



# Americas tax policy update

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## Top news

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### **Breaking** – Regional Tax Cooperation Platform for the LATAM Region

At the Latin American and Caribbean summit for global taxation, a ministerial declaration was signed to consolidate and streamline taxation in the region. It was agreed to create a regional platform to function as a space for the integration of the ministries of finance, economy and treasury. To this end, Colombia took on the temporary responsibility of preparing an annual work plan to prioritize taxation in the region.

### **OECD releases 2023 report on tax transparency in Latin America**

The Organisation for Economic Co-operation and Development (OECD) published a progress report, "Tax Transparency in Latin America 2023," providing an update on the progress achieved to date. See [Tax Alert 2023-1174](#).

### **Brazil transfer pricing law enforceable beginning 1 January 2024**

The new law establishes a transfer pricing framework that is aligned with the OECD guidelines. See [Tax Alert 2023-1078](#).

### **US Senate approval of US - Chile tax treaty brings treaty closer to entering into force**

The US Senate on 22 June 2023 approved the Resolution of Advice and Consent to Ratification for Treaties Cal. #1, Tax Convention with Chile (Treaty Doc. 112-8) on a 95-2 vote. Although Chile approved the treaty in 2015, its Senate will likely need to review and approve two reservations inserted by the Senate Foreign Relations Committee before the treaty can enter into force. See [Tax Alert 2023-1138](#).

### **Costa Rican Executive Branch files comprehensive tax reform bills**

The bills include approving a new Income Tax Law, eliminating specific value-added tax exemptions and granting greater control and inspection powers to the Tax Authority. See [Tax Alert 2023-0957](#).

### **Dominican Republic Executive Branch enacts law implementing mandatory electronic invoicing**

The President of the Dominican Republic enacted a new electronic invoicing (EI) law regulating the mandatory use of the EI. The EI law establishes the EI tax system, including its characteristics and deadlines. See [Tax Alert 2023-0976](#).

### **Mexico offers tax incentives to taxpayers who perform productive economic activities in the States of Oaxaca and Veracruz**

The tax benefits are granted to taxpayers who are domiciled, and carry out productive economic activities, within specific locations in the Isthmus of Tehuantepec. The Decree entered into force on 6 June 2023. See [Tax Alert 2023-1053](#).

### **US IRS releases guidance on Inflation Reduction Act credits**

The guidance addresses the Section 48C credit for qualifying advanced energy projects, the direct-pay election for energy credits under new IRC Section 6417 and the requirements for clean vehicles to qualify for the IRC Section 30D credit.

## Country

Cross-border
Argentina
Brazil
Canada
Chile
Colombia
Costa Rica
Dominican Republic
Ecuador
El Salvador
Guatemala
Honduras
Mexico
Nicaragua
Panama
Paraguay
Peru
Puerto Rico
United States
Uruguay
Venezuela

## Cross-border

On 27 June 2023, the OECD published a progress report, "**Tax Transparency in Latin America 2023**," in connection with the eighth meeting of the Punta del Este Declaration, an initiative established in 2018 and focused on improving effective exchange of information in tax administrations in Latin America. The report provides an update on the progress achieved to date and describes how jurisdictions in the region have developed and implemented a strategy to increase the use of exchange of information as a tool to support audits and investigations using the international network and the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes.

Two outcome statements were released in connection with the meeting, describing the accomplishments to date, calling on other Latin American countries to join the initiative, and looking forward to further collaboration in Latin America on tax transparency. See [Tax Alert 2023-1174](#).

- ▶ On 21 June 2023, the OECD released an update on the results of the peer reviews of jurisdictions' domestic laws under Action 5 (**harmful tax practices**) of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project. The updated results cover new decisions on five preferential tax regimes. See [Tax Alert 2023-1136](#).

