

## **Latin America:** Updates on Wealth Tax in Latin America

### **In brief**

The COVID-19 pandemic, together with populist politics, political instability, and public health and security concerns, has increased the number of bills of law aimed at addressing taxation of significant amounts of revenues, commonly known as Wealth Tax.

We are facing a trend among Latin American jurisdictions to propose and in some cases to implement the Wealth Tax. Accordingly, our Wealth Management team, in cooperation with Baker McKenzie, has prepared this alert describing the current scenarios in [Argentina](#), [Brazil](#), [Chile](#), [Colombia](#), [Mexico](#), [Peru](#) and [Venezuela](#).

### **In more detail**

#### **Argentina**

Law 27,605, which establishes the Solidarity and Extraordinary Contribution to Help Mitigate the Effects of the Pandemic ("**Contribution**"), was published on 18 December 2020 in the Official Bulletin and entered into force also on that date. The Contribution taxes assets that exceed ARS 200 million (approximately USD 2.5 million), and its rates vary from 2% to 5.25%.

#### **1. Who must pay the Contribution?**

- Individuals and undivided estates considered Argentine tax residents, for all of their assets in the country and abroad – The taxable basis includes contributions to trusts, private interest foundations and other similar structures; participation in companies or other entities of any type without legal personality for tax purposes; and direct or indirect participation in companies or other entities of any type existing on 18 December 2020.
- Individuals of Argentine nationality whose domicile or residence is in "non-cooperating jurisdictions" or "jurisdictions with low or no taxation" will be considered Argentine tax residents for the purposes of the Contribution and will therefore be subject to the Contribution for the total assets located in the country and abroad. The taxable basis includes contributions to trusts, private interest foundations and other similar structures; participation in companies or other entities of any type without legal personality for tax purposes; and direct or indirect participation in companies or other entities of any type existing on 18 December 2020.
- Individuals not included in any of the points mentioned above, both with tax residence abroad, for certain assets in Argentina on 18 December 2020.

## 2. What assets are subject to the Contribution?

Individuals and undivided estates are exempt from the Contribution when the value of all their assets does not exceed ARS 200 million (approximately USD 2.5 million). When this amount is exceeded, all the assets will be taxed by the Contribution.

## 3. What are the applicable tax rates?

Assets located in Argentina are subject to the following tax rates:

Total value of the assets		Will pay	Plus	On the surplus of ARS
More than ARS	To ARS			
0	300 million, inclusive	0	2.00%	0
300 million	400 million, inclusive	6 million	2.25%	300 million
400 million	600 million, inclusive	8.25 million	2.50%	400 million
600 million	800 million, inclusive	13.25 million	2.75%	600 million
800 million	1.5 billion, inclusive	18.75 million	3.00%	800 million
1.5 billion	3 billion, inclusive	39.75 million	3.25%	1.5 billion
3 billion	Onwards	88.5 million	3.50%	3 billion

Assets located abroad that are not repatriated are subject to the following tax rates:

Total value of the assets located in Argentina and abroad		For the total amount of the assets located abroad, will pay
More than ARS	To ARS	
200 million	300 million, inclusive	3.00%
300 million	400 million, inclusive	3.375%
400 million	600 million, inclusive	3.75%
600 million	800 million, inclusive	4.125%
800 million	1.5 billion, inclusive	4.50%
1.5 billion	3 billion, inclusive	4.875%
3 billion	Onwards	5.25%

**4. What is meant by repatriation?**

"Repatriation" is understood as the entrance to Argentina, within 60 days, inclusive, counted from the entry into force of the law, of: (i) holdings of foreign currency abroad; and (ii) the amounts generated as a result of the realization of financial assets abroad, which represent at least 30% of the total value of said assets. The Executive Branch may extend the aforementioned term by 60 additional days.

Once the repatriation is made, the funds must remain, until 31 December 2021, deposited in an account opened in the name of its holder in Argentine financial entities included in the regime of Law 21,526 and its modifications, or be affected to any of the destinations to be established by the Executive Branch.

**5. What powers of the Federal Tax Authority (FTA) stand out within those contemplated by the Argentine tax regime?**

When the FTA presumes that an operation constitutes an evasive scheme or is intended to evade the payment of the tax as a result of variations in the assets subject to the contribution during the 180 immediate days prior to the date of entry into force of this law, unless proven otherwise, said organism may order that those assets be computed for the purposes of the tax audit.

