



## VENEZUELA – 2009 BUSINESS ENVIRONMENT

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**Currency:** Venezuelan Bolivar (VEB)

**Foreign exchange control:** Domestic financial institutions may not offer foreign currency accounts, unless otherwise authorised by the Currency Administration Commission. Venezuelan residents may hold foreign currency abroad, but foreign currency bank transactions in Venezuela are prohibited, except for transactions involving the sale of currency from individuals and firms to banks and exchange offices. The Currency Administration Commission authorises the purchase of foreign currency by individuals or legal entities for transfer, remittance or payments for the import of goods and services. Authorisation by the Commission is also needed to make capital and interest payments on duly registered private external debt. Foreign currency obtained from the export of goods and services must be sold to the Central Bank (except for 10%, which may be retained to cover export-related expenses). All exports must be denominated in dollars, euros or other major currencies. No VEB-denominated export sales are permitted.

**Accounting principles/financial statements:**

Companies quoted on the Venezuelan stock exchanges are subject to the standards set by the National Securities Commission. Otherwise, companies are required to apply the appropriate Mexican GAAP, although IAS is becoming more common where there is no Venezuelan GAAP. Financial statements must be filed annually

**Principal business entities:** There are four basic types of business entity under Venezuelan law: the corporation (compañía or sociedad anónima—CA or SA); the limited liability partnership (sociedad de responsabilidad limitada—SRL), which combines features of the partnership and the corporation but is seldom used by manufacturing firms; the sociedad anónima inscrita de capital abierto (SAICA); and the sociedad anónima de capital autorizado (SACA).

The CA (SA) is the most popular form. SAICAs and SACAs have not proved popular, partly because of the

restrictions intended to attract and protect minority shareholders.

**TAX ID NUMBER**

**RIF Registry of Fiscal Information (RIF)** - Registry of Taxpayers Is a registry destined to the tributary control, in which the natural or legal people must register, the communities and the organizations or groupings without legal personality, susceptible in regard to the goods or activities, of being subject or responsible for the Tax on the Rent, the agents of retention of the tax, and the residents abroad without permanent establishment or fixed base, whenever the cause of the enrichment is or happens in Venezuela.

The structure is as it follows:

RIF: **G-20000303-0**

Always is a followed letter of 9 numbers. That is to say, 10 characters.

The first letter: If it is a public entity: G, if it is a natural person: V, if it is a legal person: J, if it is a foreigner without national document: F

20000 (the second character up to the sixth character): It indicates the type of contributor: Legal private, Legal public, foreign company, cooperatives, Successions, partnerships, Unions, civil groupings, societies in fact among others.

303 (the seventh character up to the ninth Character) sequential number generated at random for legal people.

If it is Natural person the eight following intermediate numbers (20000303) belong to the personal identity card of the registered person.

0 It is a random generated authentication number. The RIF number is unique.

**Corporate taxation:**

**Residence** – A company is resident in Venezuela for



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tax purposes if it is incorporated or domiciled there.

**Basis** – Resident companies are subject to tax on their worldwide taxable income; nonresidents are taxed only on Venezuela- source income. Foreign enterprises that conduct business in Venezuela through a permanent establishment (PE) are subject to income tax on foreign and Venezuelan-source income attributable to the PE.

**Taxable income** – Taxable income is defined as income from worldwide sources and is calculated by deducting from gross receipts all “normal and necessary” expenses incurred in earning income. Included in taxable income are business profits and capital gains.

**Taxation of dividends** – Dividends paid out of profits subject to tax are exempt from tax. Dividends paid in excess of taxable income are subject to final withholding tax at a rate of 34%.

**Capital gains** – Capital gains generally are taxed as part of the taxpayer’s ordinary income. However, capital gains derived from the sale of shares registered on the Venezuelan stock exchange are subject to a 1% tax on the gross amount. Losses on sales of shares registered on the Venezuelan stock exchange may not be deducted from other income.

**Losses** – Losses may be carried forward for up to 3 years, except for losses arising from inflation adjustments, which may only be carried forward for 1 year. Foreign-source losses may be offset only against foreign- source profits earned abroad. Losses may not be carried back.