## Argentina

- ▶ The Argentine Central Bank issued Communiqué A 7,746, which amended certain **foreign exchange regulations**. Companies doing business in Argentina should assess these new regulations, as the changes could have a significant financial impact. See [Tax Alert 2023-0792](#).
- ▶ The Argentine Government published a decree that contains regulations for a promotional regime to encourage **investments in the automotive and auto parts industry** and its value chain. To be eligible for the promotional regime, new projects must comply with the minimum investment amount to be established, for each specific asset or activity. See [Tax Alert 2023-1069](#).
- ▶ The Argentine tax authorities published General Resolution 5339, suspending until 31 December 2023 the validity of exemption certificates for income tax and value added tax withholdings on imported goods. The **VAT withholdings** made on goods imported until 31 December 2023 may be credited against the taxpayer's VAT liability as of the ninth fiscal period following the import date, rather than in the same month the goods were imported, as was contemplated previously. See [Tax Alert 2023-0690](#).

## Brazil

- ▶ Brazil published Law No. 14,596 in the *Official Gazette* on 15 June 2023. The new law establishes a **transfer pricing** (TP) framework in Brazil that is aligned with the guidelines provided by the OECD. The new TP model established by the law aims to integrate Brazil into the global value chains and mitigate both double taxation and double nontaxation scenarios. See [Tax Alert 2023-1078](#).
- ▶ Brazil recently published Provisional Measure 1,171/23, which amends certain tax provisions dealing with Brazilian **individual taxation** on financial investments, controlled entities and trusts held abroad. It also updates the monthly progressive tax rates applicable to individuals. See [Tax Alert 2023-0982](#).

## Canada

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- ▶ On 22 June 2023, Canada's Bill C-47, **Budget Implementation Act, 2023, No. 1**, received Royal Assent and was enacted. Bill C-47 implements certain tax measures announced in **Canada's 2023 federal budget** and the 2022 federal fall economic update, as well as various other measures (such as certain measures outstanding from the 2021 and 2022 federal budgets) that were previously included in draft legislation released on 4 February, 9 August and 3 November 2022. See [Tax Alert 2023-1151](#).
- ▶ Canada's Department of Finance released "Consultation on Reforming and Modernizing Canada's **Transfer Pricing Rules**", which follows through on the commitment made in the 2021 federal budget to review these rules. The consultation paper includes draft revisions to section 247 of the **Income Tax Act**, as well as potential administrative measures. See [Tax Alert 2023-1164](#).
- ▶ On 27 June 2023, the Honorable Sean Fraser, Minister of Immigration, Refugees and Citizenship Canada announced Canada's new **Tech Talent Strategy**, which introduces new measures and improvements to existing programs aimed at attracting and retaining tech talent in Canada. Canada's new Tech Talent Strategy contains six initiatives, all aimed at enhancing immigration pathways for highly specialized tech talent. See [Tax Alert 2023-1162](#).
- ▶ The Supreme Court of Canada applied the general anti-avoidance rule (**GAAR**) and dismissed the taxpayer's appeal in *Deans Knight Income Corporation v. The King et al.*, 2023 SCC 16, leaving in place a Federal Court of Appeal decision holding that the taxpayer had structured a series of transactions to avoid tax, thereby abusing provisions of the **Income Tax Act**. Although the law has changed since the transactions at issue were carried out, the Court's reasoning nonetheless remains relevant. See [Tax Alert 2023-1048](#).
- ▶ The Canada Border Services Agency (CBSA) announced proposed changes to the **Valuation for Duty Regulations**, which were published in the Canada Gazette on 27 May 2023. The CBSA defines the term "sold for export to Canada" differently than the term has been interpreted so far (in the absence of a definition in the Regulations) and amends the existing definition of the term "purchaser in Canada." See [Tax Alert 2023-1092](#).
- ▶ On 25 May 2023, **Prince Edward Island's** new Finance Minister, Jill Burridge, tabled the province's fiscal 2023-24 budget. The budget contains several tax measures affecting individuals. The minister anticipates a deficit of \$66.2m for 2022-23 and projects a deficit of \$97.6m for 2023-24, followed by further reduced deficits for each of the next two fiscal years. See [Tax Alert 2023-0969](#).

