

# Doing Business in Latin America

39<sup>th</sup> Annual TEI-SJSU High Tech Tax Institute  
November 7, 2023

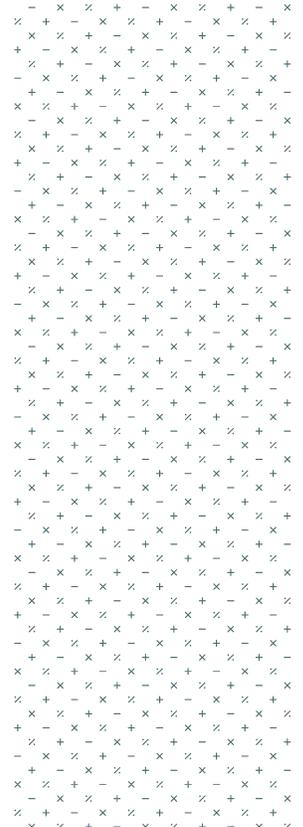
Daniel M. Green, Partner – *Gunderson Dettmer*  
Nghi Huynh, Partner - *Armanino*  
Armando Lara, Partner - *KPMG*  
Andy Mattson, Partner – *Moss Adams*



## Legal and Tax Considerations for VC Investing in Latin America

Andy Mattson, Moss Adams, LLP

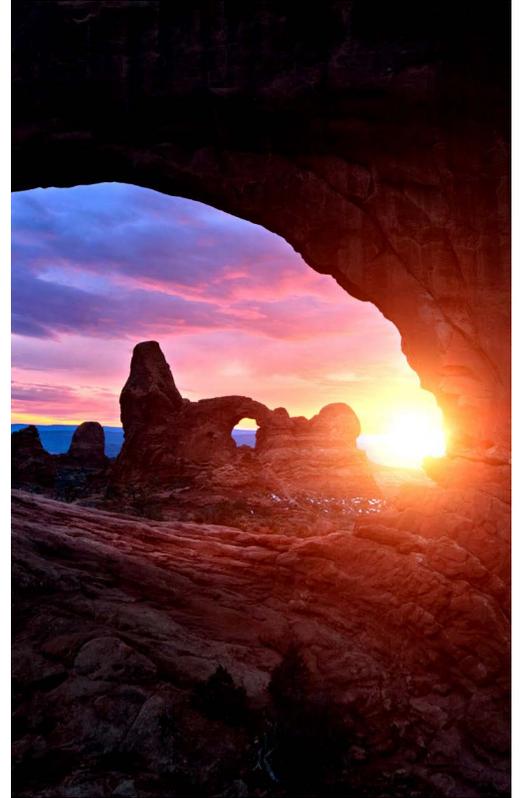
Daniel Green, Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP



# Agenda

---

- **Legal Considerations**
- **Getting Money**
- **Structuring Equity**



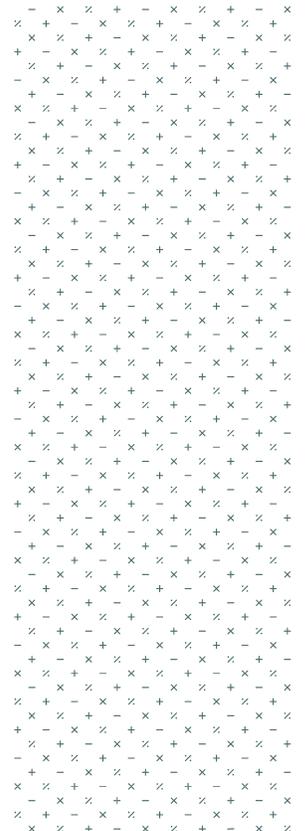
3



# Legal Considerations

---

**Daniel Green**





## Legal Considerations

- What is the current legal structure of your company, including any subsidiaries or affiliates (jurisdiction of each)?
- What does your current cap table look like (including SAFEs, convertible notes, options, warrants etc.)?
- Where are the current shareholders resident for tax purposes?
- What is your fundraising strategy (timing, amount, target investors)?
- Where do you currently have operations, and if you had a crystal ball, where do you expect to have operations in 2-3 years?
- If you had a crystal ball, what exit path will the company follow – M&A (to whom), IPO (where) or other path?

5



## Ways of Getting Money

### CONVERTIBLE NOTES AND SAFES

- Both very common for early-stage financings (SAFES more prevalent)
- Localized forms in Latin America – including the recently launched MISTO in Brazil
- Regulatory issues:
  - AML requirements
  - AML/CFT compliance
- Tax issues: Interest accruals – PIK Notes
  - Convertible note financings where interest accrues during the life of the note and is paid in kind (through shares issued upon conversion of the note) triggers tax issues, such as:
    - Income tax for beneficiary of the interest
    - May trigger value added tax
  - SAFES or SAFE-type documents may avoid some tax and regulatory issues

### EQUITY

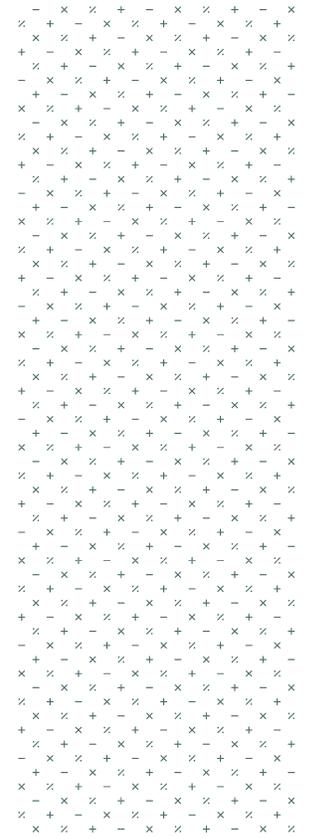
- Common and standard form for startups to get institutional funds from VC
- Important to fund at holding company level, and document downstream capital flows

6



# Structuring

---

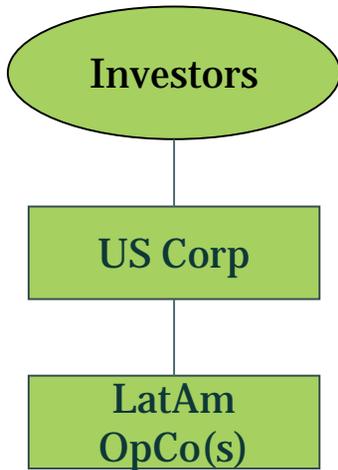


## Goals with a Flip – Tax Perspective

---

- Tax free or low tax cost to implement
- Attract investment funds – Series A and later
- Create a platform for growth
- Tax efficient on exit
- Create flexibility for exit scenarios

# Structuring – US Corporation Holdco



### BENEFITS

- Familiar and often required by early-stage investors
- Inexpensive to set up
- If QSBS, either low or no US federal tax for founders/early stage investors on exit
- Allows for grant of ISO options to US employees