The Contribution will be applicable on an extraordinary basis for one year. In addition, Argentine tax residents are required to pay Wealth Tax every year, as set out below.

Argentine tax residents that have assets located outside of Argentina are required to pay Wealth Tax according to the following scale:

Total value of assets in Argentina and abroad		Total value of assets placed abroad that exceed the minimum non-taxable amount against assets placed in Argentina will pay
More than ARS	To ARS	
0	3 million	0.70%
3 million	6.5 million	1.20%
6.5 million	18 million	1.80%
18 million	---	2.25%

The above mentioned rates will not be applicable if the taxpayers repatriate before 31 March of each year at least 5% of the total amount of assets held abroad.

The regulation defines "repatriation" as the remittance, until March 31 of each year of: (i) foreign currency positions held abroad; and (ii) amounts originated in the liquidation of financial assets owned by taxpayers located in Argentina.

In such case, and as long as the funds remain deposited until 31 December of the repatriation year, taxpayers will pay according to the following rates (the same rates applicable to local tax residents that do not have assets outside of Argentina):

Total value of assets that exceed the minimum non-taxable amount		Will pay	More %	On the excess of ARS
More than ARS	to ARS			
0	3 million	0	0.5%	0
3,000,001	6.5 million	15,000	0.75%	3 million
6,500,001	18 million	41,250	1%	6.5 million
18,000,001	---	156,250	1.25%	18 million

The minimum non-taxable amount is ARS 2 million. Real estate used as the home of the taxpayer is exempted from the tax when its value is equal to or lower than ARS 18 million. Rural real estate is exempted from the tax when the owners are individuals or estates, regardless of its type of use.



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## Brazil

Article 153 of Brazilian Federal Constitution of 1988 allows the federal government to impose tax over large fortunes (i.e., a Wealth Tax), according to the terms of a complementary law. However, up to now no such law has been enacted.

Since 1988, a total of 42 Bills of Law have been presented (by the Senate or the Congress) to address the terms of such complementary law to enforce the Wealth Tax in Brazil. Of this total, 24 was presented in 2020, as a result of the COVID-19 pandemic and its effects on the economy. These 24 Bills of Law

primarily intend to address social inequality and part of them limits the Wealth Tax to end of the COVID-19 pandemic.

Based on the existing Bills of Law, the tax-triggering event for Wealth Tax corresponds to the ownership of assets above a certain amount on a certain date during the year. Because there are several bills of law, the ongoing proposals differ from each other in terms of: the tax basis, the applicable tax rates, whether the taxpayer would only be individuals or legal entities too, and whether debts would be considered to reduce the tax basis.

In general, the proposals indicate that the Wealth Tax should apply over the worldwide assets of individual tax residents in Brazil and to assets located in Brazil owned by non-resident individuals or legal entities. Only one proposal provides as tax basis the revenues earned by legal entities. Most proposals indicate that the tax basis is subject to exclusions, and the initial brackets subject to taxation vary from BRL 2 million up to BRL 55 million. The tax rates vary from 0.5% to 5%, depending on the total value of the wealth.

Since Brazilian tax residents must report all of their worldwide assets to the Brazilian IRS, such information should be considered to assess the value of the wealth and whether it should be subject to the Wealth Tax in Brazil.

Although there is currently a large number of proposals, only Bill of Law n. 183/2019 has received a favorable opinion from Senator Min. Major Olimpio, who supports the implementation of the Wealth Tax for a two-year period to support the measures regarding COVID-19 containment. Such bill of law provides for the destination of the funds raised with the tax to, for instance, the National Health Fund (FNS) and the Worker Support Fund (FAT).

Meanwhile, in December of 2020 the Brazilian IRS answered Information Request "RIC 1.457 of 2020" addressed to Federal Deputy Leo Moraes, who requested information regarding measures to reduce social inequality and the potential regulation of the Wealth Tax in Brazil. In short, Brazilian IRS understands that: (i) although the Wealth Tax has the potential of minimizing social inequality in Brazil, a deep analysis of its economic consequences is still needed; (ii) the specification methodology for asset valuation is needed due to the different methodologies to evaluate assets; (iii) there are difficulties in controlling the taxation of the wealth; and (iv) few countries adopt the Wealth Tax and the results have not been satisfactory.

It is worth mentioning that Brazilian IRS also recommended a study on the possibility of achieving the same economic goals with the tools already available, such as: (i) for the National Treasury to avoid amnesty programs; (ii) the taxation of dividends distribution in Brazil; and (iii) adjustments on capital market taxation.

