

# Doing business in Venezuela



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## Preface

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# Introduction

## Geography

The Bolivarian Republic of Venezuela is located north of Equator, on the North Coast of South America, with an area of 916,445 square kilometers (353,839 square miles), extending into a compact continental platform, which has a maximum length of 1,493 kilometers East-West, and 1,271 kilometers north-south. It has an extensive coastline of 2,813 kilometers (1,758 miles) on the Caribbean sea.

Venezuela is made up of 23 states, a Capital District – seat of the capital city of Caracas – 311 islands, keys, sand banks and reefs that together form the so-called Federal Dependencies. The largest island, Margarita, together with the island of Coche, forms the state of Nueva Esparta.

It is bordered on the north by the Caribbean Sea, on the south by Brazil, on the east by the disputed zone of Guyana Esequiba and by Trinidad and Tobago, and by Colombia on the west and southwest.

## Advantages of Investing in Venezuela

Venezuela has attractive benefits to attract investment. A good supply of natural resources, infrastructure above Latin American standards, labor, favorable geographical location and trade agreements allow for a market beyond our borders.

Following the recommendations of the United Nations Conference on Trade and Development (**CONAPRI** for its acronym in Spanish), CONAPRI bet targeting investments as the main strategy of attracting investment. Thus, we fit only the most profitable opportunities for the national economy and employers, regardless of their size.

In addition to the hydrocarbon industry, manufacturing has the highest relative weight in the Gross Domestic Product (PIB) and the ability to create jobs, ergo, a market with purchasing power. Considering the number of companies by sector and breadth of their markets.

From 1984 to 2004 extraction of oil and gas and refining accounted for 24% of the country's gross domestic product (GDP). Most activities in the non-oil economy are in the services sector, which accounts for 46% of the non-oil GDP, with trade and real estate standing out above the rest. In the case of production of goods, manufacturing holds first place, contributing 15%, followed by construction with 6% and agriculture with 5%.

Venezuela is also very rich in minerals such as iron, bauxite, coal, gold and diamonds, especially in the Guayana region. The state holds a large interest in the basic industries and in the oil sector, since both are considered of strategic importance for the nation.

There is a strong fishing industry all along the sea coast, while the country's forestry resources and farmlands are located in the area known as Los Llanos (The Plains) and in the Andean region.

Insofar as tourism is concerned, the Venezuelan coast draws people from all over the world. The country's main points of interest are: Angel Falls, the highest waterfall in the world; Lake Maracaibo, the largest in South America; the Orinoco River, the third largest in the world; the Mérida cable car, again, the world's longest and highest; plus 43 national parks and 21 natural monuments.

The Venezuelan legal system is open to foreign direct investment in keeping with the worldwide tendency in this regard. To mention just one example, pursuant to Article 301 of the Constitution, no discrimination is allowed between local and foreign investors.

No prior authorization is required to invest in the country and red tape is limited to registration of the capital invested. These principles are to be found in Andean Community Decisions 291 and 293 and are set forth in further detail in Decree 2095.

Other provisions include recognition of the principle of *fair and equitable treatment* and *the most-favored-nation* clause, the latter stemming from agreements for the promotion and protection of investments signed by The Bolivarian Republic of Venezuela .

## Constitution

Venezuela obtained its independence from Spain on July 5, 1811. The Bolivarian Republic of Venezuela is a decentralized state and is governed by principles of territorial integrity, cooperation, solidarity, concurrence and responsibility (Art. 4 of the Constitution).

The government of the Republic and its entities are and always will be democratic, participative, elective, decentralized, alternative, responsible, and plural and of revocable mandates. The President is elected every six (6) years and is entitled to immediate re-election for a similar additional period once. The State is made up of five independent powers: Executive, Legislative, Judiciary, Citizen and Electoral. The Executive is represented by the President, the Executive Vice-President, and a Cabinet made up of 26 Ministers appointed by the President. The Legislature is represented by the National Assembly, made up of 167 representatives who hold five (5) year tenures and may be re-elected for a maximum of two additional periods. The Judiciary is independent; the highest court is the Supreme Justice Tribunal, made up of 35 Judges, distributed in 7 courts with 5 Judges in each, who are appointed by the National Assembly for 12 year terms.

## Communications

Internal and external communications and transportation are excellent and meet the requirements of all economic activities. Chile has a very efficient integrated telecommunications system providing telephone (fixed and mobile units), data transmission, facsimile, etc., and allowing direct and instantaneous communications inside the country and toward the rest of the world.

## Language and Currency

The official language is Spanish, and several indigenous languages. These indigenous languages are official languages for indigenous people and must be respected all over the Republic, as they are considered a cultural legacy of the Nation and of Humanity.

On 2007 the Central Bank of Venezuela and the National Government initiated the process to implement currency redenomination, so that as of January, 2008 the country had a new family of banknotes and coins that, for a period of transition, were called Bolívar Fuerte and was represented as “Bs.F.” Currency redenomination is a process by means of which zero are eliminated from the national currency of a country, so that starting from a specific date all amounts of money will be expressed in a new and smaller monetary scale. In Venezuela, redenomination was implemented by eliminating three zeros from the current currency, as it is established in the Decree-Law of Currency Redenomination.

## Legal System

In accordance with its juridical framework (the Constitution), The Bolivarian Republic of Venezuela is a democratic and social state of law and justice. The Constitution provides that the Republic is a decentralized federal state and that sovereignty resides inalienably with the people, who exercise it directly in the manner provided in the Constitution and the law, and indirectly, by suffrage, through the organs of government (Articles 2 and 5 of the Constitution of the Republic).

## Major Exports and Imports

Venezuela's main exports are oil and its derivatives as well as iron, steel, aluminum, coal, chemicals and other products of basic industries.

