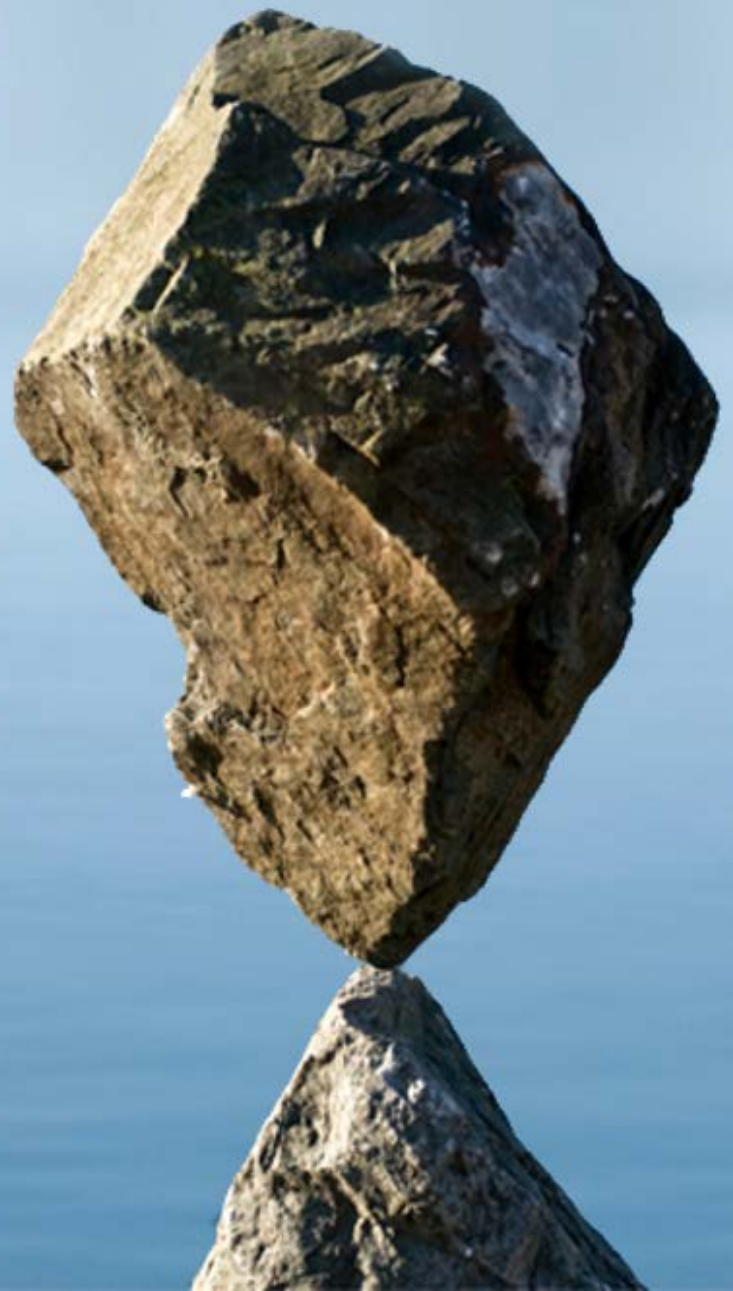
Latin America Tax | Striking the balance in the Americas

Monday 9 September 2019



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Speakers

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* KPMG Americas Ltd. is not an accounting firm and is not licensed or registered to practice accounting in any jurisdiction.

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Welcome and Introduction

Notes on CPE and polling questions

Continuing professional education (CPE) credits

North America

— We require that participants are registered, logged in and take part in at least four of the five polling questions and participate in at least 75 of the 90 minutes to qualify for CPE credits for today's webcast.

Outside North America

— We encourage you to participate in the questions, as you may be eligible for continuing education credits in your local jurisdiction.

Polling questions

— Polling questions will appear as we proceed through the presentation.

— As mentioned, in order to receive the CPE credit, we require that those participants take part in at least four of the five polling questions and participate in at least 75 of the 90 minutes to qualify for CPE credits for today's webcast.

Attendee questions

— You may submit questions in the *Ask a question* button on the left. We will answer as many questions as we can during Q&A. If we are unable to answer your question, someone from KPMG may reply via phone or email.

— For technical issues, please use the *Question Mark* button in the upper-right hand corner of the media player.

Your feedback

— When the webcast is over, the webcast player will automatically refresh to display an exit survey. Feel free to complete the survey, as your comments are very valuable to us.

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Striking the balance in the Americas

Brazil, Mexico, Chile, Argentina, Colombia, Peru, Panama and Uruguay.

Speaker

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Latin America overview

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Striking the balance in Brazil

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Brazil by the numbers

From then to now…

Macroeconomic Scenario

Key indicator	2014	2019
GDP[1]	US$2.45 trillion	US$1.87 trillion (2018)
Brazil to US dollar Exchange rate[2]	US$2.35	US$4.12 (September 04, 2019)
Inflation rate[3]	6.41%	3.22% (July, last 12 months)
Unemployment rate[4]	4.8%	12% (2nd quarter 2019)
Ease of doing business index[5]	116	109
FDI[6]	US$87.71 billion	US$88.32 billion

Sources:

1. The World Bank Data.
2. Banco Central do Brasil (Brazilian Central Bank). Ptax: Average of the exchange transactions. In this case, comprises the average of the Ptax for the full year of 2014 and the exchange rate from August 19, 2019.
3. Instituto Brasileiro de Geografia e Estatística (IBGE). Índice Nacional de Preços ao Consumidor Amplo (IPCA). Accumulated IPCA index for the last 12 months up to July 31, 2019.
4. Instituto Brasileiro de Geografia e Estatística (IBGE). Taxa de desocupação, 2014. Instituto Brasileiro de Geografia e Estatística (IBGE). Taxa de desocupação, 2nd quarter 2019.
5. 2014 Doing business index: World Bank. 2019 Doing business index: World Bank.
6. The World Bank Data.

Snapshot

Foreign Direct Investment

— Brazil is ranked 7th in the world for FDI in 2018. (UNCTAD, FDI inflows, by region and economy, 1990–2018)

— FDI inflow was slightly impacted by the downturn but investors continue to identify opportunities.

M&A

— M&A is a preferred vehicle for investment and cross-border M&A volumes have remained high.

— Trending sectors include infrastructure, agribusiness, technology and telecommunications.

Privatization

— Brazil is open to privatizations (*e.g.*, mainly airports, energy, infrastructure), which plays a significant role in the government's agenda.

Political situation

— Several reforms are being discussed for approval this year focused on effectively impacting the business environment.