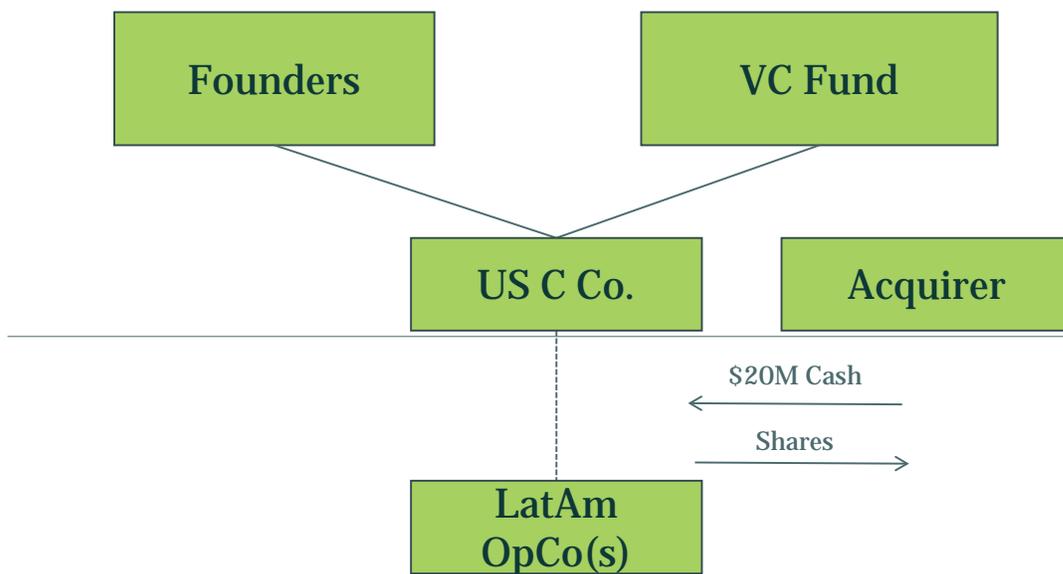
### DRAWBACKS

- Possible double tax structure
- Very expensive to unwind
- Later investors may not want to invest in US Corp

9



# Exit Via Sale Of Foreign Co.



10



# Tax Impact Of Exit-Double Taxation

**Step 1**

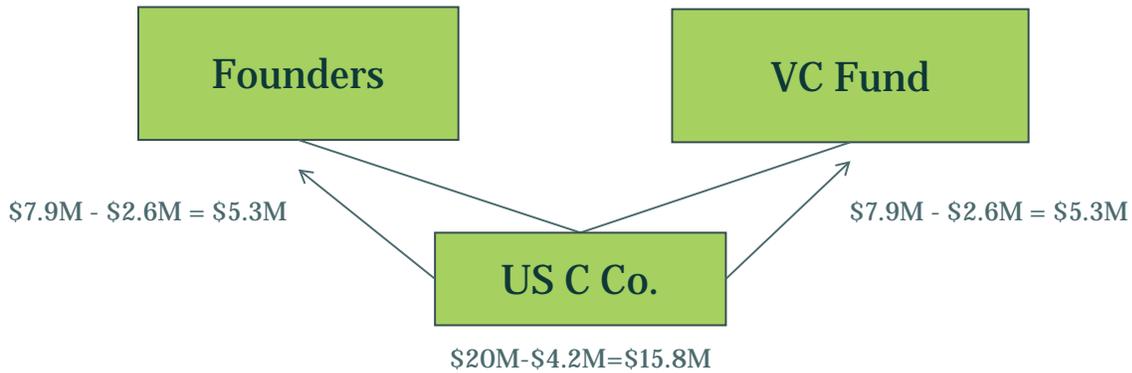
Capital Gains Tax is imposed at 21% at the Corporate Level  
(Assuming \$0 in basis for presentation purposes)

**Step 2**

Funds are distributed via dividend and suffer second level of tax at the VC level at a blended rate of 32.8%  
(23.8% Federal and 9% State)

**Result**

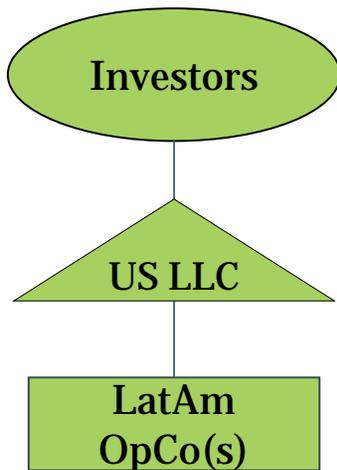
After tax cash to investors of \$10.6 million (effective tax rate of 47%)



11



# Structuring – US Limited Liability Company (LLC) Holdco



**BENEFITS**

- Inexpensive to set up
- Can take on debt financing including convertible notes
- Conversion to offshore structure is more straightforward than a US C Co., but can still require significant drafting and review of contractual obligations

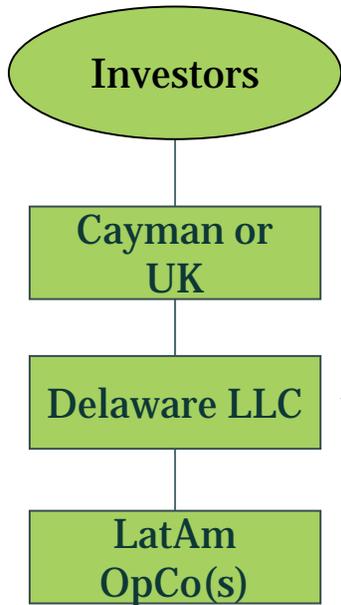
**DRAWBACKS**

- Temporary structure because VC funds will likely not invest in an LLC
- More cumbersome to issue options

12



## Structuring – Cayman or UK Holdco



← **IMPORTANT**

**BENEFITS**

- Experienced institutional US investors active in Latin America prefer Cayman to US
- Preferred shares & stock options are the same as US Corp
- Tax neutral jurisdictions

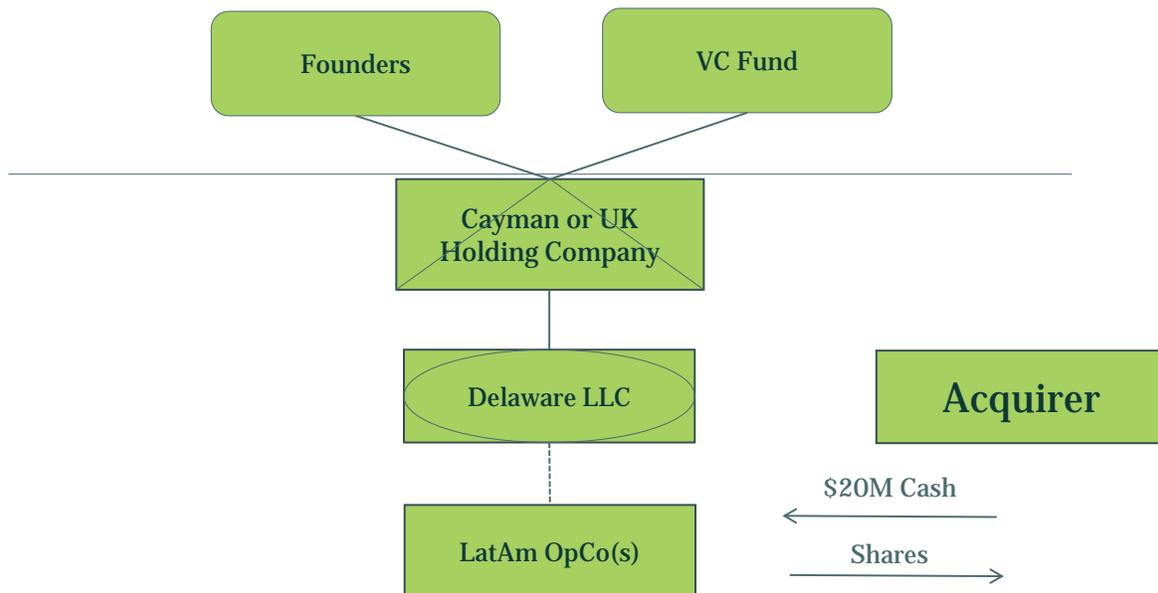
**DRAWBACKS**

- Some European investors may not want a Cayman structure
- Expensive to maintain
- No QSBS or ISO eligibility
- Brazil w/h tax imposed when LLC sells OpCo may not be creditable to US investors.

