

*July 17, 2019*

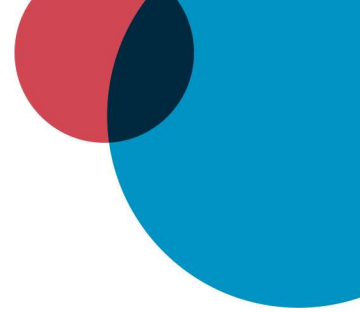
## Taxand News

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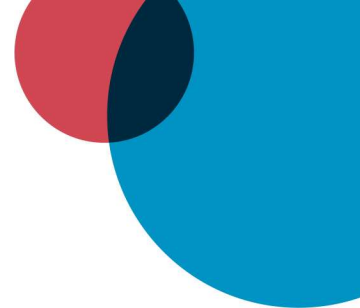
### **The Venezuelan National Constituent Assembly (ANC) approves a Constitutional Law that imposes an “Equity Tax” on High Net Worth Taxpayers**

On July 3, 2019, the ANC published in the Official Gazette No. 41.667, the Constitutional Law creating a Net Equity Tax on High Net Worth Taxpayers (LNETHNT). The most important elements of the Law being:

- The tax applies to special individual taxpayers whose net equity is equal to, or greater than, thirty-six million tax units (36,000,000 T.U.), and equal to, or greater than one hundred million tax units (100,000,000 T.U.) in the case of legal entities. The current value of the T.U. is Bs. 50/1 T.U.
- The Federal Administration is in charge of controlling, collecting and managing the tax.
- The ownership or possession of “net equity”, equal to the legal threshold constitutes a taxable event, in the terms established under the Law.
- Taxpayers who qualify as “special” will be taxed according to the following source criteria:
  - 1 Individuals and legal entities that qualify under this law, as well as entities without legal personality resident in the country, will be taxed on the total global net equity, regardless of where the assets representing the net equity are located or where can the underlying rights be exercised. The taxable Net Equity (NE) in these cases is the world-wide one.
  - 2 Foreign Individuals and legal entities qualified as subject to this tax, as well as entities without legal personality not resident in the country, will be taxed on the net equity obtained from a Venezuelan source, as well as any underlying rights that can be exercised in the country. For this assumption, the taxed NE will be only that of Venezuelan source.



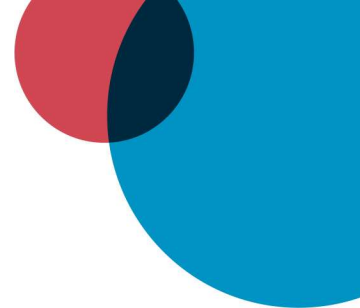
- 3 Venezuelan nationals, Individuals and legal entities subject to this tax, which qualify as non-residents in Venezuela, will be taxed by the NE represented in assets that are located within Venezuela, as well as for the underlying rights that can be exercised within the country. For this assumption, the taxed NE will be only that of Venezuelan source.
  - 4 Foreign companies with a permanent establishment (PE) in Venezuela will be taxable only over the NE attributable to the permanent establishment, no matter where the assets that make it up are located. In some specific cases, the NE taxed, may be the worldwide source one.
- The Law considers the following assets located within Venezuela:
- 1 The real rights constituted on immovable property.
  - 2 Ships, aircrafts, navigation accessories and vehicles of national registration are also considered to be located in Venezuela. Also, any of the above referred assets subject to a foreign registration, may be considered, provided they have remained in Venezuela at least one hundred and twenty (120) continuous or discontinuous days during the tax fiscal year.
  - 3 The titles, shares, membership interests or participations, and other securities, issued by Venezuelan companies.
  - 4 Precious stones, minerals, works of art and jewelry
- The tax residency criteria for individuals is as following:
- 1 Permanence in the country for a period exceeding one hundred eighty-three (183) days in a calendar year, whether continuous or discontinuous, or in the year immediately prior to the period to which it corresponds to determine the tax. This criterion is consistent with that applied by current income tax legislation.
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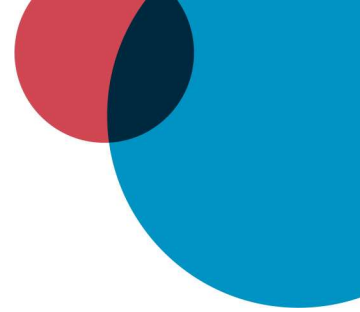
- 3 The main base of its economic activities or interests, directly or indirectly are found in Venezuela.
  - 4 Persons who have Venezuelan nationality and are public officials or workers at the service of the State, even though the main base of their activities or economic interests are abroad.
  - 5 People who have Venezuelan nationality and prove their new tax residency in a low tax jurisdiction in the terms provided for by the national legislation that regulates the income tax, except when said country or territory has signed a wide exchange of tax information agreement with Venezuela.
- Likewise, this Law establishes presumptions of tax residency for individuals qualified as special taxpayers, in the following cases:
- 1 Those who have established their dwelling or have a main dwelling in the country.
  - 2 Those of Venezuelan nationality.
  - 3 The spouse not legally separated, or minor children who depend on that individual, are considered tax residents in the country according to the criteria established in numerals 1 and 2 above.