Its main trading partners are the United States, Colombia, United Kingdom, Netherlands Antilles, Japan, Mexico, Italy, Germany, Brazil, Canada, France and Spain. Trade has increased with the member countries of the Andean Community of Nations, Community and Common Market (CARICOM) Common Market (CACM) and the Southern Common Market (MERCOSUR).

The main imports are machinery, transport equipment, chemicals, foodstuffs and manufactured goods.

## Government Policy on Foreign Investment in Venezuela

The Venezuelan legal system is open to foreign direct investment in keeping with the worldwide tendency in this regard. To mention just one example, pursuant to Article 301 of the Constitution, no discrimination is allowed between local and foreign investors.

No prior authorization is required to invest in the country and red tape is limited to registration of the capital invested. Only in the areas of gas and gaseous hydrocarbons, mining, professional services regulated by law (administration, accounting, law and journalism, among others), television, radio and print media in Spanish, restrictions on foreign investment.

Other provisions include recognition of the principle of *fair and equitable treatment* and *the most-favored-nation* clause, the latter stemming from agreements for the promotion and protection of investments signed by the Venezuelan Republic.

Another important incentive for businesses is to be found in the Legal Stability Contracts provided for in the Investment Promotion and Protection Act (LPPI in Spanish) and its Regulations. These instruments provide guarantees for application of special export-promotion systems, national taxation, and special incentives over a term not to exceed ten years.

## Import Controls

The Government levies customs duties on goods entering Venezuela. Customs clearance must be obtained to import any goods. There are imports controls on certain goods (drugs, animals, plants, food, firearms, etc.). There are some goods which import is not allowed such as used cars and motorcycles, used tires, asbestos, products considered hazardous for animals, agriculture and human wealth.

## Exchange Controls

At the present, there are exchange controls in effect. Foreign currency transactions are controlled by the Commission for Administration of Currency ("CADIVI"). Also all foreign currencies entering the territory are to be mandatory sold to the Central Bank of Venezuela. Financial institutions cannot engage in a foreign exchange business without prior approval from "CADIVI" and/or the Central Bank of Venezuela.

## Source of Finance

The Venezuelan banking market comprises various financial institutions such as commercial banks, investment banks, savings and loan associations and credit unions. There are also other specialized institutions, such as leasing, finance and factoring companies. Commercial banks are the most important suppliers of funds to businesses. Short-term financing can, in some cases, be arranged as a line of credit. Medium and long-term financing is also available. As a condition of these loans, a bank usually requires the executions of notes and formal loan agreements which may restrict the borrower's decision-making powers through special covenants. Personal guarantees and audited financial statements are usually required. Frequently, lenders ask simply for a guarantee from the parent company to grant a loan to a majority-owned subsidiary. Investment bankers are also called on to arrange financing through commercial paper.

## Venezuelan Taxation Number

Taxpayers, both businesses and individuals, are obligated to request a tax I.D. number (RIF) when they register with the SENIAT (IRS), a branch of Ministry of Finance, which is responsible for administrating the tax laws. Its mission includes interpreting tax laws, auditing taxpayers through a mandatory tax audit performed and collecting the revenue.

# Business Structures



## Types of Business Structures

The main business structures used in Venezuela are:

- Share Capital Corporation (Compañía Anonima – C.A.) (Sociedad Anonima – S.A.)
- Limited Liability Partnership (LLP) (Sociedad de Responsabilidad Limitada – S.R.L.)
- Limited Liability Co. (LLC) (Compañía en comandita. Simple o por acciones)
- General Partnership (Compañía en nombre colectivo)
- Partnership
- Branch of a Foreign Corporation

Every company must be registered in the Mercantile Register and will be subordinated in the case of financial institutions, to the Superintendence of Banks and Insurance. These institutions control and supervise business operations according to the Venezuelan Law.

## Share Capital Corporation (Compañía Anonima – C.A.) (Sociedad Anonima – S.A.)

Liability is guaranteed by a pre-determined share capital. Shareholders are liable up to the amount of their shares. They are share capital corporations.

## Limited Liability Partnership (LLP) (Sociedad de Responsabilidad Limitada – S.R.L.)

Liability is guaranteed by a pre-determined capital divided into contributing capital quotas not represented by shares of stock or negotiable papers. This form of association includes principles of share corporations and partnerships. Partners are liable up to the amount of their respective capital contributions. Transfer of participation is subject to unanimous approval of partners.

## Limited Liability Co. (LLC) (Compañía en comandita. Simple o por acciones)

One or more partners are jointly and individually fully liable and liability is limited to a pre-determined amount of one or more partners. Capital may be divided in shares of stock.

## General Partnership (Compañía en nombre colectivo)

All partners are jointly and fully liable.

## Partnership

Partnerships in Venezuela are civil organizations that usually associate professionals for the purpose of rendering a professional service, such as accountants, lawyers, architects, etc. Partnerships are organized in the same manner as corporations, and may have any number of partners.

Partners are jointly responsible for the partnership's operations and have unlimited personal liability. Except for the recognition of income for tax purposes, in which case partnerships compute using the cash method rather than the accrual method, taxes are paid in the same manner as any form of corporation.

## Branch of a Foreign Corporation

A foreign corporation may establish a Venezuelan branch, which has to be incorporated in a similar manner as a domestic corporation. Branches also compute income tax in the same manner as corporations in Venezuela, and are entitled to deduct expenses incurred both abroad and in the country, provided that the adequate supporting documentation is obtained. 15% to 34% and, if adequately supported, are deductible for income tax purposes. The percentage of withholding taxes on payments made abroad may vary depending on the tax treaties entered into with different countries.

## Governing Documents

The Company Laws contain basic and replaceable rules for the constitution and the internal management of a company. Companies have to be established on the basis of written articles of association covering basics such as the name, the registered office, the corporate purpose, the fiscal year, etc.