13



## Exit Via Sale Of Foreign Co.



14



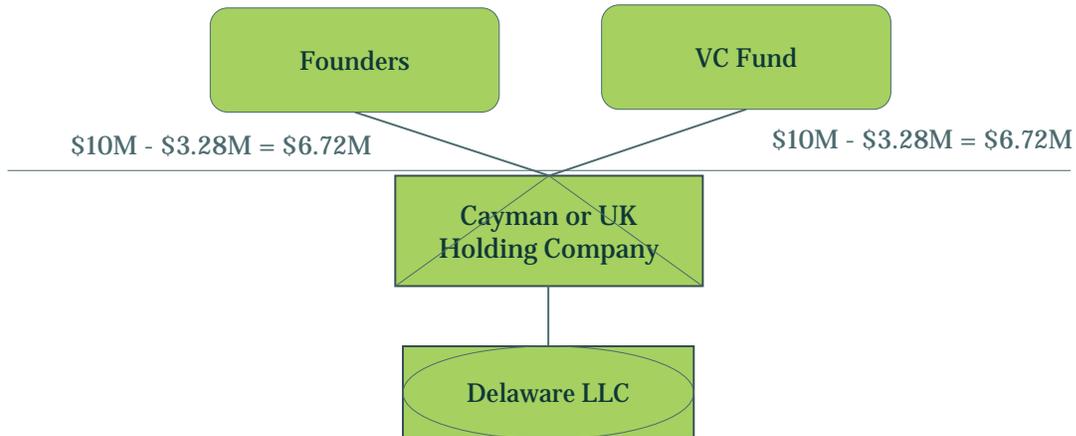
# Tax Impact Of Exit - Single Taxation

## Step 1

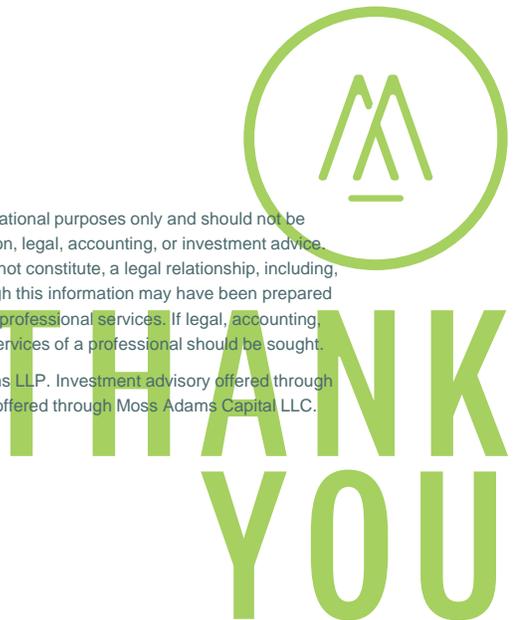
Funds “pass through” holding companies and is taxed at the VC level at a blended rate of 32.8% (23.8% Federal and 9% State) Optimal structure increases after tax return by 35% and reduces tax expense by 58%

## Result

After tax cash to investors of \$13.44 million



The material appearing in this presentation is for informational purposes only and should not be construed as advice of any kind, including, without limitation, legal, accounting, or investment advice. This information is not intended to create, and receipt does not constitute, a legal relationship, including, but not limited to, an accountant-client relationship. Although this information may have been prepared by professionals, it should not be used as a substitute for professional services. If legal, accounting, investment, or other professional advice is required, the services of a professional should be sought. Assurance, tax, and consulting offered through Moss Adams LLP. Investment advisory offered through Moss Adams Wealth Advisors LLC. Investment banking offered through Moss Adams Capital LLC.



Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP provides the material in this presentation for information purposes only and not as legal advice. The Firm does not intend to create an attorney-client relationship with you, and you should not assume such a relationship or act on any material from these pages without seeking professional counsel.



**KPMG**

**LATAM TAX TRENDS**

**October, 2023**

# LATAM Tax Trends – Executive Summary



- Left -wing governments pushing forward ambitious social spent agendas**
- New Administrations have confirmed intention to increase tax pressure over larger taxpayers**
- Brazil Transfer Pricing tax reform**
- Without a regional framework, tax administrations keep advancing towards a highly digitalized model**
- No consistency in terms of regional audit trends. Data continues to drive the big majority of assessments**
- Other than data issues, larger markets might implement specific audit campaigns (e.g., Mexico or Argentina)**
- Early to discuss specific measures, alignment with BEPS 2.0 to be considered (limited impact in terms of minimum taxation expected)**

## LATAM Tax Trends

Country	Tax Administration Trends	Recent or Upcoming Tax Reforms
	<p>After presidential elections, package of measures was announced last December with the aim of promoting the fiscal recovery of public accounts. Here are some of the highlights:</p> <ul style="list-style-type: none"> <li>Exclusion of ICMS from the PIS and Cofins calculation basis - The credit must be effectively collected in the previous step and not the product resulting from the application of a tax rate on the base.</li> <li>CARF Qualifying Vote - Reinstatement of the Qualifying Vote.</li> <li>"Litigation Zero" Program - The program aims to benefit individuals, micro and small legal entities that carry out dispute resolution transactions related to the collection of credit to the Public Treasury.</li> </ul> <p><a href="https://kpmg.com/br/pt/home/insights/2023/01/tax-news-anuncio-medidas-recuperacao-fiscal.html">https://kpmg.com/br/pt/home/insights/2023/01/tax-news-anuncio-medidas-recuperacao-fiscal.html</a></p>	<p>Updated regulation IN 2121/2022 for the calculation, inspection and collection of contributions to PIS/Pasep and Cofins in national operations and foreign trade.</p> <p>Main points include:</p> <ul style="list-style-type: none"> <li>Definition of Inputs;</li> <li>Refunds;</li> <li>Additional from Cofins;</li> <li>Exclusion of ICMS;</li> <li>Penalties;</li> </ul> <p><a href="https://kpmg.com/br/pt/home/insights/2022/12/game-of-pis-cofins-capitulo-1.html">https://kpmg.com/br/pt/home/insights/2022/12/game-of-pis-cofins-capitulo-1.html</a></p> <p><a href="https://kpmg.com/br/pt/home/insights/2023/02/game-of-pis-cofins-capitulo-9.html">https://kpmg.com/br/pt/home/insights/2023/02/game-of-pis-cofins-capitulo-9.html</a></p>

# LATAM Tax Trends

Country	Tax Administration Trends	Recent or Upcoming Tax Reforms
	<p>Tax Administration mainly focused on the 2022 Tax Reform – “Proyecto de Ley 118 de 2022 Cámara y 131 de 2022”</p>	<p>The main updates proposed on the first proposal of tax reform are the followings:</p> <ul style="list-style-type: none"> <li>• The corporate income tax (CIT) rate will increase to 35% beginning 2022 on a going forward basis (up from 30%).</li> <li>• The possibility of taking the ICA as a tax discount is eliminated, 100% accrued and paid prior to filing the income tax return will be deductible.</li> <li>• Membership fees paid to unions will be deductible from income tax.</li> <li>• A rate of 15% is set for occasional earnings of national and foreign companies.</li> <li>• Dividends that have been distributed as untaxed will have a rate of 20% (previously 10%)</li> </ul>
	<ul style="list-style-type: none"> <li>• A new Government has been recently put in place in Chile.</li> <li>• The Government has proposed a Tax Reform Bill to finance the social spending committed in the government program. The reform package introduced is quite ambitious in terms of modifying various legal bodies (Tax Code, Income Law, VAT Law, among others).</li> </ul>	<ul style="list-style-type: none"> <li>• The tax reform bill refers to a "semi-dual" system applicable to corporations, which would separate the taxation of companies and that of their shareholders. The corporate tax paid at the company level would no longer be a credit against the shareholder's tax; both taxes would be added together.</li> <li>• The tax reform bill establishes a 22% tax on corporate withdrawals or dividends</li> </ul>