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Brazil Tax Highlights

Domestic Tax Insights

Snapshot on Brazilian Tax Reform

Income taxes

CIT rates

Dividends

Others

Indirect taxes

Simplification

Potential new tax

Legislative process

Constitutional or Infra-constitutional level?

Individuals

Broader exemptions

Rate increase for high levels of income

Payroll and social security

Simplification

Potential new charges

Domestic Tax Insights (cont'd)

Tax Authorities Audit — on the spotlight

- Corporate reorganization + goodwill
- Import and export transactions aiming at shifting profits between group companies
- Abusive tax planning
- *"Fundos de Investimento em Participações" (FIP)*
- Market place transactions

Source: http://receita.economia.gov.br/dados/resultados/fiscalizacao/arquivos-e-imagens/2019_05_06-plano-anual-de-fiscalizacao-2019.pdf

BEPS

OECD Accession Process

- Formal request presented in May 2017: ongoing discussions have taken place since then
- Some of the tax challenges ahead:
  - Brazil’s transfer pricing rules
  - Policy regarding withholding income tax on payments remitted abroad
  - The limits to royalty deductibility
- Current status: discussions on approximately 70 outstanding entry instruments

Transfer Pricing — alignment towards OECD standards

- Joint effort between Brazil and OECD project to align Brazil's transfer pricing rules to OECD standards
- Options were brought to the table for such an alignment
- It is now up to the Brazilian government to make political decisions regarding whether to align and how this alignment should occur

BEPS (cont'd)

Action 15 — Multilateral Instrument

- Brazil opted out of the Multilateral BEPS convention
- Tax Treaties to be amended based on bilateral negotiations
- To date, two Protocols have been signed

Digital Economy

Simpler environment ahead?

- Refers to several different activities and agents and is a sector whose growth and particularities has drawn the attention from tax authorities.
- There has been some discussions, legislative changes and disputes on Municipal and State level, due to the increased scrutiny in regards to transactions over the internet.
- Players have been using different structures to meet their clients' needs in Brazil, each structure attracting different tax implications
- Some of existing discussions and roadblocks may be mitigated
  - "Bank transaction tax"

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Chile by the numbers

From then to now…

Macroeconomic Scenario

Key indicator	2014	2019
GDP	US$260.5bn[1]	US$315.7bn[2]
Chile to US dollar Exchange rate[3]	CLP$607.4	CLP$711
Inflation rate[4]	4.7%	2.4%
Unemployment rate[5]	6.3%	6.6%
Ease of doing business ranking[6]	34	56
FDI[7]	US$23.7bn	US$7.3bn

Sources:

1. World Bank.
2. Economist Intelligence Unit forecast
3. 2014 year end, 2019 at July 31.
4. Economist Intelligence Unit. 2019 forecast
5. Economist Intelligence Unit. 2019 forecast
6. 2014 Doing business index: World Bank and Doing business index: World Bank
7. Economist Intelligence Unit. 2019 forecast

Snapshot

Foreign Direct Investment

— Chile ranks 27th in the world for inbound FDI according to The Economist rankings

— Net FDI inflow for first half of 2019 was US$6.6bn, more than double the same period last year

M&A

— Small decrease in number of transactions (3 percent), but 39 percent increase in amounts

— Trending sectors include mining, natural resources and IT

Privatization

— 2019–2023 plan considers 57 projects for a total investment of USD$14.4bn (roads, airports, hospitals, public transport)

Political situation

— Presidential elections to be held in Nov. 2021

Chile Tax Highlights

Domestic Tax Insights

Tax Modernization Reform

- Legislative proposal presented by current Government in August 2018
- Approved by lower house of Congress on August 22, 2019
- Senate discussion and final conference to follow. Unclear if final approval will happen this year

Relevant Aspects of the Tax Modernization Bill

- Reinstatement of full imputation credit for resident individual investors and for non-treaty based foreign investors
- Contribution for regional development for investment projects of 1 percent over the value exceeding investment of $10m in capital assets
- Tax on Digital Services/Platforms
- International taxation rules: PE, FTC, low tax jurisdictions, cross-border debt funding, interest WHT

Domestic Tax Insights

Relevant Aspects of the Tax Modernization Reform (cont.)

- Immediate expensing of 50 percent of the value of capital assets acquired within 24 months from Oct. 1, 2019
- Business expense deduction rules
- Reorganization rules
- Tax valuations
- VAT cash refunds for exporters

Tax Treaty Developments

- Income Tax Treaty with Uruguay came into effect on January 1, 2019
- Income Tax Treaty with the US signed in 2010, still awaiting ratification by US Senate
- Protocol to the Income Tax Treaty with China signed in 2018 but not in effect

BEPS

Multi Lateral Instrument (MLI)

- Signed by Chile on June 7, 2017
- Pending approval by Chilean Congress

Permanent Establishment (PE) Definition

- Tax Modernization reform proposes expanded PE definition for domestic purposes
- SII has issued administrative guidance according to which in practice they will apply expanded PE definition in audits

Other

- New low tax jurisdiction definition
- Limitation of reduced 4 percent interest WHT rate
- Substance requirements for foreign financial entities

Digital Economy

VAT on Digital Services pending approval of Tax Modernization Reform

- Intermediation of services provided in Chile or sales conducted within the country
- Intermediation in sales outside of Chile when they result in an import into the country
- Supply or delivery of digital entertainment content, including downloads
- Delivery of software, software, platforms or IT platforms
- Marketing

VAT Collection Mechanisms for Non-residents

- New simplified VAT registration and collection system for non-Chilean resident taxpayers that provide services listed above and consumed in Chile by individuals that are not VAT taxpayers
- Regulations to be issued on obligations of prepaid, debt and credit card issuers to withhold all or part of VAT on operations conducted by non-Chilean resident taxpayers not under the simplified VAT system

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Mexico by the numbers

From then to now…

Macroeconomic Scenario

Key indicator	2014	2019
GDP[1]	US$1,315 bn	US$1,241 bn
MXN to US dollar Exchange rate[2]	US$0.07	US$0.05
Inflation rate[3]	4.08%	3.08%
Unemployment rate[4]	4.8%	3.5%
Ease of doing business index[5]	53	54
FDI[6]	US$32 bn	US$31 bn

Sources:

1. INEGI, International Monetary Fund
2. Banco de Mexico, The Economist Intelligence Unit
3. INEGI, International Monetary Fund
4. INEGI, International Monetary Fund
5. 2014 Doing busness index: World Bank and Doing business index: World Bank
6. International Monetary Fund, The Economist Intelligence Unit

Snapshot

Foreign Direct Investment

— Mexico ranks 13th in the world for FDI

— In 2018 the country fell one place from a previous 12th position in 2017; foreign investors will be reassured by the final signature of the revised North American Free Trade Agreement (now called USMCA)

M&A

— In 2018, the Mexican M&A market registered 212 deals with a total value of US$8.64bn

— In a number of deals, the leading sectors in 2018 were Mining, Real Estate, Financial and Energy

Political situation

— The resignation of the Finance Minister in July, Carlos Urzúa, has raised concerns over the economic policymaking direction of Mexico

— Concerns over the strength of the business environment under a López Obrador government and uncertainty arising from the upcoming 2020 Presidential elections in the US.