## Directors

The principal controlling body of a company is the Board of Directors, which is appointed by the shareholders.

Company directors have a statutory obligation to ensure the annual financial report gives a true and fair view of the financial position and performance of the company, and whether the company will be able to pay its debts as and when they become due and payable.

The directors have an obligation to ensure the financial report has been prepared in accordance with Venezuelan accounting standards (VEN NIF). Directors are also responsible for ensuring the company safeguards its assets and maintains a complete and adequate set of accounting records and statutory registers.

## Forming a Company

To form a company, you should follow these steps:

- Reserve company name.
- Obtain an approval to the company name.
- Lawyer must be prepare and legalize the company's constitutive documents and social status.
- Open bank account.
- Register at the local mercantile register (Registro Mercantil).
- Publish articles in a local newspaper (Gaceta Forense del Registro Mercantil).
- Register company books.
- Register at the local Servicio Nacional Integrado de Administracion Aduanera y Tributaria (SENIAT) with Registro Unico de Informacion Fiscal (RIF) to obtain a fiscal number.
- Obtain the clearance certificate at municipal level (Instituto Municipal de Aseo Urbano).
- Register with the Ministry of Labor.
- Go through a labor inspection (by the labor inspectorate).
- Register for social security at a local regional fund.
- Register at the National Institute of Socialist Cooperation and Education.
- Obtain the approval and undergo inspection.
- Obtain conformity of use certificate (zoning permit).
- Obtain industrial or commercial license from competent municipality.
- Register at National Bank for Housing and Habitat – Banco Nacional de Vivienda y Habitat (BANAVIH).

## Registration Requirements and Filing Procedures for Public Securities

The Securities National Superintendence (Superintendencia Nacional de Valores – SUNAVAL) is the governmental agency that regulates the offering of securities in Venezuela. One of its primary functions is to assure full and accurate disclosure of financial information with respect to companies whose shares are listed on the Venezuela Stock Exchange (Bolsa de Valores de Caracas – BVC).

The BVC is a private institution, which operates through a concession granted by the Ministry of Finance and Securities National Commission, under the Law of Capitals Market (Ley del Mercado de Capitales).

All companies whose shares are listed on the Stock Exchange are required to file periodic reports with the CNV and publish their financial statements in newspapers of significant circulation. The financial statements of these companies must be audited annually and reviewed by independent public accountants.

## Shareholdings by Non-residents and Foreign Companies

The Constitution guarantees the right to engage in any lucrative or commercial activity. This right, however, is subject to the limitations stipulated in the Constitution and to those established by law with respect to security, health or other matters of national interest. Besides, the State may reserve for itself the right to exploit certain industries or public services, such as, the Oil and Gas industry. In order to classify the company as foreign, mixed or national, the appropriate agency considers both the percentage of equity held by the foreign investor and the degree of control that the foreign investor is entitled to exercise over the technical, financial, administrative and commercial management of the company:

- (i) Foreign (more than 49% foreign equity);
- (ii) Mixed (49% or less but more than 19.9% foreign equity); and
- (iii) National (less than 20% foreign equity).

Shares owned by foreign investors with no decision power in the technical, commercial, administrative and financial management of the company, are not computed for the purpose of classifying the company as foreign, mixed or national.

There are some private and government agencies promoting investment in the country: the National Council for the Promotion of Investments (CONAPRI, from its Spanish acronym), the Social and Economic Development Bank of Venezuela (BANDES, from its Spanish acronym), some trade and industry associations, Venezuelan Embassies and Consulates around the world.

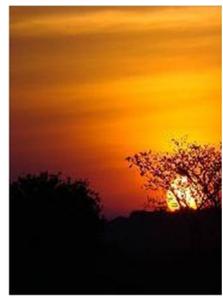
Usually, all foreign investments are deemed approved and they are only subject to registration with the appropriate agency, provided that they do not contravene any provision of general applicability under Venezuelan legislation.

However, foreign investors should register their investment with the Foreign Investment Superintendence (SIEX, from its Spanish acronym). This register is a compulsory requirement for eventual repatriation of capital and dividend remittance abroad possible.

## Audit Requirements and Practices

Corporations and partnerships subject to control of some of the respective Superintendence (e.g. publicly traded corporations, entities registered with the Register of Securities, banks, foreign companies, etc) must appoint auditors to annually report on their financial reports.

# Taxation



## Introduction

Venezuelan tax legislation contains different laws related to each tax. The taxes are related to income, assets and certain specific transactions. The fundamental legal structure for taxes is defined within the Constitution of the Bolivarian Republic of Venezuela which establishes procedures, and the National Assembly enacts the tax laws. In addition to specific tax laws, there are some basic laws that refer to general tax administration, such as income tax law and the fiscal code. Most tax laws have a series of regulations that are issued by the tax authorities and provide for procedures and interpretations.

The Venezuelan individual tax system is a self-assessment scheme which requires withholding of tax from employees' salaries and certain other payments. When a taxpayer is required to withhold taxes on payments made to another person, the taxpayer must remit the withheld taxes to the government. In addition, businesses and individuals are required to make monthly provisional payments on all different taxes.

After the close of a tax year, which is December 31 in most cases, taxpayers must file a tax return which reports all taxable income and allowable deductions. The income tax is computed on net taxable income, less advance payments made during the year.

## Income taxation Law and Administration

The taxation system regarding taxes of “internal applicability” is administrated by the Servicio Nacional Integrado de Administración Aduanera y Tributaria (SENIAT from its Spanish acronym, Venezuelan Internal Revenue Service), a branch of Ministry of Finance, which is responsible for administering the tax laws. Its mission includes interpreting tax laws, auditing taxpayers through a mandatory tax audit performed and collecting the revenue.