The Wealth Tax is indeed an important topic on the agenda of both Houses. However, due to the broad tax reform that Brazil is currently discussing, the Wealth Tax approval should be voted only after it is determined if Brazil will have a major tax reform and how it should affect individual taxation.



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## **Chile**

In 2020 during the COVID-19 pandemic, a group of congressmen from Chile's lower chamber of Congress proposed the imposition of a Wealth Tax to help tackle the social consequences of the pandemic. Their idea was that the tax would apply for one year on individuals with worldwide assets worth USD 22 million or more.

Considering that in Chile only the president may submit bill of tax laws for Congressional consideration, the initiative of the group of congressmen was deemed unconstitutional. The congressmen argued, however, that their proposal was not against the Constitution because it was not being proposed as a bill of law but as a constitutional amendment, even though the Constitution would generally not be the appropriate normative body to establish a tax.

The discussion has not been technically resolved, and if ever heard by the Constitutional Court, it is likely to be overturned. President Piñera, whose term ends on March 2022, does not seem to have plans to propose this type of tax during his administration.

Accordingly, Chile remains a country with no Wealth Tax. For the moment, the only types of net asset taxes are inheritance taxes and certain municipal taxes calculated on net assets of companies generally carrying on an active business.



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## **Colombia**

Wealth Tax or net worth tax was introduced in Colombia in 1935 as a temporal tax. It has been in our tax system for more than 80 years under different names, with the highest rate being 4.8%. The tax has been included in each tax reform, but has not been qualified as permanent yet. In the previous tax reform (Law 2010 of 2019), net worth tax was reintroduced, and it was established that it would be applicable only for taxable years 2020 and 2021.

The general characteristics of net worth tax / Wealth Tax in Colombia are the following: (i) the tax is triggered by the possession of net worth equal to or in excess of a certain amount, which has varied over the years (for 2020-2021, the threshold is COP 5 billion or approximately USD 1,435,000); and (ii) generally, net worth tax has applied to legal entities and individuals. However, net worth tax for 2020-2021 is only applicable to resident individuals and foreign entities or individuals with assets in Colombia, other than shares, accounts receivable and/or portfolio investments, such as real estate, aircrafts, yachts, boats, speedboats, art or oil and mining titles. The taxable base is the value of the taxpayer's net equity as of 1 January of the FY, with the tax rate being 1%.

The Colombian government has not formally announced a new tax reform. However, it is likely that it will file another tax reform to Congress in the first half of 2021. Considering the historical development of this tax in Colombia, a net worth tax could again be included for periods after FY 2021.



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## **Mexico**

In Mexico, there is no gift, inheritance, estate or Wealth Tax imposed on resident individuals –at least not yet. During the last couple of years, we have seen several attempts by congressmen to eliminate the non-taxation regime currently applicable in terms of the Mexican Income Tax Law. However, such attempts have not resulted in bills being passed into law.

September 2018 was the last time a tax bill was submitted to the Mexican Congress to introduce a tax on inheritance income and gifts received by Mexican tax residents. The bill is intended to amend the Mexican Income Tax Law to eliminate the tax exemptions (currently in force and contained in article 93, sections XXII and XXIII) applicable to income obtained from inheritance and gifts in excess of MXN 10 million. According to the Statement of Purpose, the amendment was proposed because of the high inequality rates that exist in Mexico, which translates into a lack of opportunities that directly affect the country's social mobility. Pursuant to the income inequality study carried out in 2017 by the OECD, where 0 refers to equality and 1 to inequality, Mexico's score is .46, placing the country in 24th place out of 38 OECD member countries evaluated under the study.

This bill is relevant as it is strongly related to the recommendations regarding tax collection improvement made by the OECD in March 2018 at the "OECD Mexico 2018: A Future with Growth and Inclusion" forum, on the elimination of the tax exemption applicable to the transfer of assets upon inheritance and the introduction of Wealth Taxes in general.

This bill recommends the establishment of tax rates (in three brackets) of 10%, 20% and 30% for the transfer of real estate with value exceeding MXN 10 million while establishing a range of up to MXN 100 million. Once the bill is approved (as originally submitted to Congress) and the amendments are passed into law, the transfer of assets by way of inheritance or gifts will need to be taken into account from a tax standpoint in order to determine if income derived (i.e., assets inherited or received as a gift) exceeds



MXN 10 million. If so, 10% tax will apply on the excess until it reaches the MXN 50 million threshold; if a surplus remains below MXN 100 million, the difference will be subject to taxation at a 20% rate, and any amount exceeding MXN 100 million will be subject to a 30% tax rate. It goes without saying that a possible repeal of such tax exemptions has incentivized the flow of funds and investments abroad and has accelerated transactions involving gifts among close relatives interested in availing themselves of the tax-exempt treatment on gifts.

