



Latin American Tax Update

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Investing in Latin America – General stats (2011)



Alphabetical Listing	Population 80%	Economy Size GDP (current US\$) 90%	Per Capita Income GNI per capita, Atlas Method (current US\$)
Argentina	Brazil: 196.7 million	Brazil: \$2.477 trillion	Puerto Rico: \$16,560**
Bolivia	Mexico: 114.8 million	Mexico: \$1.153 trillion	Chile: \$12,280
Brazil	Colombia: 46.93 million	<i>[Argentina : \$446.0 billion]</i>	Uruguay: \$11,860
Chile	Argentina: 40.76 million	<i>[Colombia: \$333.4 billion]</i>	Venezuela: \$11,820
Colombia	Peru: 29.40 million	Venezuela: \$316.5 billion	Brazil: \$10,720
Costa Rica	Venezuela: 29.28 million	Chile: \$248.6 billion	Argentina: \$9,740
Cuba	Chile: 17.27 million	Peru: \$176.9 billion	Mexico: \$9,420
Dominican Republic	Guatemala: 14.76 million	Puerto Rico: \$96.26 billion**	Costa Rica: \$7,640
Ecuador	Ecuador: 14.67 million	Ecuador: \$65.95 billion	Panama: \$7,470
El Salvador	Cuba: 11.25 million	Cuba \$60.81 billion*	Colombia: \$6,070
Guatemala	Haiti: 10.12 million	Dominican Republic: \$55.61 billion	Cuba: \$5,460*
Haiti	Bolivia: 10.09 million	Guatemala: \$46.90 billion	Dominican Republic: \$5,240
Honduras	Dominican Republic: 10.06 million	Uruguay: \$46.71 billion	Peru: \$5,150
Mexico	Honduras: 7.755 million	Costa Rica: \$40.87 billion	Ecuador: \$4,200
Nicaragua	Paraguay: 6.568 million	Panama: \$26.78 billion	El Salvador: \$3,480
Panama	Nicaragua: 5.870 million	Bolivia: \$23.95 billion	Paraguay: \$3,020
Paraguay	El Salvador: 6.227 million	Paraguay: \$23.84 billion	Guatemala: \$2,870
Peru	Costa Rica: 4.727 million	El Salvador: \$23.05 billion	Bolivia: \$2,020
Puerto Rico	Puerto Rico: 3.707 million	Honduras: \$17.43 billion	Honduras: \$1,980
Uruguay	Panama: 3.571 million	Nicaragua: \$9.317 billion	Nicaragua: \$1,510
Venezuela	Uruguay: 3.369 million	Haiti: \$7.346 billion	Haiti: \$700

* = 2008

** = 2010

Source: <http://data.worldbank.org/country>

■ Legal

- Exchange control or statistic authority e.g. Central Bank/CADIVI (influx/outflow)
- Formalistic requirements for capital contribution/reduction, change of ownership...:
 - Notary public & Public Registry participation and fees
- Expanded liability to parent (tax/labor) or foreign service provider (WHT FIN48)
- Expropriation/nationalization
- Employment/Immigration/Government Procurement/Contractual restrictions