### Fiscal Year

Tax is imposed on a current year basis. The tax year adopted is generally the one which is specified in a company statutory document, with the standard year being a calendar year (in most cases is December 31). However, it should be noted that other periods are also allowed, including periods of 12 months or less. Final tax is payable when filing the final corporation tax return, usually due within three months from the end of the accounting period.

### Taxpayers

Venezuelan resident or domiciled companies are subject to profit tax on their worldwide income. Non-resident or non-domiciled companies are subject to corporation tax only on Venezuelan-sourced income even when do not have permanent establishment or a fixed base in Venezuela. Foreign resident or domiciled companies who have a permanent establishment or fixed base in the country will exclusively pay taxes by the income of national or foreign source attributable to this permanent establishment or fixed base. Income taxation is based on the following factors: the taxpayer's place of residence and the source of the income.

## Taxable Income

The net revenue is determined by subtracting the costs and deductions permitted by the Income Tax Law from the net income. To arrive at the taxable income, some expenses must be considered as non-deductible and some income as non-taxable.

The corporate income tax rates are as follows:

<u>Expressed in Tributary Units</u> (Wich value is set by SENIAT)	<u>Rate %</u>
Up to 2.000 T.U.	15
From 2.001 to 3.000 T.U.	22
Over 3.001 T.U.	34

## Payment of Income Taxes

The income tax must be calculated and paid each fiscal year. The annual tax return must be filed and paid during the three-month period immediately following the end of the fiscal year. However, the Tax Authorities may determine another date to file the tax return (i.e. Special Taxpayers, designated as such by the Tax Authorities in Venezuela, have a particular calendar).

Income tax on salaries and wages are withheld by the employer and paid on a monthly basis. Annual income tax return is required for an employee who receives only compensation income.

Professionals and self-employed persons must make estimated payments.

The provisional payments are offset against the taxpayer's annual tax liability as determined in its annual tax return. Any amount remaining after the liability has been satisfied is refunded to the taxpayer.

Non-residents deriving Venezuelan-sourced dividend, interest, royalty or some other income have withholding tax deducted at source. The Double Taxation Agreements signed by Venezuela with countries in which the recipient is resident do not consider any reduction of rates.

## Lodgement of Returns

Taxpayers are required to lodge returns annually except for those taxpayers receiving income exempt from taxes or subject to withholding income tax (non-resident shareholders for their dividends, employees for their salaries in some cases).

## Residence and Source

Venezuelan residents are generally subject to tax on all income, irrespective of its source (i.e. on worldwide income). By contrast, non-resident are only subject on Venezuelan-sourced income even when do not have permanent establishment or a fixed base in Venezuela. Foreign resident who have a permanent establishment or fixed base in the country will exclusively pay taxes by the income of national or foreign source attributable to this permanent establishment or fixed base. Income taxation is based on the following factors: the taxpayer's place of residence and the source of the income.

- *Residence of Individuals*

A taxpayer's residency status is determined according to the follow:

1. Unless proven otherwise, it is assumed that individuals Venezuelan, are resident in the country.
2. Individuals who have remained in the country for a continuous period or discontinuous, more than one hundred eighty three (183) days in a calendar year or the year immediately prior to the year to which correspond definite tribute.

3. Individuals who have established their residence or place of abode in the country, except that in calendar year stay in another country for a continuous period or discontinuous over one hundred and eighty three (183) days and proof of having acquired residence for tax purposes in that other country.

4. Venezuelans abroad performing representative duties or charges Republic officials, states, municipalities or entities functionally decentralized, and who receive compensation of any of these public entities.

- *Residence of Companies*

A company is resident in Venezuela if it is incorporated in the country. If the company is not incorporated in Venezuela, it will be a resident in Venezuela if it carries on business in Venezuela, and either its central management and control is in Venezuela.

Australian incorporated subsidiaries of foreign companies will be residents of Venezuela for taxation purposes.

## Source of Income

The source of income is ordinarily determined according to the circumstances surrounding its receipt. The general rule regarding the source of income states that is considered of Venezuelan source those deriving from goods located in the country or from the activities developed in it, whichever is the domicile or residence of the taxpayer.

In case of services rendered, the income will ordinarily be sourced in the place where the service is rendered. Likewise the Law states that the source of the interests is in the domicile of the debtor. The royalties for the use of trademarks and other similar incomes, derived from the exploitation in Venezuela of the industrial or intellectual property are also of Venezuelan source.

Venezuela has signed Double Taxation Agreements with many countries that must be considered in the determination of where an item of income is sourced. For example, business income, personal services under certain conditions, income from property, dividend, interest, royalty and other income can be impacted by terms of the Double Taxation Agreements.

## Taxation of Companies

- *Taxation of Profits*

Broadly speaking, the net revenue is determined by subtracting the costs and deductions permitted by the Income Tax Law from the net income. To arrive at the taxable income, some expenses must be considered as non-deductible and some income as non-taxable.

- *Investment Allowance*

The Venezuelan income tax law provides for the benefit of tax abatements. In an amount equivalent to 10% of the amount of new investments made in the country, other than land that has not been used previously by other companies, and made in the following activities: industrial and agribusiness activities, construction, electric power, telecommunications, science and technology (other than hydrocarbons and related activities) and, in general, all activities of an industrial nature that represent investments to meet the requirements of advanced or state-of-the-art technology.

Taxpayers engaging in the extraction of hydrocarbons and related activities such as refining and transportation shall be entitled to a tax credit equal to 8% of the amount of any investments. The law also provides for an additional tax credit of 4% of the total cost of investment in: exploration, drilling and related facilities for production, transportation and storage; secondary recovery of hydrocarbons; use, conservation and storage of gas, including liquefied gas; and, upgrading of hydrocarbons and expenditure for research.

Parties receiving income from tourism services who are duly registered in the National Tourism Registry shall be entitled to a tax credit of 75% of the amount of new investments for construction of hotels, inns, and lodgings; expansion, improvements or re-equipping building or services; for providing any type of tourism service or for educational and training of their workers.