## Chile

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- ▶ The Chamber of Deputies of Chile approved a **mining royalty** bill that had been under discussion for several years in Parliament. Some provisions of the bill still need to pass a constitutional review by the Constitutional Court, after which the bill will be ready for promulgation by the President. See [Tax Alert 2023-0956](#).
- ▶ The US Senate on 22 June 2023 approved the Resolution of Advice and Consent to Ratification for Treaties Cal. #1, **Tax Convention with Chile** (Treaty Doc. 112-8) on a 95-2 vote. Although Chile approved the treaty in 2015, its Senate will likely need to review and approve two reservations inserted by the Senate Foreign Relations Committee before the treaty can enter into force. The White House has indicated President Biden intends to sign the instruments of ratification. See [Tax Alert 2023-1138](#).
- ▶ A Chilean Court of Appeals ruled that, under the terms of the **double tax treaty between Chile and Spain**, Chile is not allowed to impose tax on a Spanish resident who indirectly transferred a Chilean company. The court rejected the tax authority's argument that Chile may tax both direct and indirect transfers under the treaty. See [Tax Alert 2023-0769](#).

## Colombia

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- ▶ In a draft decree issued 29 June 2023, Colombia's government defined various terms used in the significant economic presence (SEP) rule under which tax is imposed on the **digital services income** of nonresidents with SEP in Colombia. The decree also specifies when clients or users will be considered located in Colombia and how to elect to file a tax return and pay the 3% tax on income from digital services, rather than 10% withholding tax. See [Tax Alert 2023-1206](#).
- ▶ The Tax Authority added to the General tax opinion on **tax and customs procedures**, clarifying some questions that were not answered with the Tax Opinion No. 001328 - 165 of 2023, called "General Concept on tax and customs procedures".
- ▶ The Ministry of Commerce, Industry and Tourism published a draft Decree regulating the Internationalization and Annual Sales Plan for **Free Trade Zones**. The Ministry published the draft of the Decree that regulates the Internationalization and Annual Sales Plan established in paragraph 6 of Article 240-1 of the Tax Statute, for Free Trade Zones.
- ▶ On 26 April 2023, the Government issued Decree 609 of 2023, through which it seeks to comply with the **tariff commitments acquired between Colombia and Venezuela**, by virtue of the Partial Scope Agreement of Commercial Nature No. 28- AAP.C No. 28".

- ▶ The Tax Authority issued an addendum to the General Tax Opinion on the national tax on **single-use plastic products** (Tax Opinion 100202208-0729 of 30 May 2023) reaffirming its position about the taxpayer and the triggering events.
- ▶ On 24 May 2023, the Tax Authority issued an addition to the General opinion on healthy taxes; i.e., **Tax on Sugared Ultraprocessed Beverages** and Tax on Industrially Ultraprocessed Edible Products and/or with High Content of Added Sugars, Sodium or Saturated Fats, addressing the character of the single-phase tax, the products produced in Free Trade Zones and imported into the national territory and other specifics.
- ▶ The Council of State established that notifications of Administrative Acts that decide on the merits of **customs matters** must be made within the terms of the action. By Court Ruling No. 25332 of May 25, the Council of State declared null and void the word "no" within the expressions "Within the terms to decide on the merits do not include those required to effect the notification of said administrative act" contained in Articles 88 and 607 of Decree 390 of 2016, and Articles 686 and 705 of Decree 1165 of 2019.
- ▶ The new provisions in the national development plan law for companies and the new legal and fiscal provisions for **Works for Taxes**, make the mechanism more relevant. This is due to the Ministry of Finance and Public Credit extended the deadline to cancel the balance of income tax payable and the National Fiscal Policy Council extended the quota for "works for taxes" projects.
- ▶ employed persons or freelancers). The term "independent workers" also includes those who work alone or in collaboration with other independent workers and may, or may not, provide a service to third parties. See [Tax Alert 2023-0844](#).
- ▶ Due to the construction of Costa Rica's new Peñas Blancas Border Post, the General Directorate of Customs has established, within the framework of the Border Integration Program implemented by the Ministry of Foreign Trade, specific procedures for the **inspection of goods crossing the border**. See [Tax Alert 2023-0850](#).
- ▶ The Free Trade Commission provided for in the **Free Trade Agreement** (FTA) between the Republic of Costa Rica and the People's Republic of China agreed to grant Costa Rica's tariff reduction program a 0% import-tariff rate for products of tariff items 2101.20.10 (preparations based on tea extract, in powder form, for industrial processing) and 8516.60.00 (ovens, stoves, grills and roasters). See [Tax Alert 2023-0886](#).
- ▶ Costa Rica's tax authority has announced on the Ministry of Finance website that 31 July 2023 is the deadline for **financial entities** subject to reporting to report financial accounts under the OECD's Common Reporting Standard (CRS) and the US Foreign Account Tax Compliance Act (FATCA) for the fiscal period 2022. See [Tax Alert 2023-1122](#).
- ▶ Costa Rica's tax authority has published a notice on the Ministry of Finance website reminding taxpayers that provide **tourism services** and are duly registered with the Costa Rican Tourism Institute that, as of 1 July 2023, they must charge the 13% value-added tax (VAT). See [Tax Alert 2023-1199](#).
- ▶ Costa Rica's tax authority published a resolution on how taxpayers should submit requests through the **tax authority's platform**. Additionally, the resolution establishes the deadlines for the tax authority to review the requests. See [Tax Alert 2023-1189](#).