■ Tax

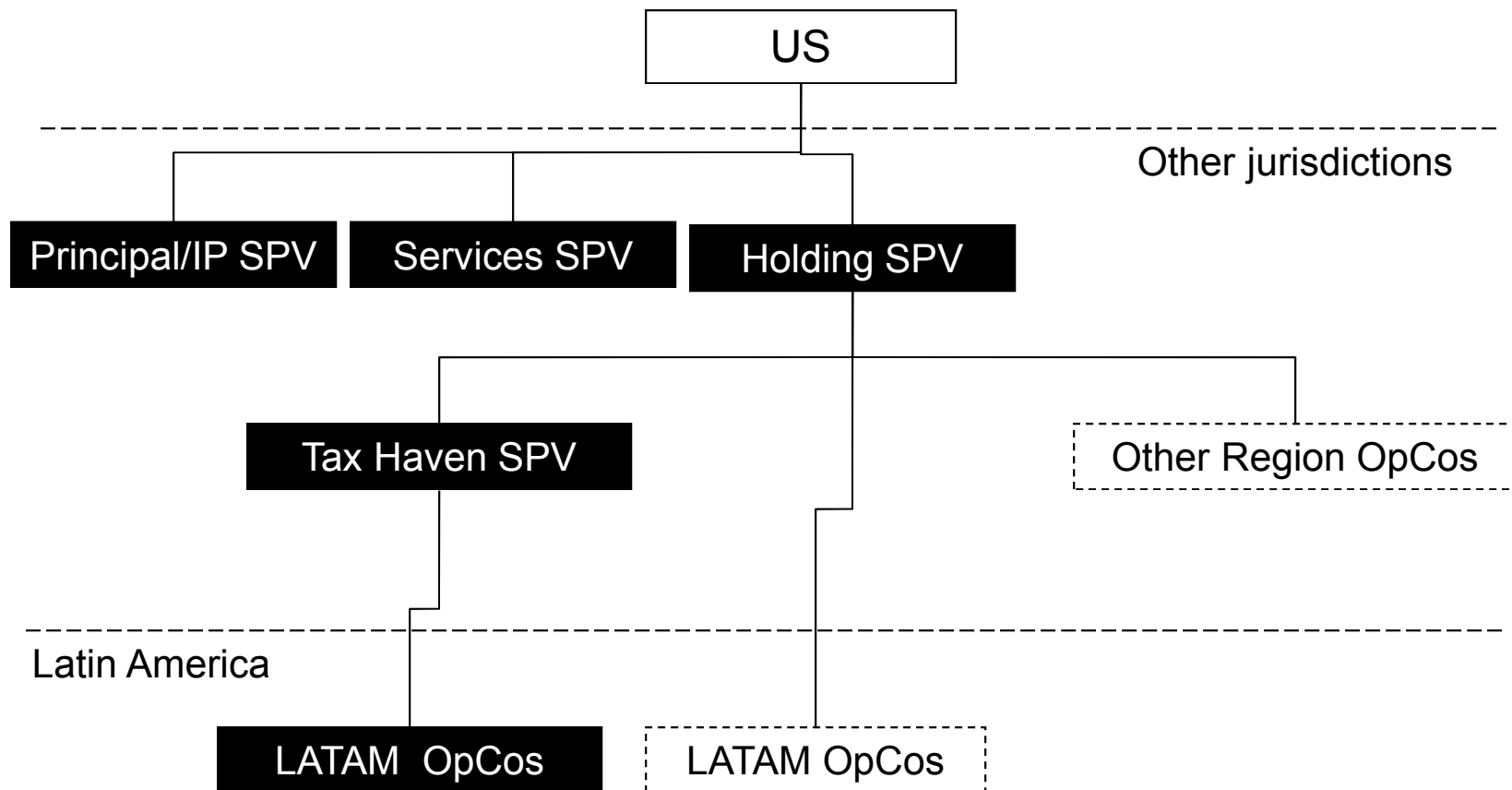
- Frequent tax reforms
- Income Tax Payable: NOT only net income tax
 - e.g. MEX: IETU; Colombia & Central America: Minimum presumptive income
- Indirect taxation
 - e.g. tax on financial transfers; turnover tax; etc.
- Several levels of taxation (National/Provincial/Municipal) Tax free reorganization provisions subject to detailed requirements
- TP local customized methods (ARG: Commodities; BRZ: Predefined margins)
- High WHT rates and limited access to lower treaty rates

▪ Ideal investment Route

- Standalone “SPV” holding company that shield rest of the group of local liability and ideally located in a jurisdiction with:
 - Tax treaty with lower WHT rates
 - Participation exemption/ Access to low tax rate via ruling
 - Lower withholding rates; and (nowadays)
 - Bilateral investment treaty (BIT)

- Since there is no key LATAM holding jurisdiction, parameters to follow include:
 - Best treaty coverage for either initial target country or future expansion
 - Double or multiple tier type of structure
 - Separate holding from Principal/Service provider jurisdiction

Latin American SPV Holding Structure



- **Tax Haven as a shield of liability to ParentCo**
 - **Targeted**
 - Prevalent in Latin America with introduction of Transfer Pricing provisions
 - (Mexico 1995, Brazil 1996, Argentina and Chile 1997, Venezuela 1999, Peru 2001, Colombia 2002, Ecuador, Uruguay, Central America and DR to date)
 - **Definition**
 - General definition + Lists (usual suspects + territorial + no K Gains)
 - “Preferential regimes” (DEL LLCs, ETVEs, Dutch, Lux, Swiss HoldCos)
 - **Tax effects**
 - Higher withholding/capital gains tax rates
 - TP mandatory compliance obligation regardless of related party
 - Enhanced audit /presumption of evasion or hidden related party
 - Thinner Thin-Cap Rules (Brazil)
 - **Future effects**
 - Signing of tax treaty and/or exchange of information agreement