- *Depreciation*

The amount admissible as deduction for depreciation during the tax year is the percentage necessary to recover the cost of such assets during the time that they are available to be used in production. Depreciation may be increased by adjusting depreciable fixed assets for inflation. Only the straight-line or the production unit method is admitted. The Tax Administration may admit other methods. Accelerated depreciation of assets is not admitted.

- *Stock/Inventory*

Taxpayers shall draw up an inventory of all goods intended for sale at the start of their activities and at the close of each tax year. The inventoried goods shall be appraised at the cost price. They can also be appraised at the wholesale market price when that is less than the cost price.

- *Dividends*

From 1 January 2001, net income from dividends is considered to be a portion of income from dividends paid or credited to account, in cash or in kind, and arising from net income that is neither exempt nor exonerated, that exceeds the taxed fiscal net income, and accordingly, has not been taxed with income tax.

Dividend income is taxed at the rate of 34% of the amount paid. The full amount of the tax must be withheld at the time of payment or credit to account. Tax on dividends from companies in the oil and mining industry are taxed at the rate of 67.7% and 60% respectively and tax is to be withheld in full at source.

Dividends received from companies incorporated and domiciled abroad or incorporated abroad Venezuela and domiciled in Venezuela are excluded from net income as contemplated in the law but tax paid on such dividends may be applied outside Venezuelan territory.

- *Interest Deductions*

Interest on capital borrowed and invested in income-producing activity is deductible. In the case of interest received by companies abroad, there must be withholding in accordance with the following percentages:

Beneficiary	Rate %
Financial Institutions (Domiciled)	5
Financial Institutions (Non-domiciled)	4.95
Parent Company	5
Legal Entity other than the above	32.3

- *Losses*

Operating losses can be shifted for three consecutive periods following the fiscal year in which they occur. The losses from the adjustment for inflation may be carried over one year.

- *Incentives*

The customs duty paid on imports of goods and products used in the production of goods for export would be reimbursed by Banco Central de Venezuela (BCV).

- *Regular Adjustment for Inflation*

The income tax law considers the regular adjustment for inflation, which represents the greater or lesser value of the net worth obtained by recognizing the effects of the inflation in non-monetary assets and liabilities through the application of Consumer General Price Index,

based on procedures established in the Venezuelan tax legislation. The fiscal adjustment for inflation, thus calculated, is considered as a taxable gain or a deductible loss in determining the income tax expense.

## Repatriation of Profits and Transfer Pricing

In addition to paying dividends, there are payments such as interest, price of goods, service fees and others which could involve methods of repatriating profits to the non-resident associates, controllers and owners of Venezuelan entities. In these circumstances, the payments made by the Venezuelan resident to the non-resident associate must reflect the market value of the goods and/or services provided to the Venezuelan company, that is, all payments must be calculated with reference to arm's length market rates.

When the IRS consider the Venezuelan entity has paid an excessive amount for the goods, services, interest or other concepts the excess can be disallowed as expense.

Transactions between Venezuelan taxable entities, branches or agencies, and their head offices, other branches, related or considered as related entities according the law established abroad are also subject to the transfer pricing rules.

Venezuela has transfer pricing rules. The Tax Law provides for several transfer pricing principles, including: (i) penalties relating to non-compliance with transfer pricing regulations; (ii) specific rules for transfer pricing audit procedures; and (iii) the introduction of Advance Pricing Agreements (APA).

The transfer pricing rules in Venezuela are based on the "arm's length" principle. The domestic legislation: (i) considers applicable the OECD Transfer Pricing Guidelines for interpreting any matter not addressed by the law; (ii) eliminates the safe harbour regime established in 1999; (iii) imposes transfer pricing documentation and filing requirements; and (iv) contains specific APA provisions.

Under the new rules, taxpayers are specifically required to base related parties transactions on the arm's length principle for tax reporting purposes, notwithstanding the prices actually used.

The transfer pricing methods are basically identical to those included in the OECD Guidelines:

- Comparable Uncontrolled Price method (CUP);
- Resale Price Method (RPM);
- Cost Plus Method (CPM);
- Profit-Split Method (PSM); and
- Transactional Net Margin Method (TNMM).

## Taxation of Capital Gains

There is no separate or distinct tax on capital gains. However, capital gains and/or losses from the sale of assets belonging to companies that are situated or located in Venezuela are included in the calculation of the income for the purpose of determining the tax liability of companies (income tax).

## Interaction with International Tax Regimes

At the present time, Venezuela has signed tax treaties for the avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to taxes on Income and Capital. Such active treaties are signed with Germany, Belgium, The Netherlands, France, Italy, Norway, Portugal, United Kingdom, Czech Republic, Sweden, Switzerland, Trinidad and Tobago, The United States of America among others.,.

These treaties allow the Companies and residents of foreign countries to use lower tax rates or even the possibility of a complete exemption from taxes.

The treaties are based on the Organization for Economic Cooperation and Development (OECD) Model Convention and on the United Nation Model.

## Taxation of Individuals

- *Residents*

As already discussed, The Organic Tax Code defines individuals who have been in Venezuela for more that 180 days of a calendar year or the previous year, either continuously or discontinuously, as residents. Residents will be subject to worldwide income system. The tax table applicable to residents is expressed in Tributary Units, where the value of the Tributary Unit is adjusted by the Taxation Administration within the first 15 days of each year, according to inflation.