Mexico Tax Highlights

Domestic Tax Insights

Tax audits

- **Financial structures:** Mexican Tax Authorities ("MTA") have been auditing taxpayers, especially as it relates to financial structures, with a large gap between the common interpretations and on grounds of tax collection.
- **Business reorganizations:** Tax audits in Mexico have also paid close attention to business reorganizations in which certain functions and risk that were formerly performed and carried out in Mexico, after the reorganization, are relocated elsewhere.
- **Electronic audits based on informative returns and electronic accounting:** Since 2015, all Mexican taxpayers are obligated to submit before the MTA its accounting information through the Internet. This is a significant challenge for taxpayers that must rapidly react to any query from the MTA.
- **Aggressive approach of tax authorities:** MTA are performing aggressive tax audits regarding several topics, mainly related to management fees, royalties, technical assistance, amongst others. As such, it is suggested to develop a defense file related to any of the above payments.

Domestic Tax Insights (cont'd)

Outsourcing companies

- **Entities to be considered:** It is common to have an operating company and a service company in order to optimize labor costs. Currently this structure is under scrutiny.
- **Information to be provided:** Several informative tax returns must be submitted to the MTA.
- **Potential risk in payroll deduction:** Even though this is a legal structure, it has been challenged due to all the compliance required in order to achieve the tax deduction, as well as the credit of the involved value added tax ("VAT").

Domestic Tax Insights (cont'd)

Transfer pricing reforms

- **Disclosure of operations:** Any unusual or extraordinary transaction carried out by any taxpayer must be disclosed to the MTA by means of an informative tax return. This information includes among others, merges, finance derivative operations and transfer pricing adjustments.
- **Master, Local and Country by Country ("CbC") files:** In Mexico, the Local File is an additional document to be filed to the Transfer Pricing Study ("TPS"). The Master File may be filed before the MTA in English and this file is in accordance to the OECD Transfer Pricing Guidelines. Finally, in Mexico the CbC File must be elaborated based on the above-mentioned Guidelines and must be submitted only if it is mandatory for the Holding entity.
- **Transaction by transaction:** In Mexico, the TPS must be elaborated including transaction by transaction performed between related parties. In the case of Global Studies, such information is not valid for the MTA standpoint.

Domestic Tax Insights (cont'd)

Digital invoices

- **Receipt payments complement:** There is an increasing compliance burden in Mexico regarding the issuing of invoices having to disclose detailed information of the transaction performed (e.g., the date of effective collection).
- **Black list:** This list includes the taxpayers that have been deemed by the MTA as not having business substance.
- **Evidence of services and resources:** Transactions carried out by taxpayers in Mexico need to be supported with actual evidence that the service or the goods were actually received and that the supplier has the resources to provide them.
- **Legal defense:** If this is the case, it is important to point out that the taxpayers in Mexico need to be ready to submit a legal defense.

BEPS

International Tax Insights

- **Mexico is an OECD member since 1994,** and it is one of the largest DTC network in Latam (60 in force and 15 in negotiation).
  - OECD and UN models.
  - Latam, EU and Asia.
- **Multilateral Instrument ("MLI"):** In July 2017 Mexico signed the MLI. At the moment, Mexico has not approved the MLI; therefore, the DTC in force will remain applicable.

  The following provisions are expected to be adopted by Mexico (as part of its MLI reserves):
  - Permanent Establishment provisions
  - Principal Purpose Test provisions (prove that the main purpose of the transactions are not taking any advantage of the benefits contained on the DTC in force).

BEPS (cont'd)

Impact and Reaction from Mexico

BEPS — Early adopter

- **Domestic Tax Reform:** As part of the Mexican Tax Reform in 2014, several tax provisions were included supporting BEPS action plans.
- **Action 2 "Hybrid mismatches":** Hybrid mismatches for payments to related parties residing abroad including payments of interests, royalties and technical assistance.
- **Action 3 "CFC rules" (in force since 2005):** As of 2005, Mexican tax residents had to anticipate the recognition of Foreign Source Income generated directly or through Foreign legal entities or figures in which they participate, as long as said income:
  - Is not taxed abroad, or
  - The Corporate Income Tax ("CIT") triggered and paid abroad results in less than 75 percent of the CIT that would have been triggered and paid in Mexico (i.e. less than 22.5 percent CIT rate).

BEPS (cont'd)

Impact and Reaction from Mexico

BEPS — Early adopter (cont'd)

- **Action 4 "Limiting base erosion involving interest deductions":** As from 2005, Mexico adopted thin capitalization rules considering the 3:1 debt equity ratio. Several conditions need to be evaluated. In addition, interest from debts in which the payment due date could be determined at any time by the creditor, would be treated as dividend payments from a tax standpoint.
- **Action 6 "Treaty abuse":** In transactions between related parties, the MTA may request information that proves the existence of juridical double taxation; otherwise, the DTC benefits could be denied.
- **Action 12 "Disclosure of aggressive tax planning":** As mentioned in the Transfer Pricing topics, any unusual or extraordinary transaction carried out by any taxpayer must be disclosed to the MTA by means of an informative tax return.
- **Action 13 "Transfer Pricing documentation":** As mentioned, CbC File must be elaborated based on OECD Transfer Pricing Guidelines and must be submitted when the Holding Company will be obliged.

Digital Economy

Digital Services

Reform Initiative in the VAT Act to tax e-commerce profited in Mexico

— On September 5, the Official Gazette published a Reform Initiative in the VAT Act to tax e-commerce profited in Mexico.

— Residents abroad with no PE in Mexico that provide services through a digital platform would be forced to accept the VAT withholding.

— Individuals and legal entities would be bound to withhold the VAT (transferred over the total amount paid) when they receive services through a digital platform by residents abroad with no PE in Mexico, unless the service provider elects to pay the tax itself.

— The transactions provided through a digital platform would be considered as independent services for VAT purposes.

— The Institutions of the Financial System, as well as individual and legal entities through whom the advanced payment for a service is made (by a digital interface), will replace the direct liable for the withholding.