# LATAM Tax Trends

Country	Tax Administration Trends	Recent or Upcoming Tax Reforms
	<p>Tax audits in Mexico are mainly focused on:</p> <ul style="list-style-type: none"> <li>• CFDIS (electronic invoices) discrepancies. Since the incorporation of electronic invoicing in Mexico, the tax authorities have information on income, deductions, and withholdings from taxpayers in an expeditious manner.</li> <li>• Control through effective tax rates. Recently, the tax authorities have published the effective tax rates that each industry should be paying. Example: in the pharmaceutical sector, the tax authorities have established that the optimal effective tax rate should be 3.41% on the total income obtained. In this sense, if companies pay above the effective rate, they have less control risk, otherwise paying ISR below the effective rate increases the risk of having an in-depth review or audit by the SAT.</li> </ul>	<p>The tax reforms that have been carried out (2020 and 2022) are mainly focused on compliance increasing the tax requirements. Main updates are:</p> <ul style="list-style-type: none"> <li>• Certification of liabilities (by a certified public accountant) when companies intend to capitalize them.</li> <li>• Supporting documentation of the effective controlling beneficiary.</li> <li>• Reincorporation of procedures that had already been eliminated, such as submitting a notice when a fixed asset is derecognized.</li> <li>• And the most relevant: The presentation of the tax report is once again mandatory. Since 2014 this opinion was optional. Sanctions were toughened for those who rule for "possible concealment of tax crime."</li> </ul>

# Market Trends in LATAM

● **Strategic evaluation of sourcing models:**

Pressure over quality of data, forcing organizations – traditionally in-house – to make decisions between making material investments on technology and resources vs. rethinking for alternative sourcing model.

● **Importance of localization and the benefits of centralization:**

Technology evolution is enabling the further centralization of tax processes, especially around data driven processes (e.g., indirect and withholding tax compliance). There remains a lack of regulatory harmonization in the region that drives need for some element of local expertise.

● **Technology evolution:**

Limited use of technology when compared to other regions, dragging resources into low value task (e.g., data reconciliations) and increasing operational risk. Companies are now facing the decision of making a technology investment or rethinking their sourcing model (i.e. leveraging investment made by outsourcing providers).

● **Deploy advanced data models:**

Data is the challenge. Reduce the time and effort capturing data and provides for enhanced reporting and analytics on the back-end of the process to reduce operational risk.

● **Integration of processes through a single platform:**

Significant pressure over quality of tax sensitive data as compared to other regions drives need for greater levels of integration over BPO/Accounting/Tax processes. Securing data quality demands a material amount of resources. Proper ERP configuration and automation of data management tasks are the focus.

● **Centralization of transformative compliance processes:**

Moving from limited centralization (i.e., governance and project management) to advanced models of centralized processing and calculations to support various tax processes.



**Transfer Pricing Considerations in LATAM**

## Transfer Pricing Framework

- Transfer Pricing rules evaluate the reasonableness of a given taxpayer's intragroup transactions based on the arm's length standard.
- Related party transactions are defined by the price (or effective compensation) charged for exchanges involving tangible property, intangible property or services.
- Transfer Pricing rules aim to allocate income within a controlled group based on the relative contributions made by each related party (member) of the controlled group.
- Quantifying the value of each related party's relative contributions is determined by:

### Functional Analysis

Identifies the nature/scope of each related party's contributions to the controlled group's value chain in terms of

- Nature/scope of functions performed
- Nature/scope of assets contributed
- Nature/scope of risks borne

### Contribution Analysis

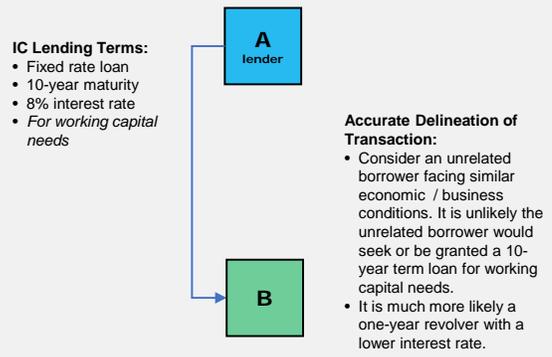
Determines the weighting assigned to each related party's contributions to the controlled group's value chain.

## Acquisition Funding – Debt, Interest, and Thin Capitalization

- The establishment of a legal entity or the expansion of its business requires capital in the form of either debt or equity. A shareholder providing equity capital is generally compensated by dividend payments, which constitute a non-deductible cost for the company. On the recipient level, dividend income is often exempt or favorably taxed to mitigate or avoid double taxation.
- The interest expense associated with debt capital is generally tax-deductible on the company level. Because most countries allow for a deduction of interest paid or payable when calculating taxable profit, the capital structure of an operating company can have a significant impact on amount of profit reported for tax purposes.
- To limit international debt shifting by multinational corporations ("MNCs"), governments have implemented thin capitalization ("thin cap") rules. These generally specify a threshold for the ratio of internal debt relative to equity beyond which interest expenses are no longer deductible from the corporate tax base.
- The classification of transactions as loans or equity has significant impact for MNCs. Accurate delineation of financial transactions is crucial to determine their proper classification and mitigate potential tax consequences.

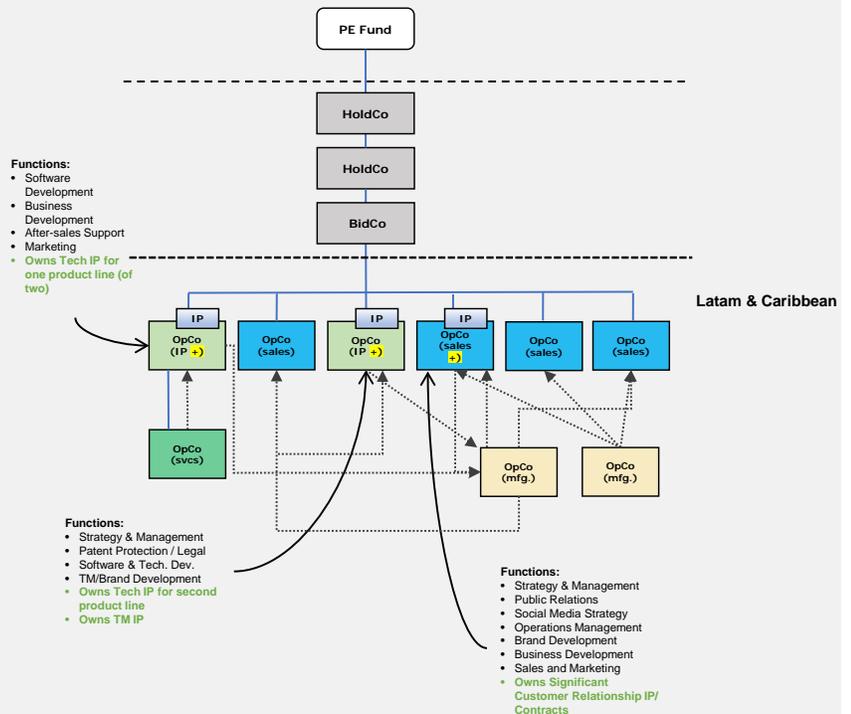
## Properly Pricing IC Financial Transactions