Regarding the aforementioned numbers 1 and 2, only proof issued by the competent authorities of the country where the person has acquired residence for tax purposes, will be admitted as evidence to the contrary.

- The law also establishes the criteria for tax residency in the country of legal entities and entities without legal personality as follows:
- 1 If constituted according to the Venezuelan laws.
  - 2 If the entity has a fiscal or statutory domicile in the country.
  - 3 If the entity has an effective domicile within the country.



- Article 9 of the Law defines what should be considered as a PE for the purposes of the law. The definition included herein is consistent with the income tax law in Venezuela.
- The law contemplates a tax consolidation regime in the case of foreign companies that have more than one PE in the country, from which they have different centers of activity.
- Regarding the temporality and period of this tax, Articles 11 and 24 consider that the taxable event occurred on the last day of the respective tax period. Being that the fiscal period is considered annually, the taxable NE existing at the close of the applicable fiscal year determines the amount of tax due.
- The Law establishes some exemptions and exonerations from the payment of the tax:
  - 1) the taxpayers homestead up to a value of sixty-four million T.U. (64,000,000 T.U.);
  - 2) domestic trousseau;
  - 3) social benefits for workers, including income and contributions to savings towards workers and employee funds;
  - 4) community property,
  - 5) assets that are used for agricultural activities, livestock, aquatic and fishing activities, as long as they are performed at the primary level;
  - 6) artist's works;
  - 7) the Republic and other territorial political entities;
  - 8) Central Bank of Venezuela;
  - 9) the functionally decentralized entities; and
  - 10) those that are considered exonerated by the President of the Venezuela.



- The taxable base is the result of adding up the total value of the assets and rights, determined according to the rules established in the Law, minus the value of liabilities and encumbrances that fall upon those assets (understood as part of these to all liabilities held by the taxpayer affected), as well as exempt or exonerated assets and rights.
- The applicable rate for the taxable NE is zero-point twenty five percent (0.25%) and may be modified anywhere from a minimum limit of 0.25% to a maximum of one-point fifty percent (1.50%). The law empowers the Executive branch to modify the applicable tax rate, which is contrary to the Constitutional principle of “tax legality”.
- The period of taxation is considered exceptionally concluded when the taxpayer dies, the legal entity or the entity without legal personality is terminated, or its residency is changed abroad, or when the legal person or entity is transformed and this determines the modification of its tax rate or the application of a special tax regime.
- The tax must be paid made in the form and under the terms established by the Tax Administration.
- Judges, registrars, notaries, financial institutions, insurance and reinsurance companies, brokerage firms, money exchange offices, depositories, museums, galleries, jewelers and other public or private entities before they register or deposit movable and/or immovable property, must remit to the Tax Administration all the information that with particular or general character may be required.
- The Tax Administration may appoint withholding agents in order to withhold directly or by interposed persons, the tax due under this law. The capability to act as a withholding tax agent will be limited from a legal and operational standpoint of view, since this tax does not levy the income obtained, but rather the taxpayer’s net equity. It may occur that a withholding tax may apply to a taxpayer without having NE to declare in a specific fiscal year, because the liabilities that form part of the equity exceed the value of the assets. This advanced collection capacity could be tremendously regressive and may apply in many cases in which there is no economic capacity to pay this tax.

- The Tax Authority will instrument all the administrative control mechanisms for the purpose of determining the accuracy of the information and the values declared by the taxpayers on their tax returns.
- The Tax Authority will exercise and/or execute collection of the amounts determined by the administration, when these have not been paid by the responsible party. The tax authorities may commence immediate collections and place levies and liens on the taxpayer's assets, in accordance with the provisions of the Master Tax Code.
- This tax is not tax deductible by the taxpayer for income tax purposes.

Our tax and legal team are trained to assist you in all the aspects related to this matter. If you have any questions, for please do not hesitate to contact our professionals:

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