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Argentina by the numbers

From then to now…

Macroeconomic Scenario

Key indicator	2014	2019
GDP[1]	US$560	US$477
Peso to US dollar Exchange rate[2]	US$8	US$57
Inflation rate[3]	38%	44%
Unemployment rate[4]	7%	10%
Ease of doing business index[5]	116	119
FDI[6]	US$ 5.000	US$ 12.100 (2018)

Sources:

1. 2019, IMF, *in billions*
2. 2019, BCRA (July, 2019).
3. 2014, Congreso de la Nación Argentina; 2019, IMF.
4. 2019, IMF.
5. 2019 Doing business index: World Bank
6. 2019, UNCTAD, *in millions*

Snapshot

Foreign Direct Investment

— In 2018 Argentina ranked 24th in FDI *inward flow* (UNCTAD, 2018).

— There are opportunities in the energy, infrastructure and agricultural sectors.

M&A

— M&A is a preferred vehicle for investment.

— Trending sectors include consumer goods, infrastructure, energy and mining, financial services and IT.

Privatization

— Argentina is open to Private and Public participation (PPP) and is market oriented.

Political situation

— Presidential elections to be held in October 2019.

— Reinstatement of foreign exchange restrictions

Argentina Tax Highlights

Domestic Tax Insights

Comprehensive Tax Reform

A comprehensive tax reform is effective from January 1, 2018. The Reform introduced changes in relation to the following topics: corporate Income Tax rates, dividend taxation, thin-capitalization rules, permanent establishment, transfer pricing, fiscal transparency rules, VAT taxation of digital services, refund of VAT credit balances, among others.

Income Tax/dividend WTH rates

The rate of the Corporate Income Tax is reduced according to this schedule:

- ✓ 2019: a rate of 30 percent.
- ✓ 2020 onwards: a rate of 25 percent.

An additional tax is levied on distributed dividends or profits:

- ✓ 7 percent dividend withholding tax rate for distributions on profits accrued during fiscal year 2019
- ✓ 13 percent dividend withholding tax rate for distributions on profits accrued for fiscal year 2020 and onwards.

Domestic Tax Insights

Tax Reform — Evolution

A Regulatory Decree was enacted as guidance for implementing income tax changes introduced by the 2018 tax reform legislation.

Overview of measures in the Regulatory Decree

— **Thin capitalization rules:** The 30 percent EBITDA deduction limitation applies to foreign exchange differences on the principal of a loan because such differences are not subject to withholding tax. In certain cases the limitation of deduction of interest does not apply.

— **Substance requirements:** The decree provides substance requirements pursuant to the 2018 tax reform, and looks to factors such as whether qualified personnel are employed by the entity in question and whether the structure or transactions have economic substance and a valid business purpose.

— **Transfer pricing:** additional regulations regarding the analysis of transactions between related parties — for example, instructions for applying transfer pricing methods and various transfer pricing documentation requirements including rules for country-by-country (CbC) reports, Master file, and Local file were introduced.

Domestic Tax Insights

Overview of measures in the Regulatory Decree

— **Permanent establishment:** agents with a significant role in the negotiation of contracts are deemed to create a permanent establishment, and profits are to be allocated to a permanent establishment in relation to the functions performed, assets involved, and risk assumed.

— **Fiscal transparency and low-tax or no-tax jurisdictions:** for purposes of determining whether a jurisdiction is a low-tax or no-tax jurisdiction, the decree clarifies that the total tax rate imposed in that jurisdiction must be taken into account, regardless of which government unit (e.g., federal, state, municipal or city) imposes the tax. The decree also provides that a "preferential tax regime" is one that deviates from the general corporate tax system in the subject jurisdiction and results in a lower effective tax rate.

The list of "non-cooperating" and low or no-tax jurisdictions has not yet been published. Companies operating with parties located in non-cooperating or low or no tax jurisdictions might have additional obligations from an Argentine transfer pricing standpoint, as well as different treatment as regards the deductibility of expenses or the taxation of capital gains, among others.

— **Indirect taxation of shares:** guidelines on the requirements to be entitled to the exemption on indirect transfers of assets located in Argentina within the same economic group were introduced.

Domestic Tax Insights

Inflation Adjustment for tax purposes

- Argentina is going through an inflationary process. Adjustment for tax inflation is only applicable, based on the general consumer price index, if the inflation calculated from the beginning until the end of each of the first three fiscal years exceeds: for the first year 55 percent, for the second 30 percent, and for the third 15 percent. The adjustment shall be charged one third (1/3) in the respective fiscal year and the remaining two thirds (2/3) in equal parts in the (2) following immediate fiscal years.
- In April, May, June and July 2019, interannual inflation exceeded 55 percent in Argentina, which means companies that close their last tax year in one of those months must apply the integral adjustment for inflation for income tax purposes to those tax years.

Domestic Tax Insights

Other significant tax measures

— **Temporary duties on exports of services:** A 12 percent tax export on services has been introduced since January 1, 2019. The referred tax is subject to a cap of four pesos (ARS 4) per US dollar of the determined tax base in accordance with the Customs Code.

— **New tax incentive regime:** Legislation expanding a tax incentive regime has been approved for domestic entities and professionals conducting certain activities relating to software, robotics, medical research and investigation, and research and development (R&D).

— **Treaty Network:** Argentina has been active in the negotiation of conventions for the elimination of double taxation with respect to taxes on income and capital. Treaties have been recently signed with:

- ✓ Turkey and China (2018, not yet in force).
- ✓ Qatar, Luxembourg, Austria (2019, not yet in force).
- ✓ United Arab Emirates (in force as from 2020).

BEPS

Impact and Reaction from Argentina

- In recent years, Argentina engaged in termination and examination of certain treaties with the perceived potential for abuse, adding LOB provisions in some of them.
- Argentina signed the MLI to Prevent BEPS, submitting a list of 17 tax treaties and MLI positions in respect of various provisions of the MLI.
- New definitions for non-cooperative and low or zero taxation jurisdictions were established: more stringent rules for such jurisdictions, including CFC rules, non-deductibility provision, increased withholding rates, and application of the transfer pricing regime.
- The PE definition and the VAT taxation of digital services have been introduced in the Income Tax Law.
- As regards CbCR, an annual information regime was established. In the event of non-compliance, taxpayers will be subject to severe penalties. The Argentine Government has also established the obligation to submit an annual Master File with a description of the group's business.
- The reform has established a Mutual Agreement Procedure and an Advance Pricing Agreement regime.

Digital Economy

Corporate Tax

— There are no specific permanent establishment provisions related to DE. From a WT tax perspective, most of DE businesses can be characterized as a provision of services which are not subject to tax in Argentina when provided entirely abroad without a physical presence in the country.