The tax rates applicable to residents are as follows:

Taxable income

<u>Expressed in Tributary Units</u>	<u>Rate %</u>
Up to 1.000 T.U.	6
From 1.001 T.U. to 1.500 T.U.	9
From 1.501 T.U. to 2.000 T.U.	12
From 2.001 T.U. to 2.500 T.U.	16
From 2.501 T.U. to 3.000 T.U.	20
From 3.001 T.U. to 4.000 T.U.	24
From 4.001 T.U. to 6.000 T.U.	29
Over 6.001 T.U.	34

Deductions:

1. Interest on loans for the purchase of principal home up to 1000 T.U. and for housing rentals up to 800 T.U.
2. Payments for education of the taxpayer and his or her descendants under 25 years of age.

3. Premiums paid to companies domiciled in the country for medical insurance.

4. Payments for medical and dental treatment and hospitalization rendered in the country.

These deductions must reflect payment by the taxpayer in Venezuela during the tax year, and the original documentation for said deductions must be attached to annual tax return. If the taxpayer decides not to use the actual deductions, a standard deduction of 774 Tributary Units can be used.

### Tax credits:

In addition, residents are entitled to the following tax credits:

- For the taxpayer 10 T.U.
- For the taxpayer's spouse 10 T.U.
- For each minor or disabled descendent 10 T.U.
- For each direct ascendant in the country 10 T.U.

- *Non-Residents*

Income received by non-residents is subject to a flat 34% of tax.

Royalties and similar payments: non-resident who receive net income from royalties and similar payments are subject to taxation of 34% based on 90% of such payments.

## Other Taxes

### Value Added Tax (VAT)

The VAT is applicable to the transfer of chattels, the rendering of services and the importation of goods, as specified in the law and is applicable throughout the entire Venezuelan territory (the Free Port of the State of Nueva Esparta, Paraguaná Peninsula in the State of Falcón and in the Cultural Scientific and Technological Tax- Free zone in the State of Mérida, will be exempt from VAT).

It will be paid by individuals and corporations, unincorporated or de facto companies, joint ventures and other public or private legal or economic entities, in their capacity as importers of goods, habitual or not. It will also be paid by manufacturers, producers, assembly plants, independent merchants and service providers who engage in activities that are defined by the law as taxable acts.

Certain imports of goods and services are exempt from tax. Exporters who are regular taxpayers are entitled to recover the tax paid upon the purchase of tangible chattels or receipt of services related to their export activities. This also applies in the case of chattels imported for export. The VAT amount accruing is determined by taxation periods of one calendar month, subtracting the aggregate tax credit amounts from the respective aggregate tax debit amount. The result is the VAT to be paid.

The standard rate, currently 12%, is charged on the net price of the transaction.

### Fringe Benefits Tax (FBT)

There is no tax payable by the company on fringe benefits. Instead, any benefits provided to employee are included in their personal income and are subject to tax.

### Local Tax

There is only a municipal tax that is assessed on gross income from commercial industrial activities at different percentages, depending on the business activities conducted and the geographic jurisdiction in which the company is located.

### Customs Duties

This involves paying tax on goods that are imported in accordance with the customs tariff which is calculated based on the CIF value.

## Stamp Tax

This is applied on certain transactions including transfer of ownership, formation of companies and a wide range of legal transactions and operations.

## Public Registry

These are duties that are incurred for the registration and certification of authenticity of various documents in the Main and Subsidiary Registry Offices of each geographic jurisdiction in which the operation is conducted.

## Mandatory Social Security

These are payments that are made monthly by employers and employees on the payroll of companies for the purpose of guaranteeing the functioning of the national worker social security system.

## Law for providing Housing and Habitat

Companies must contribute to the obligatory savings fund with 2% monthly of workers payroll. Workers' contribution shall be 1% of his salary. The savings fund must finance housing programs for the workers.

## National Institute of Educational Cooperation (NIEC)

Employers must contribute to this Institute on a quarterly basis at the rate of 2% of the total wages and compensation paid to their workers. Workers must contribute 0.5% of the profits paid to them by the employer at the end of the corporate business year. These contributions are for the purpose of professional training of workers and young apprentices, and tackling national illiteracy.

## Tax on Estates and Gifts

This is assessed on gratuitous transfers of rights *causa mortis* or *inter vivos*.

## Organic Law of Science, Technology and Innovation

This Law establishes a number of contributions the companies must make according to the activities they indulge in, as follows:

- a) hydrocarbon companies, 2% of annual gross revenues
- b) companies in mining and electrical power activities, 1% of annual gross revenues
- c) large companies indulging in other production sectors of goods and services, 0.5% of annual gross revenues, (it is understood by large companies with annual gross revenues over 100,000 UT (Tax Units).

The Law establishes that such contributions may be made in research developed in the same companies or into Government dependent Funds.

## Organic Law against Illegal Traffic and Consumption of Stupefying and Psycho Toxic Substances

This Law establishes a contribution of 1% of annual net income of companies employing 50 or more workers. This contribution must be invested in programs for the prevention of drug traffic and consumption within the same company for its workers and their family environment. Likewise, the Law establishes that 2% of their annual net income must be contributed by companies manufacturing or importing alcoholic beverages, tobacco and its mixtures, like chewing tobacco, to maintain and operate prevention and rehabilitation centers for consumers of these substances.

## Organic Law of Telecommunications

In the Organic Law of Telecommunications, various taxes and duties are set forth on the companies indulging in the business of telecommunications and making use of radio-electric spectrum, sound broadcasting and open television, among others. The various taxes and duties they must pay go between 0.05% and 2.3% of their annual gross revenues.

## Organic Law of Tourism

The Organic Law of Tourism sets forth a contribution of 1% monthly on gross revenues obtained, that must be paid by those rendering tourist services.

# Grants and Incentives



## General Introduction

Several laws state grant schemes and other incentives which purposes can be foster business establishments in some areas of the territory, investment in research and development, exports, the private cooperation with education, social assistance, sport practice, job training, etc. Some of them consist in especial tax and customs treatment, refunds, credit against income taxes or allowable expenses.

## Government Incentives

Some significant grants and incentives are detailed next.

