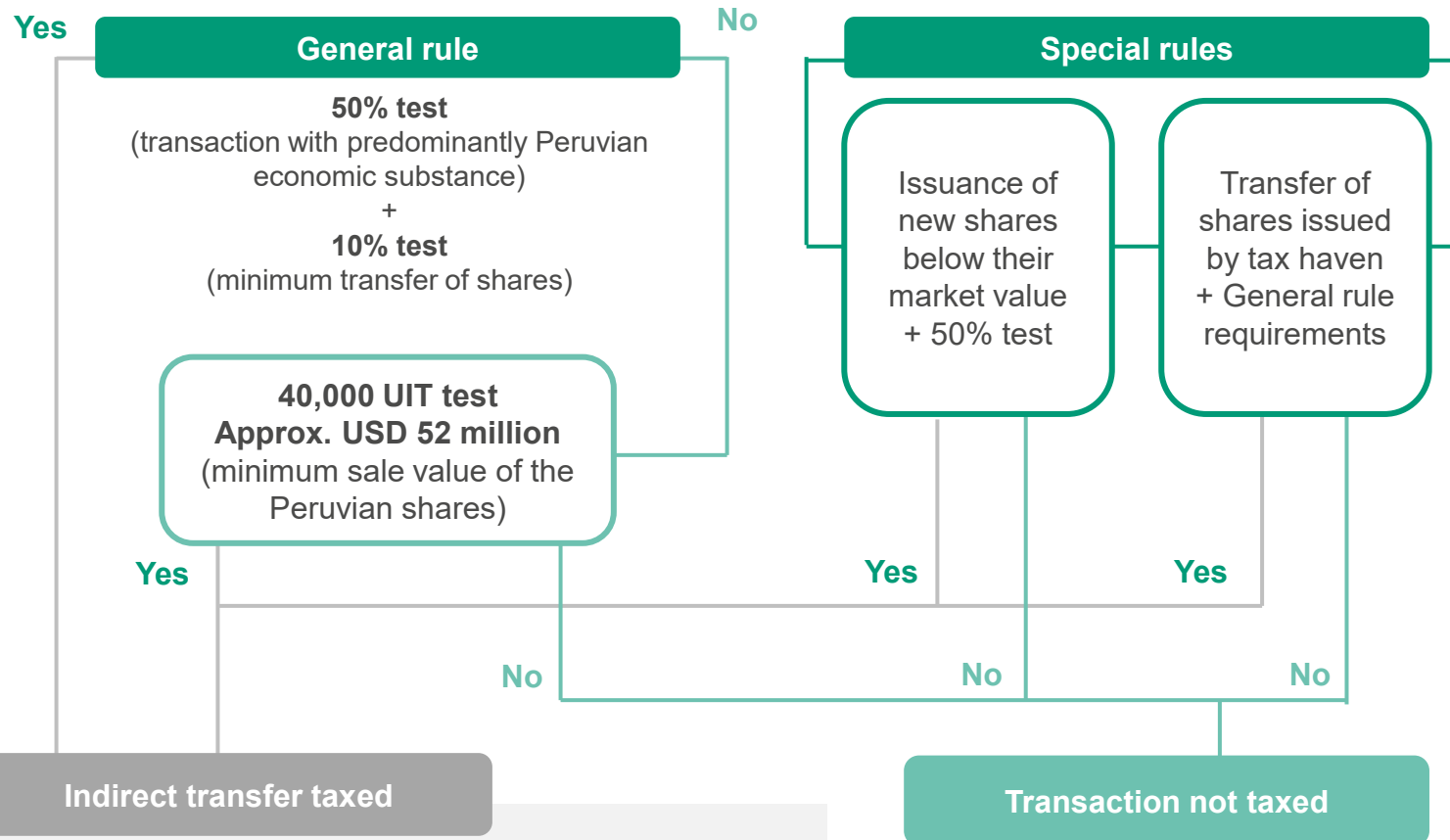


Peru



As a general rule, an indirect transfer of Peruvian shares will be triggered if, within a given period, the following conditions are met: (i) 50% or more of the fair market value of the foreign shares to be transferred derive from shares in Peruvian entities; and (ii) the shares to be transferred represent at least 10% or more of the equity capital of the nonresident entity. Be aware that if the “total amount” of Peruvian shares -indirectly transferred- is equal to or exceeds 40,000 Tax Units (approx. USD 63M), an indirect transfer of Peruvian shares would always be deemed to be carried out.