Value Added Tax

— Under the comprehensive 2018 tax reform, VAT applies to digital services provided by foreign entities to Argentine-end consumers (B2C or business-to-consumer transactions). B2B (business-to-business) transactions were already subject to the tax, through a mechanism known as “import of services”.

— The law contains a broad definition of digital services, including website services, streaming services, web services comprising data storage and online advertising, and software as a service.

Digital Economy

Turnover Tax

— Certain provinces have introduced a special provision in its Fiscal Codes to apply turnover tax on digital services, such as the Province of Córdoba, which has incorporated services rendered from abroad since 2018 to the taxable event of the turnover, and the Provinces of Mendoza and Salta, which have also proposed amendments to their respective regulations with the same purpose.

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Colombia by the numbers

From then to now…

Macroeconomic Scenario

Key indicator	2014	2018
GDP Amount (% Growth vs. prior FY)[1]	US$ 378,32 3 MM/ (4,6%)	US$ 333,11 4 MM/ (2,7%)
COL$ to US dollar Exchange rate[2]	2376	3249
Inflation rate[3]	3.66%	3.18%
Unemployment rate[4]	9.1%	9,72%
Ease of doing business index[5]	43	65
FDI[6]	US$ 17B	US$ 11B

Sources:

1,2,3,4 Banco de la Republica (Central Bank)

5. 2014 Doing busness index: World Bank and Doing business index: World Bank

6. UNCTAD Report

Snapshot

Foreign Direct Investment

— Colombia ranks 3rd in Latin America for FDI

— FDI inflow has raised significantly during 2019

M&A

— M&A is a preferred vehicle for investment and cross-border M&A volumes have increased during 2019

— Trending sectors include financial activities, agriculture, transportation and manufacturing

Privatization

— In order to tackle fiscal deficit, the Duque Administration will push for sales of shares of state owned companies

Political situation

— After 1 year of the Duque Administration, the country faces important challenges (e.g., fiscal deficit, consolidation of the peace process, the huge migration from Venezuela) with a fragile legislative coalition. No major tax reform is expected for the rest of the Duque Administration (until August 2022)

Colombia Tax Highlights

Domestic Tax Insights

Taxation of Dividends for Non Residents

— The WHT rate for Colombian dividends is dependent on whether the dividends have been paid out of previously taxed or untaxed profits. Where dividends are paid out of taxed profits, the WHT rate of 7.5% -introduced in 2016 as 5% and increased in 2018- can be reduced to zero under the Colombia/Spain or Colombia/Switzerland DTT´s (where the foreign HoldCo's participation in the Colombian company is 20% or higher).

— Where the Colombian entity distributes untaxed profits, the dividends are subject to WHT at 33 percent (rate that will be gradually reduced to 30 percent in FY2022). Given the dividend payment is to a foreign shareholder an additional 7.5 percent WHT is applied on the remaining 67 percent cash to be distributed. The first layer of 33 percent could be totally exempted under the Colombian/Switzerland DTT, as long as the HoldCo´s participation is 20 percent or higher

Withholding taxes on payments to Non-Residents

— Interest payments to non-residents are subject to 20 percent WHT for short term loans and 15 percent for long term loans (one year is the term borderline). This rate on interest can be reduced to 10 percent under some DTT´s (i.e. Spain, Switzerland) complying with the beneficial owner condition. Colombia has a special WHT rate for debt used to fund infrastructure projects, a 5 percent WHT on interest payments to any country

— Management and Shared Service Centers fees are subject to a 33 percent WHT rate — so called "management and administration services fees" — regardless of the location of the supply of the service. Under Colombia's DTT´s this WHT would fall into the "business profits" article and consequently would not be applicable

Domestic Tax Insights

M&A Tax Features

- Mergers and Spin Offs trigger a taxable transfer of assets for Income Tax purposes, unless a safe harbor deferral regime is applied (essentially keeping the same ownership) and the taxation is postponed until the shares of the reorganized entity are sold
- A very unique form of JV, so called Participation Accounts — “Cuentas de Participación” — by which there is a “hidden participant” that only receives its share of profits (which is a deduction for the “Manager Participant”) has been significantly altered by the recent tax rules. This form of JV has to follow a “pass through entity” system, by which all the participants must register for Income Tax purposes its proportional share of assets, liabilities, gross income, costs, deductions and profits and pay the corresponding tax. Its traditional strength of exempting contributions by participants from VAT is restricted when there is a “guaranteed return”
- Colombian Holding Company Regime: This regime intends to facilitate using Colombia as a platform for offshore investments, exempting the foreign income for Income Tax purposes.

Presumptive Income Taxation

- Is an alternate method for determining the taxable income so as to ensure that it is not lower than a certain percentage of net worth at the end of the preceding year. Some assets may be excluded from this tax related net worth. The percentage applicable for FY2019 and FY2020 is 1.5 percent (reduced from 3.5 percent), and will be lowered to 0 percent as of FY2021.

BEPS

Direct and Indirect Transfer

— Any gain made on the direct disposal of Colombian shares within 2 years of acquisition will be subject to Colombian Corporate Income Tax (33 percent in FY19). If the shares have been owned for 2 years or more and constitute a fixed asset on the seller's balance sheet, any gain on sale should be subject to a 10 percent tax rate. The indirect sale of Colombian assets is now assimilated to a taxable event in Colombia for any transfer of shares or rights of a foreign entity that implies the underlined transfer of Colombian assets.

Other significant developments

— The reformed Thin Capitalization debt to equity ratio of 2:1 applies to related-party debt only (the equity element refers to "tax" net worth of previous year closing). The excess of interest over such ratio is not deductible. No Thin Cap ratio applies to unrelated party debt (sworn statements by Banks that no back-to-back or other arrangements that change the substantial creditor are required).

— Any Branch or Permanent Establishment is now taxed on worldwide income. Even though the Income Tax of a Branch is calculated using an attribution method based on transfer pricing technique, the recent tax reform restricted the attribution of interests given the lack of the application of withholding tax.

— The CFC regime would not apply when the CFC entity income is 80 percent or more active income. When the CFC passive income exceeds 80 percent of its total income, all of the entity's income, costs and expenses will be deemed to be passive. The same treatment would apply when the active income exceeds 80 percent of total income.