- Determine whether a loan is a *bona fide* loan
  - D / E ratio of the borrowing entity likely differs from that of an otherwise comparable independent company
  - Review economically salient factors of the transaction (e.g., financial covenants, securitization, ability to obtain loan from unrelated lender)
- Identify the relevant commercial or financial relationship(s)
  - Contractual terms
  - Functional analysis
  - Characteristics of the loan agreement
  - Economic circumstances
  - Business strategy
- Consider perspective of both lender and borrower
- Other options realistically available
- Choose the best / most appropriate transfer pricing method and estimate an arm's length range
- Cancellation of Debt



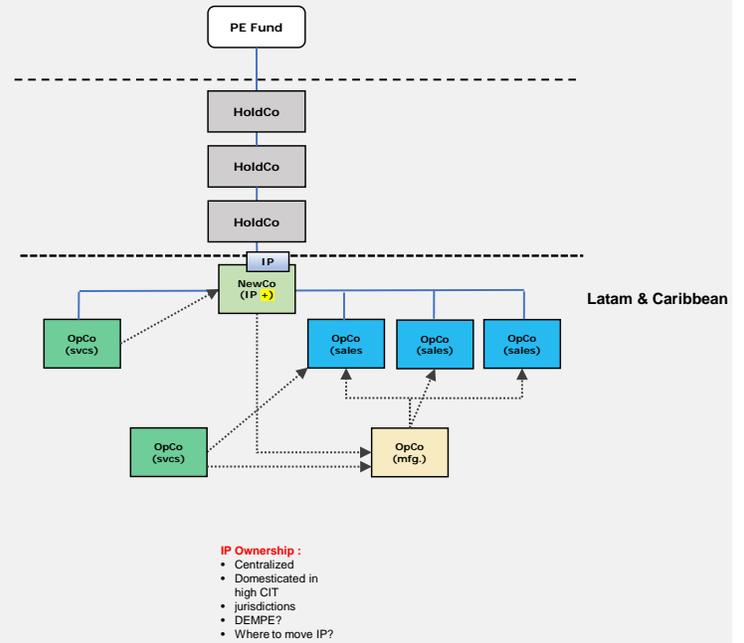
## Transfer Pricing Considerations for Post-Acquisition Integration

- The following tax & transfer pricing issues should be considered when contemplating a LAC investment:
  - Political stability and flexibility of the country's regulatory and legal structure
  - **Supply chain and transfer pricing planning – what is optimal location for assets to minimize taxes**
  - **Managing ownership of IP and substance of intercompany ("IC") transactions (DEMPE functions)**
  - Legal entity rationalization and simplification
  - **Properly designing IC agreements to delineate the actual transaction, allocate risk, etc.**
  - Reducing exposure to anti-deferral and anti-avoidance transfer pricing rules in the U.S. (GILTI, BEAT) and other jurisdictions
  - **Funding of target company**



## Supply Chain Optimization and Simplification

- Ideally, tax planning is integrated with commercial decisions and supply chain restructuring.
- This simplified, more efficient transfer pricing structure and supply chain should increase returns to the VC / PE upon exit.
  - Mitigates future tax liability
  - Reduces redundant operating costs



## Other Supply Chain Tax Planning Considerations

- Customs & Import Duties
  - MERCOSUR (Argentina, Brazil, Paraguay, Uruguay)
  - ALADI (Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, México, Paraguay, Perú, Uruguay and Venezuela)
- Indirect Taxes (e.g., VAT), Tax Incentives

	Country / Territory	Statutory Rate	less surtax	less sub-national	Combined Rate
Corporate Income Tax	Argentina	30.0%		30.0%	30.0%
	Brazil	34.0%		34.0%	34.0%
	Chile	10.0%		10.0%	10.0%
	Colombia	35.0%	35.0%		38.0%
	Mexico	30.0%		30.0%	30.0%
	Peru	29.5%		29.5%	29.5%
	Puerto Rico	18.5%		18.5%	18.5%
Withholding Tax		<b>Dividends</b>	<b>Interest</b>	<b>Royalties</b>	<b>Technical Fees</b>
	Argentina	7.0%	35.0%	35.0%	35.0%
	Brazil	0.0%	15.0%	15.0%	15.0%
	Chile	35.0%	35.0%	30.0%	15.0%
	Colombia	10.0%	10.0%	20.0%	20.0%
	Mexico	10.0%	35.0%	35.0%	25.0%
	Peru	5.0%	30.0%	30.0%	15.0%
Puerto Rico	10.0%	29.0%	29.0%	0.0%	



# Pre-Exit Integration Checklist (Tax)

## Purchase Accounting

- Identify and record potential tax exposures, where appropriate
- Assess the need to record or release a valuation allowance on acquired tax attributes
- Evaluate IP ownership to ensure appropriate deferred tax accounting
- Assess stock option plan assumptions to ensure that appropriate deferred tax accounting is applied

## Legal Entity Simplification

- Review combined legal entities by jurisdiction
- Assess potential elimination of legal entities and analysis of any adverse tax consequences associated with their elimination (e.g., triggering of tax, loss of tax attributes, etc.)
- Coordinate with other functional areas to confirm proper documentation of legal entity rationalization and ensure intended tax treatment
- Identify local country filings and other requirements

## U.S. Federal Tax Planning

- Prepare additional documentation to support future attribute utilization (i.e., Section 382 analysis), and identification of planning opportunities
- Conduct accounting methods study and execute advantageous accounting methods changes where relevant
- Complete transaction costs analysis and cost segregation studies, as applicable
- Make tax elections related to the completed transaction as applicable (Section 338 elections, election to waive NOLs, new election to file a consolidated return, etc.)

## Global Structuring

- Develop tax efficient value chain (e.g., consider U.S. versus foreign sourcing of income, location and profitability of manufacturing operations, use of principal companies)
- Plan business alignment of non US intellectual property (IP)
- Ensure IT platforms are equipped for additional compliance burdens
- Consider global treasury strategies such as the use of internal leverage, intermediate holding companies, financing entities, etc.
- Identify whether off shore cash can be redeployed and at what cost
- Pursue planning opportunities to more effectively utilize foreign tax credits
- Examine implications of new post acquisition structure of current and proposed transaction flows on indirect tax (e.g., VAT, customs or duties)
- Identify and assess foreign currency issues

## Transfer pricing

- Identify economically significant risks for all IC transactions and determine how they are contractually assumed in IC contracts
- Review substance of legal entities that manage, control, and have financial capacity to assume risk
- Update all transfer pricing analyses and enter into new IC agreements as necessary
- Assess debt capacity and supportability of inserted leverage and interest rates
- Consider how acquired IP, financing structure and acquired company's business will support transfer pricing policies going forward
- Support transfer pricing methodologies with contemporaneous transfer pricing documentation



# New Brazilian Transfer Pricing Regulations - Summary

Royalties	Cost Contribution Agreements	Low Value-Added Services	
<p>Royalty Deductions <i>previously</i> limited to 1-5% of total income</p> <p>Intercompany royalty payments will now be based on the <u>arm's length principle</u></p> <p><b>IC royalty deductions now allowed as long as the royalty rate is priced at arm's length terms</b></p> <p>Tax on royalties unchanged (WHT + CIDE)</p> <p>US allowing tax credits for 2023 even in cases where transactions are not ALP</p>	<p>New TP law introduces "CCAs", similarly to what is found in the OECD Guidelines</p> <p>Text of the new TP law is non-specific about potential contributions</p> <p>Raises questions about indirect tax treatment for a CCA as there is no regulation currently for those transactions in Brazil:</p> <p>Treated as services for indirect tax?</p>	<p>Introduces concept of low value-added services</p> <p>Offers a simplified approach in the case of the provision of low value-added services</p> <p>Remuneration will have a <u>gross profit margin on all direct and indirect costs</u> related to:</p> <p>I - at least 5%, where provider is domiciled in Brazil</p> <p>II - at maximum of 5%, where provider is related party abroad</p>	<p>RFB will provide additional guidance on the commodity and futures exchange and publications whose quotes will be recognized.</p> <p>A secondary rule should provide more details on the practical application of methods for commodities. A specific and parallel system is expected for the registration of purchase and sale contracts, like what already occurs in other LATAM countries.</p>
Business Restructuring	Commodities	MAP and APA	
<p>The RFB intends to provide guidance on restructurings in a secondary legislation</p>	<p>The CUP method is given priority whenever possible. Differences in business conditions must be adjusted to ensure comparability</p> <p>Date of the transaction will be considered as the moment agreed between the parties for fixing the price</p> <p>Absent a transaction date, the moment of registration of the import declaration document and/or shipment date will serve as a reference point</p>	<p>New TP law introduces possibility of APAs</p> <p>The law also provides from Mutual Agreement Procedures (MAP), even considering that Brazil has a Map Normative Instruction in place since 2016</p> <p>RFB will provide additional guidance through secondary legislation related to APAs/MAP</p>	