## Costa Rica

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- ▶ The Costa Rican Executive Branch filed several bills that seek to **reform the current tax system**. The bills include approving a new Income Tax Law, eliminating specific value-added tax exemptions and granting greater control and inspection powers to the Tax Authority. See [Tax Alert 2023-0957](#).
- ▶ Costa Rica's tax authority updated the list of digital services that will incur the 13% value added tax (VAT). Beginning 1 June 2023, the VAT must be withheld when those digital services are purchased. See [Tax Alert 2023-1007](#).
- ▶ The Costa Rican tax authority modified a resolution on determining tax residence and issuing certificates of **tax residence**. The modifications detail the information that must be filed with an application for a tax residence certificate, including documentation demonstrating the taxpayer's economic activity in the country and documentation that supports the information contained in the application. See [Tax Alert 2023-0796](#).
- ▶ The new **Independent Worker** Law in Costa Rica applies to independent workers (i.e., autonomous workers, self-

## Dominican Republic

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- ▶ The President of the Dominican Republic enacted a new **electronic invoicing** (EI) law regulating the mandatory use of the EI. The EI law establishes the EI tax system, including its characteristics and deadlines. See [Tax Alert 2023-0976](#).
- ▶ The Executive Branch of the Dominican Republic presented a bill before the Chamber of Deputies proposing a "Special Transitory Treatment for the Fiscalization, Management and Recovery of **Tax Debts**", which seeks to implement an abbreviated inspection procedure, payment facilities and the granting of an amnesty for the State's tax debts.

## Ecuador

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- ▶ The Internal Revenue Service issued rules to apply the income tax reduction for individuals based on certain expenses. The form was updated for personal expenses to be used, adding new boxes to declare the number of family responsibilities, and access to the corresponding reduction from July 2023.
- ▶ As of 1 July 2023, the ISD (outflow tax) rate is reduced to 3.5%, and will be in force until 31 December 2023.

## El Salvador

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- ▶ No tax policy developments to report.

## Guatemala

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- ▶ On 10 April 2023, the Guatemalan Tax Authorities began requiring that refund requests of Annual Income Tax Overpayments only be made through the new form established in the Virtual Agency that each Taxpayer can access through the website. This implies that said refund request can no longer be performed through form SAT-2124 that was previously used for this type of administrative procedure.

## Honduras

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- ▶ No tax policy developments to report.