Despite the efforts undertaken during Q4 2018 to enact such provisions and despite rumors of an inheritance/gift/Wealth Tax being in the Mexican Congress' agenda during the last legislative period of Q3 2020, we have confirmed that the current Federal Administration's agenda "not to introduce more taxes or increase [rates] existing ones" has prevailed during the first half of its Constitutional term (i.e., 2018 to 2021). Indeed, despite congressmen's efforts to introduce bills toward the repealing of the tax-exemptions, no inheritance, gift, estate and/or Wealth Tax had been effectively included in the 2019, 2020 and 2021 Tax Reform / "Economic Package."

It is very likely, however, that a new attempt to introduce such taxes will be made toward the second half of this administration (i.e., 2022 to 2024), considering the international pressure on this specific matter and in keeping with what countries like Argentina and Peru are doing.



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## **Peru**

As a response to the economic crisis, four different draft bills were proposed to the Peruvian Congress last year for the creation of a Wealth Tax. Its creation is therefore not a question of "if" but of "when." These draft bills have not been discussed by Congress yet and are still to be debated for approval. Taking into consideration that general elections will take place in April this year and that most of the transitory government efforts are dedicated to deal with the sanitary crisis, the creation of a Wealth Tax has not been a priority on Congress' agenda, and it is not expected that any of the draft bills will be approved soon. It is uncertain when any of the draft bills will be approved; however, if any is approved this year, the new Wealth Tax would become effective commencing fiscal year 2022.

Each of the draft bills vary widely on their technical approach for taxing wealth, but in general terms, the Wealth Tax might either take the form of additional taxation on income or a tax on the value of assets and estate.

Regarding local financial reporting obligations, on 31 December 2020, the Peruvian government published Supreme Decree No. 430-2020-EF containing regulations on the obligation that local financial institutions have for reporting financial information to the Tax Administration to counteract tax evasion and elusion.

Starting 1 January 2021, and on a monthly basis, local financial institutions must report to the Tax Administration the personal and banking information of individuals and companies (both residents and non-residents) that have accumulated and/or average balances and earnings of PEN 10,000 (approximately USD 2,770) or higher in their bank accounts. The details to be reported include the names, national ID and tax ID information, addresses reported to the bank, type of bank account, account number, currency of the account, balances and earnings.

This decree has not been welcomed by the general population, and there are expectations that amendments will be introduced to increase the account balance and earnings threshold (to PEN 37,000 or approximately USD 8,500), as well as in the periodicity of the reports (each semester instead of each month).



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## **Venezuela**

On 2 July 2019, the National Constituent Assembly approved the law that created a high net worth tax ("**HNW Tax**"). The law created an annual HNW tax between 0.25% and 1.50% on all assets of individuals and legal entities that the Venezuelan Revenue Service ("**Revenue Service**") has designated as "Special Taxpayers." under the Special Taxpayers Administrative Guidelines. According to such guidelines, the Revenue Service must designate Special Taxpayers individually through an official letter. The tax was set at 0.25% and has continued with that rate for the two taxable periods since the enactment of the HNW Law.

The HNW Tax applies differs from the income tax because it applies on the net worth of the taxpayer and not on the annual returns or increases thereof. The HNW Tax will apply to legal entities and individuals designated by the Revenue Service as Special Taxpayers whose net worth is equal to or greater than 150,000,000 Tax Units (VEF 7.5 billion or approximately USD 125,149.93). The HNW Tax is determined in annual tax periods on the value of the net worth by 30 September of each year. HNW Tax liability will arise from the "ownership" and "possession" of the assets attributed to the taxpayers.

The HNW Tax applies to the taxpayers' global or territorial net worth if they are residents in Venezuela. The global net worth comprises the territorial and extraterritorial assets of the taxpayer. The taxable base of the HNW Tax will be the "greater value" of: (a) the current market price of the asset; (b) the acquisition price of the asset; and (c) the special rules for certain assets (such as real estate). Determining market values and updated prices as references of the value of the assets and the "higher value" rule suggest a high discretion of the part of the Revenue Service in determining the taxable base.



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