- **Tax treaty as a shield and Tax efficient tool**
 - Treaty network expanding exponentially
 - OECD model despite the fact that only CHL and MEX are members
 - All provide for PE clear definition (when local legislation does not)
 - Some provide for exemption on capital gains and lower WHT
 - Tax controversies
 - Usually apply to income taxes or similar taxes (Spain-Argentina Treaty used to cover Argentinean Net Asset Tax).

Tax Treaty Jurisdictions



Spain (14) <i>6/7</i>	Netherlands (6) <i>4/7</i>	Switzerland (7) <i>5/7</i>	Luxembourg (3) <i>2/7</i>	USA (3) <i>2/7</i>	Barbados (3)
Argentina Barbados Bolivia Brazil Chile Costa Rica Cuba Colombia Ecuador El Salvador Mexico Panama Uruguay Venezuela	Argentina Barbados Brazil Mexico Panama Venezuela	Argentina Chile Colombia Ecuador Mexico Venezuela Uruguay	Brazil Mexico Panama	Mexico Barbados Venezuela	Cuba Mexico Panama Venezuela
Signed, not yet in force: Peru and Dominican Republic	Chile, Colombia, Costa Rica and Uruguay in the agenda	Signed, not yet in force: Peru		Signed, not yet in force: Chile	

- Bits are intended to:
 - Entitle investors to compensation if assets are expropriated (key when local provisions are not clear)
 - Provide independent/neutral judicial remedy via arbitration (vs. holding BIT qualified procedures under local court)
 - Deterrent from unjust unilateral actions by States
- But require:
 - Advanced planning (last minute shifts are not effective)
 - Suitable corporate structure
 - Substance in BIT country
 - Political positioning and backing from BIT origin country

BITs Jurisdictions



Spain (17) <i>5/7</i>	Netherlands (15) <i>4/7</i>	Switzerland (16) <i>5/7</i>	Luxembourg (6) <i>3/7</i>	USA (5) <i>1/7</i>
Argentina Bolivia Chile Costa Rica Cuba DR El Salvador Ecuador Guatemala Honduras Mexico Nicaragua Panama Paraguay Peru Uruguay Venezuela	Argentina Bolivia Costa Rica Cuba Ecuador El Salvador Guatemala Honduras Mexico Nicaragua Panama Paraguay Peru Uruguay Venezuela	Argentina Bolivia Chile Costa Rica Cuba DR Ecuador El Salvador Honduras Mexico Nicaragua Panama Paraguay Peru Uruguay Venezuela	Argentina Bolivia Chile El Salvador Mexico Paraguay	Argentina Bolivia Ecuador Honduras Panama Protection may be sought through FTAs with: <ul style="list-style-type: none"> - Chile - Colombia - Peru - Mexico

- **Tax audit focus**
 - Political (key industries or opponents ARG/VZL)
 - Technical
 - TP Compliance / moving into substance
 - Cross border payments
 - Proper WHT Rates & TP thresholds
 - Supporting documentation + relation to generation of taxable income
 - Treaty shopping / substance
 - VAT
 - Expense relationship to core business for VAT credit purposes

- **Tax incentives**
 - Auto industry in Brazil
 - R&D in Argentina... Brazil, Colombia, others
 - Head or back office in Costa Rica, Panama and Uruguay
 - Life science and medical services in Costa Rica and Colombia
 - Free trade zones / Call centers (C.A., COL, DR, Uruguay...)