## Mexico

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- ▶ On 5 June 2023, Mexico published a decree granting tax benefits to taxpayers who are domiciled, and carry out productive economic activities, within specific locations in the Isthmus of Tehuantepec designated by the Government as a "Welfare Development Corridor." The Decree entered into force on 6 June 2023. See [Tax Alert 2023-1053](#).
- ▶ In June 2023, Jurisprudence IX-J-SS-70 was published by the Lower Tax Court, effective for all Tax Courts, establishing that if **income from technical assistance** does not fall within the scope of the other income regulated separately in the other articles of any Treaty, this does not imply that it should be considered to be a business profit. The classification that technical assistance income should have under the treaty is not analyzed, but, instead, it is only pointed out that they are not considered as business profits.
- ▶ On 12 May 2023, Jurisprudence 2a./J. 19/2023 (11a.) was published by the Second Chamber of the Mexican Federal Supreme Court of Justice regarding the contradiction of criteria number 413/2022, in which it is established that the **civil compensation** is not a payment method for VAT purposes, nor it originates a request for a favorable balance or credit.
- ▶ On 4 May 2023, an Agreement was published in the Official Gazette of the Federation, effective as of 5 May

2023, where new powers are granted and delegated to the public servants of two units belonging to the Tax Administration Service for the purpose of enforcing the obligation to collect, keep and verify the **beneficial owners**.

- ▶ On 19 April 2023, the Second Chamber of the Mexican Supreme Court of Justice ruled that the requirement imposed to deduct **losses on uncollectible credits** whose principal amount at the date of maturity is greater than 30,000 UDIs is constitutionally valid, a requirement that was added in fiscal year 2022. Such requirement consists of the creditor obtaining a final resolution issued by the competent authority demonstrating (I) the exhaustion of collection efforts or (II) the impossibility of enforcing the favorable resolution.

## Nicaragua

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- ▶ A new law and accompanying regulations in Nicaragua created the **Foreign Trade Platform** (in Spanish: Ventanilla Única de Comercio Exterior — VUCEN), aiming to facilitate and simplify management of foreign trade proceedings through a technological platform that brings together various proceedings required for the export and import of goods. See [Tax Alert 2023-0729](#).
- ▶ The Mayor of Managua (Capital of Nicaragua) announced a new deadline for the declaration and payment of **withholdings of the Municipal Income Tax** (IMI by its acronym in Spanish) of within the 1st and 10th of each month. This is effective July 2023 and is exclusive to the Mayor's Office of Managua. It does not apply in the rest of the municipalities.

## Panama

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- ▶ The Panamanian tax authority issued a resolution, instructing the Tax Information Systems Department to make the necessary adjustments to the informatic systems to establish a fine for failing to submit a **withholding tax** return, known as Form 03. See [Tax Alert 2023-0798](#).
- ▶ Panama's tax authority issued a resolution to establish procedures for requesting **installment arrangements** due to the State of National Emergency. Taxpayers that wish to enter into an installment arrangement or take advantage of these benefits must check the applicable conditions and requirements. See [Tax Alert 2023-0917](#).
- ▶ The Panama tax authority issued Resolution No. 201-4983, implementing a procedure for applying penalties for failure to comply with obligations to issue, demand or **keep invoices or receipts**, based on the paragraph 3 of Article 11 of Law No. 76 of 1976. In applicable cases, the tax authority will issue a resolution to impose an economic penalty on the taxpayer based on the law and will order the temporary closure of the commercial establishment in

which the taxpayer incurred the infractions. See [Tax Alert 2023-1068](#).

- ▶ Panama's tax authority has established a process for users of fiscal equipment that have migrated to the Panamanian **Electronic Invoicing** System to report the deregistration of this equipment. The new procedures became effective on 29 June 2023. See [Tax Alert 2023-1187](#).
- ▶ Panama's tax authority has adopted **new forms** for the filing of income tax returns by individuals, as well as for legal entities, insurance companies, agricultural and livestock companies, banks and financial entities, hotels, the legal industry (in general), real estate entities, mining entities, and the Panama multinational headquarters sector (Panama Pacifico and Free Trade Zone). See [Tax Alert 2023-1202](#).
- ▶ On 29 June 2023, Panama published Executive Decree No. 9, which updates the **list of reportable jurisdictions** for CRS purposes that engage in the exchange of information during 2023 for tax year 2022 data. See [Tax Alert 2023-1201](#).