### Exports Grants

Exporters have the right to recover value added tax supported from the acquisition and reception of services or goods, in the scope of their export activities. This tax credit recovery is subject to the Value Added Tax (VAT) law and its regulations, in which the proceeding and requirements for this recovery are established.

Entities that are developing industrial projects have the right to defer the use of its value added tax credits, until the starting of the operations. Exporters in the same situation will have the right to recover the value added tax.

Some of the available forms of financing are: Business loans, loan and commercial guaranties, lines of credit, financing. Export financing is available both from government as from private sources and international organizations.

## Grants, subsidies and funds

Special grants and subsidies offered to foreign investors are in general under the scope of a Bilateral Agreement between Venezuela and another country. These grants are usually restricted to certain activities.

The process and time estimate for approval will depend on the rules established in each Bilateral Agreement or Treaty.

The investor could also receive loans from government agencies, depending on the grant or subsidy and on the agency or entity granting it and as long as the conditions imposed by the agency are fulfilled.

## National tax incentive for foreign investors

The government offers incentives on a sector-by-sector basis through Presidential decrees, available to both foreign and domestic companies, including:

- i. Tax exemptions for establishing manufacturing facilities in certain under-developed regions.
- ii. Preferential treatment in the grant of government contracts for small and medium sized enterprises.

An example of these incentives is the income tax reduction. The applicable law establishes a reduction of the income tax due to investments in new assets (excluding land) made by companies developing industrial, agro-industrial, construction, telecommunications activities and those related to science, technology and in general any industrial activity that represent and investment in advance or cutting edge technology. This reduction will be of the order of 10% of the amount of the new investments the company engages to develop in those areas.

Another example is the suspension of the use of the tax credit generated in the preoperative period of their investments as long as the project executed is in the industry sector and the period of the development of the project is of at least 6 fiscal years. This suspension will last until the company starts to generate tax debit.

The process of application will depend on the kind of tax incentive and on certain particular circumstances (i.e. emergency situations, special rules regarding some activities considered of major importance).

### Regional tax incentive open to foreign investors

Local authorities can grant certain tax incentives, as long as the tax is under their jurisdiction. Those grants might be limited to certain activities that are considered necessary in the region or that the authority wishes to develop.

These incentives might also be granted for a determined period of time, as an incentive for the business to choose the region to develop their economic activities. The process of application will depend on the region, on the kind of tax incentive and on certain particular circumstances (i.e. emergency situations).

### Free Trade Zone Incentives

The Venezuelan government has created free trade zones: in Paraguaná (Falcón State), in Margarita Island (Nueva Esparta State), in Municipio San Francisco, Maracaibo (Zulia State) and in Mérida (Mérida State). The aim is to foster economic activity in these two areas.



# Protection of Intellectual and Industrial Property<sup>(1)</sup>

## Copyright

The legislation regarding copyright is enforced by the Ministry of the Popular Power for Trade and the Autonomous Service for Intellectual Property (SAPI, from its Spanish Acronym), which is part of that ministry. There is also a centralized agency called the National Directorate on Copyright, which is part of the SAPI.

The provisions of the Copyright Law shall protect all creative intellectual works, whether literary, scientific or artistic in character and whatever their nature, form of expression, merit or purpose, as well as neighboring rights.

After Venezuela's withdrawal from the Andean Community on April 22, 2006, legislative matters related to intellectual property have changed in the country, although no major changes have taken place regarding copyrights since the Copyright Law was implemented in 1993. Discussions have taken place regarding whether decisions issued by the Andean Community while Venezuela was a member country became part of our legislation or not. A petition for interpretation was filed at the Constitutional Chamber of the Supreme Court of Justice; however, the Supreme Court has still not rendered a decision.

## Trade Marks

Regarding trademark legislation, we must take into consideration Venezuela's withdrawal from the Andean Community and that, therefore, Intellectual Property Law of 1955 is back in force.

According to this Law, distinctive words and signs and combinations thereof that can be graphically reproduced can be registered as trademarks, including numbers and numerals.

A project of reform of the current Industrial Property law is currently being drafted. According to information received, this new legislation should comply with the World Trade Organization's agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and other international agreements.

## Patents

Regarding patents, to be patentable, the subject matter must be novel; however, there are some exceptions to this requirement such as: invention, improvement or industrial model or design which, being patented abroad, has not been disclosed, patented nor put into execution in Venezuela, which means it is not in the public domain.

Following Venezuela's withdrawal from the Andean Community, the current situation in Venezuela relating to legislative issues has changed. We are still awaiting the decision from the Supreme Court of Justice on the interpretation appeal filed before the Constitutional Chamber about the legislation in force regarding this matter.

Venezuela has been a member of the World Intellectual Property Organization (WIPO) since 1984, and has ratified the following agreements administered by WIPO:

- i. The Bern Convention for the Protection of Literary and Artistic Works;
- ii. The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention);
- iii. The Paris Convention for the Protection of Industrial Property;

Additionally, Venezuela is a member of the Agreement on Trade related Aspects of Intellectual Property Rights, commonly known as TRIPS.

The most important provisions for the protection of intellectual property in Venezuela were the Decisions of the Andean Community, which are no longer in force since the withdrawal of the country from the Andean Community of Nations.

The approvals are granted by the Autonomous Service of Intellectual Property (SAPI, from its Spanish acronym).

There are no special notarization requirements. However, for each registration a few documents must be filed before SAPI.

## Licenses

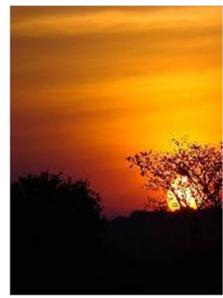
The Law on Intellectual Property (LIP) establishes the regulatory guidelines for licenses. The compulsory license system allows any interested party, particularly, local industrials and entrepreneurs, to obtain a license either for a local production or importation of the invention. The applicant does not have to show technological and economical capacity to exploit the invention; however, it is necessary to prove that the proposed user tried to obtain a contractual license from the patent holder on reasonable commercial terms and that such effort was not successful within a reasonable period of time. There might be additional requirements for certain products, depending on its characteristics (form, size, etc).