For that purpose, the “total amount” is determined by applying the percentage resulting from the “50% test” on the agreed value in the disposal of the nonresident entity's shares during a given period. The nonresident entity is subject to a 30% tax rate. It is possible to apply a reduced tax rate of 5% if the Peruvian shares are listed and they are transferred through the Lima Stock Exchange.



Indirect transfer taxed

The applicable rate is 30%, which may be reduced to 5% if the shares are listed and transferred through the Lima Stock Exchange.

The tax rate will apply over the gain obtained after deducting the tax cost (previously certified by the tax authority) of the fair market value of the transferred shares, according to an order of priority of valuation methods contained in the Income Tax Law (discounted cash flow, appraisals, equity value, etc.).”

Transaction not taxed



Uruguay

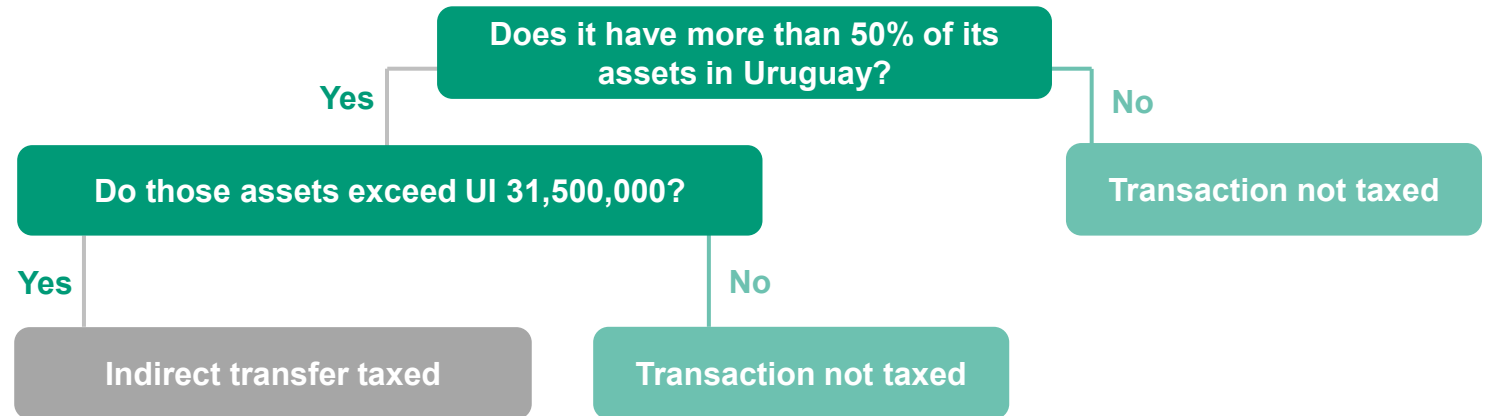


In Uruguay, indirect sales generally became subject to taxation starting in 2025 (since 2017, sales of entities from certain jurisdictions classified by the Tax Authority as Low or No Taxation (BONT), with more than 50% of their assets located in Uruguay, were already subject to tax).

Under the formula introduced in 2025, to determine whether an indirect sale is taxable, one must first assess whether the entity being sold holds, directly or indirectly, more than 50% of its assets in Uruguay, valued according to Uruguayan corporate income tax (IRAE) standards.

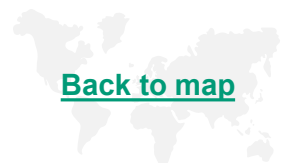
If the entity meets this asset threshold in Uruguay, and those assets exceed a minimum value of UI 31,500,000, the transaction will be subject to Non-Resident Income Tax (IRNR) at a rate of 2.4% on the transaction price, unless the selling entity is a BONT, in which case the rate increases to 7.5%.

This tax does not apply if the transfer does not alter the ultimate ownership by more than 95%, and this condition is maintained for at least two years.