## Paraguay

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- ▶ On 23 June 2023, the Paraguayan Government issued Decree No. 9545/2023 whereby a special VAT regime is provided for the importation of vaccines for the treatment of Coronavirus or Covid-19. This Decree provides that, at the time of importation, VAT shall be paid before the National Customs Office prior to the withdrawal of the vaccines from the customs premises, applying, as taxable base, 10% of the amount provided for imports, on which the rate of 5% shall be applied.

## Peru

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- ▶ The Peruvian tax authority issued Ruling 64-2023, addressing how to determine the fair market value (FMV) of shares in an indirect transfer scenario if the shares of the nonresident entity are listed on a stock exchange and the shares of the Peruvian company are not listed (or vice versa). According to the ruling, in cases of indirect **transfers of shares**, the FMV methodology to be used will depend on the particular characteristics of the entity under analysis. See [Tax Alert 2023-1047](#).
- ▶ The Peruvian Supreme Court of Justice issued Court Ruling 8380–2021-LIMA, which is mandatory case law, establishing that noncompliance with domestic requirements for **certificates of residence** should not prevent the application of the benefits of double tax treaties subscribed by Peru. See [Tax Alert 2023-1051](#).
- ▶ The Peruvian tax authority determined that a **merger** between nonresident entities in which the absorbed entity is an indirect shareholder of a Peruvian entity triggers an indirect transfer of Peruvian shares. See [Tax Alert 2023-1200](#).

- ▶ On 29 June 2023, the Peruvian government issued Supreme Decree 137-2023, establishing the use of the Secured Overnight Financing Rate (**SOFR**) in place of the London Interbank Offered Rate (LIBOR) for calculating the threshold to apply the reduced 4.99% withholding tax (WHT) rate on interest paid to nonresidents. See [Tax Alert 2023-1231](#).

## Puerto Rico

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- ▶ No tax policy developments to report.

## United States

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- ▶ The US Senate on 22 June 2023 approved the Resolution of Advice and Consent to Ratification for Treaties Cal. #1, **Tax Convention with Chile** (Treaty Doc. 112-8) on a 95-2 vote. The treaty, which had been approved by the Foreign Relations Committee in the last Congress but not the full Senate, was cleared to advance in the Senate after Republican concerns about potential double taxation relating to foreign tax credits were addressed. Although Chile approved the treaty in 2015, its Senate will likely need to review and approve two reservations inserted by the Senate Foreign Relations Committee before the treaty can enter into force. The White House has indicated President Biden intends to sign the instruments of ratification. See [Tax Alert 2023-1138](#).
- ▶ Proposed regulations released 2 May 2023, would turn off IRC Section 367(d) following certain repatriations of **intangible property** (IP). The U.S. Treasury Department and the Internal Revenue Service (IRS) would apply new rules to “repatriations” of IP subject to IRC Section 367(d). The proposed regulations include a taxpayer-favorable rule that would remove a significant disincentive to repatriating previously “outbounded IP.” In certain circumstances, the proposed regulations would permit the annual inclusions that IRC Section 367(d) and its regulations require to cease. The proposed regulations would be effective only for IP repatriations occurring on or after the date on which the final regulations are published. See [Tax Alert 2023-0843](#).
- ▶ In a Memorandum for Treaty and Transfer Pricing Operations Employees (memo) dated 25 April 2023, the IRS's Acting Director of Treaty and Transfer Pricing Operations (TTPO) outlined new internal procedures for Advance Pricing Agreement (**APA**) prefilling meeting requests and the review and acceptance of APA submissions. The guidance implements a rigorous screening process whereby the Advance Pricing Mutual Agreement (APMA) team (along with other TTPO personnel) may shift taxpayers from the APA process to alternative workstreams. While the memo represents interim guidance, it states that it will be incorporated into the Internal Revenue Manual within the next two years. The memo applies to prefilling memoranda and APA

requests filed on or after 25 April 2023. See [Tax Alert 2023-0800](#).