## New Brazilian Transfer Pricing Regulations - Summary

TP Documentation: 1 of 2	TP Adjustments	TP Documentation: 2 of 2
<p>Designed to increase transparency by providing tax authorities with sufficient information to allow them to conduct TP risk assessments and consider whether groups have participated in BEPS-type activities</p> <p>Requires companies use a consistent three-tier structure (Master File, Local File, and CbCR) to provide information on global revenue allocation, economic activity, and pricing across a company's global operations</p> <p>Local comparables preferred but not required</p> <p>Allows for the use of multiple-year data and weighted averages, IQR, etc.</p>	<p>Spontaneous Adjustment: performed by Taxpayer</p> <p>Compensatory Adjustment: true ups and true downs, booked within analyzed period</p> <p>Primary Adjustment: performed by RFB in case of tax assessment</p> <p>Adjustments will not be allowed to increase the value of the CIT loss or: Reduce the tax calculation base, except in cases of compensatory adjustments or results agreed to in a dispute resolution mechanism, or conventions to eliminate double taxation to which Brazil is a signatory.</p>	<p>Deadline for MF and LF will be last business day of 2024 / 2025 (and 2023 if recognized early) - from then, taxpayers will have up to three months CIT returns to file Transfer Pricing documentation</p> <p>Fines will have a minimum value of R\$20 thousand and a maximum value of R\$5 million.</p> <p>Taxpayers with intercompany transactions exceeding \$R 500 million (US \$100 million) must provide a complete MF and LF.</p> <p>Taxpayers with intercompany transactions exceeding \$R15 million (US\$3 million) and below \$R500 million must provide a "light" LF.</p>

## New Brazilian TP Regs – Next Steps

- Perform initial analysis of impacts of the TP rule change
- Prepare for the initial expected effects, e.g., TP adjustments, business restructurings
- Create new IC contracts where relevant, especially royalties / intra-group services
- Evaluate tax effects of new expected profit allocations in Brazil
- Review all existing IC contracts if new TP laws imply modification to IC prices
- Assess the interaction of transfer pricing with customs valuation
- Specific TP analysis for operations of:
  - Intangibles
  - Intra-group services
  - Financial transactions

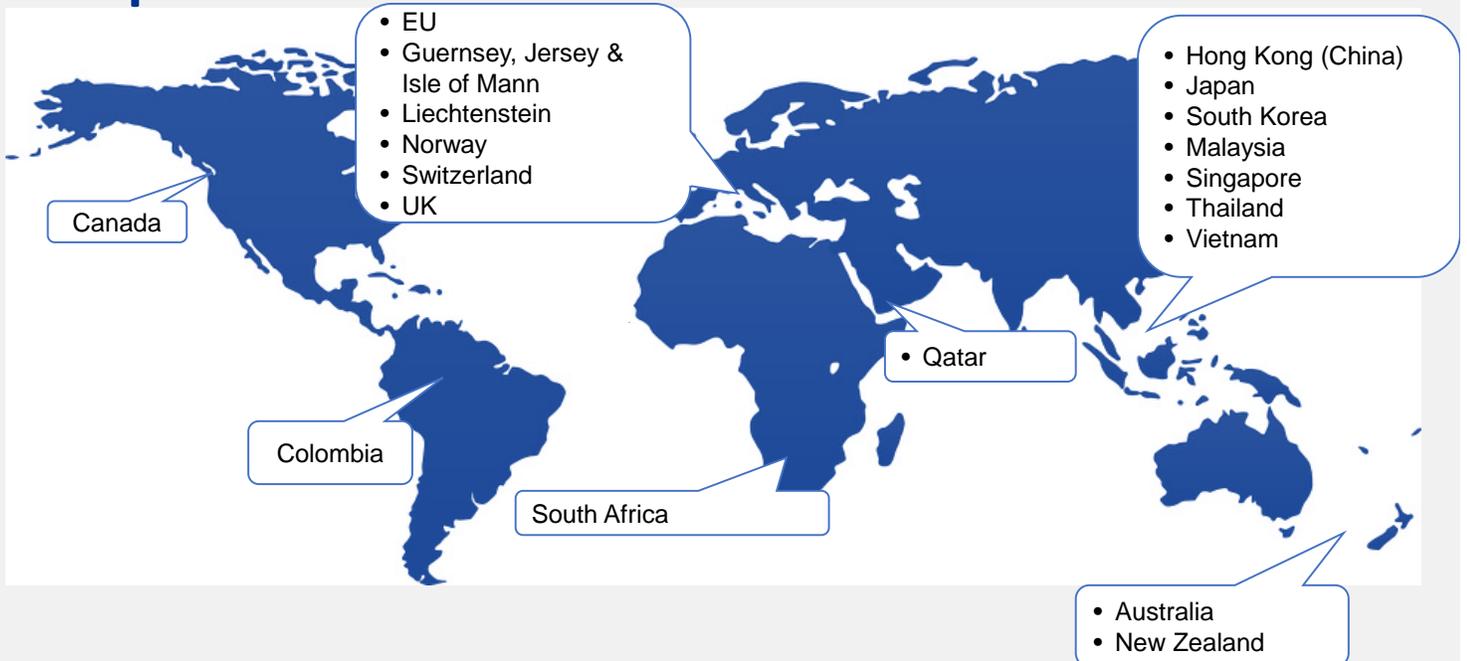


# Implementation of GloBE rules

October, 2023



## Steps from members towards the implementation



## Implementation of the GloBE rules

- IIR: Its impact in the region is estimated to be between 475 and 500 companies; So far, no countries have included them in their legislation.
- IIR Not adopted for the application of groups with an exclusively local presence.
- Colombia has approved a minimum tax of 15 percent applicable to any company. In Argentina, a bill to the same effect is applied to medium-income companies.

## Implementation of the GloBE rules

- UTPR implementation would bring constitutional problems in several countries. Judicial criteria establish that ISR is only required to be paid when a person obtains income from a taxable event.
- CFC rules are not sufficient to maintain taxing rights on their multinational groups, by first applying QDMTT where the low-taxed subsidiary is located.
- Interaction of Globe rules with CFCs and credits for taxes paid abroad

# Implementation of the GloBE rules

- Important impacts in free trade zones (Costa Rica, Panamá Uruguay) and tax incentives with reduce tax rates or exemptions in Argentina, Brazil, Chile and Mexico
- Important distortions with inflationary effects that are taken into consideration for tax purposes but not for Globe purposes reducing the ETR
- Impact on Mexican maquiladora industry, could be treated as stateless PE and income if the country where the principal is resident grants the exemption method for maquila activities.