**Rate** – Progressive up to 34%. Oil companies pay a 50% tax rate on net income, except for specific projects considered by the government to be of national interest, which are taxed at the normal corporate rate. Companies engaged in the exploration, exploitation, processing, transport, distribution, storage, marketing and export of non-associated natural gas pay 34%, as do companies

involved in oil refining. Oil companies are also charged a 30% tax or royalty on the amount of crude oil produced. The Ministry of Energy and Oil can reduce the royalty rate to 20% for heavy-oil projects or marginal fields in special circumstances, and is entitled to re-establish the 30% royalty.

**Surtax** – No

**Alternative minimum tax** – No

**Foreign tax credit** – Venezuela grants a tax credit for foreign taxes paid up to the amount of Venezuelan tax payable on the income.

**Participation exemption** – No

**Holding company regime** – No

**Incentives** – Foreign investors are entitled to a full range of investment incentives, including tax exemptions, special-credit financing, export incentives and debt-equity swaps. The government provides tax incentives for investment in “strategic” sectors. For regional incentives, there is an exemption from income tax for companies operating in certain areas in 5 undeveloped states and 36 industrial parks. Venezuela also has several industrial, commercial and services free zones.

### Withholding tax:

**Dividends** – Dividends are generally exempt from income tax. However, if the net income exceeds the net taxed income, tax is levied at a rate of 34%.

**Interest** – Interest paid to a nonresident legal entity is taxed at the normal corporate income tax rates, i.e. 15% to 34%, applied to 95% of the gross payment, resulting in effective rates of 14.7%, 20.9% and 32.30%, provided certain requirements are met. Interest paid to nonresident banks or financial institutions is subject to a withholding tax of 4.95%. Interest paid to a nonresident individual is subject to



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a 34% withholding tax.

**Royalties** – Royalties paid to a nonresident company or a resident individual are subject to tax at a maximum rate of 34% applied to 90% of the gross payment, resulting in an effective maximum rate of 30.6%. Technical assistance fees paid to a nonresident company or a resident individual are subject to tax at a maximum rate of 34% applied to 30% of the gross payment, resulting in an effective maximum rate of 10.2%.

**Branch remittance tax** – A branch profits tax is levied on permanent establishments of foreign enterprises at a rate of 34% on the excess of net taxed income. However, the tax will be deferred if amounts are reinvested in Venezuela for at least 5 years.

### Other taxes on corporations:

**Capital duty** – A 1% capital duty is levied on the formation of a company and on additional contributions to capital.

**Payroll tax** – A company that has more than 5 employees must contribute to the National Institute of Educational Cooperation. The rate is 2% on payroll.

**Real property tax** – Real property tax is levied by the municipalities, with rates and bases of assessment varying by location and use of the property. Some municipalities attract companies to their areas by offering exemptions from real property taxes to manufacturing enterprises.

**Social security** – Special contributions must be withheld by employers from employee salaries and remitted to the relevant authorities on a monthly basis. Contributions for employers are 10%, 11% and 12%; and the employee contribution is 4%.

**Stamp duty** – Stamp duty of 0.01 Tax Units per 1 VEB or fraction of 1 VEB when the initial capital of a company is registered or increased. Stamp duty is also levied when a branch registers in Venezuela.

**Other** – The municipalities levy an annual tax on economic activities for the privilege of doing business in a district. The tax is usually based on gross receipts or sales and varies by district and the type of business. Companies earning gross income exceeding 100,000 Tax Units (VEB 4,600,000) must pay an R&D contribution or make investment in R&D. The rate of the contribution is 0.5% if the enterprise engages in commercial activities, 1% if engaging in mining activities and 2% for oil activities.

### Anti-avoidance rules:

**Transfer pricing** – Venezuela's transfer pricing rules generally follow OECD guidelines, requiring income and expenses related to transactions between related parties to be on arm's length terms. The transfer pricing rules also define related parties and set forth permitted methodologies. Taxpayers are required to verify the existence of arm's length pricing by conducting a transfer pricing study, and prices that do not reflect an arm's length amount may be adjusted by the tax authorities.