Digital Economy

VAT on cross border services

- The VAT coverage on services supplied “from abroad” by Non-residents started on July 1, 2018.
- The DIAN has issued very broad and foggy criteria regarding the borderline between services supplied outside Colombia (untaxed) and services supplied “from abroad” (taxed)
- The withholding mechanism by banks on “digital services” focused on the B2C segment has not been executed yet. In the meantime, Non-resident suppliers with customers that are non VAT taxpayers must comply with the direct collection of the tax and the filing and payment of the VAT return to DIAN.
- If the Non-resident supplier has only as customers VAT registered taxpayers, a reverse charge mechanism would apply and the Non-resident supplier would not have to register as VAT taxpayer and file VAT returns.

Other taxes on cross border services

- The key distinction to consider “cloud services” or other digital services as “technical services” - subject to Income Tax withholding of 20 percent -, is the existence of a relevant active human participation in the material execution of the service.
- The Treasury is closely watching international developments regarding an equalization levy on cross border services before proposing any new tax that would add to the VAT tax layer.

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Peru by the numbers

From then to now…

Macroeconomic Scenario

Key indicator	2014	2019
Nominal GDP (in US$ BB)[1]	203.7	245.5
Peruvian Soles to US dollar Exchange rate[2]	2.8	3.3
Inflation rate[3]	3.2%	2.3%
Unemployment rate[4]	7.4%	3.3%
Ease of doing business index[5]	42	68
FDI[6]	US$ 7.8 BB	US$ 7.4 BB

Sources: Central Bank of Perú (BCRP), National Institute of Statistics and Informatics (INEI), Ministry of Economics of Peru (MFE), Proinversión.

1. The 2019 figure is a forecast, as of August 2019.
2. The 2019 figure is the average exchange rate as of August 2019.
3. The 2019 figure is a forecast, as of August 2019.
4. The 2019 figure is the current rate, as of August 2019.
5. 2014 Doing busness index: World Bank and Doing business index: World Bank
6. Proinversión

Snapshot

Foreign Direct Investment

— Growing at an average annual rate higher than 6 percent with low inflation in the period from 2002 to 2013, in a context of macroeconomic stability, Peru became an attractive destination for foreign investment.

— Growing at more moderate rates (3 percent) in the last years, mainly due to the fall in commodity prices.

M&A

— M&A activity in 2018 and 2019 has remained high, focusing in industries such as consumer markets, energy, agriculture, telecom and infrastructure.

Political situation

— Political situation has been tense in the last years since the President does not have a majority in the Congress.

— Presidential elections to be held in 2021, but there is a petition from the President to move the elections forward to 2020.

Peru Tax Highlights

Domestic Tax Insights

The last Tax Reform introduced important changes which entered into force between the last quarter of 2018 and the beginning of 2019. It was one of the most important reforms in the last few years and generated several discussions.

General Anti-Avoidance Rule (GAAR)

— GAAR was activated to apply the re-characterization of aggressive tax structures. Legal representatives, including the members of the Board of Directors are jointly and severally liable for tax planning resulting in tax avoidance, tax elusion or tax erosion. derived from tax avoidance.

Accrual Rule for Corporate Income Tax (CIT) Purposes

— As of January 1, 2019 there is a New Concept of Accruing for recognizing taxable incomes and expenses, generating differences between IFRS 15 and taxation.

— Generally, both taxable income and related expenses must be recognized when substantial facts occur, provided there will not be any suspensive condition or future events differing their recognition.

Domestic Tax Insights

Thin Capitalization Rule

— With very limited exceptions, as of January 1, 2019 Thin Capitalization Rule may prevent deducting financial expenditure derived from a total amount of indebtedness over three times the net worth of the borrower entity. This rule was originally applicable only to loans incurred with a related counter lender party. However, as of September 14, 2018 Thin Capitalization is also applicable to loans incurred with a un-related counter lender party.

— As of January 1, 2021 deduction of net interest expenditure will be limited up to 30 percent of the tax EBITDA (net income + depreciation + net interests + tax additions and deductions + tax losses). Any un-deducted interest will be subject to an expiring four (4) taxable year carry forward term.

Ultimate Beneficial Ownership

— An obligation was introduced to identify and report ultimate beneficial owners (individuals) of legal entities. Due date and specifications to comply with the report to the Tax Authority are still pending to be published. Not satisfying this reporting is subject to tax fines.

— The purpose of this rule is to avoid the improper use of legal structures for tax evasion and avoidance, to ensure the compliance of mutual administrative assistance in tax matter obligations and to fight money laundering and terrorist financing.

BEPS

Peru has set the goal to become a full OECD member by 2021. From the tax side, this has pushed the country to be very engaged on rapidly taking the actions necessary for its tax system to be as aligned as possible with the recommendations from the BEPS Action Plan.

Action 13 — Transfer Pricing Documentation

— Transfer pricing documentation includes the obligation to prepare and annually submit a Local File, Master File and Country by Country Report to the Tax Authorities.

— While the reports are based on OECD suggestions, local legislation has introduced specific requirements and templates which must be strictly adopted.

Actions 8 to 10 — Transfer Pricing — New intragroup service rules

— New requirements have entered into force in order for intragroup service charges to be deductible for tax purposes. These include passing a Benefit Test, keeping detail on the costs and expenses incurred by the service provider as well as the cost allocation criteria used, among others.

— A deductibility cap of mark-up + 5 percent has also been established for low value added services.

BEPS

Actions 8 to 10 — Transfer Pricing — Commodity imports/exports

— Commodity imports and exports with related parties must comply with submitting an informative return 15 working days before each import/export.

— In case a company fails to submit this return, the arm´s length value of the transaction must be based on the international quotation of the commodity as of the import or export date plus adjustment specifically accepted by the legislation.

Action 4 — Limitations on interest deduction

— Peru introduced reforms on its thin capitalization rules in order to align them with BEPS recommendations.

— As a result, from 2021 on, interest expenses (from related and non-related parties) will be deductible only up to a maximum of 30 percent of the tax EBITDA.

Action 5 — Harmful tax practices

— Peru successfully passed the OECD evaluation to identify harmful or potentially harmful tax regimes.

— No other harmful or potentially harmful tax practices have been identified.

BEPS

Action 15 — Multilateral instrument (MLI)

— Peru signed the MLI in June 2018. However, it is still pending to finalize arrangements for its entry into force.

Mutual Administrative Assistance in Tax Matters

— Peru has signed the Convention on Mutual Administrative Assistance on Tax Matters.

— As a result, information exchange already occurs between the Peruvian Tax Administrations and other Tax Administrations when fiscal audits are performed.

— Peru has also signed the CbC Multilateral Competent Authority Agreement for the exchange of CbC Reports, which is in process of being implemented.

Digital Economy

Withholding Tax on Digital Services

— Peru applies a withholding tax of 30 percent on Digital Services (as defined by law) received by Peruvian companies from entities abroad.

