

Peru

Legal Provisions

Compiled by:

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GENERAL REMARKS

Peru has a monist legal system (international treaties become part of domestic law without transformation).

Peru has been a World Trade Organization (WTO) member since 1 January 1995 and is also a party to the TRIPS agreement. It is a member of the *Andean Community* (www.comunidadandina.org, CAN) which has its own body of legally binding (although not always implemented) norms. Peru also participates in the *Asia-Pacific Economic Co-operation* (APEC), is associated with the *Mercosur* and has a Free Trade Agreement (FTA) with the USA, Chile, Canada, Singapore, Cuba, China, South Korea, Thailand, Mexico, Japan, Panama, European Union, European Free Trade Association (EFTA), Costa Rica, Venezuela, and Honduras. The FTA with EFTA has come into effect on July 1st 2011 for Switzerland and Liechtenstein, on October 1st 2011 for Iceland and on July 1st 2012 for Norway.

Peru has entered into several bilateral treaties with Switzerland, including a trade agreement providing for most-favoured nation treatment, an investment protection treaty and a double taxation agreement.

Regarding the Double Taxation Agreement, it is applicable since January 1st 2015.

CUSTOMS

As a CAN member, Peru uses the *Nandina* Code, based on the World Customs Organization-WCO Harmonised System. However, it still does not apply the CAN common external tariff. Peru's national tariff has basically four levels of import duties: 0%, 4%, 6% and 11%. In addition, the import of products is subject to Valued Added Tax - VAT (18%). Export is not subject to any tax or duty.

A drawback regime provides a total or partial refund of customs duties paid for the importation of goods used in the elaboration of exported goods or consumed during their production.

Customs clearance procedures may be conducted by the owner, consignee of the merchandise, an official broker, or a customs agent.

Simplified or urgent clearance procedures are possible under specific terms, including for non-commercial and perishable shipments.

More information on tariffs and procedures is available (in Spanish and English) on www.sunat.gob.pe

IMPORT AND EXPORT REGULATIONS

Documents required for imports include the “*Declaración Única de Aduanas*” (DUA or DAM), a commercial invoice, an airway bill or a bill of lading, a packing list, and an insurance letter from the insurance company of choice (no longer required to be Peruvian). There are specific requirements for certain imports as well. Pre-shipment inspection certificates are not required.

There are no quantitative import restrictions; however, the importation of used clothing and shoes, of toxic waste, fireworks, some insecticides and of foreign *Pisco* spirit is prohibited. Import licenses are required for telecommunication equipment, medicines, certain sensitive health products, firearms, ammunitions, explosives and some chemical precursors. Importation of used commercial and private vehicles is subject to limits related to antiquity of units.

Export licenses are required for goods that are considered national cultural or historical heritage as well as for war material and a number of dual-use goods. The export of certain plants and animals is prohibited.

CURRENCY REGULATIONS

There are currently no import nor export restrictions for local currency.

The free holding and disposal of foreign currency is guaranteed by the Constitution. Export of foreign currency in excess of the amount imported may be subject to income tax.

Under the Swiss-Peruvian investment protection treaty, investors are guaranteed free remittance of any profits related to their investment, after having paid the taxes required by law, and free repatriation of capital.

REGISTRATION PROCEDURE FOR PRODUCTS

Trademarks, Trade names, slogans, patents, and similar can be registered at the Trademarks and Patents Office of the Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (www.indecopi.gob.pe).

Medical equipment, supplies, and pharmaceutical products must be registered in the Dirección General de Medicamentos, Insumos y Drogas of the Ministry of Health (www.digemid.minsa.gob.pe) and have Health Registry. The commercialisation of pesticides and veterinary products requires an authorisation from the Servicio Nacional de Sanidad Agraria (www.senasa.gob.pe) and products are also subject to registration. Likewise, food and beverages must be registered at the General Bureau of Environmental Health and Food Safety (www.digesa.sld.pe/index.asp).

STANDARDS, TECHNICAL RULES, LABELLING REGULATIONS

Mandatory technical regulations (Normas Técnicas Peruanas Obligatorias) exist for some automobile parts, cement, explosives and related equipment.

Labelling regulations (Law N° 28405) require specific information in Spanish and mandatory information of the importer or distributor, country of manufacture and expiration date.