- ▶ The IRS issued proposed regulations (REG-120653-22) on the implementation of the **advanced manufacturing investment credit** (AMIC) under IRC Section 48D. The AMIC was enacted in the CHIPS Act of 2022 to incentivize businesses to manufacture semiconductors and semiconductor manufacturing equipment in the United States. The proposed regulations define important terms, including “qualified property” and “original use,” and also provide more clarity on eligibility requirements. They also clarify how to calculate the AMIC and set forth direct payment procedures. The guidance includes special rules for recapture of the credit resulting from certain transactions involving foreign entities. While the proposed regulations would apply to tax years ending on or after the date the regulations are finalized, taxpayers may rely on the proposed regulations for property placed in service after 31 December 2022. On 21 June 2023, the IRS followed up by issuing temporary (TD 9975) and proposed (REG-105595-23) regulations on the “elective payment election” for the AMIC. The proposed regulations would implement the provisions of IRC Section 48D(d) and modify Prop. Reg. Section 1.48D-6 of the proposed regulations issued in March 2023. See [Tax Alert 2023-0713](#).
- ▶ The IRS released proposed rules (REG-101610-23) answering many questions about **energy credit transferability** provisions under new IRC Section 6418. The proposed rules describe the steps to transfer a tax credit, along with issues such as which entity is liable if there is a recapture event, the ability to transfer part of the tax credit, examples concerning “excess credits” and how partnerships may deal with tax credit transfers. Temporary rules (TD 9975) issued at the same time describe a pre-filing process requiring taxpayers that want to transfer their credits to register with the IRS to obtain a registration number to use in the transaction. See [Tax Alert 2023-1103](#).
- ▶ The IRS released guidance (Notice 2023-44) on the IRC Section 48C(e) program to allocate \$10b in **credits for investments in eligible qualifying advanced energy projects**, of which at least \$4b will be for projects located in energy communities census tracts. Notice 2023-44 clarifies and modifies Notice 2023-18 with detailed information on the process for submitting concept papers and program applications, as well as the criteria the IRS and Department of Energy will consider in allocating credits. In addition, Notice 2023-44 gives information on “energy communities census tracts” and includes a complete list of eligible census tracts in Appendix C, as well as a link to an updated mapping tool. Material for submitting the concept papers is available on the 48C eXCHANGE portal; the submission deadline for concept papers was 31 July 2023. See [Tax Alert 2023-1012](#).
- ▶ The IRS released proposed rules (REG-101607-23) on the **direct-pay election of applicable energy credits** under IRC Section 6417. The IRA added IRC Section 6417, which allows eligible tax-exempt taxpayers to make a direct-pay election for certain energy credits so they can get payments from the government instead of tax credits. The proposed rules give details on implementing this direct-pay election. See [Tax Alert 2023-1102](#).
- ▶ The U.S. Treasury Department and IRS published proposed rules (REG-120080-22) 17 April 2023 providing guidance on critical minerals, battery components and other requirements for clean vehicles to qualify for the federal income tax credit under IRC Section 30D. The new requirements apply to vehicles placed in service on or after 18 April 2023. The IRA modified the IRC Section 30D “new qualified plug-in electric drive motor vehicles credit” to a “**clean vehicle credit**.” The non-refundable clean vehicle credit is a dollar-for-dollar reduction of federal income taxes by up to \$7,500 for new clean vehicles acquired and placed in service by a taxpayer during the tax year before January 1, 2033. To be eligible for a credit under IRC Section 30D, the clean vehicle must satisfy the following requirements: (1) the original use of the clean vehicle must commence with the taxpayer, (2) the clean vehicle cannot be acquired resale, (3) the clean vehicle must be made by a qualified manufacturer, and (4) the final assembly of the clean vehicle must occur in North America. See [Tax Alert 2023-0660](#).
- ▶ In Notice 2023-34, the IRS indicated that other countries’ recognition of **cryptocurrency** as legal tender “for a limited purpose” does not change the treatment of that currency for US tax purposes. In Chief Counsel Advice memorandum 202316008, the IRS concluded that a cryptocurrency owner did not have taxable income when the native blockchain of that cryptocurrency underwent a protocol upgrade with no change to the owner’s cryptocurrency. See [Tax Alert 2023-0839](#).
- ▶ The Tax Court held (*Farhy v. Commissioner*, 160 T.C. 6 (3 April 2023)) that the IRS is not authorized to assess penalties under IRC Section 6038(b) against a taxpayer that **willfully failed to report foreign income** on Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations. As a result, the IRS cannot collect the penalties it assessed through a levy notice. The IRS may, however, collect the penalties through a civil action. While the Tax Court’s decision remains subject to appeal and only addresses IRC Section 6038, taxpayers who have paid penalties under IRC Section 6038 (or similar penalty provisions not specifically identified as assessable penalties) based only upon the IRS’s assertion of such penalties may consider whether a timely refund claim or other action is warranted, in light of the Tax Court’s decision. See [Tax Alert 2023-0703](#).