— The country has not yet implemented other measures on digital economy but is expecting to see how the discussions on “BEPS 2.0” will be resolved in the OECD in order to evaluate the introduction of further changes into local rules.

Digitalization of the Tax Administration

— In the last few years, the Peruvian Tax Authority has been working on several projects to automate its systems and processes.

— As of today, not only tax returns and accounting books are submitted electronically, but also the invoicing process in all companies must be done electronically in a way that the invoicing information is simultaneously shared with the Tax Authorities.

— The Tax Authority internally runs data analytics processes and uses automation to detect for patterns that trigger actions such as letters to the taxpayers or even tax audits.

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Panama by the numbers

From then to now…

Macroeconomic Scenario

Key indicator	2014	2018
GDP Nominal (Million USD)	US$49,921.5	US$65,055.1
GDP per capita	US$12,757	US$15,642
Panama to US dollar Exchange rate	US$1.0	US$1.0
Inflation rate (Consumer Prices)	2.7%	0.8%
Unemployment rate	4.8%	6.4% (March 2019)
Ease of doing business index (Rank)	55	79
FDI (Thousands USD)	US$4,45	US$5,54
% of Nominal GDP	8.9%	8.5%

Sources (1–7):

— Contraloria General de Panama

— 2014 Doing business index: World Bank,

— Doing Business 2019 (16th Edition).

— The 2019 version of Foreign Direct Investment in Latin America and the Caribbean.

Snapshot

Foreign Direct Investment

— Panama is the fifth-largest FDI recipient in Latin America and the Caribbean.

— Panama's development has driven FDI growth and positioned it as a platform for access to the region.

M&A

— M&As are increasingly common in Panama and they are seen as a way for companies to position themselves in the regional and global economies.

— Panama's largest banks have merged during a period of strong growth in practically every industrial sector, and this growth is expected to continue.

Political Situation

— The president, Mr. Laurentino Cortizo took office in July 2019 and faces important challenges focused on accelerating the growth of the economy and increasing the overall GDP.

Panama Tax Highlights

Domestic Tax Insights

Overview of the Panamanian Tax Rates

CORPORATE INCOME TAX

25%

DIVIDEND TAX

10% Local Source

5% Foreign Source

TERRITORIAL SYSTEM

RESIDENTS AND NON-RESIDENTS

WHT ON SERVICES

12.5%

ITBMS (Local VAT)

7%

Domestic Tax Insights

Overview of the Panamanian Special Tax Regimes

SEM

Headquarters of multinational

Provision of intra-group services to related parties abroad

APP

Panama Pacífico area

International Trade Hub focused on logistics services, commerce and industry

CFZ

Colon free trade zone

Major trading center for Latin America and The Caribbean

CFI

Certificate to Foment industry

Promote the manufacturing, agro-industrial and marine resources processing industries

Domestic Tax Insights

New Panamanian Procedural Tax Code

- The Law 76 of 2019 enacts the Procedural Tax Code which — most of its content — enters into force from 1 January 2020. The following themes are highlighted:
  - New statute of limitations terms for taxes
  - New procedural rules for tax audits (formal documentation, time limits, expiry clauses…)
  - Recognition of an interest rate on undue payments and/or tax credit that the taxpayer is entitled to receive (via the refund procedure).
  - Alternative conflict resolution methods will be adopted.

New Tax Fraud Legislation

- The Law 76 of 2019 enacts the new regulation on tax fraud in order to penalize taxpayers who intentionally defraud the Panamanian Tax Authority.
- Penalties will be applicable when the amount defrauded is equal or greater than USD$ 300,000 (excluding fines, surcharges and interest).

BEPS

ACTION 5

- In 2016, Panama joined the Inclusive Framework of BEPS and committed to implement the four minimum standards. The following measures have been implemented so far:
  - The Panama Pacifico Regime and the MHQ Regime was amended in order to be in line with Action 5 on Harmful Tax Practices.
  - The nexus approach for IP regimes was incorporated, therefore the benefits granted — by virtue of a special law or preferential tax regime- to IP income would only be available if it is linked to the taxpayer's qualifying R&D expenditures.
  - Companies with a preferential tax regime are now obliged to comply with the transfer pricing rules on transactions carried out with resident or nonresident related parties.

ACTION 6

- On January 24, 2018, Panama joined the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI). By January 2019, a draft bill to ratify the MLI was submitted with Panama's reservations and notifications, but it is still pending for approval.

BEPS

ACTION 13

- In January 2019, Panama signed the Multilateral Competent Authority Agreement for Country-by-Country Reporting (MCAA CbCR), which provides the mechanism to facilitate the bilateral automatic exchange of country-by-country (CbC) reports.
- In May 2019, Panama enacts the regulatory framework for country-by-country (CbC) reporting.
- The annual obligation to submit a CbC report will be the responsibility of the ultimate parent entity of a multinational group having consolidated revenue greater than €750 million in the previous financial year and also residing for fiscal purposes in Panama.
- This information should not be used for making transfer pricing adjustments.

Common Reporting Standard (CRS)

- Panama is a signatory of the CRS Multilateral Competent Authority Agreement (CRS MCAA) re-affirming its commitment to the automatic exchange of financial account information.
- On June 5, 2019, Panama issued the list of reportable jurisdictions for AEOI on financial accounts under the CRS for the 2018 reporting period.

Broad Overview

Panama in the International Field

2016 — Panama Actions

- Panama signs the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.
- Panama enacts Law No.47 in order to comply with FATCA.
- Panama creates additional obligations for financial institutions (Law.51) in preparation for CRS.

2016 November

- Panama joins the Inclusive Framework on BEPS.

2017 — OECD Fast Track Review

- The Global Forum assigned Panama a "Largely Compliant" rating with respect to the Exchange of Information on Request standard
- New domestic legislation for automatic exchange of information under FATCA and CRS. (Executive Decree 124)

December 2017

- Panama was included in the EU list of non-cooperative jurisdictions for tax purposes

January 2018 — Exclusion from EU Blacklist

- Panama was removed from the EU list of non-cooperative jurisdictions for tax purposes

2018 — Panama Actions

- Panama aligns Special Tax Regimes with BEPS Action 5
- Panama aligns IP Incentives with BEPS Action 5
- Panama signs the Multilateral Instrument (MLI) and submits the list of covered tax agreements.

2019

- Panama signs the MCAA and implements CbC Reporting Requirements
- Panama publishes a Tax Fraud Legislation and the New Procedural Tax Code.

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Uruguay by the numbers

From then to now...