Elements to Consider:

- Valuation is performed according to the rules of IRAE (Impuesto a la Renta de las Actividades Económicas), the Uruguayan corporate income tax. These rules follow accounting valuation standards (IFRS), with fiscal adjustments as required.
- Applicable Rate: The standard rate is 2.4%, applied to the transaction price. If there is no price, or if the transaction is a contribution or exchange, the shares received as consideration must be valued. If the seller is a BONT entity, the applicable rate is 7.5%.
- UI (Unidad Indexada): This is a monetary unit that is adjusted for inflation. The amount indicated for 2025 is approximately USD 5 million.
- Exemption: The tax does not apply if the transfer does not alter the ultimate beneficial ownership by at least 95%, and this condition is maintained for at least two years.



Spain

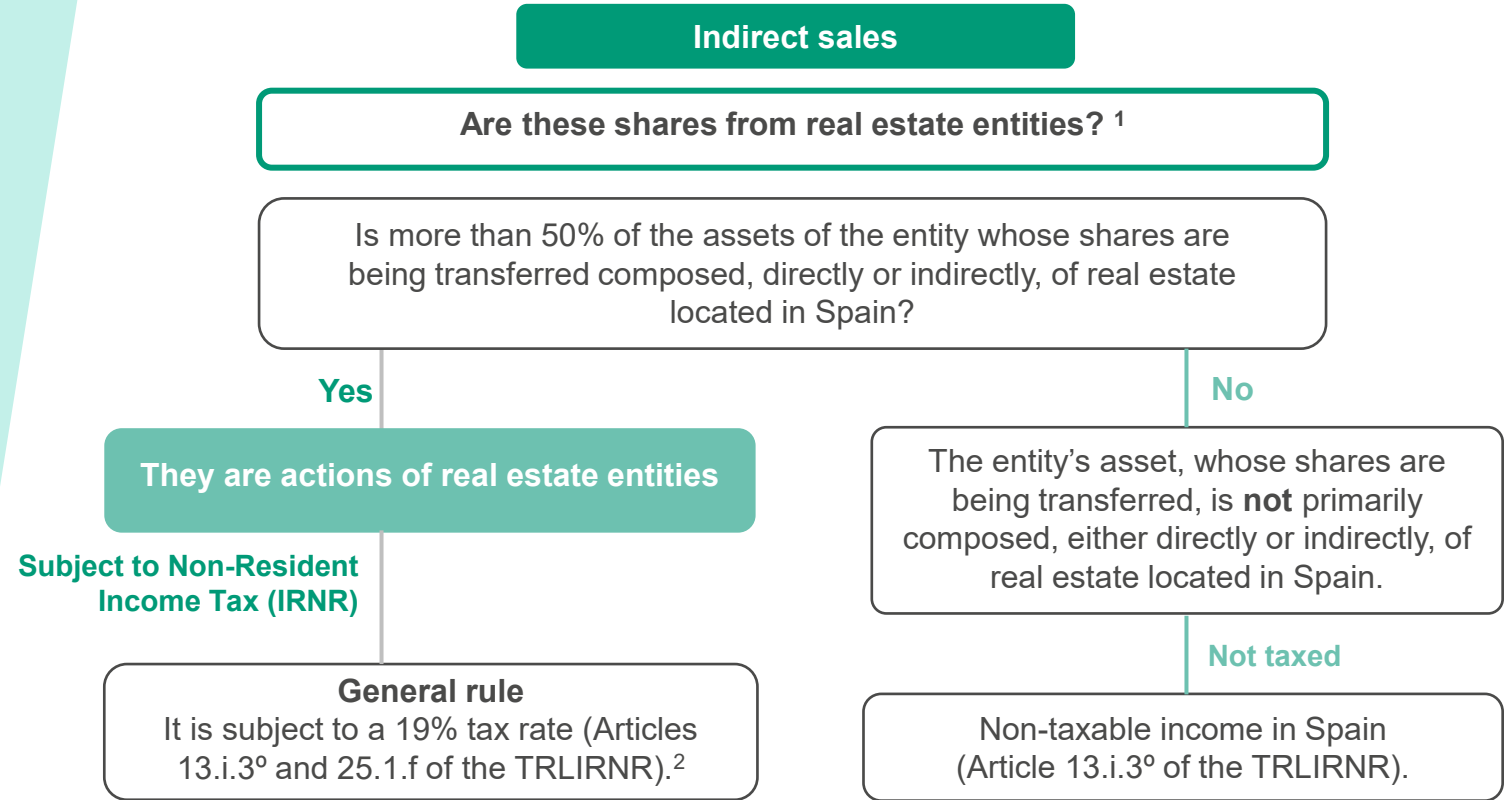


In the realm of direct taxation, it is essential to define the applicable regime for the indirect transfer of shares carried out by non-resident taxpayers in Spain who operate without a permanent establishment.