- **Reform**
 - 2013 Congress midterm election year, no current reform discussion
 - “Window” legislation tightening exchange control regulations
- **Audit**
 - Emphasis on export of commodities
 - TP 6th Method (export price of food commodities)
 - TP economic relationship with largest trading partners
- **Treaties**
 - 2012 Denounced Spain & Chile and stopped effects of Switzerland
 - 2013 Signed with Spain retroactive to 1.1.2013 but not yet ratified and no shield to annual equity tax charges

- **Reform**
 - Increase in the corporate income tax rate
 - Tax free reorganization provisions
 - Tax treatment of goodwill/badwill (allocation limited to FMV)
 - Branches (ww income)
 - Permanent establishment (defintion)
 - Cross-border transactions (tax residency and beneficial ownership)
 - Transfer pricing (compliance)

- Signed 2.4.2010 approval by US congress & ratification still pending
- Enters into force January 1 following ratification date
- US Model Income Tax Convention with Chilean dividend clause
- Withholding rates
 - Dividends 5% - 15% (“Chile Clause”)
 - Interests 4% - 10%
 - Royalties 2% - 10%
 - Other business profits 0%
- Capital gains
 - Slim reduction (from 17 to 16%)
- Comprehensive LOB provisions
- Extensive exchange of information and bank secrecy provisions

■ Reform

- CIT rate from 33 to 25%
- CREE (surcharge 9% & 8% from 2016 on) no payroll taxes
- Tax on branch distributions
- Tax free reorganization provisions (tightly limited)
- Tax residency (mind & management)
- PE definition (no minimum time limit of time to cause it)
- Anti-abuse provisions
 - Allows re-characterization if any 3 of the following are met (i) related party; (ii) tax haven; (iii) favorable tax regime; (iv) >< 25 from FMV; or (v) not executed on arms length to abuse
 - Burden of proof of business purpose on tax payer
- TP
 - Strengthening authority
 - Thin cap rule 3:1
 - Expansion of related party definition
 - Tax havens
 - Captures IP export
- Individuals & VAT

Significant "Pending" :
PE & Residency Regulations -
Environmental taxation -
WHT on dividends -

▪ Audit Focus

- Director International Tax Audit / from private practice
- TP audits beyond formal requirements
- Assessments to median range
- Technical services agreement
 - Support documentation and Due registration
 - Substance contribution to generation of taxable income
- Royalty payments on imported product
 - Import duties and VAT on royalty component

▪ Treaties

- **Tax :**
 - In force (7): Canada, Chile, Spain, Switzerland & CAN (Peru, Ecuador & Bolivia)
 - Signed (6): Czech Republic, India, Korea, Mexico (2014) and Portugal
 - Negotiated to be signed (2): Belgium & France
 - In negotiation (4): Germany, Japan, Netherlands & US (exchange of information signed)
 - Potential discussion: UK, Israel and Italy,
- **FTA:**
 - In force: Bolivia, Canada, CARICOM (13), Chile, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Peru and US
 - Under negotiation: European Union, Korea, Panama and Turkey

- Goals
 - Deter Tax Evasion
 - Increase Tax Revenues
 - Simplify Compliance Systems
 - Tax Informal Economy
 - Expand Taxation on Consumption

▪ Peru

- Tax treaty with Switzerland signed of September 21, 2012
- Anti abuse provisions/re-characterization authority
- Partial audit authority
- Transfer pricing rules (effective as of January 1, 2013)
- APAs friendly (... or not yet)

▪ Venezuela

- Effects of the reelection/Election / strengthening of the Bolivarian Revolution movement
- Zero tax evasion plan
- Steep second devaluation expected

- **Costa Rica**

- Amendments to current law related to economic reality, joint responsibility, fiscal domicile and others
- Relaxation of Bank secrecy rules

- **Dominican Republic**

- Thin capitalization rules (3:1 debt-equity ratio)
- Branch profit distribution WHT
- Dividend WHT (credit claim no longer allowed)
- Increase of VAT rates from 16 to 18% for fiscal years 2013 and 2014
- Introduction of a consumption tax on gas / oil (approx. US 0.05 per gallon)

- **El Salvador**

- Low Taxation List: Addition of Barbados, Botswana, **Florida (US)**, Gibraltar, Latvia, Malta and Qatar. Exclusion of Uruguay
- Null Taxation List: Addition of Antigua and Barbuda, Aruba, Brunei, Curacao, Guernsey, US Virgin Islands, Jersey, Luxemburg (only SPF companies), St. Maarten, Montserrat

- **Panama**

- Amendment to transfer pricing rules to apply to treaty and non treaty jurisdictions
- Inclusion of concept of PE
- Treaty negotiations still advancing at fast pace

Presenters



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