The transport of dangerous products must be done with transport companies having a special license. The list of dangerous products is in the Orange Book of the United Nations, a supranational rule provides recommendations on quantities, packaging, signage, vehicle characteristics; which have been developed by an expert committee of the Economic and Social Council of the United Nations.

TREATMENT OF PERSONAL DATA

Law No. 29733 and Legislative Decree No. 003-2013-JUS, regulates protection of personal data.

TAXES

Central government taxes include income tax (IR, 29.5% for corporations, 30% for non-domiciled individuals and a progressive cumulative scale of 8 %/ 14% / 17 % / 20% / 30 % for domiciled individuals) and a number of indirect taxes: a general sales tax (IGV, 18%), an excise tax on fuel and luxury goods (ISC), the financial transactions tax (ITF, 0.005%) and a temporary tax on net assets (0.4% on net assets over S/. 1 million¹). Local governments levy taxes on real estate property and vehicles.

Costs and expenses incurred in the generation of revenues or in maintaining its source are generally deductible for determining the income tax base of taxpayers. However, there are several limitations for deductions. The maximum annual depreciation rates for income tax purposes are 20% for vehicles, 20% for machinery and equipment used by mining, oil and construction industries (except furniture,

¹ Amounts paid with for the temporary tax on net assets is a credit against the corporate income tax of the correspondent year. If the credit is larger than the tax to be paid, refund can be requested to the Tax Authorities.

fixtures and office equipment), 10% for machinery and equipment purchased before January 1, 1991, 10% for other machinery and equipment, 25% for hardware and 10% for other fixed assets. Annual depreciation rate for income tax purposes applicable on buildings is 5%.

However, there is a special temporary regime that allows an annual depreciation rate of 20% for buildings to be used in business development. Such buildings should have been constructed in 2014, 2015 and 2016. There are additional requirements that must be met in order to apply this special regime.

Dividends distributions to individuals and to non-resident entities are subject to a withholding income tax of 5%.

Companies must register with the Registro Unico de Contribuyentes (RUC). The tax authority (www.sunat.gob.pe) will issue a tax roll number certificate (RUC certificate).

SETTING UP COMPANIES

Two or more individuals or corporate entities (resident or non-resident) may form a corporation (Sociedad Anónima) under Peruvian law. There is no minimal amount for the capital stock. Incorporation requires that the capital stock be fully underwritten and paid up in at least 25%. Contributions can be made in foreign or national currency, in kind or intangible property (e.g. technology, know-how, etc.). Books and records must be kept in Spanish and in national currency unless authorized otherwise.

Foreign companies wishing to set up a branch in Peru must make sure that their legal representative holds enough powers to solve any matter related to the company's activities, e.g. to involve the company in transactions it carries out, to appear in court and to answer a claim, to appear before tax authorities and to respond to Governmental notices.

Subsidiaries of foreign companies are taxed on the basis of their world-wide income, while branches are taxed for their Peruvian source income.

Both corporations and branches must be properly registered. Information on registration procedures can be obtained from the Superintendencia Nacional de los Registros Públicos (www.sunarp.gob.pe). Any commercial establishment, office, warehouse, factory, premises, etc. also requires a "Licencia de Funcionamiento" to be issued by the local municipality.

Foreign capital investment in Peruvian companies and joint ventures can be registered with the Private Investment Promotion Agency (www.proinversion.gob.pe), but this is not mandatory.

A brochure on "How to set up a company in Peru" is available from ProInversión.

PROMOTION OF INVESTMENT

The law provides for equal treatment of foreign and domestic investors. The Private Investment Promotion Agency (www.proinversion.gob.pe) is entitled to execute legal stability agreements with foreign investors, provided the investment amounts to no less than USD 5 million (USD 10 million for mining

and hydrocarbon projects). Benefits granted through these agreements generally extend for a ten-year period.

There are a number of special incentives (tax benefits) for investments in agriculture, aquaculture and in certain peripheral regions (such as the Tacna Free Zone).

PUBLIC PROCUREMENT

Individuals and corporate entities, nationals or foreign, may contract with the Government. According to the Public Procurement Law and its Regulation the Organismo Supervisor de las Contrataciones con el Estado (OSCE) administrates the procedure to contract goods, services, works consultant, or execution of works by the Public Authorities.