Generally, Spanish tax regulations consider capital gains derived from the transfer of shares in entities whose assets consist primarily, directly or indirectly, of real estate located in Spain to be sourced within Spanish territory.

To determine whether an indirect transfer of shares is taxable in Spain, it must be assessed whether the assets of the entity whose shares are being transferred consist, directly or indirectly, of at least 50% real estate located in Spanish territory.

If this condition is met, the capital gain obtained by the non-resident without a permanent establishment from the disposal of such shares will be subject to taxation in Spain at a rate of 19%.



1 Elements to be analyzed:

- This refers to actions or values of entities whose assets consist, directly or indirectly, of at least 50% real estate located in Spanish territory.
- Capital gains should be considered as obtained without the intermediation of a permanent establishment located in Spain.

2 In any case, to determine the final taxation of the operation, a specific analysis of the various Double Taxation Agreements (DTAs) that may be applicable will be necessary (with particular attention, for example, to the currently effective Agreement with the Netherlands).



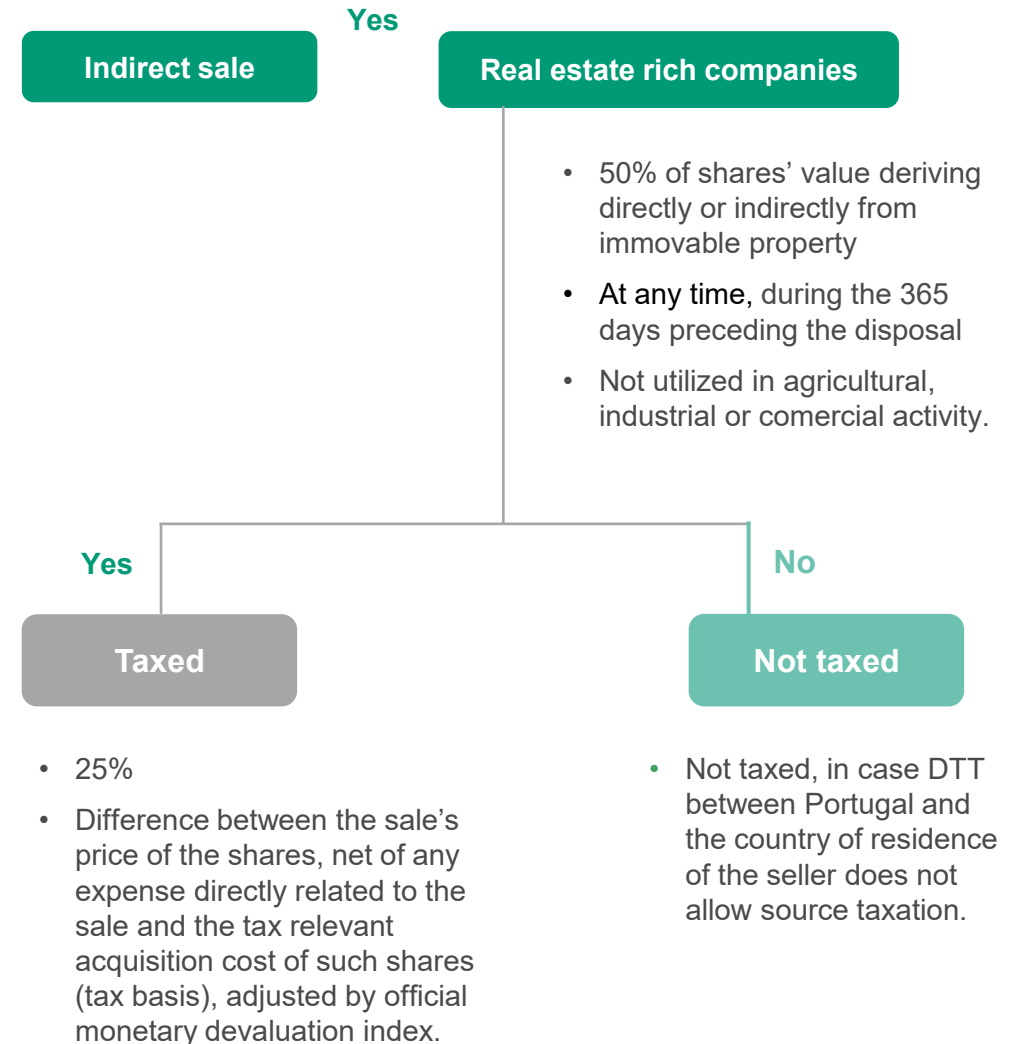
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Portugal