# Summary of Select Latin American TP Documentation Rules

#	Country / Jurisdiction	Required TPD	Threshold for Preparation of MF/LF	Due Date	Penalty Exposure	Audit Risk
1	Argentina	Required	<p>Taxpayers with transactions with foreign related parties or third parties domiciled in non-cooperating jurisdictions or low-tax or no-tax jurisdictions for over ARS3,000,000 (approx. US \$30,000) in total or ARS300,000 (approx. US \$3,000) per transaction must submit the transfer pricing study (Form 4501) and master file. Taxpayers that are part of a group of multinational entities (according to Argentine country-by-country report definitions) and comply with the following requirements must submit the master file:</p> <p>Taxpayers that exceed in the prior tax year ARS4 billion (approx. US \$40 million) of consolidated annual income at the multinational group level.</p> <p>Taxpayers with transactions with foreign related parties for amounts over ARS3 million (approx. US \$30,000) in total or ARS300,000 (approx. US \$3,000) per transaction. ■</p>	23rd to 27th of the 6th month after year-end.	<p>Pursuant to Article 57 GR 4717/2020, Article 15 GR 4130-E, Article 38 of the Argentinian Tax Code, and the legislation N° 25.795 of 2003, the applicable penalties in relation to international transactions are: The taxpayer may be fined between amounts of ARS 10.000 and ARS 20.000 for non-filing or delayed filing of transfer pricing return. A penalty of ARS 45.000 is imposed if the tax authorities have served a request to file the transfer pricing return for each failure to comply with a request. Up to ARS 450.000 additional.</p> <p>A penalty from ARS 80.000 to ARS 200.000 will be applied for the non-filing or delayed or inaccurate filing of the information related to the membership of a local taxpayer to a multinational group;</p> <p>A penalty from ARS 600.000 to ARS 900.000 will be applied for the non-filing or delayed filing or inaccurate filing of the F.8097 form regarding CbCR.</p> <p>A penalty from ARS 180.000 to ARS 300.000 will be applied for non-compliance with a requirement made by the tax authorities.</p> <p>In addition, the following penalties will be applied in the case of an adjustment of the transfer prices settled with foreign parties:</p> <p>A fine on tax omission between 1 and 4 times the tax not paid or withheld; and</p> <p>Interests on the additional tax due.</p>	Risk is high, especially for aggressive TP planning. Under the Tax Planning Information Regime ("TPIR"), The Argentine Tax Authorities ("AFIP") resolved that taxpayers shall report the structures, techniques, instruments and mechanisms applied to minimize their tax burden. The TPIR is aimed at obtaining early information about "tax planning strategies" implemented by taxpayers to obtain tax advantages or benefits in connection with any tax and/or information regime.
2	Brazil	Required	<p>There will be three levels of Local File preparation: IC transactions exceeding R\$500 million in the previous calendar year: Broader and more detailed transaction guidelines.</p> <p>IC transactions between R\$15 million and R\$500 million in the previous calendar year: Reduced requirements and complexity.</p> <p>IC transactions less than R\$15 million in the previous calendar year: Local File not required.</p>	The last business day of July of the following year business day of 2024 / 2025 (and 2023 if recognized early) - from then, taxpayers will have up to three months after filing CIT to file TP documentation.	Fines will have a minimum value of R\$20 thousand and a maximum value of R\$5 million.	Risk is likely high, as Brazil very recently enacted new TP regulations which represent drastic changes from their prior TP laws.



# Summary of Select Latin American TP Documentation Rules

#	Country / Jurisdiction	Required TPD	Threshold for Preparation of MF/LF	Due Date	Penalty Exposure	Audit Risk
3	Colombia	Required	<p>The materiality threshold is: (i) the gross equity (assets) of the local taxpayer on 31 December of each year equal to or higher than the equivalent to TVU 100,000 (approximately USD 897,000 in FY 2023) or (ii) the gross income obtained by the local taxpayer in a given year equal to or higher than the equivalent to TVU 61,000 (approximately USD 550,000 in FY 2023).</p> <p>Preparation and filing of the Informative Return is required for all transactions and preparation and filing of a Local File and Master File are required for transactions exceeding TVU 45,000 (approximately USD 405,000 in FY 2023). The materiality threshold is not applicable when engaging into transactions with tax havens, and the transaction threshold is reduced to TVU 10,000 (approximately USD 89,700 FY 2023).</p> <p>The local materiality threshold for CbC is income of the previous year of TVU 81,000,000 (approximately USD 727,276,595 in FY 2023).</p>	MF - December, LF - September, CbCR - 12 months after previous FY	<p>TP documentation: Late filing: 0.1% of the total value of the transactions subject to TP up to 1,250 UVTs - Information inconsistencies: 1% of the value of the transactions reported with inconsistencies that were carried out with related parties, limited to 5,000 UVTs - Omitted information (transactions): 2% of the value of the omitted transactions carried out with related parties, limited to 5,000 UVTs; additionally, rejection of cost and expense related to omitted operations may apply - Omitted information (related parties located in tax havens): 4% of the total value of the transactions carried out with related parties, limited to 10,000 UVTs; additionally, rejection of cost and expense related to omitted operations may apply - Amendment of transfer pricing documentation: penalties may be reduced by 50%.</p> <p>TP return: Late filing: 0.1% of the total value of the transactions subject to TP up to 1,250 UVTs - Information inconsistencies: 0.6% of the total value of the transactions carried out with related parties, limited to 2,280 UVTs - Omitted information (transactions): 1.3% of the total value of the transactions carried out with related parties, limited to 3,000 UVTs; additionally, rejection of cost and expense related to omitted operations may apply - Omitted information (related parties located in tax havens): 2.6% of the total value of the transactions carried out with related parties, limited to 6,000 UVTs; additionally, rejection of cost and expense related to omitted operations may apply. Non-filing of transfer pricing return: 4% of the total value of the transactions carried out with related parties, limited to 20,000 UVTs.</p> <p>Penalties related to the CbCR: Article 260 of the CTC states that penalties that would apply are established in article 651 of the CTC according to which penalties for failure or incorrect submitting information are up to 15,000 UVTs considering the following criteria: a) 5% of the amounts not reported; b) 4% of the amounts incorrectly reported; c) 3% of the amounts that were reported after the deadline to submit the CbCR</p>	Medium. Tax authorities have started transfer pricing audits, requesting that a taxpayer amend its income-tax return when failing to fulfill the arm's-length principle. It is expected that such requests will be brought before courts. Tax authorities have become more aggressive and have improved their transfer pricing knowledge.
4	Chile	Required	MF: EUR 750 million. LF: a) Belong to the Large Companies segment; b) Its parent or controlling entity of the GEM has had to submit the Country-by-Country Report to the Internal Revenue Service or other Tax Administration for the respective year; and, c) That in said year they have carried out one or more operations with related parties that do not have domicile or residence in Chile, in accordance with the regulations established in Article 41 E of the Income Tax Law, for amounts greater than \$200.000.000 (two hundred million Chilean pesos)	6/30 with extension to 9/30 of calendar year.	<p>The penalty prescribed by article 97(1) of the Tax Code applies in case of failure in submission or late submission of the TP Form. Penalties for late filling vary from 0.2 monthly tax unit to 30 annual tax unit (CLP11,000 to CLP195MM approximately).</p> <p>In case there has been an adjustment in transfer pricing documentation, and a proposed adjustment is sustained, in that case, tax authorities can impose a 35% penalty tax instead of the income taxes on the adjustment. The additional items such as inflation adjustments, interest, and a five per cent penalty according to the amount adjusted can also be imposed. Consequently, the taxpayer will have to pay a special tax of 40% on the difference. Furthermore, a fine of 5% more might be applied if the taxpayer does not provide the SII with the documentation requested for review by the latter in a timely manner.</p>	<p>The SII established a highly qualified Transfer Pricing Unit and has been carrying out intensive tax audits. Based on Article 41-E CITL and recent reforms, the SII requires the taxpayers (medium and large) all the information about their operations above 200 million Chilean pesos with related parties. Other taxpayers (large taxpayers who submit CbCr) must file information about their operations above 500 million Chilean pesos. Moreover, based on both Article 41-E and Article 64 of the Tax Code, the SII is also entitled to investigate and assess domestic transactions.</p> <p>Current audits are being focused on all industries involving imports, such as automotive, pharmaceuticals and electronics. Audits are also focused on shipping, mining, and some agricultural enterprises.</p>