Macroeconomic Scenario

Key indicator	2014	2018
GDP[1]	US$57.236	US$59.597
Uruguay to US dollar Exchange rate[2]	US$24.4	US$35
Inflation rate[3]	8.3%	7.96%
Unemployment rate[4]	6.6 %	8.7%
FDI[5]	US$3.830 M	US$2.702 M

Sources:

1. World Bank
2. Uruguay Central Bank (BCU)
3. National Institute of Statistics (INE)
4. National Institute of Statistics (INE)
5. CEPAL

Snapshot

Foreign Direct Investment and GDP

— Uruguay ranks 95th in the world according to the World Bank Doing Business Index.

— The country has experienced continued GDP growth for more than fifteen years.

— Uruguay has investment grade credit rating and the largest GDP per capita in the region.

— Significant foreign investments have been announced during 2019 (including 3,000 million dollar investment in the construction of a cellulose pulp mill, the highest private investment in national history).

Political situation

— Uruguay has high political and institutional stability, which should not be affected by Presidential elections that will be held in October 2019

Uruguay Tax Highlights

Domestic Tax Insights

Overview

- The Uruguay tax system is based on the **source and territoriality principles** (not based on residence), making it an attractive jurisdiction for holding vehicles and intercompany financing.
- **Direct taxes** (e.g. Corporate Income Tax — IRAE, Personal Income Tax — IRPF, Non Resident Income Tax — IRNR) are normally levied **only on Uruguay source income**, with certain exceptions (e.g. technical services, advertising, certain electronically supplied services, etc.).
- **Indirect taxes** (e.g. VAT) are applied on **goods sold and services provided in Uruguay territory**, but certain exceptions have also been introduced (e.g. audiovisual or mediation services provided from abroad by electronic means).
- **Tax exemptions** are granted to investment projects and also to certain activities and economic sectors (including Free Zones and Free Port activities, software and biotechnology, shared service centers, etc.).

BEPS

BEPS related changes

- The Government policy has focused on aligning domestic tax law to OECD recommendations and international tax standards.
- Recent changes have included the creation of a new **special regime for low or zero taxation** jurisdictions (including a black list), establishing increased tax rates, exceptions to the source principle and taxation of capital gains resulting from the indirect transfer of Uruguay assets.
- Uruguay has also adopted the **Common Reporting Standard (CRS)** and regulations to implement the **automatic exchange of information** which became effective in 2018.
- Changes in the treatment of the **software sector** were introduced, basically limiting the scope of tax exemptions to locally developed IP to prevent eventual use of the regime for aggressive international tax planning.
- Changes in **Free Zone** legislation, with increased emphasis on substance requirements as a condition for existing tax exemptions to apply
- Uruguay has also signed a number of new **Double Tax Treaties** (including one with Brazil which is not in effect yet) and the **Multilateral Instrument (MLI)** is following ratification procedures at Parliament

Digital Economy

Changes in tax treatment

- Relevant changes were introduced in the tax treatment of certain activities from the digital economy sector (effective January 1, 2018).
- Such changes cover activities developed by non-resident entities with no physical presence or assets in Uruguay that provide the following services by electronic means (internet, apps, etc.):
  - **Audiovisual services** (including music, videos, etc.) provided to local customers; and
  - **Mediation or intermediation between the supply and demand of services** in which one or both parties of the core service (e.g. transportation, accommodation, etc.) is located in Uruguay.
- As an exception to the general source and territoriality rules, these activities become taxable (totally or partially) not only by **Value Added Tax** but also by **Income Tax**.
- No withholding agents have been appointed, so the foreign taxpayers have to register at the Tax Office for compliance purposes under a simplified registration procedure.

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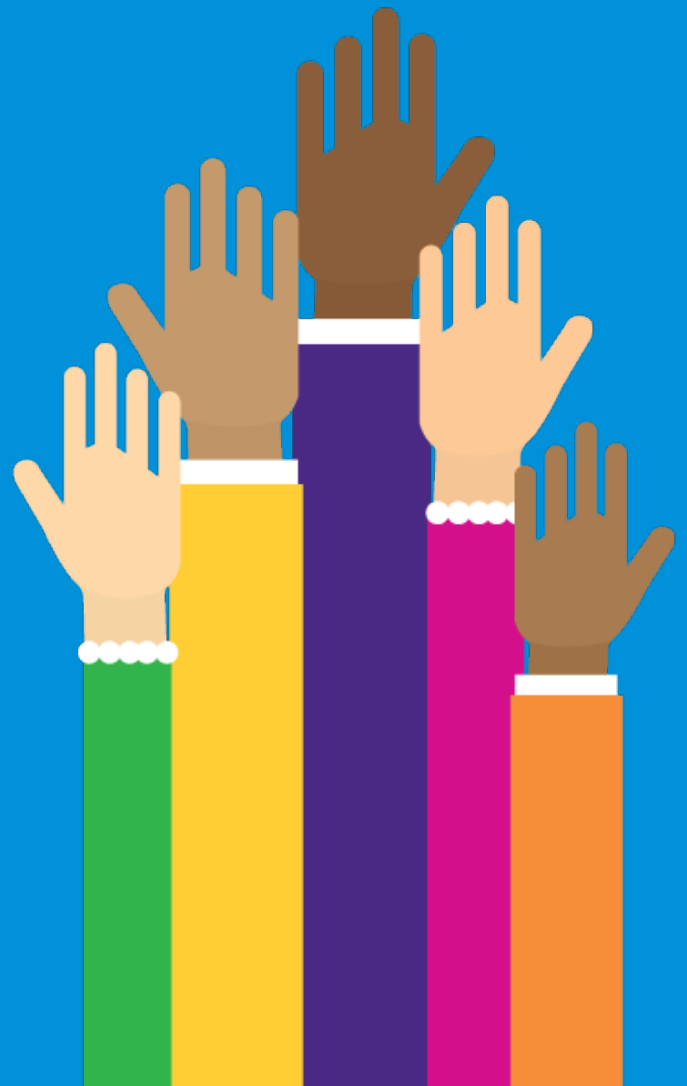
Questions?



KPMG's 2019 Latin America Tax Summit

Highlights video of the 2018 Summit in Cancun

Registration | Please contact your local KPMG representative for registration details

Program | Sao Paulo Brazil | 4-5 December 2019

Striking the balance in the Americas

Tuesday 3 December

1. Welcome reception *hosted by KNOW*
2. Client meetings

Wednesday 4 December

1. Plenary I
2. Technical Sessions
3. Catalyst Center
4. Summit Dinner

Thursday 5 December

1. Plenary II
2. Specialty and Ethics sessions
3. Catalyst Center
4. Client meetings

Thank you

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