The registration with the Government Suppliers Registry (RNP) is mandatory to participate in bid tenders and to take part in Public Authorities.

Any interested party may access the Government Procurement Electronic System (SEACE – www.seace.gob.pe), to obtain information about public bids and tenders.

ENTRY CONDITIONS, WORK PERMITS, RESIDENCE PERMITS, LABOUR LAW

The Constitution limits working hours to a maximum of 8 per day or 48 per week, and the law provides for 30 calendar days' vacation per year. Women are entitled to 98 days maternity leave (subsidy paid by the Social Security Agency, EsSalud).

The legal minimum wage currently stands at S/. 850.00 Soles - per month. In addition, employers are required to provide the following benefits for employees:

- Two bonuses (equivalent to one monthly salary each) to be disbursed in July and December;
- Approximately the equivalent one month of salary per year as unemployment fund (*Compensación por Tiempo de Servicios*) which must be deposited two times a year at a bank elected by the employee;
- Company's profit sharing: The rates are 5%, 8% and 10% of net income depending on the employer's activity. This benefit does not apply to companies employing less than 20 employees.

All these benefits are deductible for income tax purposes.

Employers may enter into employment contracts for an open end period of time and exceptionally for a fixed term. Employees that pass the trial period are protected against arbitrary dismissal, i.e. they may only be dismissed on grounds of specific events listed in Peruvian Employment Law. In the event of unfair dismissal, a permanent worker may demand a severance equivalent to one and a half monthly salaries per year of service (but with a cap of 12 salaries).

Fixed term contracts are allowed by law under certain circumstances, such as business expansion, production increase, temporary labours, replacement, new companies and new activities, extraordinary circumstances and seasonal activities. Social security under the National Health System, employers must contribute 9% of gross salary to the Social Security Agency (EsSalud), which through its own clinics and hospitals provides medical care as well as disability, illness, maternity and death benefits to employees. An additional insurance is required for workers that practice high-risk activities.

The National Health System may be complemented by programmes provided by private health care companies (Empresas Prestadoras de Salud) but this is not mandatory. Expenses incurred (2.25%) may be used as credit against the 9% EsSalud contribution.

Employees can choose between the National Pension System (SNP), administrated by the National Pensions Agency (Oficina de Normalización Previsional – ONP) and the Private Pension System (SPP), which operates on an individual account basis and is managed by private entities (Administradoras de Fondos de Pensiones - AFP). Employers are responsible for withholding employees' contributions to SNP or SPP from monthly salaries and depositing them. The withholding in the SNP is 13% and in the SPP generally amounts to 12 - 13% (depends of each AFP) of gross salary.

Work and residence permits

Expatriates working in Peru and foreign corporations carrying out activities in Peru are subject to Peruvian labour law. As a general rule, the hiring of foreign employees is limited to 20% of total personnel and salaries paid to foreign employees shall not exceed 30% of payroll. However, such limits can be waived for management personnel and highly qualified staff. No restrictions apply to foreign individuals working in Peru with Peruvian immigrant visa, individuals married to Peruvians or having Peruvian children, parents of siblings and foreign investors with a permanent investment in Peru of at least USD 30,000. Citizens from MERCOSUR area, CAN area and Spain have a special treatment.

Foreign citizens of the Schengen Area as well as foreigners from Chile, Colombia and Mexico may enter Peru requesting business visa directly to the immigration control officer at the Jorge Chavez Airport.

Companies hiring expatriate employees shall request approval of the employment contract from the Ministry of Labour (including the waivers to the percentage caps) and obtain a resident visa in the immigrations Office (Superintendencia Nacional de Migraciones).

Upon leaving Peru, expatriates having earned income from a Peruvian source need to certify that the income tax was either paid directly (form 1494 available from SUNAT) or retained by their Peruvian employer (form 1492 or online form 1692).

SOURCES OF INFORMATION AND LINKS

www.comunidadandina.org

www.indecopi.gob.pe

www.produce.gob.pe

www.minsa.gob.pe

www.osce.gob.pe

www.seace.gob.pe

www.mintra.gob.pe

www.migraciones.gob.pe

www.proinversion.gob.pe

www.sunat.gob.pe

www.senasa.gob.pe

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