## Uruguay

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- ▶ On 30 June 2023, the Executive Power submitted the **accountability bill** to the Parliament for discussion. The bill includes several tax provisions that would affect mergers and spin-offs, the transfer of capital participations, certain yields of capital and capital gains, excise taxes on disposable goods and package, and the taxation of certain retirement and pension income, which are proposed to be effective beginning 1 January 2024. See [Tax Alert 2023-1241](#).
- ▶ In Decree No.195/023 (issued 27 June 2023), Uruguay makes permanent a **corporate income tax benefit for promoters and construction companies** that was set to expire after 28 February 2024. Previously, promoters and construction companies could deduct, for corporate income tax purposes, 100% of the cost of real estate acquired from 1 July 2007 through 28 February 2024. See [Tax Alert 2023-1215](#).
- ▶ Due to the water emergency declared by the Uruguayan Government on 19 June 2023, Uruguay enacted Law No. 20,159, establishing a **VAT exemption** on the sale of mineral and sparkling waters. It also issued a decree, reducing from 8% to 0% the IMESI rate (i.e., an excise tax that applies to a manufacturer's or importer's initial transaction for certain goods in Uruguay) applicable for mineral and sparkling waters. See [Tax Alert 2023-1141](#).

## Venezuela

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- ▶ Decree No. 4,805 was published on 1 May 2023, establishing the **Minimum Monthly Income Increase**. Among the most relevant aspect of the Decree, are the following:
  - i. The value of the Socialist Cestaticket (food ticket) is increased to Bs. 1,000
  - ii. A unique solidarity complement, without salary impact, called "Bonus against the Economic War", payable monthly, is hereby created
  - iii. The National Executive may order the monthly adjustment, using as a reference the exchange rate published by the CBV
- ▶ On 8 May 2023, Administrative Order No. SNAT/2023/000031 was published by the National Integrated Service of Customs and Tax Administration (SENIAT) readjusting the **value of the Tax Unit (TU)** from Bs. 0.40 to Bs. 9.00. The value of the TU may only be used as a unit of measure for the determination of national taxes whose collection and control are within the competence of SENIAT and cannot be used by other organizations and entities for the determination of labor benefits or for rates and special contributions derived from the services they provide. The Administrative Order became effective as of its publication in the Official Gazette.

- ▶ On 8 May 2023, Decree No. 4,806 was published, establishing the exoneration from the payment of Income Tax (IT) on the income obtained by the holders, individuals and corporations residing or domiciled in Venezuela, from **investments made in securities** or other instruments of similar nature issued and guaranteed by the CBV, under the following terms and conditions:
  - i. To determine the exonerated income, the rules established in the IT Law will be applied, regarding income, costs, and deductions on taxable income.
  - ii. To enjoy this exoneration, the beneficiaries must comply with the obligations and requirements set forth in the Decree and those set forth in IT Law, its Regulations and other applicable rules.
  - iii. The term of duration of the exoneration benefit will be of one year, counted as of the date of its entry into force and will be applied to the fiscal year in progress.

Effective as of 10 June 2023, Decree No. 4,812 extends until 9 December 2023, the effectiveness of Decree No. 4,525 (dated 9 June 2021) about the **optimization and dynamization of export processes**. Therefore, the exemptions from the legal regimes exports indicated in such Decree remain in effect, under the terms and conditions indicated in the Decree. The Decree became effective as of 10 June 2023.



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