
International Tax

# Peru Tax Alert

19 December 2014

## Parliament approves tax reform bill

**Contacts**

Ana Luz Bandini
abandini@deloitte.com

Peru's parliament approved a bill on 11 December 2014 (Legislative Project No. 4007/2014-PE) that contains several tax measures intended to stimulate the economy, including a progressive reduction of the corporate income tax rate (which currently is one of the highest in the region), changes to the dividend tax regime and the introduction of a binding private rulings regime. The parliament has submitted the draft law to the executive branch; the executive branch is expected to enact the draft law or provide comments by 8 January 2015.

If the draft law is enacted, the rules would apply as from 1 January 2015, unless otherwise specified.

### Corporate income tax and dividends tax rates

The draft law would gradually reduce the corporate income tax rate from 30% to 26%. At the same time, the tax rate for the dividend tax triggered when there is a distribution of profits, or an agreement to distribute profits, to resident individuals or nonresident shareholders would be increased from 4.1% to 9.3%. The measures are designed to encourage the reinvestment of profits in Peru without substantially altering the effective tax rate of domestic entities. The following table illustrates the effect of the rate changes:

| Item | 2014 | 2015-2016 | 2017-2018 | 2019 and thereafter |
|---|---|---|---|---|
| **Profit before tax** | **100** | **100** | **100** | **100** |
| **Corporate income tax rate** | 30% | 28% | 27% | 26% |
| **Profit after tax** | 70 [100 - 30] | 72 [100 - 28] | 73 [100 - 27] | 74 [100 - 26] |
| **Dividend tax rate on distributions (*)** | 4.1% | 6.8% | 8% | 9.3% |
| **Net remittance to shareholders** | 67.13 [70 - 2.87] | 67.104 [72 - 4.896] | 67.16 [73 - 5.84] | 67.118 [74 - 6.882] |
| **Effective tax rate after the distribution** | 32.87% | 32.896% | 32.84% | 32.882% |

(*) Excluding distributions to other resident legal entities

The new dividend tax rates would apply to any dividend distribution in cash or in kind agreed or paid as from 1 January 2015. However, if the relevant agreement or payment comprises accumulated results, or any other circumstances are present that would create a deemed dividend before 31 December 2014, that amount would be subject to the 4.1% rate.

The gradual increase of the dividend tax rate would affect even foreign shareholders that are resident in jurisdictions with which Peru has a tax treaty, because even the 9.3% tax rate that would apply under domestic law from 2019 is lower than the maximum rate provided in Peru's tax treaties. Therefore, the amended domestic rates would apply to any nonresident shareholder.

Under these circumstances, attention would need to be paid as from 2015 to the distribution of profits earned in years subject to a specific reduced corporate income tax rate but distributed in a year in which the dividend tax rate is higher, since these distributions could be subject to a higher effective tax rate, as illustrated in the example below:

| **Item** | **Profits distributed in 2018** | | |
|---|---|---|---|
| | **Accumulated profits through 2014** | **Accumulated profits of years 2015-2016** | **Profits of year 2017** |
| **Profit before tax** | 100 | 100 | 100 |
| **Corporate income tax rate** | 30% | 28% | 27% |
| **Profit after tax** | 70 | 72 | 73 |
| **Dividend tax rate on distributions (*)** | 4.1% | 8% | 8% |
| **Net remittance to shareholders** | 67.13 [70 - 2.87] | 66.24 [72 - 5.76] | 67.16 [73 - 5.84] |
| **Effective tax rate after the distribution** | 32.87% | 33.76% | 32.84% |

(*) Excluding distributions to other resident legal entities

Investors would need to take steps to properly manage the overall tax burden under the proposed changes, and assess the adequacy of deferred tax reserves that were recorded based on the traditional corporate income tax rate.

Domestic taxpayers that are benefiting from tax stability agreements signed with the government that provide for a fixed corporate income tax regime for a specific number of years would not be eligible to apply the new corporate rates while the tax stability agreement is still in force (unless they relinquish the agreement), but they still would need to apply the new rates when withholding the dividends tax applicable to shareholders.

## Deemed dividend rule for credits granted to shareholders

The draft law would modify the deemed dividend rule applicable to credits granted by resident corporate taxpayers (except for some entities providing financial services and leasing companies) to their shareholders. Under the current provisions, any credit up to the limit of profits and freely distributable reserves granted in cash or in kind to shareholders, on a single or general basis and regardless of the legal form used, would be recharacterized as a deemed dividend if:

- There is no obligation to repay the capital;
- The due date agreed upon for returning the capital exceeds 12 months or, regardless of the deadline, the payment is not actually made within 12 months; or
- Regardless of the conditions agreed upon, consecutive renewals or recurrence of similar transactions leads to the conclusion that there is a unique transaction that, in total, exceeds the 12-month term.

Based on the new provisions, the specific conditions detailed above no longer would be required to apply the deeming provision to credits granted to shareholders. The new rule is intended to avoid the remittance of profits to shareholders in the form of a credit without paying the applicable tax in Peru.

## Private binding rulings

To strengthen the available tools for providing legal certainty for investors, the draft law would introduce a provision in the tax code that would allow a taxpayer to request a binding private ruling from the Peruvian tax authorities on the tax treatment applicable to specific facts and circumstances affecting the taxpayer, as long as a related tax obligation has not yet arisen. The executive branch would issue a decree setting out the procedural rules for making a ruling request.

This amendment to the tax code would be effective as from the day after the draft law is published in the official gazette.

## Comments

The draft law would introduce measures that are expected to increase the competitiveness of Peru with other countries in the region, increase the level of domestic investment and attract foreign investors. Nonresident entities with subsidiaries or investments in Peru, as well as potential investors, should assess the provisions mentioned above to determine how they could affect their existing or contemplated investment structures and design an appropriate action plan, preferably before the enactment of the draft law.

---