## Summary of Select Latin American TP Documentation Rules

#	Country / Jurisdiction	Required TPD	Threshold for Preparation of MF/LF	Due Date	Penalty Exposure	Audit Risk
5	Mexico	Required	<p>Taxpayers engaging in business activities whose income in the immediately preceding fiscal year did not exceed MXN 13 000 000 and taxpayers whose income from the provision of professional services did not exceed MXN 3 000 000 shall not be bound to prepare transfer pricing documentation, except those taxpayers: – That enter into transactions with entities in low tax jurisdictions; – Taxpayers that are contract or assignment holders in terms of the Hydrocarbons Revenues Law Taxpayers that do not meet the following requirements are not bound to prepare the Master File and Local file: – Taxpayers that in the immediately preceding fiscal year reported in their annual return revenue equal to or exceeding MXN 708 898 920 (approximately USD 38 000 000. This amount is updated every year), – Companies included in the Mexican optional tax regime for groups, – State-owned companies, or – foreign resident legal entities with a permanent establishment in Mexico.</p>	<p>The documents associated with the three-tiered approach of TP documentation (i.e. Master file, Local File and CbC Report) must be filed by <b>December 31st</b> of the succeeding required year, and the contents of these documents are in line with BEPS Action 13 Report/TPG Chapter V. Specific TP informative return must be filed in conjunction with the annual tax return or statutory tax report as of <b>March 31st</b> of the succeeding required</p>	<p>Article 32-D (IV) - The public sector will not contract with taxpayers that failed to submit a tax return. This section is applicable to Article 76-A of the MITL Article 76 - Penalty on omitted tax whenever it is unveiled by the tax authority: 55% or 75% of the omitted amount. The penalty of 30% or 40% applied to the exceeding amount reported as a fiscal loss over the real losses. Articles 81-XVII and 82-XVII - Whenever the taxpayer fails to inform about its transactions performed with related parties as set forth in Article 76 of Income Tax Law, a penalty of MXN 86 050 to MXN 172 100 is imposed. Articles 81-XL and 82 XXXVII - Whenever the taxpayer fails to submit the related parties informative returns as set forth in Article 76-A of Income Tax Law, or such returns are inaccurate, a penalty of MXN 172 480 to MXN 245 570 is imposed. Articles 83-XV and 84-XIII - Whenever the taxpayer fails to identify transactions executed with related parties residing abroad and reports them accordingly to Article 76 of Income Tax Law in its accounting records, a penalty of MXN 1 950 to MXN 5 860 is imposed for each transaction.</p>	<p>The current administration of President López Obrador signalled its interest in the regime by publishing in fiscal year 2020 the list of reportable schemes in which it included those related to TP, specifically: Transfer of intangible assets that are difficult to value; Business restructurings in which the structure of functions, assets or risks has been modified without the payment of a consideration or in which operating income has been reduced by more than 20%; Transfer or concession of the temporary use or enjoyment of goods or rights without consideration, or the rendering of unremunerated services or functions; Absence of comparables due to the contribution of the taxpayer of unique and valuable intangibles to the multinational's business; and even when the counterpart of the intercompany transaction is the beneficiary of a unilateral protection regime.</p> <p>Already during the pandemic, the SAT began an aggressive campaign of auditing multinational groups in which it has sought to eliminate the intermediation of tax advisors and has even threatened companies with charges of tax fraud.</p> <p>In these terms, a significant number of taxpayers have adjusted their results and taxable bases and have even had to publish public apologies in the national media.</p> <p>The latest measure has been the addition of Article 33, first paragraph, section I, subsection i) to the Tax Code for fiscal year 2021, which resulted in the publication of pre-established margins by industry, including a calculation of an 'effective tax rate', where the taxpayers of the forementioned industries are expected to reach the profitability or tax burden parameters suggested by the SAT.</p>



## Summary of Select Latin American TP Documentation Rules

#	Country / Jurisdiction	Required TPD	Threshold for Preparation of MF/LF	Due Date	Penalty Exposure	Audit Risk
6	Peru	Required	<p>Master file: Mandatory for companies that are part of a group with profits higher than 20,000 tax units, and companies that would have performed transactions within the scope of transfer pricing rules, whose amount of operations is equal to or higher than 400 tax units. Local File: Mandatory for taxpayers whose accrued income in the taxable year exceeded 2,300 tax units. They must provide information of transactions that generate taxable income and deductible costs/expenses.</p>	<p>June of the next year (exact date depends on filer's identification number)</p>	<p>According to numerals 2, 4 and 8 of Article 176 of the Peruvian Tax Code, it is a punishable offense: (2) Not to submit informative affidavit within the established deadlines. The penalty is a fine equivalent to 0.6% of net income. (4) Submit the informative affidavit incomplete or with nonconforming information. The penalty is a fine equivalent to 0.6% of net income. (8) Failure to file the informative affidavit without taking under consideration the guidelines and terms establish by SUNAT. It is punishable with a fine equivalent to 30% of a UIT (EUR 288 approximately). Also, numeral 27 of Article 177 of the Tax Code establishes that failure to show or to file the documentation and information referred to in subsection g) of Article 32-A of the Income Tax Law; which, among others, support the informative affidavits Local File, Master File and/or Country-by-Country Report, is a punishable offense with a fine equivalent to 0.6% of the net income, which cannot be less than 10% of a UIT or more than 25 UIT</p>	<p>High. The Peruvian Tax Authority has significantly increased the number of specific requests to taxpayers to present transfer pricing studies and related documentation. The number of transfer pricing audits has also increased, resulting in adjustments and penalties for some taxpayers. Furthermore, on October 11, 2022, the SUNAT (Superintendencia Nacional de Aduanas y de Administración Tributaria – National Superintendence of Customs and Tax Administration) expanded the number of high-tax-risk schemes. In this regard, the "Catálogo de Esquemas de Alto Riesgo Fiscal" (Catalog of High Tax Risk Schemes) was updated with 8 more modalities for obtaining undue tax advantages.</p>
7	Puerto Rico	Not required	<p>Taxpayers can reasonably rely on a certified transfer pricing study prepared for previous years, provided the taxpayer's facts and circumstances and relevant transactions in the tax year have not substantially changed since the certification of the transfer pricing study. Despite this, taxpayers need to submit annually form AS 6175 together with their income tax return.</p>	<p>N/A</p>	<p>Not required to file TP documentation; however intercompany expenses not allowed as deduction. In addition penalties can be assessed from 20% or 40%, in the case of gross valuation misstatements, of the amount assessed as deficiency. In the case of fraud the penalty should be 100% of the amount assessed as deficiency</p>	<p>On May 11, 2021 the Puerto Rico Treasury Department issued Administrative Determination Letter 2105 to among others, clarified that there is no need to issue a Transfer Pricing Report each year to the extent that the facts, circumstances and intercompany transactions have not changed substantially from the time the Transfer Pricing Report was issued.</p>