Indirect sale via the disposal of a NR entity

- Capital gains realized by NRs from the disposal of shares (or similar rights) held in non-resident entities is subject to CIT in Portugal if, at any time during the 365 days preceding the disposal, the transferred shares or rights derived more than 50% of their value directly or indirectly from immovable property located in Portugal and such immovable property is not utilized in an activity of an agricultural, industrial or commercial nature (other than the buy and sell of RE).
- If this is the case, any capital gain obtained on the sale of such shares may be subject to tax at a rate of 25%, unless the DTT between Portugal and the country of residence of the seller does not allow source taxation.
- The capital gain realized with the sale of shares should correspond to the difference between the sale's price of the shares, net of any expense directly related to the sale and the tax relevant acquisition cost of such shares (tax basis), adjusted by official monetary devaluation index.
- Regardless of the overall percentage of real estate assets, the indirect capital gains rule should not apply if the immovable property (in Portugal) owned by the company is used in an activity of an agricultural, industrial or commercial nature



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And direct sales? ¹

Argentina

Taxed as a general rule at a 15% rate applied to 90% of the selling price (13.5% effective rate) or, at the choice of the seller, 15% of the actual gain.

Chile

Taxed as a general rule at a 35% rate applied to the capital gain, which is the portion of the price of the selling value that exceeds the readjusted acquisition cost based on the inflation rate in Chile.

Colombia

Taxed as a general rule as follows: (i) if involving fixed assets that have been held for more than two years, a 15% rate is applicable, (ii) in all other cases the general rate of 35% would be applied. When the transferor is an individual, the occasional gain is taxed in the same manner, although ordinary income may be subject to marginal rates of up to 39%. The taxable base for determining the capital gain corresponds to the difference between the transfer value and the acquisition cost, adjusted in accordance with the inflation index published annually by the National Government.

Mexico

Taxed as a general rule at a rate of 25% of the total sum of the transaction or, alternatively and subject to compliance with several requirements, at a rate of 35% applied to the net gain.

Perú

Taxed as a general rule at a rate of 30% applied to the capital gain, with the possibility of deducting the relevant cost after being validated by the tax authorities in the case of parties not domiciled in Peru.

Uruguay

Taxed at an effective rate of 2.4% of the price or the consideration, or market value if no consideration is exchanged, or at 7.5% if the selling non-resident company is from a jurisdiction that is on the BONT list, in general terms.

Spain

Capital gains obtained by non-resident taxpayers from the disposal of shares in Spanish entities are, as a general rule, subject to a 19% tax rate, without prejudice to any relief available under the applicable DTT or to the exemptions provided for under domestic legislation.

Portugal

Capital gains taxed at a 25% rate in the case of non-resident entities disposing of Portuguese shares, unless within the scope of a domestic tax exemption or when DTT protection applies.

The domestic exemption does not apply inter alia to real estate-rich companies (more than 50% of the assets -> Portuguese-situs real estate), when the seller is held, in more than 25% by Portuguese residents (exceptions for EU structures may apply) and / or is resident in a blacklisted jurisdiction.

¹ In all cases the assumption is that the seller is not a resident of the country of the company being sold and does not have a permanent establishment in the country in which the latter is a resident. In all countries there are exceptions to the general rule. For example, the sale of companies listed on local stock exchanges and under certain exceptions. The system also changes if double taxation conventions with other countries are applicable when they regulate the authority to levy taxes on capital gains obtained by non-residents.

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Garrigues does not have offices in Argentina or Uruguay.

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This analysis is not intended to cover all the laws involved in every country or entail specific advice on any situation, but rather provides a simplified graphic depiction of the legislation on the issue at the time of preparation of the document. This work is based on the best understanding of the facts, according to applicable legislation, rulings and case law which does not exclude the possibility of diverging interpretations by third parties, including the tax authorities.

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