**Thin capitalisation** – Venezuela has introduced thin capitalisation rules, which provide for a debt-to-equity ratio of 1:1.

**Controlled foreign companies** – Venezuela does not have CFC rules but the Income Tax Law contains fiscal transparency rules (see below).

**Other** – Under the fiscal transparency rules, taxpayers that invest directly, indirectly or through another person (i.e. an agent or intermediary) in entities or funds located in a low-tax jurisdiction must report the income of the low-tax jurisdiction entity/fund, whether or not the income is distributed. Such income is considered foreign-source gross income for purposes of Venezuelan income tax. To be subject to the fiscal transparency rules, however, the Venezuelan taxpayer must have power to influence the distribution of profits or dividends of the low-tax jurisdiction entity or control directly, indirectly or through a third person the administration of the entity. The investment in the low-tax jurisdiction entity must be reported in an additional return filed



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with the final income tax return of the corresponding taxable year. A low tax jurisdiction is defined as one in which income is taxed at rates lower than 20%. The fiscal transparency rules do not apply if the Venezuelan taxpayer's income is derived from business activities and more than 50% of the total assets of the investment are used to carry on the business activities in the low-tax jurisdiction. Nevertheless, if more than 20% of the total income derived from the investment in the low tax jurisdiction comes from dividends, interest, royalties or income from the sale of movable or immovable property, the exception will not apply.

**Disclosure requirements** – No, except for that required under the fiscal transparency rules.

### Administration and compliance:

**Tax year** – Generally the calendar year, but taxpayers may choose their own fiscal year and, once approved, the fiscal year may not be changed without the approval of the tax authorities. Taxpayers considered “special taxpayers” are required to use a 12-month fiscal year starting on 1 January and ending on 31 December. A corporation's first fiscal year may contain fewer than 12 months.

**Consolidated returns** – Consolidated returns are not permitted; each company must file a separate return.

**Filing requirements** – All companies (except mining and oil companies) that earned more than 1,500 Tax Units during the preceding fiscal year must file an estimated tax return by the end of the sixth month of the fiscal year. The amount declared in the return must be based on at least 80% of the preceding year's taxable income, unless the company can justify a smaller estimate. The amount of estimated investments eligible for tax credits may not exceed 80% of the investments declared for the same purpose in the previous year's final tax declaration. All corporate taxpayers (except those involved in mining or oil activities) must make advance tax payments in 6 equal instalments at consecutive monthly intervals. For companies in the hydrocarbons

industry, advance payments must be made in 12 equal monthly instalments. Mining and hydrocarbons companies must file estimated returns within the first 45 days of each year, and advance payments of 96% of the tax resulting from the estimate must be paid at that time. Final income tax returns must be filed within 3 months of the close of the company's fiscal year and payment of tax liability made at that time.

**Penalties** – Penalties for late filing of returns are 10%-200% of the amount due, plus flat fines. The annual interest rate on outstanding payments is equal to the maximum commercial bank rate plus 20%.

**Rulings** – Taxpayers may request a ruling on the tax consequences of particular transactions.

### Value added tax:

**Taxable transactions** – VAT is based on the invoiced price of domestic and imported goods and the provision of services.

**Rates** – 9%. Several exemptions exist for exporters and importers and specific industries, certain staples and certain imports.

**Registration** – Taxpayers must obtain a tax number from the Tax Registry and update information every 3 years. Nonresident enterprises carrying out business or activities in Venezuela but without a permanent establishment must obtain a tax number.

**Filing and payment** – VAT tax returns must be filed and paid within 15 calendar days following the end of the tax period. If no VAT is due for a tax period, the taxpayer still must file the VAT return.

**Source of tax law:** *Ley de Impuesto sobre la Renta, Ley de Impuesto al Valor Agregado*

**Tax treaties:** Venezuela has 25 tax treaties.

**Tax authorities:** *Servicio Nacional Integrado de*



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*Administración Aduanera y Tributaria (SENIAT)*

**International organisations:** UN, WTO, IMF, OAS

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