There is no limit established for royalties from licenses. When both parties are related companies, transfer pricing rules are applicable and the royalties must be in accordance with international market standards.

Local antitrust and competition laws apply to licenses and license agreements are considered vertical agreements and they are subject to the Rule of Reason. Instead of establishing a general rule, the anticompetitive consequences are weighed against the particular agreement or business justifications.

The typical agreements foreign corporations enter into with their wholly owned subsidiaries are, among others, Technical Assistance Agreements, Software License Agreements and Mark License Agreements.

# Immigration<sup>(2)</sup>



## Migration to Venezuela

### General Immigration Controls

- There are no immigration quotas.
- In some cases vaccinations are required; it depends on the country of origin.
- Medical certificates are required.
- Entry or re-entry permits are in general not required. However, a first entry permit is needed for bearers of a labor visa. Exit permits are in general not required.
- A residence permit is not required, a visa is enough for entering and staying in the country for the period granted.

### Visas

Immigration and visa requirements in Venezuela are subject to Migration and Immigration Law and to regulations from the Administrative Service for Identification, Migration and Immigration (SAIME, from its Spanish acronym). Venezuelan authorities are allowed to issue several kinds of visa, but only two are relevant to business: Labor Visa (*visa de transeunte laboral*) and Business Visa (*visa de transeunte de negocios*). In addition, citizens from certain countries may not require a Visa for visiting Venezuela as tourists.

The Business Visa is granted to merchants, executive employees, industry or corporate representatives and micro-entrepreneurs, non-migrants, who wish to enter the country in order to carry out activities and/or commercial transactions, mercantile, financial or other lucrative activity related with his or her business.

It is obtained directly by the person before the Venezuelan Consulate in his or her country of origin or residence. It is granted for one year for multiple entries. The holder of this visa is not entitled to work for any local company.

The Labor Visa is the visa with which anyone can work in Venezuela and be hired by a company registered in Venezuela. It is advisable to obtain the visa before the employee enters Venezuela. If the employee needs to come to Venezuela before obtaining the visa, the employee shall enter in Venezuela with the Business Visa (*visa de transeunte de negocios*). Once the Labor Visa is authorized, the employee shall get it at the Venezuelan Consulate in his country of origin or residence.

The Business Visa is obtained directly by the person before the Venezuelan Consulate in his or her country of origin or residence. It is granted for one year for multiple entries. The holder of this visa is not entitled to work for any local company.

In regard with the Labor Visa, it is advisable to obtain it before the employee enters Venezuela. Once the Labor Visa is authorized, the employee shall get it at the Venezuelan Consulate in his country of origin or residence. The procedure to obtain the authorization to enter the country and the labor permission of the employee may take from three (3) to four (4) months. It is granted for one year and the holder is can bring his family to Venezuela with a Family Visa (*visa de transeunte familiar*).

The documents required for the Business visa are:

- Description of the purpose of the trip,
- Contact information of the persons and companies being visited in the country,
- Registry documents of the company in Venezuela,
- Invitation letter from a company or a Business or Trade Association,
- Any other document that the consulate might consider necessary.

The documents required for the labor visa are the following (all documents must be certified with *Apostille* or legalized):

- Passport
- 2 identity sized photos
- Medical certificate and criminal records
- Copy of the labor permit granted by the Ministry of the Popular Power for Labor and Social Security
- Request for entry permit
- Required forms duly fulfilled
- Proof of payment of taxes

The procedures and granting of labor visa may be troublesome due to the number of documents to be filed and the need to obtain the work permit which is a previous procedure to be done before filing the application to obtain the labor visa.

The procedure to obtain the authorization to enter the country and the labor permission of the employee may take from three (3) to four (4) months. It is granted for one year and the holder can bring his family to Venezuela with a Family Visa.

The fees for obtaining visas are paid before the relevant Venezuelan Consulate. These fees are around USD 100.

### Work Contracts and Permits

The law does not require any labor contract to be in writing, but it is advisable to do so as this serves as evidence of the terms of the engagement, its duration, pay, and all other circumstances which may later need proof. Besides, a work contract is needed in order to obtain the Labor Visa.

The contract must describe the position or the specific job that will be accomplished, the remuneration and the duration of the employment. The contract must be with a company properly incorporated in Venezuela or a branch duly registered in the country.

Foreign employees must have a work permit and a work visa. If the investor will only make business in the country, he will need a business visa, but no work permit will be necessary. Labor permits are granted for one year by the Ministry of the Popular Power for Labor and Social Security.

The documents required for the permit are the following (all documents must be certified with *Apostille* or legalized):

- Passport
- Birth, and marriage certificate
- 4 identity sized photos
- Curriculum Vitae with education, labor experience and copy of titles
- Medical certificate and criminal records
- Copy of the labor permit granted by the Ministry of the Popular Power for Labor and Social Security
- Registry documents of the company in Venezuela
- Company's fiscal identification number
- Company's registration and declaration of solvency issued by labor and other authorities
- Request for entry permit
- Company's tax declarations
- Employment offer
- Required forms duly fulfilled
- Last income tax declaration
- Payment of taxes
- and others

The procedures and granting of labor visas and permits may be troublesome due to the number of documents to be filed and the need to obtain the work permit which is a previous procedure to be done before filing the application to obtain the labor visa. There are no fees involved in the process and it can take from 3 to 4 months.

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(2) [A Guide to Doing Business in Venezuela by Hoet Pelaez Castillo & Duque](#)

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